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Democratic Tendencies in Hobbes's *Leviathan*

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Democratic Tendencies in Hobbes's *Leviathan*

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An abstract of
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Abstract

Democratic Tendencies in Hobbes's *Leviathan*
By Sarah Meier

In this dissertation, I argue that Hobbes articulates and defends a set of political ideals that have come to be associated with democracy. Specifically, he views political equality, individual rights for all citizens, and the rule of law as necessary components of a well-formed commonwealth. This is not to say that Hobbes himself was a democrat, merely that his thought is still valuable to those who try to theorize democracy and its relation to these ideals. Much Hobbes scholarship, however, depicts his science of commonwealth as an argument for political order at any cost — even submission to a tyrannical, absolute ruler. In my opinion, this portrayal goes too far and obscures the importance of Hobbes's account of individuals as equal parties in the constitution of both commonwealth, and the office of sovereignty. When approaching the topic of Hobbes's absolutism, I will stress the distinction between the authority of the office of sovereignty and the power exercised by whoever occupies this office. Throughout, I maintain that the authority of the office must be understood as bounded or limited by the end of its institution. Finally, I will complement my analysis of Hobbes's arguments with an examination of the competing ideological positions in Stuart England. Upon examination, Hobbes appears opposed to the conservative elitism of both his royalist and parliamentarian peers and, furthermore, seeks to counter the dangerous forms of personal authority fostered by elite infighting as well as the dysfunctional state of English common law.

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For my parents, Marcia and Anthony, and my indefatigable husband, Jim.

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Abbreviations and Conventions

I make use of the following abbreviations and conventions:

B = *Behemoth*

DC = *De cive* (DC iv.1 = *De cive*, Chapter iv, paragraph 1)

DCo = *De corpore* (DCo III.xv.1 = *Elements of Philosophy* Part III, Chapter xv, paragraph 1)

DH = *De homine* (DH xv. = *De homine,* Chapter xv, paragraph 1)

EL = *Elements of Law* (EL I.1.1 = *Elements of Law*, Part I, Chapter 1, paragraph 1)

L = *Leviathan* (L x.1 = *Leviathan*, Chapter 10, paragraph 1)

All quotations are taken from the following English-language editions of Hobbes's texts:

Hobbes, Thomas. *Behemoth, or, the Long Parliament.* Edited by Ferdinand Tönnies. Chicago: University of Chicago Press, 1990.

_____. *Man and Citizen: De Homine and De Cive.* Translated by T.S.K. Scott Craig Charles T. Wood, Bernard Gert. Edited by Bernard Gert. Indianapolis: Hackett Pub. Co., 1991.

_____. *Elements of Philosophy the First Section, Concerning Body.* London: Printed by R. & W. Leybourn, for Andrew Crocke, at the Green Dragon in Pauls Church-yard, 1656.

_____. *The Elements of Law, Natural and Politic.* Edited by Ferdinand Tönnies. 2nd ed. London: Cass, 1969.

_____. *Leviathan: With Selected Variants from the Latin Edition of 1668.* Edited by E.M. Curley. Indianapolis: Hackett Pub. Co., 1994.

For the common people are the strongest element of the commonwealth...If the great, because they are great, demand to be honored on account of their power, why are not the common people to be honored, because they are many and much more powerful.

— Thomas Hobbes, *Leviathan*[1]

That all men are created equal is not self-evident nor can it be proved. We hold this opinion because freedom is only possible among equals.

— Hannah Arendt, "Truth & Politics"[2]

Nature, like Liberty, is but restrained
By the same laws which first herself ordained.

— Alexander Pope, *An Essay on Criticism*[3]

Introduction

Thomas Hobbes did not plan to write *Leviathan*. He was busy with an already delayed manuscript on the nature of body and, moreover, had already published two separate accounts of his science of commonwealth, first in *The Elements of Law* (1640) and then in *De cive* (1642). But the English civil war forced his hand. As he states, *Leviathan* was "occasioned by the disorders of the present time without partiality...and without other design than to set before men's eyes the mutual relation between protection and obedience" (L R&C.17). It is easy to read into this claim the authoritarianism so many of us have been taught to associate with the notorious "Monster of Malmesbury."[4] Hobbes appears to urge the necessity of submission to any ruler mighty enough to

[1] This is from the Latin edition and translated by Curley at L xxx.16
[2] Hannah Arendt, "Truth and Politics," in *The Portable Hannah Arendt*, ed. Peter Baehr (New York: Penguin Books, 2000).
[3] Alexander Pope, *Essay on Man and Other Poems*, ed. Stanley Appelbaum, Dover Thrift Editions (Dover Publications, Inc., 1994), 6.
[4] See: Cowley, Abraham. *The True Effigies of the Monster of Malmesbury: or, Thomas Hobbes in His Proper Colours*. London: [s.n.], 1680.

overwhelm competitors and secure relative peace. One might indeed recall the frontispiece image of a colossal monarch looming over a city square while wielding a sword and scepter in either hand.[5] Nevertheless, our readiness to see Hobbes as an apologist for tyranny elides two central question: First, what exactly does protection entail? And, second, why does Hobbes believe obedience is conditional upon protection?

The answers to these questions, I contend, reveal an underlying democratic tendency within Hobbes's political thought. To be clear, it is not my goal to portray Hobbes as a proponent of democracy. Like the vast majority of his contemporaries, he saw democracy as a flawed system of government,[6] and while he did offer an account of possible democratic sovereignty — quite unique for the time — he would have been appalled to be counted among the "democratical gentlemen" he so loathed (B 26, 39).[7] Neither will I argue that the foundation of Hobbes's thought is accidentally or implicitly democratic, nor that any current model of democracy can be traced back to Hobbes.[8] My

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[5] For the relevance of the frontispiece imagery for Hobbes's state theory see: Horst Bredekamp, "Thomas Hobbes's Visual Strategies," in *The Cambridge Companion to Hobbes's Leviathan*, ed. Patricia Springborg (Cambridge: Cambridge University Press, 2007); Keith Brown, "Thomas Hobbes and the Title-Page of *Leviathan*," *Philosophy* 55, no. 213 (1980); "The Artist of the *Leviathan* Title-Page," *British Library Journal* 4, no. 1 (1978); Roberto Farneti, "The 'Mythical Foundation' of the State: *Leviathan* in Emblematic Context," *Pacific Philosophical Quarterly* 82, no. 3-4 (2001).

[6] In the words of Christopher Hill: "Most writer about politics during the century before 1640 agreed that democracy was a bad thing." See Hill's analysis of the social anxieties and religious beliefs underlying this hatred of democracy in his classic work, Christopher Hill, *Change and Continuity in Seventeenth-Century England*, Revised ed. (New Haven: Yale University Press, 1991).

[7] Hobbes uses this terminology throughout *Behemoth* to refer to those political elites (hence "gentlemen"), who manipulated the common people into waging war in the name of protecting parliamentary privileges. In short, Hobbes is being ironic; he thinks that often the most outspoken proponents of greater liberty truly desire to amass more power for themselves.

[8] For one example of an argument claiming Hobbes as a proto-democrat, see: David Runciman, "Hobbes's Theory of Representation: Anti-Democratic or Proto-Democratic?," in *Political Representation*, ed. Ian Shapiro (Cambridge: Cambridge University Press, 2010). Additionally, Richard Tuck and Kinch Hoekstra have recently debated whether or not adopts the model of radical democracy described by Aristotle in Book IV of the *Poliitcs*. Tuck thinks in his early

focus is instead on Hobbes's commitment to a set of political ideals that go hand-in-hand with democracy.[9] First, I argue that by 'protection' Hobbes understands the recognition of political equality and guaranteed individual rights for all subjects. Second, I demonstrate that he theorizes sovereignty as an office or institution, constituted through the actions of disparate individuals (i.e., the "multitude"), for the sake of creating an artificial space in which law can be both legitimate and effective.[10] The mutual relation between protection and obedience is a function of this end and delimits the proper scope of sovereign authority.

Methodologically, I combine philosophical analysis of Hobbes's arguments with a consideration of the intellectual and political context in which they were first formed. As a result, each chapter follows a similar structure: first I highlight a gap or weakness in current Hobbes scholarship; then I attempt to offer a more viable interpretation; and, finally, I assess the competing ideological positions Hobbes most likely sought to counter with the writing of *Leviathan*.

In Chapter 1, I reconsider Hobbes's argument for the natural equality of persons. At times this argument has been seen as evidence that, perhaps, Hobbes ought to be

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works (in *Elements of Law* and *De cive*), Hobbes sees radical democracy as amenable to the absolute state. Hoekstra strongly disagrees. See: Richard Tuck, "Hobbes and Democracy," in *Rethinking the Foundations of Modern Political Thought*, ed. Annabel Brett, James Tully, and Holly Hamilton Bleakley (Cambridge: Cambridge University Press, 2006); Kinch Hoekstra, "A Lion in the House Hobbes and Democracy," ibid., ed. Annabel Brett, James Tully, and Holly Hamilton-Bleakley.

[9] While one might call these democratic principles, since they are entailed by the institution of a democracy, I do not argue that these principles, conversely, require democracy. For example, it is clear, at least, that Hobbes thought non-democratic state-forms must also be committed to the equality of citizens/subjects under law.

[10] For one of the few analyses of Hobbes's take on the constitutive power of the people *qua* multitude, see: Murray Forsyth, "Thomas Hobbes and the Constituent Power of the People," *Political Studies* 29, no. 2 (1981).

counted among the founders of modern liberalism.[11] But the liberal reading is vexed by objections. Critics hold that Hobbes's premises are patently false, his conclusion ironic and rhetorical, or that natural equality is a moot point given his absolutism.[12] In the final case, the complaint is that Hobbes undermines the normative force of natural equality by failing to ensure the political equality of subjects within commonwealth. Simply stated, the consensus is that he falls short when it comes to theorizing equality as a basic, foundational principle of political morality.

I disagree — the liberal reading has opened itself up to such objections by assuming that Hobbes grounds natural equality in the "rough equality" of persons in their developed mental and physical capacities.[13] After examining how this standard interpretive tenet contradicts several of Hobbes's other explicit commitments, I turn to his philosophical psychology, beginning with the key concept of *conatus.* My claim is that Hobbes ultimately offers a "rights-based" argument for natural equality (i.e., he does not derive natural right from natural equality).[14] He views human beings as generally

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[11] Leo Strauss was among the first to forward the liberal reading: Leo Strauss, *The Political Philosophy of Hobbes, Its Basis and Its Genesis* (Oxford: Clarendon Press, 1936). For a more recent example, see: Noel Malcolm, "Thomas Hobbes: Liberal Illiberal," *Journal of the British Academy* 4 (2016).

[12] For model examples of these three respective critiques see: Aloysius Martinich, *Hobbes*, Routledge Philosophers (New York: Routledge, 2005), 66; Gary Herbert, "Thomas Hobbes's Counterfeit Equality," *Southern Journal of Philosophy* 14, no. 3 (1976); Gregg Franzwa, "The Paradoxes of Equality in the Worlds of Hobbes and Locke," *Southwest Philosophy Review* 5, no. 1 (1989).

[13] This assumption is rampant in the literature, and in no way unique to those who see Hobbes as a part of the liberal tradition. See: Michael Oakeshott, *Hobbes on Civil Association* (Indianapolis: Liberty Fund, 2000), 35; C. B. Macpherson, *The Political Theory of Possessive Individualism: Hobbes to Locke* (Oxford: Clarendon Press, 1962), 74; Gregory S. Kavka, "Hobbes's War of All against All," *Ethics* 93, no. 2 (1983): 293; David P. Gauthier, *The Logic of Leviathan: The Moral and Political Theory of Thomas Hobbes* (Oxford: Clarendon Press, 1969), 15; M. M. Goldsmith, *Hobbes's Science of Politics* (New York: Columbia University Press, 1966), 87.

[14] For the view that Hobbes derives natural right from natural equality, see the above cited sources as well as: Jean Hampton, *Hobbes and the Social Contract Tradition* (Cambridge: Cambridge University Press, 1986), 25.

equipped with the means to reason prudentially about their respective ends, whatever they may be, and in the absence of either a universal standard of human perfection or a recognized political authority he argues that each must be acknowledged to do so by natural right.

Moreover, interpreting natural equality as consisting in the equal natural right of each individual to pursue her self-preservation has ramifications for the political status of subjects. The very passages that have led critics to dismiss Hobbes's position as rhetorical, or merely calculated to incentivize submission to an absolute sovereign, must instead be read as earnest. This is especially true of Hobbes's ninth law of nature, "*that every man acknowledge other for his equal by nature*" at the very entrance to civil society (L xv.21). I see this as a substantive condition on the institutional structure of commonwealth that informs a number of more specific recommendations for how the political equality of subjects ought to be regulated by law.

In his repudiation of the Aristotelian doctrine of natural slavery as well as the various defenses of natural hierarchy forwarded by his own contemporaries, Hobbes betrays a deep commitment to the equality of subjects under law.[15] There is good reason to see this as intentional. After all, he could surely have anticipated the negative reactions

[15] As Kinch Hoekstra points out, the claim of natural human equality was fairly "commonplace" when Hobbes composed his famous statement. Kinch Hoekstra, "Hobbesian Equality," in *Hobbes Today: Insights for the 21st Century*, ed. S. A. Lloyd (Cambridge: Cambridge University Press, 2012), 77. Nevertheless, it is important to specify what his contemporaries *meant* by natural equality. Upon examination the reference was to *prelapsarian* human equality (i.e., prior to the fall). Nearly all of those who held this view of human beings in their *natural* state (where 'natural' literally meant "in the beginning" or "in the Garden of Eden"), also asserted the existence of a natural or divinely ordained social hierarchy. These views were seen as consistent with one another — post fall, it was thought, inequality proceeded *naturally* and was hence justified . See: Jeremy Waldron, *God, Locke, and Equality: Christian Foundations of John Locke's Political Thought* (Cambridge: Cambridge University Press, 2002).

of his peers, royalist and parliamentarian alike. Edward Hyde the Earl of Clarendon, for example, disparages Hobbes's "extreme malignity to the Nobility" in making honors and titles dependent on merit.[16] He further accuses Hobbes of being a "faithful Leveller," who would see "the reduction of all degrees to one and the same…*as if the safety of the People requir'd an equality of Persons*."[17] Despite the intended insult, Clarendon astutely hits the mark. In closing this chapter I will consider Hobbes in dialogue with the elites of his day, emphasizing his belief that unless equal natural right is formally acknowledged, commonwealth will remain vulnerable to internal strife.[18]

In Chapter 2, I expand upon the consequences of political equality for the rights of Hobbesian subjects. Needless to say, few commentators see Hobbes as a great friend of individual liberty and far fewer think he provides any protections for individual rights in commonwealth. Yet in the letter of dedication preceding *Leviathan*, Hobbes declares his hope to avoid the pitfalls of extremists who contend, "on the one side for too great liberty, and on the other side for too much authority." He views his project as a moderate one, that will "pass between the points of both unwounded" (Ibid.). How is it, then, that an avowed absolutist who seeks to "advance the civil power," and even "magnify" it as much as possible, can also claim to defend individual liberty?[19]

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[16] Edward Hyde, "A Survey of Mr. Hobbes, His *Leviathan*," in *Leviathan: Contemporary Responses to the Political Theory of Thomas Hobbes*, ed. G.A.J. Rogers (Bristol, England: Thoemmes Press, 1995), 292.
[17] Ibid., 292, 93.
[18] This is not, however, a merely instrumental argument for political equality because of how Hobbes defines stable commonwealth and the principled boundaries of legal order. For more on this see my discussion of the office of sovereignty in Chapter 3.
[19] In the English version of *Leviathan*, Hobbes states: "But yet, methinks the endeavour to advance the civil power, should not be by the civil power condemned; not private men, by reprehending it, declare they think that power to great." In the Latin version, however, he states the point thus: "But I see no reason why either side would be angry with me. For I do but magnify

On my view, Hobbes make the very existence of commonwealth a function of whether or not subjects are guaranteed protection in their most basic human rights as well as any rights that might be merited through a legally defined practice of contract within commonwealth. Moreover, he emphasizes the importance of those liberties that individuals enjoy as a result of "the silence of the law," and defends others as inalienable, including freedom of conscience or belief. Critics object to this reading on two fronts. First many think that he models all rights after original natural right and as a result never theorizes anything resembling the modern understanding of rights as claims. Often this is accompanied by the assertion that a strong theory of rights must be grounded in moral principle and Hobbes instead turns to self-interest.[20] Second, and more compellingly, critics argue that without the ability to hold rights *against* their sovereign, Hobbesian subjects are utterly beholden to the arbitrary will of a tyrant and their rights exist in name only.[21]

In responding, I analyze Hobbes's definition of 'right' as the unimpeded liberty "to do or to forbear" (L xiv.3). He sometimes uses the term 'liberty' to indicate the protected claim rights of subjects (L xiv.5; xxi.6; L xxi.19), and this use actually fits the

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as much as I can the civil power, which anyone who possesses it wishes to be as great as possible."

[20] Hampton, *Hobbes and the Social Contract Tradition*, 51-52; Michael P. Zuckert, "Do Natural Rights Derive from Natural Law?," *Harvard Journal of Law and Public Policy* 20 (1996-1997); Brian Tierney, *The Idea of Natural Rights: Studies on Natural Rights, Natural Law, and Church Law, 1150-1625*, Emory University Studies in Law and Religion (Atlanta, Ga.: Scholars Press, 1997), 340-41; Terrance McConnell, "The Nature and Basis of Inalienable Rights," *Law and Philosophy* 3, no. 1 (1984): 49.

[21] Patricia Sheridan, "Resisting the Scaffold: Self-Preservation and Limits of Obligation in Hobbes's Leviathan," *Hobbes Studies* 24, no. 2 (2011); Joel Feinberg, "The Nature and Value of Rights," *The Journal of Value Inquiry* 4, no. 4 (1970): 274; Charles Tarlton, "The Despotical Doctrine of Hobbes, Part I: The Liberalization of *Leviathan*," *History of Political Thought* 22, no. 4 (2001); "The Despotical Doctrine of Hobbes, Part Ii: Aspects of the Textual Substructure of Tyranny in *Leviathan*," *History of Political Thought* 23, no. 1 (2002).

above definition far better than natural right or any mere liberty. Along the way I comment on Hobbes's unique approach to natural law obligations and argue that he is able to hold that all individuals are voluntarily committed to the content of natural law, even in a state of nature. Finally, I concede that Hobbesian subjects do not hold any rights against their sovereign; this is a decided illiberal aspect of Hobbes's thought. Yet this does not mortally wound his rights theory. It is important to distinguish between a theory of rights and a theory of authority and the above objection tends to conflate the two and, moreover, treats the content of the former as dictated by an answer to the latter. I think this is dangerous. Moreover, just because Hobbesian subjects do not hold any legal rights against their sovereign does not mean they are entirely without recourse for pressing their claims. When looking to the relevant historical context I examine the limited and corporatist role of rights language in Stuart England. That is, Hobbes was responding to a culture in which rights were rarely if ever things held by private individuals as such. Instead they derived from custom and were allocated relative to social class or station, or by virtue of one's membership in a group. In this context, his own argument appears radical enough to satisfy liberty-loving extremists, while also advancing the cause of state-authority.

Finally, in Chapter 3 I directly address Hobbes's absolutism by answering two related charges: first, the charge of personal authority; and, second, the charge of *de facotism*. The first should be familiar: Hobbes, to borrow a phrase from John Locke, subjects individuals to the "absolute will and arbitrary dominion of another."[22] Rule by a

[22] John Locke, *Second Treatise of Government*, ed. C.B. Macpherson (Indianapolis: Hackett Publishing Co., 1980), §149.

Hobbesian sovereign, it is alleged, is rule by a private person or group, whose will constitutes law as such.[23] The second charge further alleges that Hobbes cannot adequately distinguish between authority and mere effective power. As a result, he never provides a compelling account of political legitimacy.[24] Often the key concept of representation is at issue, with commentators noting that the process of authorization results in a relation where the sovereign personates or represents the people. But due to the unilateral relationship between sovereign and subject there is no way to ensure that law and policy is formed with any consideration of public interests.

My response centers around a two-stage analysis of the social contract, through which the commonwealth is generated as a unified body politic and the sovereign is instituted as a "public person." Commonwealth will be found to consist in the set of contractual relations between subjects, generated by their agreements to alienate natural right. The act of authorization, then, institutes the sovereign to act in the name of this unity, but it also defines the bounds of its authority. Sovereignty must be seen as first and foremost an office committed to the rule of law. I further argue that Hobbes distinguishes between power and authority throughout *Leviathan*. This is evidenced by his continual

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[23] Susan Moller Okin, ""The Soveraign and His Counsellours"," *Political Theory* 10, no. 1 (1982); Tarlton, "The Despotical Doctrine of Hobbes, Part Ii: Aspects of the Textual Substructure of Tyranny in *Leviathan*."; M.M. Goldsmith, "Hobbes's 'Mortall God': Is There a Fallacy in Hobbes's Theory of Sovereignty," ibid.1 (1980); Joshua Cohen, "Getting Past Hobbes," in *Hobbes Today: Insights for the 21st Century*, ed. S.A. Lloyd (Cambridge: Cambridge University Press, 2013).

[24] Hanna Pitkin, "Hobbes's Concept of Representation—Ii," *American Political Science Review* 58, no. 04 (1964); Philip Pettit, *Made with Words: Hobbes on Language, Mind, and Politics* (Princeton: Princeton University Press, 2008); Quentin Skinner, "Hobbes on Representation," *European Journal of Philosophy* 13, no. 2 (2005); Kinch Hoekstra, "The De Facto Turn in Hobbes's Political Philosophy," in *Leviathan after 350 Years*, ed. Tom Sorell and Luc Foisneau (Oxford: Clarendon Press, 2004); "Tyrannus Rex Vs. Leviathan," *Pacific Philosophical Quarterly* 82 (2001); Michael J. Green, "Authorization and Political Authority in Hobbes," *Journal of the History of Philosophy* 53, no. 1 (2015).

attempts to theorize concrete power relations in society (L x; L xii; L xiii.4-8; L xxii.5, 27-34; L xxv.11; L xxix; L xlvii.20), as well as his concern for the mortality of the sovereign office when undermined by elites or others competing for effective power. It is also evidenced by his choice of language. The sovereign holds the right and authority of public office but is potentially hindered in the exercise of this right where subjects withdraw their "strength and means," or, for "Want of Absolute Power" (L xvii.13; L xxix.3). In the Latin version, moreover, he consistently uses the terms *potestas* and *imperium* to refer to sovereign authority and *potentia* to refer to effective power.[25]

Turning to the historical context one last time will also help shore up my account of Hobbes's theory of authority. My focus in this final section will be on Hobbes's assessment and critique of the common law tradition as it functioned in Stuart England, especially his view that the common lawyers themselves exercised an extreme form of personal authority, judicial and political, without oversight and without the fiduciary duties that go along with public office as he conceives it. Hobbes was influenced by the Roman or civil law tradition and likely saw sovereignty, a concept first articulated within this tradition, as a means to remedy the instability brought on by the overlapping jurisdictions of common, civil, and ecclesiastical courts. Contrasting his views on law with the statements of his contemporaries further supports my thesis that Hobbes's approach to theorizing the political state betrays democratic tendencies.

[25] Sandra Field, "Hobbes and the Question of Power," 52.1 (2014).

Chapter 1: Hobbes's Doctrine of Natural Equality

The thesis of natural human equality is ubiquitous within contemporary political philosophy. Indeed, it is generally agreed that "all serious thought about political ethics…must begin with a belief in human equality."[26] On this front Hobbes might appear refreshingly familiar. He too, after all, establishes equality as the foundation of his social contract theory. Yet few nowadays would consider him a trailblazer for later egalitarian thought. Hobbesian natural equality tends to be seen as an insincere or rhetorical position modeled with the intent of justifying sovereign absolutism.

I argue otherwise. In fact, Hobbes still has much to teach us, especially since it is far from clear what we actually mean by natural or moral equality.[27] In this chapter I first establish that there is a lack of consensus among scholars as to the correct interpretation of Hobbes's argument for natural equality. Moreover, the dominant views create a good deal of problems for reading Hobbes' political philosophy as a whole. On my reading, and contrary to the standard interpretation, Hobbes rejects any simplistic account of human beings as equal in any of their developed mental or physical capacities. Instead he

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[26] John Charvet, *The Nature and Limits of Human Equality* (New York: Palgrave Macmillan, 2013), 1. Other forward similarly sweeping claims. For Will Kymlicka has argued that a commitment to the basic equality of persons transcends the most bitter of ideological divides; it "is found in Nozick's libertarianism as much as in Marx's communism." See: Will Kymlicka, *Contemporary Political Philosophy : An Introduction*, 2nd ed. (Oxford ; New York: Oxford University Press, 2002), 4.

[27] Despite its ubiquity, the thesis of natural equality remains frustratingly difficult to justify. Contemporary liberal theorists find themselves thwarted by counterexamples, and without a clear argument as to what natural equality would require of us in practice. Not only is natural equality itself made a tenet of faith, but the idea that it necessarily entails the political equality of citizens is more often assumed, rather than rigorously demonstrated. It is my contention that Hobbes's argument could help such faithful believers to better understand and justify their own beliefs. For a recent challenge to the clarity of the concept of "basic equality" see: Richard Arneson, "Basic Equality: Neither Acceptable nor Rejectable," in *Do All Persons Have Equal Moral Worth? : On 'Basic Equality' and Equal Respect and Concern*, ed. Uwe Steinhoff (Oxford: Oxford University Press, 2015).

offers an account of natural equality in terms of natural right. According to this account, what we do hold in common, from the point of view of our most basic shared humanity, is so vital as to establish the need for political equality as a precondition for organized civil society. The final two sections are devoted to an analysis of the available political positions in 17th century England and their historical and theoretical sources. At this point, I aim to show that prior to Hobbes, and during his own time, no other political thinker cleanly broke with the tradition of viewing individuals from the perspective of their places within a pre-established natural hierarchy.

Part I. Hobbes's Critics

i. The Content of Natural Equality

Traditional liberal theories of equality tend to be formal in nature; their goal is "to pin down characteristics shared by all persons," since "(a)ll beings who share the attribute of personhood should therefore be treated in a way that is fitting for the dignity and moral worth that personhood brings."[28] Yet such theories are challenged by obvious counterexamples, and skeptics can easily dismiss the thesis as lacking sufficient justification. This is notable here mainly because the overwhelming popularity of liberal theories of equality informs the way contemporary scholars approach Hobbes's text. More often than not readers seek some shared and measurable property or properties as the basis for his assertion of natural human equality.

[28] Eleanor Curran, "Hobbes on Equality: Context, Rhetoric, Argument," *Hobbes Studies* 25, no. 2 (2012): 179.

Specifically, Hobbes tends to be read as asserting the "rough equality" of human beings in their native mental and physical capacities.[29] According to Michael Oakeshott, for example, Hobbes views "each man" in the state of nature as "so nearly the equal of each other man in power, that superiority of strength...is nothing better than an illusion."[30] C.B. Macpherson argues that Hobbesian individuals enjoy the same "expectation of satisfying their desires," because they are equal enough in power.[31]

Others present more nuanced interpretations, yet nevertheless retain the core claim that natural equality is based in rough equivalence of actual physical and intellectual abilities.[32] Both Gregory Kavka and David Gauthier fasten upon Hobbes's claim that all individuals are capable of killing and being killed, a position which, according to Kavka, implies that "differences in people's natural powers are not so great as to make one an obvious loser to another should they come into conflict."[33] Edwin Curley claims, in the introduction to his scholarly edition of *Leviathan*, that Hobbes believes the differences between individuals in a state of nature "are not significant enough, overall, to permit one person to establish a secure relationship of domination

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[29] Kavka, "Hobbes's War of All against All," 293; Martinich, *Hobbes*, 66.
[30] Oakeshott, *Hobbes on Civil Association*, 35.
[31] Macpherson, *The Political Theory of Possessive Individualism: Hobbes to Locke*, 74.
[32] The rough equivalence interpretation can be compared to a number of contemporary theories of equality, which hinge upon the idea of a "range property" as defined by John Rawls. Jeremy Waldron, for instance, after noting that personhood is denoted by the capacity for abstract thought, admits that there is significant variation amongst human beings in the possession and expression of this capacity. He asserts, however, that what matters is the possession of this property at or beyond a certain threshold level. See: John Rawls, *A Theory of Justice*, Original ed. (Cambridge, Mass.: Belknap Press, 2005), 508. Waldron, *God, Locke, and Equality: Christian Foundations of John Locke's Political Thought*, 76-82.
[33] Kavka, "Hobbes's War of All against All," 293. Gauthier, *The Logic of Leviathan: The Moral and Political Theory of Thomas Hobbes*, 15.

over another."[34] And, in a similar vein, M.M. Goldsmith postulates that Hobbes denies the existence of consequential differences between human beings in a state of nature.[35] He takes the force of Hobbes's argument to rest on the claim that natural talent or ability is distributed equally enough such that no single individual or group would be able to claim a right to rule except by waging war.

But by taking the term 'natural' in natural equality to refer simply to mental and physical capacities, these critics create severe problems for Hobbes's political philosophy as a whole. To begin with, it is prima facie false to deny the existence of observable and often very consequential differences in physical strength and mental acuity. Moreover, these differences can and do justify valuable social hierarchies; there is good reason to reward certain excellences or to place those with expertise in a given subject in a relevant position of power. Those who follow this interpretation of "rough equality," are thus also likely to note that Hobbes's subsequent account of social contract is weighed down by an insurmountable burden of proof. As A.P. Martinich argues, the logical basis for contract falls apart if any naturally superior human beings exist.[36] What does an overwhelmingly superior individual stand to gain from laying down natural right? Gabriella Slomp echoes this point: "The equal power of individuals to endanger each other's lives is generally acknowledged to be the cornerstone of Hobbes's theory of the social contract. Indeed, if

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[34] E. M. Curley, "Introduction to Hobbes' *Leviathan*," in *Leviathan: With Selected Variants from the Latin Edition of 1668*, ed. E.M. Curley (Indianapolis: Hackett Pub. Co., 1994), xviii.
[35] Goldsmith claims that Hobbesian individuals "are to be considered equal for three reasons": they are relatively equal in physical strength, relatively equal in wisdom and, "(f)urthermore, if any man claim superiority...since there is neither an agreed standard of value nor an agreed judge, should anyone else deny this superiority or claim equality, the only way to decide the question would be by battle." Goldsmith, *Hobbes's Science of Politics*, 87.
[36] Martinich, *Hobbes*, 66. Joel Kidder also argues this point See: Joel Kidder, "Acknowledgements of Equals: Hobbes's Ninth Law of Nature," *The Philosophical Quarterly* 33, no. 131 (1983).

people were not equally dangerous, the state of nature would be a state of peace, ruled by the most powerful."[37]

In order to save Hobbes from this fate, others thus suggest that he was never seriously committed to the thesis of natural equality, but instead appealed to it rhetorically, for the sake of its political utility.[38] Gary Herbert dubs the concept of natural equality, "counterfeit equality."[39] He stresses that Hobbes' reasoning is "conspicuously unsound," but still ought to be read as a "prudential" or "fear-inducing argument," meant to convince citizens of their need for government and reinforce the cause of obedience.[40] According to Gordon Hull, Hobbes "never says that people *are* equal in the state of nature — he says it would produce better political philosophy if they were taken as equals".[41] And in perhaps the most influential articulation of this instrumental thesis, Kinch Hoekstra argues that Hobbes endorses the presupposition of natural equality largely because it gives individuals reason to embrace their political obligations. On Hoekstra's account, Hobbesian natural equality is far from a radical hypothesis, but

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[37] Gabriella Slomp, "Hobbes and the Equality of Women," *Political Studies* 42, no. 3 (1994): 446.
[38] The inability to ground claims about natural equality has often led contemporary theorists to assert precisely such an instrumental thesis. In a nice synopsis of the literature, Hilliard Aronovitch notes a recent spate of presumptive arguments. He cites examples of theorists appealing to equality as a "non-rational commitment" (Kai Nielsen); an "unsubstantiated premise for analyzing democratic decision making" (Thomas Christiano, Andrei Marmor); and "a purely pragmatic stance for avoiding strife" (Joel Feinberg). See: Hilliard Aronovitch, "Political Equality by Precedent," *Ratio Juris* 28, no. 1 (2015): 112; Kai Nielsen, "On Not Needing to Justify Equality," *International Studies in Philosophy* 20, no. 3 (1988); Thomas Christiano, *The Constitution of Equality: Democratic Authority and Its Limits* (Oxford: Oxford University Press, 2008), 17-18; Andrei Marmor, "Authority, Equality and Democracy," *Ratio Juris* 18, no. 3 (2005); Joel Feinberg, *Social Philosophy*, Foundations of Philosophy Series (Englewood Cliffs, N.J.: Prentice-Hall, 1973), 94.
[39] Herbert, "Thomas Hobbes's Counterfeit Equality," 281.
[40] Ibid. See also: *Thomas Hobbes: The Unity of Scientific and Moral Wisdom* (Vancouver: University of British Columbia Press, 1989), 136.
[41] Gordon Hull, *Hobbes and the Making of Modern Political Thought*, Continuum Studies in British Philosophy (London: Continuum, 2009), 34.

instead a doctrine meant to "convert" potential dissidents "to the cause of commonwealth."[42]

ii. The Consequences of Natural Equality

In this manner, the tendency to read natural equality as "rough equality" further prejudices critics' assessment of the practical consequences of Hobbes's doctrine. Namely, given the above instrumental view, many relegate natural equality a merely functional role in the state of nature, and argue that it ceases to carry normative force as a political ideal within established commonwealth. According to Gregg Franzwa, for instance, Hobbes's appeal to natural equality is a "paradox" from the start, since he then utilizes the terms of contract to justify civil inequalities.[43] To explain, the interpretation of natural equality as "rough equality" assumes that Hobbes derives natural right — the right of individuals to self-rule in the state of nature — from natural equality.[44] Those who take this view problematically reverse the order of priority (as I see it, Hobbes uses the natural right of individuals as an argument for their equality), and thus foreclose the possibility of a strong rights-based reading of natural equality, of the sort which would clearly have implications for the political status of subjects.

Jean Hampton explicitly states as much. She claims that, "Hobbes derives individuals' freedom from political subjugation in the state of nature from the assumption

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[42]Kinch Hoekstra, "Hobbes on the Natural Condition of Mankind," in *The Cambridge Companion to Hobbes's Leviathan*, ed. Patricia Springborg (Cambridge: Cambridge University Press, 2007), 111.
[43] Franzwa, "The Paradoxes of Equality in the Worlds of Hobbes and Locke," 33.
[44] Edwin Curley even states in his editorial commentary to *Leviathan*, that "Hobbes derives equality of right from equality of ability". See Lev.xv.21, footnote 12 in the Curley edition.

of their rough equality with one another."[45] On this view, the state of nature is a state of war because rough equality, combined with competition over scarce resources, precipitates perpetual conflict. Within such a war each individual must enjoy a "blameless" liberty to preserve her being as she sees fit. Yet the "incommodities" of this war in turn ensure that the act of setting aside natural right and contracting to institute a common power is rationally desirable for all; and post-contract inequality may proceed legitimately from the civil laws.

However, if Hobbesian natural equality does not pertain chiefly to equivalence of abilities, and if it thus does not play a merely functional role, then its continuing political importance cannot be so easily dismissed. And, as I argue, regardless of the nuance that various scholars give it, the emphasis on "rough" equality badly misses the point. Hobbes implies that even great differences among individuals in their physical and intellectual abilities do not threaten the logic of the state of nature. Charity demands we take him seriously. Moreover, the instrumental interpretation, according to which Hobbes is just trying to win converts to the cause of commonwealth, downplays the real importance of equality. It does not make sense to regard equality as a "reasonable" methodological principle, or argue that the hypothesis produces better, sounder political philosophy, if ultimately the hypothesis is empty. Natural equality would not be a reasonable methodological principle if *inequality* could possibly be conceived as a tenable foundation for civil society.

Hobbes plainly thought that inequality was an irremediably flawed starting point for his own "civil science". In *Elements of Law* he rails against Aristotle's doctrine of

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[45] Hampton, *Hobbes and the Social Contract Tradition*, 25.

natural slavery, claiming the idea "hath not only weakened the whole form of his politics, but hath also given men colour and pretences, whereby to disturb and hinder the peace of one another" (EL II.xvii.1). Later, in *Leviathan*, he declares that the assumption of a natural hierarchy is "not only against reason, but also against experience" (L xv.21). We thus do better to take him at his word and seek the theoretical and practical bases for his earnest assertion of natural equality.

Part II. Re-examining Hobbes's Argument for Natural Equality

i. Inequality and Equality in the State of Nature

The phrasing of Hobbes's most often-cited assertion of natural equality, found in *Leviathan* XII, has galvanized the propensity of many to attribute to him a thesis of "rough equality." The text reads thus:

> Nature hath made men so equal, in the faculties of body, and mind; as that though there be found one man sometimes manifestly stronger in body, or of quicker mind then another; yet when all is reckoned together, the difference between man, and man, is not so considerable, as that one man can thereupon claim to himself any benefit, to which another may not pretend as well as he (L xii.1).

Now, Hobbes does seem to claim here that human beings are relatively equal in their mental and physical capacities. He nods to the "manifest" disparity between individuals, before observing that those at an advantage are never so well-off as to be able to recklessly assert their superiority over others. Furthermore, in a corresponding passage

from *De cive* he asserts that if this were not the case, then the overwhelmingly powerful *would* be able to successfully claim special benefit (DC iv.1).

Yet the standard interpretation, with its emphasis on these passages, cannot account for the fact that Hobbes openly acknowledges great disparities. For example, in Chapter VII of *Leviathan,* he has already defined human excellence or "virtue" as, "in all sorts of subjects…somewhat that is valued for eminence, and consisteth in comparison. *For if all things were equally in all men, nothing would be prized*" (L vii.1). He obviously, moreover, views such virtue as consequential to human relations since he then appeals to it when defining "natural power," i.e. "eminence of body or mind, as *extraordinary* strength, form, prudence, arts, eloquence, liberality, nobility" (L x.2).

In fact, as I see it, Hobbes's argument is structured such that he first openly takes stock of our differences, before then turning to highlight some underlying and persistent sense in which we truly are equal qua human being. He then proceeds to argue that the latter is more important. That is, while virtues and achievements are doubtless praiseworthy, consequential, and may entitle one to special status or reward, no degree of eminence is enough to establish the natural *inequality* of persons.

For example, when it comes to physical strength, or the "faculties of the body," Hobbes notes that our shared mortality is the bottom line.[46] He first advances this

[46] Hobbes's discussion here applies not just to isolated individuals reasoning about their mortality, but also to individuals in groups, where the strength of any one person might not be of primary concern. Indeed, much of the recent scholarship on conflict in the state of nature has been dominated by game theory. After Kavka and Gauthier popularized their "rational reconstruction" approach, many others have attempted to employ either the model of a prisoner's dilemma or that of an assurance game to better make sense of risk calculation within a state of nature. For a good overview of the literature see: Daniel Eggers, "Hobbes and Game Theory Revisited: Zero-Sum Games in the State of Nature," *The Southern Journal of Philosophy* 49, no. 3 (2011). Also, for a representative example of the argument that the best model is that of "an iterated prisoner's

argument in *Elements of Law*, where he claims the "odds" between "men of mature age" are insignificant, but *only* when considered alongside the force of the human will and the ease with which, at least sometimes, the weaker "may utterly destroy the power of the stronger" (EL II.xiv.2). It would be an unfortunate mischaracterization to read this, as many critics do, as a statement of the roughly "equal dangerousness" of all individuals.[47] For one, such an interpretation is no less vulnerable to counterexamples than is the more straightforward assertion of actual equality in physical strength.[48] Secondly, Hobbes never claims that human beings are equally proficient killers; his emphasis is instead on the frailty of the human body, combined with the fact that all normally view death as a great evil and seek to avoid it.[49] An individual looking to minimize risk within a situation

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dilemma" see: Hoekstra, "Hobbes on the Natural Condition of Mankind," 115; "Hobbesian Equality," 87.

[47] The interpretation of Hobbesian natural equality as hinging upon "equal dangerousness" has been popular among critics as a way of explaining the "rough equality" thesis, since it seems to acknowledge physical and intellectual differences while offering an explanation for why they do not matter in practice. That is, if individuals who are natively weaker might still, through cunning or through working with others, overwhelm the more powerful then this levels the playing field. In addition to the arguments from Kavka and Gauthier cited above, see also: Patrick Neal, "Hobbes and Rational Choice Theory," *Political Research Quarterly* 41, no. 4 (1988): 641; Gabriella Slomp, *Thomas Hobbes and the Political Philosophy of Glory* (New York: St. Martin's Press, 2000), 28; Martinich, *Hobbes*, 67.

[48] It is patently false to claim that any individual can kill any other. This interpretation thus also invites critics to dismiss Hobbes. François Tricaud, for example, argues that Hobbes's reliance on the "ability" to kill is a restrictive criterion and fails on that count — all are not equally able to kill and some, e.g. children and the mentally or physically disabled might not be able to do so at all. See: François Tricaud, "Hobbes's Conception of the State of Nature from 1640-1651: Evolution and Ambiguities," in *Perspectives on Thomas Hobbes*, ed. G.A.J. Rogers and Alan Ryan (Oxford: Clarendon Press, 1988).

[49] Shared mortality or vulnerability to death is very different from the equal ability to kill. As I take it, Hobbes never forwards the latter position. While it is true he claims a generally excellent individual may be overcome by a single act of cunning or the coordinated actions of much weaker individual working, his emphasis is on the fact that all *may* be killed. This is obvious from the way in which he phrases the point in *De Cive*, where he invites the reader to, "consider how brittle the frame of the human body is, which perishing, all its strength, vigour, and wisdom, itself perisheth with it"(DC i.3). To this observation he appends a normatively laden claim — potential loss of life ought to carry greater weight in the deliberations of individuals than any other object of desire or fear since death amounts to the permanent loss of the most basic, generative source of an individual's power.

of unchecked conflict might observe, as Hobbes puts it, that "the weakest has strength enough to kill the strongest, either by secret machination, or by confederacy with others that are in the same danger with himself"(Lev xiii.1). His point, in other words, is that despite great variance in strength and ability, any individual can in principle be killed. In this regard we are all the same and awareness of one's mortality ought to affect how a self-interested agent reasons in a state of nature. Life is too dear to be casually risked, and it is thus largely irrelevant whether or not human beings are actually well-matched or equally dangerous. We should seek to minimize any potential threats.

The same logic is evident in his discussion of intellect, or the "faculties of the mind." This is the more important part of Hobbes's argument, given that intellect tends to be seen as a uniquely human capacity, and hence is more salient than strength to the evaluation of human equality. Hobbes is obviously aware of this special import as he first takes care to narrow his focus in a way that many might view as deflationary. He notes that we must not consider "science" or "that skill of proceeding upon general and infallible rules," since it is not rightly a "native faculty" but instead an acquired skill which takes determination and focus to develop. Accordingly, "very few" have it, "and but in few things" (L xiii.2).[50] He presses the same about reason in general, or the proper "*reckoning*…of the consequences of general names agreed upon for the *marking* and *signifying* of our thoughts"(L v.2) — "The most part of men," he states, rarely develop their full potential for such reasoning (L v.18).[51] Once again, then, his immediate

[50] Hobbes later explains that this is in part related to differences between our respective objects of desire. Few desire knowledge enough to chase it and, accordingly, the sciences are not seen as a source of power or eminence (L x.14).

[51] The full passage reads thus: "Children are not endued with reason at all till they have attained the use of speech, but are called reasonable creatures for the possibility apparent of having the use of reason in time to come. And the most part of men, though they have the use of reasoning a

emphasis is on inequality. Indeed, when taking into account only these statements, it might appear that Hobbes paints a generally unflattering picture of the human intellect which serves to reinforce elite distinctions between so-called wise or noble souls, and the rude masses.

Nevertheless, after noting obvious inequalities, Hobbes further clarifies that an accurate assessment of our truly natural intellectual abilities should look primarily at *prudence.* Moreover, he insists, "they that have no *science* are in better and nobler condition with their natural prudence than men that by mis-reasoning, or by trusting them that reason wrong, fall upon false and absurd general rules. For ignorance of causes and rules does not set men so far out of their way as relying on false rules"(L v.19).[52]

Hobbes clarifies that the term "natural," when applied to human intellect or "wit," properly designates only those capacities which are developed as a matter of course, i.e. "gotten by use only, and experience, without method, culture or instruction" (L viii.2). This is not to say that reason isn't important. Hobbes still maintains that it distinguishes mankind from "brute-beasts" (Ibid.).[53] Yet while all normally-abled individuals have the potential to develop their capacity for reasoning, not everyone is afforded the same opportunities and motivation to do so. He accordingly chooses to focus on a skill set that

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little way, as in numbering to some degree, yet it serves them to little use in common life, in which they govern themselves, some better, some worse, according to their differences in experience, quickness of memory, and inclinations to several ends, but specially according to good or evil fortune, and the errors of one another."

[52] Consider, also, Hobbes's discussion of the "uses" and "abuses" of language, especially the following passage: "Nature itself cannot err; and as men abound in copiousness of language, so they become more wise, or more mad, than ordinary. Nor is it possible without letters for any man to become either excellently wise, or (unless his memory be hurt by disease or ill constitution of organs) excellently foolish. For words are wise men's counters, they do but reckon by them; but they are the money of fools, that value them by the authority of an *Aristotle*, a *Cicero*, or a *Thomas*, or any other doctor whatsoever, if but a man"(L iv.13).

[53] See also: L iii.5, 9.

is "born with man" and which makes proper reasoning of any form possible.[54] "Natural wit," he states, consists in "*celerity of imagining*…and *steady direction* to some approved end" (L viii.2). Moreover, all individuals are capable of such wit when it comes to the objects of their personal desires, i.e. the very considerations that naturally inform one's goals and guide her decision-making process.

Now, it is my contention that Hobbes treats this observation as the foundation of his argument for natural equality. That is, he cites the reflexive and natural striving of individuals to pursue their own self-preservation, or *conatus,* as the basis for their equal natural right to do so. Due to its centrality, and since it has further implications for the political equality of subjects in commonwealth, I will next offer a more detailed account of the model of mind underlying this, beginning with Hobbes's explanation of the mechanics of *conatus.*

ii. Hobbes's Philosophical Psychology & The Role of Prudence

For Hobbes, the best way to understand the nature of any given thing is to first examine its manner of generation, and this holds whether one is talking about objects within geometry, physics, or civil science.[55] It also holds for the topic at hand, namely

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[54] Hobbes make clear that reason, as a skill, is not precisely different in kind from prudence but rather it's refinement. For instance, consider the following quote describing the natural status of prudence and its relation to reason: "There is no other act of man's mind that I can remember, naturally planted in him so as to need no other thing to the exercise of it but to be born a man, and live with the use of his five senses. Those other faculties of which I shall speak by and by, and which seem proper to man only, are acquired and increased by study and industry, and of most men learned by instruction and discipline, and proceed all from the invention of words and speech. For besides sense, and thoughts, and the train of thoughts, the mind of man has no other motion, though by the help of speech and method the same faculties may be improved to such a height as to distinguish men from all other living creatures" (L iii.11).

[55] See: "By PHILOSOPHY is understood *the knowledge acquired by reasoning from the manner of the generation of anything to the properties, or from the properties to some possible way of*

Hobbes's account of the individual mind. In all these cases, he takes his cue from the foundational concept of *conatus,* or "endeavour." He uses it in *De Corpore* to articulate a materialist account of the manner of existence of all bodies generally and builds upon this account in his discussions of human psychology and the formation of the political state.[56]

The term itself derives from the Latin verb *conor* meaning "to strive, attempt, or undertake," and it retains this sense in Hobbes's usage.[57] Strangely enough, he offers his fullest explanation in the course of a proposed advancement of Euclidean geometry, one which he hopes will offer new insights "conducing to natural philosophy" (DCo III.xv.1). Euclid defines basic geometrical objects such as "point" and "line" in purely conceptual terms ("point" is "that which has no part," and "line" is "length without breadth").[58] By contrast, Hobbes redefines them in physical, mechanistic terms.[59] For example, he insists that "any Body" can be conceived of as a point, and then, if "the Magnitude of it be not at all considered," its movement may be called a line (DCo II.viii.12). As Douglas Joseph comments, "Hobbes's definition of a point is, in fact, very much like a physicists definition of the term 'particle': a body so small that its internal structure and the distance

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generation of the same, to the end to be able to produce, as far as matter and human force permit, such effects as human life requireth" (L xlvi.1).

[56] It could in fact be argued that the concept of *conatus* unifies all of Hobbes philosophical works. For more on the so called "unity thesis" see: Noel Malcolm, "Hobbes's Science of Politics and His Theory of Science," in *Aspects of Hobbes* (Oxford: Clarendon Press, 2002).

[57] I take this specific definition of *conor* from Douglas Jesseph's excellent article, "Hobbes on 'Conatus': A Study in the Foundations of Hobbesian Philosophy," *Hobbes Studies* 29, no. 1 (2016): 69.

[58] Euclid, *The Thirteen Books of Euclid's 'Elements'* cited in ibid., 70.

[59] Hobbes saw himself as deeply indebted to Galileo. For example, in the "Epistle Dedicatory" to *De corpore* he writes: "Galeleus in our time, striving with that difficulty, was the first that opened to us the gate of natural philosophy universal, which is the knowledge of the nature of *motion*. So that neither can the age of natural philosophy be reckoned higher than to him." For more on the connection between the two, see: Douglas M. Jesseph, "Galileo, Hobbes, and the Book of Nature," *Perspectives on Science* 12, no. 2 (2004).

between any two of its parts can be disregarded."[60] Moreover, the import of this way of thinking, from Hobbes's perspective, is that it grounds "the science of geometry in the very nature of body."[61]

With this established, Hobbes turns to define *conatus* or "endeavour," as "Motion made in less Space and Time then can be given; that is, less than can be determined or assigned by Exposition or Number; that is, Motion made through the length of a Point, and in an Instant or Point of Time" (DCo III.xv.2). He then implores the reader to remember that, "by point is not to be understood that which has no quantity, or which cannot by any means be divided…but that whose quantity is not at all considered… so that a point is not taken for an indivisible, but for an undivided thing" (DCo III.xv.2). This is to say, *conatus* refers to the smallest, invisible beginnings of motion in any object or body whatsoever. Such motion must be present, Hobbes argues, if we are to explain the visible movement of bodies.[62] And, as he elaborates, it is also responsible for their "active power," i.e. the "*power of an agent*" to produce some effect, or of a "patient" to resist the influence of an external force (DCo II.x.1).

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[60] Jesseph, "Hobbes on 'Conatus': A Study in the Foundations of Hobbesian Philosophy," 70.
[61] Ibid. See also: Thomas A. Spragens, *The Politics of Motion: The World of Thomas Hobbes* (Lexington: University Press of Kentucky, 1973). Spragens states: "For Hobbes…the geometricization of movement was not simply an approach to certain problems, but was also a revelation of the nature of the universe itself"(62).
[62] This was an important part of a sustained argument with Descartes (among others), in which Hobbes rejected the notion that bodies might possess a propensity or tendency to movement. By this it was understood that certain objects can tend to produce certain motions or effects (i.e., as it this were a property of the body in question). Hobbes argues that the term 'propensity' is meaningless here, and a holdover of the Aristotelian idea of potential— such a tendency must be motion already, however small. He thus turns to the infinitesimal motion of conatus as an explanation for "active power." For more on this topic, see: Jesseph, "Hobbes on 'Conatus': A Study in the Foundations of Hobbesian Philosophy," 72; Spragens, *The Politics of Motion: The World of Thomas Hobbes*, 63; Juhani Pietarinen, "Conatus as Active Power in Hobbes," *Hobbes Studies* 14, no. 1 (2001).

In fact, Hobbes seems to view *conatus* as "the key to nature."[63] While it was not exactly novel to accord such metaphysical import to motion, Hobbes's account radically differs from the scholastic Aristotelianism that dominated up and until his time. Aristotle's model of motion was tied to his theory of immanent forms, according to which all motion is finite and directed to a specific end, "with this end in fact constituting an irreducible cause of the motion."[64] Change or movement was seen as a necessary shift from potentiality to actuality. Thomas Spragens, in his now classic text on the topic, puts it thus: "Aristotelian motion…carries pervasive connotations of completion, wholeness, and satisfaction. When something moves naturally, for Aristotle, it does so because it is attaining its natural essence — its essential 'whatness'; it is becoming what it truly is, what it is intended to be. In a word, motion is a sort of fulfillment."[65]

By contrast, Hobbes embraces the revolution in mechanics prompted by Galileo, especially his work on the law of inertia.[66] He rejects the mysterious metaphysics of immanent form and final causation and, following Galileo's experimentation with the vectorial movement of physical bodies, reduces all discussion of cause to efficient causes: "There can be no cause of motion, except in a body contiguous and moved" (DCo II.ix.7). The consequences of thus abandoning final causes proved incredibly far-reaching. Spragens describes the result as a "genuine paradigm switch…a perceptual 'gestalt switch' such as those described by psychologists of perception."[67] For without

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[63] Spragens, *The Politics of Motion: The World of Thomas Hobbes*, 60.
[64] Ibid., 56.
[65] Ibid., 57.
[66] Daniel Garber argues that 'inertia' should not be used to describe Galileo's views (or anyone else from this time period), as the term meant something entirely different from what it means for us, post-Newton. For this reason, he instead refers to a "law of persistence." See: Daniel Garber, "Descartes and Spinoza on Persistence and Conatus," *Studia Spinozana* 10 (1994).
[67] Spragens, *The Politics of Motion: The World of Thomas Hobbes*, 53.

final causes, motion becomes purposeless and infinite. This is evident from the way Hobbes talks about causation and the "active power" of agents. Both terms reference the same phenomenon but considered from different perspectives — "*cause* is so called in respect to the effect already produced, and power in respect of the same effect to be produced hereafter ."[68] And as Hobbes sees it, both are merely a function of the sum total of accidental properties or motions found within the "agent" and "patient"; where all such accidents are present the resultant effect necessarily occurs.

All motion, then, is spontaneously caused and "continual," or without a natural end. Just as a body will remain at rest unless acted upon by an appropriate agent, "whatsoever is moved, will always be moved in in the same way and with the same velocity unless it be hindered by some other continuous and moved body" (DCo II.ix.7).[69] And this is no less true for *conatus*; "whether strong or weak, [endeavour] is propagated to infinite distance; for it is motion" (DCo III.xv.7).

Hobbes goes on to theorize life itself by analogy to the mechanics of *automata*, as "nothing but a motion of limbs, the beginning whereof is in some principal part within" (L Introduction.1).[70] In essence, he leans heavily on the mechanics of *conatus* to explain biological, psychological, and social phenomena. To begin with, the basic drive of all

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[68] Hobbes states: Wherefore the power of the agent and patient together, which may be called entire or *plenary power*, is the same thing with *entire cause*; for they both consist in the sum or aggregate of all the accidents, as well in the agent as in the patient, which are requisite for the production of the effect. Lastly, as the accident produced is, in respect of the cause, called an effect, so in respect of the power, it is called an *act"*(DCo II.x.1).

[69] See also L ii.2: "When a body is once in motion, it moveth (unless something else hinder it) eternally; and whatsoever hindreth it, cannot in an instant, but in time and by degrees, quite extinguish it."

[70] For an account of Hobbes's comparison of human beings to self-regulating *automata* see: Alan Ryan, "Hobbes and Individualism," in *Perspectives on Thomas Hobbes*, ed. G.A.J. Rogers and Alan Ryan (Oxford: Clarendon Press, 1988), 89.

living beings to preserve their own existence should be understood in inertial terms.[71] After all, such striving is natural and reflexive; precedes all conscious, voluntary action; and continues throughout the course of one's life. He further claims that "individuation," or the identity of living organisms, is a function of *conatus*; "as long as that motion remains, it will be the same *individual* thing; as that man will be always the same, whose actions and thoughts proceed all from the same beginning of motion, namely that which was in his generation" (DCo II.xi.7).

For the purpose of evaluating Hobbes's doctrine of natural equality, the point I wish to stress is that he relies upon the idea of a *conatus se movendi*, or *conatus* of self-preservation, to explain his mechanistic model of the individual mind. This account begins with sensation, a mere "seeming" or "fancy," which Hobbes claims results from the interaction between *conatus* and an external force. It is initiated when an object presses upon an organ of sense, and the imparted motion subsequently continues "inward to the brain and heart" where it is met with resistance, i.e., the *conatus* or "endeavour" of the patient to "deliver itself from the action of the agent" (L i.4). Since the motion of *conatus* is "outward," the object of sense "seemeth to be some matter without" (Ibid.). Sensation, in other words, primarily involves the formation of mental representations or "phantasms," which consist of "diverse motions" of matter (Ibid).

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[71] Hobbes was not the only one to rely upon such an analogy. Others, including thinkers such as Descartes, Spinoza, and Leibniz, appealed to the notion of conatus to explain biological drives, conceiving of it as a generalization of the principle of inertia demonstrated by Galileo, and ultimately formalized by Newton. For his original statement of the principle of inertia see: Galileo Galilei, *The Essential Galileo*, ed. Maurice A. Finocchiaro (Indianapolis, Ind.: Hackett Pub. Co., 2008), 98.

From sensation, Hobbes goes on to define 'imagination' as "nothing but *decaying sense,*" or the obscuring of the original motion as it fades and is superseded by further, stronger impressions. The term 'memory' refers to the same phenomenon, but with a different emphasis; where 'imagination' denotes the phenomenon of retained sense itself, 'memory' is used to "express the *decay*, and signify that the sense is fading, old, and past" (L ii.3). Finally, "(m)uch memory, or memory of many things, is called *experience*" (L ii.4). It is further augmented by the use of language, which serves both for "the registering of the consequences of our thoughts," or as "*notes* of remembrance," and for expanding and strengthening our conceptions through communication with others.

Stepping back from this account for a second, then, the picture we get is one where all human minds function according to the same model. Now, further recall that it is *experience,* as stated above, that primarily enables prudential reasoning. It is the reference material for deliberation. Hobbes's mechanical model of mind has thus already resulted in a leveling of sorts since it commits him to the claim that all normally-abled adults, regardless of differences in intelligence, naturally amass the experience necessary to inform their decision-making about *their own* dearly held ends. When it comes to the process of deliberation itself, Hobbes further insists upon our functional similarity. The "voluntary actions" of individuals, he claims, are all regulated by the passion of desire; whenever we imagine something as a possible benefit to *conatus,* we label it as good and our appetite leads us to pursue it. By contrast, apparent evils are things that we view as

detrimental and seek to avoid.[72] As for our other, more nuanced passions, these too derive from desire and are hence part of a common human experience.

In the very introduction to *Leviathan,* Hobbes takes pains to call the reader's attention to our shared passionate make-up, remarking that while the objects of the passions differ from one person to the next, the "thoughts and passions" themselves are so similar that anyone who reflects upon her own experiences and "considers" what she does when she "does *think, opine, reason, hope, fear, &*c, and upon what grounds," is to that extent also able to recognize and understand these same processes in others upon like occasions (L Introduction.3). Importantly, it is this shared passionate make-up, and with it the ability to read oneself as a means to understanding others, that provides Hobbes with his quotable key to the laws of nature.[73] He states:

> (T)o leave all men inexcusable [the laws of nature] have been contracted into one easy sum, intelligible to even the meanest capacity, and that is *Do not that to another, which though wouldst not have done to thyself*; which sheweth him that he has no more to do in learning the laws of nature but

[72] Again, Hobbes is literally conceiving of this as a mechanism. The primary expression of *conative* force in living organisms is found in a set of necessary, largely subconscious, "vital motions," which "begun in generation and continued without interruption through their entire life, such as are the *course* of the *blood*, the *pulse*, the *breathing*, the *concoction, nutrition, excretion, &*tc." Voluntary motion is different in that it requires the aid of imagination, or some "precedent thought of *wither, which way*, and *what*" (L vi.1). Yet it is also a mere continuation of the same, since it is directed by the goal of furthering vital motion.

[73] This key to the laws of nature is obviously a rationalized and secular assertion of the biblical golden rule and it appears to be a precursor to Kant's categorical imperative. For more on Hobbes's "easy sum" and its relation to Kant's categorical imperative see: Michael Moehler, "A Hobbesian Derivation of the Principle of Universalization," *Philosophical Studies* 158, no. 1 (2011); S. A. Lloyd, *Morality in the Philosophy of Thomas Hobbes : Cases in the Law of Nature* (Cambridge: Cambridge University Press, 2009); Bernard Gert, *Hobbes: Prince of Peace*, Classic Thinkers (Cambridge, Mass.: Polity Press, 2010), 74-164; Perez Zagorin, *Hobbes and the Law of Nature* (Princeton: Princeton University Press, 2009), 46.

> (when weighing the actions of other men with his own, they seem too heavy) to put them into the other part of the balance, and his own into their place, that his own passions and self-love may add nothing to the weight (L xv.35).

This passage clearly prioritizes the bottom line; regardless of difference or degrees of eminence, individuals are all are subject to the same passions, driven to pursue our own preservation and broader interests, and capable of amassing the experience necessary to do so. Moreover, Hobbes's "one easy sum" illuminates the practical and political consequences of this very basic form of human equality. An obvious restatement of the biblical Golden Rule becomes, in his hands, a meta-rule for determining the content of natural law. As Bernard Baumrin writes, it is an aid for determining which practical rules or maxims for action are rational and which are not, where "(t)he rational ones are those in which agents are treated equally, the irrational ones are those that treat them with partiality, i.e. unequally."[74]

Importantly, then, to the same degree that each individual is capable of reasoning prudentially about her own desires and ends, she is also capable of understanding the laws of nature. One might even argue that that this is the mark of human dignity for

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[74] Bernard Baumrin, "Hobbes's Egalitarianism: The Laws of Natural Equality," in *Thomas Hobbes, De La Métaphysique a La Politique*, ed. Martin Bertman and Michel Malherbe (Paris: Vrin, 1989). Note, Baumrin further comments that the main difference between Hobbes's "negative golden rule" and Kant's categorical imperative, "is that Kant wants us to go beyond these [specific] agents here and now, to all agents everywhere…Kant himself misjudges Hobbes's rule when he criticizes it in the *Foundations*, for he supposes it a substantive rule offering limited guidance, whereas the easie sum is a rule about rules; in other words, an imperative about general maxims, while the categorical imperative is a method of dealing with subjective maxims in order to make them general. Neither works except under the supposition that all agents are equal and entitled to equal status and treatment by one another."

Hobbes; in Chapter X of *Leviathan*, he infamously defines "(t)he *value* or WORTH of a man" in a crude manner as, "his price, that is to say, so much as would be given for the use of his power," and, hence, "a thing dependent on the need and judgment of another" (L x.16). But he distinguishes this from an individual's "worthiness" in any given arena, which is instead determined by "a power or ability for that whereof he is said to be worthy; which particular ability is usually named FITNESS or *Aptitude*" (L x.53). While it extrapolates from the text, I think an argument could be made that adult individuals, qua human beings, are *fit* to lead their own lives. In this regard all are equal. This is not to say that all individuals will exercise this fitness equally well, only that all possess it.

At this point I pause to note that a critic could very well complain that the bottom line is not what matters, or that distinctions between persons should still be drawn on the basis of our developed, higher level capacities, or perhaps as a result of the differing ends individuals choose to pursue. Hobbes, however, has convincing responses to both of these objections. In the first place, he implies that developed capacities are irrelevant, because they are informed by culture, education, environment, and other accidental circumstances. Whether one is driven by intellectual curiosity, monetary success, political ambition, etc., is at least partially the result of birth and upbringing,[75] and such socially conditioned choices in turn give rise to the measurable differences in physical

[75] It is important here that it is impossible to neatly separate and measure the influences and responsibility of constitution versus that of social conditioning. Hobbes states, for instance: "The causes of this difference of wits are in the passions; and the difference of passions proceedeth, partly from the different constitution of the body, and partly from different education. For if the difference proceeded from the timer of the brain and the organs of sense, either exterior or interior, there would be no less difference of men in their sight, hearing or other sense, than in their fancies and discretions. I*t proceeds therefore from the passions, which are different, not only from the difference of men's complexions, but also from their difference of customs and education*"(Lev.viii. 14, emphasis mine).

strength and intellectual ability that many often mistakenly focus on when assessing human equality. The idea seems to be, as Gayne Nerney notes, that if one were to take any two minds, "corrected for difference in education, and set them, for an equal time, to a task weighty and important enough so as to ensure that these experimental subjects will apply themselves equally to the task," they would both be able to accomplish it sufficiently well.[76]

Secondly, Hobbes rejects the idea that ends themselves could ever be proper to an evaluation of human standing or dignity. This is part and parcel of his rejection of Aristotelian teleology. The general and unstable goal of self-preservation should be understood as an attempt to subvert Aristotle's conception of the happy or good life for man; "For there is no such *Finis ultimus,*" he states, "nor *Summum Bonum* (greatest good) as is spoken of in the books of the old moral philosophers. Nor can a man anymore live, whose desires are at an end, than he whose senses and imaginations are at a stand" (L xi.1). There may, of course, be reason to reward or encourage the pursuit of certain ends. Hobbes recognizes the vital need for honors, titles, and offices to reflect objective achievements. But, such merit-based distinctions are always dependent upon the supporting structure of institutional norms. In other words they should not be reified as natural; in the absence of a universal standard or measure of human perfection, there is no way to distinguish between persons qua human being. Prior to the institution of a sovereign and the adoption of an artificial legal order, each individual may only be judged relative to standards internal to his or her own reasoning process and since

[76] Gayne Nerney, "The Hobbesian Argument for Human Equality," *The Southern Journal of Philosophy* 24, no. 4 (1986): 569.

Hobbes's mechanistic model of mind entails the conclusion that all *are* equipped with the necessary means to reason prudentially about their respective ends, it seems that he has a valid argument for the natural equality of individuals qua human being — and one that is more than able to acknowledge manifest, measurable differences and inequalities.[77]

iii. Political Equality

At this point, I turn to the political ramifications of Hobbesian natural equality within commonwealth. My argument depends upon clarifying the exact relationship between natural equality and the concept of natural right, and in the course of doing so I will return to my thesis, namely that Hobbes's argument is ultimately a rights-based argument for natural equality.

Now, Hobbes defines natural right by reference to the concept of a conatus: it is "the liberty *each* man hath to use his own power, as he will himself, for the preservation of his own nature, that is to say, of his own life, and consequently of doing anything which, in his own judgment and reason, he shall conceive to be the aptest means thereunto" (L xiv.1, emphasis mine). Most critics read him as further arguing that natural right is the logical consequence of the rough equality of individuals in their natural capacities. It is supposed that rough equality gives rise to the dreaded war "of every man against every man," and the extreme insecurity attending warfare, in turn, entitles individuals to an unlimited liberty (L xiii.3-8). For, "such augmentation of dominion over men being necessary to a man's conservation, it ought to be allowed him (L xiii.4).

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[77] The genius astrophysicist and the humble farmer must be considered on par with one another, in the sense that both experience the same passions and both are able to amass the necessary experience to inform their chosen endeavors.

Besides the lack of support for the rough equality thesis, however, it seems more logical to treat natural equality as a function of natural right, as Hobbes conceives it. To restate the point, the content of natural equality, per my above analysis, is dictated by natural right, not vice versa.

Consider, for example, Hobbes's too often neglected ninth law of nature proscribing public displays of pride, or any words or actions used to communicate a belief in one's superiority over others. In the course of explaining this law, Hobbes merely asserts: "The question 'who is the better man?' has no place in the condition of mere nature" (L xv.21). But he indirectly substantiates this claim by inviting the reader to contrast his own position with yet another controversial aspect of Aristotle's thought, namely his infamous doctrine of natural slavery, according to which some individuals are born to command and others to serve. Hobbes has no qualms about labeling this an absurd doctrine, but not because he denies the existence of excellent individuals, some of whom might truly be better suited to positions of authority. His complaint is simply that natural excellence does not automatically confer a *natural right* to rule. In other words, Aristotle fails to recognize that hierarchical distinctions between class, station, and office follow, as Hobbes puts it, from the "laws civil" — they are conventional, not natural (Ibid.).

Individuals in general, as Hobbes observes, are unlikely to estimate themselves to be inferior to others when it comes to their ability to lead their *own* lives.[78] No individual

[78] See: "For such is the nature of men that howsoever they may acknowledge many others to be more witty, or more eloquent, or more learned, yet they will hardly believe there be many so wise as themselves. For they see their own wit at hand, and other men's at a distance. But this proveth rather that men are in that point equal, than unequal. For there is not ordinarily a greater sign of the equal distribution of anything than that every man is contented with his share" (L xiii.12).

in a state of nature would unthinkingly recognize another's claim to naturally rule over her, and this alone is weighty evidence to the contrary. It is at this point in the text where he famously declares the idea of a natural hierarchy to be "not only against reason, but also against experience" (L xv.21). The experience in question could only be that of a *conatus se movendi.* It is contrary to experience to insist on something like a natural hierarchy, since "there are few so foolish that had not rather govern themselves than be governed by others; nor when the wise in their own conceit contend by force with them who distrust their own wisdom, do they always, or often, or almost at any time, get the victory" (Ibid.). The claims of the eminently wise (or strong) to a natural right to rule, in other words, are pretensions at best. They could never be self-enforcing; nor are such persons, when they do gain power, likely to establish a truly stable, harmonious political order.[79]

Note that Aristotle bases his claims about natural slavery in a vision of the Greek polis as the form of life proper to the human being. He saw the rigidly stratified polis as also ideally harmonious or the result of living in accordance with nature. Accordingly, he draws a difference in kind between minds suited for rule, i.e., those in possession of a more perfect or "perfect-able" rational faculty, and those that lack the rationally-formed desires necessary to achieve adequate self-governance. Such a view obviously strikes

[79] This is Hobbes's response to the idea that a natural right to rule does exist wherever individuals are not at least rough equals in their natural capacities. That is, a critic might argue that a superior individual or group could subdue everyone else, putting the lie to Hobbes's discussion of warfare and insecurity in a state of nature. The presumption behind this logic is that natural right is a function of universal insecurity. But I think the text, especially in the above cited passage, makes it clear that Hobbes believes natural right to follow not from insecurity per se, but from the fact of *conatus se movendi* itself, from which it follow that even a superior individual would be unable to enforce the claim to rule without first convincing others that their interests would also be served. Which is to say that rule exists and is maintained through conventional means, not naturally.

contemporary liberal readers as flawed, but it would perhaps be easier to stomach if the category "natural slave" was used exclusively to address extreme cases of mental disability, which do entail total dependence on a caretaker. But this is precisely not at issue; instead Aristotle claims it is perfectly conceivable that skilled and intelligent individuals might lack the ability to direct their own lives.[80]

Hobbes mobilizes his concept of *conatus* against this and similar doctrines.[81] It is dangerously misguided, he urges, to assume there are whole groups of passive people who require and welcome the rule of another. The idea of a state of nature, as he uses it, is ultimately a heuristic one, which makes vivid for the reader the absence of any spontaneous social harmony. Once one abstracts away from established laws and government, the myths that sustained them are also revealed; order would not automatically reassert itself. In Hobbesian terms, harmony requires stable institutions which foster positive, social passions, but in a state of nature, where no one accepts the authority of institutional norms, it is far more likely that unsociable or deleterious passions such as "diffidence" (i.e. generalized distrust) and vain glory would dominate. This is what Hobbes means when he states, in a much maligned but misunderstood

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[80] Again, this is tied to Aristotle's metaphysics of immanent forms. He defined "man" by reference to a specific telos or perfection — in this case the perfection of *nous* or theoretical intellect. The tradition he gave rise to, accordingly stressed the role of reason in enabling the type of directed action proper to human beings. Reason, a necessary aid to desire, apprehends the "form" of a desired thing. Baser types of individuals ("slaves") possess deformed souls, according to Aristotle, that lack a "deliberative faculty". Others, such as women, he claims do have a deliberative faculty, yet it is one that is nevertheless without "authority." See Noel Malcolm's discussion of Hobbes's rejection of Aristotelianism within the context of imperialism: Malcolm, "Hobbes's Theory of International Relations," 441.

[81] In one form or another, the Aristotelian argument persisted and continued to influence political conversation in early modernity (and likely beyond).

passage from *De Cive,* that "*man is not born fit for society*" (DC i.2, footnote).[82] While all are drawn to society and naturally desire the company of others, "it is one thing to desire, another to be in capacity fit for what we desire" (Ibid.).[83]

The idea of state of nature thus allows Hobbes to weigh in on a quintessentially 17th century political question: If no one is predestined for rule — if there is no naturally given social hierarchy — how can political order be possible at all? How can individuals be convinced to abide by the laws? In other words, what are the conditions for the possibility of successful government? His answer, as I see it, turns upon the centrality of natural right as a political first principle. Commonwealth *requires* that the *equal natural right* of all individuals be recognized within the very terms of social contract. For if no one has a natural right to rule then all must enjoy a natural right to self-governance. We are all equals in *this* regard; the content of natural equality is dictated by natural right.

Ironically, critics who favor the instrumental interpretation often cite the ninth law of nature as key evidence that Hobbes was never sincere about natural equality. But this is because they are married to the rough equality thesis and thus see Hobbes as contradicting himself here. Focus tends to fall on his conclusion: Either nature has made men equal — in which case, "that equality is to be acknowledged" — or it has not, "yet

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[82] This passage is a frequent locus of critique by many who want to claim that Hobbes's contract theory starts off on the wrong foot. Martinich, for example, claims that Hobbes denies human beings are "naturally political," and further argues that "Hobbes is mistaken. Even if we grant that humans are not fit for society, the fact that they need it to survive is sufficient…to make humans political animals by nature." See: Martinich, *Hobbes*, 107. As I see it, though, this is a misreading of Hobbes's use of the term 'natural'. He very much agrees that we need society and invariably will seek it, but this does not mean we automatically know how to construct well.

[83] Hobbes further comments that the main impediment to stable society is the deleterious passion of "pride" — specifically the pride of those who "will not stop to equal conditions without which there can be no society"

because men that think themselves equal will not enter into conditions of peace but upon equal terms, such equality must be admitted" (Ibid.). The hypothetical, either/or phrasing in this passage appears tailor-made to incentivize civil behavior and win converts to the cause of commonwealth, regardless of what holds true from the standpoint of theory. But it should be interpreted in light of the priority of natural right. Hobbes is arguing that even if human beings are not equal in our natural capacities, what we do have in common, i.e., the vital drive to pursue self-preservation in combination with the general ability to reason prudentially about our own ends, is enough to establish necessary basic equality of status.

Hobbes's doctrine of natural equality defends the position that all individuals have the natural right to direct their own lives, and this equality must be acknowledged in *legal* terms or else civil society is impossible.[84] Hobbes initially describes what such acknowledgment would look like in the tenth law of nature, "*against Arrogance"*: "*(T)hat at the entrance into conditions of peace, no man require to reserve to himself any right which he is not content should be reserved to every one of the rest*" (L xv.22). Then, in the eleventh law of nature dictating "*Equity*," he clarifies that in practice this translates to the necessity of political equality, or the equality of individual subjects under the law. It is a precept of reason, he states, that "*if a man be trusted to judge between man and*

[84] The obvious objection to this claim, is that civil society could exist without a commitment to political equality if its hierarchical structure (e.g. feudalism) is sustained via a "noble lie" or a mythology (religious or otherwise) that becomes culturally entrenched. Hobbes definitely recognizes the fact that doctrine and mythology can exert a large amount of social control, but he does not think that this a solid foundation for the political state since there is no reassurance that the myths and beliefs will continue to be accepted from one generation to the next.

man… he *deal equally between them.* For without that, the controversies of men cannot be determined but by war" (L.xv.23).

Finally, in a passage which explains the guiding metaphor behind the title *Leviathan*, Hobbes comments that sovereign absolutism, the part of his contract theory that tends to draws vehement cries of illiberalism, is necessary to mitigate the deleterious effects of elite infighting, where powerful individuals or groups vie amongst themselves for status and privileges. Membership in commonwealth must obligate all equally, and to that end the sovereign should overwhelm any who would seek exceptions for themselves. He cites a passage from the Book of Job to illustrate the point, comparing the sovereign to the formidable *Leviathan*, a biblical sea-monster so mighty God declared it to be "King of the Proud" — 'There is nothing,' saith he, 'on earth to be compared with him. He is made so as not to be afraid. He seeth every high thing below him, and is king of all the children of pride'[Job 41:33-34]" (L xxviii.27).

The importance of this passage is hard to overstate. Hobbes excels at using metaphors and offers quite the menagerie of metaphorical monsters to illustrate not only the power of the sovereign, but also the force of specific threats to commonwealth. There is one trope we might expect from him, however, which is nonetheless largely absent, namely, the characterization of the multitude as a "many-headed monster," "fickle, unstable, incapable of rational thought," and, of course, a blatant threat to order and civility.[85] As Christopher Hill points out, it was common to use the image of a "hydra" to convey the evils of democracy, and especially the fear that "base" individuals might

[85] Hill, *Change and Continuity in Seventeenth-Century England*, 181.

dismantle the traditional privileges of the ruling classes.[86] Yet Hobbes instead focuses on the danger posed by elites. For example, he criticizes the idea of "mixed government" or shared sovereignty as leading to a commonwealth divided into factions led by elites, stating:

> To what disease in the natural body of man I may exactly compare this irregularity of a commonwealth, I know not. But I have seen a man that had another man growing out of his side, with an head, arms, breast, and stomach of his own; if he had had another man growing out of his other side, the comparison might then have been exact (L xxix.17).

He further warns against "monopolies," "popular men," and "the excessive greatness of a town" for similar reasons (L xxix.19-21). And the one time he mentions the trope of the "hydra" it is used to reference the intransigent pride of elites who fail to see themselves as subject to the same laws as other subjects. He cites the special political status and benefits requested by these individuals as the cause of "public ruin": "It is a contention with ambition, like that of *Hercules* with the monster *Hydra*, which, having many heads, for every one that was vanquished there grew up three. For in like manner, when the stubbornness of one popular man is overcome with reward, here arise many more (by the example) that do the same mischief, in hope of like benefit" (L xxx.24).

Thus, while recognizing that social inequalities are inevitable, and honors and special recognition often justified, Hobbes continually stresses the need for equality of political status, as entailed by the natural equality of individuals. For if elites are seen to

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[86] Ibid.

elude "the cobweb laws of their country" (L xxvii.10), then average subjects will doubt the existence of justice and what reason would they have for agreeing to alienate original natural right? Even informal concessions to powerful individuals stand to create the appearance of special status and influence, which in turn undermines the stability of commonwealth.

Critics, again, assume Hobbes fails to make this sort of argument, resting his contract theory on an untenable claim about the rough equality of human beings in their physical and intellectual abilities. Martinich, in a representative complaint, states that Hobbes' political philosophy, "would have been stronger if he had recognized that people want 'equal terms' not because they think their strength and intelligence is effectively equal to others, but because each person thinks he deserves equal respect and regard, independently of whether or not he is as smart and strong as others."[87] Yet, as I take it, this is precisely Hobbes's point. In turning to the historical context for his thought, I will thus suggest some reasons why he has been misread.

Part III. Hobbes's Argument for Natural Equality in Context

The fact that Hobbes self-identified as a royalist during a turbulent period of revolution remains an important consideration, and one which no doubt continues to inform portrayals of him as reactionary or conservative. This is especially so, given that the political platforms birthed out of opposition to the Crown seem more likely harbingers of liberalism. Parliamentarians claimed to oppose tyranny and represent the interests of the people. Yet the historical reality proved more complicated than this.

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[87] Martinich, *Hobbes*, 67.

Hobbes's doctrine of natural equality, as I will argue, is best appreciated as an independent-minded critique of the dominant ideologies of his day, including the views of royalists and parliamentarians alike, all of whom affirmed some version of a natural hierarchy.[88]

During the period of the English civil wars (1642-1651) both royalist supporters of Charles I and parliamentarians deployed the idea of a natural hierarchy to shore up their respective political positions. This is sometimes obscured by the rhetoric surrounding parliamentary opposition. That is, while royalists openly used traditional hierarchical categories,[89] parliamentarians adopted a seemingly more "populist" language. Upon examination, however, they too endorsed a model of civil society founded upon the assumption of natural social and political inequality.[90] Hobbes was unique in turning the conversation round to the political status of individuals as such, and he did so with a clear understanding of the political stakes for himself.[91] If radicalism can be defined as "axiomatic change," or "a questioning of the foundations of contemporary

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[88] In a recent contextualization of Hobbes's political thought, Eleanor Curran comments that Hobbes was a very "peculiar royalist" who, despite voicing support for the crown, broke with royalism as a political platform, especially on the issue of equality. See: Eleanor Curran, "A Very Peculiar Royalist. Hobbes in the Context of His Political Contemporaries," *British Journal for the History of Philosophy* 10, no. 2 (2002); *Reclaiming the Rights of the Hobbesian Subject* (New York: Palgrave Macmillan, 2007).

[89] Robert Filmer, *Patriarcha and Other Writings*, ed. J.P. Sommerville, Cambridge Texts in the History of Political Thought (Cambridge England: Cambridge University Press, 1991), 3; Hyde, "A Survey of Mr. Hobbes, His *Leviathan*," 198-99, 292-93.

[90] Parliamentarians, while espousing popular government of a sort, still assumed that a natural hierarchy dictated who among the sum total of subjects actually held political status or agency within the state to act in the name of the people.

[91] Curran, *Reclaiming the Rights of the Hobbesian Subject*, 44-48.

arrangements," then only Hobbes and certain of the Levellers and Diggers radically broke with the longstanding prejudices that supported the caste systems of their day.[92]

i. The Ancient Constitution and the People

To begin with, neither royalism nor parliamentarianism were wholly unified political platforms; both accommodated factions and live ideological differences.[93] With regard to royalism, however, a set of central tenets can be extrapolated from the negative reactions of royalists of all stripes to Hobbes's political writing. Hobbes publicly supported Charles I during the first of the civil wars.[94] Yet even at this relatively early date, his defense of natural equality marked him as an unorthodox royalist and motivated his peers to by turns admonish, correct, or discredit him.

For example, Sir Robert Filmer — best known for his canonical statement of divine right theory in the work *Patriarcha* — first praises what he sees as Hobbes's

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[92] Philip Baker offers this definition albeit in order to argue that "Civil War radicalism encompassed a variety of ideologies that were radical." See: Philip Baker, "Rhetoric, Reality, and Varieties of Civil War Radicalism," in *The English Civil War: Conflict and Contexts, 1640-49*, ed. John Adamson (New York: Palgrave Macmillian, 2009), 204. It is also notable that the radicalism of both the Levellers and Diggers is open to question. For commentary on the Levellers questionable egalitarian credentials see: Christopher Hill, *The World Turned Upside Down; Radical Ideas During the English Revolution* (London: Temple Smith, 1972), ch. 7. And for an account of the Diggers acceptance of certain forms of slavery as well as patriarchal authority, see: J. C. Davis, *Utopia and the Ideal Society: A Study of English Utopian Writing, 1516-1700* (Cambridge: Cambridge University Press, 1981), 180-90.

[93] Both Baker and David Scott provide thorough analyses of the ideological diversity within these categories that are too often treated as static. See: David Scott, "Rethinking Royalist Politics, 1642-9," in *The English Civil War: Conflicts and Contexts 1640-9*, ed. John Adamson (New York: Palgrave Macmillan, 2009).

[94] Historians typically distinguish between the conflict between the years of 1642-1646, culminating in the imprisonment of Charles I, and then then the Royalist uprising and Scottish invasion between the years of 1648-1649 culminating in the beheading of Charles I as well as a number of prominent royalists.

salutary defense of the crown but then goes on to reject the "foundation" upon which it is built. He writes:

> With no small content I read Mr Hobbes' book *De Cive*, and his *Leviathan*, about the rights of sovereignty, which no man, that I know, hath so amply and judiciously handled. I consent with him about the rights of exercising government, but I cannot agree to his means of acquiring it. It may seem strange I should praise his building and yet mislike his foundation, but so it is. His *jus naturae* [right of nature] and his *regnum institutivum* [kingdom by institution] will not down with me, they appear full of contradictions and impossibilities.[95]

Filmer goes on to complain that by granting the existence of natural right Hobbes dissolves traditional distinctions between persons and groups, as if "men at the very first" were "created together without any dependency one of another."[96] By contrast, he asserts, "the truth of the history of creation" justifies a natural distinction between rulers and ruled. The right to rule, in other words, should be understood as originating in the patriarchal power first granted by God to Adam, and passed down via direct lineage to current monarchs.

While such a strong criterion of legitimacy no doubt seems to us to be impractical and absurd, Filmer relied upon divine right theory to protect the king's claim to authority against encroaching threats posed by institutions such as the Presbyterian Church and

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[95] Filmer, *Patriarcha and Other Writings*, 184-85.
[96] Ibid., 187. Filmer also rejects natural right on the basis that it may well provide commoners with a rationale for revolt; "(a)ny rogue or villain," he states, could appeal to natural right as a pretext to take up arms against a sovereign if the latter so much as "offer by force to whip or lay him in the stocks" (195).

Parliament.[97] His argument is thus framed as a categorical rejection of the idea, "first hatched in the schools," that "Mankind is naturally endowed and born with freedom from all subjection, and at liberty to choose what form of government it please(s)."[98] As he sees it, Hobbes's account of sovereignty by institution is the truly absurd doctrine, since it is akin to claiming that children are able to choose and empower their fathers.

In a brief discussion of the rights and duties of sovereigns, Filmer outlines his own stratified vision of civil society. He states that all the king's actions "tend only to preserve and distribute to every subordinate and inferior father, and to their children, their rights and privileges, so that all the duties of a king are summed up in an universal fatherly care of his people."[99] All lords and subordinate patriarchs, he argues, find place in a divinely ordained hierarchy, administrated by the sovereign monarch who grants subjects "rights and privileges" in accordance with their historical station or rank.

Moderate royalists such as Bishop John Bramhall and Edward Hyde (the first Earl of Clarendon) adopt a similar stance.[100] But rather than simply claiming that the king's actions "tend" toward maintaining stratified privileges, they argue that all monarchs have a legal duty to preserve the traditional, historical rights of their subjects. The term

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[97] The Presbyterian Church, armed with Calvinist tenets that justified action against a heretical secular
authority, posed a major threat to the English Crown in the 17th century.
[98] Filmer, *Patriarcha and Other Writings*, 2.
[99] Ibid., 12.
[100] I adopt the term 'moderate' here from Curran. She uses the term to refer to those royalists who dispensed with the most stringent and extreme tenets of divine right theory. Moderate royalists thus still argued that sovereign power is divinely ordained and insisted that monarchs rule absolutely. However, they stressed that although absolute, monarchs do have certain duties, often construed as moral obligations to observe divine and natural law. For more on the moral duties of sovereigns under the "ancient constitutions, see: Scott, "Rethinking Royalist Politics, 1642-9."; Jon Parkin, *Taming the Leviathan: The Reception of the Political and Religious Ideas of Thomas Hobbes in England, 1640-1700*, Ideas in Context (Cambridge: Cambridge University Press, 2007), 18-32.

"historical" here is meant to evoke the doctrine of the ancient constitution of England,[101] a protean and ambiguous vision of English society, according to which governance is shared between the estates of the realm and regulated by the common law.[102] J.G.A. Pocock explains it thus:

> The relations of government and governed in England were assumed to be regulated by law; the law in force in England was assumed to be the common law; all common law was assumed to be custom, elaborated, summarized and enforced by statute; and all custom was assumed to be immemorial, in the sense that any declaration or even change of custom...presupposed a custom already ancient and not necessarily recorded at the time of writing.[103]

Both Bramhall and Hyde were unswerving absolutists who nonetheless held that England's ancient constitution was compatible with the supremacy of the crown. On the

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[101] I explore the connection between the ancient constitution and English common law in further detail within Chapter 3.

[102] The theoretical make-up of the estates of the realm was not consistent over time. During the Elizabethan era through the rule of Charles I, for instance, the monarch was not included as a member of the estates, which consisted of the Lords (both spiritual and temporal) and the Commons. This only become the accepted view once the tensions between king and parliament forced the theory of the ancient constitution to evolve. For instance, Charles I responded to the hostilities of parliament by conceding his status as an estate in his *Answer to the Nineteen Propositions*. He maintained, however, that the king must be the pre-eminent estate. Ironically, this was an extreme concession on Charles' part and one that many royalists at that time saw as politically unwise and detrimental. For more on the unique composition and evolution of the estates in England, see: Glenn Burgess, *Absolute Monarchy and the Stuart Constitution* (New Haven: Yale University Press, 1996); Michael Mendle, *Dangerous Positions: Mixed Government, the Estates of the Realm, and the Making of the Answer to the Xix Propositions* (University, Ala.: University of Alabama Press, 1985); Janelle Greenberg, *The Radical Face of the Ancient Constitution: St. Edward's "Laws" in Early Modern Political Thought* (Cambridge: Cambridge University Press, 2006).

[103] J. G. A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton, N.J.: Princeton University Press, 2003), 261.

one hand, they saw their monarch as only a single part of government (albeit the head), and thus limited by common law. On the other hand, they argued monarchs must also enjoy absolute prerogative: "as God's lieutenants on earth," monarchs "could act outside the common law."[104] The question moderate royalists were thus most at pains to address was that of the "exact scope" of the legal *and* "extra-legal" powers of the king.[105] When, that is, can a king rightly claim to act as God's lieutenant? They again saw the ancient constitution as a useful resource for answering this question because it justified limiting the king's prerogative, but only to the extent necessary to defend the traditional privileges of religious prelates, aristocrats, and political elites."[106]

This is evidenced, once again, by their reactions to Hobbes. Bramhall provides an excellent example; he is animated by a desire to defend episcopacy, "an ancient institution in harmony with the rest of the political system of England," against attacks on it in Book IV of *Leviathan*.[107] By custom, he argues, traditional Church authorities enjoy the right to institutional self-governance, and may contest royal attempts to subvert their authority. However, Bramhall draws the line at resistance, carefully qualifying that episcopacy cannot entail a right to take up arms against the Crown. Like Filmer, he thus

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[104] Glenn Burgess, *The Politics of the Ancient Constitution: An Introduction to English Political Thought, 1603-1642* (University Park, Pa: Pennsylvania State University Press, 1993), 89.
[105] Ibid.
[106] Burgess and others have argued compellingly that, "neither in the 1640s or before, did most Royalists believe that kings could govern lawlessly or that they were unlimited in the sense of having no obligations to obey any laws except those of nature and of God; nor did they believe these limits to be unenforceable." See: *Absolute Monarchy and the Stuart Constitution*, 22. Royalists, however strongly denied a right to resistance; the limits of sovereign power were enforced by the normal legislative procedures of a subordinate power like Parliament. The King was absolute in the sense that no one has any power above his own.
[107] Nicholas D Jackson, *Hobbes, Bramhall and the Politics of Liberty and Necessity: A Quarrel of the Civil Wars and Interregnum*, Cambridge Studies in Early Modern British History (Cambridge: Cambridge University Press, 2010), 64.

sees Hobbes's emphasis on natural right as dangerous and even goes so far as to label *Leviathan* a "Rebells catechism," the basic premises of which would not only undermine the authority of religion but also bolster the cause for political sedition.[108] Bramhall's harshest criticism, however, is reserved for Hobbes's account of natural equality, which he apparently saw as a betrayal of the royalist cause. He remarks with disdain upon the "pride" that Hobbes takes in removing ancient landmarks "between Prince and subject, Father and child, Husband and Wife, Master and servant, Man and Man."[109]

Hyde follows Bramhall in this defense of accepted class demarcations.[110] As John Bowles notes, he was frustrated by Hobbes's "non-scholastic terminology," and attempted to "vindicate Aristotelian accounts of natural inequality and sociability from Hobbes's assault upon them, mainly by restating Aristotelian distinctions Hobbes had collapsed."[111] In *A Brief Survey of the Pernicious Errors to Church and State in Mr. Hobbes's Book entitled Leviathan,* he lays out his especial grievance with Hobbes' "false notion of equality" which is "disproved by history."[112] On the contrary, he argues: "[I]n

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[108] John Bramhall, "The Catching of *Leviathan*, or the Great Whale," in *Leviathan: Contemporary Responses to the Political Theory of Thomas Hobbes*, ed. G.A.J. Rogers (Bristol, England: Thoemmes Press, 1995), 145.
[109] Ibid., 161.
[110] Hyde and Hobbes were sometimes friendly acquaintances and Richard Tuck has argued that early in their careers both were highly influenced by the regular meetings of the Tew Circle, a group of royalist academics that convened regularly in Lord Falkland drawing room to discuss politics and science. However, his argument is rather tenuous when it comes to Hobbes, especially in the period where he was composing his mature works. Hobbes had a strained relation with the group, which grew more hostile over time. See: Richard Tuck, *Natural Rights Theories: Their Origins and Development* (Cambridge: Cambridge University Press, 2002), 101-19. I, however, agree with Zagorin, that Hobbes was not an active member and any similarity between his own writings and those of the Tew Circle members, is rather due to his own influence on their thought. See: Perez Zagorin, "Hobbes without Grotius," *History of Political Thought* 21, no. 1 (2000): 20.
[111] John Bowles, *Hobbes and His Critics: A Study in Seventeenth Century Constitutionalism* (Oxford: Oxford University Press, 1952), 51.
[112] Hyde, quoted in ibid.

all well instituted Governments...the Heirs and Descendents from worthy and eminent Parents, if they do not degenerate from their virtue, have bin alwaies allowed a preference and kind of title to emploiments and offices of honor and trust."[113] The *Survey* goes on to delineate a history of dominion with the aim of disproving the very possibility of a state of nature, and with it the basis for Hobbes's claims about human equality.

On a biographical note, Hyde opposed Charles I's notorious Ship-Money tax.[114] Yet, his position on this front should be seen as part and parcel of the same commitment to tradition that marked his later support of the king throughout the years of civil war.[115] Indeed, it provides a concrete example of the role that the ancient constitution played in 17th century political debates. Hyde saw the decision to force a non-parliamentary tax as a threat to the legislative role traditionally (albeit informally) enjoyed by members of Parliament.[116] By opposing the king, he sought to maintain as inviolate "the essential props and supports of the old Government."[117] His concern for the ancient constitution is also reflected in a critique of Hobbes's analysis of sovereign rights; where Hobbes sees property as guaranteed by the sovereign and therefore always open to forfeiture, Hyde counters that no monarch could ever be entitled to seize the property of subjects at will

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[113] Hyde, "A Survey of Mr. Hobbes, His *Leviathan*," 182-83.
[114] Michael Mendle, "The Ship Money Case: The Case of Shipmony and the Development of Henry Parker's Parliamentary Absolutism," *The Historical Journal* 32, no. 03 (2009).
[115] Hobbes, in contrast to Hyde, explicitly supported the King's Ship Money tax citing the exigencies of war as adequate reason for levying whatever tax the King deemed necessary. As Martin Dzelzainis states: "Hobbes' theory cuts through the confusion which enveloped the king and his advisors no less than recalcitrant [members of parliament]...The sovereign's 'absolute use of the sword' necessarily entailed an absolute right to secure whatever revenues were needed." See: Martin Dzelzainis, "Edward Hyde and Thomas Hobbes's Elements of Law, Natural and Politic," ibid., no. 2 (1989): 314.
[116] Burgess, *Absolute Monarchy and the Stuart Constitution*, 39.
[117] Edward Hyde, *History of the Rebellion and Civil Wars in England Begun in the Year 1641: In Six Volumes*, ed. W.D. Macray, Reproduction of original ed., vol. III (Oxford: Clarendon Press, 1992), 476.

since this would threaten the ability of nobles and landed aristocrats to fulfill their traditional duties.[118]

In general, then, all royalists — whether radical divine right theorists like Filmer or moderates such as Bramhall and Hyde — were committed to the following abbreviated list of tenets: (1) sovereign power is bestowed by God and lies solely with the king;[119] (2) the king exercises legal and extra-legal prerogative power; (3) there is a natural hierarchy; (4) and, finally, whatever rights subjects possess are maintained and preserved by the king (either by grace or duty) and distributed relative to one's place within said hierarchy. Hobbes cannot endorse any of these as stated. Even though, as an absolutist, he too theorizes rights as dependent upon sovereign protection, he rejects the idea that they either follow from the sovereign's will *qua* natural person or that they track a natural hierarchy.

Now, parliamentarians directly rejected *only* the first and second tenet, and slightly modified the third and fourth. Charles I's attempts to circumvent normal legal procedures, i.e. the same behavior that concerned a royalist such as Hyde, ultimately led politically ambitious individuals to put the old theory of the ancient constitution to new use. Parliamentarians held that the scope of a monarch's power is in all instances circumscribed by historical custom and hence subject to the law. In other words, they saw

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[118] Zagorin notes: "Nothing was more offensive to Clarendon than the investment of the Hobbesian sovereign with a right to the subject's property." See: Perez Zagorin, "Clarendon and Hobbes," *The Journal of Modern History* 57, no. 4 (1985): 614.

[119] In the case of moderate royalists, only the king's extra-legal sovereign prerogative was seen as directly bestowed by God. See: Michael P. Zuckert, *Natural Rights and the New Republicanism* (Princeton, N.J.: Princeton University Press, 1994), 59-60, 99.

sovereign "extra-legal" prerogative power as a new-fangled myth the Crown had adopted and pushed upon the rest of government.

This view is expressed by Philip Hunton, in his political pamphlet, *A Treatise of Monarchy* (1643).[120] Hunton urges that monarchs have always been limited: "In all ages, beyond record, the laws and customs of the kingdom have been the rule of government…and no obedience acknowledged to be due, but that which is according to law."[121] He follows this with the observation that England is of "mixed constitution," by which he means that the English commonwealth is not only of "ancient" origins, but that it is especially well-formed. It naturally avoids the inconveniences of the three pure types of government (monarchy, aristocracy, and democracy), but through a balanced admixture still manages to take advantage of the strengths of each.[122] The key term here is 'balanced'; Hunton's claim is that the English commonwealth developed as a political community under a system of shared sovereignty between King, Lords, and Commons. As component parts of an organic, constitutional unity, none of the three is able to exist independently from or prior to the whole.[123] This position effectively reduces the status of

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[120] Filmer published a direct response to Hunton in 1648, entitled *Anarchy of a Limited and Mixed Government.* This was later published under the title *The Free-holders Grand Inquest.* See: Filmer, *Patriarcha and Other Writings*, 69-130. For more on their exchange see: Corinne Comstock Weston, *English Constitutional Theory and the House of Lords, 1556-1832*, Reprint of original ed., Routledge Revivals (Abingdon, Oxon: Routledge, 2010), 70.

[121] Philip Hunton, "A Treatise of Monarchy [1643]," in *Divine Right and Democracy: An Anthology of Political Writing in Stuart England*, ed. David Wootton (Indianapolis: Hackett Publishing Co., 2003), 196.

[122] Again, Charles I officially accepted the doctrine of a "mixed constitution" in his response to the *Nineteen Propositions*. See: "His Majesties Answer to the Nineteen Propositions of Both Houses of Parliament [1642]," ibid. This was a tactical attempt on his part to respond to changing attitudes while also maintaining his own special standing and extra-legal prerogative. However, the move backfired and only prompted demands for further concessions to parliament.

[123] Zuckert cites the influence of Sir John Fortescue's understanding of the body politic as a *corpus mysticum* in bolstering the doctrine of the ancient constitution. See: Zuckert, *Natural Rights and the New Republicanism*, 54.

the monarchy to that of an estate alone; monarchs are not to exceed the authority placed in them by "God and the law," and are bound to legislate in cooperation with the other estates, i.e. the two houses of Parliament.[124]

While Hunton does not elaborate on the consequences for monarchs that refuse to comply, his influential and more radical peer, Henry Parker, a well-known barrister and one of the most prolific of the pro-parliament pamphleteers, openly calls for deposing Charles I. Parker has in fact been referred to as the first legal scholar "in English history" to theorize parliamentary sovereignty.[125] He rejects the royalist tenet that rule is directly bestowed by God and instead declares that "the supreme of all humane laws is *salus populi."*[126] In a later, anonymously published tract, entitled *Observations upon Some of His his Majesties late Answers* (1642), he clarifies the point; sovereignty, he argues "is originally inherent in the people," and legitimacy depends upon "a law of common consent and agreement."[127] Since the people are "the true efficient cause of power," that power exercised by any given ruler must always be "secondary and derivative".[128] From hence, Parker concludes, "the king though he be *singulis major* [greater than any

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[124] Ibid., 23-24.
[125] The view that Parliamentary sovereignty was an invention of the 1640s is excellently argued by Margaret Judson in: Margaret Judson, "Henry Parker and the Theory of Parliamentary Sovereignty," in *Essays in History and Political Theory in Honor of Charles Howard Mcilwain* (New Yotk: Russell & Russell, 1967).
[126] Henry Parker, "Observations Upon Some of His Majesties Late Answers and Expresses [1642]," in *Catalogue of the Pamphlets, Books, Newspapers, and Manuscripts Relating to the Civil War, the Commonwealth, and Restoriation, Collected by George Thomason, 1640-1661* (London: Oxford University Press, 1908), 2. Note, all references to this text will cite original page numbers. For an overview of Parker's political views as well as a detailed account of the various printings of his works and dispute over authorship see: Michael Mendle, *Henry Parker and the English Civil War: The Political Thought of the Public's Privado*, Cambridge Studies in Early Modern British History (Cambridge England ;: New York : Cambridge University Press, 1995).
[127] Parker, "Observations Upon Some of His Majesties Late Answers and Expresses [1642]," 2.
[128] Ibid.

individual] yet he is *universis minor* [less than them all]."[129] Any people whose welfare is no longer served by a reigning monarch may rightfully resist.

Parker's appeal to the original power of the people as a basis for resistance has led some historians to label him as an early modern populist, even urging that he provides a conceptual framework for theorizing democracy. Yet parliamentary sovereignty is not democracy. The populist reading is further strained by the fact that he, and other parliamentarians, remained just as committed as their royalist counterparts to the existence of a natural hierarchy.[130] If one can use the language of popular sovereignty at all to describe the parliamentarian position, it must be with the understanding that their goal was at odds with contemporary democratic ideals, especially that of political equality. In order to best appreciate why, it is first necessary to ask: Who, exactly, are 'the people'?[131]

When Parker uses the phrase 'the people,' he has in mind the idea of an organic community. He is neither referencing an informal aggregate of individuals, nor, as Hobbes does, the artificial unity formed when such individuals join together to institute commonwealth. At no point in Parker's reasoning process, in fact, are individuals as such considered politically relevant. He argues that sovereignty originates within the people, considered as an organic unity or corporate entity, and that parliament is the proper

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[129] Ibid.
[130] The difference being that where royalists tasked the king with the duty of maintaining hierarchical privileges, parliamentarians such as Parker claimed this was the duty and prerogative of parliament.
[131] For more on various meanings of 'the people' within early modern resistance theories, see: Ursula Goldenbaum, "Sovereinty & Obedience," in *The Oxford Handbook of Philosophy in Early Modern Europe*, ed. Desmond M. Clarke and Catherine Wilson (Oxford: Oxford University Press, 2011).

representative of said entity. Actually, the point is somewhat stronger. Parker holds that the two houses of parliament (but especially the House of Commons) essentially *are* 'the people,' leaving ordinary subjects without any standing to press their own claims. Eleanor Curran nicely puts a point on the matter. Parliamentarians never denied the existence of a natural hierarchy, but rather argued, "that the hierarchy should be extended downwards. They wanted the 'middling sort' of gentry, professionals and merchants who made up the Commons, to be accepted as the representatives of the people."[132]

Parker thus sought to maintain traditional class-based distinctions, while nevertheless broadening the scope of the upper tier of this hierarchy, the political class, to include those Marx would later come to label the petite bourgeoisie. Moreover, he published during the same period when the Levellers and Diggers were organizing to protest increasing poverty and demand basic political rights, such as the right of suffrage. While fully cognizant of the important role the masses would have to play on the battlefield — many of the Levellers and Diggers eventually joined with the parliamentarians to fight in Cromwell's New Model Army — he nonetheless responded with open hostility to Leveller ideas.[133] Michael Mendle, for example, documents how Parker's tract *Of Free Trade* (1648) defends merchants as the natural aristocrats of republics, and by contrast casts the masses at large as "the ruder sediment of the people," who must be excluded from politics due to their "emulous desire to interfere with others."[134] In effect, Parker's claim was that commoners, jealous of their betters and

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[132] Curran, "A Very Peculiar Royalist. Hobbes in the Context of His Political Contemporaries," 190.
[133] Michael Mendel notes that Parker's "vehemence" may in part be a reaction to his own undesired influence on the development of Leveller thought. Mendle, *Henry Parker and the English Civil War : The Political Thought of the Public's Privado*, 153.
[134] Ibid., 151.

inebriated at the thought of advantaging themselves, might endanger the whole of civil society.[135]

Such reasoning is echoed by the leaders of the New Model Army during the Putney debates of 1647.[136] These debates took place after Charles I fled the country, and largely concerned the structure of the new government under Cromwell. It was a time to revise outdated laws and customs, and the Leveller agitators took the opportunity to propose that the franchise be extended to all "freeborn, the heads of the households."[137] Given the social upheaval of warfare, this was not all that radical of a proposal; it still drew upon class-based distinctions to justify political inequality. The term 'freeborn' was widely used by the Levellers and others to reference only independent men, not held in slavery or debt bondage. It excluded women and the working poor, who because of their dependence on wage-labor were thought to have ceded any birthright as Englishmen.[138] Yet both Oliver Cromwell himself, and Henry Ireton (his son-in-law, and one of his top generals) spoke out against the idea as if it were the height of extremism. Ireton was

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[135] Ibid.

[136] "The Putney Debates [1647]," in *Divine Right and Democracy: An Anthology of Political Writing in Stuart England*, ed. David Wootton (Indianapolis: Hackett Publishing Co., 2003). For scholarly analysis of the debates see:*The Putney Debates of 1647 : The Army, the Levellers, and the English State*, ed. Michael Mendle (Cambridge, U.K. ; New York: Cambridge University Press, 2001).

[137] Hill, *Change and Continuity in Seventeenth-Century England*, 204. For a contrary view, Keith Thomas defends the Levellers as seeking the franchise for all men, not just those of property. See: Keith Thomas, "The Levellers and the Franchise," in *The Interregnum: The Quest for Settlement, 1646-1660*, ed. G.E. Aylmer (London: Macmillian, 1972), 70.

[138] Hill, *Change and Continuity in Seventeenth-Century England*, 223. Hill, quoting the work of the early 19th century historian David Ogg, notes: "Those dependent on wage-labour were so badly off in the sixteenth and seventeenth centuries that 'neither contemporary nor modern economists can explain how they lived'. Children had to be put to work so early in life that there was no chance of educating them. Their poverty and helplessness was accompanied, as cause and effect, by an unfree status. Even the Levellers, the most radical of all seventeenth-century political groupings, would have excluded paupers and servants (i.e. wage-labourers) from the franchise, because they were unfree."

especially insistent that *only* the true men of property — lords, aristocrats, and wealthy landowners or merchants — actually "hath a right to an interest or share in the disposing of the affairs of the kingdom, and in determining or choosing those that shall determine what laws we shall be ruled by here."[139]

In sum, there was firm consensus among parliamentarians that war had been waged to defend their status and agency as political elites, i.e., as the proper representatives of the people, who could not rightly speak or act for themselves. Parliamentarians were thus no less committed to the idea of a natural hierarchy than were their royalist peers. Ireton's forcefully worded reply ultimately set the tone and political climate in the years to come. It came to serve as an important prop of the new regime, a reminder of the need to stem the leveling tide in the name of order. As Christopher Hill comments, "long after the crushing of the Levellers, [Cromwell] was able to make the flesh of his Parliaments creep by recalling how the Levellers had proposed 'to make the tenant as liberal a fortune as the landlord.'"[140]

ii. The Theoretical Sources of Inequality in Stuart England

Now, despite the obvious class interests underwriting the parliamentarian position, one might still feasibly claim that the argument for government by popular assembly alone should be seen as a step towards constitutional democracy, and with it the principle of the political equality of citizens. In this final section, however, I briefly turn to the theoretical precursors of ancient constitutionalism in Stuart England so as to clarify

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[139] *The Commonwealth of England Documents of the English Civil Wars, the Commonwealth and Protectorate : 1641-1660*, ed. Charles Blitzer (New York: G.P. Putnam's Sons, 1963), 66-67.
[140] *Change and Continuity in Seventeenth-Century England*, 200.

the manner in which it was shaped by, and continued to fuel, conflict between political elites. I will then conclude by presenting Hobbes's argument for natural equality as a counter-narrative. That is, while the common people were popularly portrayed as a chaotic political force and the primary danger to stable commonwealth (even where popular agitation was minimal),[141] Hobbes instead points the finger at elites, highlighting their destabilizing role in manipulating the masses for partisan purposes. I contend that Hobbes's discussion on this count provides further support for my reading of his doctrine of natural equality. That is, the failure to acknowledge the equality of individuals in their natural rights only legitimizes harmful elite in-fighting.

To reiterate, the idea of an ancient constitution proved a useful resource for parliamentarians and royalists alike precisely because it allowed both king and parliament to claim traditional privileges as representatives of 'the people'.[142] Their competing interpretations of the extent of these privileges, moreover, were deeply shaped by the late medieval sources from which the language of ancient constitutionalism in Stuart England had evolved. While the idea of 'the people' as a corporate body or natural whole can be traced back to Aristotle's account of the polis as a perfect community, it first takes on a constitutional cast, in the sense of 'constitution' at issue, within the Holy Roman empire,

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[141] Baker points out propaganda played a huge role in motivating conflict. He states: "Following the collapse of censorship at the outset of the 1640s, for example, news of the potential threat from the 'many-headed monster' was available in an unprecedented quartet in thousands of newspapers, pamphlets and books. A great deal of this material, however, was propaganda by either Royalists or Parliamentarians, who, with contemporaries gripped by a 'moral panic,' deliberately exaggerated the scale of the threat of social upheaval posed by incidents of crowd action in order to rally support amongst local magistrates and gentry." See: Baker, "Rhetoric, Reality, and Varieties of Civil War Radicalism," 206.

[142] The tenets of the ancient constitution ultimately justified consolidating political power and agency in the hands of a few — as representative of 'the people' — but did not give any definitive answers as to the extent of their prerogative nor did it resolve disputes between elites.

specifically informing the Roman law concept of *lex regia.* This was essentially a commission of governance, assumed to have been bestowed by the Roman people upon their chosen ruler. Historian Magnus Ryan explains it thus: "The *Corpus iuris civilis* tells a story about how the Roman empire ceased to be governed by the Roman people and changed its form, forever after to be ruled by emperors. This supposedly occurred when the people of Rome enacted a 'royal statute' or *lex regia* transferring to the new emperor all its powers of government."[143]

It is worth examining this origin story, due to the immense impact it had on subsequent political theory. For the myth of *lex regia,* while adequately serving as an explanation for the existence of emperors, left unresolved the fundamental question about the resulting make-up and nature of state power, namely, "the question of whether the grant had in fact been irrevocable, or whether the Roman people or their 'representatives' still possessed the right to make law and, if necessary, retract the ruler's commission to govern."[144] Roman sources themselves described the contract as a total and binding grant of i*mperium*, such that the Emperor remains *legibus solutus* (not bound by any positive law).[145] Indeed, appeal to *lex regia* was often made to bolster imperial power and later played a role in justifying the expansion of early modern monarchies, notably appearing in Jean Bodin's defense of sovereign absolutism.[146] It made sense for monarchs wishing

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[143] Magnus Ryan and David Johnston, "Political Thought," in *The Cambridge Companion to Roman Law* (2015), 423. For original reference, see: Justinian, *Institutes*, ed. Peter Birks and Grant McLeod (Ithaca, N.Y.: Cornell University Press, 1987), I.ii.6.
[144] Michael Wilks, *The Problem of Sovereignty in the Later Middle Ages* (Cambridge: Cambridge University Press, 1963), 184.
[145] Ibid., 437. See also: Quentin Skinner, *The Foundations of Modern Political Thought, Volume I : The Renaissance* (Cambridge: Cambridge University Press, 1978), 62-63; Philip Hamburger, *Law and Judicial Duty* (Cambridge, Mass.: Harvard University Press, 2008), 73.
[146] Bodin gave his most thorough statement of sovereign absolutism in, *Six livres de la République*. For an accessible English language translation of the main parts, see: Jean Bodin, *On*

to claim legal and political supremacy to emphasize their rights and obligations as representatives of the community as a whole.[147]

Nevertheless, the idea of *lex regia* could also be used as a theoretical basis for resistance. Such potential is evident in the early form of contract theory developed by scholars in the city-republics of northern Italy during the 14th century. At the time, church and secular authorities were involved in a bitter territorial dispute, exacerbated by Pope John XII's claim to enjoy a "plenitude of power."[148] Scholars such as Bartolus of Saxoferrato and Baldus of Ubaldis, both of whom had written commentaries on the *Corpus iuris civilis,* responded by appropriating the concept of *lex regia* to defend the

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Sovereignty : Four Chapters from the Six Books of the Commonwealth, ed. Julian H. Franklin, Cambridge Texts in the History of Political Thought (Cambridge: Cambridge University Press, 1992). In another of his texts *(Method for the Easy Comprehension of History*), he illustrates the importance of *legibus solutus* using a classic story involving two medieval jurists, Azo and Lothair, who debated the exclusivity of *merum* ("pure") *imperium.* As the story goes, Lothair claims that *merum imperium,* especially "the power of the sword," can only be wielded by the Emperor. Azo wagers a horse that in fact "inferior magistrates" also wield i*mperium*. Bodin, however, finds both of them to be in the wrong because by reducing *imperium* to wielding the public sword they both ignore the most important marker of sovereignty, namely jurisdictional supremacy. For an excellent summary and explanation of Bodin's account here, see: Daniel Lee, *Popular Sovereignty in Early Modern Constitutional Thought* (Oxford Oxford University Press, 2016), 181-86.

[147] Absolutist theory was also spurred on by concrete political and economic practice. Winifred Schulze, in an analysis of the material and social interests involved in the early modern growth of monarchies, notes that while the nobility saw the power of princes and monarchs as an encroachment upon their traditional privileges, "peasant subjects, in turn, had a strong interest in securing as far as possible their individual and collective titles to the land…since that was the only way in which individual agrarian producers could prove their worth and peasants could have a share in the agricultural boom. Politically, this grass-roots interest meant that subjects increasingly appealed to the prince's authority to settle disputes, which signified a progressive weakening of the nobles' autonomy." See: Winifred Schulze, "Estates and the Problem of Resistance in Theory and Practice in the Sixteenth and Seventeenth Centuries," in *Crown, Church and Estates: Central European Politics in the Sixteenth and Seventeenth Centuries*, ed. R.J.W. Evans and T.V. Thomas (New York: Palgrave Macmillan, 1991), 162.

[148] This is to say, the pope asserted that papal sovereignty superseded the authority of the Holy Roman Emperor. Pope John XII's claims were instrumental in the development of an alternative to divine right theory as an account of the origins of imperial power, for obvious reasons. For more on the resulting changes in political theory, see: Wilks, *The Problem of Sovereignty in the Later Middle Ages*.

independence of city-republics from the authority of the Catholic Church.[149] Both assert that 'the people' must be "the historical source of imperial authority," and as such need not recognize any other authority, at least when it comes to earthly matters.[150]

In one of the most influential works of the period, *Defensor pacis,* Marsilius of Padua completes this line of argument, by asserting that 'the people,' in a technical sense, remains sovereign even after the institution of an Emperor; the Emperor is an elective monarch and his will a direct expression of that of 'the people'.[151] The force of his argument follows from his use of the phrase *legislator humanus,*[152] which he defines as rational manifestation of the *universitas civium*, or 'the people' as a whole. As such the *legislator humanus* serves as the condition of the independent status of any political community. When the Emperor issues commands, it is with the voice of the *legislator humanus.*

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[149] Ryan and Johnston, "Political Thought," 423.

[150] J.P. Canning, "Introduction: Politics, Institutions and Ideas," in *The Cambridge History of Medieval Political Thought, C.350-C.1450*, ed. J.H. Burns (Cambridge: Cambridge University Press, 1988), 361, 63.

[151] Marsilius is often considered a forerunner of Hobbes because he asserted there can only be one supreme legal authority in any given territory. However, his model of contract differed from Hobbes in at least two important respects. The first is my focus here — namely, where Hobbes sees individuals themselves as the parties to the initial sovereign-making contract, Marsilius appeals to the vague notion of the people, which he takes to reference only political elites (the Electoral Princes of each city republic). He claims that the people, in this sense, contract directly with their chosen Emporer. Second, Marsilius models the social contract as a mutual agreement that tasks the Emperor with a duty of care — if this duty is left unfulfilled the Electoral Princes may actively resist and/or depose the Emperor. Hobbes, of course, denies the possibility of a legal right to resistance.

[152] As Jeannine Quillet explains, the *legislator humanus* is the earthly counterpart of "the *legislator divinus*, the custodian and ultimate source of power, who is set over and above the *legislator humanus* and the power he holds." See: Jeannine Quillet, "Community, Counsel and Representation," in *The Cambridge History of Medieval Political Thought, C.350-C.1450*, ed. J.H. Burns (Cambridge: Cambridge University Press, 1988), 558.

The scaffolding beneath the concept is of primary interest here since it articulates in brief the same logic present in the writings of seventeenth century parliamentarians, moderates and radicals alike. For, much like Henry Parker's concept of 'the people,' Marsilius' *universitas civium* references an organic whole which in practice ends up equivalent to a small subset of privileged subjects. Following Aristotle, Marsilius holds that the different parts of civil society are all coordinated towards the achievement of a common end (in this case peace and concord).[153] Thus, the first step in determining the proper constitution of the *universitas civium* is to understand the different parts of civil society, by reference to their different, essential functions.[154] He approaches this daunting task reductively, by first narrowing the social classes and categories up for consideration. As Jeannine Quillet explains, Marsilius draws a distinction "between 'the plebeian multitude' and the parts of the state 'in the strict sense', to wit, the priests, the army and the judges, who are the notables; the multitude encompasses the peasants and the artisans, the people who in the Italian cities were categorized as the *populo minuto,* while Marsilius' *honorabilitas* corresponds to the *populo grosso*."[155]

It is thus, primarily, the *honorabilitas* that Marsilius refers to when he speaks about 'the people'.[156] He especially has in mind those members of the *honorabilitas* with positions on Padua's Grand Council, since it is they who would be responsible both for

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[153] Quillet notes that community, for Marsilius, is always "a multitude ordered into a unity, of whatever sort, whose aim and purpose is to achieve peace and tranquility for the whole social body, as that is the necessary condition for human social existence." Ibid., 535.
[154] Note that his analysis of the state is thus much more like an *anatomy* of an organic body. By analogy, the end or purpose of the state could be understood as similar to equilibrium or homeostasis in a living organism. Marsilius focuses on those parts of society (organs) that he views as most vital (functional) to achieving this end.
[155] Quillet, "Community, Counsel and Representation," 535.
[156] Quillet states: "Nor is it really admissible to see the *valentior pars* as a symbol of the people: it is in fact the very opposite of that, its constituent body." Ibid., 560.

legislating and for electing the city's highest ranking magistrates.[157] In effect, they alone possess citizenship status.[158] Marsilius uses the phrase *pars valentior* (prevailing or weightier part) interchangeably with *universitas civium* to express this fact:

> Let us say…that 'the legislator', i.e. the primary and proper efficient cause of the law, is the people or the universal body of the citizens (*civium universitatem*) or else its prevailing part (*valentiorem partem*), when, by means of an election or will expressed in speech in a general assembly of the citizens, it commands or determines, subject to temporal penalty or punishment, that something should be done or omitted in respect of human acts.[159]

In Marsilius' vision of government, the *honorabilitas* are thus the proper *legislator humanus* because they are thought to represent the "civic perceptions of the whole

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[157] Marsilius consistently treats election as the foundation of legitimate political rule. In her commentary on *Defensor pacis,* Annabel Brett explains that this follows in no small part from his reading of Aristotle'a *Politics.* Marsilius often takes his cue from questions raised in the *Politics,* addressing them in much the same way that commentators such as Aquinas might – by first offering arguments on both sides before attempting a resolution. When it comes to the idea of a legislator, he takes up Aristotle's question from *Politics* III, Chapter 6 — "who or what should be 'dominant' in the city, i.e. share in ruling or principate." Brett further notes: "Two questions were habitually raised in the commentary literature on these passages: whether the multitude should rule, or a few virtuous men…and whether the multitude should have the power to elect and correct the prince…Marsilius…[employs] many of the reasons the commentators used to support the deliberative and elective role of the multitude vis-à-vis the principate to argue for its role in the legislative process. Indeed…Marsilius makes legislation itself a kind of election and specifies in section 9 that what he says about legislation goes for 'anything else established by election.'" See Brett's extensive annotations to her scholarly edition of *Defensor pacis,* at I xii.3. Marsilius, *Marsilius of Padua: The Defender of the Peace*, ed. Annabel Brett (Cambridge: Cambridge University Press, 2005).

[158] Marsilius explicitly states: "I call a 'citizen'…one who participates in a civil community, in the principate or councillor or judicial function, according to his rank. This description separates boys, slaves, foreigners and women from citizens, although in different ways: for the sons of citizens are citizens in proximate potential, lacking only age. The prevailing part of the citizens should be identified from the honourable custom of polities, or determined according to the opinion of Aristotle, *Politics* VI chapter 2." Ibid., I xii.4.

[159] Ibid., 1.xii.3.

community" and legislate on this basis.[160] He further qualifies this statement, by specifying its 'prevailing part', out of concern for whether or not the outcomes of deliberative legislative processes would actually be representative. As Brett notes, he considers that "it would be unacceptable in the city to allow a few deformed natures to impede decisions for the common advantage."[161] In fact, though, representation does not quite capture Marsilius' meaning and misleads more than it clarifies; he seems rather to be asserting an identity relation where, "the universal body of the citizens and its prevailing part *are in fact the same thing*."[162]

It is for this reason that his use of *lex regia* was an effective counter to papal claims of a plenitude of power. Marsilius is able, "by successive stages of delegation, to describe the prince himself [in any given city-republic] as *pars valentior*, since it is the whole people which is expressed through him. If the prince is an Emperor, the *valentior pars* quite legitimately becomes the seven Electors, without contradicting the theoretical foundations of popular sovereignty."[163] Papal authority is not supported by this same scaffolding.[164] Note, however, that despite aiming to reinforce imperial rule Marsilius provides a potential basis for resistance by insisting that the right to rule inheres first and foremost in the *universitas civium* and is properly exercised by the *pars valentior.* For if

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[160] Ibid., xxii - xxiiii. Brett clarifies Marsilius' understanding of both the human legislator and the nature of law. As she states, Marsilius held that there were three criteria by which the content of law should be evaluated (as to whether or not it is actually law). First, law must have "cognitive content," meaning that it should be rational and "knowable". Second, law must be coercive and enforceable (this is the reason he rejects the idea that divine law and hence the papacy could have proper jurisdiction on earth, or in this life). Finally, "law is to be made to the common advantage of all."

[161] Ibid., xxiii.

[162] Ibid., emphasis mine.

[163] Quillet, "Community, Counsel and Representation," 560.

[164] Marsilius, *Marsilius of Padua: The Defender of the Peace*, xxix.

an elected official or even an Emperor, as an "elected monarch," fails to rule in accordance with "common advantage" it thus fails to represent 'the people' and the *pars valentior* might then withdraw their mandate.

Marsilius and other republican thinkers came to influence the rising prominence of councils or assemblies within secular politics across Europe.[165] Moreover, similar reasoning can be seen within an ecclesiological context; Catholic conciliarists in the 15th and 16th centuries, following at least in part upon the precedent established by Marsilius, theorized the community of the faithful as the locus of institutional authority and sought to subordinate the Pope to an ecumenical council (thought to naturally represent the whole body).[166] In other words, much like Marsilius' contract theory, conciliarists assumed the corporate identity and original authority of a specific community. The influence of secular and religious accounts of *lex regia,* finally, directly informed later sixteenth century resistance theorists, especially the Huguenots in France and other radical Calvinists, and by this route infiltrated English political discourse in the years leading up to the civil wars, emboldening parliamentary action.[167]

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[165] Julian Franklin notes, for example, the manner in which the role of councils in government came to be seen as customary, merging with local practices and traditions. He states: "From the thirteenth century on, it was a commonplace of customary lawyers that a king could neither impose new taxation under ordinary circumstances, nor make new statues or abrogate old ones without the consent of the realm, which came to mean the consent of the Estates." See: Julian H. Franklin, "Constitutionalism in the Sixteenth Century: The Protestant Monarchomachs," in *Political Theory and Social Change*, ed. David Spitz (New York: Atherton, 1967), 119.

[166] Francis Oakley describes conciliar theory thus: "At its heart lay the belief that the pope was not an absolute monarch but rather in some sense a constitutional ruler, that he possessed a merely ministerial authority conferred upon him for the good of the Church, that the final authority in the Church (at least in certain cases) lay nor with him but wth the whole body of the faithful or with their representatives gathered in a general council." See: Francis Oakley, *Politics and Eternity: Studies in the History of Medieval and Early-Modern Political Thought* (Leiden: Brill, 1999), 149.

[167] The scholarship of Julian Franklin, Quentin Skinner, Brian Tierney, Francis Oakley, Zofia Reuger, and others has solidified the importance that conciliar thought, especially, had in

A number of sixteenth century Huguenot resistance writings, for example, were readily available to Englishmen during the early years of the seventeenth century.[168] The writings of Calvin himself were indeed often used to justify resistance.[169] While Calvin, along with Luther, initially advocated passive obedience in the face of religious persecution, as violence against his followers grew increasingly severe and widespread he turned to the already established idea that councils or inferior magistrates, might have the authority to wage active resistance as representatives of the community as a whole.[170] In his *Homilies on the First Book of Samuel*, Calvin first admonishes commoners to submit "patiently to the yoke," but then states that inferior magistrates, as "God's gift to us," "are able to contain the prince in his office and even to coerce him."[171] In a passage from *Institutes of the Christian Religion* he additionally postulates that "popular magistrates"

England. As Oakley points out, the early years of the 17th century saw the publication of a new edition of the works of Jean Gerson. He also notes that conciliarist ideas found a ready audience during this period due to, "(t)he Europe-wide ideological warfare…concerning the indirect power of the papacy in matters temporal." This controversy culminated during the reign of James I with the Oath of Allegiance — James demanded that subjects declare their allegiance to the Crown over and above the Pope, and openly drew upon conciliar sources for justification. Of course, while his actions made the case for his own supremacy, Oakley makes the point that James's willingness to engage with conciliar thought in such a public way was shortsighted given that the sole reason most conciliarists would deny the pope any right to depose or otherwise intervene with a monarch was because that right belonged to the people, or in the words of one of James I's most outspoke critics, Jacques Davy, Cardinal de Perron, "the whole body of the realme." Ibid., 159.

[168] Oakley claims that in addition to the Oath of Allegiance controversy, such Huguenot tracts were the main route by which Englishmen became familiar with the idea of the original authority of 'the people' and the corollary institutional claim that this authority must be remain in a council of some form that has continuing control or influence over government. Ibid., 162.

[169] See: Howell Lloyd, "Constitutionalism," in *The Cambridge History of Political Thought 1450-1700*, ed. J.H. Burns and Mark Goldie (Cambridge: Cambridge University Press, 1991), 280.

[170] Quentin Skinner describes Luther in his early writings as, "emphatic in declaring that all enactments [of secular authorities] must be treated as a direct gift and expression of God's providence." Quentin Skinner, *The Foundations of Modern Political Thought, Volume Ii: The Reformation* (Cambridge: Cambridge University Press, 1978), 15. Note, Calvin likewise claims that, "the magistrate cannot be resisted without God being resisted at the same time." Ibid., 194.

[171] Quoted in ibid., 214. These homilies were most likely delivered between 1562 and 1563.

or representatives of the people might be officially appointed to "moderate the power of kings."[172] If so, the likely candidates would be "the three estates of each kingdom when they are gathered together."[173]

After the St. Bartholomew's Day massacre, Calvin's followers — including Theodore Beza, Philippe Du Plessis Mornay, and François Hotman — went on to develop formal accounts of the Estates' right to active resistance, all of which were later cited by revolutionary parliamentarians and have come to be seen as a crucial to the development of contemporary representative government.[174] According to Julian Franklin, for one, their efforts "represent a distinct and important phase in the emergence of modern constitutional ideas."[175] This is because, as he sees it, these so-called

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[172] Ibid., 235.
[173] Ibid.
[174] There is active debate among Hobbes scholars as to his religious affiliation. Some have seen him as potentially Calvinist due to similarities between his view of human nature and Calvinist theology. See: A.P. Martinich, "Interpreting the Religion of Thomas Hobbes: An Exchange: Hobbes's Erastianism and Interpretation," *Journal of the History of Ideas* 70, no. 1 (2009); Mark Goldie, "The Reception of Hobbes," in *The Cambridge History of Political Thought, 1450-1700*, ed. J.H. Burns and Mark Goldie (Cambridge: Cambridge University Press, 1991), 593; Jeffrey R. Collins, *The Allegiance of Thomas Hobbes* (Oxford: Oxford University Press, 2005); "Silencing Thomas Hobbes: The Presbyterians and Leviathan," in *The Cambridge Companion to Hobbes's Leviathan*, ed. Patricia Springborg (Cambridge: Cambridge University Press, 2007); Jeffrey Collins, "Thomas Hobbes's Ecclesiastical History," in *The Oxford Handbook of Hobbes*, ed. A.P. Martinich and Kinch Hoekstra (Oxford: Oxford University Press, 2016). This argument is strained however, due to Hobbes's rejection of the Calvinist view of salvation, as well as his absolutism.
[175] Franklin, "Constitutionalism in the Sixteenth Century: The Protestant Monarchomachs," 118. According to Franklin, Huguenot resistance theory, while influenced by the thought of Marsilius, was novel in its formality. While medieval political theorists appealed to the original authority of the community and also claimed that 'the people' or their inferior magistrates might rightfully resist a tyrannical ruler, they offered no specific institutional norms to regulate the exercise of such resistance. As he states, it came does to a "sense of justice embodied in folk tradition…as long as he could maintain the effective consent of the community a king could act upon his own discretion…Moreover, the acknowledged right to resist, or even overthrow a king for alleged injustice or incompetence does not seem to have been regarded as an act of the community done in its corporate capacity, against a ruler whose authority, as a mandatory of the people, could be revoked by them for cause. An 'unjust king' was simply set aside *de facto* and a successor confirmed by some form of acclamation and rendering of homage."

monarchomachs took Calvin's suggestion and elaborated a set of institutional controls meant to provide for the continuing involvement of the community in the everyday exercise of government. He cites Hotman's views as "the clearest and most radical" in this regard,[176] since in his work *Franco-Gallia,* Hotman argues that "the Supreme Administration of the Franco-Gallican kingdom" has always been "lodged in the Public Annual Council of the Nations which in After-Ages was called the Convention of the Three Estates."[177] He further attempts to undermine the legitimacy of any "alternative centers of decision and administration" so as to "ensure that the affairs of government cannot be carried on without frequent meetings and continuing supervision of the Estates-general."[178] And as a "final guarantee," insists that by longstanding custom and tradition French kings have always been obliged "to convene the general council of the realm each year on the Kalends of March."[179]

Now, there can be very little doubt that sixteenth century resistance theory, armed with the language of *lex regia*, set the stage for the English civil wars by asserting "the right of the people through their representatives to exercise continuous and full control over the ordinary conduct of affairs and the subjection of all officials, the king himself included, to the supervisory power of the Estates."[180] Yet despite advocating government by representative assembly, the concepts and language of sixteenth century resistance theory remain firmly at odds with the most fundamental ideals of contemporary

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[176] Ibid.
[177] Quoted in Franklin, "Constitutionalism in the Sixteenth Century: The Protestant Monarchomachs," 118-20. As Franklin notes, Hotman's definition of "Supreme Administration" includes "almost all those powers of governance that Bodin, a few years later, was to list as the rights of a sovereign authority."
[178] Ibid.
[179] Ibid.
[180] Ibid, 129.

constitutional democracy, most especially the political equality and individual rights of citizens. It is clear that the Estates-general were comprised of elites most concerned to protect their own interests which they felt to be threatened, both by the growing authority of early modern monarchies and the danger posed by the masses.[181] The practical endgame of resistance theory at this point in history was the substitution of one elite institution by another, with both predicated upon natural and intractable social inequality.

One can, in fact, find explicit metaphors throughout resistance tracts which mirror earlier Aristotelian accounts of the necessity of hierarchy. Duplessis-Mornay, for example, talks about the "corporate body" of 'the people' as a unity defined entirely by its "leading part"— just as "a ship, which is not properly constituted by its planks, nails, and pegs" but instead by its "prow, deck, and rudder."[182] The identity and constitution of 'the people,' in other words, is a function of the agency of ruling elite. By contrast, the base masses are akin to the *hydra*, a spiteful and unthinking "many-headed monster," which threatens social and political unity [183]

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[181] As Schulze points: "(T)he peasant revolts and estates' disputes to which it gave rise— in other words, this epoch's massive disruptive potential— were a product not only of dynastic and national rivalry or of religious struggles, but also of basic social tensions and shifts in status…In terms of domestic politics, we can distinguish at first glance two distinct lines of conflict, namely estates' disputes on the one hand and peasants' revolts on the other…Both lines of conflict can easily be derived from the power structures outlined above. They are part of a large and coherent historical process. At issue in the peasants' revolts were the extent of taxation and the various forms of seigneurial obligation; while the estates' disputes, in essence, were about the ruler's right to raise taxes and quasi-parliamentary safeguards against abuse of this right. More pointedly, one could say that while the peasant's revolts were about the surplus which could be skimmed off peasant production, the estates' disputes concentrated on the fundamental right to exploit peasant production." See: Schulze, "Estates and the Problem of Resistance in Theory and Practice in the Sixteenth and Seventeenth Centuries," 163.

[182] Du Plessis Mornay, François Hotman et al., *Constitutionalism and Resistance in the Sixteenth Century Three Treatises by Hotman, Beza, & Mornay*, ed. Julian H. Franklin (New York: Pegasus, 1969), 152.

[183] Ibid, 149. For more on the prevalence of this trope, see: Hill, *Change and Continuity in Seventeenth-Century England*, chap. 8.

Conclusion

The point of looking at this brief history has been to demonstrate that there is not a significant change in basic premises or end goals between sixteenth century resistance theory and the revolutionary politics of seventeenth century England. There is far more continuity than one might expect, especially given the manner in which modern historiography has come to see this period as one of pivotal social and political change, motivated by "popular, demotic" radicalism.[184] Hobbes, despite his royalist credentials, in fact adopts a more forward-looking and progressive attitude toward political equality than the parliamentarians and revolutionaries.

[184] Baker, "Rhetoric, Reality, and Varieties of Civil War Radicalism," 202.

Chapter 2: From Natural Equality to Individual Rights

This chapter is a clear extension of the previous. Given Hobbes's insistence that the natural equality of persons be formally recognized in the terms of social contract, it makes sense that he would also forward a robust account of *individual* rights. Nevertheless, for many scholars the political import of Hobbes's rights language within *Leviathan* remains questionable at best. This includes his declaration of the inalienable rights of man. In the words of Patricia Sheridan, Hobbesian subjects are denied any effective avenue for pressing their claims, rendering the nominal rights they might hold "politically impotent" or "without teeth."[185]

A related criticism is often suggested within the context of an analysis of Hobbesian *individualism.* To explain, when Hobbes is recognized as a modern thinker it is precisely because he treats individuals themselves as the building blocks of the political state, rather than beginning with the assumption of group unity or organic peoplehood.[186] Yet, this aspect of his methodology has drawn accusations of excessive abstraction at the opposite end of the spectrum. It is argued that he treats individuals as isolated, rationally self-interested agents, separating them from the social contexts in which they must live.[187] In short, he is accused of propounding the sort of "atomistic

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[185] Sheridan, "Resisting the Scaffold: Self-Preservation and Limits of Obligation in Hobbes's Leviathan," 150.
[186] Ryan, "Hobbes and Individualism."; Richard E. Flathman, *Thomas Hobbes: Skepticism, Individuality, and Chastened Politics*, Modernity and Political Thought (Newbury Park, Calif.: Sage, 1993); Macpherson, *The Political Theory of Possessive Individualism: Hobbes to Locke*.
[187] Hobbes is often mischaracterized as a psychological egoist. See, e.g.: Thomas Nagel, "Hobbes's Concept of Obligation," *The Philosophical Review* 68, no. 1 (1959): 80; Thomas McClintock, "The Meaning of Hobbes's Egoistic Moral Philosophy," *Philosophia* 23, no. 1-4 (1994). For an excellent response to this charge, see: Bernard Gert, "Hobbes and Psychological Egoism," *Journal of the History of Ideas* 28, no. 4 (1967).

individualism" that many bemoan as responsible for the worst aspects of modernity — alienation, cultural discord, and "possessive" individualism.[188] On this view, Hobbes de-emphasizes the moral ties that bind us, undermining traditional value systems, but fails to provide a viable rights-based replacement.

My goal is to demonstrate that Hobbes's methodological individualism only de-emphasizes natural or moral obligations to the extent that these cannot provide legal protection for individuals. He instead makes the case that sovereignty is necessary to guarantee a category of *protected* rights and liberties for all subjects in commonwealth.[189] Indeed, contrary to Sheridan's above statement, the ability to press a claim, impose an obligation, or sue for a right is one of the primary motivations to social contract and should be given interpretive priority in any consideration of Hobbes's rights theory.

I will proceed by first drawing into question the received view of Hobbes's account of natural right, especially the argument that he represents a "conservative" strand within the natural right tradition. Next, I address the related charge that he only articulates a conception of *liberty* rights. Hobbes does treat the right of nature as a liberty right, and he also argues that rights, in general, are liberties. But not all liberties are structurally equivalent. When it comes to the rights of subjects in commonwealth his focus is on the set of corollary obligations generated by the initial social contract and

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[188] Where Sheridan can be understood as objecting on liberal grounds to Hobbes's rights theory, the complaint represented here is a communitarian one. Many of those who forward such complaints take their cue from Macpherson's classic analysis of Hobbes as a theorist of laissez faire, bourgeois, possessive individualism. See: Macpherson, *The Political Theory of Possessive Individualism: Hobbes to Locke*.

[189] I am not alone in this view. Curran, namely, has defended a compelling account of Hobbes as a committed theorist of strong individual rights. See: Curran, *Reclaiming the Rights of the Hobbesian Subject*.

enforced by the sovereign. It is false, in other words, to assume that "for Hobbes [the right of nature] is a good thing to have."[190] In one respect he could even be seen as a forerunner to those utilitarian thinkers who denounced natural rights as "nonsense upon stilts," because he too believes that any individual rights worth having must enjoy the protection of human-made law, i.e. political "artifice."[191] The rights of subjects in commonwealth are then contrasted with inalienable rights, These rights are correctly interpreted as mere liberty rights. Yet Hobbes's argument for their existence rests upon the moral and political primacy of individuals and further supports my claim that he sees protected rights as central to political order. Finally, I will conclude by again placing Hobbes within the relevant historical context, but this time with the aim of highlighting the changes he brought to bear on rights language.

Part I. Hobbes's Critics

i. The Question of Natural Rights

The natural rights tradition has long been associated with the emergence of liberalism and contemporary accounts of human rights. Yet as Richard Tuck notes in his now classic work, *Natural Rights Theories*, the legacy of the concept of *ius naturale* is somewhat "Janus-faced, and its two mouths speak the language of both absolutism and

[190] Ibid., 70.
[191] This is, of course, a famous quote from Bentham, and representative of his view that there is no metaphysical basis for natural right claims. By contrast, Hobbes does view human rights, or the inalienable core of natural right, as grounded in the universal drive for self-preservation. He is similar to Bentham, however, in holding that they are only effective (i.e., they only impose binding obligations) where they are backed by law. See: Jeremy Bentham, *Selected Writings*, ed. Stephen G.Engelmann and Philip Schofield, Rethinking the Western Tradition (New Haven: Yale University Press, 2011).

liberty."[192] Where Locke remains the choice representative of a radical strain of natural rights theory that ultimately gave rise to the language of constitutional democracy, Hobbes is cast as a "conservative" voice — Tuck groups him together with Hugo Grotius and John Selden, arguing that all three thinkers were "sceptical about the principle of [human] sociability" and willing to condone illiberal political institutions.[193] At the heart of this critique is the claim that Hobbes does not ground his right of nature in a strong account of moral or natural law.[194] Hobbes is charged with reducing natural right to a bald liberty, such that right-holders cannot assert any moral claims or impose obligations on others.[195] Tuck further argues that Hobbes allows in principle for the near total alienation of natural right and in doing so commits himself to the position that individuals may voluntarily submit to a life of servitude (if not slavery).[196] Since all rights are supposedly derived from original natural right, and if this right is almost entirely alienable, it is not clear how Hobbesian subjects could hold any substantive rights in commonwealth.

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[192] Tuck, *Natural Rights Theories: Their Origins and Development*, 79.
[193] Ibid., 81.
[194] There have been several attempts, however, to rejuvenate Hobbes as a natural law theorist. See: S. A. Lloyd, "Hobbes's Self-Effacing Natural Law Theory," *Pacific Philosophical Quarterly* 82, no. 3-4 (2001); *Morality in the Philosophy of Thomas Hobbes : Cases in the Law of Nature*; Zagorin, *Hobbes and the Law of Nature*; Howard Warrender, *The Political Philosophy of Hobbes, His Theory of Obligation* (Oxford: Clarendon Press, 1957); A. E. Taylor, *Thomas Hobbes* (Port Washington, N.Y.: Kennikat Press, 1970).
[195] By contrast, when it comes to Locke there is a fair amount of scholarly consensus that (at least in his mature writings such as the *Second Treatise*) he treats natural law as primary and as imposing certain moral duties on individuals, even in a state of nature. Lockean natural right, then, refers to any rights and liberties that human beings ought to enjoy by virtue of their nature, and which others have a moral duty to respect. The primacy of natural law in Locke is further reflected by the manner in which he treats self-preservation itself as a *duty*.
[196] Tuck, *Natural Rights Theories: Their Origins and Development*, 119-42. Tuck over-emphasizes Hobbes's early writings such as *Elements of Law* at the expense of his mature oeuvre in a way that is at the very least hard to justify. He write: "(I)n the *Elements* Hobbes at various points went on to argue that the right to self-defense has to be renounced by the contractors if a sovereign with coercive power is to be set up." ibid., 121.

Others similarly argue that Hobbes's right of nature is an impoverished foundation for reasoning about rights in general. As Brian Tierney laments, "Hobbes's work is best seen as an aberration from the mainstream of natural rights thinking" — "(i)t is at least clear that, in Hobbes's theory…everyone had a right to everything…and no one had a duty to respect the rights of others. But how can this conceivably be regarded as the origin of modern rights theories?"[197] Likewise, Michael Zuckert finds that Hobbes's account of natural rights falls flat because he never provides a compelling "source of morality and justice."[198] According to Terrance McConnell, Hobbes's summary dismissal of morally binding natural law renders his concept of inalienable rights empty.[199] And, finally, Jean Hampton alleges that Hobbes is unable to explain or justify the existence of any obligations (moral or legal) other than those incurred through contract.[200]

In short, these critics allege that while Hobbes may treat the liberty of individuals as basic in the state of nature, he is does not forward any normative rules for its protection and in fact justifies extreme restrictions upon such liberty within commonwealth. This line of criticism is related to an additional charge — namely that he never articulates the concept of rights as *claims* that regulate the actions of others. Due to its ubiquity it is worth clarifying exactly what is at stake in this charge.

ii. Liberties vs. Claims

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[197] Tierney, *The Idea of Natural Rights: Studies on Natural Rights, Natural Law, and Church Law, 1150-1625*, 340-41.
[198] Zuckert, "Do Natural Rights Derive from Natural Law?," 731.
[199] McConnell, "The Nature and Basis of Inalienable Rights," 49. McConnell further states: "Hobbes provides no moral justification for categorizing some rights as inalienable. He needs no such justification because on his account inalienable rights entail no correlative obligation."
[200] Hampton, *Hobbes and the Social Contract Tradition*, 52.

When contemporary legal theorists analyze the structure of a given right they turn to Wesley Hohfeld's four-fold distinction between liberties, claims, powers, and immunities.[201] Both Hohfeldian liberties and powers can be characterized as "active" rights in that they only pertain to the right-holders own actions, whereas claims and immunities are "passive" rights, because they further impose some duty or disability upon others.[202] For my purposes here, the important part of this analysis is the distinction between liberties and claims. To explain, the Hohfeldian claim is special. It not only captures our colloquial understanding of the term 'right' but also seems to model the essential function of rights as such. This is because of the guarantee it provides the rights-holder, who is protected by the corollary obligation(s) imposed upon relevant others. In the words of Joel Feinberg, rights are fundamentally things "to be claimed, demanded, affirmed, insisted upon."[203] Liberties, by contrast, need not come with a guarantee unless they are coupled with a claim right. They are merely permissive and entitle the right holder to very little. An individual can meaningfully be said to hold a liberty-right to some action or good wherever she does not have a duty to forbear from that action or good.

Now, it has become increasingly common for scholars to use Hohfeldian analysis to make sense of Hobbes's rights language. Jean Hampton was among the first to propose

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[201] W.N. Hohfeld, "Some Fundamental Legal Concepts as Applied in Judicial Reasoning," *Yale Law Journal* 23 (1913). To be explicit Hohfeld's conceptual analysis runs as follows: (1) X has a liberty to Φ *if and only if X* has no duty not to Φ; (2) X has a claim that Y Φ *if and only if* Y has a duty to X to Φ; (3) X has a power *if and only if* X has the ability to alter some aspect of her own or another's rights; (4) X has an immunity *if and only if* X lacks the ability to alter Y's rights.
[202] The distinction between active and passive rights is not Hohfeld's, although it can help clarify his own analytical framework. For more on this distinction see: David Lyons, "The Correlativity of Rights and Duties," *Noûs* 4, no. 1 (1970).
[203] Feinberg, "The Nature and Value of Rights," 252.

that the right of nature be read as a Hohfeldian liberty right. Moreover, she argues that Hobbes models all other rights held by subjects in commonwealth upon this original right, in such a way that they too conform to the same category of a liberty-right.[204] She states: "It is easy to mistakenly assume that Hobbes uses the word 'right' [to refer to a claim]. But he does not; in fact, his use of the word shows that he endorses…the idea that a right *is* a privilege or a liberty."[205] Later she comments on Hobbes's discussion of inalienable rights from Chapter XXI of *Leviathan*, stating, that Hobbes's goal is to demonstrate that none of these rights may be protected or guaranteed by law because "they do not place upon [the sovereign] any obligation…Correlated with the subjects' liberties is a no-duty on the sovereign's part."[206]

While Hampton's focus in these passages is on the feebleness of inalienable rights, which unless specifically translated into civil rights do conform to the category of liberties,[207] she goes on to address obligations that subjects within commonwealth might plausibly incur against one another (e.g. as the result of contract or via another legally-defined relationship). She argues that these seeming claim-rights are not really rights at all, because they do not correlate with a duty on the part of others that is truly binding.[208]

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[204] Hampton, *Hobbes and the Social Contract Tradition*, 52. While Hampton's account is thorough in its explanation and use of Hohfeld, she was preceded in this claim by David Gauthier, who also argued that the only rights of subjects in commonwealth are mere "permissions" or liberties modeled upon the right of nature. See: Gauthier, *The Logic of Leviathan: The Moral and Political Theory of Thomas Hobbes*.

[205] Hampton, *Hobbes and the Social Contract Tradition*, 51.

[206] Ibid., 53.

[207] I say 'generally' here because there are important differences between natural right and the inalienable rights held by subjects in commonwealth. Inalienable rights do enjoy a protective buffer of sorts due to the existence of legal order, as well as the strong incentives sovereigns have to respect these rights in order to maintain peace.

[208] Hampton's argument is that these rights cannot be assimilated to the Hohfeldian category of claims because they do not necessarily (or even *prima facie*) obligate respect from relevant others.

In other words, according to Hampton, the only motivation Hobbes offers for keeping one's contract is self-interest; "self-interest," she states, "explains not only why we should do what we ought but also when our obligations arising from the surrender of right in contract cease."[209] So while the threat of sovereign punishment might keep subjects in line, their obligations are not substantive nor (as a result) are their corollary claims.

Feinberg corroborates Hampton's complaint, although for a slightly different reason. The problem as he sees it is that subjects hold no rights *against* their sovereign, so that the sovereign is at total liberty to respect, deny, ignore, or directly interfere with any subject's claim. Feinberg calls this situation a "genuine sovereign-right monopoly" — subjects in commonwealth might merit claims or incur obligations toward one another, but "the obligations (here is the twist) will not be owed directly to promisees, creditors, parents, and the like, but rather to God alone, or to the members of some elite, or to a single sovereign under God. Hence, the rights correlative to the obligations that derive from these transactions are all owned by some 'outside' authority."[210] In effect, they are held on sovereign grace; and since the sovereign can commit the grossest of iniquities with impunity they are not properly rights at all.

At this point it is possible to discern a common assumption. In both of the lines of critique I've discussed thus far, i.e. (1) that Hobbes's concept of natural right lacks sufficient grounding in natural law (or any compelling moral theory); and (2) that he fails to offer an account of the claim rights of subjects in commonwealth, critics assume he

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[209] Hampton, *Hobbes and the Social Contract Tradition*, 56.
[210] Feinberg, "The Nature and Value of Rights," 247.

views natural right as desirable and, accordingly, models the structure of all rights in general upon that of original natural right. This assumption persists despite the many explicit references to apparent claim rights throughout *Leviathan.* Wherever Hobbes appears to describe a claim, critics contend that the right in question reduces to a mere liberty because the corollary obligations fail to adequately compel. Sometimes the claim is that binding obligations cannot be founded upon a contract motivated by self-interest. Otherwise, critics argue that, "to have a substantive political right is to have a claim right against the sovereign or the state."[211] Since Hobbesian subject never possess such a right, all their other rights remain unprotected.

Both moves are far too quick. As I will clarify below, the first discounts Hobbes's unique approach to natural law, especially the natural law obligation of justice ("*that men perform their covenants made*"), while the second conflates the purpose of a theory of rights with that of a theory of the nature and limits of legitimate political authority. Finally, any successful account of Hobbes's rights theory must begin by taking seriously his claim that original natural right is destructive of human society. If contract is the means by which individuals alienate natural right, and they come to merit legal rights in commonwealth, surely it would be a strange thing indeed if these new rights were modeled upon the old.

Part II. The Rights of Hobbesian Subjects

i. Individual Liberty in a State of Nature

[211] Curran, *Reclaiming the Rights of the Hobbesian Subject*, 101.

My first task is to demonstrate that Hobbes understood liberty in the state of nature as the primary impediment to the rights of subjects in commonwealth, not as a model for their basic structure. To this end it is helpful to compare his dual definitions of 'liberty' and 'right.' In *Leviathan* he defines 'liberty' as follows:[212]

> By LIBERTY is understood, according to the proper signification of the word, the absence of external impediments, which impediments may oft take away part of a man's power to do what he would, but cannot hinder him from using the power left him, according as his judgment and reason shall dictate to him (L xiv.2).

And in a complementary passage, he opposes the concepts of 'law' and 'right,' stating:

> For though they that speak of this subject use to confound *jus* and *lex* (*right and law*), yet they ought to be distinguished, because RIGHT consisteth in liberty to do or to forbear, whereas LAW determineth and bindeth to one of them; so that law and right differ as much as obligation and liberty, which in one and the same matter are inconsistent (L xiv.3).

Examining these definitions side by side highlights the fact that Hobbes understands 'right' to be "a species of liberty," or, as Eleanor Curran notes, "all rights in the theory are unimpeded abilities to act, or to forbear from acting, of one kind or another.[213] But this does not mean that all rights are structurally equivalent or entail the *same* sort of

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[212] Hobbes's definition of 'liberty' does evolve from his earlier works, and scholars frequently debate which definition to privilege. I see *Leviathan* as a statement of Hobbes's mature philosophical position. For a defense of this reading, see: David Gauthier, "Hobbes: The Laws of Nature," *Pacific Philosophical Quarterly* 82, no. 3&4 (2001).

[213] Curran, *Reclaiming the Rights of the Hobbesian Subject*, 69.

liberty. Indeed, the sense in which anyone in a state of nature is truly 'unimpeded' in the exercise of her *natural right* remains unclear.

One might be tempted to take Hobbes literally and interpret 'unimpeded' to reference physical obstacles alone. He does take pains to clarify that "by opposition" is meant "external impediments to motion" (L xxi.1). And he further argues that, "when the words *free* and *liberty* are applied to anything but *bodies*, they are abused; for that which is not subject to motion is not subject to impediment" (L xxi.2). Importantly, however, this attempted clarification falls within his discussion of "*what it is to be Free*," or the meaning of the term "FREE-MAN," where he also repeatedly treats laws and rules as prime examples of impediments to individual agency. Indeed, he analyzes a string of colloquial phrases in which a lack of legal regulation is at issue — "a gift is free" because the giver "was not bound by any law, or covenant to give it"; and, likewise, the ability to "*speak freely*" does not reference "the liberty of voice or pronunciation, but of the man, whom no law hath obliged to speak otherwise than he did" (Ibid.).

Noting Hobbes's inclusion of legal regulation, M.M. Goldsmith, for one, urges us to read his definition of liberty expansively such that it might be used to refer to freedom from physical impediments, freedom from law, or both.[214] An individual in the state of nature, however, is 'unimpeded' in the use of her natural right only in the sense that there is no effective law and precisely because there is no effective law, she is also liable to

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[214] M. M. Goldsmith, "Hobbes on Liberty," *Hobbes Studies* 2, no. 1 (1989). One must be careful on this expansive reading to qualify that law renders the individual unfree not because she fears any resulting sanctions of breaking the law, but because this same individual voluntarily obligated herself to obey the "artificial chains" of civil law. Hobbes maintains, after all, that "(f)ear and liberty" are consistent — one is no less at liberty to act simply because she is being threatened or has reason to fear what might result from her choice.

suffer the impositions of others striving to persevere — such formal liberty is entirely compatible with severe physical limitations upon real agency. Already it is possible to appreciate the manner in which 'law,' by regulating human behavior, stands to enable or expand 'right' or 'liberty'. Despite his clear reminder that *jus* and *lex* are conceptual opposites, Hobbes qualifies that they are only inconsistent "in one and the same matter" (L xiv.3). Eleanor Curran, following Goldsmith's expansive reading of liberty, thus urges that we ought to go even further. As she sees it, Hobbes recognizes that law, by inhibiting the choices of some, enables the autonomy of others. When it comes to subjects in commonwealth, Hobbes sometimes uses the term 'liberty' to refer to liberty *through* law, i.e. legally merited claim rights.[215] In total then, 'liberty' in *Leviathan* may refer to: (1) the absence of physical impediments; (2) the absence of effective law; or (3) contractually merited claim rights, i.e., "protected liberties" where the right-holder's liberty is a function of another's legal obligation. In this section I offer support for Curran's account of Hobbesian liberty as central to his right theory. I also contend that contractually merited claim rights best fit Hobbes's stated definition of a 'right' as consisting in the "liberty to do or to forbear."

Now, to begin with, modern readers clearly associate the term 'right' with some benefit and Hobbes does too. For, after defining 'right' as a type of 'liberty,' he repeatedly insists that all men "love liberty" (L xvii.1). Nevertheless, one might be excused for questioning this assertion when it comes to his infamous right of nature. What benefit does this right confer upon Hobbesian individuals? Is such extreme liberty

[215] Eleanor Curran, "An Immodest Proposal: Hobbes Rather Than Locke Provides a Forerunner for Modern Rights Theory," *Law and Philosophy* 32, no. 4 (2012).

truly desirable? Recall that Hobbes defines the right of nature as the liberty enjoyed by individuals outside of established commonwealth to pursue self-preservation by any means necessary. In *Elements of Law* he also describes this right as the "*blameless liberty* of using our own natural power and ability" for the sake of self-preservation (EL I.xiv.6). On this description, natural right entails the broadest license imaginable. As Susanne Sreedhar observes, it is uniquely and "entirely subjective."[216] In order to justify an action or pursuit, all that is required of the agent is her "sincere" judgment that it is conducive to her preservation. And since self-preservation is an unrealizable, perpetually insecure goal in a state of nature, each individual might sincerely believe that drastic measures are required to shore up her own defenses.

Hobbes at times speaks hyperbolically on this point, even referring to natural right as a "*right to all things*" (L xiv.5); yet he also lays out the consequences of its exercise. First, all individuals in a state of nature would enjoy the exact same license, rendering the power or ability of any single individual to act on her desires tenuous at best. Even if one *may* do whatever is in one's power to do, there is nothing to stop others from interfering; an individual could be chained and bound, effectively deprived of all liberty, and yet not be deprived of natural right. The inhabitants of a state of nature would thus quickly grow to see each other as either potential threat or easy prey, generating a situation that Hobbes has no qualms about labeling 'war'.[217] He is clear that even without outright conflict or violence, 'war' is an accurate description for any "tract of time wherein the will to

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[216] Susanne Sreedhar, *Hobbes on Resistance: Defying the Leviathan* (Cambridge: Cambridge University Press, 2010), 12.

[217] As Hobbes observes: "(I)n the nature of man we find three principal causes of quarrel: first, competition; secondly, diffidence; thirdly, glory" (L xiii.6).

contend by battle is sufficiently known," since this alone would be enough to negatively impact trust, cooperation, and the possibility for development and advancement of common interests.[218]

On a related note, Hobbes's stated purpose in engaging the thought-experiment of a state of nature is to evaluate more precisely, "in what estate of security this, our nature, hath placed us" (EL I.xiv.2). And since natural right cannot be had without war, he urges the reader to face just how undesirable its possession is for anyone. He openly disparages the way we are taken in by its allure, mocking the short-sightedness of those who claim to want the total license of original natural right:

> (I)f we take liberty for an exemption from laws, it is no less absurd for men to demand as they do that liberty by which all other men may be masters of their lives. And yet, as absurd as it is, this is it they demand, not knowing that the laws are of no power to protect them without a sword in the hands of a man, or men, to cause those laws to be put in execution (L xxi.6).

While it may be the case that all men love the idea of liberty and balk at the prospect of submitting to another's command, Hobbes reminds us that in practice "men have no pleasure, but on the contrary a great deal of grief, in keeping company where there is no power to over-awe them all" (L xiii.5). Without the security of law, each must make do

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[218] The full passage is helpful: "Hereby it is manifest that during the time men live without a common power to keep them all in awe, they are in that condition which is called war, and such a war as is of every man against every man. For war consisteth not in the battle only, or the act of fighting, but in a tract of time wherein the will to contend by battle is sufficiently known. And therefore, the notion of *time* is to be considered in the nature of war, as it is in the nature of weather. For as the nature of foul weather lieth not in a shower or two of rain, but in an inclination therefor of many days together, so the nature of war consisteth not in actual fighting, but in the known disposition thereto during all the time there is no assurance to the contrary" (L xiii.8).

with "what their own strength and their own invention shall furnish them withal," so that the "enjoyment" of natural right actually deprives individuals of the ends they value most (L xiii.9). As he infamously exclaims in *Leviathan,* industry, agriculture, navigation, education, and culture all fall by the wayside, "and the life of man" remains "solitary, poor, nasty, brutish, and short" (Ibid.).

It is somewhat mystifying, then, that so many critics fault Hobbes with modeling the structure of all rights generally on that of natural right. It offers no real benefit and in practice it ends up self-vitiating.[219] Moreover, if we take natural right as the model then Hobbes's definition of 'right' as an unimpeded liberty results in an apparent contradiction. How could 'right' really be defined as "the liberty to do or forbear" if one's natural right is limited by that of others, or, in Curran's words, if it is "impeded on all sides"?[220] The only way to resolve this apparent contradiction would be to distinguish between 'right' in general and 'natural right.' That is, Hobbes must acknowledge the existence of rights that are different in kind from natural right, namely, rights that come with a guarantee. In moving forward, I thus attempt to demonstrate that legally merited claim rights are essential to his larger contract theory.

ii. The Claims of Subjects in Commonwealth

I will approach this task by discussing the conditions for the possibility of protected claim rights, taking Hobbes's state of nature as a starting point. Again, recall that the largest obstacle to claim rights is the interference others. There will always be

[219] As Sreedhar notes, "Hobbes's right of nature…ends up practically worthless." See: Sreedhar, *Hobbes on Resistance: Defying the Leviathan*, 14.
[220] Curran, *Reclaiming the Rights of the Hobbesian Subject*, 71.

other external impediments to an individual right-holder's agency, but human interference is the most relevant and preventable. As Curran states: "When [Hobbes] points out the inefficacy of the right of nature…it is in terms of the danger of other individual's use of their unlimited [original] right."[221] The most important pre-requisite to protected claims is thus the elimination of such danger. But how could this be achieved? What is the source of recognized and enforceable obligations? It is tempting to rush the answer to this question by merely asserting the necessity of a sovereign law-giver.[222] But this is to assume that law alone, or perhaps the attached sanction, is the source of obligation. While Hobbes clearly does think that stable commonwealth requires a strong sovereign to serve as enforcer, he must also show how civil law is possible and explain *its* normative force.

Note that Hobbes defines law in general as a "command…addressed to one formerly obliged to obey" (L xxvi.2). Both the concepts of command and obligation, then, must be clarified before we can appeal to the force of law. In the first place, 'command' for Hobbes is contrasted with 'counsel' — where "he that giveth counsel pretendeth only…the good of him to whom he giveth it," command reflects the will and aims at the benefit of the commander (L xxv.2-4). This may appear to result in an

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[221] Ibid., 172.

[222] There is not space to fully address the topic here, but the fact that Hobbes acknowledges the validity of first-person performer contract in the state of nature illustrates that he theorizes the source of obligation — both moral and political — as independent of coercive political authority. See: "If a covenant be made wherein neither of the parties perform presently, but trust one another, in the condition of mere nature (which is a condition of war of every man against every man) upon any reasonable suspicion it is void; but if there be a common power set over them both, with right and force sufficient to compel performance, it is not void. For he that performeth first has no assurance the other will perform after, because the bonds of words are too weak to bridle men's ambition, avarice, anger, and other passions, without the fear of some coercive power" (L .xiv.18).

arbitrary conception of law as the will of some tyrant. Yet it is important to recognize that the sovereign law-maker is a public person, and its commands ideally prioritize the benefit or good of the people as a whole or the body politic.[223] I will more thoroughly address this topic in the following chapter on sovereignty.

Even more importantly, the target audience for lawful command must be *already* obliged to obey. Law alone cannot be the source of obligation. Rather, Hobbes states, only "when a man hath…abandoned, or granted away his right, then is he said to be OBLIGED, or BOUND, not to hinder those to whom such right is granted, or abandoned, from the benefit of it" (L xiv.7). He emphasizes this definition in *Leviathan* more than in previous works, and its placement (within an explanation of the first and second laws of nature) suggests a considered revision of his prior thought.[224] That is, Hobbes remains keenly aware that obligations must bind the will, but by the time he publishes *Leviathan* he has come to recognize that, even under threat of punishment or death, the will cannot be forced. There must be some sense in which an obligation is self-imposed if individuals are to understand it as binding. As he states, there can be "no obligation on any man which ariseth not from some act of his own; for all men equally are by nature free" (L xxi.10).

The danger of natural right, then, can only be eliminated through the agency of the individuals who possess it themselves. It is also important to note that Hobbes views all voluntary acts, by definition, as acts which aim at "some good" to self; the agent must have a reason she or he accepts as motivation to perform a certain action (L xiv.8). The

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[223] I offer a detailed account of the nature of the sovereign as a public person in chapter three.
[224] In his earlier works, it is sometimes unclear whether or not Hobbes thinks one could voluntarily assume obligations under conditions that do impact physical liberty and well-being.

pursuit of individual goods in the state of nature, of course, is a precarious enterprise. But precisely because of the risk involved, the ability to hold another to account stands out as an end of paramount importance. Obligations are highly desirable commodities. Hobbes accordingly theorizes that every individual has good reason to act here. The object of each individual's will *ought* to be the achievement of political peace, and the first step towards this goal is the voluntary alienation of natural right as a way of creating enforceable obligations. This conclusion yields his first and second laws of nature, i.e. "seek peace" and "contract" as a means to peace.

At this point it is worth mentioning a possible complication evidenced by my use of the term 'ought' in the above passage. It is also noticeable in Hobbes's general definition of the laws of nature, as rules "found out be reason, by which a man is *forbidden* to do that which is destructive of his life or taketh away the means of preserving the same, and to omit that by which he thinks it may be best preserved" (L xiv.3). If the normative force of obligation is entirely a function of the relevant agent's prior voluntary action, how is it that the laws of nature are written as imperatives that ostensibly *forbid* or *mandate* certain behaviors even prior to the initial social contract? Hobbes does insist, after all, that the laws of nature always oblige *in foro interno* (i.e. "they bind to a desire they should take place") even when they cannot oblige one to act (L xv.36). Some commentators take this to be a "deviant" usage of the term 'oblige'. Mark Murphy argues that Hobbes appeals to scholastic notions of obligation whenever his own "self-imposition thesis" fails to provide him with enough normative traction to

reach the conclusions he wants.[225] In the case of the obligatory status of the laws of nature he contends that Hobbes makes use of both Aquinas' notion of obligation from "rational necessity" and Suarez's voluntarism (according to which natural law is morally obligatory as the dictates of God). Taking a slightly different tack, a number of other scholars argue that the problem is mostly one of semantics and that Hobbes does not face an inconsistency problem. John Deigh provides a model example; he argues that Hobbes speaks imprecisely when referring to the laws of nature as laws in the first place, for they do not rightly oblige (*in foro interno* obligation is a misnomer) nor are they natural. Instead they are moral guidelines derived from Hobbes definition of a law of nature. As such they are the conclusions of "artificial wit" and only hold normative force to the degree that the initial definition is commonly accepted.[226]

Nevertheless, both of these responses mischaracterize the source of natural law obligation and overlook how Hobbes may consistently hold that such obligations follow from voluntary action (L.xiv.8). In his unconventional treatment, the laws of nature are best understood as "convenient articles of peace" — and while they are conclusions of reason they nevertheless take as their starting point human nature and human passions, not arbitrary definitions. If human beings were not fundamentally concerned with their

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[225] Mark C. Murphy, "Deviant Uses of "Obligation" in Hobbes' "Leviathan"," *History of Philosophy Quarterly* 11, no. 3 (1994): 282. Murphy states: "There seem to be three different sorts of deviant usage of 'obligation' which need to be assessed for their importance in relation to Hobbes' theory. the first sort of deviant use includes those obligations which persons are under in a state of nature which cannot be plausibly construed as resultant upon voluntary acts. Another includes obligations that sovereigns are under *qua* sovereigns, and third includes the obligation that all humans have to obey God."

[226] John Deigh and John Deigh, "Reason and Ethics in Hobbes's Leviathan," *Journal of the History of Philosophy* 34, no. 1 (1996). Deigh's attempt to separate Hobbes's ethics and moral psychology is in part informed by his approach to Hobbesian definitions, which he sees as "facts about the linguistic usage of competent speakers and not facts about human desire."

own self-preservation, or if we instead enjoyed an organic social harmony, there would be no way to reason to such laws. Moreover, as Hoekstra has effectively argued, Deigh's definitional account of the laws of nature severs the content of natural law (ethics) from Hobbes's account of human nature or his moral psychology. But by doing so he creates far greater problems for Hobbes than an apparent inconsistency in his account of obligation. Namely, it is no longer clear how the dictates of natural law would properly motivate individuals. All of which recalls to mind the argument behind Hobbes's insistence that obligation is dependent upon prior voluntary action. Hobbes is concerned to stress that individuals must be rationally motivated to follow through with their obligations, or else they do not properly oblige.[227]

It is now possible to clarify the sense in which individuals are voluntarily committed to the content of natural law, even in a state of nature. It helps to begin with

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[227] This is not to say that one can readily opt-out of obligations. Hobbes makes this clear in his reply to the "fool" who argues for the rationality of breaking covenants out wherever one's self-interest is served by doing so. Curley sums up the mindset of the fool in his editorial introduction: "(I)f breaking his promise tends to his benefit, and there is not god to punish him, then he does not act unreasonably in breaking it. On the contrary, he would act unreasonably if he did not try to maximize his own good, regardless of his promises" (xxvi.). Hobbes, however, deems this "specious reasoning" and, in an apparent reference to the Machiavellian concept of *virtu*, responds: "From such reasoning as this, successful wickedness hath obtained the name of virtue" (L xv.4). His argument is that, in commonwealth and in the case of first-performer covenants in the state of nature, to go back on one's word is ultimately against self-interest in at least two senses: first, it negatively affects one's own reputation and hence ability to pursue personal goals; second, it generally undermines the trust necessary to political order. There are, of course, potential problems for this argument. For more on the scholarly debate around how to model and assess the reasoning in Hobbes's response to the fool, see: S.A. Lloyd, "Hobbes's Reply to the Foole: A Deflationary Definitional Interpretation," *Hobbes Studies* 18, no. 1 (2005); Kinch Hoekstra, "Hobbes and the Foole," *Political Theory* 25 (1997); Peter Hayes, "Hobbes's Silent Fool: A Response to Hoekstra," ibid.27, no. 2 (1999); Pasquale Pasquino, "Hobbes, Religion, and Rational Choice: Hobbes's Two Leviathans and the Fool," *Pacific Philosophical Quarterly* 82, no. 3-4 (2001); Rosamond Rhodes, "Hobbes's Unreasonable Fool," *Southern Journal of Philosophy* 30, no. 2 (1992); Peter Vanderschraaf, "The Invisible Foole," *Philosophical Studies* 147, no. 1 (2009); A. Zaitchik, "Hobbes's Reply to the Fool," *Political Theory* 10, no. 2 (1982).

Hobbes's own taxonomy of the sciences to note where he categorizes the study of natural law. In all cases, he argues that science involves the study of consequences, and must rely primarily upon conditional reasoning.[228] Moreover, with the sole exception of civil science, or the study of commonwealth, the sciences are all deemed "natural" because they articulate the "consequences from the accidents of bodies natural" (L ix.3). Moving through a variety of such "bodies natural," Hobbes eventually arrives at the study of man, where he states that ethics or moral philosophy aims to systematize the "consequences from the *passions* of men" (Ibid.). Consider that he also describes natural law in sum as "the true and only moral philosophy," and "the science of what is *good* and *evil* in the conversation and society of mankind," where "(*g)ood* and *evil* are names that signify our appetites and aversions" (L xv.40). It is the passionate origin of natural law reasoning, then, that allows Hobbes to square natural law obligations with his official definition of obligation as following from voluntary action. For example, one could merely note that anyone with the relevant appetites or aversions — "fear of death, desire of such things as are necessary to commodious living, and a hope by their industry to obtain them" (L xiii.14) — would also have to desire peace and thus would be committed to the laws of nature as the necessary means to peace. Hoekstra puts the point well when he states that the laws of nature "are conditional, but we already by our very nature fulfill the conditions."[229]

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[228] See, e.g.: "Science is the knowledge of consequences and dependence of one fact upon another" (L v.17); and "By PHILOSOPHY is understood *the knowledge acquired by reasoning from the manner of the generation of anything to the properties, or from the properties to some possible way of generation of the same*" (L xlvi.1).

[229] Kinch Hoekstra, "Hobbes on Law, Nature, and Reason," *Journal of the History of Philosophy* 41, no. 1 (2003): 116.

In a slightly more sophisticated account, Hoekstra also notes that Hobbes treats all reasoning (even "*acquired* wit," the purview of science) as originating with "natural wit,' since the intellect depends upon desire to guide and orient it towards some end (L iii.3-4).[230] The conclusions of natural law are no exception and might in fact best represent the sort of mean/ends thought or "seeking" that characterizes a strong natural wit. On this reading, there exists no forced distinction "between 'seeking,' which is means-end thinking based on experience and may proceed without language, and 'reasoning,' which requires language and is independent of experience and desire."[231] Instead, the latter presupposes the former. Hobbes can consistently hold that the laws of nature are conclusions of reason, and that they obligate as a result of originating from imperatives that human-beings establish for themselves. An additional benefit of this account, is that it explains his insistence that the laws of nature are both conclusions of reason and divine command. For, as Hoekstra notes, Hobbes may very well claim that God rules over nature "via natural reason."[232]

It is clear, then, that there are plausible ways to explain natural law obligations as voluntary which not only avoid involving Hobbes in further complications, but actually help illuminate his other commitments.[233] With this established I turn to the all-important second law of nature. The purpose of this law is the creation of a stable political peace, understood as a shared or common goal. Its structure, moreover, reveals that more is on the line than mere personal self-interest, for it demands *mutuality* from the parties

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[230] See Hobbes distinction between "regulated" and "unregulated" trains of thought.
[231] Hoekstra, "Hobbes on Law, Nature, and Reason," 117.
[232] Ibid., 119.
[233] This response may also be used to counter the objections from Hampton, et al., that Hobbes's moral theory is too weak to ground a strong defense of individual rights. See:

involved — "*that man be willing when others are so too…to lay down the right to all things, and be contented with so much liberty against other men, as he would allow against himself*" (L xiv.5). In the previous chapter, I discussed how Hobbes's doctrine of natural equality led him to insist upon the equal status of parties to the initial social contract. Of note here is the manner in which this equality of status translates into the language of claim rights. Each individual is required to grant the protected status of certain liberties for all, or else she may not lay claim to the same for herself.

Critics have been loath to acknowledge the existence of claim rights for Hobbesian subjects in part due to Hobbes's own insistence that it is impossible to transfer or grant to someone a *new* right, "because there is nothing to which every man had not right by nature" (L xiv.6). This statement makes is seem as if the universe of rights is indeed exhausted by original natural right.[234] But by acknowledging the technicality that no one will come out on the other side of social contract with a right to *something* that she was not in principle already free to pursue, Hobbes merely highlights the distinction between the content (what one has a right to) and structure of rights. The latter is fundamentally transformed through the process of alienating original natural right.

Hobbes describes this transformation in relational terms. First, alienating or laying down a right involves divesting oneself "of the liberty of hindering another of his own right to the same."[235] So while there is no fashioning a new right where none existed

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[234] Note that if this were true, it would sap the force out of Hobbes's political theory, which purports from the start to examine commonwealth as a creation of human artifice, and aims to clarify the consequences of its institution for the rights and duties of both sovereigns and subjects. What sense would it make to embark on such a project if the main normative concepts he is concerned to explain are ultimately contained in original natural right.

[235] Hoekstra, "Hobbes on Law, Nature, and Reason," 119.

before, by agreeing to stand out of another's way with regard to certain liberties the relevant party binds or limits herself, thereby enhancing the liberty of the beneficiary.[236] The original right of the beneficiary is changed by the creation of a corollary obligation — the sense in which she is entitled truly *is* a new phenomenon.

The second law of nature, by mandating the general alienation of natural right, thus gives rise to a network of mutual obligations between individuals, paving the way for protected rights. Of course, such protection is initially weak since the agreements involved here are covenants and require a promise of future performance from all parties. Hobbes reminds the reader that, "nothing is more easily broken than a man's word," and any words or other "sufficient signs" by which "men are bound or obliged" must "have their strength, not from their own nature…but from the fear of some evil consequence upon the rupture (L xiv.7).[237] It is for this reason that simple alienation of natural right is not enough.[238] Only a common power, authorized to enforce covenants, renders obligations truly effective. Nevertheless, claim rights are by definition a function of whether or not the right-holder's claim correlates with another's obligation; alienation of natural right is still the first and most fundamental condition for the possibility of claim rights. The sovereign's role as guarantor is secondary.

Consider, for example, the following passage in which Hobbes describes the origins of civil law:

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[236] Ibid. In Hobbes's words: "(T)he effect which redoundeth to one man by another man's defect of right is but so much diminution of impediments to the use of his own right original" (L xiv.6).
[237] Lev.xiv.7
[238] Hobbes clarifies: "Right is laid aside either by simply renouncing it or by transferring it to another. By *simply* RENOUNCING, when he cares not to whom the benefit thereof redoundeth. By TRANSFERRING, when he intended the benefit thereof to some certain person or person"(L xiv.7).

> But as men (for the attaining of peace and conservation of themselves thereby) have made an artificial man, which we call a commonwealth, so also have they made artificial chains, called civil laws *which they themselves by mutual covenants have fastened at one end to the lips of that man or assembly to whom they have given the sovereign power, and at the other end to their own ears*. These bonds, in their own nature weak, may nevertheless be made to hold by the danger (though not by the difficulty) of breaking them (L xxi.5).

Hobbes asserts here that individuals themselves establish civil law as a category for the purpose of protecting themselves;[239] i.e., the "artificial chains" of civil law are meant to aid in the enforcement of the obligations they have imposed upon themselves through the social contract. The sovereign alone may wield the tool of civil law (and the means of its enforcement), but the very existence of this tool depends upon the prior agency of parties to covenant.

Now, there are further consequences for subjects beyond their newfound obligations (i.e. limitations on their former liberty). The legal status of 'subject' entails certain powers or abilities. This makes good sense given that the concept of a 'subject,' as such, is defined by a set of relationships — namely, the relationship of one subject to

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[239] This is accomplished not only by alienating natural right, but also the transfer of its benefit to a sovereign. To explain, where all had enjoyed the natural right to rule themselves, it not must be the case that some third party alone exercises this prerogative. The purpose of alienating natural right (peace) would be undermined unless the benefit of its exercise redounded upon a sovereign. Hence this transfer is practically entailed by the act of alienation, and we can say that the immediate consequence of such transfer is the creation of a legislative authority — and with it the creation of civil law as a category. Note, I do not discuss here any possible distinction between the transfer of the benefit of natural right to a sovereign and the authorization of a sovereign as public person or representative. This topic will be explored in the following chapter.

other subjects, as well as the relationship of each with the sovereign. These relationships, in turn, are analyzable into legally defined roles, and the powers or abilities that go along with them, chief among them being the ability of subjects to participate in a guaranteed practice of contracting. Subjects may represent themselves in doing so, or they may authorize a fiduciary.[240] This implies the ability to own, transfer, and trade property, or otherwise participate in industry (L x.54; L xv.27); sue for any rights merited through contract (L xv.23-24, 30-33; L xxvi.24; L xxi.18); demand a fair trial, judged by a neutral third party (Ibid; L xxvi.27);[241] and participate in private businesses, social groups, and the like (L xxii.3). Hobbes addresses freedom of association at length within Chapter XXII of *Leviathan*, where he notes that many private assemblies are lawful and should be allowed to flourish, as long as they are "subordinate" to the sovereign and limited by the laws of commonwealth. Some of these private assemblies are "regular," meaning that they have their own representative and rules, and some are "irregular," meaning that they are more informal in nature, and "consist only in the concourse of people; which if not forbidden by the commonwealth, nor made on evil design…are lawful" (L xxii.3-4). Finally, Hobbes offers a classic defense of the right to freedom of conscience based,

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[240] For more on a possible fiduciary reading, see: Evan Fox-Decent, "Hobbes's Relational Theory: Beneath Power and Consent," in *Hobbes and the Law*, ed. David Dyzenhaus and Thomas Poole (Cambridge: Cambridge University Press, 2012); Malcolm, "Thomas Hobbes: Liberal Illiberal."

[241] Hobbes opposes the practice of his times, in which members of the aristocracy would comprise the jury. He indicates that the jury must be comprised of "twelve men of the common people" who are to be instructed in the principles of judging well. In the Latin version he further states: "(C)itizens are to be taught…how great a harm it is to public justice and the common peace to corrupt witnesses and judges in trials."

again, upon his definition of obligation as dependent upon a prior act of will (L xlvi.37).[242]

This rudimentary list can no doubt be expanded upon, but even as stated it provides a basis for individual subjects to exercise forms of autonomy that would have been impossible in a state of nature. The status of 'subject' itself thus exemplifies the manner in which Hobbes assumes, throughout *Leviathan,* that liberty is enabled and enhanced through the *protection* provided by civil law. His social contract theory, aiming as it does for stable political peace, requires that individuals alienate natural right and subject themselves to a sovereign authority; but as a direct result each also assumes a legally defined status and enjoys the protection this status provides her to exercise newfound agency. Claim rights, as Hobbes understands them, are protected liberties enjoyed by the subjects (or citizens) of a political state.[243]

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[242] The passage in question is a barbed attack of ecclesiastical authority and hence also lends support to the view that he was an independent and an advocate for the separate of church and state. He states: "There is another error in their civil philosophy, which they never learned of Aristotle (nor Cicero, nor any other of the heathen): to extend the power of the law, which is the rule of actions only, to the very thoughts and consciences of men, by examination and inquisition of what they hold, notwithstanding the conformity of their speech and actions. By which men are either punished for answering the truth of their thoughts, or constrained to answer an untruth for fear of punishment. It is true that that the civil magistrate, intending to employ a minister in the charge of teaching, may enquire of him if he be content to preach such and such doctrines; and in case of refusal, may deny him employment. But to force him to accuse himself of opinions, when his actions are not by law forbidden, is against the law of nature (and especially in them, who teach that a man shall be damned to eternal and extreme torments if he die in a false opinion concerning an article of Christian faith). For who is there that knowing there is so great danger in error, whom the natural care of himself compelleth not to hazard his soul upon his own judgment, rather than that of any other man that is unconcerned in his damnation?" For more on Hobbes's possible independency, see: Collins, *The Allegiance of Thomas Hobbes*.

[243] The concept of a liberty right thus may still be foundational for Hobbes's larger theory of rights. But it would nonetheless be false to claim that natural right is the paradigmatic example of a liberty rights, or that it serves as the model for the rights of subjects in commonwealth.

Critics will still object that unless subjects hold enforceable rights *against* their sovereign, there can be no such thing as true claim rights. In other words, the complaint is that no one is guaranteed of anything if the sovereign may act in an arbitrary or tyrannical manner without facing any repercussions. But as I see it, this is to conflate two separate questions that ought to be carefully distinguished: the question of the nature of rights, and the question of the nature of sovereign authority. Jeremy Waldron, writing about contemporary constitutional theory, notes the dangers of conflating the two. As he puts it, theories of rights are ultimately theories about what is just and what is not. If we treat this enterprise as part and parcel of defining the limits of legitimate authority, we not only compromise the effectiveness of our theory of authority, but also lose out on the opportunity to develop an independent and normatively compelling theory of rights. After all, "The issue of what counts as a good decision does not disappear the moment we answer the question 'Who decides?' On the contrary, the function of a theory of justice and rights is to offer advice to whoever has been identified (by the theory of authority) as the person to make the decision."[244]

Moreover, while it is true that Hobbes's sovereign can never be guilty of injustice, his position is informed by an awareness of the need for legal clarity and decisiveness in a world where individuals are bound to disagree about right and wrong.[245] He reminds the

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[244] Jeremy Waldron, "A Rights-Based Critique of Constitutional Rights," *Oxford Journal of Legal Studies* 13 (1993): 32.

[245] Ibid. Waldron puts the point thus: "(A)n answer to the question of authority most really settle the issue. It is no good saying, for example, that when people disagree about rights, the person who should prevail is the person who offers *the best conception of rights*. Each person regards her own view as better than any of the others; so this rule for settling on a social choice in the face of a disagreement is going to reproduce exactly the disagreement that called for the rule in the first place. The theory of authority must identify some view as the one to prevail, on criteria other than those which are the source of the original disagreement."

reader of this conundrum when he notes that even given the existence of objective moral standards, human beings are not likely to unanimously come to the same conclusions, much less correct conclusions, "(a)nd therefore, as when there is a controversy in an account, the parties must by their own accord set up for right reason the reason of some arbitrator or judge to whose sentence they will both stand or their controversy must either come to blows or be undecided" (L v.3). One might very well disagree with his theory of sovereignty and yet still recognize the error of making the question of who gets to decide dependent upon an answer to the distinct question of "what is right?" or "what is just?". The very reason we need an ultimate decider is because the latter question is so intractable.

Finally, there is no way to *guarantee* subjects any amount of regulatory oversight that would not renew the initial question of who gets to decide, and by what authority. The sovereign, in other words, is the precondition for legal order — that artificial space within which it is possible to resolves conflicts between subjects *about rights*. This does not mean that those who exercise sovereign authority will be immune to error in judging of right and wrong. They very well might act with authority and yet fail to effect justice. If the complaint voiced by critics here is that in those instances subjects must have some further fail-safe, then it is again not clear who will decide or how they would decide what ought to be done.

In Waldron's words, political theory at base aims to answer the question of, "how there can be a society, ordering and governing itself…in the face of the plurality of its members and the disagreements they have with one another on the question of what is to

be done."[246] This task requires an account of who is authorized to make decisions, and by what rule or decision-making procedure. It also requires a theory of justice and rights. It is a tragic but unavoidable paradox, and one by no means unique to Hobbes's political theory, that "there will sometimes be dissonance between what one takes to be the just choice and what one takes to be the authoritative choice in political decision-making."[247]

I conclude my response to this objection with one final observation, although one that does not directly rebut the complaint. Note the irony of the following: many of the critics who contend Hobbesian subjects cannot possess claim rights because they are unable to compel their sovereign, also fault Hobbes with not acknowledging binding moral obligations in a state of nature (such as might be found in a more traditional natural law theory). These two positions seem incompatible, since if one thinks the authority to compel the sovereign is necessary to the possession of claim rights, how could it also be possible to talk about *binding* moral obligations in a state of nature, where no one has the standing to compel anyone else? In any case, it is clear that Hobbes very much does appreciate the imperative of a guarantee to the existence of claim rights — and sees the institution of sovereignty precisely as the precondition for their enforcement.

iii. The Inalienable Rights of Individuals

[246] Ibid., 31.
[247] Ibid., 33. Waldron further clarifies: "A person who holds a complete political theory — one that includes a theory of authority as well as a theory of justice and rights — may find herself committed to the view that an unjust decision should prevail. Her theory of justice may condemn policy B and prefer policy A on rights-based grounds, but her theory of authority may mandate a decision procedure (designed to yield a social choice even in the face of disagreement about the justice or injustice of A and B) which, when followed requires that B be adopted."

It remains to address Hobbes's account of inalienable rights, which, unlike his treatment of the protected rights of subjects in commonwealth, has received considerable scholarly attention. This is not to say that Hobbes is praised. Inalienable rights *are* properly understood as mere liberty rights and offer no direct protection in the form of a sovereign-backed guarantee. Each individual merely retains those "blameless liberties" necessary to maintaining her existence and living well, or "so preserving life as not to be weary of it" (L xiv.8). Most evidently, this includes the liberty to defend herself against imminent bodily harm, imprisonment, or threats to livelihood. Hobbes refers to these rights as the "true liberties of a subject" precisely because, when a subject exercises them, she is beyond the normative reach of the sovereign and civil law, and acts blamelessly (L xxi.10).

Critics are drawn by the apparent incongruity of inalienable rights and sovereign absolutism. By admitting that subjects may sometimes refuse to obey a sovereign command "without injustice" (Ibid.), Hobbes seems to suggest the possibility of legitimate resistance, at odds with his concern to shore up sovereign supremacy. Many conclude that this is "a weakness or a liability," or even that the overall project of *Leviathan* would have been better off if the idea of inalienable rights were "excised" from it.[248] Jean Hampton considers the problem to be "so serious that it renders the entire Hobbesian justification for absolute sovereignty invalid."[249] On her view, if subjects retain the right to self-defense then they must also retain "the right of private judgment

[248] Susanne Sreedhar, "Defending the Hobbesian Right of Self-Defense," *Political Theory* 36, no. 6 (2008): 797. Note, this is not Sreedhar's own claim; she is summarizing a frequent sentiment in the critical literature.
[249] Hampton, *Hobbes and the Social Contract Tradition*, 197.

concerning whether or not their lives have been endangered" — "why," she asks, "doesn't this make the sovereign's empowerment conditional on people's determination that such obedience is rational?"[250]

Others, however, point out that, as unprotected liberties, inalienable rights are too weak to damage the absolute status of the Hobbesian sovereign. In fact, they are superfluous. Andrew Cohen points out that in practice subjects would still enjoy very little liberty to act on their private judgments. Take the example of a "dishonorable command" to kill a loved one. While the sovereign may not be able to compel the specific subject in question, it will still be able to command others to carry out its will: "*Somebody* will do what it commands. It just has to command the appropriate people."[251] In this manner, Hobbes is cast as begrudgingly conceding a point to liberalism, albeit one that is "politically irrelevant."[252] Carl Schmitt, expressing a similar sentiment, refers to inalienable rights as the "barely visible crack" in Hobbes's account of sovereign supremacy. Likewise, Gabrielle Slomp speaks of the "liberal slip of Thomas Hobbes's authoritarian pen."[253]

The common assumption, throughout, is that absolutism takes interpretive priority. The sovereign's ability to issue any command without limitations is judged to be more central to Hobbes's project than is the idea of inalienable rights. Critics accordingly focus on whether or not Hobbes, the supposed "standard-bearer of the ideology of law

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[250] Ibid., 198-99.
[251] Andrew I. Cohen, "Retained Liberties and Absolute Hobbesian Authorization," *Hobbes Studies* 11 (1998): 35.
[252] Deborah Baumgold, *Hobbes's Political Theory* (Cambridge: Cambridge University Press, 1990), 29.
[253] Gabriella Slomp, "The Liberal Slip of Thomas Hobbes's Authoritarian Pen," *Critical Review of International Social and Political Philosophy* 13, no. 2-3 (2010): 357-69.

and order," can consistently maintain the existence of inalienable rights,[254] while the question of *why* he thinks they exist in the first place is treated as an afterthought. But this interpretive approach is far too quick. The reasons Hobbes offers for the existence of inalienable rights should not be elided in order to cast him as a straightforward authoritarian. Indeed, taking into account his own starting point — i.e. natural human equality — it is much more likely that individualism takes precedence and his concern for "law and order" is motivated by the goal of protecting individuals as such. In reviewing Hobbes's argument for inalienable rights, my goal is thus to demonstrate their foundational, intractable status; they are a crucial adjunct to his treatment of the protected rights of subject, and render his account of commonwealth more, not less consistent.

The relevant passage falls in *Leviathan* XIV, where Hobbes once again notes that binding political obligations follow directly and only from the transfer or alienation of right. Yet, he reminds us, transfer must be voluntary or else the resultant agreement is invalid. Given that "the voluntary acts of every man" aim at "some *good to himself,"* "there must be some rights which no man can be understood by any words or other signs to have abandoned or transferred" (L xiv.8). We can formalize this argument as follows:

(i) Political obligation requires the transfer or alienation of right.

(ii) In order to be valid, the transfer or alienation of right must be a voluntary act.

(iii) Every voluntary act aims at some "apparent good" or benefit to self (L x.1)

[254] Ibid., 358.

(iv) No individual could expect to benefit from the transfer or alienation of certain rights [255]

(v) If no individual can expect to benefit from the transfer or alienation of a certain right, that right must be inalienable.

As sketched out here, Hobbes's position appears intuitive, especially when considering the right to defend oneself against an imminent threat of bodily harm. Whether we state so explicitly or not, most of us tend to assume that 'ought' implies 'can.' And, considering death is a great evil that we seek to avoid, surely no one can willingly alienate the right to defend oneself? There are obvious problems, however, with such an intuitive reading. Ignoring the question of whether or not obligations are by their very nature restricted to the humanly possible (Hobbes thinks they are),[256] it is hard to accept the idea that no one could ever rationally and willingly choose death. Abhorrent though it may be, surely it is sometimes the lesser of two evils? A terminally ill individual suffering severe emotional and physical pain might prefer death over the elongation of life; a parent might prefer to sacrifice his or her own life to save a child; and a soldier is capable of facing the risk of death for the sake of patriotism and honor.

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[255] Take, for example, Hobbes's treatment of the inalienable right of to resist bodily harm. He states: "A covenant not to defend myself from force by force is always void…For though a man may covenant thus *unless I do so, or so, kill me*, he cannot covenant thus *unless I do so, or so, I will not resist you, when you come to kill me*. For man by nature chooseth the lesser evil, which is danger of death in resisting, rather than the greater, which is certain and present death in not resisting" (L xiv.29).

[256] "The matter or subject of a covenant is always something that falleth under deliberation (for to covenant is an act of the will; that is to say an act, and the last act, of deliberation) and is therefore always understood to be something to come, and which is judged possible for him that covenanteth to perform"(L xiv.24).

In a recent analysis, Susanne Sreedhar points out that the standard reading commits Hobbes to an implausible account of human nature.[257] Namely, it implies that death is the *worst* possible evil, and no one is psychologically capable of choosing death or willingly placing herself in a position of mortal danger.[258] Many explicitly attribute this view to him.[259] Yet it is strange to think that Hobbes would not have considered the numerous, compelling counterexamples, especially given his own musings on the subjectivity of individual evaluations of good and evil.[260] Indeed, upon closer examination he does. In *De Homine* he acknowledges that, "the afflictions of life can be so great that, unless their end is foreseen to be near they make men count death as a good" (DH xi.6). He also reflects on the influence of pride and honor on our interests, noting that there very well might be commands that one would "rather die" than follow and, since "no man can be bound to will being killed much less is he tied to that which to him is worse than death" (DC vi.13). The same reasoning informs his claim that individuals retain the right to refuse "to execute any dangerous *or dishonorable* office" (L xxi.15, emphasis mine).[261] And as Johan Olsthoorn points out, Hobbes must be

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[257] Sreedhar, "Defending the Hobbesian Right of Self-Defense."

[258] Ibid., 786. Sreedhar actually distinguishes between two related senses in which alienating the right to self-defense might be categorically impossible. Both are implied on the intuitive reading of Hobbes's argument above. Besides the claim of psychological impossibility, one might take Hobbes to be view alienating certain rights as conceptually impossible. For the very concept of a valid contract depends upon the relevant party's assessment that the act will benefit them, and if it is not possible for one party to see alienating or transferring a certain right beneficial, then the words of transfer become unintelligible. Sreedhar states: "the general idea of this passage is that no matter what words I say or what gestures I make, you cannot thereby understand me as agreeing to renounce my right of self-defense."

[259] For example: Mark C. Murphy, "Hobbes on the Evil of Death," *Archiv für Geschichte der Philosophie* 82, no. 1 (2000).

[260] Moreover, Hobbes might be read as an "internalist about reason, who refuses reasons independent of their motivational efficacy." See: Johan Olsthoorn, "Worse Than Death," *Hobbes Studies* 27, no. 2 (2014): 148.

[261] Note, Hobbes qualifies this claim. Individuals do not retain this right if their refusal "frustrates the end for which sovereignty was ordained." If the peace and stability of commonwealth is at

committed to the view that religious believers can and will view death as a lesser evil than jeopardizing one's immortal soul.[262]

The fourth premise in the above argument, then, needs to be revised. It seems that, depending on circumstances, one might find the transfer or alienation of *any* right to be beneficial. Nevertheless, here we are considering the very specific circumstances of social contract and the same motivations that would inform the decision of Hobbesian individuals to lay down natural right in the first place also inform the necessity of retaining that part of natural right Hobbes refers to as inalienable and which ultimately constitutes the "true liberties of the subject." The fourth premise, then, should read: "No individual could expect to benefit from the transfer or alienation of certain rights within the act of social contract."

Sreedhar puts the point slightly differently. She finds that Hobbes relies upon three separate criteria for evaluating the validity of covenants and, in the context of social contract, all three would rule out the possibility of alienating certain rights. First, she fastens upon Hobbes's insistence on a "sufficient sign" of will and notes the impossibility of believing someone who promises to no longer exercise her right to defend herself from bodily harm. Such an individual would likely be thought insincere, and "(a) covenant is valid only if each party can reasonably expect every other party to perform their part."[263] Second, Sreedhar draws attention to Hobbes's claim that the motivation to social contract more directly limits possible obligation. According to this "fidelity principle," any

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stake, a man commanded to fight in war could only refuse if he could also provide a suitable replacement.

[262] Olsthoorn, "Worse Than Death."

[263] Sreedhar, "Defending the Hobbesian Right of Self-Defense," 793.

transfer of right must "be faithful to the purpose of covenant."[264] For example, Hobbes states

> … the obligation a man may sometimes have, upon the command of the sovereign, to execute any dangerous or dishonorable office, dependeth not on the words of our submission, but on the intention, which is to be understood by the end thereof. When, therefore, our refusal to obey frustrates the end for which the sovereignty was ordained, then there is no liberty to refuse, otherwise there is (L xxi.15).

Finally, rights need only be transferred where the purpose of a covenant requires this transfer. Sreedhar's "necessity principle" is implicit in Hobbes's claim: "As it is necessary, for all men that seek peace, to lay down certain rights of nature…so it is necessary, for man's life, to retain some (as, right to govern their own bodies, [right to] enjoy air, water, motion, ways to go from place to place, and all things else without which a man cannot live, or not live well" (L xv.22).

All three of these principles, however, underscore the main point that inalienable rights are rights that must be retained specifically within *social contract*, regardless of whether or not death is the worst possible evil and even if one can imagine a trade-off where alienation makes sense. These are rights that are always held *qua* natural person rather than *qua* subject and as such are exercised at the margins of political and legal order.[265] Seen from this perspective, they in fact set the purpose of political order in sharp

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[264] Ibid., 795.

[265] This is true even if one must also be a subject in order to exercise an inalienable right. These are rights that are retained during the process of subjecting oneself to a sovereign. But the status of 'subject' is an artifice, or an additional legal personality, that individuals bear atop the persistent fact of their natural personhood. The former cannot erase the latter. And this is rather

relief. Hobbes is not naive to the reality that the same awesome power that protects individual subjects might sometimes place the lives and interests of some subjects in jeopardy. Inalienable rights, then, are an all-important adjunct to the protected rights of subjects in commonwealth, and one that renders his account of commonwealth more, not less consistent.

Part III. The Evolution of Rights Language

Thus far I've examined Hobbes's rights theory through the lens of Hohfeldian analysis, focusing especially on the distinction between claims and liberties. Following Curran, I've argued that Hobbes's approach is motivated by the insight that rights are first and foremost *individual* rights. And while all rights derive from original natural right, Hobbes does not reduce all rights held by subjects in commonwealth to mere liberties. Hobbes very much appreciates that rights worth having require protection. He begins with the concept of 'liberty' as foundational to that of 'right,' but proceeds to demonstrate that the alienation of certain harmful liberties is necessary to legally guarantee others. Finally, his doctrine of *inalienable* rights further highlights his individualism and the goal of guaranteeing protections for individual rights that lies at the heart of *Leviathan*

At this point, however, it is worth moving away from modern rights language to again, briefly, place Hobbes in conversation with his own contemporaries. Historical

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the point of inalienable rights. In many ways civil law can and must take the place of an individual's pre-political natural reason. But it cannot entirely do so. The possibility that the state's interests may be directly in conflict with one's own fundamental interests (especially those pertaining to self-preservation) remains ever-present and inalienable rights are the result of this natural limitation on the reach of civil law (or the extent of political obligation.

context is perhaps more important with regard to the notion of a 'right,' given how changeable and "theory-dependent" this term has proven over time.[266] My goal is to demonstrate the extent of Hobbes's impact on the evolution of rights language, especially insofar as he articulates the concept of individual rights as things that empower the rights-holder to impose obligations on others, rather than simply define a licit sphere of liberty.

i. Rights Language in Stuart England

Rights language in Stuart England found place in a theological-political context distinct from that which we often associate with the classical modern era of social contract theory, and thus reflects different questions than those we might expect. In fact, the main concern motivating debate over the nature and content of rights was not the need to define the relationship of individual citizens to state authority, but rather the need to remedy political instability brought on by the Reformation, especially the resulting clashes between elites. Accordingly, rights language became a common tool in partisan attempts to impose social order and unity.

The tone was set by James I's assertion of his divine right to rule. In a speech to the English parliament in 1610, he exclaims that the monarchy is established on the basis of God's will, and that kings enjoy the power to:

> …make and vnmake their subjects: they haue power of raising and casting downe: of life, and of death: Iudges of all their subjects, and in all causes,

[266] As Richard Tuck puts it, "the meaning of a term such as a right is theory-dependent, [and therefore] we have to be sure about what role the term played in the various theories about politics which engage our attention." Tuck, *Natural Rights Theories: Their Origins and Development*, 2.

> and yet accomptable to none but God onely. They haue power to exalt low things, and abase high things, and make their subjects like men at the Chesse; A pawne to take a Bishop or a Knight, and to cry vp, or downe any of their subjects, as they do their money.[267]

By so declaring his ability to dispense and strip "privileges" at will, James purposefully rejects the idea of an original contract with 'the people,' and attempts to counter the influence of its popularizers in England and Scotland, such as Henry Parker and George Buchanan. On his view, the king should be understood as the 'head' atop the body politic — the condition of its life and integration. It is nonsensical to imagine the body might direct the head, as it could not exist without it.[268] We can further see the polemical purpose of divine right theory, through Filmer's influential defense of it within *Patriarcha*, where he asserts, in no uncertain terms, "(A)ll those liberties that are claimed in parliaments are the liberties of grace from the king, *and not the liberties of nature to the people*."[269]

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[267] Quoted in J. H. Burns, *The True Law of Kingship: Concepts of Monarchy in Early-Modern Scotland* (Oxford: Clarendon Press, 1996), 276. This speech is dated March 21, 1610 and, as Burns notes, James provides "a condensation and, in certain respects, an elaboration of the doctrine expounded in *The True Lawe,* an earlier tract he had published in 1598. Charles I, of course, affirmed James's assertion, dissolving parliament when it sought to oppose his will.

[268] For more on this image, see: Zuckert, *Natural Rights and the New Republicanism*, 35. Besides referring to the king as the head atop an organic body politics, James I also compared to the king as the patriarch of a large family, and hence the key to its organization and unity. Zuckert documents these and other "similitudes". As he points out divine right was a biblically grounded doctrine, but it adherents needed to employ contentious hermeneutic principles to reach their anti-constitutionalist conclusions. These similitudes served such a role: "(D)ivine right theorists grasped the biblical texts in the light of a series of metaphors of political life that produced their interpretation…King James I expressed those images repeatedly in his analogies, or 'similitudes,' of politics…by means of these two analogies, James conveyed three central, apparently Aristotelian propositions about politics: the naturalness of politics, and particularly of monarchy; the ordination of monarch to the common good; and the irresistibility of royal authority."

[269] Filmer, *Patriarcha and Other Writings*, 155.

Rather than respond to the ascendency of divine right theory by asserting the artifactual and constructed nature of commonwealth and government, as Hobbes did, members of parliament looking to check the king's absolutist pretensions often doubled-down on corporatist arguments for the original authority of the people as a natural community, independent of royal authority. Michael Zuckert nicely characterizes the opposing extreme as populated by "parliamentary oriented contractarian doctrines."[270] It is important to stress that while these doctrines spoke the language of contract, they did not involve individuals nor did they theorize contract as an agreement between formally equal parties. Indeed, these doctrines varied in the extent to which they offered any explicit terms of agreement at all. Parliamentarians and royalists alike were still enthralled to the doctrine of the ancient constitution, and any contractractarian premises, when adopted, had to be rendered compatible with its tenets.

Consider, for example, Philip Hunton's *Treatise of Monarchy.* Hunton takes the actual act of contract to be secondary to the "constitution or power of magistracy in general," which is given by God.[271] By magistracy, here, is meant the authority of the state, i.e. sovereignty. Hunton thus argues that authority is "given" and naturally inheres in the people, or the community as a whole. Yet the people must exercise this authority to establish a constitution, which in turn dictates, "where sovereign power lies in that society,"[272] as well as who actually enjoys political agency and rights. It is thus the community as a whole that "consents" to the resulting arrangement.[273] Of course, as

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[270] Zuckert, *Natural Rights and the New Republicanism*, xv-xvi
[271] Hunton, "A Treatise of Monarchy [1643]," 175.
[272] Zuckert, *Natural Rights and the New Republicanism*, 68.
[273] Ibid., 70. Hunton states: "I do conceive that in the first original all monarchy, yea, any individual frame of government whatsoever, is elective; that is, is constituted and draws its force

discussed in the previous chapter, Hunton claims that in the case of the English commonwealth, the community naturally gave rise to a "mixed" constitution such that King, Lords, and Commons share sovereignty. In Zuckert's words, Hunton argues the constitution "derives" from "the nation" and this origin is indeed one that is ancient or from "time immemorial."[274]

In a seminal article on the diversity of historical appeals to the idea of contract, Harro Höpfl and Martyn Thompson refer to the above as an example of "constitutional contractarianism" in contrast to "philosophical contractarianism."[275] The latter, of course, is the source of the modern idea of social contract. The former, on the other hand, lacks the same generality and theoretical ambition: "(i)n constitutional contractarianism particular positive laws, and the institutional inheritance of specific polities were most relevant and important, rather than universal propositions about all men and all polities."[276] Such versions of contractarianism, accordingly, eschew individualism and instead speak the language of "fundamental law," "fundamental rights," and "ancient" or "fundamental constitution."[277] Rights here are understood as historical entitlements proper to a given station or corporate identity.

Two theoretical questions thus dominated contract theory and debate over rights in Stuart England: (1) What relevant groups or entities besides the king are entitled to claim special political status under the ancient constitution?; and (2) Do any of these

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and right from the consent and choice of that community over which it sways." See: Hunton, "A Treatise of Monarchy [1643]," 189.
[274] Zuckert, *Natural Rights and the New Republicanism*, 70.
[275] Harro Höpfl and Martyn P. Thompson, "The History of Contract as a Motif in Political Thought," *The American Historical Review* 84, no. 4 (1979): 941.
[276] Ibid.
[277] Ibid.

groups or entities possess the right to resist the crown? Royalists, of course, answered 'no' to the latter question, and only differed amongst themselves in the degree to which they thought the king obligated to maintain the traditional privileges of parliament and the episcopacy. Parliamentarians, by contrast, asserted that such rights are held independent of the king's grace and, moreover, they turned to the notion of resistance as a last resort protection against a tyrannical monarch.[278] The sharp contrast between Hobbes's original natural right ("philosophical contractarianism") and parliamentary appeals to "fundamental right" or "fundamental law" ("constitutional contractarianism") is perhaps best observed within such burgeoning accounts of legitimate resistance.

Henry Parker provides the best example. As discussed in the previous chapter, Parker argues that 'the people' is an organic unity, and parliament its only legitimate representative.[279] His reasoning is Aristotelian — the end or final cause of government must be "the good of the community rather than the good of the rulers,"[280] and this end informs the proper "mixture" of elements in any constitution. Parker appeals to the concept of *salus populi* (by which he understands the health of the people as a natural community) as a fundamental law of necessity, "that shall give law to all humane laws whatsoever."[281] If this is the end of government, he proceeds, then 'the people' must also be the efficient cause. All political power originally inheres in the community and is only

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[278] In other words, both a radical royalist such as Filmer and a moderate like Clarendon would agree that these privileges are held upon sovereign grace, and thus dependent on the king. But moderates stressed, to a greater degree, the obligations that the king had to rule from within the ancient constitution.
[279] Much as with the case of Marsilius, the concept of 'representation' does not precisely capture the relationship at issue. For Parker, parliament is in a very real sense identical to 'the people'.
[280] Zuckert, *Natural Rights and the New Republicanism*, 73.
[281] Parker, "Observations Upon Some of His Majesties Late Answers and Expresses [1642]," 2-3.

handed over to a specific ruler through "a law of common consent and agreement."[282] Yet the blind masses are unable to act as one: "In truth, the whole kingdom is not so properly the Author as the essence itself of Parliament."[283] Thus, parliament is the essential embodiment of 'the people' and it would be incompatible with self-preservation for it to consent to royal prerogative.

Now, I reiterate Parker's argument here for the purpose of illustrating the limited, and corporatist role of rights language in Stuart England. Note the above reference to self-preservation. Parker implicitly relies on an analogy between the natural right of individuals to protect themselves against the threat of violence, and the right of 'the people' (i.e. parliament) to maintain and preserve itself against the king's assertion of absolute, divine right. Only the latter is politically consequential. Indeed, when Parker does talk about the natural rights of individuals, it is to clarify that subjects do not retain the right to take up arms against parliament. Military action could only be justified if required by the "paramount" or "fundamental" law of *salus populi,* and parliament alone judges of this necessity.[284] Moreover, his view was widely accepted amongst parliamentarians. As Sreedhar notes, most saw it as imperative to the goal of preserving the body-politic that individuals only retain a right to defend themselves against other private persons.[285] Curran further clarifies that some moderate parliamentarians rejected

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[282] Ibid., 1.
[283] Ibid., 5.
[284] Ibid., 45.
[285] Sreedhar, *Hobbes on Resistance: Defying the Leviathan*, 19. Sreedhar further states: "Interestingly, many who held that public self-defense was not only permissible but obligatory were also concerned to deny the existence of a right of resistance that could be exercised by *individuals.* This caveat appears in most theories of resistance of this time — from the anonymously penned Huguenot tract, *Vindiciae contra tyranny* to Francisco Suarez's *A Defense of the Catholic and Apostolic Faith* and John Locke's *Second Treatise of Government*."

the notion of inalienable rights entirely, arguing that natural right, in principle, is always alienable.[286] By contrast, the "fundamental right" of 'the people' (i.e., parliament) to resist threats to health of the natural community cannot be renounced because it is derived from "fundamental law."

This highlights another point of contrast between "constitutional contractarianism" and "philosophical contractarianism." Parker and his fellow parliamentarians treat the right of resistance as simultaneously an obligation, or more precisely a dictate of natural law. Where Hobbes insists that rights-holders must always possess the liberty to exercise (or refrain from exercising) their right at will, there is no similar option here. Treating rights as supervening upon natural law obligations, moreover, was not unique to parliamentary resistance theory during this time period. As the doctrine of the ancient constitution came under increasing strain, natural law was often used as a supplement to reinforce its tenets independent of appeal to mere custom and precedent. Both the ancient constitution and traditional natural law theory, after all, maintain the inherent sociability of human beings, conceive of community as a natural unity (e.g., *societas perfecta* in Aristotle and Aquinas), and theorize this unity as structured by a natural (or divinely ordained) hierarchy. The two were seen as compatible and mutually reinforcing.[287]

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[286] Curran, *Reclaiming the Rights of the Hobbesian Subject*, 41-43.

[287] This is merging of natural law theory and ancient constitutionalism is evidenced as early as the late sixteenth century in the writings of the influential theologian Richard Hooker, who attempted to a rational defense of ecclesiology that supported the customary privileges accorded to it under the ancient constitution. In a representative passage, he explains how the structure of the English commonwealth may be at once natural and informed by rational consent: "To supply those defects and imperfections which are in us living singly and solely by ourselves, we are naturally induced to seek communion and fellowship with others, This was the cause of men's uniting themselves at first in politic societies, which Societies could not be without Government, nor

Rights language in Stuart England, then, generally made rights a function of one's class and status, derived from custom or natural law. Often, they were actually duties in disguise. Finally, there was no place for considering appeals to the natural right of *individuals* as a basis for their valid claims as subjects in commonwealth, nor even as a ground for their legitimate resistance apart from a representative group. Only rights enshrined in the ancient constitution were politically consequential — parliamentarians and royalists alike, in other words, held that rights ought to be maintained because doing so allows governing authorities to "keep each part in its proper relation to the whole and thus to the common good."[288]

Conclusion

Why, then, does Hobbes so sharply deviate from this context by insisting upon the foundational status of *individual* rights? One reason is that rights language was generally undergoing an evolution, at least in continental Europe.[289] Another is that Hobbes found, in his contemporaries, a habit of conflating *ius* in its classical, objective sense with the modern concept of a subjective right — the former refers to law or "what is just",[290] while the latter indicates an active power or capacity of the subject (*potestas* or *facultas*) (L xiv.3).[291] Hobbes saw this conflation, for instance, at issue in appeals to "fundamental

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Government without distinct kind of law. …Two foundations there are which bear up public societies: the one, a natural inclination [to social life]; the other, an order expressly or secretly agreed upon touching the manner of their union in living together. The latter is that which we call the Law of the Commonwealth, the very soul of a commonweal." Hooker quoted in Höpfl and Thompson, "The History of Contract as a Motif in Political Thought," 934.

[288] Ibid.

[289] Tierney, *The Idea of Natural Rights: Studies on Natural Rights, Natural Law, and Church Law, 1150-1625*; Zuckert, *Natural Rights and the New Republicanism*.

[290] Tierney, *The Idea of Natural Rights: Studies on Natural Rights, Natural Law, and Church Law, 1150-1625*, 391.

[291] Thomas Mautner, "How Rights Became "Subjective"," *Ratio Juris* 26, no. 1 (2013).

rights" and the ancient constitution. And he was especially vexed by the manner in which such appeals to an objective sense of *ius* as *lex* sowed confusion within the populace and prompted those who thought they had God, custom, or truth on their side to take up arms or, worse, convince the common people to take up arms for the sake of defending elite privileges. But perhaps the most important consideration is Hobbes's perceptive analysis of individual psychology and his foundational concept of *conatus*. As I will discuss in the next chapter, Hobbes was aware of the growing politicization of the masses and saw the protection of individual rights as not only a matter of principle but a practical imperative.

Chapter 3: The Free Gift of Sovereignty

Introduction

My goal in this chapter is to recover Hobbes's concept of sovereignty as one that is still valuable for contemporary political philosophy. After addressing objections from critics, I will forward two claims. First, I argue that Hobbes conceives of sovereignty as a public office or institution. Moreover, the authority to exercise the rights associated with this office is a *free-gift* — but it is not one that comes without strings attached. Sovereignty is founded upon a basic duty to respect the justificatory reasons subjects hold for submitting to a common ruler in the first place. In short, Hobbes offers a fiduciary account of the nature of sovereign authority (*potestas, imperium*), which is distinct from his analysis of absolute sovereign power (*potentia*). Second, while acknowledging that Hobbes's sovereign representative is ultimately at liberty to flout this duty, I argue that he nevertheless identifies both structural and prudential limitations on the exercise of its powers meant to guard against this possibility. His discussion of these limitations yields a more principled theory of the relation of political authority to political power than his critics usually recognize.[292] Finally, in closing, I consider the relevant historical context in order to provide additional support for my argument.

Part I. Hobbes's Critics

Hobbes's defense of absolute sovereignty is among the most notorious and frequently rejected positions in the history of political philosophy. Even those scholars

[292] As noted earlier, this in no way suggests that Hobbes supports a democratic form of government, or that he saw himself as forwarding democratic principles.

who find inspiration in his larger contract theory try to distance themselves from its absolutist conclusions. Many, echoing the words of John Locke, argue that it is impossible for individuals in a state of nature to give meaningful consent to an unconstrained authority. To subject oneself in this manner would be to risk the creation of a "monster," or a tyrant whose very existence threatens individual rights and liberties. In this section, however, I argue that two longstanding interpretive tenets motivate the judgment that Hobbes's absolutism amounts to an apology for tyranny, and neither is wholly unproblematic or beyond question.

i. The Problem of Personal Authority

The first interpretive tenet I will discuss concerns the nature of Hobbes's sovereign. It might at first seem strange that there is room for disagreement on this topic, given the amount of attention Hobbes devotes to analyzing the concept of sovereignty, especially his exhaustive list of the so-called "essential rights" of sovereigns (L xviii). Yet, when we turn from the legal status of sovereignty to the *subject* of sovereignty itself, i.e. who or what properly enjoys this legal status, Hobbes appears frustratingly unclear. On the one hand, he declares an intent to "speak not of men, but (in the abstract) of the seat of power" (L intro.1), a seat which he goes on to identify with "that great LEVIATHAN called a COMMONWEALTH, or STATE" (Ibid.). Both claims imply an institutional view of governance. On the other hand, he describes commonwealth as an "artificial man," and stresses the need for an actual human agent authorized to speak and act on its behalf. He only resolves this obvious tension by introducing a distinction between the "two persons" of the sovereign. In its private capacity, that is, the sovereign

representative remains a mere "natural person"; but considered qua sovereign, it is ultimately a "politic person" or public office.[293]

Critics, with near unanimity, argue that this distinction is vacuous on the grounds that an *absolute* sovereign would enjoy supra-legal privileges in either its politic or private capacities. After all, by 'absolute' Hobbes indicates not only that the sovereign is the supreme authority in the land, but also that the above mentioned "essential rights" are indivisible and cannot be shared by separate governing bodies or otherwise limited. His concern is with eliminating elite conflict. When the powers of legislation, adjudication, enforcement, war-making, etc., are divided, the possibility of crippling disagreement and civil war remains alive. One governing body might hinder the actions of another to the detriment of public welfare, or even oppose another using violence.

By resolutely holding to this point, however, Hobbes leaves himself with little room to maintain a distinction between the private and public persons of the sovereign, at least in practice. To say that the "essential rights" of sovereigns are indivisible, amounts to arguing that the exercise of these rights is the exclusive prerogative of a given natural person or group. Without legally defined limits on sovereignty, subjects have no way to monitor or check the actions taken by sovereign representatives in their private capacity, or even to argue that these are the actions of private persons rather than a public office. For instance, although a subject who has a dispute with the sovereign concerning

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[293] Hobbes states: "(E)very man or assembly that hath sovereignty representeth two persons, or (as the more common phrase is) has two capacities, one natural and another politic (as a monarch hath the person not only of the commonwealth, but also of a man; and a sovereign assembly hath the person not only of the commonwealth, but also of the assembly)" (L xxiii. 2). See also L xix.4. For Hobbes's earlier attempts to provide a theoretical basis for this distinction, see: EL II.xxi.11; DC vi.1, 13.

property, services, or penalties, "grounded upon a precedent law," is at liberty to "sue for his right *as if it were against another subject*" (L xxi.19), the sovereign is not required to comply with law in settling the suit. Instead it may invoke its authority *qua politic person* at any time, leaving the subject with no further recourse. Moreover, she does not even have grounds for complaint since, according to Hobbes's formal model of authorization, each subject agrees to "own" all sovereign actions and cannot subsequently complain of them without absurdity (L xxi.27).[294] Susan Moller Okin sums up the point well: "[Hobbes] does not indicate how we might discern which of these mantles a sovereign is wearing at any time, nor does he suggest anything that might limit the occasions on which a sovereign is entitled to don his public or politic capacity."[295]

On the standard interpretation, then, a Hobbesian sovereign simply *is* a *personal authority* — an "identifiable human being or organization of human beings" — not a public office or institution.[296] The charge of tyranny follows as a matter of course. A personal authority who is also a Hobbesian sovereign, *should* count as a tyrant par excellence. To best appreciate why, first take Locke's famous definition of tyranny: "*(M)aking use of the power any one has in his hands, not for the good of those who are under it but for his own separate advantage.*"[297] Next, pause to consider a personal authority within the context of Hobbes's own account of human psychology. As discussed in Chapter 1, Hobbes uses the drive-based concept of endeavour, or *conatus,* to

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[294] Hobbes states: "(N)othing the sovereign representative can do to a subject, on what pretence soever, can properly be called injustice, or injury, because every subject is author of every act the sovereign doth, so he never wanteth right to anything."
[295] Okin, ""The Soveraign and His Counsellours"," 55.
[296] Goldsmith, "Hobbes's 'Mortall God': Is There a Fallacy in Hobbes's Theory of Sovereignty," 39.
[297] Locke, *Second Treatise of Government*, §199.

explain our behavior. *Conatus* refers to "the small beginning of motion in the body of man," and it is always directed toward a perceived object of desire or away from a potential harm. The same, then, holds true of its end products, i.e. conscious choices and action. And since no single individual or group can be arbitrarily exempted from this account, we are left to conclude that a such a sovereign must consciously pursue its own well-being, or "*separate advantage*" in Locke's words, first and foremost.

The problems compound from here. A personal authority, just as any other natural person, would remain subject to the same volatile human passions (e.g. covetousness, vanity, self-conceit, glory in conquest, fear, anxiety) that fuel conflict in the state of nature. Moreover, a personal authority would be prone to conflating its immediate interests with long-term goods. And finally, last but not least, the value judgments of a personal authority would likely prove inconsistent. As Hobbes writes, even "the same man in diverse times differs from himself, and one time praiseth...what another time he dispraiseth" (L xv.40). This could lead to a haphazard legal system, in which the sovereign declares contradictory laws, repeals laws on a whim, or randomly chooses whether or not to enforce promulgated sanctions (perhaps even choosing harsher penalties).

All these considerations, however, highlight a problematic irony, one which I believe challenges the standard interpretation. Namely, it is hard to see how Hobbes could have endorsed personal authority when the consequences of doing so are clearly at odds with the *chief* goal of instituting a sovereign in the first place. Throughout his political writings, Hobbes argues that conflict in a state of nature is intractable precisely because individuals in such a condition are constantly uncertain of their future well-

being. Each lacks the sufficient assurance that others will abide by their promises or conform to the demands of peace, and as a result, there is no stability to their lives, nothing to ground rational decision-making. Given awareness of the volatile human passions mentioned above, even an otherwise rational, moderate, and peace-loving individual might find it prudent to anticipate possible threats and attack first.[298]

In fact, within *Leviathan* specifically, Hobbes develops his view of conflict in the state of nature to place greater emphasis on the centrality of mistrust, or 'diffidence' than in previous works.[299] It is undoubtedly still important that human beings compete over scarce resources, and that at least some individuals in any given population take glory in conquest or are ruled by other volatile passions. But the real problem is that no one can trust anyone else. Widespread diffidence, in turn, structures social relations in such a way that, to quote Noel Malcolm, "pre-emptive actions (including acts of violence) become *reasonable*."[300] This is the idea behind Hobbes's distinction between natural law and natural right. Reason dictates as the first law of nature that one ought to *seek peace*, since only within a general condition of peace is a secure, good life truly viable. Yet it would be naïve and contrary to the goal of self-preservation to follow the laws of nature in a situation where it is not possible to trust that others will do so also. Where diffidence

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[298] See above note 42 for list of reference using game-theory to analyze conflict in Hobbes's state of nature. See also: Mark C. Murphy, "Hobbes's Shortsightedness Account of Conflict," *Southern Journal of Philosophy* 31, no. 2 (1993).

[299] In both *Elements of Law* and *De Cive,* Hobbes's description of conflict in the state of nature relies on psychological claims related to competition over scarce resources, and the prevalence of passions such as over-weaning pride and glory in conquest.

[300] Noel Malcolm, *Leviathan: Introduction*, ed. Noel Malcolm, vol. I, The Clarendon Edition of the Works of Thomas Hobbes (Oxford: Clarendon Press, 2012), 18..

rules, each individual must retain the liberty (natural right) to decide for him or herself how to pursue self-preservation (e.g. *"use all helps and advantages of war"*) (L xiv.4).

My point here is that sovereignty is designed as a solution to the structural problem posed by diffidence. Its chief goal is to eradicate the causes for diffidence and so enable individuals to follow the laws of nature (again, because doing so is the best way to achieve a secure, good life). Whereas individuals in a state of nature retain natural right and are ruled only by their own private judgments of right and wrong, in commonwealth the sovereign serves as a neutral arbitrator, whose sentence all have agreed to abide by as law (or else suffer sanctions). The sovereign, in other words, provides an artificial standard of right reason to remedy the lack of an effective natural standard, or at least a natural standard that all acknowledge.

Yet, if the sovereign in question is a personal authority, this means the private will of some individual or group is *constitutive* of law itself**.** As the above discussion ought to make clear, subjects under such a sovereign would remain uncertain of their future well-being. They could not trust a personal authority to prioritize the public good above its own, partial interests (especially where the two directly conflict). Indeed, there is not an appreciable difference between life in the state of nature, as Hobbes describes it, and life under the sort of haphazard legal system that may well result from personal authority (imagine the unpredictable nature of law and punishment in Nazi Germany, or within a war-torn country such as contemporary Syria). So how could Hobbes, for whom self-preservation is the first principle of political philosophy, have endorsed such a model?

It must be admitted that he does, at times, invite the charge of personal authority. Perhaps the most prominent example is his rationale for why a people never holds the political right to check their sovereign representative. In one notable passage he states:

> The opinion that any monarch receiveth his power by covenant, that is to say, on condition proceedeth from want of understanding this easy truth, that covenants, being but words and breath, have no force to oblige, contain, constrain, or protect any man, but what it has from the public sword, that is, from *the untied hands of that man or assembly of men that hath the sovereignty*, and whose actions are avouched by them all, and performed by the strength of them all, in him united. (L xviii.)

Hobbes's phrasing here — e.g. the statement "*that man or assembly of men"* — evokes personal authority.[301] As far as his critics are concerned, however, it is more important that his argument can be interpreted as a rejection of the idea of constitutionalism. The above passage might be taken to go well beyond urging the practical point that all law requires interpretation and enforcement by human beings, to instead conclude that *the source of the authority of law in general is human will*.[302] He first claims the sovereign

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[301] Hobbes also uses similar language in his exposition on state forms, a fact which his critics also take to be strong evidence of personal authority. See Lev.xix.1.

[302] The claim that a Hobbesian sovereign is a personal authority is ubiquitous in the literature. For instance, in a recent article, the political philosopher Joshua Cohen accuses Hobbes of trivializing the possibility of constitutionalism, understood as "a sovereign schema of laws, rules, or principles." In Hobbes's "authoritarian" legal order, Cohen claims, the sovereign "stands juridically superior" to the fundamental norms of society— "(w)ill, not law or reason, is the basis for the state." See: Cohen, "Getting Past Hobbes," 7-8. Likewise, M.M Goldsmith observes that the problem with Hobbes's absolutism is not supremacy per se, but rather that the office of sovereignty is not a "rule-constructed role." See: M.M. Goldsmith, "Hobbes on Law," in *The Cambridge Companion to Hobbes*, ed. Tom Sorell (New York: Cambridge University Press, 1996), 278. And Jean Hampton argues that Hobbes errs in assuming that conflict and disorder in political society, "cannot be cured unless that political society rests on an ultimate and undivided *human* will...*human beings control the rules*, and not vice versa." See: Jean Hampton,

cannot be party to covenant because it alone provides the sheer physical might necessary to ensure conformity to terms. And on the same basis he appears to specify such power — a property of natural persons — as the mark of rightful authority and the reason the sovereign's word is law (L xxvi.1-3).

Likewise, in a statement from *De cive*, often referred to in the literature as the "regress argument," Hobbes again points to the logical impossibility of mandating limits on sovereignty, "(f)or he who prescribes limits must have a greater power than he who is confined by them" (DC vi.18).[303] That is, any party capable of checking the actions of an aspiring ruler must, by virtue of its ascendency, hold a better claim, and the question of limitations arise once more. Given the logical impossibility of an infinite regress of authorities, however, Hobbes concludes every commonwealth must have a "supreme command" (i.e. the sovereign) whose power "hath no other limit but that which is the *terminus ultimus* of the forces of all the citizens together" (DC vi.18). In this key passage as well, then, Hobbes's discussion of the sovereign's status focuses on its physical ability to compel broad (near universal) obedience in a way which many think is synonymous with endorsing personal authority. I will thus pay special attention to these and similar passages when I turn to re-examine Hobbes's argument for absolute sovereignty.

"Democracy and the Rule of Law," in *Hobbes on Law*, ed. Claire Finkelstein (New York: Routledge, 2005), 17.

[303] Hobbes makes similar claims in *Leviathan*, as when he states: "Whoever thinking sovereign power too great will see to make it less, must subject himself to the power that can limit it; that is to say, to a greater"(L 20.18). He also uses the same logic when explaining why the sovereign cannot be subject to civil law, since it "setteth also a judge above him, and a power to punish him; which is to make a new sovereign; and again for the same reason a third, to punish the second; and so continually without end" (L 29.9). For a detailed review of Hobbes's regress argument, see: Goldsmith, "Hobbes's 'Mortall God': Is There a Fallacy in Hobbes's Theory of Sovereignty."

ii. The Problem of Political Legitimacy

Before turning to my analysis of Hobbes's argument, however, it is worth making explicit a second standard interpretive tenet that goes hand in hand with the charge of personal authority, namely, the claim that Hobbes fails to articulate any compelling criterion of political *legitimacy*.[304] The motivation behind this charge is also evident in the above-cited regress argument. The sovereign, due to the fact that it holds "supreme command," occupies a unique structural position vis-à-vis commonwealth; it establishes the boundaries of legal and political order proper, despite remaining outside these same boundaries, unconstrained by law. This supra-legal status prompts a set of questions that philosophers typically argue require normative principles by way of an answer, most importantly: What is the origin of such exceptional authority? On what grounds is it justified? And, finally, are subjects always obligated to obey sovereign commands?

When addressing these questions, however, Hobbes appears to eschew normative principles to instead privilege the fact of power alone.[305] To say that the sovereign's

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[304] I have left my treatment of the topic of political legitimacy very general due to the complex and varied ways in which legitimacy is treatment within the literature. For instance, not all philosophers and political theorists actually do agree on classifying authority as a normative concept. Some offer descriptive accounts of authority, and then go on to differentiate between the creation of a political authority and the criteria by which it might be justified (i.e. it's existence is in principle distinct from whether or not it is just). Others further differentiate between morally justified authority and legitimate authority. For instance, John Locke could perhaps be read as doing so — one might say that on Locke's theory, a political authority is legitimate if it is established by popular consent, however it is only morally justified if its actions are in accordance with the laws of nature.

[305] Another, competing interpretation is that Hobbes, as a Royalist, defends the traditional hereditary right of monarchs. It is sometimes claimed that he only turned to a doctrine of *de facto* authority in *Leviathan.* However, there are numerous problems with this interpretation. Most importantly, Hobbes clearly does hold, in all of his works, that sovereign right is defeasible. As he states in his earliest political writing, "For no covenant bindeth farther than to endeavour" (EL II.xxv.14). See also: EL II.xxi.12-16; EL xxii.7; DC vii.18; DC viii.9; L xiv.8; L xiv.26-30; L xxvi.8; L xxx.1; and L R&C.17. For a detailed account of this subject see: Hoekstra, "The De Facto Turn in Hobbes's Political Philosophy."

supra-legal status depends on its physical ability to compel broad obedience is near enough to claiming that power, or might, makes right. His critics thus allege that Hobbes is guilty of conflating facts with norms; many press that his ethics does not recognize substantive moral values at all, or that Hobbesian morality reduces to mere prudence. F. H. Hinsley, for one, refers to Hobbes's state of nature as a "moral vacuum;"[306] and Christine Korsgaard argues that he treats sovereign commands as the ultimate source of normativity. Hobbes's position, she claims, is essentially voluntarist: "(M)oral obligation derives from the command of someone who has legitimate authority over the moral agent," and, thus, "morality only comes into the world when laws are made."[307] But, Korsgaard continues, if this is the case then Hobbes is stuck with an empty concept of legitimacy which can only reference sovereign "effectiveness" or the "successful exercise of power."[308]

This sentiment bolsters the view that Hobbes is best interpreted as a *de facto* theorist, and the worst sort, at that. In his own day there were a number of thinkers, especially in the interregnum years after the beheading of Charles I, who argued that *de facto* power must be part of the equation when assessing either a would-be-ruler's right to command, or subjects' obligations to obey. It was a central tenet of *de facto* theory, that subjects could not be obligated to obey a ruler or government if that same ruler or government did not have the power to protect them. Yet, as Hoekstra has skillfully argued, these theorists differed on important details. There were two main schools of

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[306] F. H. Hinsley, *Sovereignty*, 2nd ed. (Cambridge: Cambridge University Press, 1986), 149.
[307] Christine M. Korsgaard, *The Sources of Normativity*, ed. Onora O'Neill (Cambridge: Cambridge University Press, 1996), 24, 27.
[308] Ibid., 29.

thought. First, "*de facto* theorists of obligation" held that "subjects are obligated to obey the holders of *de facto* power even though their rule is not *de jure*".[309] In other words, the possession of power is sufficient to establish an obligation to obey, but nothing more. Second, "*de facto* theorists of authority" forwarded the stronger thesis, that possession of power was also sufficient to establish a *de jure* right to rule.[310] Now, Hobbes eloquently declares the "mutual relationship between protection and obedience" (L R&C.17). Yet he cannot be classed a *de facto* theorist of obligation, since he does not recognize an obligation to obey that does not correlate with another's right to rule. On the other hand, he does often speak as if possession of power *ipso facto* constitutes right. When addressing the right by which God reigns over men, for example, he concludes: "To those, therefore, whose power is irresistible, the dominion of all men adhereth naturally by their excellence of power" (L xxxi.5)[311]

Once again, then, if this statement is representative of Hobbes's views and he is a *de facto* theorist of authority, it makes sense to cast him as an anomaly within the social contract tradition, and an illiberal thinker at base. After all, the social contract tradition is an exemplar of modern liberal political theory because it accords individual liberty normative priority. All individuals, it is argued, are naturally free to govern themselves; thus, restrictions on liberty, especially the sort required by sovereignty, require the consent of the governed in order to be justified. No amount of power, regardless of how it is used or whether it serves to protect the people, can establish right or title.

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[309] Hoekstra, "The De Facto Turn in Hobbes's Political Philosophy," 50.
[310] Ibid.
[311] See also: EL xiv.10, 13; DC i.14.

On this front, however, the standard interpretation is liable to an obvious response — Hobbes does frequently cite consent as the determining factor in establishing a right to rule. As discussed in the foregoing chapter, he argues that all human beings "naturally love liberty" (L xvii.2) and are only obligated by voluntary agreements, indicated by "some voluntary and sufficient sign or signs" of will (L xiv.7). Additionally, when discussing the status of a conqueror in battle — the paradigmatic example of overwhelming might — he argues that dominion requires covenant: "It is not therefore the victory that giveth the right of dominion over the vanquished, but his own covenant. Nor is he obliged because he is conquered...but because he cometh in, and submitteth to the victor" (L xx.11).

This response, however, is unlikely to save Hobbes from his critics due to the controversial nature of his understanding of consent. He equates consent with *mere* voluntary action, or any action "which proceedeth from the *will*" (L vi.53). Yet he rejects the idea that the will is a distinct faculty, or dependent in any other way upon a rarefied conception of human reason. Instead, the will is simply the last appetite or aversion in deliberation, the process by which an individual contemplates the "diverse good and evil consequences of doing or omitting" something, relative to her own desires (L vi.49-53). This at least seems to result in an overly broad understanding of consent, according to which, unless an individual is bound and in chains, any action she takes counts as voluntary.[312] Such a reading is additionally supported Hobbes treatment of certain

[312] I intend to argue that Hobbes's concept of voluntary action or consent is not nearly as broad as it seems and there are conditions limiting when an individual can reasonably be understood to have given her consent.

agreements made under duress as consensual.[313] He dismisses the objection that, "all such covenants as proceed from fear of death or violence are void," by claiming that if this were true, "no man in any kind of commonwealth could be obliged to obedience" (L xx.1). Conquest and power are simple facts of history, and a covenant undertaken for the sake of self-preservation is eminently rational. Finally, and on this same basis, he recognizes the validity of tacit, or inferred, consent when the life of the individual in question is entirely in the hands of another.[314] It is, accordingly, unlikely that Hobbes's concept of consent alone could serve as a normative criterion of legitimacy robust enough to quiet accusations that he is a *de facto* theorist of authority. In Hoekstra's words, Hobbes stretches the concept of consent until it is "vanishingly thin."[315]

Moreover, recent neo-republican authors such as Philip Pettit and Quentin Skinner have raised the stakes by arguing that consent is not enough for political legitimacy, at least not unless it demands respect for the sort of liberty that is most fundamental to human beings as members of a political society — namely, autonomy.[316]

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[313] See, especially, Hobbes's argument that "Covenants, entered into by fear, in the condition of mere nature, are obligatory" (L xiv.27).

[314] This is in large part what leads to the belief that Hobbes conflates effective power with the right to rule. Hoekstra notes: "We can see here why contemporaries say that Hobbes holds that the power to rule constitutes the right to rule: *might implies consent, and consent confers right, therefore might implies right*." See: Hoekstra, "The De Facto Turn in Hobbes's Political Philosophy," 49.

[315] Ibid., 67.

[316] Actually, to be more accurate, both Skinner and Pettit attempt to go beyond the notion of consent because of their skepticism about tacit consent. However, their reasons for considering the standard of non-domination in governance ultimately relate to concern over the same set of issues that motivated early modern political theorists to look to consent as a standard, namely the belief that individual interests must be considered when evaluating the legitimacy of authority and the structure of political institutions. For more on their respective attacks on Hobbes's concept of liberty and its relation to consent see: Quentin Skinner, *Hobbes and Republican Liberty* (Cambridge: Cambridge University Press, 2008); Pettit, *Made with Words: Hobbes on Language, Mind, and Politics*.

Individuals must be able to identify with the authority and laws by which they are governed and see them as in some sense their own. As Pettit puts it, legitimacy cannot attain unless the power in question conforms to the principle of non-domination in governance. He argues that even if a government refrains from using coercion to violate an individual's negative liberty (i.e. freedom from interference),[317] as long as that same government *could* interfere in the affairs of citizens *arbitrarily*, i.e. without consideration of their "welfare and world-view," it still falls short of full legitimacy.[318]

Hobbes is an obvious target for neo-republicans because of his view that sovereignty, by definition, requires individuals to cede the right to private judgment. While each subject can be said to "own" sovereign actions, this is because they have authorized the sovereign to act in their stead. That is, Hobbes uses the mechanism of authorization to involve subjects in the actions of the sovereign, yet many view the relation between Hobbesian sovereign and subject as hopelessly unilateral. In her influential writing on the concept of political representation, Hannah Pitkin claims that Hobbesian authorization falls short of true representation because it functions to subsume the individual wills of subjects into that of the sovereign, such that, "when the sovereign wills, the commonwealth wills, and all of the subjects through him."[319] This view is echoed throughout the literature; it is supposed that Hobbesian subjects, as such, cannot

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[317] Note, it is implied here that any violation of negative liberty automatically violates consent. Where an individual has given her consent, she has acted as an agent, and thus the limitation on her liberty is an important sense also the result of her liberty. For example, if an individual establishes a withdrawal limit on her own bank account to promote good financial choices, she is limited her own future freedom, and authorizing another (namely, the bank) to enforce this limitation.

[318] Philip Pettit, *Republicanism: A Theory of Freedom and Government*, Oxford Political Theory (Oxford: Clarendon Press, 1997), 56.

[319] Pitkin, "Hobbes's Concept of Representation—Ii," 904.

have political agency.[320] His critics find further evidence favoring this supposition in Hobbes's discussion of the "liberties of subjects," specifically his claim that such liberty consists only in freedom *from* the law. Where the law is silent "men have the liberty of doing what their own reasons shall suggest for the most profitable to themselves" (L xxi.6; L xxi.10). In contrast to the autonomy of citizens praised by Pettit, then, Hobbes's "liberty of subjects" is inherently unpolitical.

Altogether, then, the textual evidence appears damning. Hobbes says enough to suggest the view that power is sufficient for establishing legitimate political authority. Nevertheless, this interpretation leaves several of his most prominent commitments unexplained. Besides his recurring insistence on the importance of consent (which is complicated by the foregoing discussion, *but* can't be explained away on that basis), there remains his extended treatment of the laws of nature, the theoretical centerpiece of *Leviathan*. The ability to enforce these laws, once again, is the main draw of sovereignty; but Hobbes continues to reference their content as vital guidelines to the *maintenance* (not just the institution) of a stable commonwealth. In fact, he turns to the laws of nature most often, first when discussing the virtues of a judge, as when he declares that a "good judge" must have "*a right understanding* of that principal law of nature called *equity*" (L xxvi.28); and, second, when giving an account of sovereign duties. He states, in no uncertain terms: "The office of the sovereign (be it a monarch or an assembly) consisteth in the end for which he was trusted with the sovereign power, namely, the procuration of *the safety of the people*, to which he is obliged by the law of nature" (L xxx.1). This statement is then supplemented by a number of specific claims about good laws and wise

[320] For a recent example, see: Green, "Authorization and Political Authority in Hobbes."

governance. How can someone so committed to sovereign absolutism also make such strong evaluative claims? In what follows, I will look to Hobbes's account of the generation of sovereignty in an attempt to answer this question.

Part II. Re-examining Hobbes's Argument for Absolute Sovereignty

i. Generating Leviathan (A Response to the Charge of Personal Authority)

To begin with, it is important to remember that Hobbes views his theory of sovereignty as part of a civil *science*, one which avoids making presuppositions about social and political entities, and instead begins from first principles. His opening moves are thus humble. He limits himself to claims about human beings insofar as they exist by nature, or outside of established commonwealth.[321] Individuals are the basic building blocks in his social ontology, from which all other associations or systems (political or otherwise) are built. This reminder should also underscore the dependence of Hobbes's civil science on a prior science of human nature. Certain facts about human nature must constrain proper reasoning about political ends.[322]

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[321] I am not using the term "natural person" yet because it is unclear to me that individuals can rightly be called natural persons prior to the initial sovereign-making covenant. Hobbes, after all does not discuss the concept of a natural person until the final chapter in the first part of *Leviathan*, immediately prior to his discussion of the institution of a sovereign. And he defines a natural person as someone who is capable of owning and taking responsibility for his or her actions, which in turn implies the possibility of obligation. See: L xvi.1-2.

[322] This fact is often lost in the shuffle, or trivialized, due to a desire to view Hobbes as the progenitor of a modern civil science which stands *independent* of any other discipline or body of knowledge (this is thus the diametrically opposed position to those who espouse the unity thesis, where Hobbes's accounts of the various science are unified by the foundational concept of *conatus*. For a defense of the independent status of civil science, see: Tom Sorell, "Hobbes's Scheme of the Sciences," in *The Cambridge Companion to Hobbes*, ed. Thomas Sorell (Cambridge: Cambridge University Press, 1996). I am more inclined to agree with the unity thesis. After all, the existence of politic bodies (i.e. commonwealths) results directly from

In order to expand his social ontology, Hobbes considers two ways for a disparate multitude of individuals in a state of nature to join together and form groups. First, where individuals hold a shared goal or their interests align, they might use their collective powers to act together in pursuit of this goal. However, each retains his or her own distinct will. In other words, they hold no binding obligations (*in foro externo*). Since the principle of social cohesion is mere shared interest, group members cannot be expected to remain loyal once their interests cease to align. Hobbes refers to this as an association or concordance of wills (L xvii.4; DC v.3-5). Second, and by contrast, individuals can form a true *union* through contract, or, more specifically, covenant.[323] In doing so, they alienate the bulk of natural right and combine their distinct wills into a single *public will*, one which must be represented by a common ruler. This agreement is then punitively enforced by the common ruler, whose dictates parties to covenant are now obligated to follow as law. Commonwealth, of course, is Hobbes's paradigmatic example of such a union, and the sovereign is the all-important public person.

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covenant — a subject which Hobbes clearly treats as belonging under the heading of a *science of human nature*. Not only does he discuss covenants and contracts within the portions of text devoted to understanding human nature, but he provides a detailed taxonomy of the different sciences (in Chapter IX of *Leviathan*, entitled "*Of the several Subjects of Knowledge"*), which illustrates the relationship of dependency at issue. Hobbes's science of man seeks knowledge of the "Consequences from the qualities of *men in special*" and he further divides the topic into two sub-specialties: (1) The study of the "Consequences from the *passions* of men" (i.e. ETHICS) and the study of the "Consequences from *Speech*"— namely, contracting practices (Hobbes's "*Science* of JUST and UNJUST"). It also seems clear, given his explanation of the origin and nature of human speech, that one cannot cleanly separate contracting practices from ethics; for the passions directly pertain to the content of speech, and inform Hobbes's normative account of the proper uses and (conversely) the "abuses" of speech.

[323] Covenant is a subspecies of contract, distinguished by the timing of the parties' performance. In covenant, one or both parties promise to deliver the thing in the future (i.e. only the right is transferred).

Yet the initial sovereign-making covenant is far from straightforward. It seems paradoxical for individuals in full possession of natural right to thus subject themselves; and the exact source of their obligation is also unclear, i.e. why are the terms of covenant suddenly binding, when no previous promises or agreements had such force? Under what conditions is this unique covenant possible in the first place? Hopefully, a closer look at the fundamental drive for self-preservation — *conatus* or endeavour — will shed some light on both questions, since to the extent that this drive constrains voluntary action, it also delimits the possibilities for valid covenant.

Thus far I've only discussed how the drive for self-preservation is cashed out in terms of perceivable behavior. Human beings pursue the objects of our appetites and avoid those of our aversions. But I have not examined the content of self-preservation, or what exactly individuals are aiming for when they pursue this universal goal. Between his earlier works and *Leviathan,* Hobbes's thought undergoes a subtle evolution on this precise point. While he consistently views the drive for self-preservation as justification for natural right, within *Elements of Law* and *De Cive* his characterization of the content of self-preservation focuses almost exclusively on physical survival. In *Elements of Law*, he declares death as the worst of all evils and argues on this basis that, "it is not against reason that a man doth all he can to preserve his own body and limbs, both from death and pain. And that which is not against reason, men call RIGHT, or *jus,* or blameless liberty of using our own natural power and ability. It is therefore a *right of nature*: that every man may preserve his own life and limbs with all the power he hath" (EL xiv.6). This same line of thought is present in his claim that no individual, even in commonwealth, can be "bound" to kill or otherwise betray her own life (DC vi.13). By

the time he writes *Leviathan,* however, whenever Hobbes talks about self-preservation and natural right, he takes care to elaborate that more than mere survival is at stake. For instance, he asserts that the "voluntary actions and inclinations of all men tend, not only to the procuring, but also to the assuring of a *contented life*" (L xi.1, emphasis mine); individuals are driven to seek after "the means of so preserving life as not to be weary of it" (L xiv.8); and, outside established commonwealth, each enjoys the natural right not just to secure her own life but also the "means of living" (L xiv.18). Self-preservation, it would seem, is better construed as a drive to maximize one's well-being, or to secure the means of a thriving existence.[324]

By shifting his emphasis from survival to general welfare, Hobbes clarifies the extent of the role of self-preservation in regulating the rational deliberations, and hence the voluntary actions, of individuals.[325] Recall his definition of 'voluntary action' or 'act of will' as the end product of deliberation. A mind in the process of deliberation experiences a stream of alternating appetites and aversions, corresponding to "the diverse good and evil consequences of the doing or omitting of the thing propounded" (L vi.49). Each of these moments counts as an inclination, but until the individual has acted she does not have a will. Note, however, that under conditions of extreme uncertainty, such as in a state of nature, the process of deliberation is obstructed by the fact that it has no

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[324] Hobbes explicitly appeals to general welfare rather than mere survival when he enumerates the "passions that incline men to peace". He states: "The passions that incline men to peace are fear of death, desire of such things as are necessary to commodious living, and a hope by their industry to attain them" (L xiii.14).

[325] My assertion that Hobbes ascribes to a broad view of the drive towards self-preservation as inclusive of one's general well-being (and not mere survival) should not be conflated with the claim that Hobbes ascribes to a theory of rationality as "welfare maximization." See: Claire Finkelstein, "A Puzzle About Hobbes on Self-Defense," *Pacific Philosophical Quarterly* 82, no. 3&4 (2001): 347.

regular, foreseeable end. From the perspective of an individual within such conditions, that is, all discrete actions resulting from consideration of what conduces to her short-term well-being are part of one long chain of deliberation over the perpetual goal of self-preservation, which, broadly interpreted to include general welfare, could in principle extend ad infinitum.[326]

The plain conclusion is that individuals in a state of nature cannot rightfully have a will or act voluntarily.[327] This is also why Hobbes maintains they can't take on any binding obligations. All contracts and covenants depend for their validity on whether or not the parties involved have given a sufficient sign of will, such that anyone could clearly understand their intention. If the initial sovereign-making covenant is to be

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[326] Again, this account only applies to a state of nature situation. In commonwealth, the existence of sovereign authority and civil law establishes relative certainties, or rules and a system of enforcement which subjects can count on when deliberating about self-preservation. The intelligibility of political order allows for individuals to make dependable predictions about the behavior of other individuals.

[327] This is a controversial claim, and to my knowledge has not been explicitly forwarded within the literature. It is also worth noting that this claim provides grounds to question the very personhood of individuals in a state of nature prior to the initial sovereign making covenant; Hobbes defines a *natural person* as one "*whose words or actions"* may be considered as his or her own. That is, in order to count as a person, one must be able to claim ownership and, conversely, be held responsible for his or her actions. And where voluntary action is impossible, so too is ownership/responsibility. Nevertheless, my interpretation is supported by the text. The only possible exception is first-person performer covenants in the state of nature — i.e. Hobbes claims that in circumstances where two people are involved in a mutual covenant (where both parties promise future performance), if one party actually holds up her end and performs first, then this renders the covenant valid and the other is obligated to perform as well. However, even in this circumstance I would argue that my interpretation still holds. Promises (even those taking the form of mutual covenants) do not and cannot *directly oblige* in a state of nature. The parties can speak the words of covenant, but this alone is not a sufficient sign of will. Neither party *can* truly have a will. In discussing first-person performer covenants, Hobbes does acknowledge that sometimes one party may actually perform on her promise, but, to be clear, he thinks it is utterly irrational for the first party to perform; in doing so she acts against her own interests since she cannot reasonably expect the other party to similarly follow through. However, the other party no longer has reason to fear the non-performance of the first, and for this reason he or she is obligated to honor the initial promise. Thus, to sum up, I would claim that in this special case, the second party is actually *not* in a state of nature situation with regard to the first and can indeed have a will or act voluntarily.

successful, then, it requires a social context stable enough that individuals' deliberations concerning self-preservation *could* terminate in an act of will which generates obligations.

Hobbes attempts to provide for this requirement in *Leviathan* by delineating a model of covenant containing *two* analytically distinct stages. Here is how he explains it:

> This is more than consent, or concord; it is a real unity of them all, in one and the same person, made by covenant of every man with every man, in such manner as if every man should say to every man *I authorise and give up my right of governing myself to this man, or to this assembly of men, on this condition, that thou give up thy right to him, and authorize all his actions in like manner*. This done, the multitude so united in one person is called a COMMONWEALTH, in Latin CIVITAS. This is the generation of that great LEVIATHAN, or rather (to speak more reverently) of that Mortal God to which we owe, under the Immortal God, our peace and defence (L xvii.13).

Note that he treats the alienation of natural right and the authorization of the sovereign as two separate acts within a single covenant. That is, although contemporaneous acts, they involve distinct terms of agreement. It is my contention that a careful reading of this passage shows the logical priority of the alienation of natural right. Moreover, analyzing the immediate consequences of both stages, and how they function together, provides a compelling institutional alternative to the standard interpretation of Hobbes's sovereign as a personal authority.

Hobbes indicates the central importance of the alienation of natural right by enshrining it within the second law of nature, dictating contract as a means to peace. This is explicitly an agreement of *each* individual with *each* other individual, qua natural persons; the sovereign is only involved obliquely, as a third-party beneficiary.[328] I will have more to say about the specific benefit it receives shortly. At the moment, however, the crucial point is that the individual parties themselves are responsible for generating order from chaos. The mutuality contained in the conditional statement "*when others are so to*" precipitates the stable social context necessary for a valid covenant. And from this act, or as an immediate consequence of the terms of their agreement, a set of relations emerges, a network of obligations that ties together all the individuals involved.

When Hobbes speaks of 'the people' as a unified entity, rather than a disparate multitude of individuals, it is precisely this set of relations that he is referring to.[329] There is no such thing as a people by nature, because relations as such do not have independent existence, nor are they reducible to any property or properties of the real entities involved.[330] However, the fact that Hobbes's concept of the people refers to something as abstract as a set of relations is obscured within the standard interpretation explained above in large part because it tends to resolve the two stages of the initial covenant into one. Hobbes's model of covenant is often treated as an agreement between individuals to *directly* institute some natural person or group as their sovereign representative. The

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[328] Larry May, "Hobbes's Contract Theory," *Journal of the History of Philosophy* 18, no. 2 (1980): 196.

[329] Christine Chwaszcza makes this same point, although to somewhat different ends, in her recent article: Christine Chwaszcza, "The Seat of Sovereignty: Hobbes on the Artificial Person of the Commonwealth or State," *Hobbes Studies* 25, no. 2 (2012).

[330] This fact is often cited as evidence of Hobbes's extreme absolutism, since in denying the natural existence of the people, as such, he also dismantles the dominant historical justification for collective resistance against an abusive sovereign.

unity of this natural person or group is then thought to be what provides the people, and hence commonwealth, with its own unity and agency.[331] But such a reading is mistaken; it treats commonwealth and sovereignty as one and the same, and then fails to adequately explain the special status of either as political/legal entities, i.e. *artificial persons*.[332]

To explain, I turn to Hobbes's account of personhood and representation, from Chapter XVI of *Leviathan*. When defining the concept of a person, Hobbes significantly does not rely on the idea of rational agency simply speaking. Instead he defines a person as anyone, "*whose words or actions are considered either as his own, or as representing the words and actions of another man, or of any other thing to whom they are attributed, whether truly or by fiction*" (L xvi.1). Again, then, this is a concept that depends on abstract relations, namely the capacity to own and conversely be held accountable for words and actions. Hobbes then claims that many things, not only human beings, can have the status of person.[333] He clarifies his point by further distinguishing between "*natural*" and "*feigned* or *artificial"* personhood (L xvi.2). An individual who takes responsibility for words or action she has performed herself is a natural person. However, if she speaks or acts in the name of anyone or anything else, then she must be considered

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[331] The following statement from Hobbes's theory of representation is often quoted in support of this view: "A multitude of men are made *one* person, when they are by one man, or one person, represented so that it be done with the consent of every one of that multitude in particular. For it is the *unity* of the representer, not the *unity* of the represented, that maketh the person *one*"(L xvi.13).

[332] My claim is that both the sovereign and commonwealth are artificial persons, although of somewhat different sorts. The sovereign is an artificial person since it personates or represents commonwealth and acts in its name. It's existence as such a representative is a legal fiction and the rights and competencies that attach to the office are founded on the basis of this legal status and have no natural correlates or predecessors. Commonwealth — i.e. the unity of the people —is a "person by fiction" since it has no real existence, independent of its representation by the sovereign. It too is a legal entity whose form is given only be the legal relationships that exist between (i) individual subjects, each with each; and (ii) individual subjects and the sovereign.

[333] Indeed, he states: "There are few things that are incapable of being represented by fiction."

to act as an artificial person (Ibid.).[334] Artificial persons are essentially actors playing a role — they personate or represent another individual or thing. [335] Examples include: a lawyer representing a client, a guardian acting for a minor, and an overseer managing a building or piece of property.

Hobbes is clear, however, that all artificial persons must be *authorized* to act for the principal in question. Typically, this relationship is straightforward — a natural person grants a second party the right to represent her, and in doing so agrees to own or *author* all that the representative does in her name. Yet it cannot always be so straightforward. The case of a guardian acting for a minor, as well as that of an overseer managing a building or piece of property introduces further complexity into Hobbes's theory. Both are examples of representation by *fiction* (as alluded to in Hobbes's definition of persons quoted above). In both cases, the principal is not literally capable of

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[334] Lev.xvi.2. There is some controversy over how to interpret Hobbes's definition of artificial persons, due to an inconsistency between *Leviathan* and his later work *De Homine.* The full quote from *Leviathan* reads: "When [the words and actions] are considered his own, then is he called a *natural person*; and when they are considered as representing the words and actions of another, then is he a *feigned* or *artificial* person." However, in *De Homine,* Hobbes states: "*(A) person is he to whom the words and actions of men are attributed, either his own or another's;* if his own, the person is *natural*; if another's, it is *artificial*"(DH.xv.85). The problem lies with the word "attributed" since it implies that the artificial person owns and is responsible for the words and actions of another, whereas the reverse is implied in the *Leviathan* — the artificial person acts in the name of someone else, who ultimately owns those actions and words. I believe the controversy is mostly semantics, and that Hobbes's definition in *De Homine* is a hasty simplification of his original position. The point, stated as broadly as possible, is that artificial persons ultimately do not act in their own name. For more on the controversy, however, see: Quentin Skinner, "Hobbes and the Purely Artificial Person of the State," in *Visions of Politics: Hobbes and Civil Science* (Cambridge: Cambridge University Press, 2002); David Runciman, "What Kind of Person Is Hobbes's State? A Reply to Skinner," *Journal of Political Philosophy* 8, no. 2 (2000); "The Concept of the State: The Sovereignty of a Fiction," in *States & Citizens*, ed. Quentin Skinner and Bo Stråth (Cambridge: Cambridge University Press, 2003).

[335] Hobbes uses these terms interchangeably, as when he states: "(A) *person* is the same that an *actor* is both on the stage and in common conversation; and to *personate* is to *act*, or *represent*, himself or another and he that acteth another is said to bear his person, or act in his name"(L xvi.3).

responsible speech and action, and therefore cannot serve as the author in the relationship.

The question thus stands, who has the right to authorize the representation of such "irresponsible" entities? Hobbes's answer is complicated. When it comes to "children, fools, and madmen...he that hath the right of governing them may give authority to the guardian" — i.e. the parents or relatives of such individuals (L xvi.10). Similarly, he argues that the "owners or governors" of "things inanimate" have the right to authorize their representation (L xvi.9). The fiction, then, is that the principal is a person in the relevant sense. However, maintaining this fiction has very real consequences. As David Runciman aptly puts it, all others involved (artificial and natural persons alike) "are required to act in such a way as to give the impression that the person by fiction can take responsibility" — they must provide the principal with "an enduring presence in the world of responsible action."[336] Moreover, in Hobbes's explicit words, this includes a duty on the part of the representative to "*procure [the] maintenance*" of the person by fiction (Ibid., emphasis mine).

At this point, we can return to the concepts of commonwealth and sovereignty. For the commonwealth, is just such an "irresponsible" entity, or person by fiction. The second stage of Hobbes's initial sovereign-making covenant requires that the sovereign be authorized to represent this nascent entity. And the multitude of distinct individuals alone hold the right to do so, since it is their many agreements to alienate natural right that generate the abstract set of relations mentioned above, i.e. the unity of the people, or commonwealth. It would not be inappropriate, in fact, to characterize the relationship

[336] Runciman, "What Kind of Person Is Hobbes's State? A Reply to Skinner," 272.

between the multitude and commonwealth as one of dominion or ownership.[337] Commonwealth, then, is a person by fiction, the sovereign is an artificial person, and the individual subjects in commonwealth are the true authors of all that the sovereign does in the name of commonwealth. In each case, we are talking about an abstract political/legal entity defined by its relations to the others. This is no less true of the sovereign (or the subject for that matter), simply because its status as such is built atop natural personhood.

This point deserves emphasis. The prevalence of the personal authority interpretation is surprising, considering how Hobbes constantly reminds the reader of the *sui generis* nature of the sovereign — i.e. the fact that it possesses rights and capacities that could not be held by any other entity, especially not a natural person or group. The essential rights of sovereigns are dictated by its role as the public person or representative of commonwealth. They could not result from any simple act of transfer or authorization, where all parties involved are natural persons, since no individual in the state of nature holds the right to rule over others.[338] As Christine Chwaszcza puts the point: "Considered as a human being, no individual *has the right* to make law, to punish a transgressor of the

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[337] Hobbes states: "For that which in speaking of goods and possessions is called an *owner* (and in Latin *dominus*, in Greek *kurios*), speaking of actions is called author. And as the right of possession is called dominion, so the right of doing any action is called AUTHORITY. So that by authority is always understood a right of doing any act; and *done by authority*, done by commission or license from him whose right it is" (L xvi.4). For more on the multitude's dominion, see: "Hobbes's Theory of Representation: Anti-Democratic or Proto-Democratic?," 23.

[338] To clarify, the alienation of natural right does not grant any new right to the sovereign office holder. It could not possibly do so, since the sovereign retains its own full original natural right. Likewise, authorization does not involve the proffer of any new right to the office holder, as Hobbes reminds us when he discusses the nature of sovereign punishment: "Again, the consent of the subject to sovereign power is contained in these words *I authorize, or take upon me, all his actions*, in which there is no restriction at all of his own former natural liberty; for by allowing him to kill me, I am not bound to kill myself when he commands me. It is one thing to say *kill me, or my fellow, if you please*, another thing to say *I will kill myself, or my fellow*"(L 21.14).

laws, to declare war, to sign an interstate peace treaty and so on."[339] These are rights, then, that are irrevocably attached to the institutional role or office of sovereignty, and limited by its end purpose.

Now that the relation between the sovereign and commonwealth is clear, it remains to examine the relationship between the sovereign and individual subjects. On this front, the sovereign's status as a third-party beneficiary within the initial covenant deserves a closer look. The fact that Hobbes's sovereign is not actually party to covenant, and hence retains full natural right is seen as the height of backwards absolutism. Yet the status of a third-party beneficiary implies indebtedness, not unmitigated tyrannical authority. There may be no "mutual transferring of right" between sovereign and subject, but Hobbes has a separate conceptual mechanism for explaining the relationship that must attain between the two.

Sovereignty, is a legal status and an office; the sovereign is the bearer of the public person of commonwealth. Given that individual subjects are responsible for bringing commonwealth into existence, they also generate the office of sovereignty. And the privilege of holding this office is their *free-gift* to whichever natural person(s) they authorize to represent them all or to assume the new status of a public person. Hobbes states: "When the transferring of right is not mutual, but one of the parties transferreth in hope to gain thereby friendship, or service from another…this is not contract but GIFT, FREE-GIFT, GRACE, which words signify one and the same thing" (L xiv.12). The idea of a free gift might not seem to have any bite to it, but this is precisely Hobbes's point.

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[339] Chwaszcza, "The Seat of Sovereignty: Hobbes on the Artificial Person of the Commonwealth or State," 135.

The achievement of political order is propped up on nothing but artifice and good will.[340] The recipient of a freely transferred right is "enabled to merit only by the benignity of the giver" who was not "bound by any law, or covenant to give it" (L xiv.17; L xxi.3). The point might be rephrased thus: although freely given sovereignty does not come without strings-attached. The strings may not be the strong bonds that obligate subjects in commonwealth to behave "justly," that is, to obey the civil laws and honor contracts, but they are strings nonetheless.

Note that *Justice* is Hobbes' third law of nature, placed immediately after the directive to contract as a means to peace. This is a logical placement since it enjoins the keeping of covenants and thus instructs new subjects as to their duties. The fourth law of nature prescribing *Gratitude* may initially seem less clear, but I am suggesting that it be read as a guide to the proper authority of sovereign office. As this is an important passage, I will quote it in full. Hobbes states:

> As Justice dependeth on antecedent covenant, so does GRATITUDE depend on antecedent grace, that is to say, antecedent free-gift; and is the fourth law of nature, which may be conceived in this form *that a man which*

[340] This is not to say that there is no normative order outside of the state. Hobbes's laws of nature do always bind *in foro interno* and they ultimately serve as the source of the authority of law in general, given my reading of the nature of sovereign office. His assimilation to the tradition of legal positivism is, therefore, too quick. However, normative and legal order are not coextensive, and Hobbes does probe the limits of legal order with more assiduousness than many political philosophers nowadays. He recognizes the problem of appealing to legal concepts to discuss human relations at the brink. This ought to be seen as part of the greatness of his legacy -- we have inherited an important and pressing question from Hobbes, and it is one that is too often neglected: How ought we to theorize the relationship between political authority (and the norms which define it) and effective power? I will discuss Hobbes's response to this question at length below. It is also worth noting that we can accept his theory of the nature of political authority and indeed also recognize the importance of distinguishing it from effective power, but reject (in full or part) his recommendations for the administration of government.

> *receiveth benefit from another of mere grace endeavor that he which giveth it have no reasonable cause to repent him of his good will*. For no man giveth but with intention of good to himself, because gift is voluntary, and of all voluntary acts the object is to every man his own good; of which, if men see they shall be frustrated, there will be no beginning of benevolence or trust; nor consequently, of mutual help, nor of reconciliation of one man to another; and therefore they are to remain still in the condition of war, which is contrary to the first and fundamental law of nature, which commandeth men to *seek peace*. The breach of this law is called *ingratitude*, and hath the same relation to grace that injustice hath to obligation by covenant (L xv.16).

This passage, first of all, makes it explicit that the office of sovereignty is structured by a basic duty to achieve the ends for which individuals institute government — peace, security, and well-being. Indeed, Hobbes later states: "The office of sovereign ... consisteth in the end for which he was trusted with sovereign power, namely, the procuration of *the safety of the people*" (L xxx.1).[341] He further clarifies the meaning of safety. In line with the broad interpretation of self-preservation detailed above, Hobbes argues that safety is not equivalent to "bare preservation," but instead must include access to "all other contentments of life, which every man by lawful industry, without danger or hurt to the commonwealth, shall acquire to himself" (Ibid.).

[341] And unlike his contemporaries, such as Henry Parker, Hobbes clearly means individual safety, not that of the people as an organic community.

Second, the conclusion to this passage classes ingratitude on the part of sovereign office-holders as conceptually analogous to injustice on the part of citizens. This is an important comparison. By acknowledging the possibility of sovereign ingratitude at all, Hobbes admits that the actions of sovereign office-holders can be seen as exceeding the scope of their proper authority. That is to say, he assumes a conception of sovereign authority as the bounded authority of an office.

Nevertheless, Hobbes's critics are correct to point out that the ties do not bind. For while sovereigns are obliged by the laws of nature, there is no one to hold them accountable.[342] Hobbes does not and cannot offer up any sort of legal regulations for ensuring that the sovereign makes good on its duties. In order to avoid a regress problem that would invite a return to the state of nature, sovereigns must be without external limitations to their power. My task moving forward is thus to clarify how Hobbes can hold an account of the bounded and fiduciary authority of sovereign at the same time that he endorses absolutism.

iv. Distinguishing Authority from Power (A Response to the Charge of De Factoism)

There are two important senses in which a Hobbesian sovereign is still absolute. First, even given that the authority of sovereign office is bounded by natural law, the sovereign always enjoys supremacy. In other words, it is still the highest authority in the land and the only official source of law and order. Second, sovereign office-holders alone retain full natural right and, on that basis, Hobbes argues they ideally possess the greatest

[342] In Hobbes's words, the sovereign need only "render an account thereof to God, the author of that law, and to none but him" (Ibid).

amount of effective power humanly possible.[343] As I hope to show in this section, however, such power is not a surety and this fact has consequences for how we think about Hobbesian absolutism. In contrast to authority (*potestas/imperium*), which one is either entitled to or not, the sovereign's effective power (*potentia*) can in fact wax and wane.[344]

Now, despite the prevalent view of Hobbes as a *de facto* theorist of authority, he distinguishes between the two concepts of authority and power from the start, within the subtitle to *Leviathan,* i.e., "The Matter, Forme, *and* Power *of* A Commonwealth Ecclesiasticall *and* Civil".[345] This is no mere turn of phrase. It nicely encapsulates the structure and three-fold goal of the work. As Hobbes states in the introduction, his goal is to explain: (1) the "*matter*" and *"artificer"* of commonwealth, "both of which is *man*"; (2) the form of commonwealth, especially "the rights and just power or authority of a sovereign"; and, finally, (3) "what it is that *preserveth* and *dissolveth* it" (L intro.2).[346]

My claim is that he follows through with this third stated objective via a detailed analysis of effective power. In a recent article, Sandra Field argues that over the course of

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[343] When Hobbes uses the term 'absolute' to describe the sovereign, he is almost always using it to refer to the former sense of sovereign supremacy. When describing the effective power of the sovereign, however, he claims that the it is the greatest amount of power afforded to any human person or group. See, for instance, L .x.ii.

[344] See Sandra Field's excellent account of this distinction: Field, "Hobbes and the Question of Power." Field points out that Hobbes uses the terms *potestas* or *imperium* to reference sovereign supremacy, rights, entitlements, and privileges. On the other hand, when it comes to the sovereign's effective power to coerce obedience, he speaks of *potentia*

[345] See the original frontispiece to the English version of Leviathan— the title page of the so-called Head Edition.

[346] In other words, *Leviathan* as a whole encapsulates three separate areas of study: a science of human nature; political science, or the study of the formal structure of commonwealth (including the rights and duties of sovereigns and subjects/citizens); and an analysis of effective power. One might even characterize this third area as a social science, since it concerns the way power accrues to both individuals and groups.

his career Hobbes grew increasingly aware of the importance of complementing his theory of political authority with a practical analysis of effective power dynamics.[347] Instead of the cursory treatment found in *Elements of Law* and *De Cive*, in *Leviathan* he devotes the entirety of Chapter X to the topic. He also moves away from defining effective power in terms of "natural faculties" and instead emphasizes its social constitution.[348] In the first place, he claims that "the power *of a man* (to take it universally) is his present means to obtain some future apparent good" — a pragmatic nod to the decisiveness of effects. Moreover, such power can be either "natural," and a function of the "eminence of the faculties of body or mind," or "instrumental," in which case it need not bear any connection to natural abilities. Examples of the latter include, "riches, reputation, friends, and the secret working of God, which men call good luck" (L x.1).

The main benefit of either, however, is found within a social context. In *Leviathan*, power is an asset which stands to compound over time due to its effects on the thinking and behavior of others. As Hobbes puts it: "The nature of power is in this point like to fame, increasing as it proceeds; or like the motion of heavy bodies, which, the further they go, make still the more haste" (Ibid.). Take, for instance, his claim that the "(r)eputation of power, is power, because it draweth with it the adherence of those that need protection" (L x.5)· Likewise, popularity is power, and so is "what quality soever maketh a man beloved or feared of many, or the reputation of such quality...because it is

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[347] Field, "Hobbes and the Question of Power," 71-75.

[348] Field states: "*Leviathan* observes that a person's causal effectiveness is primarily constituted by the aid or forbearance of the informal constellation of people around them. Correspondingly, rather than restrict the ground of individual power to the faculties internal to that individual, I argue that *Leviathan* offers a new analysis by which human power is a socially constituted and potentially shifting property." Ibid., 70.

a means to have the assistance and service of many" (L x.7).[349] These examples demonstrate the way in which instrumental power can become untethered from natural faculties, since reputation of power, popularity, adoration, etc., remain effective whether or not they are substantiated by actual strength, intelligence, or virtues of character. We also see how the growth of such power could be exponential precisely because socially constituted. Individuals tend to honor those seen as powerful, capable, or admirable, and this practice of honoring magnifies the appearance that the subject in question really is powerful, capable, or admirable. In turn, more people are likely to honor him or her, leading to ever greater increases in that subject's actual effective capacity.[350]

Finally, these examples provide cause to reflect on the efficaciousness of even those powers that are based in natural faculties.[351] For, regardless of how superior one's capacities, they will never be a major source of effective power beyond their immediate ends unless recognized and valued as "eminent" by others.[352] In short, then, Hobbes's point is that power is not a stable object of possession, but instead a fluctuating commodity which tracks the belief and opinion of others — something which is not held but instead circulates in a social context.

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[349] Lev.x.7

[350] Note that Hobbes entitles Chapter X, "*Of Power, Worth, Dignity, Honour, and Worthiness*". He goes on to define "worth" or "value" as a function of other's estimation — "a thing dependent on the need and judgment of another" — and "honour" as the act of valuing someone "at a high rate."(L .x.16-17). We honor others through displays of obedience, praise, love, fear, admiration, etc. The whole point of placing this discussion of worth and honour in the context of a larger discussion of effective power is to draw attention to the way in which these social practices of assigning value actually constitute power.

[351] For example, great wit and intelligence could lead one to develop skill in the sciences. And while the sciences could be a great source of power, Hobbes argues that they are not "eminent" or respected by those who do not possess scientific knowledge, and as a result they are but "small power"(L x.14).

[352] Recall Hobbes's definition of virtue: "Virtue generally, in all sorts of subjects is somewhat that is valued for eminence, and consisteth in comparison"(L viii.1).

Applied to Hobbes's account of the initial sovereign-making covenant, this line of thought reveals the relationship between sovereign authority and power to be a complicated balancing act. The sovereign's rights and privileges, after all, exist at the boundary of political order, and just as there is no legal enforcement mechanism to ensure that office-holders make good on their duties, so too there is no guarantee that they will be able to successfully wield their rights. Hobbes thus faces the question of how office-holders might best achieve and maintain the amount of "effective power commensurate to this authority."[353] And answering this question requires taking into account the support of subjects.

To explain, note that the sovereign's effective power is an aggregate of that of its subjects.[354] When talking about the sovereign, Hobbes speaks of "strengths united" — e.g., "(t)he greatest of human powers is that which is compounded of the powers of most men, united by consent in one person, natural or civil, that has the use of all their powers depending on his will" (L x.3).[355] This is because subjects covenant to both stand out of the sovereign's way and to obey its commands. So, at the same time that their alienation of natural right provides the sovereign with unimpeded liberty, or freedom from

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[353] Field, "Hobbes and the Question of Power," 62.

[354] Hobbes perhaps states the point best in the following: "For the power [*potentia*] of the citizens is the power [*potentia*] of the commonwealth, that is, his power who holds the sovereignty [*summum...habet imperium*] in the commonwealth (DC x.16). This quote also has the benefit of illustrating Hobbes's use of the terms *potentia* and *imperium* to distinguish between sovereign power and authority. Finally, note that Hobbes echoes this claim frequently in *Leviathan*, and makes it especially important in the context of sovereign duties. He notes, for instance, that the sovereign's "strength and glory" consists in the "vigour" of its subjects (L xviii.20), and the sovereign thus acts against its own best interests qua public person when it creates laws or implements policies that would weaken subjects or harm their interests.

[355] In this passage, Hobbes's reference to a person "natural or civil" is his way of succinctly stating that the sovereign office holder may be either an individual or group. It is not an avowal of personal authority

interference,[356] their pledge of obedience entitles the sovereign to command their individual powers.[357] Note, however, that regardless of Hobbes's use of the language of transfer to describe this pledge, it is not a literal transfer, but instead a promise of future performance on subjects' part.[358] Subjects cannot magically endow the sovereign with their own strengths and competencies. The sovereign is entitled (at least *prima facie*) to subjects' obedience, but its effective power, i.e., its ability to "*use the strength and means of them all, as [it] shall think expedient, for their peace and common defence*," is a function not of right, but of whether or not subjects actually do obey.[359]

The sovereign's power, then, is not truly absolute. Indeed, Hobbes is openly concerned with the extent to which it might vary. Among the threats to the stability of commonwealth, he lists most prominently that sovereigns might sometimes be "*content with less power than to the peace and defence of the commonwealth is necessarily required*" (L xxix.3). He uses the term *potestas* here and immediately alludes to a situation where a sovereign does not claim in full the essential rights of its office or cedes certain rights to another governing body. Yet it seems his real concern is with effective

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[356] This is because office-holders alone retain full original natural right.

[357] There are limits to what a sovereign may command, which follow from a proper understanding of the bounds of sovereign office. These limits, are given by natural law and the inalienable right to self-preservation and I will have more to say about their actual purchase in the following section, where I address structural and pragmatic limitations on sovereign power.

[358] As Hobbes states when describing the nature of covenant: "There is a difference between transferring of right to the thing and transferring ... of the thing itself. For the thing may be delivered together with the translation of the right (as in buying and selling with ready money, or exchange of goods of lands); and it may be delivered some time after" (L xiv.10).

[359] Field argues that Hobbes's did not include any such distinction in his earlier texts, or at least was not careful to develop it. It is only in *Leviathan* and later works where he is careful to mediate theory with a concern for power dynamics in practice. For instance, in both *Elements of Law* and *De Cive* Hobbes has a tendency to assume effective power will follow automatically from sovereign right, in large part because he assumes the sovereign will be able to play on subjects' fear and thus ensure their obedience. Field, "Hobbes and the Question of Power," 67-69.

power, or *potentia*, since a sovereign's failure to claim its rights, especially its failure to educate subjects in the ground and purpose for these rights,[360] enables others to leach the support of the populace, thus paving the way to sedition.[361] This is also in large part why he deems "monopolies," "potent subjects," and the "excessive greatness of a town" to be latent threats. They each draw from the well of people power and to that extent lessen the sovereign's ability to act unimpeded (L xix.19-21).[362]

In order to keep these threats at bay, a sovereign may always legislate against the formation of monopolies, or create policies meant to limit the ability of subordinate associations to amass power.[363] It could even use military force. Such solutions are temporary at best, however, since the social landscape Hobbes describes in *Leviathan* is

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[360] The number of times that Hobbes comments on the sovereign's duty to educate subjects in the basis for sovereign authority is remarkable. It is a consistent refrain throughout all his works, but especially in *Leviathan*. I will discuss his treatment of civic education in the following section.

[361] Hobbes details several examples of sovereigns who have lost office as a result of not claiming in full the rights of sovereignty, and in each he cites other powerful individuals or factions as decisive in instigating sedition, because of the support they already enjoy. His first example is telling. He states: "So was *Thomas Becket,* Archbishop of *Canterbury*, supported against *Henry* the Second by the Pope, the subjection of ecclesiastics to the commonwealth having been dispensed with by *William the Conqueror* at his reception, when he took an oath not to infringe the liberty of the church"(L xxiv.3). I draw attention to this example since it makes clear the reasons behind Hobbes's Erastianism (the belief that the clergy must always be subordinate to state government). His point is that to the degree the clergy enjoys special political rights, it is also able to amass a reservoir of popular support that necessarily exists at the expense of that same support for the sovereign.

[362] See Lev.xix.19-21. Moreover, the formation of such groups is a threat regardless of whether or not they are formed with the purpose of opposing the sovereign.

[363] Hobbes uses the terms "system" and "association" when describing social groups. He offers a summary taxonomy of types of systems in Chapter XXII of *Leviathan*. The most dangerous for the sovereign are unlawful, private systems, or citizen constituted groups that are directly outlawed, as well as so-called "irregular systems." The latter are interesting since they are informal and often arise organically without any leadership or representation. They are, in other words, inevitable. Hobbes claims that irregular systems are generally legal, unless they form around some interest that is harmful to commonwealth, or if they involve a "considerable" number of people (L xxii.4)

one where individuals naturally seek to increase their power,[364] and spontaneously ally themselves with others in order to do so.[365] Moreover, since most daily interactions involve some form of honoring or dishonoring others, it is impossible to entirely avoid the accumulation of power by private subjects.

The lesson in all of this is that the sovereign faces a constant challenge; it is never assured sufficient power to exercise the rights of office and must work to foster widespread popular support.[366] Acknowledging this point, however, does not entail the position that authority reduces to power, or is constituted by power. Hobbes's realism about power dynamics, in other words, is not a declaration of *de factoism*. Rather it follows from his insistence on consent. If the sovereign's effective power erodes to the point that it cannot protect subjects, Hobbes does not claim that it is thereby

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[364] Hobbesian individuals do not desire power merely for its own sake, but instead because it is a general means to any end one can imagine. The accumulation of power is a guiding principle of social life because power is a security buffer. Hobbes states: "So that in the first place, I put for a general inclination of all mankind, a perpetual and restless desire of power after power, that ceaseth only in death. And the cause of this is not always that a man hopes for a more intensive delight than he has already attainted to, or that he cannot be content with a moderate power, but because he cannot assure the power and means to live well, which he hath present without the acquisition of more" (L xi.2).

[365] Field calls such social groupings "associations of allegiance" and comments that they have "greater durability than associations for specific ends." See: Field, "Hobbes and the Question of Power," 78. I agree, but would add that this greater durability is only had within established commonwealth due to the radically decreased threat of inter- (and intra-) group conflict that comes with the regular enforcement of established civil laws. Thus, it is interesting and ironic that the sovereign's existence actually *enables* the formation of more stable associations which, in turn, could threaten the political order that gave them life. This problem is different than the volatility involved in a state of nature, and far more intractable.

[366] We can also use Hobbes's reflections on the social constitution of effective power to clarify some of the more controversial passages which are often cited as evidence of a *de facto* theory of political authority. For instance, when Hobbes states that "the dominion of men adhereth naturally" to a power "irresistible", he is not declaring for *de facto*-ism but rather offering a descriptive observation about human behavior. Individuals do tend to honor powerful others, and are more likely to grant them political authority. Of course, no one truly has irresistible power (as Hobbes, again, makes clear he is talking about God when he uses this phrase), but even so those who are naturally more powerful still only hold political authority if it is granted them, as a free gift.

automatically stripped of authority. Rather he claims that subjects' obligations may no longer be binding. Consent is only possible where individuals are reasonably assured of protection in their life and well-being.

v. Limitations on Sovereign Liberty?

Hobbes's critics will surely complain that none of the above mitigates the total liberty sovereign office-holders enjoy to overstep the boundaries of their authority without fear of sanction. In this section, however, I argue that Hobbes is also committed to the *rule of law*, which he theorizes as part and parcel of commonwealth.[367] These positions need not be at odds. Hobbes's dual analyses of authority and effective power yield a set of structural and prudential limitations on the actions of office-holders, which, I claim, hold regardless of ultimate sovereign legal immunity.

To begin with, the liberty of sovereigns from the "artificial chains" of civil law is often taken to be identical to that of individuals in the state of nature, in that both retain full natural right (L xxi.5). Hobbes himself equates the two; for instance, when he argues that the liberty so often praised by "the ancient Greeks and Romans" and idealized by his own contemporaries, is properly understood as "the liberty of the commonwealth, which is the same with that which every man should have if there were not civil laws, nor commonwealth at all" (L xxi.8). Still, alongside the bulk of his explanation of sovereign

[367] See: Goldsmith, "Hobbes on Law." David Dyzenhaus, "Hobbes and the Authority of Law," in *Hobbes and the Law*, ed. David Dyzenhaus and Thomas Poole (Cambridge: Cambridge University Press, 2012); "Hobbes and the Legitimacy of Law," *Law and Philosophy* 20, no. 5 (2001); Lars Vinx, "Hobbes on Civic Liberty and the Rule of Law," in *Hobbes and the Law*, ed. David Dyzenhaus and Thomas Poole (Cambridge: Cambridge University Press, 2012).

status, this statement reads as hyperbolic. There is at best a loose analogy at work, not an identity.[368]

Note that in context Hobbes uses the comparison between sovereigns and individuals in the state of nature to mock those of his fellows desirous of total liberty. He points out they might easily have it by taking leave of the protections of civil society. Yet given the undesirability of this prospect, he actually highlights a relevant dis-analogy. Liberty in the state of nature goes hand-in-hand with a social climate wherein there can be, "no propriety, no dominion, no *mine* and *thine* distinct, but only that to be every man's that he can get, and for so long as he can keep it" (L xiii.13).[369] Such liberty stands in the way of individuals realizing their autonomous life goals and accordingly has a negative value.[370] The liberty of sovereigns, however, is praiseworthy insofar as it enables peace, "commodious living," and the individual pursuit of happiness. One is thus a "profitable" liberty, while the other is decidedly not.[371]

Moreover, because the liberty of sovereigns is valuable *solely* as a means to the end of peaceful political order, it is already more circumscribed and conditional than that of individuals in the state of nature. Peace, again, is not an empty formal concept within Hobbes's repertoire; it has substantive content (dictated by the justificatory reasons that

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[368] I speak only of the status of sovereign office-holders vis-à-vis subjects; the analogy is far more straightforward when it comes to the relationship between sovereigns. That is, in the international arena it may plausibly be said sovereigns stand in a state of nature relationship relative to one another. Even this, however, is open to debate.

[369] Lev.xiii.13

[370] On this front Hobbes is not exactly the opponent of republicanism that he is made out to be.

[371] Hobbes uses the term "profitable" to describe any good the value of which is purely instrumental. He states: "So that of good there be three kinds: good in the promise, that is *pulchrum*; good in effect, as the end desired, which is called *jucundum, delightful*; and good as the means, which is called *utile, profitable*; and as many of evil; for *evil* in promise is that they call *turps*; evil in effect and end is *molestum, unpleasant, troublesome*; and evil in the means *inutile, unprofitable, hurtful*" (L vi.8).

motivate individuals to submit to the initial covenant), and clearly defined guidelines (i.e. the laws of nature, the only true means to lasting means). Tom Sorell sums up the point nicely, "there is more to constraint than obligation" — "to the extent that the liberty of sovereigns is a genuine good, it does not involve quite the perfect discretion to judge what is necessary for security as Hobbes's theory extends to individuals in the state of nature."[372]

In a nice bit of irony, Hobbes even alludes to the existence of necessary constraints on office-holders within his often-cited defense of sovereign legal immunity. He argues:

> For having power to make and repeal laws, [the sovereign] may, when he pleaseth, free himself from that subjection by repealing those laws that trouble him and making new; and consequently he was free before. For he is free that can be free when he will; nor is it possible for any person to be bound to himself, because he that can bind can release; and therefore, he that is bound to himself only is not bound (L xxvi.6).

This statement is not exactly the resounding defense of the sovereign's absolute freedom from law one might expect; it is mitigated by the requirement that when the sovereign acts it must act via legislation. In other words, Hobbes does not portray office-holders as enjoying the license to simply do as they please or follow the whims of their private will.

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[372] Tom Sorell, "The Burdensome Freedom of Sovereigns," in *Leviathan after 350 Years*, ed. Tom Sorell and Luc Foisneau (Oxford: Clarendon Press, 2004), 183, 85.

Instead they must first go through the trouble of repealing laws they dislike and promulgating new ones.[373]

We can generalize here: the actions of sovereign office-holders must conform to the nature of the office if subjects are to understand them as authoritative.[374] For example, the requirement that the sovereign's will be made known via law follows from the initial covenant; individuals pledge obedience to the sovereign qua *public person*, and they accordingly must be able to recognize any command as issuing from the will of this public person in order for it to effectively obligate them. Hobbes reinforces this point by defining civil law as, "*to every subject those rules which the commonwealth hath commanded him (by word, writing, or sufficient sign of will) to make use of, for the distinction of right and wrong*" (L xxvi.2-3)[375] By using the term 'commonwealth' in this

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[373] Hobbes has the student in *Behemoth* ask his teacher about whether tyrants must always be obeyed, even in the case of a command to execute one's own father. The teacher responds: "This is a case that need not be put. We never have heard of any King or tyrant so inhuman as to command it. If any did, we are to consider whether that command were one of his laws. For by disobeying Kings, we mean the disobeying of laws, *those his laws that were made before they were applied to any particular person*; *for the King…commands the people in general never but by precedent law, and as a politic, not a natural person.* And if such a command as you speak of were contrived into law (*which never was, nor never will be*), you were bound to obey it, unless you depart the kingdom after the publication of the law, and before the condemnation of your father" (51, emphasis mine). I see Hobbes here as commenting on legal form and noting its limitations, especially when he states so emphatically that there will *never* be such a law. He must mean that no such command could ever be issued in the form of a general law. See below for Hobbes's polemic against the specificity and growing arbitrariness of the common law tradition in his day.

[374] Rephrased, this is to say that subjects need to be able to recognize the actions of office-holders as issuing from the public person of commonwealth. Throughout *Leviathan* (and in previous works as well) Hobbes treats intelligibility as a crucial requirement for obligation. Wherever individuals cannot understand the content of a command, or where the source of the authority to issue commands is unclear, they cannot reasonably consent. Even when it comes to the *in foro interno* obligations imposed by the laws of nature, Hobbes stresses intelligibility. He states: "[T]o leave all men inexcusable [the laws of nature] have been contracted into one easy sum, intelligible even to the meanest capacity; and that is, Do not that to another, which thou wouldest not have done to thyself"(L .xv.35).

[375] It is also worth recalling that Hobbes defines "COMMAND" as, "where a man saith do this, or do not this, without expecting other reason than the will of him that says it"(L xxv.2). He also

context, he indicates the source of sovereign authority and, correspondingly, subjects' political obligation.[376]

Several basic structural limitations follow. In order to effectively communicate the *public* will of commonwealth (i.e. provide "sufficient sign" that a given command proceeds from the public will), sovereign office-holders are required to (1) legislate in general terms, applicable to all;[377] and (2) ensure that civil laws are widely promulgated, together with accompanying sanctions.[378] Likewise, (3) sovereign office-holders must

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argues that "it followeth manifestly that he that commandeth pretendeth thereby his own benefit; for the reason of his command is his own will only" (Iibid.). Applied to sovereign command, these statements appear *prima facie* to support the interpretation of personal authority. But a closer reader reveals that Hobbes cannot mean the private will of office-holders, but instead the public will that individuals agreed to obey within the initial covenant. He further stipulates that for any command to count as civil law, it must be apparent to subjects that it issues from this public will — the sovereign must give "sufficient sign" of its will qua public person of commonwealth. The important question is thus: Are there rational criteria governing what counts as a "sufficient sign" of will in this case"? That is, what would be necessary for a subject to recognize a command as issuing from the sovereign will?

[376] Hobbes is often classed as a forerunner to modern legal positivism, since he endorses the view that law in general consists in sovereign command (L xvi.2). Legal positivists argue that law exists wherever rules have been "posited" by an authority. In its broadest application, positivism impacts how one theorizes political and legal order itself — whether or not legal order exists is a function of whether or not there is a de facto ruler able to effectively command. While one can find the general contours of positivist thought in Hobbes's political theory, it is not clear that he actually holds to its most fundamental tenets. He indeed does treat the validity of law as a function of its source, but, again, this source is the public person of commonwealth, or the "*persona civitatis,"* whose will is supposed aligned with the laws of nature. Moreover, as already argued above, he clearly does not think that the cessation of violence or the existence of a de facto ruler who can successfully issue commands is enough for peaceful political order.

[377] The idea of a "common power" or "direction by one judgment," demands that all subjects answer to the same command, and for this to be possible, the content of such command must be de-personalized. However, the necessary generality of law does not entail that all laws must be addressed to all subjects at all times. The content of law must be stated generally to apply to anyone to whom the law is pertinent. As Hobbes states: "For every man, seeth that some laws are addressed to all the subjects in general, some to particular provinces, some to particular vocations, and some to particular men, and are therefore laws to every of those to whom the command is directed, and to none else"(L xxvi.4).

[378] See, especially: L xxvi.15 and L xxvii.5. Only unwritten laws, i.e. the laws of nature, need not be promulgated, but this is because Hobbes claims they may be known and understood through reason alone. Note, also, that where civil laws are not properly promulgated, Hobbes argues subjects have grounds for total excuse from punishment. He states: "From this, that the law is a command, and a command consisteth in declaration or manifestation of the will of him that

demonstrate consistency in their communication of the public will. That is, subjects are not truly able to know their duty if there is partiality in the adjudication and enforcement of law, thus sovereign office-holders are required to respect the equality of subjects before the law (L xv.23, 32; L xxvii.16). Finally, (4) since written law (due to its generality) requires interpretation, office holders must appoint subordinate judges for the interpretation and application of civil law to specific cases (L xxvi.21).

It may not be clear how this last point counts as a structural limitation. Consider, however, that legal interpretation invariably leads to questions of validity and authenticity. Faced with competing views it is natural to ask which is correct, or even which is better. Hobbes is often thought to avoid addressing the sticky business of legal interpretation by making authenticity merely a function of whether or not a judgment is handed down with the approval of the sovereign. Questions of interpretation, in other words, lose their insoluble nature if we need not concern ourselves with the merit of arguments. All that would matter is the final statement of office-holders.

In one sense, this view is warranted. When it comes to sovereign-made law, Hobbes states the only rule or standard of interpretation is a proper understanding of the "final causes" for which the law was ordained. Since the sovereign is the sole legislator, any office-holder must be presumed to have this understanding: "To him, therefore, there cannot be any knot in the law insoluble, either by finding the ends to undo it by, or else by making what ends he will (as *Alexander* did with his sword in the Gordian knot) by

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commandeth…we may understand that the command of the commonwealth is law only to those that have the means to take notice of it" (L xxvi.12). Accordingly, "natural fools," "children," and "madmen" are automatically exempt from obligation, as is "every man from whom any accident (not proceeding from his own default) hath taken away the means to take notice of any particular law is excused, if he observe it not; and to speak properly, that law is no law to him" (Ibid).

the legislative power, which no other interpreter can do" (L xxvi.22). Nevertheless, and this is key, sovereign office-holders *do not* enjoy this same automatic *infallibility* when it comes to the laws of nature.

To explain, first consider Hobbes's account of the relation between natural and civil law, especially his statement that, "(t)he law of nature and the civil law contain each other and are of equal extent" (L xvii.8).[379] On the one hand, it is clear how civil law is "contained" within the law of nature. Justice, the third law of nature, demands the performance of covenants made and, "every subject in commonwealth hath covenanted to obey the civil law" (Ibid.). Hobbes, however, argues the more complicated position that the law of nature is also contained in civil law and indeed gives civil law its life and force, hence why the two are of "equal extent". His claim is that sovereign office-holders must translate the content of the law of nature into truly obligatory civil law, for without such translation the experiment of commonwealth would fail: "For in the differences of private men, to declare what is equity, what is justice, and what is moral virtue, and to make them binding, there is need of the ordinances of sovereign power, and punishments to be ordained for such as shall break them" (Ibid.).

The frustrations of legal interpretation, then, cannot be wholly eliminated. Hobbes holds that the laws of nature, whether they are thought of as God's commands or conclusions of reason, are universal, immutable, and eternal.[380] Accordingly, sovereign office-holders *can* get it wrong. There is a tension in Hobbes's thought, since he still argues that sovereign commands, even those that are iniquitous or offensive to natural

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[379] In the literature this is sometimes referred to as the "dual containment thesis."
[380] Additionally, one might argue based on Hobbes's account that individuals in the state of nature do not have the right to authorize the sovereign to act contrary to the laws of nature.

law, are necessarily valid and "just" (at least as long as they are formulated in compliance with the first three structural requirements mentioned above).[381] The same is true of the rulings of sovereign-appointed judges. He is careful, however, to stipulate that no command or judgment is to be presumed righteous or binding in perpetuity, as in the following lengthy exhortation:

> 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 it. Neither (for the same reason) becomes it a law to other judges, though sworn to follow it. F*or 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 tittle of the law of nature shall pass, for it is the eternal law of God. *Therefore, all the sentences of precedent judges that have ever been cannot all together make a law contrary to natural equity, nor any example of former judges can warrant an unreasonable sentence, or discharge the*

[381] Again, a Hobbesian sovereign cannot be accused of injustice since their actions have been authorized by subjects. This should not raise as much ire as it does, however, because Hobbes's concept of justice is formal and procedural. When discussing sovereign abuses he refers to other natural law limitations, and especially the more substantive concept of "equity". For more on the role of equity in Hobbesian jurisprudence see: Larry May, *Limiting Leviathan: Hobbes on Law and International Affairs*, First edition. ed. (Oxford: Oxford University Press, 2013).

> *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* (L xxvi.24).

There are two aspects of this passage that deserve special attention. First, Hobbes draws a distinction between civil laws enacted for the efficient administration of human affairs (i.e. those dealing with all things "mutable"), and others that touch on natural law prescriptions. He obviously thinks the latter are foundational to legal order.[382] His focus on equity as well the subsequent example he offers — involving an innocent individual, sanctioned after being acquitted of wrong-doing — suggest that he is talking about basic political morality and takes the laws of nature to be a litmus test, not for the validity of a command or judgment, but instead for its standing legality.[383] The failure of a sovereign office-holder or subordinate judge to deal fairly with one subject, cannot become precedent for doing the same to others in future cases.

Second, Hobbes argues that this holds regardless of previous sovereign directions. Subordinate judges are obligated to study the law of nature independently, and to the best of their ability hand down judgments consonant with equity. They cannot be

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[382] The foundational role of natural law, or it crucial function of structuring the legal order as such, has been overlooked in part because of a difference in terminology. Modern readers might view Hobbes's disdain for the idea of "fundamental law" as a denial that certain laws are foundational to commonwealth (L xxvi.34), but this is to mistake his meaning and intent. The phrase "fundamental law" was legal terminology typically used by the common lawyers of Hobbes's day to reference prescriptive, unwritten custom that was thought to have its authority independent of either king or parliament, and from "time immemorial." See my discussion of Henry Parker's use of the "fundamental law" in Chapter 2 above.
For more on this subject see: Corinne Comstock Weston, "England: Ancient Constitution and Common Law," in *The Cambridge History of Political Thought 1450-1700*, ed. J.H. Burns and Mark Goldie (Cambridge: Cambridge University Press, 1991).…

[383] By legality, here, I mean whether or not a command or judgment has the "intrinsic character of law." I take this phrase from: Michael Oakeshott, "The Rule of Law," in *On History and Other Essays* (Indianapolis: Liberty Fund, 1999), 172. See also: Dyzenhaus, "Hobbes and the Authority of Law," 194.

"discharged" from this duty since it is held toward the sovereign qua public person. Note that while Hobbes does maintain the authentic interpretation of law depends upon sovereign will, i.e. the "intention of the legislator" (L xxvi.22), he also explicitly discusses the ambiguity of this phrase — "the doubt is of whose reason it is shall be received for law" — and goes on to clarify:

> It is not meant of any private reason, for then there would be as much contradiction in the laws as there is in the Schools; nor yet (as Sir Edward Coke makes it) an 'artificial perfection of reason, gotten by long study, observation, and experience'…For it is possible long study may increase, and confirm erroneous sentences; and where men build on false grounds, the more they build the greater is the ruin (L xxvi.11).

Instead, the "intention" or "reason" that matters belongs to "our artificial man, the commonwealth" (Ibid.).

Judges thus play an important role in maintaining the integrity of legal order within *Leviathan*, as recently noted by philosopher and legal scholar David Dyzenhaus.[384] In fact, Hobbes uses the phrase "fidelity to law" to encapsulate the force of judges' obligation to commonwealth and further states that it would be a "great contumely" (i.e. an incitement to warfare) for any judge to interpret the sovereign's will in any way that

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[384] For more on the importance of subordinate judges in *Leviathan*, see: "Hobbes and the Authority of Law," 204. Dyzenhaus argues that subordinate judges should be seen as "completing the sovereign act of law-making as part of the artificial person of sovereign," and he further reminds us that Hobbes refers to judges, in his introduction, as the "artificial joints" that necessarily complement the "artificial soul" of sovereignty. Note that other ministers of government could play a similar role; e.g. councilor. Gabriella Slomp, "The Inconvenience of the Legislator's Two Persons and the Role of Good Counsellors," *Critical Review of International Social and Political Philosophy* 19, no. 1 (2015).

cannot reasonably be made consonant with equity (L xxvi.14, 26; L xv.20). A good judge, "ought, therefore, if the word of the law do not authorize a reasonable sentence, to supply it with the law of nature" (L xxvi.26)[385] The role of judge is in this respect much like the office of sovereignty; both are structured by the ends for which they are ordained.[386] And since the end of arbitration is not merely the settlement of disputes as they arise, but instead ensuring long-term peace, subordinate judges can indeed be seen to pose a structural limitation on the actions of sovereign office-holders.[387]

Now, Hobbes takes certain prudential limitations on the actions of sovereign-office holders to be the functional corollaries of the above structural limitations. In order to see how, it helps to return to the distinction between authority (*potestas*) and power (*potentia*). When sovereign office-holders defy the above structural limitations, they are attempting to rule not as a Hobbesian sovereign, but as personal authorities and likely to

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[385] Note that Hobbes has an incredibly demanding account of the qualities that make a good judge. He states: "The things that make a good judge (or good interpreter of the laws) are, first, a right understanding of that principal law of nature called equity, which, depending not on the reading of other men's writings but on the goodness of a man's own natural reason and meditation, is presumed to be in those most that have had most leisure, and had the most inclination to meditate thereon. Secondly, contempt of unnecessary riches and preferments. Thirdly, to be able in judgment to divest himself of all fear, anger, hatred, love, and compassion. Fourthly, and lastly, patience to hear; diligent attention in hearing; and memory to retain, digest and apply what he hath heard"(L xxvi.28).

[386] Dyzenhaus, for example, states: "Once the conflicting parties' consent constitutes an arbitrator, that person is not simply a natural individual. Rather, he is an artificial person in that he takes on a role in which at least four of the other laws of nature are implicated. Law 11 is the law of equity…And because, says Hobbes, 'every man is presumed to do all things in order to his own benefit, no man is a fit arbitrator in his own cause,' which gives us Law 17. For the same reason, Law 18 holds that no man is to be judge who '*has in him a natural cause of partiality'*. Law 19 is that in controversies of fact, the judge must five credit to the witnesses. These last four laws are both procedural and substantive in that they affect, without determining, the content of any decision by an arbitrator who is faithful to the moral discipline of his role." See: Dyzenhaus, "Hobbes and the Authority of Law," 195-96.

[387] As I argue in the preceding chapter, the protection of individual civil rights is a necessary part of ensuring long-term peace. The role of subordinate judges should extend to this protection as well.

deleterious effect. Hobbes uses the phrase "act of hostility" to describe instances where office-holders act by right of nature but without authority, and he notes that subjects might, "when they have strength enough," endeavor to respond in turn (L xxx.4).[388] If sovereign office-holders are to maximize popular support and effective power, then, prudence at the very least requires they generally respect the boundaries of office.[389] But it may require even more.

Prudence, as Hobbes defines it, is the ability to use past experience to make informed decisions in the present. It is a type of "*foresight,*" which involves predicting the likely consequences of one's actions, differing from superstitious prognostication in that "the best guesser" is "he that is most versed and studied in the matters he guesses at" (L iii.7).[390] Note, however, that for sovereign office-holders prudential reasoning is complicated by the fact that its object is the best interest of commonwealth as a whole; where the individual is generally unimpeachable when it comes to the question of her

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[388] Hobbes first discusses acts of hostility in comparison to authoritative sovereign actions in Chapter XXVIII: *Of* PUNISHMENTS *and* REWARDS. Note that the sovereign right of punishment is often treated as entirely a function of original natural right. This view stems from Hobbes's claim that, since no individual can alienate the right to self-defense, the sovereign is never authorized to physically harm or imprison subjects. He states: "It is manifest therefore that the right which the commonwealth…hath to punish is not grounded on any concession or gift of the subjects…For the subjects did not give the sovereign that right, but only (in laying down theirs) strengthened him to use his own as he should think fit, for the preservation of them all" (L xxviii.2). Nevertheless, the very fact that it depends upon the initial covenant and is justified by the end of peace and security provides basis for distinguishing between authoritative punishment, and illegal acts of hostility. The natural right of sovereigns is protected, that is, by the existence of the state, and is thus different from that of the natural right of an individual in the state of nature. It is surely not a legal claim right or even a constitutionally merited privilege of office, but the preconditions of its existence do imply the burden of obligations — even if we must class these as prudential rather than strictly legal.

[389] Of course, there may be times when overstepping the bounds of official authority could benefit commonwealth, and this is one of the reasons why Hobbes, as an absolutist, defends office-holders' retention of full natural right.

[390] Hobbes treats prudence as highly valuable, even though its conclusions fall short of the certainty of pure deduction.

own benefit, a prudent sovereign needs to constantly assess the actual needs, inclinations, beliefs, and practices of subjects.

This challenge is reflected in Hobbes's prioritization of sovereign duties. The foremost asserts sovereigns should govern, "by a general providence, contained in public instruction, both of doctrine and example, and in the making and executing of *good laws*, to which individual persons may apply their own cases" (L xxx.2, emphasis mine). Especially noteworthy in this statement, is his emphasis on public instruction. We have already seen that Hobbes deems all properly formulated sovereign commands valid and just law; but the measure of good law is more exacting. Namely, "(a) good law is that which is *needful* for the *good of the people*, and withal *perspicuous*" (L xxx.20). Both criteria strongly indicate that prudence recommends sovereigns to heed the latent dominion of the multitude over commonwealth and, in a practical if not formal sense, earn their continuing consent.[391]

It is, of course, woefully imprudent for sovereign office-holders to govern in a way that forces subjects to fall back upon their inalienable rights, by creating laws or policies that put subjects in harm's way, require them to submit willingly to torture or imprisonment, forgo access to goods necessary for thriving, or perform any dishonorable deed (L xxi.12-21). However, any laws that over-regulate private life or which benefit an office-holder at the expense of the people also sow the seeds of discontentment and revolt. As Hobbes puts it, the purpose of law, "is not to bind people from all voluntary action, but to direct and keep them in such motion as not to hurt themselves by their own impetuous desires, rashness, or indiscretion, as hedges are set, not to stop travelers, but to

[391] Note, I will explain what I mean by continuing consent below.

keep them in the way" (L xxx.21). It is incumbent on the prudent sovereign to carefully consider which laws are actually "needful" then, and moreover to teach subjects the purpose behind its laws, since whether or not the general populace can understand and appreciate a given law is just as important as its actual needfulness.[392] This is what Hobbes means by the "perspicuity" of good law, which consisteth…in the declaration of the causes and motives for which it was made" (L xxx.22).

Across Hobbes's writings, one can find a regular and urgent appeal to public instruction, as well as the suggestion that the lack thereof is partially responsible for the turmoil of his own times (DC xiii.9; L xxx.6-9). This exceedingly positive appraisal of sovereign transparency stands out as radical against the backdrop of absolutism. Its shock value lies in the way Hobbes harnesses the beliefs and opinions of the multitude as a safeguard against office-holders ruling as personal authorities. Nevertheless, he is also at pains to argue that the sovereign's good really is the same as that of the people,[393] and that clear, truthful civic education is an important means to maintaining the supremacy of

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[392] One might even say that this point is the one which Hobbes's is most at pains to communicate to his reader, and of course the reader he cared the most about could likely have been the young prince Charles II. It is also worth noting that Hobbes recognizes, in this prudential advise, the limits of civil science, which can provide a model of the ideals that should structure the political state, but cannot thereby see them implemented. Much depends on sovereign office-holders knowledge of human nature and willingness to learn from experience. Recall Hobbes's statement from the introduction to *Leviathan*: "He that is to govern a whole nation must read in himself, not this or that particular man, but mankind, which though it be hard to do, harder than any language or science, yet when I shall have set down my own reading orderly and perspicuously, the pains left another will be only to consider if he also find not the same in himself. For this kind of doctrine admitteth no other demonstration."

[393] Hobbes further states: "A law may be conceived to be good when it is for the benefit of the sovereign, though it be not necessary for the people; but it is not so. For the good of the sovereign and the people cannot be separated. It is a weak sovereign that has week subjects, and a weak people whose sovereign wanteth power to rule them at his will. Unnecessary laws are not good laws, but traps for money which, where the right of sovereign power is acknowledged, are superfluous (and where it is not acknowledged, insufficient to defend the people" (L xxx.21).

office.[394] The salient point, as far as absolutism is concerned, is that the essential rights of sovereignty, the markers of supremacy, are precarious and strange rights indeed, without any guarantee. It behooves office-holders, in both their public and private capacities, to carefully promote themselves, and ensure the strength of their subjects as a way of increasing their own effective power.

Nowhere is this point more convincing than in Hobbes's post-civil war dialogue, *Behemoth,* where the stakes are dramatized in a conversation between an old teacher and an eager student: "[T]he power of the mighty hath no foundation but in the opinion and belief of the people…[I]f men know not their duty, what is there that can force them to obey the laws? An army, you will say. But what shall force the army?" (B 59). Jeremy Waldron, commenting on this passage, notes that Hobbes's commitment to sovereign transparency is of a piece with his "conviction that social and political order cannot be maintained by force."[395] He further argues that we ought to read Hobbes's rationale for the perspicuity of law as articulating an early version of the liberal principle of publicity — i.e. the idea that a "well-ordered" political society is conditional upon whether or not those who are subject to its rules and laws are educated as to their content and basis, rather than left ignorant or purposefully mislead.[396]

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[394] Hobbes's commitment to sovereign transparency is consistent with his general thoughts on the nature of human progress. Consider his response to the prevalence of human error: "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" (L v.20).

[395] Jeremy Waldron, "Hobbes and the Principle of Publicity," *Pacific Philosophical Quarterly* 82, no. 3&4 (2001): 449.

[396] Ibid., 448.

I find this argument convincing, for the simple fact that Hobbes could have advocated a different strategy for winning over subjects and done so secure in the knowledge that many of his royalist contemporaries would approve. The actual business of politics, after all, lends itself to pageantry, fanfare and indoctrination; he could have easily declared the prudence of disseminating a noble myth or false ideology favorable to the sovereign.[397] There is also a strong basis in his own survey of human social behavior for taking such a position. He speaks freely (and bitterly) of the success of both the universities and the clergy in manipulating public opinion and forcing mangled truths upon the masses.[398] He could have recommended that sovereigns do the same and, as Waldron puts it, push whatever convenient doctrine stands to enhance their immediate authority, "irrespective of its truth or falsity."[399]

So why put so much stock in the prudence of thorough civil education and sovereign transparency? The answer lies in the difference between allegiance and obedience. The latter can be procured through the classic combination of fear and an elevated but false mythology;[400] subjects, however, are still likely to revolt if the opportunity to escape oppression arises, and equally so to disrupt a state mythology if faced with contradictory evidence or made to feel the dupes of political elites. Allegiance requires more.

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[397] For example, he could have followed Filmer, and affirmed the divine right of kings.
[398] See: Jeremy Waldron, "Hobbes on Truth and Civil Doctrine," in *Philosophers on Education* ed. Amelie Rorty (London: Routledge, 1998).
[399] "Hobbes and the Principle of Publicity," 451.
[400] Hobbes, of course, places great importance on fear, but while fear is surely necessary as a means to establish peace, he does not believe it is sufficient to its long-term maintenance.

Hobbes's view is nuanced, and his language by turns pessimistic and optimistic; human beings are malleable and reactionary, but also possess native good sense when not infected by false teachings; for, "(n)atural sense and imagination are not subject to absurdity. Nature itself cannot err; and as men abound in copiousness of language, so they become more wise, or more mad, than ordinary" (L iv.13). He further takes the time to explicitly oppose the opinion that the "common" or "vulgar" people cannot be made to understand political principles, arguing that it is rather "potent men" who are too in love with their own opinions and thus recalcitrant. "The people's minds," he states, "are like clean paper, fit to receive whatsoever by public authority shall be imprinted in them" (L xxx.6). Yet he does not conflate an aptitude for learning with total credulousness.

Within the jumble of Hobbes's sometimes contradictory statements about human nature, including his assessment of the competing roles of rhetoric and science in public life, one thing stands out as central — his open acknowledgement that the individual intellect remains intractably free. Subjects alienate their right to privately judge of right and wrong, or, rather, to *act* on their own judgment, but they cannot shutter their minds or ignore their natively restless calculations about well-being.[401] Thus, in order to earn allegiance rather than merely shore up obedience, prudent office-holders should respect the individual intellect and *persuade* subjects of the grounds for their authority and the

[401] Recall Hobbes's discussion of "felicity" and the restlessness of all animal life: "*Continual success* in obtaining those things which a man from time to time desireth, that is to say, continual prospering, is that men call FELICITY; I mean the felicity of this life. For there is no such thing as perpetual tranquility of mind, while we live here, because life is but motion, and can never be without desire, nor without fear, no more than without sense"(L vi.58). Such restlessness, combined with the fact that political decisions by definition are the sort which effect livelihood, should lead us to conclude that human beings cannot be expected to put up with false ideology or misguided sovereign policy for very long.

worth of their laws and policies.[402] The backbone of successful persuasion is clear, demonstrable reasoning because of its staying power in the face of subjects with minds of their own, who can "figure things out for themselves and spot a lie when they hear one."[403] But it also requires art; the sovereign must be able to move individuals by offering them a way to see their own interests as aligned with the good of commonwealth.

Indeed, Hobbes's belief in scientific progress and his pragmatic realism converge on this point. Dispute is inevitable and beliefs cannot be fully controlled from without: "A state can constrain obedience, but convince no error, nor alter the minds of them that believe they have the better reason" (B 62).[404] The point can be rephrased. Where there is a truth to be found, or better and worse ways of addressing an issue, Hobbes argues that

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[402] In fact, Waldron points out that Hobbes has multiple defenses for sovereign transparency. Not only is rational argumentation the best means to communicate with subjects who might otherwise seek the truth for themselves, but it is also the best protection against the appeal of short-term, irrational desires — which are often the first thing would-be demagogues appeal to in an effort to grab power for themselves. In order to defend, "difficult and counter-intuitive propositions about long-term interest," the sovereign's best strategy is "impeccable argumentation." Waldron, "Hobbes and the Principle of Publicity," 455.

[403] Ibid. Note, also, that there are plenty of compelling examples of badly managed sovereign lies that were likely on Hobbes's mind when writing *Leviathan.* One stands out, however, because of Hobbes's own proximity to the events. Namely, the manner in which King Charles dealt with the so-called "Forced Loan" of 1626-1627. Charles had dissolved parliament early in order to avoid the impeaching of the Duke of Buckingham. As he still needed money to finance failing wars in both Spain and France, he took the extraordinary measure of forcing subject to lend him the money, without assurance of repayment. This resulted in so much ill-will towards the monarchy, that Charles instructed two clergy members to defend the measure using what Hobbes would consider a "noble lie". Both Roger Maynwaring and Robert Sibthorp followed instructions to preach that the king's authority was divine, or derived from God, and that he was accordingly not accountable to the people. Hobbes was secretary to the Earl of Devonshire at this time and as such helped to collect the money from the Forced Loan. He no doubt had ample opportunity to observe the consequences. For more on the Forced Loan, see: J. P. Sommerville, *Thomas Hobbes: Political Ideas in Historical Context* (New York: St. Martin's Press, 1992), 9-19.

[404]Hobbes further notes the effect suppression of doctrine might have on power dynamics: "Suppression of doctrine does but unite and exasperate, that is, increase both he malice and the power of them that have already believed them."

suppression of inquiry is counterproductive. As he eloquently explains, it is either unnecessary or beyond the point; unnecessary because a strong sovereign should be able to garner support without it, and beyond the point because any office-holder who is left with no other option is not actually sovereign:

> Yet the most sudden and rough bustling in of a new truth that can be does never break the peace, but only sometimes awake the war. For those men that are so remissly governed that they dare take up arms to defend or introduce an opinion are still in war, and their condition not peace, but only a cessation of arms for fear of one another; and they live, as it were, in the precincts of battle continually (L xviii.9).

It is better, or more prudent, for sovereign office-holders to establish a guide for public reason.

A couple of important qualifications. First, Hobbes's commitment to sovereign transparency, civic education, and free inquiry does not lead him to endorse free speech. He argues vehemently for state control of public doctrine and condemns the idea that subjects have a right to openly question the sovereign, even while recognizing that such actions can be expected if office-holders fail to perform their duties.[405] Yet it is worth noting that he takes this right to entitle office-holders to root out pernicious and false doctrine, not to spread lies themselves. We can of course fault him with being overly optimistic about the likelihood that office-holders will refrain from abuse.

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[405] Waldron points out that modern day liberals assume the principle of publicity necessitates a commitment to free speech, although the principles are analytically distinct. Waldron, "Hobbes and the Principle of Publicity," 462-64.

Second, Hobbes does not entirely discount rhetoric as a mode of sovereign communication. He thinks prudent office-holders should use it to adorn and promote the truth: "For wheresoever there is place for adorning and preferring of error, there is much more place for adorning and preferring of truth" (L R&C.4).[406] This is all the more vital if a specific sovereign right is in contention. Prudence can both restrict certain sovereign actions and recommend the adoption of others. Often office-holders will need to motivate allegiance by stirring up the right sort of passions in subjects.[407]

To sum up, structural limitations constrain the actions of office-holders, qua public person of commonwealth, to the end the office itself. The force of prudential limitations, by contrast, derives from the distinction between authority and effective power. I stated above that prudence requires sovereign office-holders to earn the continuing consent of subjects, but this statement should be narrowly construed.[408] Hobbes definitely does not claim subjects may opt out of their political obligations whenever it suits their purposes. Consent is theorized as a formal standard; what matters is whether or not individuals who are motivated by their own self-preservation could rationally submit to a certain authority. If the rational conditions for consent are met, that

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[406] Hobbes's "Review & Conclusion" is a fascinating combination of Enlightenment faith in progress and reason and savvy awareness (perhaps influence by Renaissance humanism) that politics requires art to motivate the passions of men to virtuous ends.

[407] See: "Again, in all deliberations and in all pleadings the faculty of solid reasoning is necessary. For without it the resolutions of men are rash and their sentences unjust. And yet if there be not powerful eloquence, which procureth attention and consent, the effect of reason will be little. But these are contrary faculties: the former being grounded upon principles of truth; the other upon opinions received (true or false) and upon the passions and interests of men (which are different and mutable)" (L R&C.1)

[408] The idea of "continual consent" was in fact theorized during the years of the English Civil War and espoused by the Levellers. There is evidence that Hobbes was influenced by their views on this topic. See: David Wootton, "Introduction," in *Divine Right and Democracy: An Anthology of Political Writing in Stuart England*, ed. David Wootton (Indianapolis: Hackett Publishing Co., 2003).

authority is sovereign, and political obligation non-negotiable. Nevertheless, this formal standard intersects with facts about power dynamics and the actual sentiments of the populace. The rational conditions for consent could attain and yet a majority of the populace not recognize this (perhaps because of the influence of demagogues or "potent men") and thus withdraw their support. In such cases, the ability of sovereign office-holders to protect the populace would be undermined, consent would in turn become implausible, and a once legitimate sovereign lose its right to rule.[409] What emerges from all of this is a principled account of political authority which, while cautious in its approach to the topic of revolutionary change, is at base built for a period of increasing political engagement where the influence and status of the multitude cannot be ignored.

Part III. Hobbes's Ideas in Historical Context

Before closing this chapter, it is worth once again placing Hobbes's absolutism within its historical context to provide further support for my conclusion that he offers a principled account of political authority, informed by a surprisingly populist outlook. One debate is especially apposite, namely, the controversy over the status of common law in Stuart politics. Indeed, it is hard to fully appreciate Hobbes's absolutism as a response to the so-called constitutionalists of his day without first examining how these thinkers evaluate the authority of custom and historical tradition. Now, Hobbes on multiple occasions takes pains to contrast his civil science with what he calls "*civil history,*" or

[409] Hobbes in fact argues that only initial acts of revolt are unjust. All further acts are done by right of war (natural right) and are beyond the scope of legality or justice. Moreover, while Hobbes notes that if the sovereign offers responsible parties a full pardon — and gives sufficient sign of will that this pardon will be honored — then they cannot claim to act by right of war, the near impossibility of a rational subject trusting such an offer, appears to render the point moot (L xxi.17).

"the history of the voluntary actions of men in commonwealths" (L ix.2). This move is unlikely to strike modern-day readers, accustomed to distinguishing between facts and values, as significant. We tend to agree, as Glenn Burgess puts it, that "(q)uestions about the best sort of political organization or about the rightness of political policies…insofar as they are moral questions, cannot be answered by saying that in the past things were done in some particular way and that this ought to be continued."[410] Yet this was definitely not the case for Hobbes's contemporaries, who likely saw in his displacement of history a battle-line drawn, or a rejection of the belief that "values themselves had an objective status as some sort of 'fact' to be 'discovered'."[411]

This idea of the past as a repository of truths to be excavated and analyzed for application to the present characterizes early Stuart politics. It is at the heart of the common law mindset expressed in the doctrine of the ancient constitution.[412] In the first chapter I discussed how the ancient constitution was used as a pretext for resistance and also noted that despite its revolutionary application the theory was never amenable to the democratic ideal of political equality.[413] The ancient constitution was a doctrine for elites, which set limits on government only by reifying social and political hierarchies. Its partisans maintained that the English commonwealth was historically constituted (from

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[410] Burgess, *The Politics of the Ancient Constitution: An Introduction to English Political Thought, 1603-1642*, 8.
[411] Ibid.
[412] The paradigmatic statement of this view is offered by the 15th century jurist, Sir John Fortescue in his *De Laudibus Legum Angliae.* He bases the authority of common law in its antiquity alone, and characterizes the "ancient constitution" of England as a static and unchanging. For more on Fortescue's influence see: J. G. A. Pocock, *The Ancient Constitution and the Feudal Law: A Study of English Historical Thought in the Seventeenth Century :A Reissue with a Retrospect* (Cambridge: Cambridge University Press, 1987).
[413] As discussed in the previous chapter, the idea that individual subjects might hold any political status or rights as such was vehemently opposed by parliamentarians.

time immemorial) by the three estates, in order to defend aristocratic entitlements against royal prerogative.[414]

At this point, I turn to challenge the idea that the doctrine of the ancient constitution should be seen as an early harbinger of popular sovereignty.[415] My goal is to highlight the strangeness of the common law mindset, especially the assumptions that informed its reliance on custom.[416] Rather than celebrating 17th century common lawyers and constitutionalists as the forward-looking and ultimately victorious opponents of a backwards absolutism, I argue that it is rather Hobbes's absolutism, with its emphasis on first principles, that deserves credit for successfully disentangling political thought from the accidents of history and the determinations of tradition.

i.The Common Law Tradition in Stuart England

The authors of the Petition of Right (1628), a pivotal document used to air parliamentary grievances with Charles I, relied heavily on an interpretation of the 13th century Magna Carta. Yet they did not appeal to it as a "statute in the modern sense," or even a simple precedent.[417] In a clear demonstration of common law thinking, members of parliament depicted the contents of the Magna Carta, which dictated terms of peace

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[414] Most notably, the ancient constitution was used to defend the right of the House of Commons in specific, to participation in the legislative process. For more on the tenuous historical status of the House of Commons, and the evolution of its claims upon sovereignty see: Weston, "England: Ancient Constitution and Common Law," 402-03.

[415] For more on this view, see: Skinner, *The Foundations of Modern Political Thought, Volume Ii: The Reformation*.

[416] The English common law tradition, especially its evolution in the 17th century, is often cited as an intellectual forerunner to the contemporary idea of constitutionalism. There is a sense in which the idea of 'constitutionalism' does apply to Stuart England; and, of course, common law remains an important part of many contemporary legal systems. Yet this similar terminology masks deep conceptual differences.

[417] Weston, "England: Ancient Constitution and Common Law," 379.

between King John and a group of wealthy barons, as holding the force of "prescription."[418] This term was used to describe ancient rights and liberties held by inheritance, and thus neither dependent upon nor granted by the English crown. As the historian Corinne C. Weston describes, Magna Carta was understood, "not as making law but as declaring and confirming common law."[419] She further notes that, if "pressed to identify these laws," members of parliament "would have turned to the laws of Edward the Confessor," the last of the Anglo-Saxon monarchs, prior to the invasion of William the Conqueror.[420] Some even went further back; Edward himself was thought to have simply been "repairing, embellishing, and confirming" laws that had long been in practice.[421]

On its face, defending parliamentary privileges by appeal to a story of ancient origins appears a weak strategy. It demands direct evidence, and since Edward's laws were apocryphal this was an impossibility. Still, the idea of "perpetual rights and liberties" held wide appeal and there was no dearth of other historical material ripe for interpretation from a juridical standpoint. Stuart scholars sought out likely examples of "Norman confirmation of Edward's laws," combing "medieval chronicles and annals to

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[418] As Noga Morag Levine notes, it was a widespread belief at the time that Englishmen held a "birthright" to "adjudication under common law procedure (rather than alternative royal institutions)." This belief was supported by Chapter 29 of the Magna Carta, according to which "no free man may suffer interference with his property or freedom 'except by the lawful judgment of his peers and by the law of the land.' Law of the land transformed into 'due process' in some later versions of the Magna Carta, and both phrases become synonymous with common law in the view of those who challenged the authority of royal tribunals." See Noga Morag Levine, "Common Law, Civil Law, and the Administrative State: From Coke to Lochner," *Constitutional Commentary* 24 (2007): 615. For a thorough history of the evolution of common law courts, see: John H. Baker, *An Introduction to English Legal History*, 4th ed. (London: Oxford University Press, 2007).

[419] Weston, "England: Ancient Constitution and Common Law," 379.

[420] Ibid.

[421] Ibid., 381.

apply common law reasoning to whatever evidence…existed in the historical record."[422] Their efforts, while self-interested, were not disingenuous. They were informed by the assumption that history proceeds in a slow but continual evolution, and that its lessons are distilled in the form of customs.

Common law thinking, that is, postulates a deep and necessary connection between *custom* and *reason*; 17th century practitioners did not claim the common law to be authoritative out of a blind respect for custom but instead due to its presumed inherent rationality. Sir Edward Coke offers perhaps the best-known statement of this view in his *Institutes*, famously declaring: "(R)eason is the life of the law, nay the common law itself is nothing else but reason."[423] Still, much turns on the precise meaning of his appeal to 'reason' here. Commenting on the ambiguity of the term, Burgess notes it was quite typical for common lawyers to treat "all codes of positive law" (not only that of England) as rational manifestations of natural law principles, a fact that is hard to square with the vast diversity of law.[424]

Some clarification is thus necessary. At the time, the most popular explanation took its cue from a distinction first introduced by Aquinas. Some positive laws, namely those that are the same everywhere, are rational because they can be deduced directly

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[422] Ibid., 382. Weston goes on to note that seeming royal confirmation of Edward's laws was "widely perceived as the legal mechanism by which rights and liberties embodied in ancient customs had retained the legitimacy and face of the common law in the dangerous years after the Norman Conquest. The standard account of the confirmations to which everyone turned is in the preface to Coke's Eighth Reports, where he dwells on the manner in which William the Conqueror consolidated his hold on the kingdom."

[423] Edward Coke, *The First Part of the Institutes of the Laws of England; or a Commentary Upon Littleton [1628]*, ed. Charles Butler and Francis Hargrave, 18 ed. (Birmingham, Ala: Legal Classics Library, 1985), 97 b

[424] Glenn Burgess, "Common Law and Political Theory in Early Stuart England," *Political Science* 40, no. 1 (1988): 5.

from natural law. But others arise through an extended process of "determination," within which there is room for cultural difference in the choice and definition of legal terms.[425] Importantly, this process of determination was theorized as orderly and systematic.[426] Customs were selected for, since whether or not a practice or norm achieved the status of custom was a function of its longstanding, regular, and documented use.[427] The survivors of this process, it was thought, must have survived for a reason. Or as Richard Hooker puts it: "(T)hat which public approbation hath ratified, must carry the benefit of presumption with it to be accounted meet and convenient."[428]

What, then, of a foolish, excessive, or prejudicial custom? Since the presumption is in favor of its rationality, challenges must offer compelling evidence that somehow history has failed to select well. And at this point, a problem which greatly exercised Hobbes becomes apparent. Common lawyers themselves were the only ones deemed learned enough to evaluate such a challenge. In other words, the rational principle at the

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[425] Ibid., 7.

[426] This evolutionary picture is not at odds with a belief in the ancient constitution as static or unchanging. Following Pocock, the language of "immemorial custom" was stressed to such an extent that it at times obscured the way in which common lawyers themselves accounted for the inevitability of change. For example, John Selden relied upon the famous parable of the Ship of Theseus — "the essential nature of the state" was established at its founding, and while customs may change through a process of evolutionary refinement, the state and its legal system remain the same as long as it retains the same general form. For a comparative analysis of Selden's scholarship with that of Fortescue and the "Anglican School" of statecraft (which did defend a fairly literal interpretation of the unchanging nature of the English constitution), see: William Klein, "The Ancient Constitution Revisited," in *Political Discourse in Early Modern Britain*, ed. Nicholas Phillipson and Quentin Skinner (Cambridge: Cambridge University Press, 1993).

[427] Weston summarizes the point: "To be deemed prescriptive, customs must also have been exercised regularly and constantly before and after 1189; usage must have been long, continued, and peaceable without the interruption, for example, of a Norman conquest. If these conditions were met, a customary usage was established that demonstrated tacit consent; and the rights and liberties involved were allowed by the common law." See: Weston, "England: Ancient Constitution and Common Law," 376-77.

[428] Hooker, *Of The Laws of Ecclesiastical Polity*, IV, IV, 2; quoted in: Burgess, "Common Law and Political Theory in Early Stuart England."

heart of a custom need not be apparent or even accessible to average individuals. This manner of thinking is evidenced in the same passage from Coke quoted above. If we follow the text a little further he contends that the rationality of common law is not something understood to "every man's natural reason," but instead depends upon "an artificial perfection of reason, gotten by long study, observation and experience. This legal reason *est summa ratio*…because by many successions of ages it hath been fined and refined by an infinite number of grave and learned men."[429] By depicting legal reasoning as an art whose practice was the purview of a select few, developed within strict disciplinary confines, Coke ultimately denies that law as such can be structured by independent, extra-legal rational principles (e.g. natural law).

To explain, consider the "complex mass of particulars" that made up the ancient constitution.[430] Alan Cromartie has argued that the sheer amount of customary rules and precedent posed both a practical and theoretical dilemma for jurists. Namely, common law's independent authority was thought to stem from the accumulated wisdom of the community.[431] Yet the details of common law "were extremely technical, and plenty of its rules were surprising or even abhorrent to the layman."[432] The available literature, moreover, even when meant for students first embarking on their legal studies, was "written in either Latin or Norman French," and contained an unsystematic account "of

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[429] Coke, *The First Part of the Institutes of the Laws of England; or a Commentary Upon Littleton [1628]*, 97b.
[430] Burgess, *Absolute Monarchy and the Stuart Constitution*, 135.
[431] These were the people's customs, and thus often thought of as the result of popular consent (at least after a fashion). Note also that his claim depends upon a corporatist account of the people's constitution and unity as a natural community.
[432] Alan Cromartie, *Sir Matthew Hale, 1609-1676: Law, Religion, and Natural Philosophy*, Cambridge Studies in Early Modern British History (Cambridge: Cambridge University Press, 1995), 14.
Cromartie, *Sir Matthew Hale, 1609-1676: Law, Religion and Natural Philosophy*, 14

various technical procedures…devised in the courts of Westminster Hall".[433] Common law had grown into an impenetrable system, whose "esoteric nature was related to its utter formlessness. There was no convenient synthesis of all this scattered learning".[434] If law is beyond the comprehension of average individuals, its seems at least counter-intuitive to claim its authority is the same as that of the community itself.

Coke's way of dealing with this dilemma was to claim it as a boon, a desirable barrier against rash subjective judgment whether that of a lone individual or a crowd, since the community transcends both.[435] Custom may be the "best interpreter of the law," but before it can have the force of law it must take legal form; and this, Coke contends, only occurs "in the mind of a common law judge."[436] Jurists assume the burden of finding the guiding principles of the system as a whole, which in turn requires that they first study and internalize all its byzantine detail. Once they have done so, they are able to

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[433] Ibid., 15.
[434] Ibid.
[435] Burgess characterizes the common law attempt to avoid subjective judgment thus: "English government is prevented from 'arbitrariness', not because it is guided by 'Generals' of constitutional law, but because every particular matter can be decided by a particular law." See: Burgess, *Absolute Monarchy and the Stuart Constitution*, 137. Of course, the "artificial reason" of the common lawyer is still required in the choosing and interpreting of applicable customs. Hence it is far from clear that the common law system as it functioned in Stuart England, did anything to rid law of subjectivity. Moreover, what of the plight of an individual whose case fit none of the highly specific writs? In the words of Daniel Coquillette: "The common-law courts were a restricted-entry system, and the ticket was a judicial writ… and here was the key point — only the writ that correctly described the case of action presented by the facts of the plaintiff's case would do, and the parameters of the causes of action described by the writs were originally very narrow. Many wrongs suffered by potential plaintiffs were not described by writs in the Register and thus lay outside the acceptable common-law causes of action. Remedies for these wrongs were only available in the Church courts, the feudal courts, the traditional local courts, or not at all." See: Daniel Coquillette, "Past the Pillars of Hercules: Francis Bacon and the Science of Rulemaking," *University of Michigan Journal of Law Reform* 46, no. 2 (2013): 555.
[436] Coke, *Second reports*, 81a; *Sixth Reports*, 5b; quoted in Cromartie, *Sir Matthew Hale, 1609-1676: Law, Religion, and Natural Philosophy*, 15-16. See: Edward Coke, *The Reports of Sir Edward Coke in Thirteen Parts [1572-1617]*, ed. J. H. Thomas, John Farquhar Fraser, and Robert Philip Tyrwhitt (London: J. Butterworth and Son, 1826).

resolve any contradictions in the interest of revealing the "underlying harmony" of common law sources.[437] Thus, on Coke's view, the common law should be seen as a self-contained system with no need of guidance from higher law or any external rational principles (such as natural law).[438] As a system it becomes more refined and elegant, "more reasonable not less…in the course of its formalisation by lawyers."[439]

Now Hobbes rarely cites other thinkers, but Coke is an exception. He refers to him by name, as "that most famous jurist Edward Coke," and on multiple occasions quotes from the *Institutes* (L xv.4; L xxvi.11,24; L *Appendix* ii.54). This is a privileged instance where we as readers know the exact context and motivation for Hobbes's absolutism. His complaint is straightforward — the common law is too unstructured to form the basis of a stable legal system, and the source of its authority unclear. Jurists such as Coke end up with an ambiguous and unfettered power to determine its content and meaning, but do not hold any right to represent (or personate) the people in the same way a sovereign must as the public person of the commonwealth.[440] He exclaims: "Seeing

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[437] Coke, quoted in Cromartie, *Sir Matthew Hale, 1609-1676: Law, Religion, and Natural Philosophy*, 18. Note, one might find in Coke's description here the theoretical beginnings of legal formalism.

[438] Coke was far from alone in this view. Many common lawyers maintained that the common law, as a system, was independent and self-sufficient.

[439] Cromartie, *Sir Matthew Hale, 1609-1676: Law, Religion, and Natural Philosophy*, 19. Cromartie further comments: "Coke saw the history of common law as that of a move from arbitrary judgment to a system with enough sophistication to be predictable." Indeed, this process was thought to culminate in more than mere predictability but instead certainty. So legal artifacts ultimately attain the status of objectively true judgments — not only relative to the legal system, because this system has become, or so it was thought, refined to such an extent that it is the best possible expression of natural law principles. It is worth noting that in this way Stuart common lawyers were able to both preach the wisdom of antiquity (i.e. claim that the common law contains ancient truths) and contend that history is a story of continual evolutionary progress).

[440] As Weston notes, historical records, combined with the doctrine of "prescription", provided Stuart common lawyers with a treasure-trove of complicated practice from which they were able to "fashion legal and constitutional principles of wide application," and ultimately limit royal prerogative. See: Weston, "England: Ancient Constitution and Common Law," 384.

then all laws, written and unwritten, have their authority and force from the will of the commonwealth…a man may wonder from whence proceed such opinions as are found in the books of lawyers of eminence in several commonwealths, directly or by consequence making the legislative power depend on private men" (L xxvi.10). Thus, from his perspective, the common law presumption of rationality enables a dangerous version of personal authority founded only upon a tenuous claim to expertise.[441] Coke and those influenced by him, in fact, do not offer a clear distinction between law and political morality and treat questions about the nature and source of political authority as secondary to, or even dictated by, the professional's interpretation of common law.[442]

With this in mind, Hobbes's many statements of the importance of equity in adjudication become especially compelling. As cited above, he considers equity to be a rule of reason that supersedes law in general and exhorts jurists to remember that, "there is no judge, subordinate nor sovereign, but may err in a judgment of equity" (L xxvi.24). It is clear from this passage that he is concerned with the manner in which the proliferation of particular (often *very* specific) common laws, without the guiding

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[441] I've quoted part of this passage above, but it is worth reiterating. Hobbes attacks the common lawyers self-appointed jurisdiction when he questions *whose* reason is at issue: "That law can never be against reason, our lawyers are agreed; and that not the letter (that is, every construction of it), but that which is according to the intention of the legislator, is the law. And it is true; but the doubt is of whose reason it is that shall be received for law" (L xxvi.11).

[442] Noga Morag Levine writes that "the supremacy of law" over politics was "a paramount common law principle." She cites a famous exchange between Coke and James I, as evidence: "At the heart of the encounter…was the king's authority to take cases away from the courts so that he could rule on them himself James claimed such an authority by saying 'I thought law was founded upon reason, and I and others have reason as well as the judges.' To which Coke responded that 'causes which concern the life or inheritance of goods or fortunes of his subjects are not to be decided by natural reason, but by the artificial reason and judgment of the law, which law is an art which required long study and experience before that a man can attain to the cognizance of it'." See: Levine, "Common Law, Civil Law, and the Administrative State: From Coke to Lochner," 613.

influence of general principles, actually stands to reify judicial error. Or, as he puts it, "men's judgments have been perverted by trusting to precedents" (Ibid.). The example he cites of such perversion, again, pointedly mentions Coke.[443] Hobbes explains that while it is contrary to reason, or "against the law of nature *to punish the innocent,*" Coke has declared, by the "presumption" in favor of common law, that an innocent man who flees for fear, even if he subsequently "judicially acquitteth himself of the felony," forfeits "all his goods, chattels, debts, and duties" (L xxvi.24).[444] After further noting that flight is not forbidden by any English statute, Hobbes denounces this and like judgments as failures of "justice" (Ibid).[445]

In short, Hobbes's position is that Coke (and other common lawyers) appeal to the presumption of rationality in common law to condone judgments of the sort that could readily lead to revolt and, consequently, the dissolution of peaceful political order.[446] We can expand upon this point. Hobbes's critique of Coke is part and parcel of his rejection of the common law view according to which history is a continual process of moral refinement. Hobbes denies that the accumulated wisdom of tradition yields universal truths or rules of reason in the form of customs, at best it offers a record of what others

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[443] It is also a very personal example for Hobbes, since he himself fled England despite his innocence and faced the seizure of all his property.
[444] Lev.xxvi.24
[445] It is notable that he actually uses the term 'justice' here. Hobbes focuses especially on a common law tenet allowing judges to refuse to hear proof in certain cases. He states: "For all judges, sovereign and subordinate, if they refuse to hear proof, refuse to do justice; for though the sentence be just, yet the judges that condemn without hearing the proofs offered are unjust judges, and their presumption is but prejudice, which no man ought to bring with him to the seat of justice, whatsoever precedent judgments, or examples he shall pretend to follow."
[446] One might say that the common law as it functioned in Stuart England often did not meet the conditions of validity, as discussed by Hobbes in Chapter XXVI of *Leviathan.* A pacified state requires government under law, and Hobbes might very well argue that the common law system posed a threat to achieving government under law.

have deemed prudent in the past. And when elevated to the status of a political and legal authority, it is prone to cracking under the pressure of changing circumstances.[447]

ii. The Civil Law Tradition, Sovereign Absolutism, and the Politicized Masses

On this note, there is one relevant force of change that likely had a strong impact on Hobbes's thinking, namely, the fact that the general populace was quickly becoming politicized. With the wide availability of printing technology Englishmen were able to access broadsides, petitions, and political pamphlets.[448] These were often the work of elites who hoped to mobilize the masses for their own ends, but it can't be denied that public opinion grew as a result in import and political consequence. Moreover, the content of political discourse, in part because of the growing influence of continental legal theory, often addressed the status of 'the people' within government.

As we have seen, common law was thought to originate from within the community itself, yet in practice it was far from populist, and ultimately deferred to the jurist's claim to professional expertise. The cumbersome inability of the common law

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[447] This point should call to mind Hobbes's mechanistic description of the state. Where the common law tradition and the ancient constitution characterize the state in organic terms as a natural entity, Hobbes insists that it is an artificial creation, and its stability is largely a function of good design — absent "a very able architect" it can easily fail. See: L xxix.1.

[448] David Zaret, *Origins of Democratic Culture: Printing, Petitions, and the Public Sphere in Early-Modern England*, Princeton Studies in Cultural Sociology (Princeton, N.J.: Princeton University Press, 2000), 49; Lawrence Stone, *The Causes of the English Revolution, 1529-1642* (London: Routledge, 2002). Stone, commenting on the influence of print technology during the years immediately prior to and during the civil war, states: "The mere fact that it was such a wordy revolution — well over 22,000 sermons speeches, pamphlets and newspapers were published between 1640 and 1661 — would by itself suggest that this is something very different from the familiar protest against an unpopular government. This torrent of printed words is evidence of a clash of ideas and ideologies, and the emergence of radical concepts affecting every aspect of human behavior and every institution in society from the family to the Church to the State."

system to accommodate legal reform or adapt to the changing needs of the populace led to the formation of alternative courts, meant to address "instances where common law remedies were deemed insufficient."[449] These included the Court of the Start Chamber (originally composed of the King's council); the Court of Requests (which again originated with the King and was formed to serve the poor); and the Chancery, also known as the Court of Equity (originally associated with the Lord Chancellor of England). Each of these "alternative courts relied, to varying degrees, on continental legal procedures instead of those of common law."[450] That is, they were modeled on the Roman or civil law tradition.[451] The prominence of Roman law within continental Europe followed from the recovery of the Justinian Code during the middle ages, i.e. that portion of the *Corpus iuris civilis* ordered by Justinian I for the purpose of compiling and codifying imperial law. Medieval jurists studied these works and found in them not only a source for understanding the Roman Empire, but also a shining example of consistent legal reasoning, a "presumptively universal 'ius commune'…(or) 'lex omnium generalis'" that may be applied "across jurisdictional and national boundaries."[452]

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[449] Levine, "Common Law, Civil Law, and the Administrative State: From Coke to Lochner," 615.

[450] Ibid., Civil Law Courts were not necessarily any less prone to abuse than those of the common law. The point being made here is that the existence of an alternative legal system presented a challenge to the idea of the "ancient constitution," and ultimately forced the common law tradition to adapt.

[451] While it would require too much space to fully discuss here, ecclesiastical courts and canon law were also influenced by the Roman or Civil Law tradition and contributed to the professional competition at issue. If a given dispute or claim fell under the apparent purview of canon law, ecclesiastical authorities could move to have the case heard within an ecclesiastical court.

[452] James Q. Whitman, *The Legacy of Roman Law in the German Romantic Era: Historical Vision and Legal Change* (Princeton, N.J.: Princeton University Press, 1990), 8. See also: Daniel Lee, "Hobbes and the Civil Law: The Use of Roman Law in Hobbes's Civil Science," in *Hobbes and the Law*, ed. David Dyzenhaus and Thomas Poole (Cambridge: Cambridge University Press, 2012), 212.

In England, however, the use of civil law only grew in prominence during the 16th century, as an official course of study within the universities.[453] But as it did, the above mentioned civilian courts also became increasingly popular. One legal historian notes that this was likely the result of "their streamlined and efficient procedure, and their independence from the landed interests that held sway in common law courts."[454] By contrast to common law courts, civil proceedings concentrated decision making authority in the hands of judges, who were themselves involved in the interrogation of witnesses and examination of evidence. There were no jury trials.[455] Instead, adjudication resembled what we would nowadays call "equitable" process or equity law.[456]

By the turn of the 17th century the resulting professional competition had reached a crisis point.[457] Common lawyers insisted that civilians were infringing upon their proper jurisdiction and lacked the "artificial reason" to judge well.[458] They also made use

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[453] Whereas common lawyers were trained in legal inns, civilians earned a doctorate at university. For more on the separate educational and professional paths of common lawyers and civilians, see: "Hobbes and the Civil Law: The Use of Roman Law in Hobbes's Civil Science."

[454] Levine, "Common Law, Civil Law, and the Administrative State: From Coke to Lochner," 615.

[455] Coquillette, "Past the Pillars of Hercules: Francis Bacon and the Science of Rulemaking," 560. See also: John H. Langbein, "Bifurcation and the Bench: The Influence of the Jury on English Conceptions of the Judiciary," in *Judges and Judging in the History of the Common Law and Civil Law*, ed. Paul Brand and Joshua Getzler (Cambridge: Cambridge University Press, 2012). Coquillette further notes that that common law proceedings did not always involve jury trials. While causes of action within common law courts often entitled the plaintiff to a jury trial, some writs only required, for example, that the defendant swear relevant oaths of credibility. Others allowed for trial by combat.

[456] Coquillette, "Past the Pillars of Hercules: Francis Bacon and the Science of Rulemaking," 560.

[457] Moral-Levine notes that, "(a)t least since the reign of Edward I (12-72-1307), the king's council had taken on adjudicative functions." But, "(t)he scope of the Council's judicial activities increased considerably over the course of the 15th century." This culminated in the 16th century with the formation of the Court of the Star Chamber, and other civil law courts soon followed. See: Levine, "Common Law, Civil Law, and the Administrative State: From Coke to Lochner," 614-15.

[458] Originally, access to civil law or "conciliar courts" was supposed to be limited to cases where no common-law cause of action existed. See: Coquillette, "Past the Pillars of Hercules: Francis

of "prohibitions," i.e. orders from common law judges to halt civil proceedings, with the aim of ultimately re-claiming jurisdiction. Civil lawyers in turn petitioned for royal protection, claiming the king alone held the right to resolve jurisdictional disputes. Needless to say, it should be obvious how proponents of these two dueling legal systems contributed to the political conflict leading up to the civil war.[459]

Indeed, this seemingly academic squabble introduced into mainstream English political discourse the key concepts that ultimately galvanized civil war. For many civilians, legal reform was a primary goal. But successfully "modernizing" common law would require a political authority entitled to enact sweeping change, the idea of which was incompatible with the doctrine of the ancient constitution.[460] In a recent and excellent treatment of the subject, Daniel Lee argues that the lack of a supreme legal authority prompted civilians and royalists to turn to the concept of sovereignty.[461] He documents how, initially, civilians such as Alberico Gentili introduced the notion of sovereignty into the curriculum at Oxford in an attempt to recast "the King of England as a latter-day Roman *princeps,*" unbound by civil law (*legibus solutus*), and thus free to act without the input or consent of parliament.[462] Gentili, drawing upon the work of the famous French

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Bacon and the Science of Rulemaking," 559; Baker, *An Introduction to English Legal History*, 26-33.

[459] As Morag-Levine puts it, "(w)ith very few exceptions, civilians sided with the monarchy and the English Church," while the allegiance of common lawyers was largely "with the Puritans and the Parliament." See: Levine, "Common Law, Civil Law, and the Administrative State: From Coke to Lochner," 617.

[460] Lee, "Hobbes and the Civil Law: The Use of Roman Law in Hobbes's Civil Science," 217.

[461] *Popular Sovereignty in Early Modern Constitutional Thought*, ch. 6.

[462] Ibid., 219. Gentili held the Regius Professorship in Civil Law at Oxford, and Lee further notes that Gentili's ideas likely were available and taught to the young Hobbes, since his own tutor at Magdalen Hall, Sir James Hussey (also a civilian) was influenced by Gentili, who had strongly advised "civilian law students to study the medieval and Renaissance commentators on Roman law."

civilian, Jean Bodin, argued for the necessity of an ultimate decider in any political state, and further supported his claim that the king alone held this role by pointing to instances where past monarchs exercised "extra-ordinary power."[463] In short, he treated royal prerogative as evidence that sovereignty had always been held by the prince.[464]

Common lawyers and parliamentarians found themselves forced to respond in terms of sovereignty.[465] For the sake of expediency many accepted the concept, but argued that parliament, not the crown, was sovereign in England. And their justification (somewhat ironically) turned to a Roman law concept that had recently enjoyed renewed attention from English civilians — namely the idea of a *lex regia,* according to which political authority originates with 'the people', who may then grant it to a ruler or monarch.[466] As previously discussed, the parliamentarian Henry Parker was one of the foremost exponents of this idea in England. However, he rejected its radical populist implications by equating 'the people' in England with the institution of parliament. Parker and his fellow parliamentarians, in other words, only turned to the idea of a *lex*

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[463] Ibid., 279.

[464] While Bodin argued the prince must fill the role of the final-decider in all matters of positive law, he did argue that all sovereigns are bound by "divine, natural, and the common law of all nations." However, he also insisted subjects have no recourse against breaches of these norms. Hobbes takes issue with Bodin here. He implies that if the sovereign were limited by either divine (other than the laws of nature) or common law, this would effectively generate more elite conflict and endanger commonwealth because it could be seen as empowering members of the episcopacy and barristers or common lawyers to challenge the sovereign. See: Bodin, *On Sovereignty : Four Chapters from the Six Books of the Commonwealth*.)

[465] Lee notes that is was of course possible for parliamentarians and common lawyers to deny that the concept of sovereignty had any application to English politics. However, "(s)uch sovereignty skepticism was…an untenable strategy in contesting royal sovereignty. The reality was that sovereignty had already infected English constitutional and legal thought, in re-imagining the authority of the English state. The result was an irreversible transformation of English constitutional discourse from one which categorically eschewed sovereignty to one which actively embraced it." See: Lee, *Popular Sovereignty in Early Modern Constitutional Thought*, 289.

[466] See discussion in Chapter 1.

regia because they saw in it a strategic way to merge the civil law concept of sovereignty with the already deeply ingrained common law view of the people as comprised of the three estates, not because they sought to further the cause of popular government.[467]

Royalists openly contested such corporatist accounts of 'the people'. In a representative example, Dudley Digges argues that 'the people' signifies the populace, or the "body at large".[468] Moreover, when considering the idea of a *lex regia* he agrees, at least in a limited sense, that "power is originally inherent in the people" — "politique corporations" are formed through "that might and vigour" inherent in a "societie of men".[469] Nevertheless, all power is always from God. While subjects play an "instrumentall" role in choosing their ruler, they do not thus constitute it as sovereign and cannot be entitled to press any claims.[470] For who among 'the people' would act for the whole?[471] Robert Filmer expands upon this line of argument. He stresses that 'the people' can be taken in many different senses — it can refer to "the whole multitude of mankind"; "the major part of a multitude, or sometimes the better or the richer, or the wiser"; or even specific "Regions or Countries."[472] Given this inconstancy, the concept can be used to pursue multiple, contradictory political ends. Moreover, he concludes that

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[467] While the origin of parliaments in England is often debated, it is generally agreed that, at least beginning with the reign of Henry I (1068 – 1135), the assembly of the three estates was known as a parliament, following the Norman tradition. Since the three estates were already thought of as the body of the people, it is unsurprising that many such as Parker equated the parliament with the people and then exploit the language of sovereignty in this context. See: Greenberg, *The Radical Face of the Ancient Constitution: St. Edward's "Laws" in Early Modern Political Thought*, 138.
[468] Dudley Digges, *A Review of the Observations Upon Some of His Majesties Late Answers and Expresses* (Oxford [i.e. London]: Printed by Leonard Lichefield, 1643), 6.
[469] Ibid., 4,8
[470] Ibid., 6
[471] Digges seems to imply that the concept of popular sovereignty is an absurdity; by allocating sovereignty to the populace as a whole, one would essentially deny its existence.
[472] Filmer, *Patriarcha and Other Writings*, 140.

regardless of interpretation, it is impossible for 'the people' to enjoy any real political agency. Corporatist accounts must explain who has the right to speak and act for the community. On the other hand, any account according to which the 'the people' is the sum total of individuals elides the fact that many will inevitably be excluded from decision making.[473] The unruly masses cannot act as one, nor is their unanimity to be counted upon.

In this way, the question of the constitution and significance of 'the people' came to infiltrate regular political discourse in England. As Lee notes, "one way or another, all partisans had to confront it."[474] Both parliamentarians and royalists turned to the topic only as a means to advance their own positions, and generally denounced any explicitly populist claims, especially the idea that 'the people' might have any real political agency. The possibility of something like popular sovereignty, however, could no longer be so quickly dismissed, as evidenced by the emergence of radical factions such as the Levellers and the Diggers. Once the language of sovereignty, coupled with the idea of an original contract, was widely available to the masses there was no way to entirely suppress populist sentiments.

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[473] In fact, Filmer claims that rule by 'the people' would inevitably devolve into oligarchy. See: ibid., 276. Lee examines this passage at length inthe context of comparing agential and non-agential account of popular sovereignty. As he explains, any attempt to argue that 'the people' can play an active role in governing themselves runs up against a "Parmenidean puzzle" — namely, "(h)ow can the many become one." In practice, the worry he articulates focuses on the impossibility of any truly inclusive or "popular" decision-making rule., since "devices usedto generate collective agency will ultimately have an exclusionary, anti-populist effect." See: Lee, *Popular Sovereignty in Early Modern Constitutional Thought*, 305.

[474] *Popular Sovereignty in Early Modern Constitutional Thought*, 300.

Now, Hobbes forms his theory of sovereign absolutism in this context. There is strong evidence he was influenced by the civil law tradition.[475] Early in his career he was employed as a secretary by Francis Bacon, where he had ample exposure to the workings of civil law,[476] and he explicitly cites Bodin's *Six livres de la République,* and its use of the Roman law concept of *Imperium* when offering his own explanation of sovereign supremacy. He was also keenly aware of the growing politicization of the masses and the likely effects this would have on standing institutions. Ignoring populist sentiments would be ruinous, but so would embracing the idea of a *lex regia,* with its overly abstract appeal to the original authority of 'the people'.[477]

It is with this in mind that Hobbes insists on the distinction between 'the multitude' and 'the people', which he then exploits in order to offer a comprehensive account of popular agency. He begins with the unruly masses, or the multitude of distinct individuals whose status had for the most part been either neglected by his contemporaries or treated as an inherent threat to political order as such. The multitude is primary for Hobbes and it remains salient even within commonwealth because of the way power circulates among individuals and, as argued above, because of the necessity of harnessing this power in order to establish and maintain political authority. As David

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[475] This is not to say that he was entirely uncritical of civilians. Hobbes reserves his harshest criticism for English common law, but he also faults the pretensions of civilians in importing a foreign legal system without establishing a basis for its authority in England. For example, in Chapter XXVI of *Leviathan*, he broaches an apparent polemic against the civil law tradition when he carefully distinguishes between civil law "in general" (his own intended topic), and the narrow purview of Roman law. He rejects the idea that the contents of the *Corpus Iuris Civilis* necessarily constitute a universally valid *jus commune*.

[476] See: Robin Bunce, "Thomas Hobbes' Relationship with Francis Bacon - an Introduction," *Hobbes Studies* 16, no. 1 (2003).

[477] Returning to Hobbes's statement from the letter of dedication to *Leviathan* — ignoring the growing politicization of the masses would incompatible with his goal of balancing liberty and authority. There would be no way to "pass between the points of both unwounded."

Wootton documents, Hobbes was familiar with and responsive to rhetoric employed by the Levellers, who first argued "that government must be founded on the continuing consent of all citizens."[478]

Harnessing this power in practice, however, such that the multitude is not a directionless and destabilizing force, requires a further account of popular agency that can explain how the multitude *might* become unified. Hobbes's definition of the sovereign as a *persona civilis,* or public person, accomplishes just this task. He inverts the standard trope of the masses as antithetical to politics, an unthinking "many-headed monster," by instead theorizing their possible unity — the unity of 'the people' — as the precondition of commonwealth. The artificial person of commonwealth, represented by the sovereign, exercises real political agency. And, as Lee reminds us, while it is necessary to stress the unique independence of this public person, "we need to remember that the *civitas* remains, at the same time, a citizen-body, a people assembled. Sovereignty belongs as much, and even more, to them as it does to their representative."[479]

Conclusion

It is impossible to know if Hobbes saw the volatile circumstances of 17th century England as an entirely new historical phenomenon. At the very least, however, he recognized that growing politicization requires a civil science that can clearly articulate the rights and duties of both sovereigns and subjects. Moreover, his theory of sovereign

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[478] Wootton, "Introduction," 57.
[479] Lee, *Popular Sovereignty in Early Modern Constitutional Thought*, 315. Lee also notes that Hobbes has managed to inextricably link the the concepts of "popular" sovereignty and "state" sovereignty. In his account of commonwealth, these are one and the same.

authority directly addresses the fundamental importance of consent in structuring the limits and nature of sovereignty as a public office. Far from an apology for tyranny, Hobbes bases the authority of this office in a relation of fiduciary trust between office holders and individual citizens, one which is responsive to the underlying need to maintain their allegiance. Finally, as I hope my consideration of the relevant history conveys, Hobbes was concerned to give individuals strong reason and motivation to identify with their sovereign. It is impossible to stifle populist sentiments, and much more fruitful to turn them to civic ends by fostering a "love of obedience" (B 59). In this sense alone, as at least one other scholar has noted, he encourages popular engagement and nudges politics towards the democratic: "Obedience becomes a cause one can 'love' when it is attached to a fully elaborated and explained view of the value of the political realm…Hobbes's theory cannot therefore aim to create passive unthinking subjects but active, consenting citizens."[480]

[480] Ingrid Creppell, "The Democratic Element in Hobbes's Behemoth," in *Hobbes's Behemoth: Religion and Democracy*, ed. Tomaz Mastnak (Exeter: Imprint Academic, 2009), 32.

Summary & Conclusion

In this dissertation I have argued that Hobbes establishes certain principles — political equality, individual rights for all citizens, and the rule of law — as essential to the constitution of commonwealth. These are the same foundational principles of political morality that we nowadays associate with democracy, although Hobbes by no means thought their implementation required democratic government. On my reading, moreover, his sovereign absolutism follows from a commitment to these principles. When Hobbes assessed the conflict between King and parliament, he saw a broader underlying issue, namely, the problem of elite infighting and the chaotic state of English common law in Stuart England. He was concerned with the way in which competing claims to legal authority,[481] combined with the sheer complexity of the common law system, undermined peace. Regardless of who ruled, then, he argued for the final authority of sovereign *office* as the ground of legal order.

Before drawing to a close, however, I pause to mention one reason why Hobbes's legacy is often viewed as authoritarian. Jon Parkin has pointed out that, while *Leviathan* was a controversial work from the moment of its publication, it was so widely and "seriously" read as to be fairly considered a "part of mainstream political and religious

[481] This includes claims to legal authority made by parliament, common lawyers, and bishops. I have not spent nearly as much time discussing Hobbes's views on episcopacy, but it is notable that his reasoning his consistent throughout. He was especially adamant that bishops should not have the legal authority, for instance, to mandate belief or even behavior, nor should they be able to charge individuals with heresy. In all cases this was the sovereign's prerogative alone — and it is worth emphasizing that he did not endorse a state religion nor did he encourage the sovereign to mandate belief, Quite the contrary, he was far more amenable to Independency (in line with his commitment to freedom of conscience). Instead, when he mentions matters of religious belief and insists upon the sovereign's absolute right to legislate and punish, it is with an eye to countering the pretensions of episcopacy and the belief on the part of the bishops that this was their right.

discussion" during the mid-17th century.[482] Indeed, one had to address it. The tenor of discussion changed, however, with the restoration of Charles II to the throne. In the Declaration of Breda, Charles II sought to erase the memory of the civil wars and the ensuing Protectorate of Cromwell by pardoning crimes and reaffirming the crown's commitment to many of the traditional rights accorded to Parliament and the clergy under the ancient constitution. It was "an attempt to restore a status quo" that had given rise to "years of intense religio-political conflict between king and Parliament" and "deep-going social unrest."[483] And it was a partial success. The people were happy to forget the strife of war and Parliament "tripped over itself in its eagerness to denounce its predecessors' constitutional pretentions."[484] Intellectual culture also changed, evidenced by a general rejection of contractarian principles as a bolster to the doctrine of the ancient constitution.[485] Nevertheless, new partisan lines were drawn that reflected lingering anxieties over royal prerogative power.

The Whig party arose out of opposition to the succession of the Catholic James II to the throne. This was the time period of the exclusion crisis, culminating in the Glorious Revolution. But religion was not an isolated issue. The Whigs, led by the Earl of Shaftsbury, associated Catholicism with absolutism. A Catholic king would not just imperil religious liberty or undermine orthodoxy, it would threaten the ancient rights and

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[482] Jon Parkin, "The Reception of Hobbes's *Leviathan*," in *The Cambridge Companion to Hobbes's Leviathan*, ed. Patricia Springborg (Cambridge: Cambridge University Press, 2007), 441.
[483] Zuckert, *Natural Rights and the New Republicanism*, 100.
[484] Ibid., 99.
[485] This is true even though the Whig party came to be associated with the contract theory of John Locke. This happened over an extended period of time, during which there was a good deal of disagreement amongst early Whigs about how to justify their opposition to royal prerogative. See: ibid., chap. 4.

liberties of parliamentarians and English men of property all over again. Hobbes quickly became a convenient scapegoat and the term 'Hobbism' shorthand for a large tally of bugbear issues, royal prerogative power and religious belief chief among them.[486] No longer was Hobbes read seriously, then, but instead caricatured and used as ammunition in another highly partisan debate. In Parkin's words: "Hobbism as a term of abuse had become part and parcel of political and religious polemic, signifying the unacceptable boundaries of public discourse."[487] The image of Hobbes that occupies our public imagination is, unfortunately, an inheritance of this era, and we stand to gain new perspective by instead acknowledging that he was "a Man much blam'd, but little understood."[488]

[486] Despite the fact that Whigs portrayed their Tory opponents as Hobbists, the Tories also dislike Hobbes and actually posed more of a threat to his life. Hobbes was viewed as an enemy of Anglicanism and episcopacy and parliament twice moved to put him on trial for heresy.
[487] Parkin, *Taming the Leviathan: The Reception of the Political and Religious Ideas of Thomas Hobbes in England, 1640-1700*.
[488] This is from an obituary for Hobbes published in *Mercurius Anglicus*. Quoted in: ibid., 346.

Bibliography

Primary Sources

Bodin, Jean. *On Sovereignty : Four Chapters from the Six Books of the Commonwealth.* Cambridge Texts in the History of Political Thought. Edited by Julian H. Franklin. Cambridge: Cambridge University Press, 1992.

Bramhall, John. "The Catching of *Leviathan*, or the Great Whale." In *Leviathan: Contemporary Responses to the Political Theory of Thomas Hobbes*, edited by G.A.J. Rogers, 115-79. Bristol, England: Thoemmes Press, 1995.

Coke, Edward. *The First Part of the Institutes of the Laws of England; or a Commentary Upon Littleton [1628].* Edited by Charles Butler and Francis Hargrave. 18 ed. Birmingham, Ala: Legal Classics Library, 1985.

———. *The Reports of Sir Edward Coke in Thirteen Parts [1572-1617].* Edited by J. H. Thomas, John Farquhar Fraser and Robert Philip Tyrwhitt. London: J. Butterworth and Son, 1826.

The Commonwealth of England Documents of the English Civil Wars, the Commonwealth and Protectorate : 1641-1660. Edited by Charles Blitzer. New York: G.P. Putnam's Sons, 1963.

Digges, Dudley. *A Review of the Observations Upon Some of His Majesties Late Answers and Expresses.* Oxford [i.e. London]: Printed by Leonard Lichefield, 1643.

Filmer, Robert. *Patriarcha and Other Writings.* Cambridge Texts in the History of Political Thought. Edited by J.P. Sommerville. Cambridge England: Cambridge University Press, 1991.

Galilei, Galileo. *The Essential Galileo.* Edited by Maurice A. Finocchiaro. Indianapolis, Ind.: Hackett Pub. Co., 2008.

"His Majesties Answer to the Nineteen Propositions of Both Houses of Parliament [1642]." In *Divine Right and Democracy: An Anthology of Political Writing in Stuart England*, edited by David Wootton, 171-74. Indianapolis: Hackett Publishing Co., 2003.

Hobbes, Thomas. *Behemoth, or, the Long Parliament.* Edited by Ferdinand Tönnies. Chicago: University of Chicago Press, 1990.

———. *The Elements of Law, Natural and Politic.* Edited by Ferdinand Tönnies. 2nd ed. London: Cass, 1969.

———. *Leviathan: With Selected Variants from the Latin Edition of 1668.* Edited by E.M. Curley. Indianapolis: Hackett Publishing Company, 1994.

———. *Man and Citizen : De Homine and De Cive.* Translated by T.S.K. Scott Craig Charles T. Wood, Bernard Gert. Edited by Bernard Gert. Indianapolis: Hackett Pub. Co., 1991.

Hotman, François, Théodore de Bèze, Philippe Du Plessis-Mornay, and Hubert Languet. *Constitutionalism and Resistance in the Sixteenth Century Three Treatises by Hotman, Beza, & Mornay.* Edited by Julian H. Franklin. New York: Pegasus, 1969.

Hunton, Philip. "A Treatise of Monarchy [1643]." In *Divine Right and Democracy: An Anthology of Political Writing in Stuart England*, edited by David Wootton, 175-213. Indianapolis: Hackett Publishing Co., 2003.

Hyde, Edward. *History of the Rebellion and Civil Wars in England Begun in the Year 1641: In Six Volumes.* Edited by W.D. Macray. Reproduction of original ed. Vol. III, Oxford: Clarendon Press, 1992.

———. "A Survey of Mr. Hobbes, His *Leviathan*." In *Leviathan: Contemporary Responses to the Political Theory of Thomas Hobbes*, edited by G.A.J. Rogers, 180-300. Bristol, England: Thoemmes Press, 1995.

Justinian. *Institutes.* Edited by Peter Birks and Grant McLeod. Ithaca, N.Y.: Cornell University Press, 1987.

Locke, John. *Second Treatise of Government.* Edited by C.B. Macpherson. Indianapolis: Hackett Publishing Co., 1980.

Marsilius. *Marsilius of Padua: The Defender of the Peace.* Edited by Annabel Brett. Cambridge: Cambridge University Press, 2005.

Parker, Henry. "Observations Upon Some of His Majesties Late Answers and Expresses [1642]." In *Catalogue of the Pamphlets, Books, Newspapers, and Manuscripts Relating to the Civil War, the Commonwealth, and Restoriation, Collected by George Thomason, 1640-1661*. London: Oxford University Press, 1908.

"The Putney Debates [1647]." In *Divine Right and Democracy: An Anthology of Political Writing in Stuart England*, edited by David Wootton, 285-316. Indianapolis: Hackett Publishing Co., 2003.

The Putney Debates of 1647 : The Army, the Levellers, and the English State. Edited by Michael Mendle. Cambridge, U.K. ; New York: Cambridge University Press, 2001.

Secondary Sources

Arendt, Hannah. “Truth and Politics.” In *The Portable Hannah Arendt*, edited by Peter Baehr, 454-575. New York: Penguin Books, 2000.

Arneson, Richard. “Basic Equality: Neither Acceptable nor Rejectable.” In *Do All Persons Have Equal Moral Worth? : On 'Basic Equality' and Equal Respect and Concern*, edited by Uwe Steinhoff, 30-52. Oxford: Oxford University Press, 2015.

Aronovitch, Hilliard. “Political Equality by Precedent.” *Ratio Juris* 28, no. 1 (2015): 110-26.

Baker, John H. *An Introduction to English Legal History.* 4th ed. London: Oxford University Press, 2007.

Baker, Philip. “Rhetoric, Reality, and Varieties of Civil War Radicalism.” In *The English Civil War: Conflict and Contexts, 1640-49*, edited by John Adamson, 202-25. New York: Palgrave Macmillian, 2009.

Baumgold, Deborah. *Hobbes's Political Theory.* Cambridge: Cambridge University Press, 1990.

Baumrin, Bernard. “Hobbes’s Egalitarianism: The Laws of Natural Equality.” In *Thomas Hobbes, De La Métaphysique a La Politique*, edited by Martin Bertman and Michel Malherbe, 119-27. Paris: Vrin, 1989.

Bentham, Jeremy. *Selected Writings.* Rethinking the Western Tradition. Edited by Stephen G.Engelmann and Philip Schofield. New Haven: Yale University Press, 2011.

Bowles, John. *Hobbes and His Critics: A Study in Seventeenth Century Constitutionalism* Oxford: Oxford University Press, 1952.

Bredekamp, Horst. “Thomas Hobbes’s Visual Strategies.” In *The Cambridge Companion to Hobbes’s Leviathan*, edited by Patricia Springborg, 29-60. Cambridge: Cambridge University Press, 2007.

Brown, Keith. “The Artist of the *Leviathan* Title-Page.” *British Library Journal* 4, no. 1 (1978): 24-36.

———. “Thomas Hobbes and the Title-Page of *Leviathan*.” *Philosophy* 55, no. 213 (1980): 410-11.

Bunce, Robin. “Thomas Hobbes' Relationship with Francis Bacon - an Introduction.” *Hobbes Studies* 16, no. 1 (2003): 41-83.

Burgess, Glenn. *Absolute Monarchy and the Stuart Constitution.* New Haven: Yale University Press, 1996.

———. “Common Law and Political Theory in Early Stuart England.” *Political Science* 40, no. 1 (1988): 4-17.

———. *The Politics of the Ancient Constitution: An Introduction to English Political Thought, 1603-1642.* University Park, Pa: Pennsylvania State University Press, 1993.

Burns, J. H. *The True Law of Kingship: Concepts of Monarchy in Early-Modern Scotland.* Oxford: Clarendon Press, 1996.

Canning, J.P. “Introduction: Politics, Institutions and Ideas.” In *The Cambridge History of Medieval Political Thought, C.350-C.1450*, edited by J.H. Burns, 341-66. Cambridge: Cambridge University Press, 1988.

Charvet, John. *The Nature and Limits of Human Equality.* New York: Palgrave Macmillan, 2013.

Christiano, Thomas. *The Constitution of Equality: Democratic Authority and Its Limits.* Oxford: Oxford University Press, 2008.

Chwaszcza, Christine. “The Seat of Sovereignty: Hobbes on the Artificial Person of the Commonwealth or State.” *Hobbes Studies* 25, no. 2 (2012): 123-42.

Cohen, Andrew I. “Retained Liberties and Absolute Hobbesian Authorization.” *Hobbes Studies* 11 (1998): 33-45.

Cohen, Joshua. “Getting Past Hobbes.” In *Hobbes Today: Insights for the 21st Century*, edited by S.A. Lloyd, 3-19. Cambridge: Cambridge University Press, 2013.

Collins, Jeffrey. “Thomas Hobbes’s Ecclesiastical History.” In *The Oxford Handbook of Hobbes*, edited by A.P. Martinich and Kinch Hoekstra, 520-46. Oxford: Oxford University Press, 2016.

Collins, Jeffrey R. *The Allegiance of Thomas Hobbes.* Oxford: Oxford University Press, 2005.

———. “Silencing Thomas Hobbes: The Presbyterians and Leviathan.” In *The Cambridge Companion to Hobbes’s Leviathan*, edited by Patricia Springborg, 478-500. Cambridge: Cambridge University Press, 2007.

Coquillette, Daniel. “Past the Pillars of Hercules: Francis Bacon and the Science of Rulemaking.” *University of Michigan Journal of Law Reform* 46, no. 2 (2013): 549-92.

Creppell, Ingrid. “The Democratic Element in Hobbes's Behemoth.” In *Hobbes’s Behemoth: Religion and Democracy*, edited by Tomaz Mastnak, 241-68. Exeter: Imprint Academic, 2009.

Cromartie, Alan. *Sir Matthew Hale, 1609-1676: Law, Religion, and Natural Philosophy.* Cambridge Studies in Early Modern British History. Cambridge: Cambridge University Press, 1995.

Curley, E. M. "Introduction to Hobbes' *Leviathan*." In *Leviathan: With Selected Variants from the Latin Edition of 1668*, edited by E.M. Curley. Indianapolis: Hackett Pub. Co., 1994.

Curran, Eleanor. "Hobbes on Equality: Context, Rhetoric, Argument." *Hobbes Studies* 25, no. 2 (2012): 166-87.

———. "An Immodest Proposal: Hobbes Rather Than Locke Provides a Forerunner for Modern Rights Theory." *Law and Philosophy* 32, no. 4 (2012): 515-38.

———. *Reclaiming the Rights of the Hobbesian Subject.* New York: Palgrave Macmillan, 2007.

———. "A Very Peculiar Royalist. Hobbes in the Context of His Political Contemporaries." *British Journal for the History of Philosophy* 10, no. 2 (2002): 167-208.

Davis, J. C. *Utopia and the Ideal Society: A Study of English Utopian Writing, 1516-1700.* Cambridge: Cambridge University Press, 1981.

Deigh, John, and John Deigh. "Reason and Ethics in Hobbes's Leviathan." *Journal of the History of Philosophy* 34, no. 1 (1996): 33-60.

Dyzenhaus, David. "Hobbes and the Authority of Law." In *Hobbes and the Law*, edited by David Dyzenhaus and Thomas Poole, 186-209. Cambridge: Cambridge University Press, 2012.

———. "Hobbes and the Legitimacy of Law." *Law and Philosophy* 20, no. 5 (2001).

Dzelzainis, Martin. "Edward Hyde and Thomas Hobbes's Elements of Law, Natural and Politic." *The Historical Journal* 32, no. 2 (1989): 303-17.

Eggers, Daniel. "Hobbes and Game Theory Revisited: Zero-Sum Games in the State of Nature." *The Southern Journal of Philosophy* 49, no. 3 (2011): 193-226.

Farneti, Roberto. "The 'Mythical Foundation' of the State: *Leviathan* in Emblematic Context." *Pacific Philosophical Quarterly* 82, no. 3-4 (2001): 362-82.

Feinberg, Joel. "The Nature and Value of Rights." *The Journal of Value Inquiry* 4, no. 4 (1970): 243-60.

———. *Social Philosophy.* Foundations of Philosophy Series. Englewood Cliffs, N.J.: Prentice-Hall, 1973.

Field, Sandra. “Hobbes and the Question of Power.” *Journal of the History of Philosophy* 52, no. 1 (2014): 61-85.

Finkelstein, Claire. “A Puzzle About Hobbes on Self-Defense.” *Pacific Philosophical Quarterly* 82, no. 3&4 (2001): 332-61.

Flathman, Richard E. *Thomas Hobbes: Skepticism, Individuality, and Chastened Politics.* Modernity and Political Thought. Newbury Park, Calif.: Sage, 1993.

Forsyth, Murray. “Thomas Hobbes and the Constituent Power of the People.” *Political Studies* 29, no. 2 (1981): 191-203.

Fox-Decent, Evan. “Hobbes’s Relational Theory: Beneath Power and Consent.” In *Hobbes and the Law*, edited by David Dyzenhaus and Thomas Poole, 118-44. Cambridge: Cambridge University Press, 2012.

Franklin, Julian H. “Constitutionalism in the Sixteenth Century: The Protestant Monarchomachs.” In *Political Theory and Social Change*, edited by David Spitz, 117-32. New York: Atherton, 1967.

Franzwa, Gregg. “The Paradoxes of Equality in the Worlds of Hobbes and Locke.” *Southwest Philosophy Review* 5, no. 1 (1989): 33-37.

Garber, Daniel. “Descartes and Spinoza on Persistence and Conatus.” *Studia Spinozana* 10 (1994): 43-67.

Gauthier, David. “Hobbes: The Laws of Nature.” *Pacific Philosophical Quarterly* 82, no. 3&4 (2001): 258-84.

Gauthier, David P. *The Logic of Leviathan: The Moral and Political Theory of Thomas Hobbes.* Oxford: Clarendon Press, 1969.

Gert, Bernard. “Hobbes and Psychological Egoism.” *Journal of the History of Ideas* 28, no. 4 (1967): 503-20.

———. *Hobbes: Prince of Peace.* Classic Thinkers. Cambridge, Mass.: Polity Press, 2010.

Goldenbaum, Ursula. “Sovereinty & Obedience.” In *The Oxford Handbook of Philosophy in Early Modern Europe*, edited by Desmond M. Clarke and Catherine Wilson, 500-24. Oxford: Oxford University Press, 2011.

Goldie, Mark. “The Reception of Hobbes.” In *The Cambridge History of Political Thought, 1450-1700*, edited by J.H. Burns and Mark Goldie, 589-615. Cambridge: Cambridge University Press, 1991.

Goldsmith, M. M. “Hobbes on Liberty.” *Hobbes Studies* 2, no. 1 (1989): 23-39.

———. *Hobbes's Science of Politics.* New York: Columbia University Press, 1966.

Goldsmith, M.M. "Hobbes on Law." In *The Cambridge Companion to Hobbes*, edited by Tom Sorell, 274-304. New York: Cambridge University Press, 1996.

———. "Hobbes's 'Mortall God': Is There a Fallacy in Hobbes's Theory of Sovereignty." *History of Political Thought* 1, no. 1 (1980): 33-50.

Goodin, Robert E., and Philip Pettit. *A Companion to Contemporary Political Philosophy.* Blackwell Companions to Philosophy. Oxford, UK ; Cambridge, Mass.: Blackwell, 1993.

Green, Michael J. "Authorization and Political Authority in Hobbes." *Journal of the History of Philosophy* 53, no. 1 (2015): 25-47.

Greenberg, Janelle. *The Radical Face of the Ancient Constitution: St. Edward's "Laws" in Early Modern Political Thought.* Cambridge: Cambridge University Press, 2006.

Hamburger, Philip. *Law and Judicial Duty.* Cambridge, Mass.: Harvard University Press, 2008.

Hampton, Jean. "Democracy and the Rule of Law." In *Hobbes on Law*, edited by Claire Finkelstein, 485-515. New York: Routledge, 2005.

———. *Hobbes and the Social Contract Tradition.* Cambridge: Cambridge University Press, 1986.

Hayes, Peter. "Hobbes's Silent Fool: A Response to Hoekstra." *Political Theory* 27, no. 2 (1999): 225-29.

Herbert, Gary. *Thomas Hobbes: The Unity of Scientific and Moral Wisdom.* Vancouver: University of British Columbia Press, 1989.

———. "Thomas Hobbes's Counterfeit Equality." *Southern Journal of Philosophy* 14, no. 3 (1976): 269-82.

Hill, Christopher. *Change and Continuity in Seventeenth-Century England.* Revised ed. New Haven: Yale University Press, 1991.

———. *The World Turned Upside Down; Radical Ideas During the English Revolution.* London: Temple Smith, 1972.

Hinsley, F. H. *Sovereignty.* 2nd ed. Cambridge: Cambridge University Press, 1986.

Hobbes, Thomas. *Elements of Philosophy the First Section, Concerning Body.* London: Printed by R. & W. Leybourn, for Andrew Crocke, at the Green Dragon in Pauls Church-yard, 1656.

Hoekstra, Kinch. “The De Facto Turn in Hobbes’s Political Philosophy.” In *Leviathan after 350 Years*, edited by Tom Sorell and Luc Foisneau, 33-73. Oxford: Clarendon Press, 2004.

———. “Hobbes and the Foole.” *Political Theory* 25 (1997): 620-54.

———. “Hobbes on Law, Nature, and Reason.” *Journal of the History of Philosophy* 41, no. 1 (2003): 111-20.

———. “Hobbes on the Natural Condition of Mankind.” In *The Cambridge Companion to Hobbes’s Leviathan*, edited by Patricia Springborg, 109-27. Cambridge: Cambridge University Press, 2007.

———. “Hobbesian Equality.” In *Hobbes Today: Insights for the 21st Century*, edited by S. A. Lloyd, 76-112. Cambridge: Cambridge University Press, 2012.

———. “A Lion in the House Hobbes and Democracy.” In *Rethinking the Foundations of Modern Political Thought*, edited by Annabel Brett, James Tully and Holly Hamilton-Bleakley, 191-219. Cambridge: Cambridge University Press, 2006.

———. “Tyrannus Rex Vs. Leviathan.” *Pacific Philosophical Quarterly* 82 (2001): 420-46.

Hohfeld, W.N. “Some Fundamental Legal Concepts as Applied in Judicial Reasoning.” *Yale Law Journal* 23 (1913): 16-59.

Höpfl, Harro, and Martyn P. Thompson. “The History of Contract as a Motif in Political Thought.” *The American Historical Review* 84, no. 4 (1979): 919-44.

Hull, Gordon. *Hobbes and the Making of Modern Political Thought.* Continuum Studies in British Philosophy. London: Continuum, 2009.

Jackson, Nicholas D. *Hobbes, Bramhall and the Politics of Liberty and Necessity: A Quarrel of the Civil Wars and Interregnum.* Cambridge Studies in Early Modern British History. Cambridge: Cambridge University Press, 2010.

Jesseph, Douglas. “Hobbes on ‘Conatus’: A Study in the Foundations of Hobbesian Philosophy.” *Hobbes Studies* 29, no. 1 (2016): 66-85.

Jesseph, Douglas M. “Galileo, Hobbes, and the Book of Nature.” *Perspectives on Science* 12, no. 2 (2004): 191-211.

Judson, Margaret. “Henry Parker and the Theory of Parliamentary Sovereignty.” In *Essays in History and Political Theory in Honor of Charles Howard Mcilwain* 138-67. New Yotk: Russell & Russell, 1967.

Kavka, Gregory S. “Hobbes's War of All against All.” *Ethics* 93, no. 2 (1983): 291-310.

Kidder, Joel. “Acknowledgements of Equals: Hobbes's Ninth Law of Nature.” *The Philosophical Quarterly* 33, no. 131 (1983).

Klein, William. “The Ancient Constitution Revisited.” In *Political Discourse in Early Modern Britain*, edited by Nicholas Phillipson and Quentin Skinner, 23-44. Cambridge: Cambridge University Press, 1993.

Korsgaard, Christine M. *The Sources of Normativity.* Edited by Onora O'Neill. Cambridge: Cambridge University Press, 1996.

Kymlicka, Will. *Contemporary Political Philosophy : An Introduction.* 2nd ed. Oxford ; New York: Oxford University Press, 2002.

Langbein, John H. “Bifurcation and the Bench: The Influence of the Jury on English Conceptions of the Judiciary.” In *Judges and Judging in the History of the Common Law and Civil Law*, edited by Paul Brand and Joshua Getzler, 67-82. Cambridge: Cambridge University Press, 2012.

Lee, Daniel. “Hobbes and the Civil Law: The Use of Roman Law in Hobbes’s Civil Science.” In *Hobbes and the Law*, edited by David Dyzenhaus and Thomas Poole, 210-35. Cambridge: Cambridge University Press, 2012.

———. *Popular Sovereignty in Early Modern Constitutional Thought.* Oxford Oxford University Press, 2016.

Levine, Noga Morag. “Common Law, Civil Law, and the Administrative State: From Coke to Lochner.” *Constitutional Commentary* 24 (2007): 601-61.

Lloyd, Howell. “Constitutionalism.” In *The Cambridge History of Political Thought 1450-1700*, edited by J.H. Burns and Mark Goldie, 254-97. Cambridge: Cambridge University Press, 1991.

Lloyd, S. A. “Hobbes's Self-Effacing Natural Law Theory.” *Pacific Philosophical Quarterly* 82, no. 3-4 (2001): 285-308.

———. *Morality in the Philosophy of Thomas Hobbes : Cases in the Law of Nature.* Cambridge: Cambridge University Press, 2009.

Lloyd, S.A. “Hobbes's Reply to the Foole: A Deflationary Definitional Interpretation.” *Hobbes Studies* 18, no. 1 (2005): 50-73.

Lyons, David. “The Correlativity of Rights and Duties.” *Noûs* 4, no. 1 (1970): 45-55.

Macpherson, C. B. *The Political Theory of Possessive Individualism: Hobbes to Locke.* Oxford: Clarendon Press, 1962.

Malcolm, Noel. “Hobbes’s Science of Politics and His Theory of Science.” Chap. 5 In *Aspects of Hobbes*, 146-55. Oxford: Clarendon Press, 2002.

———. “Hobbes’s Theory of International Relations.” Chap. 5 In *Aspects of Hobbes*, 432-56. Oxford: Clarendon Press, 2002.

———. *Leviathan: Introduction.* The Clarendon Edition of the Works of Thomas Hobbes. Edited by Noel Malcolm. Vol. I, Oxford: Clarendon Press, 2012.

———. “Thomas Hobbes: Liberal Illiberal.” *Journal of the British Academy* 4 (2016): 113-36.

Marmor, Andrei. “Authority, Equality and Democracy.” *Ratio Juris* 18, no. 3 (2005): 315-45.

Martinich, A.P. “Interpreting the Religion of Thomas Hobbes: An Exchange: Hobbes’s Erastianism and Interpretation.” *Journal of the History of Ideas* 70, no. 1 (2009): 143-63.

Martinich, Aloysius. *Hobbes.* Routledge Philosophers. New York: Routledge, 2005.

Mautner, Thomas. “How Rights Became “Subjective”.” *Ratio Juris* 26, no. 1 (2013): 111-32.

May, Larry. “Hobbes's Contract Theory.” *Journal of the History of Philosophy* 18, no. 2 (1980): 195-207.

———. *Limiting Leviathan: Hobbes on Law and International Affairs.* First edition. ed. Oxford: Oxford University Press, 2013.

McClintock, Thomas. “The Meaning of Hobbes’s Egoistic Moral Philosophy.” *Philosophia* 23, no. 1-4 (1994): 247-63.

McConnell, Terrance. “The Nature and Basis of Inalienable Rights.” *Law and Philosophy* 3, no. 1 (1984): 25-59.

Mendle, Michael. *Dangerous Positions: Mixed Government, the Estates of the Realm, and the Making of the Answer to the Xix Propositions.* University, Ala.: University of Alabama Press, 1985.

———. *Henry Parker and the English Civil War : The Political Thought of the Public's Privado.* Cambridge Studies in Early Modern British History. Cambridge England ;: New York : Cambridge University Press, 1995.

———. “The Ship Money Case: The Case of Shipmony and the Development of Henry Parker's Parliamentary Absolutism.” *The Historical Journal* 32, no. 03 (2009): 513-36.

Moehler, Michael. “A Hobbesian Derivation of the Principle of Universalization.” *Philosophical Studies* 158, no. 1 (2011): 83-107.

Murphy, Mark C. “Deviant Uses of "Obligation" in Hobbes' "Leviathan”.” *History of Philosophy Quarterly* 11, no. 3 (1994): 281-94.

———. “Hobbes on the Evil of Death.” *Archiv für Geschichte der Philosophie* 82, no. 1 (2000): 31-61.

———. “Hobbes’s Shortsightedness Account of Conflict.” *Southern Journal of Philosophy* 31, no. 2 (1993): 239-53.

Nagel, Thomas. “Hobbes's Concept of Obligation.” *The Philosophical Review* 68, no. 1 (1959): 68-83.

Neal, Patrick. “Hobbes and Rational Choice Theory.” *Political Research Quarterly* 41, no. 4 (1988): 635-52.

Nerney, Gayne. “The Hobbesian Argument for Human Equality.” *The Southern Journal of Philosophy* 24, no. 4 (1986): 561-76.

Nielsen, Kai. “On Not Needing to Justify Equality.” *International Studies in Philosophy* 20, no. 3 (1988): 55-71.

Oakeshott, Michael. *Hobbes on Civil Association.* Indianapolis: Liberty Fund, 2000.

———. “The Rule of Law.” In *On History and Other Essays*. Indianapolis: Liberty Fund, 1999.

Oakley, Francis. *Politics and Eternity: Studies in the History of Medieval and Early-Modern Political Thought.* Leiden: Brill, 1999.

Okin, Susan Moller. ““The Soveraign and His Counsellours”.” *Political Theory* 10, no. 1 (1982): 49-75.

Olsthoorn, Johan. “Worse Than Death.” *Hobbes Studies* 27, no. 2 (2014): 148-70.

Parker, Henry. “Observations Upon Some of His Majesties Late Answers and Expresses [1642].” In *Catalogue of the Pamphlets, Books, Newspapers, and Manuscripts Relating to the Civil War, the Commonwealth, and Restoriation, Collected by George Thomason, 1640-1661*. London: Oxford University Press, 1908.

Parkin, Jon. “The Reception of Hobbes’s *Leviathan*.” In *The Cambridge Companion to Hobbes’s Leviathan*, edited by Patricia Springborg, 441-49. Cambridge: Cambridge University Press, 2007.

———. *Taming the Leviathan: The Reception of the Political and Religious Ideas of Thomas Hobbes in England, 1640-1700.* Ideas in Context. Cambridge: Cambridge University Press, 2007.

Pasquino, Pasquale. “Hobbes, Religion, and Rational Choice: Hobbes's Two Leviathans and the Fool.” *Pacific Philosophical Quarterly* 82, no. 3-4 (2001): 406-19.

Pettit, Philip. *Made with Words: Hobbes on Language, Mind, and Politics.* Princeton: Princeton University Press, 2008.

———. *Republicanism: A Theory of Freedom and Government.* Oxford Political Theory. Oxford: Clarendon Press, 1997.

Pietarinen, Juhani. “Conatus as Active Power in Hobbes.” *Hobbes Studies* 14, no. 1 (2001): 71-82.

Pitkin, Hanna. “Hobbes's Concept of Representation—Ii.” *American Political Science Review* 58, no. 04 (1964): 902-18.

Pocock, J. G. A. *The Ancient Constitution and the Feudal Law: A Study of English Historical Thought in the Seventeenth Century :A Reissue with a Retrospect.* Cambridge: Cambridge University Press, 1987.

Pocock, J. G. A. . *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition.* Princeton, N.J.: Princeton University Press, 2003.

Pope, Alexander. *Essay on Man and Other Poems.* Dover Thrift Editions. Edited by Stanley Appelbaum. Dover Publications, Inc., 1994.

Quillet, Jeannine. “Community, Counsel and Representation.” In *The Cambridge History of Medieval Political Thought, C.350-C.1450*, edited by J.H. Burns, 520-72. Cambridge: Cambridge University Press, 1988.

Rawls, John. *A Theory of Justice.* Original ed. Cambridge, Mass.: Belknap Press, 2005.

Rhodes, Rosamond. “Hobbes's Unreasonable Fool.” *Southern Journal of Philosophy* 30, no. 2 (1992): 93-102.

Runciman, David. “The Concept of the State: The Sovereignty of a Fiction.” In *States & Citizens*, edited by Quentin Skinner and Bo Stråth, 28-38. Cambridge: Cambridge University Press, 2003.

———. “Hobbes's Theory of Representation: Anti-Democratic or Proto-Democratic?”. In *Political Representation*, edited by Ian Shapiro, 15-34. Cambridge: Cambridge University Press, 2010.

———. “What Kind of Person Is Hobbes's State? A Reply to Skinner.” *Journal of Political Philosophy* 8, no. 2 (2000): 268-78.

Ryan, Alan. “Hobbes and Individualism.” Chap. 4 In *Perspectives on Thomas Hobbes*, edited by G.A.J. Rogers and Alan Ryan, 81-105. Oxford: Clarendon Press, 1988.

Ryan, Magnus, and David Johnston. “Political Thought.” Chap. 20 In *The Cambridge Companion to Roman Law*, 423-51, 2015.

Schulze, Winifred. “Estates and the Problem of Resistance in Theory and Practice in the Sixteenth and Seventeenth Centuries.” In *Crown, Church and Estates: Central European Politics in the Sixteenth and Seventeenth Centuries*, edited by R.J.W. Evans and T.V. Thomas, 158-75. New York: Palgrave Macmillan, 1991.

Scott, David. “Rethinking Royalist Politics, 1642-9.” In *The English Civil War: Conflicts and Contexts 1640-9*, edited by John Adamson, 36-60. New York: Palgrave Macmillan, 2009.

Sheridan, Patricia. “Resisting the Scaffold: Self-Preservation and Limits of Obligation in Hobbes's Leviathan.” *Hobbes Studies* 24, no. 2 (2011): 137-57.

Skinner, Quentin. *The Foundations of Modern Political Thought, Volume I : The Renaissance.* Cambridge: Cambridge University Press, 1978.

———. *The Foundations of Modern Political Thought, Volume Ii: The Reformation.* Cambridge: Cambridge University Press, 1978.

———. *Hobbes and Republican Liberty.* Cambridge: Cambridge University Press, 2008.

———. “Hobbes and the Purely Artificial Person of the State.” Chap. 6 In *Visions of Politics: Hobbes and Civil Science*, 177-208. Cambridge: Cambridge University Press, 2002.

———. “Hobbes on Representation.” *European Journal of Philosophy* 13, no. 2 (2005): 155-84.

Slomp, Gabriella. “Hobbes and the Equality of Women.” *Political Studies* 42, no. 3 (1994): 441-52.

———. “The Inconvenience of the Legislator’s Two Persons and the Role of Good Counsellors.” *Critical Review of International Social and Political Philosophy* 19, no. 1 (2015): 68-85.

———. “The Liberal Slip of Thomas Hobbes's Authoritarian Pen.” *Critical Review of International Social and Political Philosophy* 13, no. 2-3 (2010): 357-69.

———. *Thomas Hobbes and the Political Philosophy of Glory.* New York: St. Martin's Press, 2000.

Sommerville, J. P. *Thomas Hobbes: Political Ideas in Historical Context.* New York: St. Martin's Press, 1992.

Sorell, Tom. “The Burdensome Freedom of Sovereigns.” In *Leviathan after 350 Years*, edited by Tom Sorell and Luc Foisneau, 183-96. Oxford: Clarendon Press, 2004.

———. “Hobbes’s Scheme of the Sciences.” In *The Cambridge Companion to Hobbes*, edited by Thomas Sorell, 54-62. Cambridge: Cambridge University Press, 1996.

Spragens, Thomas A. *The Politics of Motion: The World of Thomas Hobbes.* Lexington: University Press of Kentucky, 1973.

Sreedhar, Susanne. “Defending the Hobbesian Right of Self-Defense.” *Political Theory* 36, no. 6 (2008): 781-802.

———. *Hobbes on Resistance: Defying the Leviathan.* Cambridge: Cambridge University Press, 2010.

Stone, Lawrence. *The Causes of the English Revolution, 1529-1642.* London: Routledge, 2002.

Strauss, Leo. *The Political Philosophy of Hobbes, Its Basis and Its Genesis.* Oxford: Clarendon Press, 1936.

Tarlton, Charles. “The Despotical Doctrine of Hobbes, Part I: The Liberalization of *Leviathan*.” *History of Political Thought* 22, no. 4 (2001): 587-618.

———. “The Despotical Doctrine of Hobbes, Part Ii: Aspects of the Textual Substructure of Tyranny in *Leviathan*.” *History of Political Thought* 23, no. 1 (2002).

Taylor, A. E. *Thomas Hobbes.* Port Washington, N.Y.: Kennikat Press, 1970.

Thomas, Keith. “The Levellers and the Franchise.” In *The Interregnum: The Quest for Settlement, 1646-1660*, edited by G.E. Aylmer, 57-78. London: Macmillian, 1972.

Tierney, Brian. *The Idea of Natural Rights: Studies on Natural Rights, Natural Law, and Church Law, 1150-1625.* Emory University Studies in Law and Religion. Atlanta, Ga.: Scholars Press, 1997.

Tricaud, François. “Hobbes’s Conception of the State of Nature from 1640-1651: Evolution and Ambiguities.” In *Perspectives on Thomas Hobbes*, edited by G.A.J. Rogers and Alan Ryan, 107-23. Oxford: Clarendon Press, 1988.

Tuck, Richard. “Hobbes and Democracy.” In *Rethinking the Foundations of Modern Political Thought*, edited by Annabel Brett, James Tully and Holly Hamilton Bleakley, 171-90. Cambridge: Cambridge University Press, 2006.

———. *Natural Rights Theories: Their Origins and Development.* Cambridge: Cambridge University Press, 2002.

Vanderschraaf, Peter. “The Invisible Foole.” *Philosophical Studies* 147, no. 1 (2009): 37-58.

Vinx, Lars. “Hobbes on Civic Liberty and the Rule of Law.” In *Hobbes and the Law*, edited by David Dyzenhaus and Thomas Poole, 145-64. Cambridge: Cambridge University Press, 2012.

Waldron, Jeremy. *God, Locke, and Equality: Christian Foundations of John Locke's Political Thought.* Cambridge: Cambridge University Press, 2002.

———. “Hobbes and the Principle of Publicity.” *Pacific Philosophical Quarterly* 82, no. 3&4 (2001): 447-74.

———. “Hobbes on Truth and Civil Doctrine.” In *Philosophers on Education* edited by Amelie Rorty, 139-47. London: Routledge, 1998.

———. “A Rights-Based Critique of Constitutional Rights.” *Oxford Journal of Legal Studies* 13 (1993): 18-51.

Warrender, Howard. *The Political Philosophy of Hobbes, His Theory of Obligation.* Oxford: Clarendon Press, 1957.

Weston, Corinne Comstock. “England: Ancient Constitution and Common Law.” In *The Cambridge History of Political Thought 1450-1700*, edited by J.H. Burns and Mark Goldie, 374-411. Cambridge: Cambridge University Press, 1991.

———. *English Constitutional Theory and the House of Lords, 1556-1832.* Routledge Revivals. Reprint of original ed. Abingdon, Oxon: Routledge, 2010.

Whitman, James Q. *The Legacy of Roman Law in the German Romantic Era: Historical Vision and Legal Change.* Princeton, N.J.: Princeton University Press, 1990.

Wilks, Michael. *The Problem of Sovereignty in the Later Middle Ages.* Cambridge: Cambridge University Press, 1963.

Wootton, David. “Introduction.” In *Divine Right and Democracy: An Anthology of Political Writing in Stuart England*, edited by David Wootton, 21-90. Indianapolis: Hackett Publishing Co., 2003.

Zagorin, Perez. “Clarendon and Hobbes.” *The Journal of Modern History* 57, no. 4 (1985): 593-616.

———. *Hobbes and the Law of Nature.* Princeton: Princeton University Press, 2009.

———. “Hobbes without Grotius.” *History of Political Thought* 21, no. 1 (2000): 16-40.

Zaitchik, A. “Hobbes's Reply to the Fool.” *Political Theory* 10, no. 2 (1982): 245-66.

Zaret, David. *Origins of Democratic Culture: Printing, Petitions, and the Public Sphere in Early-Modern England.* Princeton Studies in Cultural Sociology. Princeton, N.J.: Princeton University Press, 2000.

Zuckert, Michael P. “Do Natural Rights Derive from Natural Law?”. *Harvard Journal of Law and Public Policy* 20 (1996-1997): 695-731.

———. *Natural Rights and the New Republicanism.* Princeton, N.J.: Princeton University Press, 1994.