INFORMATION TO USERS

This manuscript has been reproduced from the microfilm master. UMI films the text directly from the original or copy submitted. Thus, some thesis and dissertation copies are in typewriter face, while others may be from any type of computer printer.

The quality of this reproduction is dependent upon the quality of the copy submitted. Broken or indistinct print, colored or poor quality illustrations and photographs, print bleedthrough, substandard margins, and improper alignment can adversely affect reproduction.

In the unlikely event that the author did not send UMI a complete manuscript and there are missing pages, these will be noted. Also, if unauthorized copyright material had to be removed, a note will indicate the deletion.

Oversize materials (e.g., maps, drawings, charts) are reproduced by sectioning the original, beginning at the upper left-hand corner and continuing from left to right in equal sections with small overlaps. Each original is also photographed in one exposure and is included in reduced form at the back of the book.

Photographs included in the original manuscript have been reproduced xerographically in this copy. Higher quality 6" x 9" black and white photographic prints are available for any photographs or illustrations appearing in this copy for an additional charge. Contact UMI directly to order.

UMI

A Bell & Howell Information Company
300 North Zeeb Road, Ann Arbor MI 48106-1346 USA
313/761-4700 800/521-0600

HOBBES'S THEORY OF RIGHTS

by

ELEANOR ANN CURRAN

A dissertation submitted to the Graduate Faculty in Philosophy in partial fulfillment of the requirement for the degree of Doctor of Philosophy, The City University of New York

1998

This manuscript has been read and accepted for the Graduate Faculty in Philosophy in satisfaction of the dissertation requirement for the degree of Doctor of Philosophy.

9/16/98
Date

[signature] Steven Cahn
Chair of Examining Committee

9/16/98
Date

[signature]
Executive Officer

[typed name] Prof. B.H. Baumrin

[typed name] Prof. V. Held

[typed name] Prof. D. Lackey
Supervisory Committee

THE CITY UNIVERSITY OF NEW YORK

Abstract

HOBBES'S THEORY OF RIGHTS
by
Eleanor Curran

Adviser: Professor Bernard Baumrin

Hobbes - champion of absolutism, arch-royalist, supporter of Charles I, relentless egoist. What could he have to tell us about the natural rights of individuals? Not much, would be considered a fair reply by most and yet it is argued in this thesis that Hobbes actually holds a strong theory of natural rights. It is argued that, contrary to the interpetations of most modern Hobbes scholars, Hobbes gives primacy to the rights of the subjects rather than to the right of the sovereign to rule. The sovereign's right to rule is *dependent* upon his ability to uphold the subjects' rights. It is further argued that Hobbes describes rights for individuals that are correlated with the duties of others, rights, therefore, that can be defined as claim rights.

It is by examining the historical context of Hobbes's writing that the significance of his pronouncements on rights are brought to light. A comparison of contemporary political writers with Hobbes shows that on the subject of rights, what Hobbes has to say is closer to the arguments of the parliamentarians, than it is to those of the royalists. The assumption that Hobbes was a staunch royalist is questioned and an examination of what is known about Hobbes's personal actions and allegiances

during the Civl War period is shown to add nothing more in the way of evidence for the truth of the assumption.

Closely allied to the assumption that Hobbes is a royalist is the assumption that he is an absolutist. It is argued here that he makes the subjects the judge of whether their rights are being sufficiently protected by the sovereign. His theory of rights therefore provides a check on the power of the sovereign, and so it is argued that Hobbes does not defend absolutism.

The new interpretation of the subjects' rights in Hobbes's theory is examined to see what underlying rights theory is being assumed. It is argued that while the rights in Hobbes's theory may be termed natural rights, they do not rely on a traditional theory of natural law.

ACKNOWLEDGMENTS

I am very grateful to Virginia Held for her many helpful suggestions and criticisms throughout the process of conceiving and writing this dissertation, and also for her continual support and encouragement. I would also like to thank Douglas Lackey, Charles Landesman and Steven Cahn for help and advice at various stages of writing the dissertation. I would like to thank Arthur Collins for his advice and support in the first few years of my time at the Graduate Center. Most especially I would like to thank Stefan Baumrin who first showed me another way of looking at Hobbes and whose fascination with the history of the period during which Hobbes was writing, has been an inspiration. His enthusiasm for Hobbes scholarship and for this project has helped to keep me enthusiastic and has sustained me through the inevitable periods of difficulty. In particular I would like to thank him for his kindness and support when my work was interrupted during my father's illness and death. Books on writing dissertations have much advice to give about choosing an adviser. This adviser can add to the usual list of desirable qualities one that I haven't seen mentioned, that is, the ability to make the advisee laugh.

I would also like to thank those friends who have offered endless encouragement and support; in New York: particularly Holly Kilpatrick,who was there at the beginning, Gina Cannizzo, Maureen Linker, Jamie Bernstein and John Cimperman, and especially Irasema Rivera whose help and encouragement throughout my time in New York made it all possible. And in London: Maureen Chadwick and especially Katherine Gotts for all her computer help, Louise and Dexter Dymoke, Ivan Charaton, Quentin Charaton, Allison Johnson and Andrew Gibson, Lisa and Charlie Hennessy, Maurice Millen and Tish Golding and a very special thank you to Deborah Setterfield for her invaluable support, help and good humour through the last two years.

Last but not least, many thanks to my family for their support and help; especially to my mother and to James and Michael and particularly to Peter for his computing wizardry and to Uncle Noel for making me curious and buying me my first philosophy books and of course to my late father, who is almost entirely to blame for all of this.

CONTENTS

Abstract iv
Contents vii
Introduction 1

Chapter

1. **HOBBES'S POLITICAL THEORY, THE HISTORICAL CONTEXT**

Introduction 8

Part I. The Use of Historical Material to Help Interpret the Theory

1. The Use of Political Terms in Hobbes's Theory 10
2. Hobbes's References to Civil Strife in England 13
3. Political Theory as a Prescription for the Avoidance of Civil War 16
4. Reference in the Theory to Central Issues of contemporary Debate 19
5. A Common Assumption - Hobbes as Supporter of the Royalists 23

Part II. English Political Writers of the 1640s; Hobbes's Contemporaries 31

1. Radical Royalism 33
2. Moderate Royalism 38
3. Moderate Parliamentarianism 46
4. Radical Parliamentarianism - I. The Levellers 52
   II. The Diggers 57
5. The De Facto Theorists 59

Table One 62

Commentary on Table 63

Conclusion 66

Notes 69

2. **HOBBES'S THEORY OF RIGHTS - INTERPRETATIONS**

Introduction 72

Definitions of Rights 76

1. Gauthier, Rights as Permissions 80

2. Kavka, The Subject and the Sovereign, Liberty Rights to Claim Rights 93

3. Hampton, Rights as Simple Liberties 98

The Rights to Self-Defense and Self-Preservation, A Threat to the Theory 107

4. Taylor/Warrender, Rights in a Deontological Reading of Hobbes 109

5. Strauss, the Principle of Right 118

6. Tuck, Hobbes as a Conservative Rights Theorist 121

Conclusion, Hobbes Scholarship on Rights in the Theory 130

Notes 132

3. **HOBBES'S THEORY OF RIGHTS**

Part I, The Textual Argument 133

1. Unprotected Rights, The Rights of Nature 134

Summary of the Right of Nature 136

2. Protected Rights/Claim Rights 138

2a. The Second Law of Nature 140

Summary of Rights under the Second Law of Nature 143

Answer to an Objection - Hobbes's Talk of Liberty Excludes Claim Rights 145

2b. Inalienable Rights - Retained in the Commonwealth 151

The Right to Self-Preservation and the Duty of the Sovereign 155

Summary of Rights in the Theory 159

Answer to an Objection 2 - No Claim Rights without Positive Law 160

Part II. The Commentators 163

1. Gauthier, Rights Versus Obligations 164

2. Kavka, Claim Rights that don't Fit the Picture 169

3. Hampton, No Claim Rights in a Subjectivist Moral Theory and Inalienable Rights as a Threat to Absolutism 173

4. Warrender, No Advantage to receiving a Transferred Right 177

5. The Historical Argument; Tuck's Conservative Rights Theories: A Reply 179

Taking Sides - Hobbes as a Royalist Writer 184

Conclusion 187

Notes 189

4. IMPLICATIONS OF THE THEORY OF RIGHTS

Part I. a) A New Right? - The Right to Peace 190

Self-Preservation - A Closer Look

A Right to Full Preservation 192

Full Preservation as an End 193

The Need for Peace 194

Argument for the Right to Peace 195

b) Securing the Peace; A Sovereign's Duty 197

Part II. Hobbes's Theory of Rights - A New Kind of (Natural) Right? 200

i. Traditional Natural Rights Theories

a) Part of the Natural Law 204

b) The Emergence of Natural Rights 208

c) Mature Natural Rights Theories 212

d) d'Entreves - A Different Slant, Natural Rights not Part of 217

Traditional Natural Law

ii. Hobbes - New (Natural) Rights - Rights as a 220

Requirement of Nature

An Aside; Hobbes Avoids Some Pitfalls of Traditional 226

Natural Law/Natural Rights Theories

Conclusion 228

Part III. Revising History - The Radical Denied? - 230

Hobbes's True Place in the History of Political Thought

i. The Problem, Hobbes's Reputation - The Monster of Malmesbury

ii. Acquiring a Reputation 233

The Royal Society 235

Friends and Admirers, An Author in Demand 240

iii. History Revised; Hobbes, his Theory and its Influence 244

Notes 255

CONCLUSION 259

Further Implications of Hobbes's Theory of Rights

The Political Theory 260

The Moral Theory 262

Final Thoughts 267

INTRODUCTION

What does Thomas Hobbes have to say to us about the natural rights of individuals? Not much, would be considered a fair reply by most people who have read Hobbes's political theory. And yet we will be arguing in the next four chapters that Hobbes does in fact hold a strong theory of natural rights. What reasons could we possibly have for thinking that Hobbes holds a strong theory of rights when there is almost unanimous agreement amongst Hobbes scholars that he does not?

There are many disagreements about Hobbes's theory amongst the scholars who study it, but there are also many orthodoxies and these orthodoxies have such a grip on our minds that when we read Hobbes we are inclined to see his theory through them.

- Hobbes has a pessimistic view of man and he believes that man's natural state is one of brutal and unending war.

- Man's aggressive passions must be controlled and they can best be controlled by fear.

- What is needed is an absolute sovereign to rule over them, (most probably a monarch), who can keep the people "in awe".

- The sovereign's word is law, his sovereignty is undivided and non-negotiable.

- The people give up all their rights and submit themselves completely to his power.

- The freedom that they had in the state of nature is swapped for the safety which the sovereign can provide.

- The moral theory Hobbes encapsulates in his laws of nature is one of unbridled egoism. These are some of the beliefs about Hobbes's theory that are so entrenched that it seems eccentric to question them.

When Hobbes is studied seriously and the details of his argument are subjected to scholarly scrutiny, differences do emerge; about his psychology, about his moral theory, about how integrated the theory is, about his scientific method, and so on. And yet some of the strongest orthodoxies remain. Hobbes is an absolutist. Hobbes supported Charles I and the royalists during the English Civil Wars, and Hobbesian subjects give up most or all of their natural rights to the sovereign; any they retain are retained in name only, and are useless against the all powerful sovereign.

We are used to reading that "*Leviathan* is suffused with defenses of Charles I" (Martinich 1995, 16), that ". . . Hobbes believed in absolute sovereignty" (ibid., 5), and that "the subject, having given up his rights, cannot now appeal to them." (Ryan, in Sorell ed., 1996, 235). Most books that one picks up on Hobbes contain versions of these statements about his theory. And so, against this background, anything that seems to conflict with the orthodox versions of the theory, comes as something of a surprise.

It is when we start looking at the historical context of Hobbes's writing, that the surprises begin. Having been told that Hobbes was a staunch royalist who supported

Charles I during the Civil Wars, it is strange to read that two men who knew Hobbes personally and who actively and openly supported Charles I, (Edward Hyde, who became the Earl of Clarendon and Bishop Bramhall), both wrote attacks on *Leviathan* accusing Hobbes of supporting Cromwell and the parliamentarians. Bramhall said that Hobbes had written a "Rebells catechism" and Clarendon accused Hobbes of publishing "false and evil Doctrines" which were "pernicious to the Soveraign Power of Kings, and destructive to the affection and allegiance of Subjects". (Bramhall in Rogers ed., 1995, 145), and Clarendon 1676, Epistle Dedicatory). It is not so much that we should immediately take these attacks at face value; after all they do not offer any sort of proof of Hobbes's allegiances. But they do raise some interesting questions. What does it say about Hobbes's theory, that two well-informed royalists such as Clarendon and Bramhall could make such accusations. Presumably, to suggest that Hobbes might be sympathetic to the parliamentarians was not so outrageous that it would not be taken seriously. To make such a suggestion today does seem outrageous; so what did these men see, that is harder for us to see, three hundred years later?

What we have found, in trying to answer these questions, is that there are some aspects of Hobbes's theory that seem to fly in the face of the received wisdom of Hobbes as an absolutist, a royalist and someone who advocates the complete submission of subjects to sovereign. And there are positions Hobbes takes on certain topics which have a particular relevance to the political context of the time in which he was writing. When Hobbes says, in *Leviathan*, that the individual subject retains

his right of defense, even against the sovereign; he is saying something that was of the utmost political importance and sensitivity during the sixteen forties. In the political debates that raged during the period of the English Civil Wars (1642-1649) the question of the right to self-defense was particularly sensitive. Royalists argued that the right to self-defense, along with all other natural rights, must be given up to the sovereign and that an individual was never justified in attacking any superior, let alone the king, even in self-defense. "According to Michael Hudson (a chaplain to Charles I), our duty to obey the civil magistrate is of a higher order than the obligation to defend ourselves. So we may never defend ourselves against the king." (Sommerville 1992, 35). This was the standard view of royalists and the text of Romans 13 was often used to add religious weight to it.

> Everyone must submit himself to the governing authorities, for there is no authority except that which God has established. The authorities that exist have been established by God. Consequently, he who rebels against the authority is rebelling against what God has instituted, and those who do so will bring judgment on themselves. (The New Testament, Romans 13, The Gideons International).

This text fits nicely with the theory of the divine right of kings, according to which, a monarch's right to rule comes directly from God in a line of succession beginning with Adam and continuing down to the kings of this period. This theory had wide acceptance during Hobbes's time and, again, if we start to look at his theory in the context of these sorts of beliefs we can begin to see how controversial some parts of the theory, such as the subject's retained right to self-defense, must have been.

In the next four chapters we will be arguing that Hobbes's theory should be re-assessed, particularly on what it has to say about the rights of the subjects. First we shall look in some detail at the historical context in which it was written and show how this can help us to have a more informed interpretation of the theory, taking into account the political significance of some of what Hobbes had to say, at the time in which he said it. We shall examine the writing of some of his contemporaries and see what they had to say on the subjects of *law*, *sovereignty*, *equality* and *rights*. What this will demonstrate is that on some subjects, namely; *equality* and *rights* Hobbes uses arguments that would not be out of place if they were presented by a parliamentarian; indeed some of what he has to say is closer to what a Leveller would argue than it is to what we would expect a royalist to say. This leads us to a closer examination of Hobbes's theory of rights. How can we make sense of pronouncements on rights that could easily be from a radical parliamentarian pamphlet, when they are coming from the pen of a man who is, by all accounts, an arch-royalist and absolutist?

We will start by looking at what others have said on this subject. What have Hobbes scholars said about his theory of rights? How have they reconciled it with the supposed absolutism of his political theory as a whole? Another surprise. Almost all Hobbes commentators agree that he holds a very weak theory of rights. Most natural rights are given up to the sovereign when we form a commonwealth and those that aren't are either trivial (those liberties the sovereign has not thought it necessary to legislate against) or they are useless. Whenever these writers do detect an argument

or statement by Hobbes that smacks of a stronger defense of the rights of subjects they explain it away either as an inconsistency that can be reconciled with the wider argument or as a serious flaw in the wider argument.

We explore the third alternative; that Hobbes knew what he was saying, understood its significance in the debates of the time and deliberately ensured that the rights of the subjects in his commonwealth were protected in various ways. We will argue that Hobbes describes two kinds of claim rights, that is, rights that are correlated with the duties of others. And it is these claim rights that make the theory of rights strong.

If Hobbes holds a strong theory of (natural) rights how can this be reconciled with his absolutism? The answer to this question is that it can't be. The theory of rights does not "fit" with the absolutism of a Hobbesian monarch; rather, it provides a check on that absolutism. Hobbes, we will argue, is not an absolutist because he makes the sovereign's right to rule dependent on the subjects' judgment that he is providing them with sufficient protection.

If Hobbes is not an absolutist and he has a strong theory of natural rights then we must look again at the way the theory has been categorized; we must look at Hobbes's place in the history of political thought and see whether that position should be revised. If he is strong on natural rights and does not support absolutism then his theory looks closer to that of Locke than it has been thought to be.

We conclude that Hobbes has been misunderstood and his theory misinterpreted; not without reason, because when it is read without an awareness of its historical,

political context it is easy to interpret it in the way in which it has been interpreted. for at least the last hundred years. This problem is exacerbated by the fact that the theory does seem to pull in two directions. Hobbes uses royalist and absolutist language while at the same time he undermines the theoretical positions adopted by the real royalists. There is much to unravel in the theory itself, in the way that it was received at the time and the way that it is now perceived. In what follows we will show that. on the subject of the rights of individuals, the modern. orthodox interpretation of Hobbes fails. We will replace it with an analysis of Hobbes's theory of rights that shows it to be more original. more interesting and more liberal than one could have imagined on reading the theory out of its context.

CHAPTER 1

HOBBES'S POLITICAL THEORY, THE HISTORICAL CONTEXT

Introduction

In this chapter we shall show that looking at Hobbes's political theory in its historical, political context raises some interesting questions about some of the orthodoxies that have grown up around the theory. We will begin in part I, by sketching five ways in which a historical approach helps in the interpretation of Hobbes's theory. In part II we outline the thinking of the main political factions at the time of the Civil Wars on the subjects of: *sovereignty*, *law*, *equality* and *rights*. We then summarize the positions of the various factions on these subjects in a table with Hobbes's positions added in so that a comparison can be made. What the comparison shows is that although Hobbes is thought to be a royalist and therefore close to royalist thinking; he is actually closer to the parliamentarians and even the radical parliamentarians on the subjects of *equality* and *rights*. What are the implications of this observation? Hobbes's theory of rights has been categorized by most commentators as weak and of little significance once a commonwealth is formed. He

is said to describe natural rights as mere freedoms that are given up or made impotent once a sovereign is instituted. A fresh look at what Hobbes says on rights yields surprising results and provides the focus for the next 3 chapters.

PART I. *Examples of the use of Historical Context to help Interpretation of the Theory*

A great deal of Hobbes scholarship has been undertaken without the inclusion of any discussion of historical context. Scholars including Howard Warrender, David Gauthier Gregory Kavka and Bernard Gert have written extensively about Hobbes's political theory, without reference either to the extraordinary political events that were taking place in England as he wrote, or to the outpouring of political thought and debate that accompanied those events. The context of the English Civil Wars of the sixteen forties. (1) and Hobbes's self-imposed exile in Paris for about eleven years is ignored by these writers who favor close textual study of the theory without the distraction of material that is seen as superfluous to the theory's philosophical content. The argument, if one is given, is that if the theory is sound it will hold up on its own.(2) My intention, in this section, is to sketch a few arguments in favor of including some historical material in an analysis of Hobbes's theory.

1. The Use of Political Terms in Hobbes's Theory

It is true that the logical coherence of Hobbes's argument is a matter for internal investigation only. No amount of evidence from outside sources will make his argument valid if it cannot be shown to be so internally. And although the psychological premises of the argument could be challenged by empirical data, the job of ascertaining the validity of the argument itself ought to require no reference to context, historical or otherwise.

As long as we are only interested in the logic of the argument this point of view seems reasonable. When we start to look at the statements that can be made about the theory and its application to political order, however, the meaning or reference of the words used becomes relevant. If we want to be able to say something like "Hobbes's theory of political society is based upon a theory of duty" (Warrender 1957, 322) or "the moral obligation to obey the natural law is antecedent to the existence of the legislator and the civil society;" (A. E. Taylor 1938, Philosophy vol X111, October 1938, in Baumrin ed., 1969, 39) then we must be able to be clear about the use of words such as 'obligation', 'sovereignty' and 'civil society' in Hobbes's writing. Hobbes's theory includes propositions containing political terms such as these and others like 'rights' and 'law', which were widely used in contemporary political thought and debate. In England in the sixteen forties, for example, the application of the word 'sovereignty' was hotly debated by the various factions active in political

life. To those who supported the king, sovereignty was said to lie in the king himself. He had the ultimate authority and power to rule and could summon and dismiss his legislative body, Parliament, at will. The Royalist, Sir Robert Filmer, who defends the theory of the Divine Right of Kings, puts it in the following way:

> [C]reation made man prince of his posterity. And indeed not only Adam, but the succeeding patriarchs had, by right of fatherhood, royal authority over their children. . .
>
> . . . And this subjection of children being the fountain of all regal authority, by the ordination of God himself; it follows that civil power not only in general is by divine institution, but even the assignment of it specifically to the eldest parents. (Filmer 1680, 255).
>
> There is and always shall be continued to the end of the world a natural right of a supreme father over every multitude, . . . [i]f we compare the natural rights of a father with those of a king, we find them all one, . . . as the father over one family, so the king, as father over many families, extends his care to preserve, feed, clothe, instruct, and defend the whole commonwealth. His war, his peace, his courts of justice and all his acts of sovereignty. (ibid., 260).

Parliamentarians, on the other hand, saw sovereignty as lying in Parliament. An example of this view can be found in the writings of the parliamentarian, Henry Parker, who said that "[p]ower is originally in the people" and "is but secondary and derivative in Princes" (Dow 1985, 17). According to Parker, Parliament represented the people and the monarch should be restricted by law for the protection of the people. "Princes were created by the people, for the people's sake, and so limited by expresse Laws as that they might not violate the people's liberty" (ibid., 18).

These two writers represent two clearly opposing theories of sovereignty. In the posturing and negotiating that preceded the actual outbreak of war in 1642, versions

of these opposing views of sovereignty were used by each side to justify or popularize their positions. In 1642 for example, shortly before the war began, Charles I. under pressure from Parliament and in response to the Nineteen Propositions that Parliament had put to him (3), declared that he supported the theory of "mixed monarchy" according to which sovereignty was divided between the "three estates" of King, Lords and Commons. This was not a new theory but rather a co-opting of a popular theory that was already very familiar to those on both sides of the conflict, and one that could be accepted by many of the more moderate thinkers on each side. This theory was closely associated with the writings of Sir Edward Coke and the view often used by the critics of the king, that England had a constitution that had been created and adjusted and strengthened over hundreds of years, and that this constitution accorded a role to Parliament and the King, thereby dividing sovereignty between monarch, lords and commons. Charles, despite having ruled without Parliament for eleven years, stated his support for "mixed monarchy" in the following way:

> The experience and wisdom of your Ancestors hath so moulded this (government) out of a mixture of these (elements), as to give to this Kingdom . . . the convenience of all three, without the inconveniences of any one, as long as the Balance hangs even between the three Estates (the King, the House of Lords and the House of Commons), and they run joyntly on in their proper Chanell . . . (ibid., 16).

While Charles's sincerity, in expressing support for a "mixed monarchy" must be in doubt, his purpose is clear enough. It had become necessary to try and pacify his opponents in Parliament who now formed a clear majority.

Parliamentarians had become increasingly critical of the king's blatant disregard for the views of his Parliaments (when he chose to call them), and they often cited some version of the theory of "mixed monarchy" or "mixed government" to support their position. One such writer is the parliamentarian Philip Hunton, who proposed, in response to Charles's declaration of support for "mixed monarchy", his own version of the theory according to which sovereignty lies in the 'King-in-Parliament' (ibid., 16/17). Tying the king's sovereignty into his connection with Parliament, Hunton declared that the king had no independent sovereignty but only became sovereign when acting in conjunction with the legislative body.

This example of the disagreements over the use and application of the term 'sovereignty' illustrates the importance of an awareness of the way this and other political terms were being used at the time Hobbes was writing. The interpretation of Hobbes's political theory is made more accurate, by including an examination of the meaning and significance which terms central to the theory had at the time the theory was being written.

2. Hobbes's References to Civil Strife in England

Many philosophical analyses of Hobbes's political theory make no reference to the civil strife that was taking place in England while the theory was being written,

yet Hobbes does refer to some of the political events and debates of the time, even using such references as part of his argument. One example being what he says about the theory of "mixed monarchy" discussed above. In *Leviathan* Hobbes says:

> If there had not first been an opinion received of the greatest part of England, that these Powers were divided between the King, and the Lords and the House of Commons, the people had never been divided, and fallen into this Civill Warre; first between those that disagreed in Politiques; and after between the Dissenters about the liberty of Religion; which have so instructed men in this point of Sovereign Right, that there be few now (in England,) that do not see, that these Rights are inseperable, and will be so generally acknowledged, at the next return of Peace; (*Lev*. 18, 16).

This passage comes during a discussion of sovereignty and forms part of Hobbes's argument that sovereignty should never be divided. From an ahistorical perspective the most likely interpretation of this passage is as one of the many examples in Hobbes's writing of a stand taken against democracy and for the rule of an absolute monarch. Seen against the background of the conflicting views of sovereignty at the time however, Hobbes's position becomes less clear. If he was arguing that there was no role for Parliament and that the king should rule without any contribution from either Lords or Commons then he was espousing a more extreme monarchism than that of most royalists of the time. To attribute such an extreme position to Hobbes would require further argument and more textual evidence than this one passage. It would also raise another question. Why, if he wished to support such an uncompromising version of monarchism, did he then fail to support so many other tenets that were central to the royalist cause? Such questions as these can only be investigated when some knowledge of events and debates of the time is assumed.

There is also an entirely different interpretation of this passage that can be made when certain historical events are taken into consideration. It is possible to argue that Hobbes's affirmation of the principle of undivided sovereignty implies not his commitment to an absolutist monarchical form of government, but rather his support of the undivided sovereignty of Parliament. (see Skinner 1972 and below p28). Hobbes is usually thought to have written *Leviathan* between 1649 and the end of 1650, although Curley, in his recent edition of *Leviathan*, suggests that Hobbes may have started writing it as early as 1646 (Tuck 1993, 324/5, Hobbes 1994). Charles I was tried and executed in January 1649 and England was declared a republic in February of the same year, after a vote in the Commons on February 7th to abolish the monarchy. This means that when Hobbes was writing *Leviathan* England was already under the rule of a republican government. Quentin Skinner has argued that Hobbes supported the theory that a "de facto" government, like that set up after the Civil Wars by the Rump Parliament, could be a legitimate government. If that is the case then Hobbes, in arguing for undivided sovereignty, could be arguing in support of a sovereign assembly e.g. The House of Commons rather than for an absolute monarch. Again, it is an awareness of the *context* of Hobbes's remarks about undivided sovereignty that allows us to formulate an interpretation of the passage that would be unlikely to occur to a reader who is ignorant of that context.

3. Political Theory as a Prescription for the Avoidance of Civil War

The Civil Wars in England make their way into Hobbes's political theory at a conceptual level as well as in direct references such as that mentioned above. Hobbes makes man's tendency to fall into a state of civil war the ground of his theory of political power. His postulated state of nature combined with the psychological premises of the theory provide a hypothetical situation in which individuals spiral down into a state of constant and unending civil war. "During the time men live without a common Power to keep them all in awe, they are in that condition which is called Warre; and such a warre, as is of every man, against every man." (*Lev.* 13, 8).

Hobbes was acutely aware of the dangers and destructiveness of civil war and of the overriding political importance of the ability of a government to protect against it. As C. B. Macpherson has put it, Hobbes's "overriding concern was civil war; its avoidance was, for him the main purpose of political enquiry." (Macpherson 1968, 9). And as Hobbes himself writes:

> the utility of moral and civil philosophy is to be estimated, not so much by the commodities we have by knowing these sciences, as by the calamities we receive from not knowing them. Now, all such calamities as may be avoided by human industry arise from war, but chiefly from civil war; for from this proceed slaughter, solitude and the want of all things. (De Corpore 1994, 190).

Hobbes's view of civil war as the greatest social evil is perhaps most eloquently expressed in the following passage from *Leviathan* where he describes life in the

state of nature as a state of civil war:

> In such condition, there is no place for industry; because the fruit thereof is uncertain: and consequently no Culture of the Earth; no Navigation, nor use of the commodities that may be imported by sea; no commodious building; no Instruments of moving and removing such things as require much force; no Knowledge of the face of the Earth; no account of Time; no Arts; no Letters; no Society; and which is worst of all, continuall feare and danger of violent death; And the life of man, solitary, poore, nasty, brutish, and short. (*Lev* . 13, 9).

And if there can be any doubt that Hobbes intended to address the real problems occasioned by the breakdown in political authority in the sixteen forties, at the same time as devising a theory that justifies government at the most abstract level, there are his remarks at the beginning and at the end of *Leviathan*.

> . . . I humbly dedicate unto you this my discourse of Common-Wealth. I know not how the world will receive it, nor how it may reflect on those that shall seem to favour it. For in a way beset by those that contend on one side for too great Liberty, and on the other side for too much Authority, 'tis hard to passe between the points of both unwounded. (*Lev*. Dedicatory Epistle).

And at the end of *Leviathan*,

> And thus I have brought to an end my discourse of Civill and Ecclesiastical Government, *occasioned by the disorders of the present time*, without partiality, without application, and without other design, than to set before mens eyes the mutuall Relation between Protection and Obedience (*Lev*. A Review and Conclusion, my emphasis).

These comments demonstrate Hobbes's intention to provide insights into the political crisis of his times. It is important to acknowledge both his deeper philosophical purpose *and* his desire to say something that might prove relevant and useful to his contemporaries. It seems that he thought he could achieve both ends with his political theory.

It could be argued that Hobbes's political theory was already largely formed when he wrote the *Elements of Law*, before the Civil Wars (circulated in manuscript form in 1640, two years before the outbreak of war) and that therefore it is mistaken to see the formulation of the theory as a response to the horrors of civil war. We would reply to such an argument that although the war had not yet begun in 1640, the political stability of the country was already under threat and had been since the beginning of Charles I's reign in 1625. By 1629, for example, the relationship between the king and Parliament was already so bad that when the speaker of the House, acting on the king's orders, tried to adjourn the Parliament, he was physically held down in his chair while three resolutions were unanimously passed. The resolutions, which were directly critical of the actions of the king regarding such things as the raising of taxes without the consent of Parliament, were worded in such a way that going against them was said to be a capital offense; the implication being that the king himself, could be held to account by Parliament. Actions such as these highlight the extent to which the relationship between the king and Parliament had already broken down before 1630.

This is another reason for stressing the usefulness of an understanding of the political setting of Hobbes's writing. He was clearly deeply disturbed by and interested in the political conflicts that shaped his time. He had close connections with people who played important roles in those conflicts and even fled the country because he thought that he might be in danger from politicians who thought that his words tended to "advance the prerogatiue of kings" (Malcolm 1994, 115). His

political theory, addressing as it did, problems mirroring those of his fellow Englishmen at the time he was writing, should not be seen in isolation from the events and debates to which it was responding.

4. Reference in the Theory to Central Issues of Contemporary Debate

Hobbes directly addresses issues that were the subject of heated political debate before and during the civil wars. As Johann Sommerville comments in his book on the historical context of Hobbes's ideas, "Hobbes's arguments are steeped in references to the concepts and claims of his contemporaries. No account of his theory which ignores this can be adequate." (Sommerville 1992, 167).

The natural right to self-defense and the question of whether or not that right extended to self-defense against the king, was the subject of much discussion and disagreement amongst Hobbes's contemporaries. Royalists argued that there was no right to resist the king, even in self-defense. The right to defend oneself was, they argued, a right that could be given up and in the case of the sovereign it must always be surrendered. It was a common assumption that it must even be surrendered to a magistrate. (ibid., 35). The royalists' argument followed one given by Grotius (4), amongst others, that all natural rights are alienable and the right of individuals to defend themselves must be renounced as it is displaced by the superior right of the

state. According to Grotius, violent defense against an equal was lawful but against a superior it was unlawful.

> That private war may be lawful, so far as Natural Law goes, I conceive is sufficiently apparent from what has been said above, when it was shewn, that for anyone to repel injury, even by force, is not repugnant to Natural Law [chap. II]. But perhaps some may think that after judicial tribunals have been established, this is no longer lawful: for though public tribunals do not proceed from nature, but from the act of men, yet equity and natural reason dictate to us that we must comform to so laudable an institution; since it is much more decent and more conducive to tranquillity among men, than that men, under the influence of self-love, should right themselves according to their notions of right. (Grotius 1853, Ch. III, I, 2, p95).

Parliamentarians, on the other hand, argued that there was a right to resist anyone, even the king, in self-defense. By using a widely accepted proposition of natural law theory, that all substances naturally seek their own preservation and that it is morally right to preserve ourselves, they used this justification of self-defense to apply against anyone who might attack us. William Prynne, a parliamentarian, said in 1642 (*A soveraigne antidote to prevent, appease, and determine our unnaturall and destructive civill wars*, second edition 1642) that all individuals could defend themselves against unlawful attack even by a husband or king. (Sommerville 1992, 35). Some parliamentarians expanded this self-defense right to apply to a whole community's right to defend itself against "unlawful attack". This argument was then used to justify rebellion against a king whose actions or policies were said to be "unlawful".

What Hobbes has to say on the right to self-defense against the sovereign is interesting for at least two reasons. First, it changes dramatically from the *Elements*

of Law to *Leviathan*. Second, his position in *Leviathan* drew scathing criticism from some well known royalists. In the *Elements of Law* Hobbes states that we must give up the (natural) right to self-defense when we transfer that right to the sovereign. Once we have done so then "no man in any commonwealth whatsoever hath right to resist him, or them, on whom they have conferred this power coercive" (*De Corporae Politico* xx, 7, in Hobbes 1994, 112). This fits easily with the standard royalist argument. But in *Leviathan* Hobbes states that the right to self-defense cannot be transferred to the sovereign and therefore that there is a right to resist the sovereign. "If the sovereign command a man (though justly condemned,) to kill, wound or mayme himself; or to abstain from the use of food, ayre, medecine, or any other thing, without which he cannot live; *yet hath that man Liberty to disobey*" (*Lev*. 21,12 my emphasis). The right to self-defense has gone from being a right that we can and should give up to the sovereign, in the *Elements of Law*, to being a right that we cannot give up or transfer, even to the sovereign, in *Leviathan*. The right to self-defense has become inalienable.

> As it is necessary for all men that seek peace, to lay down certaine Rights of Nature; that is to say, not to have libertie to do all they list: so it is necessarie for mans life, to retaine some; as right to governe their own bodies; enjoy aire, water, motion, waies to go from place to place; and all things else without which a man cannot live, or not live well. (*Lev*. 15, 22).

In terms of contemporary political debate Hobbes's position on the right to resist the king had changed from one that would support royalist arguments that there exists no such right, to a view much closer to that of the parliamentarians, that the

self-defense right can be employed against anyone, up to and including the king. He came under vicious attack from royalists such as The Earl of Clarendon and Bishop Bramhall (Clarendon 1676 and Bramhall in Rogers ed., 1995), (5) for his apparent support of a right that could be used to justify violence against the king. Clarendon declared that such a right was "utterly inconsistent with the security of prince and people" (Clarenden 1676, 87), while Bishop Bramhall said that it opened "a large window . . . to sedition and rebellion." (Rogers ed., 1995, 144).

The right to self-defense, and whether it extends to superiors and specifically to a sovereign, is an example of an issue that was of the utmost political significance at the time of the Civil Wars and for many years afterwards. The responses quoted demonstrate the sensitivity of the subject and its perceived political implications. One of the interesting conclusions that can be drawn from an examination of Hobbes's discussion of this issue is that it raises a problem for the interpretation of Hobbes as a staunch royalist.

This common interpretation or assumption about Hobbes's own political affiliations will be discussed in the next section.

5. A Common Assumption - Hobbes as Supporter of the Royalists

Recently in *A Hobbes Dictionary*, A. P. Martinech declared that "*Leviathan* is suffused with defenses of Charles I." (Martinech 1995,16) To see Hobbes as a defender of the royalist cause is not new. It has been the received wisdom of most Hobbes scholarship of at least the last hundred years.

It is often argued and more often simply assumed that Hobbes did take a specific position on the wars between Charles I and the Parliamentary forces and that his theory is devised, at least in part, as a defense of that position. What is usually assumed is that Hobbes fully supported the royalist cause in the Civil Wars and that his theory is intended, at least in part, as a justification for the rule of an absolute monarchy. Richard Tuck says that "[i]t is clear that Hobbes's sympathies were entirely on the side of Charles's government, . . . " (Tuck 1993, 313). and Sommerville remarks that it was one of Hobbes's intentions to "rebut the principles commonplace among Charles I's parliamentarian opponents, . . ." and that some 'informed' contemporaries "rightly regarded his theory as essentially royalist in character." (Sommerville 1992, 3). Hobbes's arguments in *Leviathan* and his other political works, for a strong, powerful and undivided sovereignty are taken to be a clear indication of his support for the royalist side in the Civil Wars and his close personal connections with the Earls of Cavendish, one of the most important aristocratic, royalist families in the country, is seen as additional evidence of his

royalist leanings. Add to this his appearances at court, his tutelage of the young Prince of Wales and his pension from the king after the Restoration and the picture is of the consummate royalist both by conviction and connections.

The evidence for Hobbes's own political views, however, is not as conclusive as one might think. Amongst his contemporaries he was not always seen as a royalist. Royalists such as Clarendon and Bramhall saw him as at worst a supporter of the "Rebellion" and at best a danger to the royalist cause. There is enough reason for doubt both in the arguments of his political theory and in what we can surmise of his personal political opinions to make the assumption of a thoroughgoing royalism at least questionable. We would argue that it cannot be shown conclusively that Hobbes supported the royalists during the Civil Wars. There are significant departures from conventional royalism in his writing and as Quentin Skinner has remarked, "Hobbes usually preserved a lofty silence over all debate about his political thought." (Skinner 1965, 214).

Little is known of the details of Hobbes's life during the Civil Wars and what we do know tells us nothing that is conclusive about his political affiliations. He removed himself physically from the conflict before the first stage of the Civil Wars had begun. He left England in 1640 and did not return until 1651 when the wars were over and England had been declared a republic. The Civil Wars began in 1642 and went on intermittently until Charles I was executed in January of 1649. During those years Hobbes lived in Paris and carried on his philosophical work, becoming closely involved with the circle of Father Mersenne (6) and interacting with the great

intellectuals of the time including Descartes. In 1641 Mersenne invited Hobbes to write objections to Descartes' *Meditations* to be published with the Meditations and Descartes' reply. In 1642 Hobbes published *De Cive* in Paris. He started work on *De Corpore* and published a second edition of *De Cive* in 1647. There is some controversy as to when he started writing *Leviathan*, as we mentioned above. Edwin Curley, in his 1994 edition, puts it as early as 1646, suggesting that he may have begun writing the Latin edition at this time. Richard Tuck says that he did not start writing *Leviathan* until 1649. (Tuck 1993, 325). Whatever the starting date, Hobbes did not publish *Leviathan* until the spring of 1651 when it was published in London shortly before his return to England in late '51 or early '52. (According to Noel Malcolm in Sorell 1996, Hobbes left Paris in Mid-December 1651 and traveled to England shortly afterwards). On his return to England, Hobbes submitted to the new republican government by taking the "Engagement", a promise of obedience required of all adult males since 1650.

Hobbes was active at court before going into exile in France and while he was in Paris he acted as tutor in mathematics to the prince of Wales, at the court-in-exile at St. Germaine, just outside Paris, from the summer of 1646 to 1648. After the restoration of the monarchy in 1660, when he was living back in England, he received a pension from his former tutee, now king Charles II. He attended court once more and was said to be a favorite of the king.

On the other hand Hobbes was turned away from the court in exile at St. Germaine in October 1651 (Curley 1994, pIii) when he went to present a manuscript

copy of *Leviathan* to Charles. He had fallen out with the royalists there after tutoring the prince. He was said to have complained about not receiving full remuneration for his services and was known to have been disapproved of by Charles's mother, the catholic Queen Henrietta because of his unorthodox religious views.

Hobbes did have extensive ties to the English aristocracy, although his own origins were fairly humble; he was the son of a semi-literate clergyman in the small English town of Malmesbury in Wiltshire. His uncle, a successful local businessman, paid for Hobbes's education and on leaving Oxford at the age of twenty Hobbes was employed by one of England's leading aristocratic families, the Cavendishes, who became the Earls of Devonshire. After his graduation from Magdalen Hall, Oxford, Hobbes began as tutor to the first Earl, then he was tutor and later secretary to the second Earl, and then tutor to the third Earl. He also had a close association with the Earl of Newcastle, a second cousin of the second Earl, to whom he dedicated the *Elements of Law*. Newcastle was an important general in the royalist army and he left England for Paris after defeat at the Battle of Marston Moor in 1644. Hobbes associated with Newcastle in Paris and may have owed his position as tutor to the young Prince Charles at the court-in-exile, to Newcastle. After Hobbes returned to England in 1651/52 he lived again in the Devonshire household and remained with the family until his death in 1679. It is important, however, not to assume that Hobbes's close personal ties to leading royalists imply his agreement with their views. Hobbes's independence of thought is well documented and a parallel case regarding his religious views may be worth noting here. Hobbes had close personal

friendships with many Catholics; Father Mersenne, Kenelm Digby and the Catholic philosopher Thomas White, being but a few, and yet he did not agree with their religious views and their Catholicism did not seem to influence him.

The fact that Hobbes associated a great deal with close allies of king Charles I before and during the Civil Wars, is both illuminating and confusing. He was financially and personally indebted to them and probably counted some of them amongst his friends. At the same time he was not one of them and never could be. His extraordinary intellectual gifts and personable nature allowed him the privileged position of mixing with many of the most important and influential people of his time, many of whom supported the king. But how much of an insight this gives us into Hobbes's own `political beliefs is questionable. If he was little more than an apologist for the king, as some suggest, why did he not write openly in defense of the divine right of kings as Filmer did? (see below p19). Why did he change his position to the anti-royalist one of defending the right to self-defense against the king?

Different answers can be given to these questions. It could be for philosophical rather than political reasons that he did not defend the theory of the divine right of kings. Sommerville makes the point when he says that Hobbes "could not afford to admit the truth of patriarchalism of the Filmerian variety, for it was wholly incompatible with his system." (Sommerville 1992, 71). In the effort to keep his theory consistent he may not have always been able to say what royalists wanted to hear. Or there could have been reasons of self-protection, of wanting to disguise his partisanship, for fear of its possible repercussions regarding his future safety. Or, of

course, there is the possibility that he did not wholly support the royalist cause politically, even though he expressed feelings of sympathy towards the king and his supporters. It is certainly the case that Hobbes argued against some of the central tenets of the royalist theorists, as will become clear when we discuss in the next section some of the theories and arguments of the royalists. He is then, at the very least, a most unconventional royalist.

Hobbes's autobiographies and private correspondence do not help to clarify his political allegiances in the Civil Wars. Apart from a few references in his verse autobiography to his "defense o'th' King's prerogative" (v.a. 260, in Hobbes 1994, lx) and to "The King's Defense and Guard" (v.a. 275, ibid.) and Charles II's "Right to England's Sceptor undenied" (v.a.218, ibid., lix), there is little to tell us exactly what he thought. And of course the autobiography was written long after the Restoration (of the monarchy) in 1660. There are no references that I can find in his surviving correspondence that overtly state a commitment to the royalist cause.(Although many of his letters have been lost and Hobbes is said to have destroyed some). At times when one might expect a response to dramatic events such as the execution of Charles I in 1649, or the Restoration in 1660, there are no comments. He does mention in a letter to Gassendi in 1649 that he is preparing to return to England, "I am in fairly good health for my age, and I am certainly looking after myself, preserving myself for my return to England, should it happen by any chance" (Malcolm 1994, Vol. 1, 179). This letter was written less than eight months after the execution of Charles I, at a time when the House of Lords had been

abolished and England declared a republic. If Hobbes had any misgivings about returning to England and making a promise of obedience to the new regime, he said nothing, at least in this letter. It has been suggested that in April 1649 he fully expected Charles II to succeed in his efforts to defeat the parliamentary forces and restore the monarchy, (Tuck 1993, 323) and that it was in this frame of mind that he planned his return to England. Even if he did believe this, however, there is little reason to think that Hobbes could have been confident of acceptance at the court of a restored Charles II when he had just been rejected by Charles in St. Germaine. Also, at the time Charles refused to see Hobbes in October 1651 he (Charles) had just returned from England after the resounding defeat of the royalists at Worcester in September. By the time Hobbes actually left France for England, shortly after mid-December, (Sorell 1996, 33) there could have been little hope of a royalist victory. On his return to England Hobbes submitted to the new republican government by taking the "Engagement", a promise of obedience required of all adult males since 1650.

The events and connections of Hobbes's personal life do not give a conclusive answer to the question of whether Hobbes was a royalist and if so what kind of royalist he was, which leaves us with his writing and the writing of his contemporaries. The period before and during the Civil Wars saw an outpouring of political writing from thinkers of all political persuasions in England and an examination of some examples of this work, next to Hobbes can, we shall argue, throw some light on the extent and limit of his royalist thinking and his political

thought in general. What we shall argue in the next section is that an examination of the actual writings of his contemporaries, on both sides of the Civil Wars, shows that Hobbes should not be held to be a straightforward supporter of royalism, in the political debate surrounding the Civil Wars. We should perhaps just say something briefly about what we mean here by royalism. When we say someone was a royalist we could mean two connected but distinct things: first, that the person supported king Charles I in the Civil Wars and wished to see him restored to (absolute) power and second, that the person believed in the sort of absolute monarchy that Charles represented. Hobbes is usually taken to have been both kinds of royalist; he is said to have supported the side of Charles I and the royalist army during the wars and he is said to support and argue for absolutism. We shall say more about this in Chapters 2, 3 and 4, but for now we shall concentrate on the writings of Hobbes's contemporaries, so that we can see Hobbes's political theory in the context of the political thought of his time. Given the prevailing assumption of Hobbes's royalism one would expect his views to be closest to those of other royalists writing at the time. If Hobbes was a royalist, however, he was not a conventional one and he departed from standard royalist opinion on several important points.

PART II. *English Political Writers of the 1640s; Hobbes's Contemporaries*

We have divided the political writings into five groups of political thinkers who we will refer to as:

1. Radical Royalists

2. Moderate Royalists,

3 Moderate Parliamentarians, (Independents)

4. Radical Parliamentarians, (Levellers, Diggers)

5. De Facto Theorists

For the *radical royalists* we will look at Sir Robert Filmer, who is most famous for his defense of the theory of the divine right of kings in his work *Patriarcha*. This work places Filmer as an unbending absolutist and unquestioning supporter of Charles I. For the moderate royalists we shall look at the writings of Edward Hyde, Lord Clarendon who, as a member of Parliament before the Civil Wars, was critical of some of Charles I's excesses in government and supported a certain amount of reform, but who, once the wars started, swung behind the king and became one of his closest advisers. After the Restoration he became a Minister in the new Government of Charles II before eventually falling from grace. (Rogers 1995, xv). We will also refer to members of the Tew Circle,(7) the group of royalist intellectuals whom Richard Tuck picks out as the group in which we should place Hobbes. For the

moderate parliamentarians we shall include both the "Independents" of the parliamentary army such as Cromwell and Ireton and the more moderate of the pro-parliamentary political thinkers such as Philip Hunton, (*A Treatise of Monarchie*, 1643), Henry Parker (*Observations upon some of his Majesties late Answers and Expresses*, 1642) and Charles Herle. The radical parliamentarians we will refer to include the section of the parliamentary army that comprised the Levellers (*The Case of the Army Truly Stated*, 1647, *An Agreement of the People*, 1647) and Leveller thinkers such as John Lilburne (*The Free Man Vindicated*, 1646) and Richard Overton (*An appeal from the degenerate representative body 1647*) as well as the thinkers of the more radical "Diggers", particularly Gerrard Winstanley. Finally we shall also look at the group known as the *de facto* Theorists who, in support of the new regime after the Civil Wars, argued that whatever person or group demonstrated the power to rule had a right to rule. This group is represented by the writing of Anthony Ascham (*Of the confusions and revolutions governments*, 1649).

Political debate in England during and just after the reign of Charles I was dominated by discussion of certain key political subjects whose very definitions were at the heart of the struggle for power that erupted in the Civil Wars. '*Sovereignty*', '*law*', '*equality*' and '*rights*' were among the most significant and we shall briefly outline the positions of the main factions on these subjects.

1. Radical Royalism

Sir Robert Filmer, a country squire knighted by Charles I, wrote what was to become one of the most famous defenses of the theory of the *divine right of kings*, of the civil war period and beyond. Though his work *Patriarcha* was only published posthumously in 1680, it is thought to have been written and circulated in manuscript form between 1635 and 1642 (Tuck 1993, 262). In it Filmer attacks the view "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, and that the power which any one man hath over others was at first bestowed according to the discretion of the multitude." (Filmer 1991, 2).

This view, he declares, "contradicts the doctrine and history of the Holy Scriptures, the constant practice of all ancient monarchies, and the very principles of the law of nature." (ibid., 3) And on this doctrine there has been built the 'perilous conclusion' that "the people or multitude have power to punish or deprive the prince if he transgress the laws of the kingdom" (ibid.). Filmer is attacking those who argued that sovereignty comes from the people and what is said to follow from that, namely, the proposal that there is a right to rebellion on the part of the subjects. Such a view, argues Filmer, stems from "the supposed natural equality and freedom of mankind and liberty to choose what form of government it please." (ibid.).This is an "erroneous principle" whose effective contradiction would lead to the collapse of the

"vast engine of popular sedition"(ibid.). Filmer also wrote a book directed against *Leviathan* and two other works, *Observations Concerning the Original of Government, upon Mr. Hobs Leviathan, Mr. Milton against Salmasius, H. Grotius 'De Jure Belli'* published in 1652. In this work he attacks Hobbes's view of sovereignty with its notion of people sprung from the earth like mushrooms, with no attachments or obligations to one another. Filmer argues to the contrary that we have natural obligations arising out of our roles as children and parents, and he uses this to criticize the notion of the right of nature employed by Hobbes. (Filmer 1652, III, in Rogers ed. 1995, 4).

Filmer argues against the principle of 'natural equality' by locating the rights of kings in a line of patriarchal power handed down by God to Adam and succeeding patriarchs. A natural subjection of people to king is thus posited, analogous to the natural subjection of child to father, "this subjection of children being the fountain of all regal authority, by the ordination of God himself" and so "it follows that civil power not only in general is by divine institution, but even the assignment of it specifically to the eldest parents, which quite takes away that new and common distinction which refers only power universal and absolute to God, but power respective in regard of the special form of government to the choice of the people." (Filmer 1991, 7). On the question of how sovereignty is transferred Filmer states that the Crown never devolves to the people. In cases where there is not a straightforward heir the Crown will go to "the prime and independent heads of families." (ibid., 11).

Sovereignty, according to Filmer, lies in the monarch solely and completely and is bestowed by God. On the rights and duties of the sovereign, Filmer says "the king, as father over many families, extends his care to preserve, feed, clothe, instruct, and defend the whole commonwealth. His war, his peace, his courts of justice, and all his acts of sovereignty, 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." (ibid., 12).

Filmer goes on to say that any theory which says that the people may choose their form of government is a paradox which he likens to the notion that a father could have his power given to him by his children. Monarchy is the form of government intended by God. To those who would support democracy Filmer points to what he sees as the weaknesses in the democracy of Rome, that it only lasted for about four hundred and eighty years, that there were confusing shifts in the form of government, that it was rife with sedition that led to civil wars and that it could only extend to one city.

The alternative of a "mixed monarchy" which I have already mentioned above is given short shrift by Filmer. It is a notion that bears directly on arguments of the time concerning the power of Parliament and whether it shared in the "sovereignty" of the king. Filmer dismisses the idea as an 'impossibility' and 'contradiction' which converts the government into a democracy taking away from the king his sovereignty. Only if the king preserves the absolute power in himself using the assembly merely for advice, can the monarch remain sovereign. If the nobles and

commons each have a voice as well as the king, the nobles and commons together could "make a law to bind the king, which was not yet seen in any kingdom but if it could the state must needs be popular and not regal" (ibid., 32).

On the subject of law Filmer stresses that kings are above the law and argues that it is one of the great mistakes of those who say that kings get their power from the people that they make the king subject to positive laws. A king makes the law and is tied only to God's law or the law of nature in his exercise of his lawmaking power. "[F]or as kingly law is by the law of God, so it hath no inferior law to limit it. The father of a family governs by no other law than by his own will, not by the laws or wills of his sons or servants." (ibid., 35). The king is not obliged to uphold all the written laws of the kingdom but only those he judges to be "upright, . . . according to the equity of his conscience joined with mercy, . . ." (ibid., 43). The king is also above the common law. Filmer argues that common laws are just customs which at some point became laws which they could only have done by the command of a superior. And as the first power is the kingly power, the common law must, he says, originally have been the "laws and commands of kings at first unwritten" (ibid., 45). In other words the king is above the common law just as he is above statute law and may change it as he sees fit. The subject, on the other hand, is always obliged to obey the commands of the sovereign even if these go against his (the sovereign's) laws.

Before laws were written, Filmer argues, the word of the king was law. Positive law therefore comprises the commands of the king, written down for the convenience of both king and people. The power to make law is the defining mark of a king.

"That which giveth the very being to a king is the power to give laws; without this power he is but an equivocal king." (ibid., 44). Of laws made in Parliament, Filmer says that they may be suspended by the king for reasons known only to him. The proper role of Parliament in the making of laws, according to Filmer, is merely to advise and inform the king and thereby to strengthen the laws which the king "ordains". The laws themselves can only be made by the king. "[I]n parliament all statutes or laws are made properly by the king alone." (ibid., 57).

On the question of rights, Filmer, not surprisingly, says that rights are to be preserved and distributed by the king. All natural rights are to be given up to the king. If natural rights are retained by the people there will be a consequent loss of sovereignty for the king or worse, " . . . all those liberties that are claimed in parliaments are the liberties of grace from the king, and not the liberties of nature to the people. For if the liberty were retained it would give power to the multitude to assemble themselves *when* and *where* they please, to bestow sovereignty and by pactions to limit and direct the exercise of it, . . ." (ibid., 55). His response to Hobbes's contention in chapter 21 of *Leviathan* that the rights to self-defense and self-preservation are retained by individuals, is to say that such "doctrines" are "destructive to all governments whatsoever" (ibid., 195).

We can see that Filmer advocates a clear and uncompromising version of absolutism and supports the theory that kings have a divine right to rule that comes directly from God. There is a natural hierarchy amongst people with kings at the top of the pyramid (on earth) and it is the king and the king alone who may make law.

The subjects are always obliged to obey the king and his laws and they must give up all their natural rights to the king who may then distribute rights as he see fit.

2. Moderate Royalism

More moderate royalists such as Edward Hyde, who became the Earl of Clarendon, rejected some of the more extreme and absolutist elements of Filmer's defense of the monarchy while still supporting many of the central tenets of the monarchist position. According to Christopher Hill, Clarendon "rejected theories of divine right, of king or bishops, and was critical of the conduct of the Laudian hierarchy." (Hill 1967, 202). His backing of some reform of some of the excesses of Charles I when he sat in Parliament during the early years of his reign confirms this view. Some remarks of Clarendon's do however sound closer to divine right theory than Hill's comment implies, - "all power was by God and Nature invested into one Man" (Clarendon 1676, 72) for example, and when the country polarized for the Civil Wars his royalism was unflinching. He backed the king in the Wars, became Charles II's leading minister after the restoration in 1660 and wrote a book savagely attacking *Leviathan* as "pernicious to the Sovereign Power of Kings, and destructive to the affection and allegiance of Subjects;" (Clarendon, 1676, Dedicatory Epistle). In this book, *A Brief View and Survey of the Pernicious Errors to Church and State*

In Mr. Hobbes's book entitled Leviathan, Clarendon accuses Hobbes of supporting Cromwell, of influencing or being influenced by the Levellers (ibid., 181), and as we mentioned above, of introducing under the guise of support for a powerful sovereign, doctrines such as the right to defense against the sovereign, that were "utterly inconsistent with the security of prince and people." (ibid., 87).

Clarendon's royalism is as deep seated as Filmer's, he stops short of the more extreme tenets of divine right theory, but many of the assumptions behind filmer's defense of that theory are accepted by Clarendon. The suggestion that people are equal, for example, is seen as absurd by Clarendon. He takes for granted a natural hierarchy in society and in government. "in 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." (ibid., 182/3). Hobbes's suggestion that such privileges should be given only as a recognition of ability is treated with contempt by Clarendon and dismissed as being like the pronouncements of "a faithful leveller." Indeed, Clarendon lists Hobbes egalitarianism as just one of his false assumptions, saying "he takes many things for granted which are not true; as . . . that 'nature hath made all men equal in the faculties of body and mind.'"(ibid., 26).

He is similarly outraged by what he sees as the attack on the right of succession by Hobbes, when Hobbes says that the sovereign may choose any successor he wishes. Clarendon accuses Hobbes of;

> . . . invading the right of all Hereditary Monarchies in the world by declaring,

> that by the law of nature which is immutable, it is in the power of the present Sovereign to dispose of the succession, and to appoint who shall succeed him in the Government; and that the word Heir doth not of itself imply the Children or nearest Kindred of a man, but whomsoever a man shall any way declare he would have succeed him; contrary to the known right and establishment throughout the World, and which would shake if not dissolve the Peace of all Kingdoms. (ibid., p61).

These words underline Clarendon's support of the argument that monarchs rule by right and that the natural succession down a hereditary line is the way that sovereignty should be passed on. They also demonstrate once again the distance perceived by some royalists between their position and Hobbes's.

Another point of difference Clarendon sees between himself and Hobbes is on the question of wherein sovereignty lies or originates. Hobbes argues that "the sovereign power is conferred by the consent of the People assembled." (*Lev.* 18, 2). Clarendon dismisses the claim that sovereignty is conferred by the people in the following way: "that which the levelling fancy of some men would reduce their Soveraign to, upon an imagination that Princes have no authority or power but what was originally given them by the People." (Clarendon 1676, 71). He goes on to argue that if it was really up to a group of equals to confer such power they would not give up their own power to someone who could then use it against them.

> It cannot be imagined possible in nature, that ever such an assembly of men of equal authority in themselves, will ever agree to make one Man their Soveraign with such an absolute Jurisdiction over the rest, as must devest them of all property as well as power for the future; and whereas in truth all power was by God and Nature invested into one Man, where still as much of it remains as he hath not parted with, . . . " (ibid., 72).

Clarendon's assertion that all power resides in the monarch and that its source is God and nature, is in direct conflict with any view that says that sovereign power is originally in the people and is then given to a monarch or assembly. Such a view, held by both parliamentarians and Hobbes, raises the question when or how the sovereign power might be retained by the people or devolve back to the people, for example when a monarch abuses his power. If it resides solely in the monarch then it is never the people's to give up or claim back. The people's obedience to the monarch is then a permanent requirement and the preservation and good of the people is something the monarch should protect according to his judgment, and perhaps according to natural law but *not* something the people themselves can have any responsibility for or any right to assert. Here, again, we can see Clarendon's closeness to divine right theory and Hobbes's distance from it.

The sovereign power, according to Clarendon,

> where still as much remains as he hath not parted with, and shared with others, for the good and benefit of those (and the mutual security of both) for whose benefit it was first intrusted to him; the rest, which is enough, remains still in him, and may be applied to the preservation of the whole, against the fancies of those who think he hath nothing but what they have given him; and likewise against those who believe that so much is given him, that he hath power to leave nobody else any thing to enjoy; the last of which are no less enemies to Monarchy than the former." (ibid.).

So, the argument is not that the monarch has no duty to protect the good of the people but *that the people have no right to protect themselves or to judge their protector*. (This point is directly opposed to Hobbes as we shall argue below).

On the question of law, Clarendon, a lawyer by profession himself, criticizes Hobbes for making the sovereign too powerful and for being arrogant in his presumption of defining law without reference to experts in the field. "[C]ontrary to the notions of all other men, he must introduce a notion of Law, contrary to what the world hath ever yet had of it." (Clarendon, in Rogers ed., 1995, 252). He will not disagree with Hobbes on the principle that it is the sovereign who makes the law but he does object to the ease with which Hobbes implies that a sovereign may undo the laws he has made.

> He saies the Soveraign is the only Legislator: and I will not contradict him in that. It is the Soveraign stamp, and Royal consent, and that alone, that gives life and being, and title of Laws, to that which was before but counsel and advice: and no such constitution of his can be repeal'd and made void, but in the same manner, and with his consent. *But we say*, that he may prescribe or consent to such a method in the form, and making these Laws, that being once made for him, *he cannot but in the same form repeal, or alter them; and he is oblig'd by the Law of justice to observe and perform this contract, and he cannot break it, or absolve himself from the observation of it, without violation of justice*: (ibid., 254, my emphasis).

Clarendon stresses that Hobbes has gone too far in emphasizing the sovereign's complete independence from the laws that have been made. He criticizes Hobbes's deduction from his definition of law that "the sovereign is Sole Legislator, and that himself is not subject to Laws, because he can make, and repeal them: which in truth is no necessary deduction from his own definition;" (ibid., 253) and he gives as an example an arbitrary repealing of an established law such as that of male primogeniture that, if changed, would cause utter confusion.

> Doth Mr. Hobbes believe that the word of the King hath power to change this course, and to appoint that all the sons shall divide the Estate, and the Eldest

> Daughter inherit alone? and must not all the confusion imaginable attend such a mutation? all governments subsist and are establish'd· by firmness and constancy, by every mans knowing what is his right to enjoy, and what is his duty to do: and it is a wonderful method to make this Government more perfect, and more durable, by introducing such an incertainty, that no man shall know what he is to do, nor what he is to suffer, but that he who is sovereign tomorrow, may cancel, and dissolve all that was don or consented to by the Sovereign who was yesterday, or by himself as often as he changes his mind. (ibid., 255).

His argument is that while the king makes the law he cannot change or repeal it without going through the processes of receiving advice and going through the formalities that have been established over time. It seems that he is arguing that the sovereign is to some extent bound by previous laws and by the role of Parliament in the lawmaking process, or at least that he cannot change them at will. Law is the word of the king in accordance with the law of nature and yet the word of the king alone cannot alter or repeal the law.

> No Eminent Lawyer hath ever said that the two Arms of a Common-wealth are Force and Justice, the first whereof is in the King, the other deposited in the hands of the Parliament; but all Lawyers know, that they are equally deposited in the hands of the King, and that all justice is administered by him, and in his name: and all men acknowledge that all the Laws are his Laws; his consent and autority only giving the power and name of a Law, what concurrence, or formality soever hath contributed towards it; the question only is, whether he can repeal or vacate such a Law, without the same concurrence and formality. . . . For tho it be confess'd that those old Laws become new by this consent of his, the Laws of the Legislator, that is of that Soveraign who indulges the use of them; yet he cannot say that he can by his word vacate and repeal those Laws, and his own concession, without dissolving all the ligaments of Government, and without the violation of faith, which himself confesses to be against the Law of Nature. (ibid., 256).

Clarendon's view of the law then, is equivocal. He declares, like Filmer, that the word of the king is law but makes it clear that, unlike Filmer, he does not mean this

literally. He supports a more constitutional form of lawmaking by the sovereign, with consultation of experts in the field, an acceptance of the need for consistency and obedience to the body of law that has already been established according to the traditions of the commonwealth.

On the question of rights, Clarendon, like other royalists, was outraged by the suggestion that there was a universal right of self- preservation that entailed a right to resist the sovereign, as we mentioned above. Clarendon thinks that Hobbes gives too much liberty to the subject on the one hand and too little on the other.

> [T]ho he (Hobbes) be so cruel as to devest his Subjects of all that liberty, which the best and most peaceable men desire to possess, yet he liberally and bountifully confers upon them such a liberty as no honest man can pretend to, and which is utterly inconsistent with the security of Prince and People; which unreasonable Indulgence of his, cannot but be thought to proceed from an unlawful affection to those who he saw had power enough to defend the transcendent wickedness they had committed, tho they were without an Advocate to make it lawful for them to do so, till he took that office upon him in his *Leviathan*, . . . (ibid., 234).

Here again Clarendon is accusing Hobbes of supporting Cromwell, because of his advocacy of the right to self-defense against the king. In a series of publications in the early 1640s, members of Tew Circle (a group of royalist inclined intellectuals of whom Clarendon was one, as we mentioned above, see note 7), attacked the argument being made by parliamentarians such as Henry Parker, that the right of self-preservation or self-defense could be applied to justify resistance to the sovereign. Dudley Digges argued in a lengthy pamphlet published posthumously in 1644, *The Unlawfulness of Subjects Taking up Arms against their Sovereign*, that the right to

self-preservation was not a law but merely a right of nature which could be given up as all rights could be given up. In language uncannily close to that of *Leviathan*, (*Lev.* 14, 3) Digges says:

> If we look backe to the law of Nature, we shall finde that the people would have had a clearer and most distinct notion of it, if common use of calling it *Law* had not helped to confound their understanding, when it ought to have been named the *Right* of nature; for *Right* and *Law* differ as much as Liberty and Bonds: *Jus*, or right not laying any obligation, but signifying, we may equally choose to doe or not to doe without fault, wheras *Lex* or law determines us either to a particular performance by way of command, or a particular abstinence by way of prohibition; and therefore *jus naturae* , all the right of nature, which now we can innocently make use of, is that freedome, not which any law gives us, but which no law takes away, and laws are the severall restraints and limitations of native liberty. (Digges 1644, in Tuck '93 p274).

Royalists such as Digges and the others of the Tew circle are using an argument familiar in natural law theory of the time, which can be found for example in Grotius, (and which we mentioned above) that all individual rights should be given up to the sovereign. Grotius had also made the more general claim in 1647 that "violent defence though lawful against an equal is unlawful against a superior" (Sommerville 1992, 36, quoting Grotius from *De imperio summarum potestatum circa sacra*, Paris 1647, 45).

Clarendon and other moderate royalists ostensibly advocate a less extreme form of royalism than Filmer does; the more absolutist stance on law, for example, is toned down by Clarendon to a hybrid of absolutism and constitutionalism. On the other hand, when it comes to sovereignty, equality and rights they sound close to the divine right theorists. Clarendon is anti-egalitarian and says that sovereignty comes

from God and Nature. He also argues against the notion of a right to self-defense against the king and generally he takes the position that all (natural) rights should be given up to the sovereign.

3. Moderate Parliamentarianism

The arguments used by the moderate parliamentarians in the 1640s were often not new in themselves but rather new expressions or applications of arguments that had been circulating in the 1620s and thirties and sometimes even earlier. The ideas of Sir Edward Coke, the former Attorney-General to Queen Elizabeth I and Lord Chief Justice to James I (the father of Charles I), were taken up by the next generation and used to strengthen the case of Parliament against the king. Coke had written extensively on English law and particularly on English common law and the English constitution. "Coke used his learning in the yearbooks and legal records both in his *Reports* and his *Institutes* to set out and comment upon what he took to be the law (the legal principles, values, maxims, and rules) embedded in previous decisions." (M. M. Goldsmith in Sorell ed., 292).

Coke raised the status of the common law to something almost mythical and posited a science of law that could decide questions regarding the powers of the king and the liberties of the subject. (Somerville 1992, Dow 1985). The common law

itself was said to be immemorial and the result of the wisdom and experience of many generations of both English subjects and monarchs. It is this view of the common law that Hobbes refers to with such contempt in *Leviathan* . (*Lev.* 26).

The view of the common law associated with Coke was used by parliamentarian writers to stress the pre-existence, in England, of a body of law in which were enshrined the rights of the people and the prerogatives of their sovereigns. England, they said, is a country ruled by an ancient law and if any particular sovereign violated the law or the rights enshrined in it, they would be breaking the law or overstepping their prerogative.

This contrasts strongly with the theory of law argued for by Filmer, where it is the sovereign's command that is law and the sovereign himself is above the law. Parliamentarians applied the idea that there were laws that a sovereign should not break or misapply, to justify, first, criticism of Charles I, in the hope of reform, and later, rebellion and civil war against the sovereign. At one of the Putney Debates on the 1st. November 1647 (8) Cromwell declared "I think that the king is king by contract" (Blitzer 1963, 75). On the 20th January 1649 in the charges brought against Charles I, the king was described in the following way:

> That the said Charles Stuart, being admitted King of England, and therein trusted with *a limited power to govern by and according to the laws of the land, and not otherwise*; and by his trust, oath and office being obliged to use the power committed to him for the good and benefit of the people, and for the preservation of their rights and liberties . . . (ibid., 84/5, my emphasis).

Parliamentarians saw the king as being subject to laws that were already in place

before he was king. And, as we have seen, some moderate royalists such as Clarendon were also sympathetic to this idea. This way of seeing the law influences the view of sovereignty. If sovereignty is defined as Bodin defined it, as the power to make law, then the king's sovereignty is seen by this group as being of a limited kind.

Philip Hunton, a moderate parliamentarian, published *A Treatise of Monarchie* in 1643 (in reply to which Filmer wrote *The Anarchy of a Limited or Mixed Monarchy*). Hunton argues that England was a mixed monarchy; the theory that the country is governed by a combination of King, Lords (or bishops) and Commons.(As mentioned above in Section I,1). Hunton's particular version of the theory of mixed monarchy says that sovereignty lies in the King-in-Parliament. The king has the power to make law, but only in conjunction with the legislative body of Parliament. The king on his own does not have total sovereignty, instead sovereignty is split between the three "estates".

Henry Parker, a lawyer who was made secretary to the Commons in 1645, wrote a number of political pamphlets between 1640 and 1644, his most famous being his *Observations upon some of his Majesties late Answers and Expresses* published in 1642. Parker locates sovereignty first in the people "Power is originally inherent in the people" and that of kings as derived from the people, "power is but secondary and derivative in Princes, the foundation and efficient cause is the people." (Dow 1985, 18). The king's power comes from the people and is limited by law. "Princes were created by the people, for the people's sake, and so limited by expresse laws as

that they might not violate the people's liberty." (ibid., 417). If a king did fail to act in the interests of the people then parliament could act to restrain the king. (ibid., 18). Parliament could then act without the king, though the circumstances are restricted, i.e. only if the king fails to act according to his duty, but under that circumstance Parliament, it seems, becomes sovereign, at least temporarily.

It is important to note that according to Parker and other moderate parliamentarians like Hunton and Charles Herle, sovereignty *originates* in the people, but is *given* or *transferred* to the people's representatives in Parliament. They did not take the more radical step of saying that any power is retained by the ordinary people outside Parliament. As Charles Herle puts it, "The Parliament *is* the people's own consent, which once passed, they cannot revoke . . . We acknowledge no power can be employed but what is reserved and the people have reserved no power from themselves in Parliament" (Dow, 18).

The arguments that the king's power and authority were limited by laws and a constitution and possibly also by a claim to the sovereignty of Parliament, were common on the parliamentary side by the end of the Civil Wars. In January 1649 the Rump Parliament passed a resolution stating that "the people are, under God, the original of all just power: and also . . . the Commons of England in Parliament assembled, being chosen by and representing the people, have the supreme power in this nation." (Dow, 20).

The language of the moderate parliamentarians is peppered with references to the 'interests', and 'liberties' of the English people. But if the English people were held

to be sovereign by these writers, it was only in an indirect sense, because it was Parliament that not only represented the people but *was* the people. For Parker, for example it made no sense to suggest that Parliament could be acting against the interests of the people or could be called to account by them, because the power that had been given to Parliament could not be retracted by them. (Sommerville 1992, 61).

In terms of the debate on equality, the difference between the moderate parliamentarians and their royalist counterparts could be said to consist not so much in the opposite view to the royalists i.e. that there is *no natural hierarchy*, but rather 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. The ordinary people were thought to be not always able to represent themselves and so, according to the moderate parliamentarians, they should rely on their representatives. The following description of the Commons by Parker illustrates the point.

> That Princes may not be now beyond all limits and Lawes, nor yet left to be tryed upon those limits and Lawes by any private parties, the whole community in its underived Majesty shall convene to do justice, and that this convention may not be without intelligence, certaine times and places and formes shall be appointed for its regiment, and that the vastnese of its own bulke may not breed confusion, by vertue of election and representation: *a few shall act for many, the wise shall consent for the simple, the vertue of all shall redound to some, and the prudence of some shall redound to all.* (Tuck 1993, 230, my emphasis).

and in the Putney Debates Ireton makes it clear who the "Independents" thought

should be included in the franchise:

> I think that no person 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 . . . that hath not a permanent fixed interest in this kingdom . . . that is, the persons in whom all land lies, and those in corporations in whom all trading lies." (The General Council of Officers at Putney, 28 October 1647, in Blitzer 1963, 66/67).

On the question of rights, the moderate parliamentarians, such as Parker, defended the natural right to resist the king. Resistance was justified on the grounds that the king is limited by law and if he breaks the law he can be said to be attacking the people. The people then have the right to defend themselves against the king. Parker puts it in the following way: "Since all natural power is in those who obey, they which contract to obey to their owne ruine, or having so contracted, they which esteeme such a contract before their owne preservation, are felonious to themselves and rebellious to nature" (Tuck 1979, 104). Here Parker is going against the Grotian view mentioned above, that the natural right to self-defense applied only between equals and not against a superior.

The moderate parliamentarians argued for the right of self-defense to be retained against the king but in other cases such as that of the people retaining rights against Parliament they argued against the retaining of rights. We are left with a rather confused picture regarding which rights must be given up to the sovereign, (be that sovereign a monarch or an assembly) and what rights may be retained by individuals. On sovereignty and the law the moderate parliamentarians argued for a more constitutional form of monarchy in which the king is limited to some extent by

established law. On equality, this group advocated a shift in the hierarchy so that more power is given to the "middling sort" and less to the king and aristocracy, but they stop short of any argument for real egalitarianism.

4. Radical Parliamentarianism

I. The Levellers

The Levellers (9) took the ideas of the moderate parliamentarians a stage further and challenged not only the royalists but also many of the assumptions of the more moderate parliamentarians. On equality, for example, John Lilburne wrote in 1646 that, "[a]ll and every particular and individual man and woman, that ever breathed in the world, are by nature all equal and alike in their power, dignity, authority, dominion or magisterial power one over and above the another." (Dow 1985, 37, quoting from Lilburne, *The Free Man's Freedom Vindicated*, 1646). This sort of radical egalitarianism was almost as unattractive to the moderates and "Grandees" of the parliamentary army as it was to their royalist opponents.

Equally radical is the Leveller view of sovereignty, which is that sovereignty resides in the people, and through them in their representatives in Parliament. The Leveller document, *The Case of the Army Truly Stated*, of October 1647, states:

> Whereas all power is originally and essentially in the whole body of the people

> of this Nation, and whereas their free choice or consent by their Representors is the only originall of foundation of all just government . . .
> That the supreme power of the people's representors or Commons assembled in Parliament, be forthwith clearly declared as their power to make lawes, or repeale lawes . . . as also their power to call to an account all officers in this Nation whatsoever, for their neglect or treacheries in their trust for the people's good, and to continue or displace and remove from their offices . . .
> That all obstructions to the freedome and equalitie of the peoples choice of their Representors . . . be removed by these present Commons in Parliament, and that such a freedome of choice be provided for, as the people may be equally represented."(Shaw 1968, 111).

Sovereignty originates in the people and should be transferred to Parliament, (specifically the Commons, alone, not to a king even of limited power), by regular elections every two years, and certain rights are to be retained by the people. In *An Agreement of the People* the sovereignty of the Commons is put the following way:

> That the power of this, and all future Representatives of this Nation, is inferior only to theirs who choose them, and doth extend, without the consent or concurrence of any other person or persons, to the erecting, altering and repealing of laws; to the erecting and abolishing of offices and courts; to the appointing, removing, and calling to account magistrates and officers of all degrees; to the making war and peace; to the treating with foreign states; and generally, to whatsoever is not expressly or impliedly reserved by the represented themselves (Blitzer 1963, 43).

The natural rights to be reserved by the people include freedom of religion, freedom from being drafted into an army, and the right of all to be treated equally under the law. The contrast between the position of the Levellers and that of the moderates or 'Independents' (see notes 6 and 7) on the question of sovereignty is clear in the following response by Cromwell to *An Agreement of the People* when it was discussed at the Putney Debates. "Truly this paper (8) doth contain in it very

great alterations of the very government of the kingdom, alterations from that government that it hath been under, I believe I may almost say, since it was a nation . . . " (Blitzer, 1963, 49). He goes on to warn the council of the officers of the parliamentary army of the "confusion" and "absolute desolation" that may result from such radical changes.

On the question of law the Levellers appealed to the idea of ancient English laws as the moderates, following Coke. had done, but again, they took the argument further. First the law must be seen to come from the sovereign people, "there can be no liberty in any Nation where the Law giving power is not solely in the people or their Representatives" (*The Petition of November 23, 1647, To the Supream Authority of England*", in Wolfe 1967, 237). And again Lilburne writes, "[t]he only and sole legislative Law-making power is originally inherent in the people, and derivatively in their Commissions chosen by themselves by common consent and no other." (*The Charters of London*, ibid., 14).

The Levellers argued that the laws that protected the freedom of the English people extended not only to Magna Carta and common law but also to those laws that had existed before the Norman Conquest, which event they said, marked the beginning of the oppression of the English people. The laws of the Anglo-Saxons before the invasion were said to be laws that protected their liberties and it was these lost freedoms that they wanted to recover.(Dow 1985, 37/8, also Wolfe, 17/18). The Norman Conquest, they said:

> represented the enslavement of a free English people and the repression of

> Anglo-Saxon representative institutions. They regarded the law itself as part of the Norman bondage, and despite appeals to Magna Carta and other enactments they believed the mainstream of the common law had been corrupted and that wide-ranging legal as well as political reform would be necessary to restore the lost rights and liberties of the people. (Dow, 38).

The Levellers also appealed to natural law as a check on English laws. Lilburne, for example, defines the "Fundamental Law of the Land" as "the PERFECTION of reason, consisting of Lawfull and Reasonable Customes, received and approved of by the people. . . . But such only as are agreeable to the law Eternall and Naturall." (Wolfe 1967, 12).

On specific natural rights that remain with the people, the Levellers include the right to change the government if it fails to protect the people, as well as those mentioned above. William Walwyn writing in 1645 says "so ought the whole Nation to be free therein even to alter and change the publique forme, as may best stand with the safety and freedome of the people." (ibid., 6). As to a general theory of rights, the Levellers articulated a view of natural rights with the important difference from the moderates that some rights were irrevocable or inalienable. The right to choose ones religion, the right to be treated equally under the law, the right to choose not to fight a war, and of course the right to defend and preserve oneself. All these liberties are seen as natural rights of individuals that cannot be given up or transferred either to the king or to Parliament. The language of protection - the language of the royalists, has been replaced by the language of oppression, as when Overton writes, "[w]ee are resolu'd upon our Natural *Rights* and *Freedoms* , and to be enslaved to none, how

Magnificent soever, with Rotten Titles of Honour." (ibid., 11). The natural rights of individuals are now seen as best protected when *retained* by individuals or *reclaimed* rather than when transferred or given up to a superior power which is more capable of protecting them than they are themselves. In the following passage Overton says this about authority, that it is:

> alwayes is either in the hands of the *Betrusted* or of the *Betrustees*, while the *Betrusted* and *dischargers* of their *trust*, it remaineth in their hands, but no sooner the Betrusted betray and forfeit their Trust, but (as all things else in dissolution) it returneth from whence it came, even to the hands of the *Trustees* : For all iust *humaine powers* are but betrusted, confer'd and conveyed by ioynt and common consent, *for to every individual in nature, is given individuall propriety by nature, not to be invaded or usurped by any . . . for every one as he is himselfe hath a selfe propriety, else could not be himselfe*, and on this no second may presume without consent; and by naturall birth, all men *are equall and alike borne to like propriety and freedome, every man by naturall instinct aiming at his own safety and weale* . . . Now as no man by nature may abuse, beat, torment or afflict himself, so by nature no man may give that power to another, seeing he may not doe it himselfe . . . (Tuck 1979, 149).

This view of inalienable natural rights stemming from a natural right over one's own self has much in common with what Locke was to argue forty years later and the argument that just as man may not destroy himself he may not allow another to destroy him is also similar to what Hobbes says in chapter 14 of *Leviathan*. (*Lev*. 14, 8).

II The Diggers

Even more radical than the Levellers were the Diggers, a breakaway group who sought to take over the common lands and form a community who would live off the land, holding and tilling it in common and sharing the produce with the poor and needy. Sometimes calling themselves "True Levellers", it is in the writings of Gerrard Winstanley that their philosophy is most clearly presented. He advocated a real "levelling" of society where no honors or privileges would exist except those earned by merit, industry or age. Land and its produce were to be held in common although houses and their contents would be owned and lived in by individual families. The fruits of the land were, to be enjoyed by all. As with the Levellers, the Norman Conquest is seen as the beginning of the people's oppression. "Their work was to persuade the multitude of people to let William the Conquerer alone have possession and government of the Earth and to call it his and theirs," (Bernstein, 1963, 122).

On sovereignty Winstanley begins from what sounds like the patriarchal position of Filmer with Adam as the first "Governor", but moves quickly to a democratic form of government. "The original Root of magistry is common Preservation, and it rose up first in a private Family: for suppose there were but one Family in the World as is conceived Father Adam's Family wherein were many persons, Adam was the first Governor or officer". But, says Winstanley, this was by necessity and does not

sanction despotic rule. "All officers in a true Magistracie of the Commonwealth are to be chosen Officers" and these officers "are to be chosen new ones every year." (ibid., 123). Sovereignty truly resides in the people, as it does according to the Levellers, but the form of parliamentary democracy suggested is more radically democratic and more participatory than that put forward by the Levellers.

On equality, the radical egalitarianism of the Diggers extends to the proposal that there should be no hereditary honors or privileges at all. They supported universal manhood suffrage. And as all offices were to be newly elected yearly there would be no class of governors or administrators.

On law, Winstanley appeals to natural law to make his case for the common ownership of land. "[I]n the beginning of time the great Creator, Reason, made the earth to be a Common Treasury, to preserve beasts, birds, fishes and man." (Dow 1985, 76). And as we have mentioned above, he argued that it was the Norman conquest that had introduced private property to England.

The natural rights that were endorsed by the Diggers were extended, from those proposed by the Levellers, to apply to common ownership of land and common ownership of its produce. All the other liberties such as liberty to choose a religion "are Freedoms: but they lead to Bondage, and are not the true *Foundation-Freedom* which settles a commonwealth in Peace. *True Commonwealth Freedom lies in the free Enjoyment of the Earth.* True Freedom lies where a man receives his nourishment and preservation", (Bernstein 1963, 121).

5. The *De Facto* Theorists

This group of thinkers writing after the execution of King Charles I, sought to justify allegiance to the new regime and to persuade those on *both* sides that it was now legitimate for them to support and obey the new government. Sometimes called the "Engagement Theorists" after the promise of obedience called the "Engagement" that all adult males were required to take after January 1650, Quentin Skinner has argued that those who had certain arguments in common about the legitimacy of submitting to a "de facto" government should be called the *de facto* theorists. He also argues that there is a strong case for placing Hobbes among these *de facto* theorists. Simply put, their argument is that allegiance is owed to whatever group or individual has demonstrated the power to keep the peace and protect the people. This defense of the new commonwealth, set up by Cromwell and the Rump Parliament after the Civil Wars, "concentrated on the government's practical ability, as a matter of fact, to maintain order and enforce obedience, rather than on its moral right to do so" (Dow 1985, 22).

The scope of this 'theory' is clearly not equal to the broad political philosophies discussed above but it deserves mentioning, not least because Skinner has argued quite persuasively that some of Hobbes's writing, for example in the *Review and Conclusion* of *Leviathan*, seems to argue for a *de facto* theory of obedience.

Conquest (to define it) is the Acquiring of the Right of Sovereignty by

> Victory. Which Right , is acquired, in the peoples submission, by which they contract with the Victor, promising Obedience, for Life and Liberty. . . . And thus I have brought to an end my Discourse of Civill and Ecclesiasticall Government, occasioned by the disorders of the present time, without partiality without other designe, than to set before mens eyes the mutuall Relation between Protection and Obedience; of which condition of Humane Nature, and the Laws Divine, (both Naturall and Positive) require an inviolable observation. (*Lev.* Rev. and Conc.).

According to the *de facto* theorists, sovereignty lies in whatever man or assembly has the power to govern and protect the people. This leaves open the question of whether the form of government should be monarchical, democratic or of some other form. So long as the government can provide security and is strong enough to govern, it can legitimately command the obedience if its citizens. The end of government is said by many *de facto* writers to be 'security' or 'protection' or 'peace'. Then any group or person who can provide this has a legitimate claim to govern.

On the question of law some *de facto* theorists claim that there can be legitimate submission to an unlawful government while others try to show that even a usurping power might be considered lawful provided that it maintains "the same law and equity which the excluded magistrates ought to have done, if they had succeeded" (Skinner 1972, 89). Also, as above if "the end of all law and government" is concerned with "the need to preserve our persons and estates" then a de facto government can also make and enforce the law.

On the question of rights Anthony Ascham argues that if government breaks down;

> [o]ur generall rights surely are not yet all lost, though all the world be now trampled over, and impropriated in particular possessions and rights: there yet remains some common right, or naturall community among all men, even in

> impropriation; so that that which is necessary for any naturall subsistence and necessary to another belongs justly to mee, unless I have merited to lose the life which I seek to preserve. (Tuck 1979, 152, Ascham, *Of the confusions and revolutions of governments 1649).*

Believing himself to be arguing against Hobbes and Grotius, Ascham made a plea for the retention of some natural rights; "Mr *Hobbes* and H. *Grotius* are pleased to argue severall wayes for obliging people to one perpetuall and standing Allegiance. . . . such a totall resignation of all right and reason, as Mr.*Hobbes* supposes, is one of our morall impossibilities, . . . " (ibid., 153, as above).

Tuck concludes from this that "we can deduce that among the rights which Ascham believed could not reasonably be renounced were those of self-defense, of taking the necessities of life, and of punishing malefactors." (ibid.). Ascham was then able to argue that rather than being bound to a government that was no longer functioning by a "perpetuall and standing Allegiance", rather "when government broke down, men were free to act on the basis of retained rights." (ibid., 154). This freedom then enabled them to transfer their allegiance to a new *de facto* government.

TABLE ONE

	Radical Royalists, Filmer	Moderate Royalists	HOBBES	Moderate Parliamentarians	Radical Parliamentarians	De Facto Theorists
Sovereignty	Lies solely in the king, bestowed by God Passed on by inheritance (Filmer '91, 7)	Lies in the king Bestowed by God and Nature (Clarendon)	1 Originally in the people by whose agreement and consent is instituted a sovereign (individual or assembly) 2 Sovereign power lasts only as long as the sovereign provides peace and protection, unclear however, whether or how it reverts to the people 3 Sovereignty is undivided	1 Originally in the people, bestowed upon king and parliament 2 limited by law 3 If violated by king then reverts to Parliament 4 Mixed between king, parliament law and constitution	Originates in the people, transferred to representatives in parliament every two years (commons only)	Lies in whatever individual or assembly demonstrates power to secure peace and govern
Law	1 The word of the king 2 Tied only to God and the law of nature 3 Written laws may be repealed or suspended by king without explanation	The word of the *king in accordance* with the law of nature	1 The command of *the sovereign in* accordance with the laws of nature 2 The sovereign "is not Subject to the Civill Lawes" (*Lev* 26 6) and may change them 3 "The Law of Nature and the Civill Law, *contain* each other and are of equall extent" (*Lev* 26, 8)	1 The Common *law and the* Constitution and the Natural Law 2 The sovereign can make laws as long as they do not violate the above	1 The Ancient *Laws of England* pre-1066, Magna Carta, Natural Law and approved customs that do not against the law of nature 2 The law-making power originally in the people and derivatively in Parliament	1 The commands *of the De Facto* government 2 Some De Facto theorists say that a usurping power may be considered lawful provided that it maintains "the same law and equity which the excluded magistrates ought to have done, if they had succeeded" (see Skinner '72, 89)
Equality	1 There is a natural hierarchy 2 Equality is an "erroneous principle" (Filmer '91, 3)	1 There is a natural hierarchy (Clarendon 1676, 182/3) 2 It is "not true that "nature hath *made all men* equal in the faculties of body and mind" (ibid., 26)	1 "Men by nature Equall" (Lev 13, 1) The differences between people are not so great that anyone or any group has a special claim to any benefit 2 *Equity* -all should be dealt with	1 Moderate egalitarianism- The hierarchy to be extended to include the "middling sort" of people 2 The ordinary people to be represented in parliament by those better qualified to	1 Radical egalitarianism - all men and women "are by *nature* all equal and alike in power, dignity, authority, dominion or magisterial power" (Lilburne, 1646, *The Free Man's*	1 Power can change hands but must always be obeyed 2 Rous adapts Romans 13 to "we must obey *whatever* powers are in a position to command obeidience" for

			the people 3 Sovereignty is undivided			
Law	1 The word of the king 2 Tied only to God and the law of nature 3 Written laws may be repealed or suspended by king without explanation	The word of the king in accordance with the law of nature	1 The command of the sovereign in accordance with the laws of nature 2 The sovereign "is *not Subject to the* Civill Lawes" (*Lev* 26 6) and may change them 3 "The Law of Nature and the Civill Law, contain each other and are of equall extent" (*Lev* 26, 8)	1 The Common law and the Constitution and the Natural Law 2 The sovereign *can make laws* as long as they do not violate the above	1 The Ancient Laws of England pre-1066, Magna Carta, Natural Law and approved *customs that do not* against the law of nature 2 The law-making power originally in the people and derivatively in Parliament	1 The commands of the De Facto government 2 Some De Facto theorists say that a *usurping power* may be considered lawful provided that it maintains "the same law and equity which the excluded magistrates ought to have done if they had succeeded" (see Skinner '72, 89)
Equality	1 There is a natural hierarchy 2 Equality is an "erroneous principle" (Filmer '91, 3)	1 There is a natural hierarchy (Clarendon 1676, 182/3) 2 It is "not true" that "nature hath made all men equal in the faculties of body and mind" (ibid., 26)	1 "Men by nature Equall" (Lev 13, 1) The differences between people are not so great that anyone or any group has a special claim to any benefit 2 *Equity* -all should be dealt with equally according to the law of nature 3 "The inequality that now is, has bin introduced by the Lawes civill" (*Lev* 15, 21)	1 Moderate egalitarianism- The hierarchy to be extended to include the "middling sort" of people 2 The ordinary people to be represented in parliament by those better qualified to represent them "a few shall act for many, the wise shall consent for the simple" (Parker's *Observations*, in Tuck '93, 230)	1 Radical egalitarianism - all men and women "are by nature all equal and alike in power, dignity, authority, dominion or magisterial power" (Lilburne, 1646, *The Free Man's Freedom Vindicated* in Dow '85, 37)	1 Power can change hands but must always be obeyed 2 Rous adapts Romans 13 to "we must obey *whatever* powers are in a position to command obeidience" for anyone excelling in power must have received it from God (Dow '85, 23)
Rights	1 All natural rights to be given up to the king 2 Rights to be preserved and distributed by the king (Filmer '91, 55 &195)	All natural rights to be given up	1 *Some natural rights retained some of which are inalienable* 2 Rights to be retained a) Self-defense and self-preservation (even against the sovereign) are inalienable b) not to *incriminate oneself* c) not to execute a dangerous or dishonorable office or fight in a war unless required for the defense of the commonwealth d) to appeal to the law and be treated with equity e) to any act not *prohibited by law*	1 Some natural rights retained i e right to self-defense even against the king 2 No rights retained by the people from parliament (Herle in Dow, 18)	1 Some natural rights are inalienable a) self-defense b) to be treated equally under the law c) to change the form of government if it fails to protect the people d) to choose religion	1 Must give up as many natural rights as required for protection But 2 Some rights to be retained e g self-defense, so that allegiance can be switched to new government

Commentary on Table

What becomes clear from the table is that if Hobbes was a royalist he was a royalist who differed from other royalists on several key issues of political orthodoxy. What also becomes clear when the political factions are compared directly in this way is that Hobbes looks surprisingly close to the parliamentarians and even to the radical parliamentarians on the issues of equality and rights. Leaving aside the broader political question of whether his theory as a whole could be said to be in any way parliamentarian, we can at least say that on the subjects of equality and rights and even to some extent on sovereignty, Hobbes *sounds like* a parliamentarian and sometimes like a *de facto* theorist rather than a royalist. This point was of course recognized by contemporary critics such as Clarendon and Bramhall, but even though it is sometimes mentioned by current Hobbes scholars, it seems that its significance has been lost in the last three hundred years. If we are, as we believe we are, entitled to say that Hobbes's writing was at least in part "occasioned by the disorders of the present time" (*Lev.* Rev. and Conc.) then we surely cannot ignore the points where he allows himself to sound more sympathetic to the political ideas of one side rather than the other. Of the four subjects we have looked at it is only on the law that Hobbes really sounds like a royalist and the point is not merely one about tone. What Hobbes has to say about equality, for example, is fundamentally opposed to the consensus of opinion on the royalist side, that is, that there is a natural

hierarchy that must be protected. Indeed, Hobbes's view of the natural equality of men seems even more radical than the moderate parliamentarian position. His sneering remarks about Aristotle's analysis of the natural superiority of some people over others make clear his sincerity on this point.

> The inequallity that now is, has bin introduced by the Lawes civill. I know that *Aristotle* in the first booke of his Politiques, for a foundation of his doctrine, maketh men by Nature, some more worthy to Command, meaning the wiser sort (such as he thought himselfe to be for his Philosophy;) others to Serve, (meaning those that had strong bodies, but were not philosophers as he;) as if Master and Servant were not introduced by consent of men, but by difference of Wit: which is not only against reason; but also against experience. For there are very few so foolish, that had not rather governe themselves, than be governed by others:" (*Lev.* 15, 21).

This belief, that the suitability of one group to rule over another is a man-made fiction rather than a divinely ordained truth, puts Hobbes outside most royalist thinking. It also has repercussions for his analysis of sovereignty. A sovereign who rules by right, ordained by God, as part of a natural process of authority passed down from generation to generation, has no need of extra justification and his right to rule is beyond question. Presumably only God could take away that right. Hobbes's stipulation that a sovereign's right to rule lasts only as long as he is able to protect his subjects must have had a false ring for anyone who believed that his right to rule comes from God and that he is its only rightful bearer.

Perhaps the most interesting of the comparisons on the table is the comparison on natural rights. Both the Filmerian royalist and the more moderate royalist say quite clearly that all natural rights (including the rights to self-defense and self-preservation) are alienable and all are given up to the king. This is also implied by

what Grotius says. The parliamentarians, on the other hand, say that some natural rights must be retained by individuals and both the moderates and the radicals agree that the right to self-defense, even against the King, must be retained. The radicals go further, saying that several rights must be retained including a right to rebellion, and a right to be treated equally under the law. Some *de facto* theorists such as Ascham also suggest that some rights should be retained, although they would argue that as many as were necessary to ensure the protection of the *de facto* government should be given up to the new sovereign.

What Hobbes says about rights, when compared to these groups of thinkers, is closer to the parliamentarians than to the royalists. Hobbes says that some (natural) rights can be retained and not given up to the sovereign, and of these some *must* be retained. The rights to self-defense and self-preservation are inalienable, they *cannot* be given up to the sovereign. This point distinguishes him from the royalists who are in agreement that all rights must be given up to the sovereign. It also says something deeper about Hobbes's view of the individual subject and of his view of a sovereign. The subjection of individual to sovereign is not complete. The natural right of the individual to protect and preserve his life is never given up to another, not even to the sovereign who is charged with providing for his protection. This means that Hobbes builds in the possibility of the sovereign failing to protect his subjects and gives to the subjects the power of resistance against their sovereign. For the royalists, on the other hand, a failure on the part of the sovereign to protect his subjects might be cause for censure from advisers or even from Parliament but could not have any

repercussions concerning the "rights" of individual subjects, as the subjects have retained no such rights into the commonwealth. Such rights do exist into the commonwealth, however, according to the parliamentarian writers. The rights to self-defense and self-preservation are retained and held even against the sovereign, according to both moderate and radical parliamentarians. This is a point of close similarity in both language and substance between Hobbes and the parliamentary writers. Even the more radical proposals of the Levellers and Diggers such as the argument that there is a natural right to equal treatment under the law and a right not to take up arms, have their echoes in Hobbes. In Chapter 21 of *Leviathan.* Hobbes says that we have a right not to fight unless the "Defence of the Common-wealth, requireth at once the help of all that are able to bear Arms" (*Lev.* 21, 16). And in Chapter 15 he declares equitable treatment by judges to be a law of nature. (*Lev.* 15, 23).

Conclusion

What we have tried to do is to put Hobbes's political writing into the particular context of the writings of political thinkers and propagandists of the pre-Civil War and Civil War years. By directly comparing what Hobbes says on specific political subjects with what the royalists, the parliamentarians and the *de facto* theorists say, we are able to see what must have been obvious to his contemporaries; that although he associated with and worked for leading royalists, his writing contains some

surprising similarities to the writings of the parliamentarians and this despite its apparently absolutist themes. Some of what he says even sounds strangely close to the Levellers and the Diggers. This suggestion is not new, of course; it was made in Hobbes's own time by people like Clarendon and Bramhall and has been made to me in recent years by B.H. Baumrin. But its rejection by most modern Hobbes scholars contributes to a tension in the analysis of Hobbes's political theory. Liberal strains are often recognized but dismissed in complex explanations of the theory's supposed absolutism. More will be said about this in the next three chapters.

Taking the four political concepts discussed above together, we could say that Hobbes seems close to royalist theory on the law, and, to a lesser extent, with some leaning towards a *de facto* position, on sovereignty. On equality and rights, he is closer to the parliamentarian position, perhaps even to the Leveller or Digger arguments. This leaves us with an interesting, not to say confusing picture of Hobbes's political allegiances. Contemporary writers saw the ambiguities in Hobbes's theory and representatives of each side in the Civil Wars blamed him for supporting the other.

To say that Hobbes's language on rights is similar to that of the parliamentarians or that he shares certain notions about rights with them, is not to prove anything about his theory of natural rights. But it does raise the question of what kind of theory of rights Hobbes holds and in the next 2 chapters we will analyze that theory and what others have said about it and we will show that, contrary to what most Hobbes scholars say, Hobbes holds a strong theory of natural rights that provides for

the protection of the rights of the individual by the imposition of duties on others.

An Aside, Hobbes Denies Supporting Cromwell

In *Considerations upon the reputation, loyalty, manners and religion of Thomas Hobbes of Malmesbury. Written by himself by way of Letter to a Learned Person (John Wallis D.D.),* (Hobbes 1840) originally published in 1662, Hobbes attempts to answer the accusation, made by royalists like Clarendon, Bramhall and Filmer, that in *Leviathan* he was writing in defense of Cromwell. His reply is to say that first, he couldn't have been defending Cromwell's title because Cromwell wasn't yet Lord Protector when he was writing *Leviathan* in 1650. And second, he asks how he could be accused of supporting Cromwell when he had been attacked for supporting the king after he wrote the *Elements of Law* in 1640.

Hobbes's tone in this reply to his accusers is almost hysterical as he denies in page after page that he had been in any way supporting Cromwell's rule in *Leviathan*. His reference to the *Elements of Law* seems disingenuous as of course in the *Elements of Law* Hobbes had not yet added the right to self defense against the sovereign that was to prove so offensive to royalists. In the *Elements of Law* Hobbes had said that we must give up our right of self defense to the Sovereign, which fitted well with the royalist view of the right to self defense. We should also note that the *Considerations* was written after the Restoration, at a time when Hobbes was anxious, once again, to curry favor with the king, to whom he was now indebted for a yearly pension and acceptance at court.

Notes

1. The English Civil Wars of the sixteen forties were fought between the army of Charles I, the reigning monarch and the parliamentary army, also known as the New Model Army, under Oliver Cromwell. The first war began in 1642 and ended in 1646 with the defeat of the king's army. The second war began in 1648 and ended in January 1649 with the execution of Charles I.

2. See for example Warrender 1957 p viii "I have attempted to construct an interpretation of Hobbes's theory of obligation out of his various writings, and have been concerned entirely with his statements and the inner coherence of his doctrine. No explanation is offered, therefore, of the place of this doctrine in the history of political thought".

3. The Nineteen Propositions presented to Charles I by Parliament in 1642, shortly before the civil war, making suggestions that would severely restrict the power of the king and force him to gain the support of Parliament in many matters of government.

4. **Hugo Grotius**, (1609-1674), Dutch natural law theorist who also a founder of international law. He is most famous for writing *De Jure Belli ac Pacis Libris Tres*, 1625.

5. **Edward Hyde**, (1609-1674) who became Lord Clarendon, famous for writing a history of the Civil Wars. He was a member of Parliament before the wars and a Minister in the government after the Restoration in 1660. He also wrote a seething attack on Hobbes. See section II. 2.
Bishop Bramhall, (1594-1663), Bishop of Derry, argued with Hobbes about free will and published an attack on his ideas in 1658, *The Catching of Leviathan or the Great Whale*.

6. **Marin Mersenne**, a Minim Friar, educated at the same Jesuit College as Descartes, (La Fleche), was at the center of a group of scientists and intellectuals in Paris that included Descartes and Pierre Gassendi. He corresponded with leading intellectuals all over Europe and held weekly meetings for scientific discussion. He helped and encouraged Hobbes and the two became close friends. Hobbes stayed in Mersenne's convent when he lived in Paris.

7. A group of royalist inclined intellectuals and theologians connected with Oxford University who used to meet at the house of Viscount Falkland, at Great Tew during the 1630s. The group included Clarendon, Sheldon, Morley, Hammond, Chillingworth and Digges.

8. The Putney Debates, were meetings of the New Model Army's General Council of Officers at Putney Church, in October and November 1647. They debated how the kingdom was to be settled and particularly discussed whether the franchise should be extended and if so to whom. The main groups opposing each other in these debates were the "Independants" such as Cromwell and Ireton and other officers or "Grandees" and representatives of the radicals in the army, (for the most part the Levellers), who had been chosen by their regiments as "Agitators". These men had been so successful in radicalising the troops that they refused to disband after the fighting was concluded. Blitzer describes the situation in the following way: "Taking as their excuse the back pay that was owed to them, the soldiers refused to disband while negotiations for a permanent settlement were being conducted by the king, parliament and their officers. Fearing, quite rightly, that the relatively conservative, Presbyterian-dominated parliament wished to arrive at terms that would combine limited monarchy with the establishment of Presbyterian church government in England, the soldiers of the New Model [army] sought means of achieving the republican , congregationalist regime for which they had fought. (Blitzer '63, p28) He continues to say that at the Putney Debates "[t]he subject for discussion was the future constitution of England , the point of departure the two constitutional proposals that had been put forward during the summer: the *Heads of Proposals*, representing the views of the officers and *An Agreement of the People*, written by the Levellers in the army." (ibid.)

9. The Levellers were a political party and movement that grew out of the civil war and particularly the experiences of some of the men serving in the New Model Army. They wanted more radical reforms of the English political system than the more conservative "Independants" like Cromwell and Ireton, including a greater extension of the franchise possibly to all men over the age of 21. (Macpherson has argued in *The Political Theory of Possessive Individualism* that what they argued for was not really universal manhood suffrage as it excluded certain groups such as servants) They published pamphlets and manifestos and are perhaps most famous for their part in the army debates at Putney in 1647 when they challenged the authority of the Independants and discussed their "Case of the Army Truly Stated" which was to be the basis of "An Agreement of the People" a sort of Leveller Manifesto setting out their plan for a new republican government with a reformed parliament whose members would be elected every two years. Their most influential leaders were John

Lilburne and Richard Overton, both of whom wrote and published a great deal in the sixteen forties. They supported religious toleration as well as a radical democratization of the political system. For further discussion of their ideas see section on Radical Parliamentarians.

CHAPTER 2

HOBBES'S THEORY OF RIGHTS - INTERPRETATIONS

Introduction

When we compared what Hobbes says on the subject of natural rights with what his contemporaries say, in Chapter 1, we found that Hobbes sounds closer to the parliamentarians than he does to the royalists on this subject. We also noted that Hobbes's support, for example, of a self-defense right that is retained into the commonwealth and holds even against the sovereign, brought him under vicious attack from contemporary royalists such as Clarendon and Bramhall. What seems to have been lost over the next three hundred years is an awareness of the significance of these facts.

So what is their significance? In Chapter 1 we discussed the fact that the assumption that Hobbes is a royalist, is accepted by modern writers and that there is therefore cause for some surprise if he seems to be taking a position closer to that of the parliamentarians on a subject as important and sensitive as that of natural rights. He is also almost always taken to be an absolutist by modern commentators. These

two assumptions have contributed to some of the tensions in modern Hobbes scholarship, particularly about Hobbes's theory of rights. To find out whether his political theory really does contain a strong theory of natural rights, however, we need to know exactly what kind of theory of rights he holds. We shall discuss that in Chapter 3; but first, to see how modern Hobbes scholars have analyzed his theory of rights we will turn to some of them and what they have said on this subject.

We will begin by examining the analyses given by a representative group of modern Hobbes scholars of what Hobbes says in his political theory about rights. What is interesting about such an examination is that it shows an almost unanimous failure to recognize what the comparisons of Chapter 1 alerted us to. The commentators, in other words, give an analysis of Hobbes's theory of rights that is compatible with the assumption of royalism that we have shown should be questioned. Each of the writers we will look at argues that there are no natural rights, or none that have any significance, that are retained into the commonwealth, according to Hobbes's theory. (The only exception is Leo Strauss who argues that Hobbes was the first modern natural law theorist to base his theory on the notion of rights rather than on the notion of law). They argue, in slightly different ways and with different "readings" of Hobbes's theory, to very similar conclusions; that Hobbes's theory of rights is weak, that most of the natural rights held by individuals in the state of nature are given up to the sovereign once a commonwealth is formed, and that the natural rights of subjects, as described by Hobbes, are only "liberty rights", that is, rights that are mere freedoms. Such rights imply no correlative duties

on the part of others and as such they hold no great strength or significance. (We shall be arguing in Chapter 3 that these writers are mistaken and that Hobbes's theory does in fact contain descriptions of what we call *claim rights* and is a strong theory of rights).

But first, in this chapter, we shall outline several different interpretations of rights in Hobbes's theory, beginning with those writers who see Hobbes as a rational choice theorist. Because there are different "readings" of Hobbes's moral theory which might affect the interpretation of his theory of rights we have chosen three representatives of the most common "reading" of Hobbes as an egoist, and one of the less common "reading" of Hobbes as a deontologist. In addition we will look at Strauss, whose interpretation is closer to our own, and finally at Tuck whose recent historical work on Hobbes gives a rather different historical analysis of his theory of rights. To represent those who argue that Hobbes holds an egoistic moral theory we have chosen David Gauthier, Gregory Kavka and Jean Hampton. To represent the deonotological reading of his moral theory, sometimes called the *Taylor/Warrender Thesis* , we will look at Warrender, partly because Taylor says little specifically about rights in the theory.

David Gauthier, Gregory Kavka and Jean Hampton are in broad agreement that for Hobbes, the subjects' rights are founded in the right of nature and, as in the right of nature, they consist in freedoms or liberty rights. Kavka differs slightly in distinguishing three concepts of rights employed by Hobbes, two of which could be defined as claim rights, but the claim rights, according to Kavka, apply only to the

sovereign, not to the subject, and the third which does apply to subjects is a "permission right" which is a freedom or liberty right. All three are in agreement that there are no claim rights for individuals in the theory.

Howard Warrender, who has famously argued that Hobbes holds a deontological ethical theory, is, perhaps surprisingly, close to the rational choice theorists when it comes to his analysis of rights in the theory. He also denies that there are claim rights for individuals in a Hobbesian commonwealth, and he gives an interesting defense of this position in his analysis of the second law of nature.

Leo Strauss stands alone amongst the scholars discussed in this chapter, in that he argues that Hobbes holds a strong theory of individual rights. Using a historical analysis, he locates Hobbes as a natural law theorist, though with an important difference from all previous natural law theorists; he puts the notion of 'right' ahead of that of law as the fundamental moral principle upon which a political order should be based. He defines the difference of the notion of right compared to that of law or duty as being that a right is an absolutely justified claim that the individual has to preserve himself. Strauss does not argue, however, that Hobbes describes *actual* strong rights for subjects in his theory.

Finally, Richard Tuck, also taking a historical approach, finds the roots of Hobbes's position on rights in the work of the Dutch natural law theorist Hugo Grotius, and traces what he calls a tradition of "conservative rights theorists" from Grotius to John Selden, and to other royalist writers in England at the time of the Civil Wars. Tuck sees Hobbes as holding, in his early writing, a position on rights

similar to these others. the outstanding feature of which is the principle that all natural rights can and should be given up to whomever is going to govern and provide peace and order. In spite of recognizing that in later work including *Leviathan*, Hobbes specifies that the right to self-preservation cannot be given up. and that he stresses the right to self-defense even against the king, (a view that was anathema to royalists): Tuck concludes that Hobbes is part of this tradition of conservative rights theorists who support absolutism.

Definitions of Rights

Throughout the next three chapters we shall be discussing Hobbes's theory of rights. To avoid unnecessary confusion we shall give the definitions here of the main uses of the word "right" in the following sections. In using the terms "claim right" and "liberty right" we are following the definitions given by Wesley Hohfeld when he distinguishes four uses of the word "right" in the *legal* literature. (Hohfeld 1923).

1. **A claim right** is a right that is correlated with the duties of another or others. These duties consist in either refraining from actions that would impede the right-holder in her exercise of the right or, sometimes, of performing actions that will give the right-holder the thing she has a right to or help her to have or do the

thing she has a right to. So, if A has a claim right to X against B, then B has a correlative duty to A to refrain from interfering with A's having or doing X, or sometimes, a duty to give X to A or to help A to have or do X.

2. **A liberty right** is a freedom from a duty to refrain from doing something or from having to provide something and it is not correlated with any duties on the part of others. Two or more people may have liberty rights to the same thing or action and will be in unrestricted competition with one another to exercise their rights. A liberty right is the opposite of a duty. So, if A has a liberty right to X against B, then B has a correlative no-right (i.e. no claim right) that A not do X. A has no duty to refrain from doing X; and B has no duty to refrain from interfering with A's doing X. A and B are therefore in competition for X, each has a liberty right to achieve X, neither has a duty to refrain from achieving X and each has no right that the other not achieve X.

The Distinction between Natural Rights and Positive or Legal Rights

There is another distinction that is important in philosophical writing on the subject of rights and that is the distinction between *natural rights* and *legal* or *positive rights*. Legal or positive rights are those rights that are created by positive

law. If a law is passed making it illegal to take the possessions of others then one of the consequences of passing this law is that I now have a legal or positive right to my possessions. A second consequence of the law is that other people now have a (legal) duty not to take my possessions and a third consequence is that my right to my possessions is enforceable. We could say that I now have a claim on others with regard to my possessions and this fits Hohfeld's definition, given above, of a claim right. X has a legal right (or claim) against Y that Y not do A (take my possessions) when Y has a legal duty to X to not do A.

A natural right is a right that has as its ground something other than positive law; a right, in other words, that is not dependent on positive law. There are different views as to exactly what this ground is but it is usually some form of *natural law*, as for example, in Locke's political theory. Natural law is usually said to be or to be linked either to divine law or to moral principals and is knowable by all individuals. Natural rights are usually said to include the rights to life, liberty and property and the right to life includes the right to preserve and defend one's life. The right to preserve one's life is fundamental but, as Locke puts it, when "his own preservation comes not in competition, ought he, as much as he can, *to preserve the rest of mankind*, and may not, unless it be to do justice on an offender, take away, or impair the life, or what tends to the preservation of the life, the liberty, health, limb, or goods of another." (Locke 1980, 9).

In the following discussion of Hobbes's theory of rights, we will, for the most part be referring to what would be called *natural rights* because, at least initially, they do not rely on positive law. (Although in the case of the claim rights brought about under the second law of nature they will eventually, with an effective sovereign, be made part of positive law and therefore enforceable). We will show in Chapter 4, however, that for Hobbes these *natural rights* are *not* underpinned by a theory of natural law, at least not a traditional theory of natural law, and so they are not natural rights in the usual sense.

In what follows , as in Chapter 1, we will sometimes use the term *natural rights*, sometimes just *rights* and sometimes *(natural) rights*. Hobbes, of course did not use the term *natural rights* and sometimes it is less confusing to stick with his language. In other cases we use simply *rights* either because it is unnecessary to specify *natural rights*, when it has already been made clear that we are referring to natural rights or because we are discussing Hobbes's theory of rights in general; we have yet to define what he intends to be the ground of these rights and we do not wish to imply the type of natural law theory that has traditionally underpinned theories of natural rights.

1. David Gauthier, Rights as Permissions

Gauthier sees the rights that exist in a commonwealth as being the same liberties that Hobbes describes in the state of nature. The word liberty, however, is interpreted by Gauthier to mean "permission". "The word "liberty" as scholars have recognized, is not defined and used by Hobbes in a clear and consistent manner. . . . here it is sufficient to take the word in its obvious sense, and assume it conveys permission - what a man *may* do." (Gauthier 1969, 30). Whether the liberty or freedom that Hobbes had in mind can be regarded as a permission, particularly given that word's implication of an authority to *grant* the permission, is questionable, especially in the context of the state of nature. But Gauthier uses the words "permission" and "liberty" interchangeably. And straight away he distinguishes a permission right from a claim right. "What is in accord with the right of nature, then, is what one may do, what it is *all right* for one to do. It is not, however, what one has *a right to*, a claim which must, or ought to, be recognized by others. The right of nature entails no correlative duties." (ibid.). So Gauthier is saying that the rights that exist in the state of nature are not claim rights. And as he thinks that all the rights in a commonwealth are those same rights of nature even after they have been retained, these too are not claim rights but are, like all rights of nature, liberty rights or permission rights. ". . . [T]hose rights which remain constitute the liberty of subjects." (ibid., 140).

Gauthier describes the right of nature as one of the four most important "moral concepts" that are to be found in Hobbes's theory, the other three being: the law of nature, obligation and justice. First, he gives what he calls "formal definitions" of these concepts which, he says, are logically independent of Hobbes's psychology and are practical, not merely prudential, concepts, and then he gives what he calls "material definitions" of the same concepts, which he says are dependent on the psychological theory and allow us to outline Hobbes's actual moral system, "his doctrine of what we ought, and ought not, to do." (ibid., 29). In the past, Gauthier says, people have correctly argued that Hobbes's conclusions have a prudential basis and then inferred incorrectly that the moral concepts used by Hobbes are therefore also prudential.

In his discussion of the formal definition of the right of nature, Gauthier draws a distinction between Hobbes's earlier writings, amongst which he includes *De Cive*, and later works such as *Leviathan*, saying that in the earlier works Hobbes connects the right of nature to reason.

> . . .[I]t 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. (E.W. iv, p83, quoted in Gauthier, 32).

And in *De Cive* the same connection is drawn, only this time with "*right* reason". "But that which is not contrary to right reason, that all men account to be done justly,

and with right. Neither by the word *right* is anything else signified, than that liberty which every man hath to make use of his natural faculties according to right reason." (E.W. ii pp8-9, quoted in Gauthier, 32) Gauthier then draws the following equivalence:

A has the natural right to do X = A doing X is initially in accordance with (right) reason

He then points out that Hobbes defines a right as the liberty to do, or to forbear, (*Lev.* 14, 3) but this, says Gauthier, if put into the equivalence, leads to absurdities:

A has the natural right to do X = A doing or not doing X is initially in accordance with (right) reason

The absurdity arises, according to Gauthier, because clearly it is not the case that for every action that accords with right reason, the omission of the action also accords with right reason. Two possible explanations for this apparent absurdity might be, first, that Hobbes means that A has a right *either* to do X or to forbear from doing X, depending on which alternative accords with right reason, at the time. Or, second, that Gauthier is mistaken in thinking that in *Leviathan* Hobbes is saying that the right of nature accords with right reason. If, as seems to be the case, Hobbes says that in the state of nature man is ruled by the passions rather than by reason

(referring, for example, to the state of nature in Chapter 13, Hobbes says "this Inference, made from the Passions") and if it is only when we accept the laws of nature that we employ reason, then the quotation used by Gauthier, is, in its context, consistent, and does not give rise to an absurdity. "RIGHT, consisteth in liberty to do or to forbeare; whereas LAW, determineth, and bindeth to one of them:" (*Lev.* 14, 3). Now we have right defined as a perfect freedom to do something, and law as a stipulation to do what reason dictates, (for our self-preservation).

Gauthier points out that in *Leviathan* Hobbes "leaves the concept of the right of nature entirely without prior explication." (ibid., 34). He dismisses the possibility that Hobbes no longer accepted the arguments he had given in earlier works and concludes that, "[n]othing in the argument present in *Leviathan* is incompatible with the supposition that the right of nature is based on reason, and so we are surely entitled to turn to the earlier works for our definition." (ibid.). The fact that in *Leviathan* Hobbes "divorces discussion of right reason from the introduction of the right of nature, . . . (and) omits to add connecting links, which would make explicit the connection of right reason and the right of nature" (Gauthier 1969, 35) has led to some confusion according to Gauthier. Hobbes only starts to talk about human rationality in *Leviathan* when he addresses the problem of how men can escape from the state of nature. This means that it is in reference to the *law* of nature rather than the *right* of nature, that reason is introduced. A law of nature, Hobbes tells us in *Leviathan*, "is a Precept or generall Rule, found out by 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 thinketh it may be best preserved." (*Lev.* 14, 3). As Gauthier has stressed the connection of the right of nature to the exercise of reason, he says that Hobbes ought to link the right of nature to the law of nature in the following way:

> Given our formal definitions, it would seem that the laws of nature are precepts instructing us in the exercise of the right of nature. . . . Hence acting on the laws of nature is acting rightly, exercising the right of nature . . . Furthermore, the laws of nature would not themselves impose limitations on the right of nature . . . they would serve the useful role of enabling us more effectively to act in accordance with reason, or to exercise the right of nature, but they would not affect that right in principle. (Gauthier 1969, 39).

Hobbes scholars have usually seen the right of nature and the law of nature as being sharply in contrast, with the right of nature as a state of total freedom and constant war and the law of nature providing the limits on freedom that lead to peace. Gauthier's interpretation, that the laws of nature are a sort of extension of the right of nature and impose no limitations on it, is a radical departure from the accepted "reading" and he admits that he is going beyond what Hobbes actually says when he points out that "unfortunately, what Hobbes says is rather different." (ibid.). He follows this with the quotation from *Leviathan,* Chapter 14, that comes immediately after his definition of a law of nature quoted above:

> 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 forbeare; 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.(*Lev.* 14, 3).

Clearly this presents a problem for Gauthier's new interpretation of the law of nature as merely a guide to the proper exercise of the right of nature. He tries to get rid of the problem by dismissing this way of opposing right and law, and he does this by referring back to his criticism, mentioned above, of the definition of a right as the "liberty to do or to forbeare". He concludes that as this "cannot be imported into Hobbes's definition of right without creating absurdities" *and* that it is this phrase which "enables Hobbes to oppose right and law in the way in which he does", it is therefore reasonable to dismiss the opposition.

> If then we may ignore this way of explaining the difference between right and law, as involving an inconsistency with more basic features of Hobbes's moral theory, we may accept the relationship between the laws of nature and the right of nature implied by our formal definitions. But, although we shall maintain that it is strictly accurate to say that the laws of nature do not themselves impose limitations on the right of nature, we shall see that this claim may easily be misunderstood, and as misunderstood it becomes clearly false.(Gauthier 1969, 39/40).

It turns out that what Gauthier means here is that while the laws of nature do not strictly speaking impose any limitations on the right of nature, limitations *are* imposed but they are self-imposed. This is the main thrust of Gauthier's argument about the concept of obligation in the theory; that there are no natural obligations in the way that there are natural rights, the only obligations are those we impose upon ourselves when we lay down our natural right to some action or object. The point he wishes to make is that obligation does not exist prior to our actions in the form of a pre-existing obligation to obey, say, God's law or the law of nature. Rather, obligation is something we create for ourselves.

> All obligations, then, are self-imposed. There are no natural obligations, co-ordinate with natural rights. There are no obligations outside the area of the right of nature; if one has an obligation not to do some action, then previously one had a natural right to do that action. (Ibid., 40).

Gauthier then gives the following equivalence:

> A has an obligation not to do X = A has laid down the natural right to do X

And so, on Gauthier's reading, the only way an obligation can arise in Hobbes's theory is by the laying down of a right, and he raises a possible problem for Hobbes. He asks whether someone can lay down a right if to do so would be contrary to right reason. Whether, for example, one has a right to do what would be either contrary or indifferent to her preservation. Gauthier's answer is that it seems Hobbes would say one cannot have reason to do what one believes would destroy oneself and therefore one does not have the right to do such a thing. Gauthier points out that this might mean that the right of nature is initially limited, a position he has denied. He avoids this unwanted conclusion by arguing that outside the exercise of right reason there can be no consideration of a right.

> . . . [T]he question of right arises only within the framework of what is in principle possible. One neither has nor lacks the right to do what one cannot be motivated to do. And a normal man, in possession of his faculties, is necessarily motivated to preserve himself, and so cannot be motivated to destroy himself. As we have seen, the man who seeks to kill himself is, for Hobbes, 'not compos mentis'. (ibid., 49).

But Hobbes says something else that Gauthier admits is troublesome for his reading. In *De Cive*, he reminds us, Hobbes says that if a man pretends his actions are for his preservation but knows this is not true then he may be offending against the laws of nature. (ibid.).Again, this sounds like a limitation on the right of nature imposed by the laws of nature. But this too is compatible with Gauthier's view that the laws of nature impose no limitations on the right of nature, for he tells us that "the question here is not whether the laws of nature are laws restricting our rights.Rather it is whether the laws of nature show the extent to which the right of nature is originally limited, by advising us that certain actions are wrong, contrary to reason". And he continues "I am, however, inclined to think that in the bare state of nature, the right of nature is strictly unlimited - that whatever we do in that state is to be taken as considered conducive to preservation, and so done with right." (ibid., 50).

Acting in this bare state of nature, however, will inevitably lead to the war of each against each, and so, Gauthier says, the unlimited right of nature "proves contradictory in its use.reason". And he continues "I am, however, inclined to think that in the bare state of nature, the right of nature is strictly unlimited - that whatever we do in that state is to be taken as considered conducive to preservation, and so done with right."(ibid., 50).

Acting in this bare state of nature, however, will inevitably lead to the war of each against each, and so, Gauthier says, the unlimited right of nature "proves contradictory in its use." It leads to destruction when it exists for the purpose of preservation, and because of this it is necessary for us to give up some of our

unlimited right. (ibid., 52). Our natural rights are not taken away from us by the laws of nature, rather we realize what we must do to preserve ourselves and this involves giving up some of those rights. And so, he concludes, "initially, the right of nature is unlimited, but after one has accepted limitations on it, disregard of these limitations is without right, and indeed contrary to the laws of nature. (ibid.).

It is the second law of nature that provides what Gauthier calls the rationale for laying down some of our initially unlimited rights, and therefore for taking on certain obligations. (ibid., 53). But he is careful to maintain that it is not the second law of nature that *imposes* limits on the right of nature. What the second law does state, according to Gauthier, is that "as a condition of peace every man must limit his own right of nature in certain respects, provided others do so. In this way, it does *indirectly* provide for limitations on the right of nature, by imposing on us the rational requirement that we *directly* limit our right." (ibid., 54). It is often misunderstood, says Gauthier, and some interpreters have confused what the law itself does with what it requires us to do. This then leads to the view that the law imposes restrictions on the right of nature which in turn gives rise to the notion that it is the law that obliges us, taking obligation to mean "lack of right". If this were the case one would have to accept that not all obligation is self-imposed, the opposite of what Gauthier is claiming.

We might ask at this point, what position Gauthier has arrived at regarding the right of nature. He began by saying that Hobbes connects the right of nature to the use of reason, and stated that to say that A has a natural right to do X is to say that for

A to do X is initially in accordance with right reason. He then disputed the distinction, drawn by Hobbes in *Leviathan*, between right and law, saying that if upheld it leads the theory into absurdities. With the distinction out of the way he suggested that the laws of nature, far from imposing limits on the right of nature, act as a guide to the right of nature, that they are precepts which help us to "exercise the right of nature." In other words, that obeying the laws of nature, rather than taking us away from the chaos of the state of nature, will actually help us to act as we ought to *in the state of nature.*

Gauthier's reading runs counter to the usual interpretation that it is the laws of nature that enable us to leave the state of nature (which is the state of war that inevitably results from the exercise of our right to all things) and enter civil society. If they are, instead, a guide to the proper exercise of the right of nature, then the proper exercise of the right of nature must constitute behavior that will lead to peace. And yet, according to Hobbes, as long as we are exercising our right to all things (the right of nature) we will be in a state of war. "[F]or as long as every man holdeth this Right, of doing any thing he liketh; so long are all men in the condition of Warre." (*Lev.* 14, 5). The implication from Hobbes is surely that we must give up the right to all things if we are to achieve peace, and this fits with his description of the second law of nature where he says that men must be willing, so long as others are too, for the sake of peace, "to lay down this right to all things; and be contented with so much liberty against other men, as he would allow other men against himselfe." (*Lev.* 14, 5). Gauthier tries to fit this in with his interpretation by saying that the second law of

nature describes the limits that we realize we must impose upon our own right of nature. And yet, if Gauthier is right and we are disposed by our rationality to impose limits on the right of nature and if the proper exercise of the right of nature involves accepting those limitations, then what is left of the original right of nature described by Hobbes as the right to all things that we have in the state of nature? Indeed, what has happened to the state of nature itself? If we are always bound to accept the rational limitations of the laws of nature then there is no state of nature that we need escape from and the point has gone from Hobbes's "possibility to come out of it, consisting partly in the Passions, partly in his Reason." (*Lev.* 13, 13). This possibility consists, of course, in the laws of nature.

It is hard to see how Gauthier's interpretation can be squared with the text of *Leviathan*. He has focused on the idea that a prerequisite of the correct exercise of the right of nature is that it accords with reason. But he has himself pointed out that this connection of the right of nature to the use of reason has been taken from Hobbes's earlier works and not from *Leviathan*. If we look carefully at the quotations Gauthier has selected (see page 6) we see that Hobbes is referring to the "blameless liberty" we have when it comes to acting in the state of nature when there are no contracts and no sovereign to protect us. Acting in such a dangerous situation we are free to do anything that we think might preserve us and any such actions are not "contrary to reason" because in this context it is rational to act with nothing but our own short-term individual preservation in mind. Gauthier admits, however, that in *Leviathan* Hobbes "divorces discussion of right reason from the introduction of the

right of nature. . . . (and) omits to add connecting links, which would make explicit the connection of right reason and the right of nature." (Gauthier 1969, 35).

Once Gauthier has linked the right of nature to the use of reason and coupled this with his dismissal of the distinction drawn by Hobbes between right and law, he is able to move towards a position where the differences between behavior under the right of nature and behavior under the law of nature are diminished to the point where he can say that the latter is no more than the correct expression of the former. But the cost of bringing the right of nature and the laws of nature so close together is that we lose the contrast Hobbes seems so anxious to emphasize, between the violent and anarchic consequences of acting on the right to all things, on the one hand, and the move towards peace that results from giving up that right to all things and obeying the laws of nature, on the other.

The consequences of Gauthier's argument about the right of nature for his view of rights in general, in Hobbes's theory, are that all natural rights in the commonwealth are seen as the remaining liberties or permission rights that have been retained from the state of nature. These rights carry no correlative duties; "the liberty of subjects would seem to be coextensive with, or even equivalent to, the rights of subjects. Now these rights extend, presumably, to whatever rights are not given up in the covenant to authorize the sovereign." (Gauthier 1969, 130). The rights that are retained are the rights (1) "not to kill or injure themselves" and the right (2) "to defend themselves, under any circumstances". These rights are "guaranteed by the inalienable core of the right of nature" (ibid., 141). Also to be retained, is the right (3) "not to undertake any

dangerous task, such as killing another, or engaging in warfare, unless the survival of the commonwealth depends on it. That is, the inalienable right of nature must include the right to choose the course of action least dangerous to survival;" (ibid.). And finally, says Gauthier, (4) "the subjects are not obliged to avoid what the sovereign has not forbidden by law" (ibid., 142). This last provision, he concludes, comprises "the most considerable part of the liberty of the subject." (ibid.).

Once Gauthier is talking about the rights of the subjects in a commonwealth, he refers only to those rights that remain from the original right of nature. The rights, in other words, that form a part of the perfect liberty or freedom, that is the right to all things enjoyed in the state of nature. Interestingly, he does not refer to those rights which come into being when one acts in accordance with the laws of nature, even though, according to his argument, the proper exercise of the right of nature means limiting oneself according to the laws of nature. This point will be taken up in more detail in chapter 3 where we will argue that our rights are transformed under the second law of nature, so that some are given up and some are strengthened into claim rights. For the purposes of our discussion of Gauthier's view of rights in the theory, however, we can conclude that on his reading, all natural rights in the commonwealth are seen as liberty rights retained from the state of nature and carrying no correlative obligations or duties.

2. Kavka. The Subject and the Sovereign, Liberty Rights to Claim Rights

Kavka distinguishes three concepts of rights employed by Hobbes:

1. **A permission right**. This is the weakest form of right and is a liberty right. "A party has a permission right to do something if and only if it is permissible for him to do it." (Kavka 1986, 297). On Kavka's reading, the rights that individuals have in the state of nature are permission rights. "[T]he most important permission rights are the right of nature and its corollaries", (ibid., 298). According to Kavka, a permission right is a right that carries no correlative obligations but does "ascribe a genuine moral permission" (ibid., 315).
2. **A noninterference right**. A noninterference right "consists in a permission right conjoined with an obligation on the part of others not to interfere with the agent's performance of the act in question." (ibid., 297). Here Kavka seems to be describing what we might call a claim right. The right carries correlative duties on the part of others, to refrain from any action that would hinder the performance by the right holder of actions sanctioned by the right. The example he gives of a noninterference right is the sovereign's right to punish lawbreakers.
3. **An aid right**. An aid right is the stongest form of right "which an agent possesses if and only if he has a noninterference right to do something and others are obligated to actively aid him in doing that thing." (ibid.). This is what is sometimes called a positive right because it requires some positive act or actions

by others, to fulfill the right, rather than a merely negative restraint from actions that would violate the right as in no. 2 above. Kavka uses the examples of the sovereign's right to raise revenues from citizens and the sovereign's right to conscript able-bodied persons into the armed forces "when the defense of the commonwealth requireth at once the help of all that are able to bear arms", (ibid., 298, quoting *Leviathan* ch.18) as examples of aid rights, because they require the "active cooperation of citizens" (ibid.). As with the case of a noninterference right, this sort of right could be defined as a claim right because it implies correlative duties on the part of others. But, also as with the noninterference right, Kavka says that it applies only to the sovereign in a commonwealth and not to the subjects.

What does Kavka mean by a moral "permission"? Clearly he intends to convey a permission right as a liberty right in a similar way to Gauthier. Kavka points out that there is a problem, however, because of Hobbes's definition of liberty as the "absence of external impediments" (*Lev.* 14, 2), which would mean his right of nature is either tautological or false. There are often physical barriers to our use of our power to preserve ourselves, so, if taken literally, we do not always have the liberty (absence of external impediments) to preserve ourselves, so the right of nature is false. On the other hand, if we interpret the power to preserve ourselves as an internal ability to be able always to *try* to preserve ourselves then the claim is empty and useless, and the definition of the right of nature (the liberty, i.e. absence of

external impediments, to preserve ourselves) would be tautological. It must mean more, therefore, says Kavka, than that there are no external impediments to our using our power to preserve ourselves. Kavka concludes that "in ascribing to us a right of nature, he [Hobbes] means to attribute to us only a certain *kind* of liberty" that is, the absence of certain impediments, in this case not of physical impediments but rather of normative impediments such as "legal rules, moral principles, obligations, and so on. In saying that we have a right of nature, he is saying that as human beings we are under no natural *normative* restrictions on our pursuit of self-preservation." (ibid., 299/300).

Now we have a better idea of what Kavka means by a right that is a moral permission. It is a right that consists in the liberty to act in order to preserve ourselves without moral impediment. The most important permission right, Kavka has told us, is the right of nature and the right of nature is "the foundational right of Hobbes's moral and political system", (ibid., 299) which is, in turn, "a natural human right." (ibid.). So, according to Kavka, this foundational right in Hobbes's theory is a liberty right, but what of the other two rights Kavka has defined in the theory? Noninterference rights and aid rights are not mere liberty rights, for they involve the obligations of others. By our definition these are claim rights because they are the grounds of the obligations of others. Is Kavka arguing that Hobbes has (natural) claim rights in his theory? There are two things to say in answer to this question. First, these are rights that Kavka attributes to the sovereign not to the subjects of a commonwealth, so that even if the rights he is describing are claim rights they will

not apply to individuals in the commonwealth. Second, when he attempts to carry over these sorts of rights into Hobbes's own definitions and descriptions of rights, it doesn't work.

Kavka argues that, for Hobbes, the concept of a right is central to his "entire scheme of moral concepts" and that many of the other moral concepts he employs are defined in terms of rights. According to Kavka, he does this by using the notion of laying down a right, for, he says, it is laying down a right that brings about an obligation and sometimes a covenant or contract. The kind of right Hobbes has in mind to be laid down is a permission right derived from the right of nature. On laying down a right we "give up the liberty of interfering with another's exercise of what we earlier labeled a competitive right." (ibid., 302). (A competitive right is a liberty right where two or more people have liberty rights to the same thing and may, therefore, interfere with the other's right to that thing by exercising their own right). Laying down a liberty right places one under an obligation not to interfere with the right holder's exercise of her right. This works well with Hobbes's theory, Kavka points out, as long as we are concerned with permission rights. But he says, "[t]his reasonably neat picture falls apart when we consider one frequent consequence of the laying down of a permission right: creation of a right of noninterference" (ibid., 302/303). By Kavka's definitions, when I renounce a permission right I create a noninterference right for the right holders with respect to myself. Or if I transfer a permission right I similarly create a noninterference right for the person or persons to whom I have transferred the right. Once these noninterference rights are held by

various people it would seem, according to the theory, that these rights could themselves be transferred or renounced, creating "complex conjunctions of permissions and obligations of noninterference" (ibid., 303). But, as Kavka himself remarks, "transfer and renunciation of *such* rights do not fit Hobbes's definitions at all" (ibid.).

Kavka is right to point out the complexity and confusion that would result if one started applying the notion of the renouncing and transferring of rights to noninterference rights as well as to permission rights. But perhaps we can go some way to explaining the apparent inadequacy of these notions by keeping in mind that when Hobbes uses the word "right", at least in the context of the renouncing and transferring of rights, he is talking of liberty rights. These rights, which are really just pure freedoms, or perhaps justified pure freedoms, can be given up, putting the previous right holder under an obligation to the person or persons to whom the right is transferred. We could now ask, what is the nature of the new strengthened right, held by the person or persons to whom the original right has been transferred, the right which now seems to be linked to an obligation on the part of others? This question will be explored in detail in Chapter 3. But Kavka, having defined this new right as a "noninterference right" and having then tried to apply Hobbes's treatment of liberty rights to the noninterference right, that is, having tried to apply the concepts of the transferring and renouncing of rights to a right that already entails an obligation, is forced to say in the end, that Hobbes's "reasonably neat picture falls apart" (ibid. 302) and that the "transfer and renunciation of *such* rights do not fit

Hobbes's definitions at all." (ibid. 303). Kavka's mistake is not in the conclusion he draws, that the transferring of rights that already entail obligations, therefore taking on new obligations, involves a sort of spiraling set of ever more complicated rights and obligations. His mistake is in thinking that Hobbes intended the transfer or renouncing of any rights other than the liberty rights held in the state of nature. The reason why we should transfer and renounce some of our rights, according to Hobbes, is that we want to move from a state of war to a state of peace. This only applies, of course, in the move from the state of nature into civil society, and therefore only applies to the rights we hold in the state of nature, that is, to liberty rights.

3. Jean Hampton, Rights as Simple Liberties

Hampton locates the subjects' rights of Hobbes's theory in those liberty rights which everyone has in the state of nature. All the subjects' rights in a commonwealth, she says, "arise out of their fundamental 'right of nature' to preserve themselves." (Hampton 1986, 52). According to Hampton, whenever Hobbes uses the word "right" he is using it in the sense of Wesley Hohfeld's concept of a right as a privilege or liberty. (ibid., 51). As in the definition given above, this form of a right is nothing more than a justified freedom to perform or not perform the action to

which one has a right. A right, used in this sense, "is the opposite of a duty. If I have a liberty to use land in a certain way, I may do so or not, as I desire; in no way am I morally required to do so." (ibid.). Hampton wishes to stress that liberty rights are non-moral, in the sense that she argues that such rights carry no "objectivist" moral weight. They imply no duty or obligation either on the part of the holder of the right to perform the action she has a right to, or on the part of others to respect her right to that action. Liberty rights, therefore, are different from claim rights, which are correlated with the duties of others to respect those rights or at least to refrain from interfering with the right holders' exercise of them. Instead of being correlated with a duty, liberty rights are "correlated with what Hohfeld calls . . . a 'no-right'. If I have a liberty right to pick the apples on the tree others have no basis for claiming that I should or should not pick the apples, and no obligation to help me or allow me to do so. They have a 'no-right'. And if another person has the same liberty right to pick the apples then we may come into competition with one another for the apples, with neither of us having any obligation to refrain from picking as many as we desire." (ibid.). In other words if I have a liberty right to pick the apples on the tree I have a freedom to do so, and a freedom that is justified, when I pick the apples I do so with right, but this right does not imply any obligation on the part of others to allow me to pick the apples. In fact if another person also has a liberty right to pick the apples she can jump ahead of me and pick them first. We will be in open competition for the apples, each having the right to pick them and neither having a duty to refrain from doing so.

Hampton links her analysis of Hobbes's liberty rights to her assessment of his moral theory. According to her reading of the theory there is no objectivist moral claim attached to his notion of a right because there is no objectivist moral theory in his writing. And, the liberty rights that Hobbes does describe are precisely those rights appropriate to a subjectivist moral theory.

> [Hobbes] makes a point of giving no objectivist moral reasons for attributing liberty-rights to human beings in the state of nature such that a claim-right would have to be linked to the exercise of them, and Hobbes accords a person liberty-rights only because of the subjectivist ethical position he espouses. (ibid., 53).

Hampton defines Hobbes's ethical stance as subjectivist because she says Hobbes defines "good" as "an object or state of affairs desired by any individual in a particular place and time." (ibid.). And the notion of a right used by Hobbes fits this definition "because he defines a right or rational action as one that is instrumentally valuable to that individual in attaining the object of her desire." (ibid.). If an action is a means to the end of the desired object then "it not only can be described with the adjectives 'right' and 'rational' but also can be characterized as an action that the individual has a 'right' to take." (ibid.).

So Hampton grounds Hobbes's notion of a right in a theory of morality that gives no other justification for an action other than as a means to a desired end. If the desired end is self-preservation then any action towards that end is rational and justified and 'done with right'. Fitting in with this subjectivism, a liberty right to an action or object exists "when reason determines that this object or action is necessary

to accomplish his desired ends." Using 'right' as a noun now, the word "indicates that the action is allowed by prudential rationality." (ibid.) Indeed if Hobbes were to say that x had *no* right to y it "could only mean that the person's action was not an effective means to her desired end." (ibid., 54).

One complication that arises, according to Hampton, is that Hobbes uses the word "rational" to describe a physically healthy action as well as a prudent one. This means that, given his view that a healthy person must desire self-preservation above all else, someone who, for example, efficiently procured the means of destroying herself, might still be seen as prudent, on Hobbes's account, but she could not be seen as rational, because the actions are self-destructive. So, according to Hampton, Hobbes ties in an assumption about what constitutes a healthy person (i.e. one for whom self-preservation is the primary desire) to his notion of rationality. One consequence of this is that a person can only have a liberty right to something which will help her accomplish a desired end, provided that desired end is the product of a healthy (self-preserving) individual. "It is probably because right reason is defined partly in a medical way that Hobbes persists in attributing liberty-rights only to healthy individuals for whom self-preservation is their primary good." (ibid., 55).

Hampton pulls back a little from this interpretation by saying that what she has described is the notion of rights that Hobbes ought to hold "if he is a subjectivist" and she then asks the question "[b]ut does he actually hold it?" (ibid., 53). Her answer to this question is that while there are passages in *De Cive* and *Leviathan* which seem to describe exactly this notion of a right (see p53/4 *De Cive*. EW, ii, I, 7,

8-9 and *Lev.* 14) there are other passages in *Leviathan* where he seems to introduce what could be defined as a "claim right", (i.e. a right linked to an obligation on the part of others). This presents a problem of interpretation for Hampton because she has already stressed that given his ethical subjectivism "Hobbes *cannot* link the notion of obligation with any objective moral claim-rights individuals have." (ibid., 55 my emphasis).

The passage in *Leviathan* to which Hampton is referring is the following description of the second law of nature in Chapter 14.

> Right is layd 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 intendeth the benefit thereof to some certain person, or persons. And when a man hath in either manner 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: and that he *Ought* and it is his DUTY, not to make voyd that voluntary act of his own: and that such hindrance is INJUSTICE and INJURY, as being *Sine Jure* ; the right being before renounced, or transferred. (*Lev.*14, 7).

Hampton admits that in this passage it sounds as though Hobbes is saying that once we have renounced our liberty right, we then have a duty to others not to try to exercise the right we have renounced, and that this duty or obligation is correlated with a claim right that the person(s) who is the recipient of the right now has over us. (We will be arguing in Chapter 3 that Hobbes is indeed describing the formation of claim rights in this passage). Noting that this and other similar passages in *Leviathan* have been used by Warrender to support his view that Hobbes holds a deontological

moral theory, Hampton goes on to argue that "there is a subjectivist way to interpret the passage on obligation and duty quoted . . . from chapter 14." (ibid., 56).

The textual evidence she uses to support her argument is from Hobbes's discussion of "the fool" in Chapter 15 of *Leviathan*. When Hobbes is answering the fool's question as to why it would not be rational to break our contractual promises when to do so might be in our interests, he replies that it is always in our (long term) interest to keep our promises because if we do not we will be cast out of civil society back into a state of nature. We cannot expect the protection of those with whom we covenant if we are not to be trusted to keep our side of the agreement. Hampton says, of this reply, "his explanation does not invoke any normative obligation that we have incurred by promising to transfer our right. Instead he invokes self-interest, . . . " (Ibid., 55). And she concludes that while Hobbes may have apparently defined what it means to be obliged or duty-bound to do something in Chapter 14 by linking it to a person's surrender of a right, what he shows in Chapter 15 is that the reason one should do one's duty is because it is prudent to do so. In other words there is no obligation or duty to *not* exercise the renounced right *unless* the non-exercise of that right is prudent and rational. Once it ceases to be in one's best interests to "do one's duty" Hampton says, Hobbes tells us that we can and indeed ought to renege on our contracts.

> . . . all of chapter 21 of *Leviathan* is devoted to explaining when it is right (i.e., prudent) for subjects in a commonwealth to renege on their contract creating the sovereign. And in that chapter he repeats . . . what he had insisted on previously in chapter 14, namely, that 'A covenant not to defend myself from force, is always voyd.' So, for Hobbes, self-interest explains not only why

> we should do what we ought but also when our obligations arising from the surrender of right in a contract cease:" (Ibid., 56).

Hampton goes too far when she argues that Hobbes tells us to renege on our contracts. After all, it is the third law of nature which, Hobbes says, is the "Fountain and Originall of JUSTICE" *(Lev.* 15, 2) and which defines *injustice* as "*the not Performance of Covenant.*" (ibid.). And, as she reiterates, it is when a contract is voyd that we are no longer obliged to keep it, (and it is voyd if it involves contracting not to defend myself). It is one thing, however, to say that I cannot contract not to defend myself, or to put it another way, that a contract that did so would be void, it is quite another to say that Hobbes is telling us to renege on our contracts. In Chapter 21, where, according to Hampton, Hobbes is explaining when it is right for subjects to renege on their contract creating the sovereign, Hobbes himself says that he will say "what are the things, which though commanded by the sovereign, he may neverthelesse, *without Injustice*, refuse to do;" (*Lev.* 21.10, my emphasis). Having defined injustice as the not performing of contracts, it is improbable that he is now saying that subjects can sometimes renege on or break contracts without injustice.

The following from the quotation above summarizes Hampton's argument that Hobbes's subjectivism rules out any possibility that obligations could be inextricably tied to the surrender of a right. "So, for Hobbes, self-interest explains not only why we should do what we ought but also when our obligations arising from the surrender of a right in a contract cease:" (Hampton 1986, 56). She seems to be arguing that there is no real link between rights and obligations because self-interest will dictate

whether or not an obligation is binding. But Hobbes is not saying that self-interest will always, as it were, trump an obligation. If that were the case, the argument against the fool wouldn't work. Immediate self-interest could be used to justify breaking virtually any contract. Hobbes is saying, rather, that there cannot be an obligation which binds us to anything genuinely self-destructive. And this goes back to what he says about renouncing and transferring rights. The right to preserve ourselves cannot be given up. But other rights that we have in the state of nature such as the right to steal the property of another, *can* be given up. And once given up, there is an obligation not to exercise the right, and "not to hinder those to whom such Right is granted, or abandoned, from the benefit of it:" (*Lev.* 14, 7). So that, for example, even if it were in my immediate self-interest to steal from someone, I am obligated, because I have given up my right to do so, not to steal and not to deprive the owner of the property of her right to it. Hobbes does not say that any of my obligations might cease if it is in my self-interest not to fulfill them. What he says is that I cannot be obligated in cases where I could not have transferred or renounced the right in the first place. "It is manifest, that every Subject has Liberty in all those things, the right whereof cannot by Covenant be transferred." (*Lev.* 21,11).

It is only in these sorts of cases, where my right could not be transferred or renounced, (because it would involve neglecting my self-preservation), that there is no resulting obligation on my part. But the reason that I am not obligated is that no obligation *arises* in such a case. Hampton is mistaken, when she argues that my self-interest *causes an existing obligation to cease.*

And now, to return to Hampton's more general argument that *because* of his ethical subjectivism, Hobbes "cannot link the notion of obligation with any objective moral claim-rights individuals have." (Hampton 1986, 55). She is making the following assumptions:

1. A claim right is a moral right
2. Such a right requires an objectivist moral theory
3. A subjectivist theory could not give rise to such a right
4. The notion of obligation is a moral one and implies a deontological moral theory

From these assumptions it clearly follows that if Hobbes holds a subjectivist moral theory then he cannot also hold that there exist moral claim rights linked to obligations on the part of others. On the other hand, if a claim right does not require an objectivist moral theory and if we can have a notion of obligation that is non-moral or does not imply a deontology then it would be *possible* for Hobbes to hold that there are claim rights linked to the obligations of others. If, say, on renouncing the liberty right to steal the property of others, I then have an obligation of some sort to *not exercise* the renounced right (i.e. to keep my promise, an obligation Hampton might allow on her subjectivist reading, as long as it does not threaten my self-interest) and this is correlated with a (claim) right on the part of the person(s) to whom the right is renounced or transferred, to my non-interference, then we would still have some basis for arguing that there are claim rights in the theory.

Leaving aside for the moment the connection to an underlying moral theory, it is possible to examine the way in which Hobbes describes the transfer and renouncing of rights and the new relationship that results, relative to the right that has been given up. If I am right in saying that Hobbes does not argue that self-interest always trumps an obligation, contrary to what Hampton suggests, then in cases where a right has been successfully transferred or renounced (i.e. where self-preservation is not threatened), there is, according to Hobbes, an obligation or duty to not exercise the right that has been given up. This leaves open the question of what exactly Hobbes is saying about what, if anything, is owed to the recipient of the transferred or renounced right, and whether the right holder has a claim on the person who gave up the right. This question will be explored in Chapter 3. For our present purposes, we can say that Hampton has not succeeded in ruling out the possibility of claim rights, i.e. rights linked to the obligation of others, in Hobbes's theory.

The Rights to Self-Defense and Self-Preservation; A Threat to the Theory

Having dismissed the possibility that Hobbes is describing a claim right when he sets out the second law of nature in Chapter 14, Hampton goes on to argue that there is a sense in which the rights of subjects that exist after the contract has been made, are strong enough to be a threat to the power of the sovereign. This problem, says Hampton, "has been little recognized in recent years by Hobbes scholars but . . . was

appreciated by a number of Hobbes's important contemporary critics, including Clarendon, Bramhall, and Filmer." She goes on to argue that, "[t]his problem is so serious that it renders the entire Hobbesian justification for absolute sovereignty invalid." (ibid., 197). The "problem" she is referring to is that concerning the extent to which subjects must "surrender" their powers to the sovereign. When we are surrendering "punishment powers" to the sovereign, the fact that Hobbes says that we retain our right to self-defense means, according to Hampton, that we cannot give the sovereign an absolute power to punish.

> One could never willingly obey the sovereign's command to punish oneself, insofar as doing so would endanger one's self-preservation rather than preserve it. Given a human being's inevitable commitment to self-preservation, Hobbes must grant that each human being will "surrender" her punishment powers to the sovereign only insofar as doing so will not endanger her life. Thus, according to Hobbes, each human being carries with her into the commonwealth a "self-defense" right. But if she does, is the resulting ruler a genuine sovereign? Does he still have the power to decide all questions in the commonwealth? Does he still reign permanently? In order to answer these questions we need to know precisely what this self-defense right is and how extensive it is. (ibid., 198).

Hampton concludes that the self-defense right is more than a mere right to defend one's body against lethal attack. But even if that was the extent of the right it would still represent a serious problem, in as much as it seems to imply that subjects in a commonwealth retain the right to make their own judgments about whether or not their lives may be threatened. It is on the basis of such a judgment that subjects would make a decision whether or not to obey the commands of the sovereign, and this means, according to Hampton, that the subjects "do not really empower a truly

absolute sovereign at all, because there is no single permanent power to decide all questions and hence ensure peace among men." (ibid., 199). The seriousness of the problem, for Hampton, is clear. If the subjects cannot give all the decision-making power to the sovereign then he will not be an absolute sovereign of the kind Hampton thinks Hobbes intends him to be. In which case Hobbes's whole argument is under threat. "Hobbes is forced to say that an 'absolute sovereign' reigns at his subjects' pleasure" and this, she says, "is disastrous for Hobbes's political argument" (ibid., 202). We shall argue in Chapter 3 that the right to self-defense that is retained into the commonwealth and can be exercised even against the king, does indeed weaken the sovereign's power and therefore provides a check against absolutism.

4. Taylor/Warrender, Rights in a Deontological Reading of Hobbes

A. E. Taylor and Howard Warrender represent a different reading of Hobbes's ethical theory from Gauthier, Hampton and Kavka's rational choice view. Taylor and Warrender see Hobbes as holding a deontological ethical theory. In Taylor's much quoted words: "Hobbes's ethical doctrine proper, disengaged from an egoistic psychology with which it has no logically necessary connection, is a very strict deontology, curiously suggestive, though with interesting differences, of some of the characteristic theses of Kant." (Baumrin ed., 1969, 36/7, quoting A. E. Taylor, 1938).

One might expect that on a deontological reading of the ethical theory there would be a tendency to view Hobbes as also holding a strong theory of individual rights. As we shall see, this is not the case. Taylor mentions rights only in passing, accepting Hobbes's use of the term without commenting on it and concentrating instead on his use of the notions of obligation and duty. The right of nature is discussed only in reference to the manner in which it is given up. He does refer to Hobbes's discussion of the liberties of the subject in Chapter 21 of *Leviathan*, but he does so only in the context of showing the limits of the sovereign power and the freedoms that must remain in a commonwealth. We can conclude that Taylor has nothing specific to say about rights in the theory but that where he refers to them he is assuming, as the rational choice theorists do, that they are only liberty rights or freedoms.

Howard Warrender has a great deal more to say about rights in Hobbes's theory, though as we shall see, he is also closer to the rational choice theorists on this subject than one might expect. He dismisses the idea that Hobbes might hold a strong theory of individual rights in the following way: "Natural rights for the citizen, in the traditional sense of substantive rights against sovereign authority, cannot on Hobbes's view be given any philosophical justification, and the claim to such rights argues only a complete misconception of the nature of sovereignty and law." (Warrender 1957, 253). By "substantive rights against sovereign authority" we can understand Warrender to mean rights that are correlated with the duties of others, in this case with those of the sovereign; he is, therefore, dismissing the view that there may be any claim rights for the citizens in Hobbes's theory, held against the

sovereign. This does not mean, however, that he is ruling out all rights in the theory, for he also says that Hobbes's "advocacy of absolute sovereignty never involves a theory in which subjects have no rights and sovereigns no duties." (ibid., 177). What is of note here, as it is with the rational choice theorists, is that the rights of the subjects are not seen to be correlated with the duties of others in a way that would allow us to define them as claim rights or "substantive rights". The following quotation summarizes Warrender's view of the relationship between rights and duties in the theory:

> . . . Hobbes's theory provides, not merely for a general duty of the subject to obey the commands of the sovereign where his will has been sufficiently declared, but also for rights of the subject and duties on the part of the sovereign. What makes Hobbes's account confusing at first sight is that there is absent the correspondence between these rights and duties that is normally expected. It has become axiomatic to regard the duties of the sovereign as implying rights in the subject and vice versa. Nevertheless, Hobbes denies these implications, for the rights of the subject against the sovereign are freedoms from obligation and do not imply duties for the sovereign, and the duties of the sovereign are owed to God and not to the subject. Thus the subject has a right to defend his life, but the sovereign has not necessarily a duty to spare it, and the sovereign has a duty to observe natural law, but the subject has no right to exact that observance. (ibid., 196).

Hobbes uses the word "right" in two different ways, according to Warrender. On the one hand, he uses it to mean "something to which one is morally entitled", (ibid., 18) which he says is equivalent to a description of other people's duties and is the meaning usually given to the word in moral and political philosophy. Used in this way a right denotes the duties which other people have towards the right holder. Warrender is saying two things here: he is describing what we would term a claim

right and he is also aligning himself with a particular argument that states that the term "right", used in this way, has no particular philosophical value or usefulness because "whatever can be said in the rights-formula can be said in the (other people's) duties-formula, and therein stated more precisely." (ibid.). We shall say more about this argument in Chapter 3, but regarding what Warrender is saying about Hobbes's use of the term right, we can see that he claims that Hobbes sometimes uses the word right to mean entitlement (or claim right), but this is usually when he is discussing the rights of the sovereign. The only other instance in which there are rights that are entitlements are in civil society, when the individual "does collect some entitlements as against his fellow citizens, for the civil law does impose obligations upon them that secure him in some respects." (ibid., 195). These are legal rights; rights *granted to him* by the sovereign when he makes the law and are therefore not to be confused with those rights which the individual has prior to civil society. When Hobbes is discussing the rights of the *subjects* he uses the word in a different way, according to Warrender, to mean freedom from obligation. In this sense rights "are the antithesis of duties" (ibid., 19). This form of a right specifies "something that the individual cannot be obliged to renounce." (ibid.). This is similar to the "liberty rights" and "permission rights" discussed by the rational choice theorists, and is intended as a definition of the rights described by Hobbes as existing in the state of nature. "Thus Hobbes's 'right to all things', for example, does not imply that men are entitled to everything, but that they cannot be obliged to renounce anything." (ibid., 20).

The word "right" is used by Hobbes with a particular meaning, according to Warrender, so that "a right to x" should be translated as "a freedom from obligation to renounce "x"', whereby rights do not imply corresponding duties in other people." (ibid. 50). This sounds very much like the definitions of liberty rights and permission rights used by the rational choice theorists, and it is a substantially similar definition, but Warrender goes on to analyze in more detail the process of the transferring and renouncing of rights and how this affects the right holders.

When an individual lays down a right, Warrender argues, he 'resigns a freedom' but does *not* "transfer a right in the modern sense of making over to others an entitlement to some object or service to which he himself was entitled previously." (ibid.). And although the person transferring the right becomes thereby impeded in his future actions against the person to whom the right is transferred, this affects only him. according to Warrender, all other people are still free to interfere with the right holder's ability to exercise his own right. Furthermore, Warrender also claims that the person to whom the right is transferred has only the same right that he had before. In other words, Warrender is arguing that the kind of transfer of rights described by Hobbes in the second law of nature does *not* create a new kind of right, a claim right; it does not in fact change the right in any way.

> ...the individual who resigns or transfers a right, takes upon himself a duty which he did not have before, but the rights of other people remain the same, whether the transference of the right in question was to them or not. Thus if, for example, the individual transfers a right to person 'p', but not to person 'q', he will have a duty not to hinder 'p' in some respect and no duty to 'q' in this respect; but the rights of both 'p' and 'q' will remain the same as before. This assertion appears less paradoxical if Hobbes's special use of the word, right, is

> emphasized. Thus, to resign a freedom from obligation (a right), does not as such increase other people's freedoms from obligation (rights), although, as Hobbes adds, it does affect the convenience of their exercise. Similarly, to transfer a right to a particular person, does not increase his freedoms from obligation, but it does increase the facility with which he can exercise these freedoms. It is of rights in this sense that the second law of nature requires a resignation or a transference.(ibid.).

For the person 'p', Warrender is arguing, his right remains unchanged, even in relation to the individual 'x' who has transferred his right to 'p'. Yet he admits that 'x' now has a duty towards 'p' in that he is obliged not to hinder 'p' in his (p's) exercise of his right. So, p's right in relation to x is now correlated with a duty of x's. And this duty that x has, directly affects p's ability to exercise his right, because it ensures that p's ability to exercise his right will not be interfered with by 'x'; p's right is now correlated with a duty of x's to respect p's exercise of the right. Even if one sticks with Warrender's definition of a right as a freedom from obligation, this freedom from obligation is now a *protected* freedom from obligation. In relation to x then, p's right has changed in that it has lost its competitive aspect. If x has transferred his right to the apples on the tree to p, then p is no longer in a competitive situation with x in exercising his right to the apples, and this competitive aspect is one of the characteristics of a liberty right, as we have mentioned above. Warrender does point out that, although by transferring a right the individual restricts his own future actions against the person to whom the right is given yet "he does not impede the action of other men as against that person" (ibid.) and this could be used to argue that the right holder's right has not changed even in its exercise, because there are many other people who may still interfere with his exercise of it. It is important to

remember, however, that what is under discussion is the second law of nature and according to the second law of nature we must *all* lay down some of our rights and indeed, each one of us is only obliged to do so when everyone else agrees to do the same: "if other men will not lay down their Right, as well as he; then there is no Reason for any one, to devest himselfe of his: For that were to expose himself to Prey, (which no man is bound to)" (*Lev.* 14, 5).

So, the example Warrender has given of one person x, transferring his right to p, does not represent the laying down of rights Hobbes describes under the second law of nature. Under the second law of nature everyone would lay down their right, say, to p's life so that his (p's) right to his life would then be protected by the fact that everyone else now has a duty not to interfere with his right to his life. His right has changed from being a simple liberty right or, as Warrender defines it, a freedom from obligation, to a freedom or liberty right that is protected by the duties of others not to interfere with its exercise. One could argue that this is now closer to the definition of a claim right than a liberty right. We will be arguing in Chapter 3 that this does describe what could be called a claim right, but for the moment we can say that Warrender has not succeeded in showing conclusively that the rights of the recipients of transfers of rights under the second law of nature are still mere liberty rights or freedoms from obligation that are unchanged by the duties now connected to their exercise.

Warrender argues that the lack of connection between duties and rights in the theory can be explained by examining their different roots.

> Hobbes's philosophy, . . . contains not only a theory of what the individual is obliged to do, but also a theory of what he cannot be obliged to do, and these two theories have different roots. Whereas the one relies upon natural laws which prescribe duties; the other is based upon an analysis of what is implied in being obliged, and more particularly in being obliged by law, and may be said to give a theory of natural rights. (ibid., 252).

Warrender is analyzing liberty rights in terms of the conditions underlying obligation. It is when these conditions do *not* apply that the individual has a right, that is, a freedom from obligation. When the sovereign cannot oblige an individual to act, that individual has a right. Natural rights in the theory, therefore, are, according to Warrender, those liberties that cannot be removed by the sovereign. They are the rights that underlie what Warrender terms the "validating conditions of civil law", which are conditions without which there could be no obligation to obey. They are: the condition that the law itself and the author of the law must be capable of being known to the subject and the condition that the individual must be capable of having an adequate motive to obey the law. In the case of the second condition this would amount to the right to self-preservation because a man could not be motivated to destroy himself.

To couch a theory of natural rights in terms of formal conditions of obligation may seem to be a failure to capture the primacy of the concept of a right and Warrender acknowledges this potential criticism with the following remarks:

> Hobbes's stipulation that obligations are imposed by law, and that law must be capable of being known if it is to oblige, may appear incongruous as a part of a theory of natural rights. Such a theory, it is true, would be formal in character as requiring a mere due process of law and the absence of *ex post facto* legislation. If a theory of natural rights implies necessarily a content of

> rights morally owed to the subject, moreover, these principles are no part of such a theory, for in Hobbes's account they have a logical rather than a moral basis. But yet if the contention that all legitimate government is government by law, may be taken to be a moral postulate, these principles may be so described.
>
> It is not meaningless to regard a purely formal principle as constituting a natural right, and it may well be that this represents theoretically the most defensible type of claim for such a right. It is at least something for the subject to know that though he may suffer from the reprisals of an arbitrary government whose wishes he has crossed, he may be held to have failed in his duty only if he has broken the law. If natural rights are conceived in this manner, far from requiring the assumption of natural law in the traditional sense, they are to be based upon any concept of law, and the only political theory which could finally lay the ghost of natural rights would be one which gave an account of the State without using the concept of law at all." (ibid., 262/3).

The only other sense in which individuals have liberties, in Warrender's account of Hobbes's theory, is in instances when there is no law prohibiting something. "The silence of the law, therefore, gives some liberties until that silence is terminated." (ibid., 254). So, for Warrender, individual rights in the theory are relegated to the formal conditions of obligation and a lack of obligation when none is stated. Clearly Warrender's reading of Hobbes as a deontologist does not make him more inclined to see strong natural rights in the theory. In Chapter 3 we shall examine these arguments more closely, particularly his analysis of the second law of nature as not giving rise to claim rights.

Warrender's argument that the right held by a subject, after another subject has transferred a right to him, (as described by Hobbes under the second law of nature), is no different to the right originally held (i.e. the liberty right, held in the state of nature), is an argument that can be defeated. As we have shown above, and will show

in more detail in Chapter 3, the recipient of a transferred right has a *protected* right, a right that is now correlated with a duty of the person who held the original right, before transferring it. That person now has a duty not to interfere with the right holder's exercise of his right. The right holder therefore has something *added* to his original right. The right, is not, as Warrender argues, completely unchanged.

5. Strauss, the Principle of Right

Strauss differs from most writers on Hobbes in his interpretation of the significance of the notion of rights in the theory. His view that modern political philosophy begins with Hobbes is centered on his argument that Hobbes rejected the traditional notion of law as the basis of a political order and replaced it with the notion of right.

> . . . Hobbes, and no other, is the father of modern political philosophy. For it is he who, with a clarity never previously and never subsequently attained, made the 'right of nature', i.e. the justified claims (of the individual) the basis of political philosophy, without any inconsistent borrowing from natural or divine law (Strauss 1936, 156).
>
> Hobbes's political philosophy starts from natural 'right', as distinguished from both natural 'law' and natural inclinations or appetites (ibid. ix).

Strauss's point is that Hobbes broke with traditional political philosophy by putting the individual *before* the state, thus reversing the classical notion that man

can only reach his natural perfection *through* the state (Strauss 1953). While traditional natural law "formulates man's natural duties", (ibid., 181) in Hobbes's new version of natural law there exists by nature "only a perfect right and no perfect duty" (ibid.). The political consequences of this transition are considerable, "one could not assert the primacy of natural rights without asserting that the individual is in every respect prior to civil society: all rights of civil society or of the sovereign are derivative from rights which originally belonged to the individual" (ibid., 183). And these rights, according to Strauss, consist in more than statements about what all people naturally desire or naturally strive for. They represent a "claim" (1) that is absolutely justified and forms the basis of moral and political life. A claim that "the only unconditional moral fact is the individual's right of self-preservation" (ibid., 197).

Strauss's intention is to show, that contrary to much of what is written about Hobbes, and to some of Hobbes's own comments, his attempt to base his political theory on modern natural science was a mistake, and furthermore that modern science was not really the basis of his philosophy. One of the consequences of this mistake, according to Strauss, is Hobbes's failure to make good the distinction between "right" as a moral concept and the natural appetites that a right serves, such as the desire to preserve ourselves. "In the case of Hobbes, the attempt to base political philosophy on modern science led to the consequence that the fundamental difference between natural 'right' and natural appetite could not be consistently maintained." (Strauss 1936, ix).

We should point out that Strauss is not arguing that the treatment of the actual rights of individuals in the theory is particularly significant, indeed it is not clear how far he would go towards the view we shall be arguing for in Chapter 3, that Hobbes develops what could be called claim rights, in the theory. He is, however, arguing that Hobbes's use of the notion of a right is significant and that it marks the introduction of a new moral concept which replaces that of "law" as the basis for a just political order.

> . . . although Hobbes attaches much less practical importance to the 'rights of men' than do most exponents of natural law, the essence of modern natural law and all its essential implications are nowhere more clearly seen than in his doctrine. For Hobbes obviously starts, not, as the great tradition did, from natural 'law', i.e. from an objective order, but from natural 'right', i.e. from an absolutely justified subjective claim which, far from being dependent on any previous law, order, or obligation, is itself the origin of all law, order, or obligation. It is by this conception of 'right' as the principle of morals and politics that the originality of Hobbes's political philosophy . . . is least ambiguously evinced. (Strauss 1936, viii).

Clearly Strauss disagrees with the view expressed above by Warrender, that rights can always be described, and described more accurately, in terms of duties. Strauss is arguing that the notion of a right stands on its own as a moral concept. He distinguishes the notion of a right from that of a duty by emphasizing the aspect of a right that is a claim and specifically, a justified claim. We can conclude that Strauss's view of Hobbes's theory of rights differs sharply from all the other writers discussed in this chapter. His view that rights are central to the theory and that Hobbes has made the rights of individuals the basis upon which a political system should be

constructed, sets him apart from the others, who all see the individual's natural rights in Hobbes's theory as being either too weak to be of consequence, or outside the main argument of the theory. In Chapters 3 and 4 we shall explore what Hobbes says about the rights of individuals, and how important his theory of rights is to the rest of his political theory. We will show that Strauss is closer to being right on this subject than the writers we have discussed above or Richard Tuck, whose recent historical work on Hobbes we will discuss below.

6. Tuck, Hobbes as a Conservative Rights Theorist

As we have already seen, Hobbes has usually been viewed as holding a weak theory of individual rights. Most commentators draw the conclusion that although the theory refers to the rights of individuals extensively, this means very little in the end, given:

1. the type of rights they take Hobbes to be describing (i.e. liberty rights, mere freedoms that do not imply any correlated duties on the part of others)
2. the power of the sovereign (which is absolute)
3. the extent to which the rights that are held in the state of nature are given up once a commonwealth is formed

Tuck is no exception to this rule. His argument is that there are other theories, as well as Hobbes's, which, in spite of apparently stressing the role of the rights of individuals, can be seen as actually defending authoritarian regimes, at the expense of the rights of individuals. Tuck places Hobbes's theory of rights in this tradition, which he calls *conservative, authoritarian rights theories,* stretching from the middles ages to Grotius to Selden.(2) Instead of seeing Hobbes as an exception in a liberal tradition of rights theorists, as others have done, he places him alongside other writers whom he defines as conservative thinkers on rights, in an analysis that draws two distinct threads out of the history of rights theories. "An important conclusion to which one is forcibly led is that most strong rights theories have in fact been explicitly authoritarian rather than liberal." (Tuck, 1979, 3). This may sound like a contradiction in terms but Tuck argues that there is evidence of authoritarianism in the writings of several political theorists who have contributed to the theory of natural rights. He then argues that these natural rights theories are themselves authoritarian in nature and therefore lend themselves to a defense of authoritarianism.

> The medieval rights theorists, Molina, Grotius, Selden (one of the most important and yet neglected of the seventeenth-century figures), Selden's followers and Hobbes all openly endorsed such institutions as slavery and the absolutist state. It is true that more liberal rights theories developed out of this conservative and authoritarian tradition, and that Grotius was the vital figure here; in his early works and to some extent in De Iure Belli ac Pacis itself he provided a theory which could be read in a liberal way, as it was in their different manners by the English radicals of the sixteen forties and by John Locke. But the Grotian origins of these liberal theories cannot be ignored, for they were always uneasily close to their authoritarian counterparts. When Rouseau repudiated the entire tradition as conservative, and chose Grotius as his main target, his instincts were absolutely right, however unfair he may have been to liberals such as Locke. (ibid.).

What does Tuck mean when he says that Hobbes is a conservative or authoritarian thinker on rights and that he is indeed part of a tradition of such thinkers? He picks out Hugo Grotius as the writer to whom both threads mentioned above, can be traced. "Grotius was both the first conservative rights theorist in Protestant Europe and also, in a sense, the first radical rights theorist." (ibid., 71). Tuck argues that his book *De Jure Belli ac Pacis Libri Tres (1682),* contains elements of both types of rights theory. "The book is Janus-faced, and its two mouths speak the language of both absolutism and liberty" (ibid., 79). After Grotius, according to Tuck, the theory was split into two separate theories, each espoused by opposing political groups, particularly during the English Civil Wars.

> The two groups can be characterised as the conservative and the radical rights theorists, the first sceptical about the principle of sociability but condoning slavery and absolutism, dominated by Selden (with Hobbes a somewhat deviant member), while the second held fast to the principle of interpretive charity, and was dominated by the radical English pamphleteers of the 1640s." (ibid., 81).

In reference to the conservative rights theories, Tuck quotes the following passage from Grotius, condoning first slavery and then the absolute power of the state over individuals.

> It is lawful for any Man to engage himself as a Slave to whom he pleases; as appears both by the *Hebrew* and *Roman* Laws. Why should it not therefore be as lawful for a People that are at their own Disposal, to deliver up themselves to any one or more Persons, and transfer the Right of governing them upon him or them, without recovering any Share of that Right to themselves? (Grotius, De Iure Belli, bk.I.ch. III., VIII. 1-2, in Tuck 1979, 78).

The important point about (natural) rights that Tuck is attributing to Grotius is that they can all be given up. All individuals start out with natural rights to life, liberty, self-defense and so on but all of these rights are alienable. They can be given over to a sovereign or a master or a protector. On self-defense for example, Tuck quotes Grotius saying:

> . . .all Men have naturally a Right to secure themselves from Injuries by Resistance. . . But civil Society being instituted for the Preservation of Peace, there immediately arises a superior Right in the State over us and ours, so far as is necessary for that End. Therefore the State has a Power to prohibit the unlimited Use of the Right towards every other Person, for maintaining publick Peace and good Order, which doubtless it does, since otherwise it cannot obtain the End proposed; for if that promiscuous Right of Resistance should be allowed, there would be *no longer a State*, but a Multitude without Union . . . (Grotius, De Iure Belli,bk.I.ch.IV., II. 1., quoted in Tuck 1979, 78-9).

One might conclude from the above passage that Grotius thought that all natural rights could and *should* be given up to the state; but this is to leave out the part of the theory that Tuck picks out as having influenced the *radical rights theorists*. What Tuck calls the principle of interpretive charity, mentioned above, is that principle according to which Grotius says that while all rights *could* be given up, charity requires that we accept that they are not always *in fact* given up. In answering the question of whether "the Law of non-resistance obliges us in the most extreme and inevitable danger" Grotius says,

> this Law (of which we now treat) seems to depend upon the Intention of those who first entered into civil Society, from whom the Power of the Soveraigns is originally derived. Suppose then they had been asked, Whether they pretended to impose on all Citizens the hard Necessity of dying, rather than to take up Arms in any Case, to defend themselves against the higher Powers; I do not

> know, whether they would have answered in the affirmative: It may be presumed, on the contrary, they would have declared that one ought not to bear with every Thing, unless the Resistance would infallibly occasion great Disturbance in the State, or prove the Destruction of many Innocents. For what Charity recommends in such a Case to be done, may, I doubt not, be prescribed by a human Law. (De Iure Belli ac Pacis, bk. I.ch. IV.,VII. 2., quoted in Tuck 1979, 80).

It is this principle of charity, according to Tuck, that was taken up and used by the parliamentarians in the English Civil Wars to justify holding on to rights such as the right to self-defense, even against the king. The other principle that Tuck extracts from Grotius as being one that influenced radical rights theorists is the *principle of sociability.* This is the principle that states man's innate sociability as the root of the law of nature (Tuck., 1979, 59, 60, 72). In his early writings, according to Tuck, Grotius used this principle to expound an essentially Aristotelian theory of justice. But in his later writings it was used to put forward a theory of individual rights.

> This Sociability, . . . or this Care of maintaining Society in a Manner conformable to the Light of human Understanding, is the Fountain of Right, properly so called; to which belongs the Abstaining from that which is another's, and the Restitution of what we have of another's, or of the Profit we have made by it, the Obligation of fulfilling Promises, the Reparation of a Damage done through our own Default, and the Merit of Punishment among Men. (Grotius, De Iure Belli ac Pacis, Prolegomena, 8-10 quoted in Tuck 1979, 72).

So these two principles, that of sociability and interpretive charity, were, according to Tuck, taken up by radical rights theorists and used to develop the later theories of individual rights that we associate with the liberal tradition of natural rights theories. But Hobbes does not come under this category of later theorist,

according to Tuck's analysis. Hobbes belongs to the other tradition of *conservative rights theorists*; those theorists who emphasized the alienability of all rights and support for an absolutist state. We shall be arguing that Tuck's picture of conservative rights theories does not fit Hobbes's theory, but first we shall say something about Tuck's view of Hobbes's theory and how it fits his picture of a history of conservative rights theories stretching from Grotius to Selden and his followers and then Hobbes.

According to Tuck's interpretation of Selden, Selden argues that man has complete liberty until restricted by natural law, which is the law of God. He is not proposing a real state of liberty prior to natural law but rather hypothesizing, "we hypothesize such a state of boundless liberty for the purpose of our argument , just as a line is often extended infinitely to demonstrate something in geometry." (Selden, *Opera*, I. quoted in Tuck, 1979, 90-91). His next proposal is that men form contracts which cannot be broken and this could include a contract of total servitude. "Every law is a contract between the king and the people, and therefore to be kept." (Selden. *Opera*, III, quoted in Tuck 1979, 96). Selden allowed no right of resistance or defense; once a contract had been made it must be kept, even if the consequence was death. Selden has a theory, therefore, that despite being called *a theory of rights* by Tuck, allows for the possibility that "men could find themselves completely divested of any rights." (ibid., 100).

Tuck next examines the writings of a group he refers to as "Selden's Followers" and he includes Hobbes in this group, albeit as a "deviant member". The most

important members are better known as the Tew Circle, (as mentioned in Chapter 1, see note 7, ch. 1) and were mainly Oxford intellectuals who met at Viscount Falkland's house at Great Tew in the 1630s. Hobbes has been associated with this group, who discussed matters of religion and published works attacking parliamentarian writers, although he was not one of the inner circle. (Sorell ed., 1996, 22/23). Tuck picks out examples of the work of people such as Henry Hammond and Dudley Digges and argues that they were strongly influenced by Selden.

> . . . it is clear that on the whole the Tew Circle writers are working very much within the ideological constraints set up by Selden. Like him, they believed in a state of complete freedom prior to the law of nature, and like him they thought that the obligatory force of the law of nature was given by man's knowledge of God's commands. Political authority was the result of a contract which could imply the death of the contractor, but it was rational for him to stick to his promise given what he knew of God's instructions. (ibid., 107).

Tuck constructs a picture of theories that have certain important elements in common, a state of complete freedom prior to any contracts or laws, the requirement that individuals give up all natural rights, including that of self-defense, in order to be protected, and a law of nature that had its authority from being the law of God. He also argues that Hobbes's theory can be included in this group, particularly in his early works such as the *Elements of Law* and he is right to point out that in this work Hobbes says that the right of self-defense must be given up to the sovereign for protection. He quotes Hobbes in the following passage where he says that the power of coercion of the sovereign:

> consisteth in the transferring of every man's right of resistance against him to whom he hath transferred the power of coercion. It followeth therefore, that

> no man in the commonwealth whatsoever hath right to resist him, or them, on whom they have conferred this power coercive, or (as men used to call it) the sword of justice; . . . (Hobbes , *Elements of Law*, II.I.7., quoted in Tuck 1979 121).

What is less clear, however, in Tuck's analysis, is why he lays such stress on this early formulation of Hobbes's theory. After all, it is in his later, mature, version of the theory, particularly in *Leviathan* that Hobbes is so emphatic that the right of self-defense *cannot* be given up.

> It is manifest, that every Subject has Liberty in all those things, the right whereof cannot by Covenant be transferred. I have shown before in the 14. Chapter, that Covenants, not to defend a man's own body are voyd. Therefore.
>
> If the Soveraign command a man (though justly condemned,) to kill, wound, or mayme himselfe; or not to resist those that assault him; or to abstain from the use of food, ayre, medecine, or any other thing, without which he cannot live; yet hath that man the Liberty to disobey. (*Lev.* 21, 11/12).

Tuck does not deny that in his later writings Hobbes moved away from a position that could be compared to that of Selden and the Tew Circle, but he diminishes the importance of the changes in the theory and stresses the similarities.

> The Tew writers developed a consistent theory out of Selden's ideas; Hobbes began along lines similar to theirs, and as a result was left with some awkward features in his theory when he diverged from them.
>
> . . . his ideas never fundamentally diverged from those of Selden's other followers, with embarrassing consequences for the more orthodox of them. (Tuck, 1979, 132).

The connections between the various writers Tuck picks out, from Grotius to Selden to Digges et al., are very interesting and illuminating, but his argument that Hobbes's theory, particularly as formulated in *Leviathan*, can be seen as one of the many royalist theories of the time, albeit with some "divergences" is not convincing.

This becomes particularly clear when one focuses on rights in the theory. Hobbes makes the right to self-preservation inalienable. It cannot be given up, not even to the sovereign. One of the main features of the theories of Selden and other members of the Tew Circle is that all natural rights can and must be given up to the sovereign. This is a fundamental difference in the theories, and it was Hobbes's insistence on the right to self-defense, even against the sovereign, that led to scathing criticism from people such as Clarendon, who was a member of the Tew Circle.

A political theory that states that all natural rights of individuals must be given up to create a sovereign who can protect them is significantly different from one which states that certain natural rights of individuals *cannot* be given up and are retained in the commonwealth. For our purposes, Hobbes (at least the mature Hobbes of *Leviathan*) and royalist writers before and during the Civil Wars, differed completely on the crucial question of the rights of individuals in a civil society. For the royalists, no natural right of a subject could trump the rights of the king. For Hobbes, no political right of a sovereign could trump the natural right of a subject to preserve his life.

Conclusion, Hobbes Scholarship on Rights in the Theory

It should be clear from the discussions above that in general Hobbes is thought to have a very weak theory of individual rights. Apart from Strauss, there is broad agreement that the natural rights of individuals in a commonwealth set up along Hobbesian lines are little more than those freedoms allowed to us by "the silence of the law". The rights that individuals do have are liberty rights and so are unprotected by the duties of others and most of them are given up when we agree to institute a sovereign.

We shall be arguing in Chapter 3 that Hobbes has been misunderstood on the question of rights. First, using a textual analysis, we shall argue that if the second law of nature is properly understood, it can be seen to give rise to rights that are correlated with the duties of others. We shall therefore be arguing against the interpretations of Gauthier, Kavka, Hampton and Warrender, all of whom argue that there are no (natural) rights in the theory that are correlated with the duties of others. Second, drawing on textual material on the inalienability of the right to self-preservation, as well as on historical material discussed in Chapter 1, we shall be arguing against Tuck's historical analysis of Hobbes as a member of a group of conservative rights theorists, and also against his proposal that Hobbes defends absolutism. We shall argue for the complete picture of Hobbes's theory of individual rights; a theory which puts rights at the center of political theory and makes the

sovereign's right to govern dependent upon the his ability to uphold the rights of his subjects.

Notes

1. Strauss is using the word claim here, not in reference to a claim right, but as a moral term. He is arguing that in Hobbes's theory, rights are the basis for morality, and that their moral status comes from the *claim* that the individual's right of self-preservation is paramount.

2. Hugo Grotius - Dutch natural law theorist, writing in the early to mid Seventeenth century. see note 4, chapter 1.

John Selden - English political writer, and member of Parliament, writing before and during the Civil Wars. He supported the royalist side during the war, although he had supported some reform during the years before the war.

CHAPTER THREE

HOBBES'S THEORY OF RIGHTS

Part I, The Textual Argument

We shall now discuss Hobbes's theory of rights, as given in his mature political work, *Leviathan*, and show, by textual examination, that contrary to the arguments of Gauthier, Kavka, Hampton and Warrender, Hobbes does in fact describe what we could call claim rights; that is, he describes rights which are correlated with the duties of others.

First, Hobbes's definitions of a liberty and a right are as follows:

> By LIBERTY, is understood, according to the proper signification of the word, **the absence of externall 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 judgement, and reason shall dictate to him. (*Lev.* 14, 2, my emphasis).

> 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 forbeare**; 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. (*Lev.* 14, 3, my emphasis in bold).

These definitions are quite specific and we shall do better to stick with them than to go against the text where it is unequivocal. So, to have liberty is to be unimpeded in the use of one's power to act. And a right is therefore an unimpeded freedom to do

or to not do something. A right, according to Hobbes then, is a species of liberty. (This was first pointed out to me by B. H. Baumrin). We can see from the definitions above that any right will be a liberty, so all rights in the theory are unimpeded abilities to act, of one kind or another.

1. Unprotected Rights. The Right of Nature

Hobbes takes as his starting point the right of nature, that is, the right to all things that every individual has in the state of nature. Before any form of political order, before any government or law, "every man has a Right to every thing; even to one anothers body" (*Lev.* 14, 4). This is an aggregate right; a right to every and any action that I deem necessary to my preservation. Hobbes describes the state of nature in the following way: "[A] condition of Warre of every one against every one; in which case every one is governed by his own Reason; and *there is nothing he can make use of, that may not be a help unto him, in preserving his life against his enemyes*;" (ibid., my emphasis). In other words, any action that may help me preserve myself is justified in the state of nature and each man is at liberty to perform whatever action he sees fit.

> The Right of Nature, which Writers commonly call *Jus Naturale*, is the Liberty each man hath to use his own power, as he will himselfe, for the preservation of his own Nature; that is to say, of his own Life; and

> consequently, of doing any thing, which in his own Judgement, and Reason, hee shall conceive to be the aptest means thereunto.(*Lev.* 14, 1).

However much the right to all things in the state of nature may seem like an advantage to the individual, Hobbes is quick to point out that this is an illusion. First, in the *Elements of Law* he warns us, " . . . that right of all men to all things, is in effect no better than if no man had right to any thing. For there is little use and benefit of the right a man hath, when another as strong, or stronger than himself, hath right to the same." (*El. of Law* ., pt. I ch. XIV, 10). And he reiterates the point in *Leviathan;* "as long as this naturall Right of every man to every thing endureth, there can be no security to any man, (how strong or wise soever he be,) of living out the time, which Nature ordinarily alloweth men to live." (*Lev.* 14,

It is clear that Hobbes wishes to say that rights are not always beneficial to the right holders. If the right held is what we have been calling a "liberty right", in the state of nature, then no one has any duty to stand out of the way of the right holder, or to uphold the right or to protect the right holder in his exercise of the right. And all other people have an equal right to everything, so that there is competition between people who are exercising their rights to the same things. In such a case, as Hobbes says, "there is little use and benefit" of having the right. If there is no protection of the exercise of the right, then the right is as useless as if there were no right at all. This is an important point and particularly relevant to the arguments of the commentators discussed in Chapter 2. If Hobbes is saying that a pure liberty right (which is not correlated with the duty of any others) is useless and if Gauthier,

Hampton, Kavka and Warrender are saying that all (natural) rights in the theory, including those that exist after a commonwealth is formed, are liberty rights, then what purpose could Hobbes envisage that these rights have? Why would he want to have only liberty rights in the theory, unless he wants to say that even those rights held in a commonwealth are useless? If we consider the importance he gives to the rights to self-defense and self-preservation and the fact that he says that these rights are inalienable and cannot be given up even to the sovereign, we can begin to see the confusion that results if we accept the interpretation of the commentators. We will discuss this in greater detail below. But first we shall continue to lay out what Hobbes actually says about rights.

Summary of the Right of Nature

To summarize the right of nature; it is an aggregate right that covers any possible action or thing that someone, living in the state of nature, might see as conducive to his preservation. By Hobbes's own definition it is a liberty to do or to forbear that is unlimited. It is therefore an unimpeded and complete freedom to act. And yet there is a contradictory element to the right of nature that Hobbes points out. In reality, individuals will be unable to enjoy an unrestricted exercise of the right of nature because others who may be stronger, have an equally unrestricted right to the same things and actions. In other words individuals are in *competition* with one another

when they attempt to exercise their right of nature. Competition is unrestricted with no rules that would place an obligation upon anyone to refrain from any action. If we take as an example the right of every individual to the apples on a tree, then anyone may make a run at the tree and may use any means to try to prevent others from getting there first. Suddenly, as I am tripped and pushed back and beaten by those faster than me, my *right* to the apples on the tree looks a little useless. The *definition* Hobbes has given us, of a right as an unimpeded freedom to do or to forbear also seems contradictory if the purest case of a right (the right of nature), is actually a freedom to act that will be impeded on all sides. The contradiction, however, is only an apparent one; there is no real contradiction, because a right that is *unprotected* is not really a right, or at least not a right worth having. In what follows we shall argue that, contrary to the interpretations of the commentators, Hobbes does provide for the protection of rights in the theory and those rights fit the definitions he gives *and* they are not impotent. Once we enter civil society we secure our (natural) rights in two ways and the rights we still hold then become protected and real.

It should be noted here that the rights to self-defense and self-preservation are rights that are included under the right of nature. They will be discussed in detail in section 2b. *Inalienable rights - Retained in the Commonwealth,* but they are originally rights of nature, as are all the rights held by individuals.

2. Protected Rights/Claim Rights

A claim right is a right that is correlated with the duty of another or others. The difference between a claim right and a liberty right is that the complete freedom of the liberty right is replaced by the protected freedom of the claim right. Leaving aside for the moment questions of the *enforcement* of duties; if my right to the apples on the tree is correlated with the duty of all others to refrain from acts that would interfere with my exercise of my right, then my passage to the tree and the apples is clear and my freedom to pick the apples is unimpeded. (Or at least it is unimpeded by any deliberate act directed at preventing my exercise of my right. It is always possible that someone crossing my path for another reason will accidentally block my way to the tree or someone climbing it for a better view will block my access; but my right to the apples is cleared of the threat of sabotage.). Now we have a right that fits much better with Hobbes's definition of a right as a liberty (absence of external impediments) to do or to forbear. It also seems reasonable to suppose that his use of the phrase "external impediments" refers in the main to the impediments caused by other people's deliberate actions. When he points out the uselessness of the right of nature in the *Elements of Law* and in *Leviathan*, it is in terms of the danger of other individuals' use of their unlimited right. He does not mention other kinds of external impediments such as the accidental interference of others or natural physical impediments.

There are two ways that individuals in a Hobbesian commonwealth secure their *own* rights by turning them into protected rights. (We are ignoring here the legal or positive rights that are created by the sovereign when he makes law). The first is under the second law of nature, according to which, individuals choose to give up the right to all things that is the right of nature and thereby to put themselves under an obligation to refrain from interfering with the exercise of the rights of others. (*Lev.* 14. 5.6.7). If this process is achieved, and individuals fulfill their duties, right-holders will then have rights that are protected. The second way that individuals may secure their rights in a commonwealth, according to Hobbes, concerns those rights held in the state of nature which, he says, cannot be given up. The rights to self-defense and self-preservation are retained from the state of nature into the commonwealth, yet if they are retained as simple liberty rights they will be of little value. To be of value they must be protected. Does Hobbes make any provision for the protection of the inalienable rights to self-preservation and self-defense? We shall argue that he does. The key is in the relationship between the individual subject and the sovereign. There is a duty on the part of the sovereign to protect and preserve the individuals in the commonwealth and this, we shall argue, is correlated with the rights to self-defense and self-preservation that each individual retains.

2a The Second Law of Nature

Hobbes describes the way out of the state of constant and unending civil war, that is, the state of nature, in terms of a set of rational precepts or rules that set out what is necessary in order for individuals to best preserve their lives. These "convenient Articles of Peace, upon which men may be drawn to agreement" (*Lev.* 13, 14) are the laws of nature, the second of which explains how the right of nature, which is such a disaster for the security of individuals, must be exchanged for a system of reciprocal transferring and renouncing of rights. In general terms Hobbes states the second law of nature as the law:

> *That a man be willing, when others are so too, as farre-forth, as for Peace, and defence of himselfe he shall think it necessary, to lay down this right to all things: and be contented with so much liberty against other men, as he would allow other men against himselfe.* (ibid., 14, 5).

The right of nature is so destructive of security that it must be given up, or at least some of the rights held must be given up and Hobbes defines what it is to lay down a right in the following way. "To *lay downe* a man's Right to any thing, is to *devest* himselfe of the *Liberty*, of hindring another of the benefit of his own Right to the same." (ibid., 14, 6). In other words if I lay down *my* right to the apples on the tree, then I am no longer free to interfere with another person's exercise of *their* right to the apples on the tree. Once I have laid down the right (assuming whatever conditions are necessary for me to be able to do that), I am then under an obligation

to refrain from interfering with the right-holder's exercise of *his* right. Hobbes points out that this is not to give a *new right* to the person to whom the right is transferred, because in the state of nature everyone already has every possible right (the right to all things).

> For he that renounceth, or passeth away his Right, giveth not to any other man a Right which he had not before; because there is nothing to which every man had not Right by Nature: but only standeth out of his way, that he may enjoy his own originall Right, without hindrance from him; not without hindrance from another. So that the effect which redoundeth to one man, by another mans defect of Right, is but so much diminution of impediments to the use of his own Right originall. (*Lev.* 14, 6).

So, the laying down of a right does not give the right-holder a *new right* but it does change the right or at least change the situation with regard to its exercise. If we can successfully argue that the resulting situation for the right-holder is one in which the right he now holds is correlated with a duty or obligation of another or others not to interfere with his exercising the right, then we will have shown that rights resulting from adherence to the second law of nature are *claim rights*. The quotation above also supports our argument that when Hobbes says that liberty is the absence of impediments he seems to be thinking of the impediments caused by the deliberate actions of others.

There are two ways a right may be "layd aside", either by 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 intendeth the benefit thereof to some certain person, or persons." (*Lev.* 14, 7). What does Hobbes mean by

"benefit" here? Clearly, he intends to show that it is to the benefit of the right holder to whom the right has been transferred or who is left with the right another has renounced, to be the recipient of the effects of this new obligation (on the part of the original right-holder), which will lessen the impediments to the exercise of his right. The man who is in receipt of the transferred right is now better able to enjoy his exercise of his right. "He that transferreth any Right, transferreth the Means of enjoying it, as farre as lyeth in his power." (*Lev.* 14, 21). It now seems clear that something *has changed* for the right holder. He has received a *benefit* from the transference of the right of another and is now actually better able to enjoy the exercise of his right. We are not arguing that he has a new right, but that he has a *changed* right; some impediments to his enjoyment of his original right have been removed.

Hobbes states clearly the nature of the obligation a man places himself under when he either transfers or renounces a right.

> And when a man hath in either manner 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: and that he *Ought*, and it is his DUTY, not to make voyd that voluntary act of his own: and that such hindrance is INJUSTICE, and INJURY, as being *Sine Jure* ; the Right being before renounced or transferred. (*Lev.* 14, 7).

Anyone who transfers or renounces a right is therefore under an obligation and has a duty to refrain from any action that would hinder the recipient in his exercise of his right.

Summary of Rights under the Second Law of Nature

Can we now say that there is a *duty* on the part of the person who has transferred or renounced their right, that is correlated with the right of the recipient of the transferred or renounced right? There might be an objection that Hobbes does not intend there to be any "receipt" of a right on the part of the person to whom the right is transferred. The following passage on the second law of nature, however, makes his intentions clear. "The way by which a man either simply Renounceth, or Transferreth his Right, is a Declaration, or Signification, by some voluntary and sufficient signe, or signes, that he doth so Renounce, or Transferre; or hath so Renounced, or Transferred the same,*to him that accepteth it.*" (*Lev.* 14, 7, my emphasis). So, the right that is transferred or renounced is accepted by the person to whom it is transferred or renounced. How does this fit with Hobbes's declaration that there is no resulting *new right* for the recipient, who, after all, already has a right to all things under the right of nature? He does not receive a *new* right but he receives *the* right (the "it" in "to him that accepteth it" above, is the right which has been transferred) and this right is linked to the new duty of the previous right holder to refrain from all actions that would interfere with the recipient's exercise of the right.

The recipient now has *a right that is correlated with a duty on the part of another to refrain from actions that would interfere with his exercise of the right.* This fits the definition of what we have been referring to as a claim right, as defined by Hohfeld.

An objection might be raised (e.g. by Warrender), that it is not really a claim right because the right is only correlated with the duty of one other person, (i.e. the person who has transferred or renounced the right). In relation to everyone else, the objection goes, the right is still not correlated with anyone's duty. But this is to misunderstand the second law of nature, which applies to *all* men in the state of nature and says they must all give up the right to all things. Indeed if others do not, then Hobbes tells us we would be foolish to do so. "But if other men will not lay down their Right, as well as he; then there is no Reason for any one, to devest himselfe of his: For that were to expose himself to Prey, (which no man is bound to) rather than to dispose himselfe to Peace." (*Lev.* 14, 5). If, for example, I were to give up my right to your possessions but you did not give up your right to my possessions then I would be exposing myself to prey. It will only work if we all agree to give up our rights to one another's possessions. Then, each of us will be left with a claim right to our own property, that is, a right that is correlated with the duty of all others not to interfere with our exercise of our right to our own property and none of us will have a right to anyone else's property. This answers Warrender's objection. Under the second law of nature all men give up their right to all things. The rights that must be given up by one, must be given up by all.

The second law of nature operates as a collective system of the transfer and renouncing of all the rights that we would not wish another to hold against us in civil society. All rights that allow the invasion of other people's property or persons, or a threat to peace, or interference with the means to ones preservation, would

presumably be given up. This is to some extent a matter of speculation, as Hobbes himself does not specify exactly which rights would be transferred or renounced under the second law of nature. If we keep in mind the wording of the law, however: "[t]hat a man be willing, when others are so too, as farre-forth, as for Peace, and defence of himselfe he shall think it necessary, *to lay down this right to all things; and be contented with so much liberty against other men, as he would allow other men against himselfe*", (*Lev.* 14, 5, my emphasis) then we shall be able to say roughly what sorts of rights would have to be given up or transferred. It should be noted that when Hobbes says that we should be contented with only so much *liberty against other men,* he must be referring to the liberty to interfere with others that is given up every time one transfers or renounces a right. This loss of liberty to interfere, on the one hand, is replaced with the increased liberty on the other, to exercise the rights that have been transferred to us.

Answer to an Objection - Hobbes's Talk of Liberty Excludes Claim Rights

An objection could be raised that would state the following: Hobbes is saying simply that an individual is giving up liberty under the second law of nature, and therefore he sees liberty as pertaining only to the pure, unprotected freedom of the right of nature. Indeed from the way Hobbes refers to the giving up of liberty and to

the retaining of rights or liberty it is easy to think, as most commentators have thought, that what he means by a (natural) right is purely and simply a liberty or freedom and therefore that the rights he describes in the theory are liberty rights, that they are held under the right of nature and all but the right to self-defense and self-preservation are given up upon entering a commonwealth. In other words, it seems that what Hobbes describes as happening under the second law of nature is merely the giving up of certain rights or liberties on the understanding that others will also give them up, and the result is a loss of liberty that is compensated for by a decrease in danger. On this interpretation, the result of the second law of nature is only a *decrease in rights*, it is *not* a *decrease* in liberty rights and an *increase* in protected or claim rights, as we have argued above. If we accept the standard interpretation of the second law of nature, however, how can we explain what happens to the recipient of the transferred or renounced right? We would have to say that they have not received a right that is correlated with a duty. Yet, as we pointed out above, Hobbes says:

> And when a man hath in either manner 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: and that he *Ought*, and it is his DUTY, not to make voyd that voluntary act of his own: and that such hindrance is INJUSTICE, and INJURY, . . .
>
> Whensoever a man Transferreth his Right, or Renounceth it; it is either in consideration of some Right reciprocally transferred to himselfe; or for some other good he hopeth for thereby. (*Lev.* 14, 7/8).

On reading these passages it is hard to see how it could be denied that:

1. Hobbes does say that a right is received as the result of a transfer and

2. that the right which is received is correlated with the duty of the person who transferred it, to refrain from interfering with the recipient's exercise of the transferred right.

If 1 and 2 are correct, then even if Hobbes does sometimes speak as though a right is only a liberty right; he has in fact described what we would now define as a claim right. It is possible, and we suggest, that Hobbes is breaking with the tradition of some natural law theories such as that of Hugo Grotius, when he describes a right that is correlated with a duty which protects the right holder. Grotius holds that natural rights or liberties must be given up *in exchange for* protection.

> By nature all men have the right of resisting in order to ward off injury, as we have shown above. But as civil society was instituted in order to maintain public tranquillity, the state forthwith acquires over us and our possessions a greater right, to the extent necessary to accomplish this end. The state, therefore, in the interest of public peace and order, can limit that common right of resistance. That such was the purpose of the state we cannot doubt, since it could not in any other way achieve its end. If, in fact, the right of resistance should remain without restraint, there will no longer be a state, but only a non-social horde. . . . (Grotius 1901, bk.I, ch.IV, II, 1.).

And Hobbes, while seeming on the one hand to accept the notion that a right is a liberty that individuals give up in exchange for protection, on the other hand creates a complicated system of the transfer of rights *between* individuals. Instead of only giving up rights to the sovereign, he argues that individuals also give them up to each other and take on duties that provide some protection for the gifted rights. At the same time he is adamant, in *Leviathan*, that the right to self-preservation could not

and should not be given up. And he changes the relationship between sovereign and subject, as it was seen by most of his contemporaries, to one where instead of exchanging the right for protection, the right is retained and protection provided anyway, as the duty of the sovereign. Furthermore, if the sovereign fails to uphold the right (i.e. to protect the subjects), then the subjects' obligation to obey ceases. Thus making the sovereign's authority dependent upon his ability to protect the rights of the subjects.

It may be true that, given the way Hobbes famously distinguished right and law, "so that Law, and Right, differ as much as Obligation, and Liberty; which in one and the same matter are inconsistent" (*Lev.* 14, 3), it was not possible for him to categorize a claim right or right protected by the duties of others, as a liberty. And yet he does clearly state in his description of the second law of nature, as we have argued above, that there is a *recipient* of a transferred or renounced right and this recipient does receive a *benefit* from the transfer *and* that the transferor then has a duty towards the recipient not to interfere with his exercise of the right. By Hohfeld's definition the recipient now has a claim right against the transferor. How might Hobbes have seen this right? If he could not allow that a right could be tied to or entail an obligation, then he is bound to separate the two aspects of the claim right, saying on the one hand that the right (i.e. the right of nature), the liberty to do or forbeare, is still with the recipient and on the other hand that the transferor has lost the right and gained a duty. The recipient has indeed received the benefit of less impediments to his exercise of the right, but Hobbes seems unwilling to join these

elements together and say that he now has a right that itself entails or is correlated with, a duty on the part of another. The view of rights described by natural law theorists like Hugo Grotius, sees natural rights being held as freedoms that can be given up in order to gain protection - that a right must as it were be exchanged for the protection that can be offered by the sovereign. The price of the protection is the sacrifice of the right. Hobbes, on the other hand, ensures the protection without the sacrifice of the right.

The relationship between freedom and rights is a complex one historically. We are inclined to see freedom as entailing rights which entail duties, which protect the rights. And there is a history of the use of the term "rights" in this way, as entailing duties, which Tuck traces back in the modern era to the early scholars of Roman law in the Twelfth Century. "It is among the men who rediscovered the Digest and created the medieval science of Roman law in the twelfth century that we must look to find the first modern rights theory, one built round the notion of a passive right. . . . All rights were claim rights: they all required other men to act in some way towards the claimant, to grant him something." (Tuck, 1979, 13, 15).

Political writers who were Hobbes's contemporaries, however, were inclined to see rights as pure freedoms that should be retained or sacrificed, depending on the particular right under discussion and the political sympathies of the writer. Royalists such as Filmer thought that all natural rights should be given up to the sovereign, while parliamentarians argued that some rights such as the right to self-defense should be retained. We shall discuss in more detail below, the different strains of the

natural rights theories that were in circulation when Hobbes was writing, in relation to Tuck's argument that Hobbes represents a version of what he calls "conservative rights theories".

To return to the objection at the beginning of this section; when Hobbes describes the second law of nature he says that a man must "lay down this right to all things; and be contented with so much liberty against other men, as he would allow other men against himselfe." (*Lev.* 14, 5). And this could be said to imply that he thinks this laying down of the right to all things involves only a *sacrifice* of rights or liberty and no gaining of liberty; we would reply to the objection that even if the explanation given above in terms of Hobbes's inability to complete the move to a claim right is not accepted, we could still argue that his use of the phrase *liberty against other men* refers to a specific liberty, namely the liberty to interfere with others' rights, rather than to liberty in general. It is this specific liberty that must be sacrificed under the second law of nature but not liberty in general. We are then free to say that there is also liberty that is *gained* from the second law of nature and this is the liberty to more easily exercise ones own rights (i.e. without the interference of others). So the liberty to interfere with others is certainly diminished under the law, but there is not a decrease in liberty overall.

2b Inalienable Rights - Retained in the Commonwealth

There are certain rights that Hobbes says must *not* be given up under the second law of nature. These rights are so fundamental to our ability to flourish that giving them up would be to invite harm to ourselves, which according to Hobbes we cannot rationally do. If we do try to give up any of these primary rights, those agreements or contracts we form are void. The rights we give up under the second law of nature are given up in order to secure rights that are protected for ourselves, which is rational; for example if I give up my right to your possessions so that you will give up your right to mine; this helps me to secure my right to my own property. However, there are some rights that it could never be to an individual's advantage to give up.

> Whensoever a man Transferreth his Right, or Renounceth it; it is either in consideration of some Right reciprocally transferred to himselfe; or for some other good he hopeth for thereby. For it is a voluntary act: and of the voluntary acts of every man, the object is some *Good to himselfe*. And therefore there be some Rights, which no man can be understood by any words, or other signes, to have abandoned, or transferred. As first a man cannot lay down the right of resisting them, that assault him by force, to take away his life; because he cannot be understood to ayme thereby, at any Good to himselfe. . . .
> . . . And lastly the motive, and end for which this renouncing, and transferring of Right is introduced, is nothing else but the security of a mans person, in his life, and in the means of so preserving life, as not to be weary of it. And therefore if a man by words, or other signes, seem to despoyle himselfe of the End, for which those signes were intended; he is not to be understood as if he meant it, or that it was his will; but that he was ignorant of how such words and actions were to be interpreted. . . .(*Lev.* 14, 8).
>
> A Covenant not to defend my selfe from force, by force, is alwayes voyd. For (as I have shewed before) no man can transferre, or lay down his Right to save himself from Death, Wounds, and Imprisonment, (the avoyding whereof is the

> onely End of laying down any Right, and therefore the promise of not resisting force, in no Covenant transferreth any right; nor is obliging." (*Lev.* 14, 29).
>
> . . . I have shewn before in the 14. Chapter, that Covenants, not to defend a mans own body, are voyd. (*Lev.* 21, 11).

The rights that cannot be given up are described in Chapter 21 of *Leviathan* as providing the "true Liberty of a Subject" and are said by Hobbes to be "the things, which though commanded by the Soveraign, he may neverthelesse, without Injustice, refuse to do;" (*Lev.* 21, 10). These are the rights that cannot be transferred. "It is manifest that every Subject has Liberty in all those things, the right whereof cannot by Covenant be transferred." (*Lev.* 21, 11).

Hobbes starts by saying that a man has the right to disobey the sovereign if he "command a man (though justly condemned,) to kill, wound, or mayme himselfe; or not to resist those that assault him; or to abstain from the use of food, ayre, medicine, or any other thing, without which he cannot live;" *(Lev.* 21, 12). Here Hobbes is saying that individuals retain the right to self-defense and more broadly to self-preservation. He describes the right of self-preservation in broader terms in Chapter 15. "As it is necessary for all men that seek peace, to lay down certaine Rights of Nature; that is to say, not to have libertie to do all they list: so is it necessarie for mans life, to retaine some; as right to governe their own bodies; enjoy aire, water, motion, waies to go from place to place; and all things else without which a man cannot live, or not live well." (*Lev.* 15, 22). In Chapter 21 he lists in greater detail, commands of the sovereign that an individual may with right disobey, which could

be mistaken for more rights that must be retained, but as we shall see, they can all be subsumed under the rights to self-defense and self-preservation.

1. If a man is interrogated he retains the right not to incriminate himself unless he is assured a pardon.
2. A man has the right not to kill himself or any other man, therefore if commanded by the sovereign to execute a dangerous or dishonourable office he may disobey so long as his disobedience does not frustrate "the End for which the Soveraignty was ordained."
3. If commanded to take up arms and fight, a man may refuse, particularly if he can provide a soldier in his place, unless his help is required for the defense of the commonwealth, in which case he cannot refuse. (Hobbes also says here that if he does refuse then the sovereign has the right to punish his refusal by death. We shall examine this statement in more detail below).
4. Perhaps the strangest of rights to be retained is that by which a group of men who "have already resisted the Soveraign Power unjustly, or committed some Capitall crime, for which everyone of them expected death" then have the right to join together and help and defend one another. "For they but defend their lives, which the guilty man may as well do, as the Innocent." (*Lev.* 21, 12-17).

Each of the "rights" above could be categorized under the more general rights of self-defense or self-preservation and the right of self-defense itself could also be subsumed under the right to self-preservation. So, what is the nature of this right,

according to Hobbes? It is the most fundamental of rights, and ties in to Hobbes's psychology and his ethics. The desire to preserve ourselves is defined by Hobbes as the strongest and most fundamental desire we have and it forms the basis of morality as set out by Hobbes in the laws of nature. It also provides the reason and purpose of sovereignty: ". . . a body politic is erected only for the ruling and governing of particular men. . . . [t]he benefit is that for which a body politic was instituted, namely, the peace and preservation of every particular man," *(El. of Law*, pt.II, ch. XXIV).

The rights to self-defense and self-preservation are the most important rights in the theory and Hobbes says that they are not given up or transferred, but must be retained. If they are retained as simple rights of nature, however, how will they be protected? It seems inconceivable that he would make no provision for their protection, having made it clear that in the state of nature the right to all things is useless, because we are subject to others who may be stronger than ourselves (who have the same rights to the same things). And we have seen how, under the second law of nature, he ensures the protection of some rights by the sacrifice of others, in a mutual agreement between individuals. We cannot protect our rights to self-defense and self-preservation by making such agreements with one another, however; there is no part of these rights that can be given up. Other individuals therefore have no duties to refrain from actions that will interfere with our exercise of these rights (unless and until the sovereign legislates to create such duties), but of course the *sovereign* does have just such a duty. We do not mean by this that the sovereign has a

duty to protect the subjects who have given up their natural rights in exchange for his protection; this is how a divine right theorist such as Filmer would conceive that the sovereign protects the rights of the subjects. We mean that the sovereign has a duty to protect the lives of the subjects *without the subjects having given up their natural rights to him.*

As Hobbes says above, the end of instituting a sovereign is to provide for the peace and preservation of every particular man. In *Leviathan* he says that "the Obligation of Subjects to the Soveraign, is understood to last as long, and no longer, than the power lasteth, by which he is able to protect them. For the right men have by Nature to protect themselves, when noone else can protect them, can by no Covenant be relinquished." (*Lev.* 21, 21).

The Right to Self-Preservation and the Duty of the Sovereign

If there is a duty then, on the part of the sovereign, to protect the lives of individuals, can we say that the right of the individual to self-preservation is correlated with a duty of the sovereign to protect that right? When Hobbes describes the end of sovereignty he does seem to say that it consists in the protection of the lives of the subjects. It is worth noting, for example, that he never speaks of the end of sovereignty in terms of the rights of the sovereign to protect himself or to protect

the *institution* of sovereignty or some abstract notion such as "the good of the country." (Unlike Grotius, for example, who says as above, "The state forthwith acquires over us and our possessions a greater right, . . ." (Grotius 1901, bk. I, ch.IV. II. 1.). Hobbes does not refer to the duties of a sovereign in terms of what must be done for the good of the state, or for the good of England or to make England stronger. Indeed, it is commensurate with his nominalism that he would not use such general terms. The end and purpose of sovereignty is always defined in terms of the protection of the individual subjects: ". . . the End of this Institution, is the Peace and Defence of them all;" (*Lev.* 18, 8), ". . . the End of the Institution of Soveraignty: namely, the Peace of the Subjects within themselves, and their Defence against a common Enemy." (*Lev.* 21, 10), ". . . when men agree amongst themselves, to submit to some Man, or Assembly of men, voluntarily, on confidence to be protected by him against all others." (*Lev.* 17, 15).

> The Office of the Soveraign, (be it a Monarch, or an Assembly,) consisteth in the end, for which he was trusted with the Soveraign Power, namely the procuration of *the safety of the people* ; to which he is obliged by the Law of Nature, and to render an account thereof to God, the Author of that Law, and to none but him. But by Safety here, is not meant a bare Preservation, but also all other Contentments of life, which every man by lawfull Industry, without danger, or hurt to the Commonwealth, shall acquire to himselfe. (*Lev.* 30, 1).

And as above in the *Elements of Law*, Hobbes declares that "the benefit is that for which a body politic was instituted, namely, the peace and preservation of every particular man," (*El. of law*, pt.II, ch XXIV). (We shall argue in Chapter 4 that the

right to preservation or safety, amounts to a right to peace on the part of each individual).

The right to self-preservation on the part of the individual seems to *correspond* to the duty of the sovereign to protect individual subjects and provide for their security. Just as, under the second law of nature, Hobbes provides for the protection of certain rights by the transfer and renouncing of other rights, resulting in a duty to refrain from actions that would impede the right holder in her exercise of the protected right; so, by the institution of a sovereign he provides for the protection of the inalienable right of self-preservation of the subjects. There is a right to self-preservation on the part of each subject and a duty to protect the lives and security of each subject on the part of the sovereign. Is any more needed before we can say that there is a correlation between the two? And if there is a correlation, we now have another claim right or protected right in the theory, namely, the right to self-preservation.

There are obvious differences between the protection of rights by other subjects under the second law of nature and the protection of the right to self-preservation by the sovereign. First, there is, famously, no agreement between the subjects and the sovereign, so the duty of the sovereign does not arise out of a contract that it would then be unjust to break. (Although we should note that in the Review and Conclusion of *Leviathan* Hobbes says that if we have a sovereign by conquest then we contract with the victor and promise obedience in return for life and liberty). There *is* a penalty if the sovereign fails to protect the subjects, however, and that is that he loses his right to rule. "The Obligation of Subjects to the Soveraign, is understood to last

as long, and no longer, than the power lasteth, by which he is able to protect them. . . . The end of Obedience is Protection; which, wheresoever a man seeth it, either in his own, or in anothers sword, Nature applyeth his obedience to it, and his endeavour to maintaine it." (*Lev.* 21, 21).

If we think of the right to self-preservation as it is before the institution of a sovereign, as a right of nature, then it is, like all rights of nature, a perfect or complete freedom or liberty that is in practice very weak because it is unprotected. My right to preserve myself in the state of nature will not do me very much good as long as there are many people stronger than I, who can without punishment do me harm and who are disposed to do so, given the circumstances of the state of nature, together with human psychology as described by Hobbes. So, I have a complete liberty (absence of impediments in theory - no law or person to say I should not act) to act to defend and preserve myself; but my attempts to do so are often thwarted, by the actions of others (real impediments - others free to act against me). Once we institute a sovereign I still have a right to preserve myself, which right I have retained, but the sovereign now has a duty to protect me and is empowered to do so. When someone tries to impede my actions to preserve myself, the sovereign may intervene to prevent them or to prevent it from happening by threat of punishment, enforcement of laws, etc. There is now, as there was when a right was transferred or renounced under the second law of nature, a "diminution of impediments to the use of [my] own Right originall." (*Lev.* 14, 6). My right is therefore more truly a liberty than it was in the state of nature, the impediments being that much less.

Summary of Rights in the Theory

From the above it should now be clear that there are three different kinds of (natural) rights in Hobbes's theory. All natural rights in the theory are liberties but two are *protected* liberties while the other is an *unprotected* liberty.

1. **The Right of Nature**, which is an aggregate right, a right to all things, is enjoyed in the state of nature. These rights are complete and *unprotected* freedoms or liberty rights and therefore their exercise is in practice often limited to the strong. Some rights held under the right of nature are retained into the commonwealth if the sovereign has not legislated against them. If and when the sovereign does legislate against them, however, they must be given up.
2. **Acquired Rights**. The rights that result from the transfer and renouncing of rights by others, under the second law of nature, are *protected* rights or claim rights, because they are correlated with the duties of others to refrain from acts that would interfere with their exercise. Their exercise is therefore protected by the duties of other individuals who have agreed to give up their rights to the same things.
3. **Inalienable Rights, Retained in the Commonwealth.** The rights that are inalienable and are therefore retained after the commonwealth has been set up, namely, the rights to self-defense and self-preservation, are also *protected* or claim

rights. (Also the right to peace which we will discuss in Chapter 4). These rights are not protected by the duties of other individuals, however, but are protected instead, by the duties of the sovereign. They are never given up and if the sovereign fails to protect them they may be used against him/them.

Answer to an Objection 2 - No Claim Rights without Positive Law

There are of course, questions concerning the enforcement of rights and duties and some would argue that we should not even speak of rights and duties without referring to the positive laws and enforcement mechanisms which, they would argue, might give the rights and duties "clout" in a real political system. Those who read Hobbes in this way might also argue that conforming to or obeying the laws of nature involves making agreements or contracts and that Hobbes says that "If a Covenant be made, wherein neither of the parties performe presently, but trust one another; in the condition of meer Nature, . . . it is Voyd:" *(Lev.* 14, 8). We would argue, however, that Hobbes is talking here about a promise to perform "at some determinate time after, and in the mean time be trusted" (*Lev.* 14, 10), which is his definition of a covenant. The promise to keep an agreement at some future date is problematic, in the state of nature, when life is very uncertain and there is no sovereign to enforce agreements. But Hobbes does not say that we cannot perform *contracts* in the state of

nature, which he defines as "[t]he mutuall transferring of Right," and it is this sort of agreement that he describes under the second law of nature.

In the short term we must be able to obey at least the first three laws of nature or we will be unable to get to the point of instituting a sovereign. Hobbes says that "the Soveraigne Power is conferred by the consent of the People assembled." (*Lev.* 18, 2). For the people to be assembled and able to agree on a sovereign they must already be:

1. seeking peace
2. agreeing not to invade one another's bodies etc.
3. keeping their agreements

In other words they must already be obeying the first three laws of nature. If the assembled people were still exercising their right of nature and engaging in war rather than seeking peace or if they merely pretended to be peaceful only to break their agreements, a sovereign could not be instituted. A sovereign can only be instituted, Hobbes says, "when men agree amongst themselves, to submit to some Man, or Assembly of men, on confidence to be protected by him against all others." (*Lev.* 17, 15).

An argument can also be made that Hobbes precludes the possibility of duties or obligations before the institution of a sovereign because of the distinction he draws between obligations *in foro interno* and obligations *in foro externo*. The laws of nature, he says, oblige *in foro interno* always but *in foro externo* only when there is security. (*Lev.* 15, 36). What exactly he means by this is a matter of controversy

amongst Hobbes scholars and is sometimes read differently, for example, by those who argue that Hobbes is a deontologist than it is by those who argue that he is an egoist. Those who read Hobbes as an egoist usually argue that the laws of nature carry no obligations unless and until a sovereign is in place who can make them a part of positive law and enforce them. To be obliged *in foro interno*, in other words, is not to be obliged at all. Deontologists such as Warrender, on the other hand, interpret the distinction as a contrast between obligations to perform two sorts of actions rather than one obligation to do nothing and one obligation to obey the law. "The essential distinction appears to be not between intentions and actions, but between two classes of *actions*." (Warrender 1957, 67). When we are obliged *in foro interno*, on Warrender's reading, we are obliged to obey the laws of nature as much as we can without seriously endangering our safety. The obligation to "endeavour peace" is always there and we must act when we can towards peace. When we are obliged *in foro externo*, on the other hand, we are obliged to a "specific performance of the law". (ibid.). Warrender argues against those who say that to be obliged *in foro interno* is not to be obliged to perform any action,

> This is not . . . the best reading of Hobbes's entire text. Apart from the fact that an obligation to continue intending to act morally, without taking any action whatsoever of an appropriate kind, is an absurdity and would not have the implication which Hobbes requires for his own doctrine, his later statements would seem to indicate that more is required of the individual under this head than a mere intention. (Warrender 1957, 67).

This reading of Hobbes's theory will allows us to say that the laws of nature represent laws that oblige under all circumstances within the limits set by our

(justified) need to preserve ourselves. We will accept Warrender's interpretation of the *in foro interno/ in foro externo* distinction because it makes the best sense of the apparent tension between Hobbes's insistence that the laws of nature oblige always to "an unfeigned and constant endeavour" (*Lev.* 15, 36) and yet *not* always to "the putting them in act" (*Lev.* 15, 36).

These objections (that could be raised against our argument that Hobbes provides for the protection of transferred rights by the imposition of duties under the second law of nature), have been answered by showing first, that some agreements can be made and some laws of nature can and indeed must be obeyed before a sovereign can be instituted and second by accepting Warrender's analysis of the *in foro interno/in foro externo* distinction.

Part II. The Commentators

We can now see that most of the commentators discussed in Chapter 2 have fallen short of an accurate analysis of Hobbes's theory of (natural) rights in his mature political theory. Gauthier, Kavka, Hampton and Warrender are all in agreement that the rights described in the theory are pure liberty rights, that is, rights that are not correlated with any duties. We have shown above, however, that Hobbes also describes two kinds of claim rights or protected rights. We have also shown that

an analysis of these claim rights is complicated by the fact that Hobbes himself does not explicitly define them as rights of a particular kind, that is, as claim rights. We are now in a better position to state exactly where each of the commentators mentioned above has failed to give the full picture of Hobbes's theory of rights.

1. Gauthier, Rights Versus Obligations

Gauthier's reading of Hobbes's theory of rights, as we discussed in Chapter 2, sees all rights in the theory as liberty rights, which he calls "permission rights", originating in the state of nature as the aggregate "right of nature". Any (natural) rights that exist in a commonwealth are liberty rights that remain from the original right of nature, ". . .these rights extend, presumably, to whatever rights are not given up in the covenant to authorize the sovereign." (Gauthier, 1969, 130). Gauthier seems to be referring to what we have called *inalienable rights, retained in the commonwealth*, above, those rights that *cannot* be given up, according to Hobbes. And Gauthier does say that these rights are "guaranteed by the inalienable core of the right of nature." He lists four rights that he says remain from the state of nature, the first three of which could be included under the rights to self-defense and self-preservation. The fourth is different however and is described in the following way by Gauthier; "the subjects are not obliged to avoid what the sovereign has not

forbidden by law" (ibid., 142) and this last right comprises "the most considerable part of the liberty of the subject." (ibid.). This does tally with the text of Chapter 21 of *Leviathan* by the squib stating "The Greatest liberty of subjects, dependeth on the silence of the Law" *(Lev.*, 21, 18), but although this does describe a group of rights that exist after the sovereign has been instituted, it cannot describe another *inalienable* right, even a collective one. As Hobbes himself points out, those actions that are not prohibited by law *vary* ". . . such Liberty is in some places more, and in some lesse: and in some times more, in other times lesse, according as they that have the Sovereignty shall think most convenient." (ibid.). Any rights that exist because the sovereign has not legislated against them, exist almost by chance. They could certainly not be described as rights that are inalienable. The law can change, as Hobbes also points out, in which case the right will cease. If a right is inalienable, however, it cannot be given up or taken away, no matter what the circumstances. So Gauthier lumps together the inalienable rights to self-defense and self-preservation with the alienable rights or liberties that exist only because the sovereign has not legislated against them.

Hobbes separates these two sets of rights by describing them differently. As we noted above, he introduces the inalienable rights in the following way: "To come now to the particulars of the true Liberty of a Subject; that is to say, what are the things, which though commanded by the Soveraign, he may neverthelesse, without Injustice, refuse to do;" *(Lev.* 21, 10). Clearly these rights remain with the individual into the commonwealth and cannot be given up even to the sovereign. Gauthier's

fourth right, on the other hand, is introduced rather differently by Hobbes who says "As for other lyberties, they depend on the silence of the Law. In cases where the Soveraign has prescribed no rule, there the subject hath the liberty to do, or forbeare, according to his own discretion." *(Lev.* 21, 18). These are merely the left-over liberty rights from the state of nature which have neither been given up/transferred under the second law of nature, nor retained because they are inalienable. They are simple freedoms that are retained or given up according to the legislation of the sovereign.

Gauthier has overlooked two things; first, that the rights he describes as those that are retained from the state of nature into the commonwealth, are of two different kinds: the inalienable rights of self-defense and self-preservation that cannot be given up or taken away and the alienable, left-over liberty rights to whatever the sovereign has not legislated against, that may be given up whenever the sovereign legislates against them. And second, Gauthier overlooks the correlation between the inalienable rights to self-defense and self-preservation and the primary duty of the sovereign to protect those rights.

There are no (natural) rights in the theory that are correlated with obligations, according to Gauthier, indeed, an obligation is something that arises only when one gives up a right. All rights in the theory are those that exist under the right of nature (either in their purest state in the state of nature or those that are retained after the sovereign has been instituted as discussed above) and "[t]he right of nature entails no correlative duties" (Gauthier 1969, 30). Gauthier's complicated argument about the right of nature and its relationship to the law of nature, (see Chapter 2, section on

Gauthier) characterizes natural rights as rights to actions that accord with reason. He does away with Hobbes's definition of a right as the liberty to do or to forbeare (which he says leads to absurdities) and he does away with Hobbes's famous distinction between a right and a law (which he says can be dismissed because it relies on the definition of a right that he has rejected) and then concludes that "the laws of nature are precepts instructing us in the exercise of the right of nature" (ibid., 39).

Gauthier is saying that if we act according to reason we shall act with right and the laws of nature are merely the guides provided by our reason which instruct us as to how we should limit our right of nature. As we pointed out in Chapter 2, Gauthier risks throwing out the baby with the bath water; he has diminished the role of the laws of nature to the point where they neither impose obligations upon individuals nor provide the "possibility to come out of" the anarchy of the state of nature. The argument is being driven, presumably, by Gauthier's wish to show that there are no independently existing moral obligations imposed by God or a law of nature. There are only, on this view, obligations that individuals impose upon themselves. And if one has an obligation not to do X then one has laid down the natural right to do X.

> All obligations, then, are self-imposed. There are no natural obligations, co-ordinate with natural rights. There are no obligations outside the area of the right of nature; if one has an obligation not to do some action, then previously one had a natural right to do that action. (ibid., 40).

Gauthier is now stuck with a view of (natural) rights in the theory that allows for nothing but liberty rights and a view of the second law of nature that reduces it to

providing a rationale for laying down some of our initially unlimited rights. He admits that under the law of nature we lay down those rights that are not conducive to peace, but does not ask what happens to the right that is given up or transferred to another. The transferred right is the source of an obligation on his own reading, and yet he is prevented from defining the transferred right as a claim right because it is precluded from his analysis of all rights as being rights of nature and even all obligations as being in the area of the right of nature. The rights that are transferred under the second law of nature disappear into the ether on his reading, leaving an obligation in their place. This is not how Hobbes describes the transfer and renouncing of rights as we have already shown above. Hobbes says clearly that there is a *recipient* of the transferred right and that an obligation is owed to that recipient.

Gauthier's analysis of Hobbes's theory of (natural) rights fails to recognize that there are claim rights in the theory. By defining all rights in the theory as liberty rights he cannot account for the transferred and renounced rights under the second law of nature and ignores the duty of the sovereign to protect the lives and preservation of his/their subjects.

2. Kavka. Claim Rights that don't Fit the Picture

Kavka reaches a similar conclusion to Gauthier about the (natural) rights of individuals in Hobbes's theory, namely, that there are only liberty rights, (which he also calls permission rights) and no claim rights. Or rather, there are claim rights in the theory but they apply only to the sovereign not to the subjects and cannot be made to apply to subjects. Although Kavka uses some different arguments from Gauthier to arrive at his conclusion, he starts in a similar vein by criticizing Hobbes's use of the word liberty.

Kavka agrees with Gauthier that Hobbes's use of the word liberty is confusing and he also agrees that the word permission can be used instead, but he takes the argument further saying that Hobbes's definition of liberty as the "absence of external impediments" would make his right of nature either tautological or false. (see Chapter 2 above, section on Kavka). To solve this problem Kavka concludes that Hobbes must mean by the word liberty, not an absence of external physical impediments but an absence of "normative impediments" such as legal rules, moral principles and obligations. This means the right of nature is taken to mean that individuals have no normative impediments to preserving themselves. This interpretation is hard to reconcile with Hobbes's full definition:

> By LIBERTY, is understood, according to the proper signification of the word, the absence of externall 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 judgement, and reason shall dictate to him. (*Lev.* 14, 2).

Impediments that take away part of *a man's power to do what he would* must be physical unless we are prepared to say that a moral impediment such as an obligation literally takes away one's power to act. If this was the case (that an obligation takes away one's power to act) then we would have to deny free choice in the face of moral obligations and Hobbes, despite his denial of freewill, admits the existence of voluntary action and the possibility of acting against a moral obligation. "Whensoever a man Transferreth his Right, or Renounceth it; it is either in consideration of some Right reciprocally transferred to himselfe; or for some other good he hopeth for thereby. For it is a voluntary act: and of the voluntary acts of every man, the object is some *Good to himselfe*." *(Lev.* 14, 8, my emphasis underlined). And " . . . when a Covenant is made, then to break it is *Unjust*:" *(Lev.* 15, 2). Hobbes accepts both the voluntary nature of making a covenant and the possibility of breaking it after it is made.

We would therefore argue as we have above, that the interpretation of Hobbes's use of the phrase "external impediments" in his definition of liberty is best understood as referring to the sorts of impediments that are caused by the actions of others. In the perfect freedom of the state of nature we are unimpeded by the laws or actions of a sovereign to prevent us from performing any action, but we are still subject to impediments caused by the actions of others acting on their own perfect freedom and Hobbes points this out ". . . there is little use and benefit of the right a

man hath, when another as strong, or stronger than himself, hath right to the same." (*El. of Law*, pt.I, ch. XIV). When we have a protected right to an action we have less chance of being impeded by the actions of others acting deliberately against us. In the case of what we have called an *acquired right* (a right transferred under the second law of nature), there should be no impediments from other individuals. In the case of *inalienable rights, retained in the commonwealth*, (the rights to self-defense and self-preservation that cannot be given up) there should be no impediments from the sovereign whose duty is to uphold the rights and, although there may be impediments from other individuals, these should be dealt with by the sovereign.

Kavka's argument that the right of nature (where liberty is defined as the absence of external impediments) if not tautological, must be false, can be defeated if we take the external impediments to be those caused by the deliberate actions of others and if we take liberty to be a relative term. This latter condition may seem unjustified until we remember that, as we mentioned above, having described the state of nature as a state of complete liberty where there is a right to all things, Hobbes then says that the right of nature will be hard to use and benefit from when there are others acting on the same right who may be stronger. What could this mean other than that there will be others who will cause impediments to the person despite the fact that they have the complete liberty of the right of nature? In other words, even the right of nature, i.e. a complete liberty (lack of external impediments) to do or to forbeare, will, in reality, not mean an absolute lack of impediments but rather a relative lack of impediments.

Kavka does point out that Hobbes seems to describe a claim right when he defines the second law of nature. Kavka remarks that "one frequent consequence of the laying down of a permission right" is the "creation of a right of noninterference." (i.e. a right connected to an obligation on the part of others. See Chapter 2, above). And yet when he extrapolates noninterference rights into the theory, saying that it seems we should then be able to transfer and lay down these new rights, he finds that this leads to confusion. Kavka's conclusion is that Hobbes's definitions cannot accommodate such rights as noninterference rights. In a sense he is right but what he has not taken account of is Hobbes's failure to define the new right, now tied to an obligation, as a different kind of right. His definition of a right is still the pure "liberty to do or to forbeare". And so Kavka is right when he says that the new noninterference right will not fit into the system of the transfer and renouncing of rights under the second law of nature. But the transfer and renouncing of rights under the second law of nature applies specifically to the giving up of liberty rights of the right of nature and they are being transferred and given up for a reason, namely that such a state of complete freedom cannot be countenanced if we are to enter a peaceful civil society. There is no comparable reason for transferring claim rights. Why would individuals give up or transfer claim rights to things that they have been allowed under the second law of nature?

Kavka comes closer than Gauthier to recognizing the existence of claim rights resulting from the obligations that arise when a right is transferred or renounced under the second law of nature. In the end he denies the existence of such claim

rights, however, because he concludes that they do not fit in with Hobbes's definitions. Like Gauthier he also ignores the correlation between the inalienable rights to self-defense and self-preservation and the duty of the sovereign to protect his subjects.

3. Hampton, No Claim Rights in a Subjectivist Moral Theory and Inalienable Rights as a Threat to Absolutism

Hampton, like Gauthier and Kavka, wants to show that there are only liberty rights in the theory and ties this in to her interpretation of Hobbes's moral theory as subjectivist. Because of this subjectivism, Hampton says there cannot be claim rights in the theory because claim rights presuppose an objectivist moral theory. In a similar move to Kavka, Hampton points out that it does sound as though Hobbes is describing claim rights when he defines the second law of nature. She tells us that Hobbes seems to be saying that once we have renounced a liberty right we then have a duty to others not to interfere with their exercise of the right and this seems to imply that the right holder now has a claim right, (i.e. a right correlated with our duty). Instead of concluding that this is indeed a description of a claim right, however, Hampton is forced to find a way of denying that it is a claim right because of her commitment to the position that Hobbes's moral theory is subjectivist and

cannot therefore include claim rights.(see Chapter 2, above). Her use of Hobbes's reply to the fool to achieve this is rather weak, relying as it does on the use of the fool's appeal to our long-term self-interests to justify keeping our promises and concluding from this that there are no real duties in the theory but only prudential reasons for acting. She goes so far as to say that Hobbes is saying that whenever it is in our self-interest to do so we should renege on our contracts. We argued against this conclusion in Chapter 2. Hampton's assumption that there cannot be claim rights in the theory because of Hobbes's ethical subjectivism was also rejected there and we would add to what was said, that we can now see that there *is* something owed to the recipient of the transferred or renounced right, namely, an obligation to refrain from acts that interfere with her exercise of the right. And from this it follows that the recipient of the transferred or renounced right now has a claim on the transferor, a claim to his non-interference.

We are now in a position to say something more about Hampton's interesting comments on the strength of the rights to self-defense and self-preservation, which lead her to conclude that they are, in the end, a threat to Hobbes's whole political argument. She points out that given the way Hobbes describes the rights to self-defense and self-preservation he implies that they cannot be given up and that their exercise depends on the individual using his own judgment when deciding whether or not to obey the sovereign. If this is the case, according to Hampton, Hobbes's whole argument is under threat because it means that the subjects cannot "empower a truly absolute sovereign . . . " (Hampton 1986, 199). This assumes that Hobbes

intends the sovereign to be absolute and that his entire argument depends on it. There is another possible interpretation of course, that indeed the sovereign is not truly absolute and that Hobbes does not intend him to be so. As we have argued above, the sovereign has a duty to protect the lives and well-being of the subjects because his right to rule is conditional upon whether he successfully protects them. If it is up to the individual subjects to decide whether or not he is giving them adequate protection, as Hampton argues, then we would have to say that he is less than an absolute monarch. Hobbes, although he does not spell out a right to rebellion, does state quite clearly that subjects no longer have a duty to obey the sovereign if he cannot protect them. He even says that the sovereign may not make a law to protect himself if it does not also protect the subjects. "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 People, cannot be separated." (*Lev.* 30, 21).

Hampton is right when she says that the strength of the rights to self-defense and self-preservation threatens an argument for absolute sovereignty, but she is forced to see these rights as a problem for Hobbes's argument rather than as a part of it. This is a serious criticism of Hobbes and suggests that he had not thought out the implications of the inalienability of these rights for the rest of his theory. The principle of charity (1) would suggest that if we can make sense of the inalienable rights without analyzing them as a threat to the main argument of the theory, we should accept that explanation. Our argument is that the sovereignty Hobbes

describes, is strong and undivided but not truly absolute. He is careful to emphasize that sovereignty comes from the people, he is certainly no divine right theorist; and, having been instituted by the people for their protection, the sovereign is then duty bound to provide for their safety. Once he is unable (or unwilling) to protect the people, then he no longer has a right to their obedience. This is not an absolute monarchy. The sovereign's power is conditional upon the judgment of the people that he is providing adequate protection. Once they decide that he is not protecting them they can shift their allegiance to anyone who in their judgment can provide such protection. It is true that Hobbes does not spell out how the people would withdraw their obedience from the sovereign except in the case of a conqueror where they simply shift their allegiance to him. Nevertheless the description of sovereignty outlined here weakens the argument that Hobbes is arguing for a thoroughgoing absolutism, and provides an explanation of the implications of the inalienable rights pointed out by Hampton, that fits with the theory rather than threatening it. Curley makes a similar point although he pulls back from the conclusion that Hobbes is not arguing for absolutism. When discussing the various situations in which the subject may justly disobey the sovereign he says,

> [i]f the subject has discretion to determine when these conditions are satisfied, as Hobbes seems to think he would when his self-preservation is at stake (cf. xxi, 21), then his liberty might be very great indeed. The subject's liberty does not restrict the sovereign's right to kill or imprison disobedient subjects, but royalists like Bramhall had some reason to accuse Hobbes of having written 'a rebel's catechism'. (Hobbes 1994, xxxviii).

We shall say something more about the question of absolutism below in Section III.

In conclusion, Hampton comes close to recognizing the existence of both the *acquired rights* gained under the second law of nature and the *inalienable rights, retained in the commonwealth,* and protected by the sovereign. In both cases, however, her commitment to a reading of the theory that precludes the possibility of such rights forces her to reject their existence in the theory. In the case of *acquired rights* she rejects the possibility of such rights because on her analysis they could not exist as part of a subjectivist moral theory and she has defined Hobbes's theory as subjectivist. We argued against this in Chapter 2. In the case of the *inalienable rights* her reading defines their existence as a problem threatening the coherence of the entire theory and in particular as a problem for what she sees as Hobbes's absolutism.

4. Warrender, No Advantage to Receiving a Transferred Right

Warrender, as we have discussed in Chapter 2 above, also argues against the possibility of claim rights in the theory despite his conviction that Hobbes holds a deontological moral theory. Those rights that exist in the state of nature are defined by Warrender as freedoms from obligation; they are things which the individual cannot be obliged to renounce. The right of nature, therefore, is not so much a right to all things as a state where individuals cannot be obliged to renounce anything. This

definition of the right of nature is not substantially different to those given by Gauthier, Kavka and Hampton; the rights held are freedoms or liberty rights and we are in broad agreement with this. Warrender's argument against the possibility of claim rights arising from the second law of nature is quite detailed and we have already answered it, in Chapter 2 and in Part I, above. To summarize his argument: someone who renounces or transfers a right under the second law of nature does give up a freedom but does not make over an entitlement to others even though he will now be impeded in his future actions against the right-holder. It is only he, the renouncer, who is now restricted in his actions against the right-holder, no one else will be thus impeded and so the right-holder's right has not changed into a claim right, but remains the same liberty right it was before. We have argued that under the second law of nature everyone must give up their right to all things and therefore the same rights are renounced or transferred by all, so that it is not only one person who will have an obligation to refrain from actions inhibiting the right holder's exercise of her right but all others as well. The right-holder's right will then have changed to one with a correlated duty on the part of others, in other words it will have changed into a claim right.

Warrender's other contribution on the subject of rights in the theory is to say that rights, as freedoms from obligation, can be defined in terms of the conditions underlying obligation. When the conditions do not apply, (i.e. when there is no obligation), then there is a right. This negative definition of a right sees law as the positive element in the theory, prescribing the duties of subjects and a right as being

merely a lack of duty or obligation. He adds to this the other instance when he says Hobbes allows liberties, namely when the law is silent. In his attention to the detail of the second law of nature and in the analysis of the conditions of obligation, Warrender may seem different to the other commentators. In substance, however, he is very much the same, analyzing all (natural) rights in the theory as liberty rights and denying the possibility of claim rights.

5. The Historical Argument; Tuck's Conservative Rights Theories - A Reply

As we outlined in Chapter 2, Tuck also reads Hobbes's theory as one with a weak theory of natural rights, although he argues to this conclusion historically, placing Hobbes in a tradition of "conservative, authoritarian rights theorists". This argument raises two questions; first, is he right in defining a group of theories on natural rights as authoritarian and endorsing slavery and the absolutist state and second, if there is such a group does Hobbes's theory belong to it?

As we discussed in Chapter 2, Tuck focuses on Hugo Grotius as the writer to whom the two traditions of conservative and radical rights theories can be traced. He picks out three features of Grotius's theory as the root of the later split between the conservatives and the radicals. The feature that will be taken up by conservative followers is that of the alienability of all natural rights. This is born out in Grotius's

statements, that individuals may lawfully give up all their rights to enslave themselves, that they might transfer their right of governing themselves to a sovereign and that there is no right to self-defense against a sovereign. Tuck argues that the two endorsements represented by these statements, of slavery and absolute government, are what mark out the future conservative rights theories from their radical counterparts - the genuinely liberal natural rights theories. The two features of Grotius's theory that are taken up by the liberal theorists, according to Tuck, are the principle of *interpretive charity* and the principle of *sociability*. The principle of *interpretive charity*, as used by Tuck, is that principle according to which rights should not be presumed to have been given up *in fact*, even though it is *possible* that they should all be given up. So, although it is possible in principle to give them all up we should allow for a lack of desire to give them up and therefore for the practical possibility that they will not actually all be given up. This is the principle that Tuck argues was used by the parliamentarians during the Civil Wars to justify a right to self-defense even against the king. The second principle, that of *sociability*, gives man's innate sociability as the root of the law of nature, a law of nature that binds us to respect the rights of others (Tuck, 1979, 72).

If we accept Tuck's argument that Grotius has strains of a conservative rights theory, should we also accept that Hobbes has a similarly conservative theory? We would suggest not, in the light of evidence of Hobbes's profound disagreement with some of Grotius's "conservative" beliefs. First, on sovereignty for example, Grotius says, "And here we must first reject their opinion who say that the sovereignty

everywhere belongs to the People". (Grotius 1853, bk.I, ch.III, VIII, 1.p38). Hobbes, of course, does hold that sovereignty *originates* in the people and we would argue that by having the subjects retain the rights to self-defense and self-preservation even against the sovereign he ensures that, in a time of crisis, that is, when the sovereign fails to protect the people, sovereignty reverts back to the people. Second, a point given by Tuck as definitive of Grotius's conservatism on rights, is his view of the permissibility of slavery. "A man may by his own act make himself the slave of any one: as appears by the Hebrew and the Roman law." (ibid.). Hobbes, on the other hand says that any statement which would frustrate the end of self-preservation and well-being, is to be ignored as a mistake.

> . . . the motive, and end for which this renouncing and transferring of Right is introduced, is nothing else but the security of a mans person, in his life, and in the means of so preserving life, as not to be weary of it. and therefore if a man by words, or other signes, seem to despoyle himselfe of the End, for which those signes were intended; he is not to be understood as if he meant it, or that it was his will; but that he was ignorant of how such words and actions were to be interpreted. (*Lev.* 14, 8).

On the general point of whether it is appropriate for some men to be ruled by others, the differences between Grotius and Hobbes are striking. Grotius says ". . . as Aristotle says that some men are slaves by nature, so some nations are more prone to be governed than to govern." (ibid.,bk.I, ch.III, VIII, 4.). And in stark contrast Hobbes says the following:

> The inequallity that now is, has bin introduced by the Lawes civill. I know that *Aristotle* in the first booke of his Politiques, for a foundation of his doctrine, maketh men by Nature, some more worthy to Command, meaning the wiser sort (such as he thought himselfe to be for his Philosophy;) others to Serve, (meaning those that had strong bodies, but were not philosophers as he;)

> as if Master and Servant were not introduced by consent of men, but by difference of Wit: which is not only against reason; but also against experience. For there are very few so foolish, that had not rather governe themselves, than be governed by others:" (*Lev.* 15, 21).

On the question of equality, then, we can see significant differences between the two. Grotius believes in a natural hierarchy that destines some to rule and some to be ruled; while Hobbes argues that all significant inequalities are man made.

Trading quotations that back one reading against another is of course commonplace in Hobbes scholarship; a more substantial argument against Tuck can be made by reference to the principle of the inalienability of the rights to self-defense and self-preservation. His argument that Hobbes is part of a tradition of conservative rights theories hangs on the notion of the alienability of all rights. (Tuck does point out himself that the evidence for Hobbes's support, for example, of the alienability of the right to self-defense against the king is to be found in the *Elements of Law* and not in *Leviathan* or *De Cive.*). According to Tuck it is this alienability of all rights that marks out such theories from their liberal counterparts. It is this that enables the theorists to support voluntary slavery and absolute monarchy. Without the possibility of giving up all of one's natural rights one could not submit oneself to such institutions. So, what is Hobbes's position on the alienability of rights? As we have already shown in Chapter 2, Hobbes allows for the alienation of certain rights under the second law of nature. Those rights, held in the state of nature, that endanger the journey to peace, should be given up or transferred. Certain rights, however, cannot be given up. The rights to self-defense (even against the sovereign) and to self-

preservation (the extent of this right is yet to be fully examined and will be discussed in Chapter 4) can never be given up (see section 2b of this chapter). And these rights cannot be trumped by a superior right because there is no superior right. The sovereign does not, according to Hobbes, have rights that wipe out those of his subjects on account of his superior responsibility. Grotius states clearly his support of the superiority of the sovereign's rights over those of individual citizens and argues from this position that all the rights of individuals can and should be given up when required by the sovereign.

Hobbes does not agree with Grotius that the sovereign has superior rights over those of individuals. On the contrary when the rights to self-defense or self-preservation are threatened it is the sovereign who must be disobeyed. And although Hobbes does say that the sovereign's power of life and death is unlimited (*Lev.* 21,7), he makes sure, at the same time, that the subjects retain their rights to self-defense and self-preservation. If subjects are free to defend themselves against the sovereign how unlimited is his power in reality?

So Tuck's argument that Hobbes follows the conservative strain in Grotius seems vulnerable. On the other hand Tuck's interpretation of the liberal strain in Grotius on rights - the application of the principle of *interpretive charity* - cannot be found in Hobbes either. It is not a question of charity or "a senseof human weakness" (ibid., bk.I, ch.IV, VII, 2. p56) that leads Hobbes to say, like Grotius, that the right to self-defense may, under threat of death, sometimes not be given up. For Hobbes the right to self-defense *cannot* be given up because an individual cannot knowingly fail to

protect his life. Also, not only is it psychologically impossible, but there can be no political justification either, for sacrificing the end for which the commonwealth was set up, namely the protection and well-being of each individual citizen.

> As it is necessary for all men that seek peace, to lay down certaine Rights of Nature; that is to say, not to have libertie to do all they list; so it is necessarie for mans life, to retaine some; as right to govern their own bodies; enjoy aire, water, motion, waies to go from place to place; and all things else without which a man cannot live, or not live well. (*Lev.* 15, 22).

Taking Sides - Hobbes as a Royalist Writer

Tuck groups Hobbes together with John Selden and the writers of the Tew Circle, as we have already discussed in Chapter 2, and therefore categorizes him as a writer for the royalist cause. Selden's theory, he says,

> provided a whole generation of politically active and intelligent Englishmen with a new ideology, which they were able to apply to the most important issue of the day, the war between the King and Parliament. The most interesting of these followers, and the most original in his adaptation of the ideology, was Thomas Hobbes." (Tuck, 1979, 101).

Tuck is certainly not the only writer to brand Hobbes as a supporter of the royalist cause; as we said in Chapter 1, it has been the received wisdom of most Hobbes scholarship of at least the last hundred years. We suggested in that chapter that there is little straightforward evidence of Hobbes's personal political views. Although he had many associations with leading royalists he never openly stated his political affiliations. Both his comments elsewhere and his political theory were sufficiently

ambiguous to make many of his contemporaries suspicious about his true allegiances and it is important to remember, as it is when discussing say, Descartes' religious views, that he lived at a time when the consequences of political disloyalty could be very serious. Hobbes famously referred to himself as timorous and we would be foolish to underestimate the role of fear and the need to protect himself, of a man who depended for most of his adult life, on the kindness and generosity of a great aristocratic royalist family. (2)

It could be argued that it is not of any great significance to our analysis of Hobbes *as a political philosopher* whether or not he supported the royalists during the civil war. And yet if we notice how many commentators make the judgment that Hobbes was a royalist who supported Charles I and his attempts at absolutism, then we must also admit that this does affect the analysis of the political theory. Because if Hobbes is a supporter of absolutism then his theory must also support absolutism and if we make that assumption then we are denying the possibility of all the other shades of political belief, short of absolutism, that the theory might justify. If, at the core of our analysis of the theory, is a belief that Hobbes's intention was to justify absolutism then we will be unable to accept any conclusions about the kind of political order he is recommending, if that political order is incompatible with absolutism. The parts of the theory that seem to show, for example, a veiled right to rebellion, (albeit in the vaguest of terms), or the inalienability of some individual rights, or the origin of sovereignty in the people; these and all the other elements in Hobbes's theory that

seem to demonstrate a liberal tendency incompatible with absolutism, must either be explained away or admitted as contradictory elements within the theory.

There is another possible twist to the assumptions that are often made, concerning the connection between royalism and absolutism. It is not necessarily the case that a supporter of Charles I is a supporter of absolutism. Selden, for example and Clarendon, who were both members of Parliament, who later supported the king, argued for some measure of reform before the Civil Wars (see Chapter 1 above). Tuck argues, however, that Selden's theory of obligation takes him "further along the road to absolutism than ever Grotius had gone." And he says that Selden (and Grotius) are "prepared to accept a high degree of absolutism in theory while denying that the constitutions of their own countries were absolutist." (ibid., 97, 100). And, in another variation on the connection between royalism and absolutism, Sommerville says that Hobbes argues "for an absolutism *more thoroughgoing than most royalists were willing to support*." (Sommerville in Sorell ed., 1996, 247/8, my emphasis). In other words there is not a straightforward relationship between support for Charles I and support for absolutism. It is possible to support the king and not support absolutism, to support absolutism and not support the king or to support varying degrees of absolutism coupled or not with support of the king!

We have already argued, however, that Hobbes should not be categorized as an absolutist because his strong theory of individual (natural) rights provides a check on the power of the sovereign. Only those theorists who argue that all natural rights can and should be given up to the sovereign can be said to be arguing for true absolutism.

If any right is retained and in particular retained against even the sovereign, then, according to that theory, the sovereign does not hold absolute power

Conclusion

We have shown in this chapter, that Hobbes has a strong theory of (natural) rights. He describes three different kinds of natural rights; first, the rights held under the aggregate *right of nature*, second, the *acquired rights* that we gain when others transfer their invasive and destructive rights to us under the second law of nature and third, the *inalienable rights* that we retain into the commonwealth. The second and third kinds of rights are what we have called protected or claim rights because they are correlated with the duties of others.

We have also shown, in the light of our analysis of these rights, when and how the commentators we have discussed have failed to give an accurate picture of Hobbes's theory of rights. Finally, we argued against Tuck's historical analysis, according to which Hobbes should be grouped with Selden and the writers of the Tew Circle as a conservative rights theorist who supports slavery and absolutism.

In Chapter 4 we will explore the extent of the right to self-preservation and argue that it entails a right to peace. We will then explore the nature of the rights described by Hobbes, looking at the history of natural rights theories and finally we will discuss

the implications of our analysis of his theory of rights for the history of political thought and Hobbes's place in that history.

Notes

1. That principle according to which we should accept an interpretation of a theory that makes the most sense overall. If two opposing interpretations differ in that while both explain the theory or an aspect of the theory, one allows the theory more coherence or prevents the conclusion that the writer made a mistake or failed to notice a contradiction or weakness then the more generous interpretation should be accepted.

2. See, for example, Leo Strauss 1952, Persecution and the Art of Writing, in which he names Hobbes as one of those who suffered persecution for his views.

CHAPTER 4

IMPLICATIONS OF THE THEORY OF RIGHTS

1.a) A New Right? - The Right to Peace

Self-Preservation - A Closer Look

As we noted above, in Chapter 3, section 2b, Hobbes describes the right to self-preservation in broad terms in Chapter 15 of *Leviathan*,

> As it is necessary for all men that seek peace, to lay down certaine Rights of Nature; that is to say, not to have libertie to do all they list: so it is necessarie for mans life, to retaine some; as right to governe their own bodies; enjoy aire, water, motion, waies to go from place to place; and all things else without which a man cannot live, or not live well." (*Lev.* 15, 22).

We have already discussed, in Chapter 3, Hobbes's argument that while some rights enjoyed in the state of nature must be given up others must be retained into the commonwealth because they are required for the preservation of the individual.

> There be some Rights, which no man can be understood by any words, or other signes, to have abandoned or transferred. As first a man cannot lay down the right of resisting them, that assault him by force, to take away his life; because he cannot be understood to ayme thereby, at any Good to himselfe. . . .
> . . . And lastly the motive, and end for which this renouncing, and transferring of Right is introduced, is nothing else but the security of a mans

> person, in his life, and in the means of so preserving life, as not to be weary of it. (*Lev.* 14, 8).

We have a right, according to Hobbes, to whatever is required for us, not only to preserve our lives, that is, to avoid death; but also to those things without which we could not live a full life, a life that would be worth living. If we were imprisoned, for example, or enslaved we would be unable to live a life in which it is possible to "live well". We have a right, as Hobbes says above, "to all things else without which a man cannot live, or not live well" We must therefore retain from the right of nature (that gave us a right to anything we thought we needed for our preservation), the right to those things or actions that will enable us to "live well". Indeed, if we should seem to agree to anything that would "despoyle" ourselves of the end towards which we aimed in transferring and renouncing some of our rights, in accordance with the second law of nature, then we are not to be understood as though we meant it. And this "end" towards which we are aiming is, as quoted above, "nothing else but the security of a mans person, in his life, and *in the means of so preserving life, as not to be weary of it*." *(Lev.* 14, 8, my emphasis). This makes clear again the full extent of what Hobbes intends the right to self-preservation to cover; it is not merely a right to preserve our actual lives but is rather a right to what Hobbes would call a "commodious life", that is a life unmarred by (physical) restrictions that would prevent us from enjoying at least the minimum freedoms required for an active and full life. Hobbes emphasizes that this right is inalienable; if we seem to be giving it up, we must be understood as having made a mistake.

The right to preservation, then, involves more than what Hobbes would call a "bare preservation". It includes the right not only to preserve our lives but also to the conditions that are necessary for well-being. In Chapter 30 of *Leviathan,* in the passage quoted in section 2b of Chapter 3 above, when Hobbes describes the end of the office of sovereignty as the "procuration of the safety of the people" he goes on to say, "But by Safety here, is not meant a bare Preservation, but also all other Contentments of life, which every man by lawfull Industry, without danger, or hurt to the Commonwealth, shall acquire to himselfe." (*Lev.* 30, 1). Hobbes is distinguishing between a bare preservation and what we might call a "full preservation", between merely having life and having what we have called, after Hobbes, a "commodious life". In each case it is the latter more substantial definition which he chooses when setting out first, the rights that must be retained into the commonwealth and second, the duties of the sovereign to his subjects.

A Right to Full Preservation

If what we have said in the last section is right then we are justified in saying that in the passages discussed, where Hobbes is telling us which rights cannot be given up or transferred under the second law of nature; when he says "preservation" he means a full preservation and when he says there is a right to preservation that cannot be given up he means there is a right to full preservation that cannot be given up.

In Chapter 14 of *Leviathan* then, Hobbes argues that *all individuals have an inalienable right to what is required for full preservation.* This means that individuals have an inalienable right to what is necessary in order to live a commodious life. The examples of the sorts of rights Hobbes has in mind are: the right to govern our own bodies, to enjoy air, water and motion, to be free to move from place to place and to engage in "lawfull Industry". *(Lev.* 15, 22 and 30, 1).

Full Preservation as an End

What is the end we are aiming at, according to Hobbes, when we agree to conform to the laws of nature and institute a sovereign?

> The Passions that encline men to peace, are Feare of Death; Desire of such things as are necessary to commodious living; and a Hope by their Industry to obtain them. And Reason suggesteth convenient Articles of Peace, upon which men may be drawn to agreement. *(Lev.* 13, 14).

Hobbes describes a process, beginning with life in the state of nature, (which, being a state of war, frustrates the end of preservation); through reason's presentation of the laws of nature and the agreements they require, to the institution of a sovereign who can enforce the agreements we must make, and so to a state of peace which in turn provides the necessary conditions for commodious living. Hobbes describes the end of the institution of a sovereign as "the Peace and Defence of them all" (*Lev.* 18, 8) and we would argue that there is a further end for the individuals who create the

sovereign and that is *a commodious life*. If we look again at what Hobbes says when describing the rights that individuals must renounce under the second law of nature.

> And . . . the motive, and *end for which this renouncing and transferring of Right is introduced*, is nothing else but the security of a mans person, in his life, *and in the means of so preserving life, as not to be weary of it.* (*Lev.* 14, 8, my emphasis).

The "means of so preserving life, as not to be weary of it" clearly refers to the means to what we have called a full preservation. We can conclude that the *end* towards which we are aiming when we renounce and transfer certain rights and retain others, is the end of full preservation or a commodious life.

The Need for Peace

If we look at what Hobbes says about life in the state of nature, that is, in a state of war, we see that he says ". . . no man is of might sufficient, to assure himself for any long time, of preserving himself thereby, whilst he remaineth in the state of hostility and war;" (*El. of Law,* pt.I, Ch XIV, 14). There is little chance of living out a normal lifespan and what is more, in the time he does have, he will be unable to enjoy those activities and freedoms that Hobbes has defined as necessary for a full preservation. "[I]n such condition, there is no place for Industry; because the fruit thereof is uncertain:" (*Lev.* 13, 9). He adds to this a list of other activities that will stop when a society breaks down;

> . . . no Culture of the Earth; no Navigation, nor use of the commodities that may be imported by Sea; no commodious Building; no Instruments of moving, and removing such things as require much force; no knowledge of the face of the Earth; no account of Time; no Arts; no Letters; no Society; and which is worst of all, continuall feare, and danger of violent death; and the life of man, solitary, poore nasty, brutish, and short. (ibid.).

Allowing some poetic license for this beautifully worded description of a society in collapse, we are left nevertheless with the conclusion that it is not possible for individuals to flourish in such a state. It may be possible to survive, at least for a time, but not to have a commodious life; not, in Hobbes's terms, to exercise the right to a full preservation. This being the case, Hobbes seems to be arguing that peace is a prerequisite to being able to exercise the right to a full preservation.

Argument for the Right to Peace

We have shown that according to Hobbes's argument in *Leviathan* the following hold true:

1. Every individual has a right to self-preservation.

2. The right to self-preservation is inalienable.

3. By preservation Hobbes means full preservation, i.e. what is necessary for an individual to be able to live a commodious life.

4. Full preservation or a commodious life is the end at which individuals aim when they agree to renounce some of the rights held in the state of nature, and form a commonwealth.

5. Peace is required in order for individuals to be able to live a commodious life and is therefore a means to the end of a commodious life.

Hobbes says in Chapter 18 of *Leviathan* "whosoever has right to the End, has right to the Means;" (*Lev.* 18, 8). He also says in Chapter 14, "Right to the End, Containeth Right to the Means" (Lev. 14, 21). We have already shown that, according to Hobbes, there is a right to full preservation on the part of all individuals and that full preservation is an end at which all individuals aim. We have also shown that it is necessary to be in a state of peace in order to achieve the end of full preservation and therefore that peace is a means to the end of full preservation. Taking these statements together with the quotation, we can say that whoever has a right to full preservation has a right to the means to full preservation and as peace is a means to full preservation, whoever has a right to full preservation has a right to peace. We can now conclude that there is a right to peace on the part of each individual.

Hobbes does not actually state the right to peace but the argument for it is there, as we have shown and he says nothing in the theory that would conflict with there being a right to peace. We can, therefore, add it to our list of *Rights in the Theory* (see Chapter 3, above), as another *inalienable right, retained in the commonwealth.*

We might also wish to ask the question; if there is a right to peace on the part of each individual how might that right be protected? As we have already shown in Chapter 3, Hobbes provides for the protection of some rights, first under the second law of nature and then, for inalienable rights, by giving the sovereign certain duties. Is there anything in the theory that would provide protection for the right to peace? We shall argue below that the sovereign's duty to secure the peace is correlated with the right to peace of each subject.

1.b) Securing the Peace; A Sovereign's Duty

From what we have argued above we can now say that there is a right to peace on the part of each individual, that is retained into the commonwealth. If there is a right to peace held by each individual in the commonwealth, how is this right protected? We have already argued in Chapter 3 that the inalienable right to self-preservation is protected in the commonwealth by the sovereign whose duty is to protect individual subjects. Similarly we would argue that it is the sovereign who protects the right to peace. When Hobbes describes the setting up of a commonwealth and the instituting of a sovereign he makes it clear that the purpose of such actions is to secure the peace and the sovereign's duty, as long as he or they are sovereign, is to keep the peace.

> The only way to erect [such] a Common Power, as may be able to defend them from the invasion of forraigners, and the injuries of one another, and thereby to secure them in such sort, as that by their owne industrie, and by the fruites of the Earth, they may nourish themselves and live contentedly; is, to conferre all their power and strength upon one Man, or upon one Assembly of men, . . . This done, the Multitude so united in one Person, is called a COMMON-WEALTH, in latine Civitas. This is the Generation of that great Leviathan, or rather (to speake more reverently) of that *Mortall God*, to which wee owe under the Immortall God, our peace and defence. (*Lev.* 17, 13).

> . . . A *Common-wealth* is said to be *Instituted* , when a *Multitude* of men do Agree, and *Covenant, every one, with every one*, that to whatsoever *Man* , or *Assembly of Men* , shall be given by the major part, the *Right* to *Present* the Person of them all, (that is to say, to be their *Representative*;) every one, as well he that *Voted for it*, as he that *Voted against it*, shall *Authorise* all the Actions and Judgements, of that Man or Assembly of men, in the same manner, as if they were his own, to the end, to live peacably amongst themselves, and be protected against other men. (*Lev.* 18, 1).

> And because the End of this Institution, is the Peace and Defence of them all; and whosoever has right to the End, has right to the Means; it belongeth of Right, to whatsoever Man, or Assembly that hath the Soveraignty, to be Judge both of the meanes of Peace and Defence; and also of the hindrances, and disturbances of the same; and to do whatsoever he shall think necessary to be done, both before hand, for the preserving of Peace and Security, by prevention of Discord at home and Hostility from abroad; and, when Peace and Security are lost, for the recovery of the same. (*Lev.* 18, 8).

The sovereign is required to ensure that the commonwealth achieves or remains in a state of peace. And just as we argued in Chapter 3 that the sovereign has a duty to protect the individual which is correlated with the individual's right to self-preservation, so now we can say that the sovereign's duty to protect the individual includes the duty to secure the peace, without which individuals will be unable to fully preserve themselves and live a commodious life. This is part of the sovereign's duty; to provide a peaceful state where individuals will be able to flourish. The

passage from Chapter 30 quoted in Chapter 3 and in part above, (page 151) can now be seen to describe this duty.

> The Office of the Soveraign, (be it a Monarch, or an Assembly,) consisteth in the end, for which he was trusted with the Soveraign Power, namely the procuration of *the safety of the people* ; to which he is obliged by the Law of Nature, and to render an account thereof to God, the Author of that Law, and to none but him. But by safety here, is not meant a bare Preservation, but also all other Contentments of life, which every man by lawfull Industry, without danger, or hurt to the Commonwealth, shall acquire to himselfe. (*Lev.* 30, 1).

And, staying with Chapter 3, the following passage from the *Elements of Law* can now be seen to describe the purpose of the sovereign in terms of *both* protecting the right to self-preservation of each individual *and* the right to peace of each individual. "[T]he benefit is that for which a body politic was instituted, namely, the peace and preservation of every particular man." *(El. of Law*, pt. II, ch.XXIV).

The sovereign is obliged to procure the safety of the people by which he means not just a bare preservation which might be managed in a state of war, but all the normal contentments of life that are possible, according to Hobbes, only in a state of peace. In other words Hobbes is saying that the sovereign has a duty to secure the peace and this duty, we are arguing, is correlated with the right to peace, which is entailed by the right to full preservation of each individual.(1)

Just as the right to self-preservation was shown to be correlated with the duty of the sovereign to protect the subjects in Chapter 3, above; so now we can say that the right to peace is correlated with the duty of the sovereign to secure and maintain the peace. If and when he fails in this duty then "Subjects are absolved of their obedience

to their Soveraign" and the individual subject may seek peace wherever he can find it "either in his own or in another's sword" (*Lev.* 21, 21), (see Chapter 3, above section 2b and particularly the section, The Right to Self-Preservation and the Duty of the Sovereign) and, as we argued in Chapter 3, it is the *subjects* who must decide when their obligation to obey the sovereign has ceased, for only they can decide when they are no longer being protected. They have held on to their right to peace (just as they hold on to their right to preserve themselves), it has not been given up to the sovereign, and so they are always free to make the judgment as to who is best able to protect them, which protection includes providing the peace. "The end of Obedience is Protection; which, *wheresoever a man seeth it*, either in his own, or in another's sword. Nature applyeth his obedience to it, and his endeavour to maintaine it." (*Lev.* 21, 21, my emphasis). What could Hobbes mean by "whereever a man seeth it" except that it is the man who decides where his protection lies?

2. Hobbes's Theory of Rights - A New Kind of (Natural) Right?

We have said a certain amount about the detail of the rights that Hobbes describes in the theory and we have defined the rights that are carried over into the commonwealth as claim rights which are correlated in the first instance, with the

duties of other individuals under the second law of nature and in the second instance with the duties of the sovereign. But what sort of theoretical underpinning is implied by the rights he describes? What sort of theory of rights is Hobbes assuming? Is it a theory of natural rights or one of legal or positive rights? The *liberty* rights held in the state of nature are clearly attached to individuals on the ground of their human nature and their need for the freedom to protect themselves as best they can. The *protected* rights that we have found described by Hobbes under the second law of nature are claim rights in that they are correlated with the duties of others: so are they really positive rights? At the point in *Leviathan* at which Hobbes introduces them no civil laws have yet been promulgated to bring them into existence, (although in any commonwealth, laws will be written eventually that will make at least some of them also positive rights, protected and enforced by the legal system and ultimately, by the sovereign). It is only when the sovereign is instituted, though, that the agreements can be enforced: but do the rights themselves, as described by Hobbes, rely on positive law for their existence? We must be careful in answering not to beg the question. If we take "rights" to mean enforceable rights, for example, then they will not be such until there is a sovereign in place with the power to enforce them and to be enforced they will presumably have to be promulgated in positive law. If, on the other hand, we stick to the text and ask what Hobbes means when he describes them as part of the as yet unenforceable laws of nature, remembering that he says "The Lawes of Nature are Immutable and Eternall" (*Lev.* 15, 37), then we must concede that in some sense the rights he describes pre-exist their entry into positive law.

The rights described in *Leviathan* exist first of all in the state of nature as crude liberty rights where they are an expression of man's right to do what he is impelled by nature to do, that is, to preserve himself as best he can. At this stage they are certainly natural rights as there are no positive laws of any kind and the right to preserve ourselves as nature has taught us is a fundamental natural right in the writing of natural law theorists like Aquinas and political natural law theorists like Locke. According to Hobbes, our reason tells us to transform them into claim rights when we realize what is required for people to live together in peace (in order to preserve themselves more effectively), and these claim rights can be enforced once the sovereign is in place. The third kind of right we have described in Hobbes's theory, the rights to self-preservation and peace that are retained from the state of nature into the commonwealth and protected by the sovereign, are originally included in the right of nature (the right from which all others are derived in fact), the right to do whatever is necessary to preserve ourselves. The rights to defend and preserve ourselves, even against the sovereign, and the right to peace, as we have said, are natural rights in the state of nature; they become protected natural rights when we institute or submit to a sovereign. Can they become legal or positive rights? If they were to become legal rights how would they be enforced? Could the sovereign enforce rights that depend on his actions for their protection? If he fails to secure the peace, for example, how would he enforce the subjects' right to peace? This breach could not be enforced by law, because the sovereign, according to Hobbes, is not subject to the law. If a subject's preservation was threatened by another individual or

individuals, on the other hand, and a law had been promulgated against such threats, then the sovereign could enforce the law, so in that case the individuals' right to preserve herself has become a positive or legal right. Hobbes is adamant, however, that subjects do not ever give up their rights to self-preservation and self-defense, and that these rights are held even against the sovereign. So, even if some aspects of their protection are made into positive law by the sovereign, the individual retains the right as a natural right, and, as we discussed above, it is the individual who must, in the end, judge when the right has been violated.

If the rights that we have been discussing, as described by Hobbes, are not positive rights does this mean that they are all "natural rights"? And if so, what exactly does this mean? Natural rights have traditionally been associated with theories of natural law. Does this mean that Hobbes is, as some have argued, a natural law theorist? Should we place him alongside Aquinas and Grotius as part of the history of that theory? It has not been usual to define Hobbes as a natural law theorist, although of course it has also not been usual to argue that he has a strong theory of rights. In what follows we shall argue that he is not in the traditional sense a natural law theorist, that his theory of natural rights exists without the underpinning of a conventional natural law theory. But before we try to lay out this particular version of natural rights theory we shall say something about the traditional theory.

i. Traditional Natural Rights Theories

a) Part of the Natural Law

The theory of natural rights is usually associated with natural law theory which can be traced back to the Stoics, then through Roman law to the medieval philosophers and on to the European philosophers and political theorists of the Seventeenth and Eighteenth Centuries. The argument that natural rights theory grew out of or is based on traditional natural law theory is not without its detractors and we shall say something about that below, but first we shall examine the orthodoxy that the notion of natural rights is inextricably tied to the history of natural law theory.

The many variations of natural law theory have certain elements in common, one of which is the notion of a universal law that can be known by reason and that applies to all men.

> True law is right reason in agreement with Nature; it is of universal application, unchanging and everlasting; it summons to duty by its commands, and averts from wrong-doing by its prohibitions. . . . It is a sin to try to alter this law, nor is it allowable to attempt to repeal any part of it, and it is impossible to abolish it entireley. We cannot be freed from its obligations by Senate or People, and we need not look outside ourselves for an expounder or interpreter of it. And there will not be different laws at Rome and at Athens, or different laws now and in the future, but one eternal and unchangeable law will be valid for all nations and for all times, and there will be one master and one ruler, that is, God, over us all, for He is the author of this law, its promulgator, and its enforcing judge (Cicero, *De Republica*, III, xxii, 33, quoted in d'Entrèves 1951, 20,21).

Natural law theory has usually connected the notion of a natural law to God as the creator of that law:

> . . . it is clear that the whole community of the universe is governed by the divine reason. This rational guidance of created things on the part of God . . . we can call the Eternal law.
>
> [Now] since all things which are subject to divine Providence are measured and regulated by the Eternal law . . . it is clear that all things participate to some degree in the Eternal law, in so far as they derive from it certain inclinations to those actions and aims which are proper to them.
>
> But, of all others, rational creatures are subject to divine Providence in a very special way; being themselves made participators in Providence itself, in that they control their own actions and the actions of others. So they have a certain share in the divine reason itself, deriving therefrom a natural inclination to such actions and ends as are fitting. This participation in the Eternal law by rational creatures is called the Natural law. (Aquinas, *Summa Theologica*, Ia 2ae, quae. 91, art. 1 and 2, quoted in d'Entrèves 1951, 39).

Four hundred years later, however, another of natural law's exponents, Hugo Grotius, is famous for having taken the theological premise out of the theory, saying, after putting forward his theory of natural law; "[a]nd what we have said would still have great weight, even if we were to grant, what we cannot grant without wickedness, that there is no God, or that he bestows no regard on human affairs." (Grotius 1853, Prolegomena 11., p xlvi). Grotius also argues that certain rational propositions could not be denied even by God because to do so would be self-contradictory.

> Natural law is so immutable that it cannot be changed by God himself. For though the power of God be immense, there are some things to which it does not extend: because if we speak of those things being done, the words are mere words, and have no meaning, being self-contradictory. Thus God himself cannot make twice two not be four; and in like manner, he cannot make that which is intrinsically bad, not be bad. For as the essence of things, when they exist, and by which they exist, does not depend on anything else, so is it with

> the properties which follow that essence: and such a property is the baseness of certain actions, when compared with the nature of rational beings. And God himself allows himself to be judged of by this rule. (Grotius, 1853, bk.I, ch.I., X. 5.)

The laws that come from the natural law apply to all people by virtue of their shared rational nature and can overrule the positive laws made by men, "human law" in Aquinas's terminology. The natural law, which all men can understand by virtue of their reason, applies to ethics and politics as well as to law itself. "The relation between law and morals is the crux of natural law theory. . . . The very enunciation of natural law is a moral proposition. The first precept of natural law, says Thomas Aquinas, is 'to do good and to avoid evil.' " (d'Entrèves 1951, 80, 81 and see Grotius above). In the scholastic version of natural law theory, certain other precepts are deduced from this first precept that correspond to "the order of our natural inclinations" such as self-preservation.

> . . . [R]ational creatures are also subject to God's provident direction, but in a way that makes them more like God than all other creatures. For God directs rational creatures by instilling in them certain natural inclinations and capacities that enable them to direct themselves as well as other creatures. Thus human beings also are subject to the eternal law and they too derive from that law certain natural inclinations to seek their proper end and proper activity. These inclinations of our nature constitute what we call the natural law; they are the effects of the eternal law imprinted 'in' our nature.
>
> Thus even the scripture suggests that our natural ability to reason (by which we distinguish right from wrong) in which the natural law resides, is nothing more than the image of God's own reason imprinted on us. (Aquinas, *Summa Theologica*, trans. Manuel Velasquez, question 91, in Velasquez and Rostankowski 1985, 47).

Aquinas here links the presence of God's eternal law in human beings to the Aristotelian notion of a final cause or end towards which human beings naturally strive. The natural inclinations we have, for example to preserve ourselves, are defined as the working of the natural law within us. Self-preservation is a morally justified endeavor and it is morally justified because it comes from God via the law of nature.

If we want to see how the theory of natural rights has been associated with natural law theory, we might start by looking at some aspects of natural law theory that act as stepping stones to the notion of natural rights. A. P. d'Entrèves, in his 1951 book on natural law, says that there are certain concepts "closely related to the doctrine of natural law. First and foremost the concept of equality. Cicero, . . . had clearly formulated the notion of the fundamental equality of all men." (d'Entrèves, 1951, 21). Cicero puts it in the following way:

> No single thing is so like another, so exactly its counterpart, as all of us are to one another. Nay, if bad habits and false beliefs did not twist the weaker minds and turn them in whatever direction they are inclined, no one would be so like his own self as all men would be like all others. And so, however we may define man, a single definition will apply to all . . . For those creatures who have received the gift of reason from Nature have also received right reason, and therefore they have also received the gift of Law, which is right reason applied to command and prohibition. And if they have received law, they have received justice also. Now all men have received reason; therefore all men have received justice (Cicero, *De Legibus*, I, x, 29; xii, 33, quoted in d'Entrèves 1951, 21,22).

The natural law applies to all equally and is accessible to all equally. All men are equally endowed with reason and therefore have equal access to the natural law.

There is also the notion of justice here and running through natural law theory is the juxtaposition of "natural" justice and the imperfect world which should be brought into line with it. It could be said that these two notions represent the beginning of a natural rights theory - all individuals are equal and each deserves justice that accords with the ideal "natural justice" of the law of nature rather than that decided by the mere positive laws of humans. It is a short step from there to the claim that each individual has a *right* to her due and from that to a list of the various "rights" of each individual.

Is this how rights theory grew out of natural law theory, historically? Opinion is divided and we shall say more about that below, but for the moment let us take a brief look at the way the theory progressed or transformed into the natural rights theories of the French and American Revolutions. We have seen how Cicero argues that all men are equal in their ability to conceive the natural law and therefore justice. but it is not until the middle ages, according to Richard Tuck, that the language of rights first appears and not until the Seventeenth Century that we find "the classic texts of rights theory, stretching from Grotius through to Locke." (Tuck 1979, 2).

b) The Emergence of Natural Rights

Tuck traces the emergence of the modern notion of a right to the medieval scholars who interpreted Roman law; "[i]t is among the men who rediscovered the

Digest and created the medieval science of Roman law in the twelfth century that we must look to find the first modern rights theory, one built round the notion of a passive right." (Tuck 1979, 13). What Tuck means by a passive right is "a right to be given or allowed something by someone else," and it contrasts with an active right which is "the right to do something oneself." (ibid., 6). An active right implies control of the right holder over that which he has the right in. Debate between those who see rights as fundamentally passive and those who see rights as fundamentally active characterizes much of the writing on rights from the Fourteenth to the Sixteenth Centuries, according to Tuck. The point is illustrated in the following passage, from Dominican theologian, Silvestro Mazzolini da Prierio, writing in 1515.

> *Dominium* , according to some people, is the same thing as *ius*. So that anyone who has a *ius* in something, has a *dominium* over it; and anyone who has a *ius* to the use of something, has *dominium* in it, and vice versa . . . According to other people, it is not identical, for an inferior does not have *dominium* over a superior, but he may have a *ius* against him. Thus for example a son has a *ius* to be fed by his father, and the member of a congregation has a *ius* to receive the sacrement from a prelate, etc. So they say, to have *dominium* implies that one has a *ius*, but not vice versa; for in addition to a *ius* one must have superiority. (S. Mazzolini da Prierio, *Summa Summarum quae Silvestrina nuncupatur*, I., Bologna, 1515, quoted in Tuck 1979, 5).

The use of *ius* in this passage is remarkably close to the way "right" is used by some theorists today. Indeed, the debate between the notions of active and passive rights is one that is still going on.

The journey to this early natural rights theory via Roman law and the natural law theories of medieval theologians is a complex, not to say tortured one, according to Tuck. Aquinas's theory of natural law, for example,

> was not a genuine natural rights theory . . . As Aquinas said, the *ius naturale* is neutral in the areas of personal servitude and private property, and that cuts both ways. There is no *prima facie* right to either servitude *or* liberty, either private property *or* common possession. It is the essence of a natural rights theory that it attributes *prima facie* rights to natural men; Aquinas explicitly avoided doing so, and refrained from following up the implications of a natural *dominium utile*. The most important area which his theory left out, and which was left unconnected with any rights theory for a hundred years or so, was the area of natural liberty. In Aquinas, men do not have a *prima facie* natural right to liberty any more than they have a *prima facie* natural right to dominate other men. (Tuck 1979, 20).

Not until Jean Gerson, Chancellor of the University of Paris, writing in 1402, do we see what Tuck calls a "fully fledged natural rights theory". Gerson gives an account of a "ius" as a facultas, a faculty or ability, which enabled him "to assimilate ius and libertas", right and liberty (ibid., 26). "*Ius* is a dispositional *facultas* or power, appropriate to someone and in accordance with the dictates of right reason . . ." (Gerson 1402, in P. Glorieux ed., 1962, quoted in Tuck 1979, 26). "*Libertas* is a *facultas* of the reason and will towards whatever possibility is selected . . . *Lex* is a practical and right reason according to which the movements and workings of things are directed towards their ordained ends." (Gerson 1400-1415, ibid., 26/27).

It was this definition of a right as a faculty, Tuck argues, that made it possible to associate a right with a liberty and therefore to see a right *as* a liberty. This, together with the notion of a right connected with that of dominium (implying sovereignty or control over whatever one has the right in) marks the emergence of what he calls "a radical natural rights theory" that was different from the theory of "passive" rights that had come out of the twelfth century theorists.

> They had converted the claim-right theory of the twelfth century completely into an active right theory, in which to have any kind of right was to be a *dominus*, to have sovereignty over that bit of one's world - such that even a child had sovereignty over its parents when it came to questions of its welfare. (ibid., 28).

It is important to try to separate Tuck's historical tracing of the notion of a right from his own analysis of the theory of rights. We have already dealt with his own theory of the two traditions of conservative rights theories and radical rights theories.(see Chapter 2, Richard Tuck, Hobbes as a Conservative Rights Theorist and Chapter 3, part III, The Historical Argument; Richard Tuck's Conservative Rights Theories. A Reply). We have tried to restrict our comments here to his description of the *emergence* of rights theories but inevitably his own division of rights theories into various types comes into that description.

John Finnis gives a very short history of the use of the word *ius* or *jus* in which he agrees with Tuck that it was first used in Roman law and that Aquinas did not use it to denote "a right". On Aquinas's use of the word he says,

> [t]he primary meaning, . . ., is 'the just thing itself' (and by 'thing', as the context makes clear, he means acts, objects, and states of affairs, considered as subject-matters of relationships of justice). One could say that for Aquinas '*jus*' primarily means 'the fair' or 'the what's fair'; indeed, if one could use the adverb 'aright' as a noun , one could say that his primary account is of 'arights' (rather than of rights).(Finnis 1980, 206).

Finnis contrasts Aquinas's use of "ius" with that of Suarez (1548-1617), writing more than three hundred years later, "Here the 'true strict and proper meaning' of 'jus' is said to be: 'a kind of moral power [*facultas*] which every man has, either over

his own property or with respect to that which is due to him." (Suarez, *De Legibus* 1612, I. ii. 5, quoted in Finnis 1980, 206/207). This change, which Finnis calls the watershed in the use of the word "jus", seems to correspond to the change described by Tuck as having taken place two hundred years earlier. For our purposes it does not matter exactly when this change took place, (and to be fair to Finnis he does not specify when it took place only that it was some time between when Aquinas was writing and when Suarez was writing), what does matter is the fact that it took place and that it was in the writings of theologians and natural law theorists that discussions of what we would call natural rights first began.

c) Mature Natural Rights Theories

To find what we might call mature natural rights theories should we go to the declarations on natural rights of the American or the French revolutions of the Eighteenth Century or to natural law theorists like Hugo Grotius and Samuel Pufendorf (1632-1694) (2) who had incorporated rights into their natural law theories over a century earlier? As we have already discussed in Chapter 3, Grotius's natural law theory incorporates a theory of natural rights, although he stops short of putting the rights of individuals above the rights of the state. As we have seen, the right to defend one's life does not extend to a right to defense against the sovereign, according to Grotius. Once we are in a commonwealth with laws and a system for

making judgements and deciding punishments. Grotius says that our right to preserve ourselves must be given over to the state.

> That private war may be lawful, so far as Natural Law goes, I conceive to is sufficiently apparent from what has been said above, when it was shewn, that for any one to repel injury, even by force, is not repugnant to Natural Law [Chap. II.]. But perhaps some may think that after judicial tribunals have been established, this is no longer lawful: for though public tribunals do not proceed from nature, but from the act of men, yet equity and natural reason dictate to us that *we must conform to so laudable an institution; since it is much more decent and more conducive to tranquility among men, that a matter should be decided by a disinterested judge, than that men, under the influence of self-love, should right themselves according to their notions of right.* (Grotius, 1853, bk.I ch. III., I, 2, p95, my emphasis).

Grotius does not see the right to self-defense as inalienable which immediately differentiates his theory of rights from Hobbes's. Grotius, however, *defines* a right in a way that combines several kinds of rights in Hohfeld's analysis.

> IV. *Jus, Right,* has another signification from the former, as when we say *my* Right. In this sense *Right* is a moral Quality by which a person is competent to have or to do a certain thing justly. . . .
>
> This moral quality, when perfect, is called facultas, a jural claim; when less perfect, aptitude, a fitness, or moral claim.
>
> V. A Jural Claim, belonging to any one, the jurists call suum, his own thing. We shall call this hereafter a *Right* strictly speaking, or a *Right proper* . It includes, Power; whether over one's self, which is Liberty; or over another, which is Authority, for example, paternal, dominical (that of a master over a servant;)
>
> Ownership; whether full, as of Property; or less full, as of Compact, Pledge, Credit, to which corresponds Debt on the other side. . . .
>
> VII. A fitness is . . . a moral claim.
>
> VIII. A Jural Claim, or Right proper, belongs to Expletory Justice, or Justice proper. This is what Aristotle calls Contractual Justice; but the term is too narrow; for that the possessor of my thing should restore it to me is not a matter of contract; and yet it belongs to this division. Elsewhere he calls it by a better name, Corrective Justice.
>
> A Moral Claim [sometimes called an Imperfect Right] belongs to Attributive Justice, which Aristotle calls Distributive Justice, the companion of the virtues

> which are useful to our neighbours, as liberality, mercy, directive prudence. (Grotius 1853, bk.I. ch.I., IV-VIII).

Pufendorf was in some ways a more traditional natural law theorist than Grotius. He "refused . . . to countenance even for the sake of argument the possibility that God does not exist, and he went so far as to chide Grotius for his decision to entertain, albeit hypothetically, this very possibility" (Pufendorf 1994, 8). On the other hand he acknowledged Hobbes's work and even saw himself as responding to it . "Pufendorf took inspiration from Hobbes's effort to raise law and politics to a scientific level and establish with certainty the need for the state. But he rejected Hobbesian methodological individualism and cynicism, and in his own words "fought against Hobbes at close quarters.'" [ibid., 7, quoting Pufendorf from *De jure naturae et gentium, libri octo*, . . . accedit Eris Scandica, ed. Gottfried Mascvius (Lausanne & Geneva: Marcus-Michael Bousquet, 1744), vol. 2, p.341 (trans. by Michael J. Seidler)]. He often referred directly to Hobbes's writing, for example on equality; "[t]o understand better this equality among men, we must observe that Hobbes . . . restricts it to a parity of strength and other natural faculties with which mature men are equipped, and wishes to show from this that men have a natural reason to fear one another. . . .(ibid., 159). And he often strongly criticized elements of Hobbes's theory with which he disagreed, for example, on the right to all things in the state of nature,

" . . . if Hobbes's opinion of the matter was as crass as his words apparently seem to indicate, . . . let him find out on his own how to deflect the criticism launched deservedly against him. . . ." (ibid., 142, 143).

Pufendorf defines a right as "an active moral power, belonging to a person, to have something from another by necessity." (ibid., 46). He goes on:

> the word 'right' is . . . most frequently used for that moral quality by which we either rightly command persons or possess things, or by which things are owed to us. . . .
>
> Now a right is either *perfect* or *imperfect.* One who infringes the former does an injury, which gives the hurt party an action in a human court against the one who hurt him. To it there corresponds, on the other side, a perfect obligation in the one from whom that which is owed us will come. . . .
>
> An imperfect right, however, which some call an aptitude, is when someone owes something to another in such a way that if he should refuse it he would, indeed, act unfairly; yet the hurt party would by no means receive an injury giving him an action against the one who hurt him. Nor could he claim that right for himself by force, except where necessity does not admit another way of promoting his welfare. (ibid.).

We can see that the theory of natural rights was well established in the writing of the natural law theorists of the Seventeenth Century, but we should turn to the political writers of the American revolution to see the culmination of this particular way of formulating individual rights. The Declaration of Independence in 1776 gives us a statement of a view of natural rights that raises the rights of individual citizens above those of the state. Grotius's cautionary warning that although the rights of the individual are important they cannot of course override those of the state, is swept away as rights are made the basis of the state.

> When in the Course of human events, it becomes necessary for one people to dissolve the political bands, which have connected them with another, and to

> assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation. We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed. That whenever any form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organising its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. (from the Declaration of Independence 1776, quoted in d'Entrèves 1951, 61/62).

In this passage we see the theory of natural rights, based on natural law, as the basis of both a justification of the state (the state should exist to protect the natural rights of individuals) and a justification of rebellion (if the state fails to protect the rights of individuals the citizens are justified in altering or abolishing it and instituting a new government). The Lockean view being expressed represents a clear example of a mature natural rights theory. We can now return to the question - does Hobbes's theory of rights fit into this tradition? Should he be included amongst those writers who developed the theory of natural rights from its beginnings in Roman law to its culmination in the Declaration of Independence of the American revolution and the Declaration des Droits de l'Homme et du Citoyen of the French revolution? But before we attempt to answer that question we shall say something about a view that the theory of natural rights did not develop gradually out of the tradition of natural law theory but rather that it took a significant change in natural law theory for it to come about.

d) d'Entrèves - A Different Slant, Natural Rights not Part of Traditional Natural Law

There are some writers who do not agree that the theory of natural rights has gradually emerged from natural law theory. A. P. d'Entrèves argues against the view that the theory of natural rights is part of a *continuous tradition* of natural law theory. He starts by referring to the usual interpretation that we have discussed above. "According to many historians, the theory of the rights of man had 'been implicit in political thought ever since the Stoics and as a result of Rome's transmission of Stoic conceptions of equality'. I have . . . raised some doubts as to the continuity of that development." (d'Entrèves 1951, 48). In his discussion of natural law theory he traces a move away from what we might call natural law theory proper, i.e. that theory which sees the law of nature as 'the revealed laws of God' (ibid., 52), to what he calls "the modern theory of natural law" which is "a purely rational and secular principle" (ibid., 56). D'Entrèves picks out Grotius as the one who started the move away from traditional natural law theory, even though he thinks that Grotius himself was still committed to the theological premises he was removing from the theory. When Grotius made his infamous remark (quoted above) that the laws of nature would still apply even if we were to say that there is no God, d'Entrèves argues that,

> [i]t is quite clear that Grotius, still deeply imbued with the spirit of Christianity, would never have conceded that God did not take any part in the affairs of men. The law of nature is implanted in man by God. It has therefore unquestionably a divine origin. . . . But Grotius' aim was to construct a system of laws which would carry conviction in an age in which theological

> controversy was gradually losing the power to do so. He therefore proceeded on the hypothesis further than anyone had done before him . . . He proved that it was possible to build up a theory of laws independent of theological presuppositions. His successors completed the task. The natural law which they elaborated was entirely 'secular'. They sharply divided what the Schoolmen had taken great pains to reconcile.
>
> The doctrine of natural law which is set forth in the great treatises of the seventeenth and eighteenth centuries . . . has nothing to do with theology. It is a purely rational construction, though it does not refuse to pay homage to some remote notion of God. . . . What Grotius had set forth as a hypothesis has become a thesis. The self-evidence of natural law has made the existence of God perfectly superfluous. (ibid., 52,53).

If the law of nature no longer gains validity from God, as the commands of one with divine authority, it must rely on "internal coherence and necessity" and an appeal to this kind of justification can be found in Grotius' comment that even God could not change mathematics (quoted above). D'Entrèves calls this the "rationalist character" of the new law of nature and he adds two more defining characteristics of the new version of the theory namely, individualism and radicalism. The emergence of individualism, he argues, can be traced to "the moment at which individual theorists turned to the idea of contract for their interpretation of the relationship between the individual and the community." (ibid., 55). The idea of the social contract, according to d'Entrèves, is specific to modern individualism with its "notion of an agreement between individuals as the origin of civil society." (ibid.). It is, he says, the "distinctive mark of the political theory of individualism" and is "closely associated with the modern theory of natural law". (ibid., 55, 56). The modern theory of natural law provides the basis of social contract theory in the following way:

> There was nothing new in the assertion that man is a rational being, capable of guiding himself and of deriving from his reason a standard to judge his environment. There was nothing new in the notion that man is born free and equal to all other men; in the idea of an original state of nature; in the quest for an explanation of the change which had come about with the rise of social and political institutions. It is only a shifting of accent on these commonplaces of natural law theory which can explain why all of a sudden we are faced with a doctrine which purposely sets out to construe civil society as the result of a deliberate act of will on the part of its components.
>
> The shifting of accent is the same which we have analyzed in the transformation of natural law into a purely rational and secular principle. The accent is now on the individual. The social contract was the only possible way left for deducing the existence of social and political institutions once the reason of man was made the ultimate standard of values. (ibid., 56).

The content of the contract is the "natural right" of the individual which is exchanged for the security and other benefits of living in society. And this aspect of the new theory of natural law, its "vindication of rights", gives us d'Entrèves' third distinguishing element, its radicalism. It is this element of the new theory that enables it to become a revolutionary doctrine. More significant than this, from the point of view of the theory of natural rights, is d'Entrèves' conclusion about this new theory of natural law.

> The modern theory of natural law was not, properly speaking, a theory of law at all. It was a theory of rights. A momentous change has taken place under cover of the same verbal expressions. The *ius naturale* of the modern political philosopher is no longer the *lex naturalis* of the medieval moralist nor the *ius naturale* of the Roman lawyer. These different conceptions have in common only the name. (ibid., 59).

The confusion arises because of the Latin word *ius* and its use to refer to both the objective and subjective right, or in English usage, law and right - the rule of action and the right to act. Most natural law writers in the Seventeenth and Eighteenth

Centuries would not have accepted what d'Entrèves calls Hobbes's "anarchical conception" of "natural right" as opposed to "natural law", because to them natural law was the "necessary presupposition of natural right." But, he points out that Christian Wolff, writing towards the middle of the Eighteenth Century, (3) illustrates the shift quite clearly when he says that: "whenever we speak of natural law (ius naturae), we never intend the law of nature, but rather the right which belongs to man on the strength of that law, that is naturally." (Wolff, *Ius Naturae Methodo Scientifica Pertractatum*, 1741, tom. I, Prol., no.3., quoted in d'Entrèves 1951, 60).

And so, approaching the time of the American and French revolutions, "the theory of natural law had been turned into a theory of natural rights." (ibid.). D'Entrèves' conclusion is that far from being a part of traditional natural law theory, the theory of natural rights was the result of a transformation of natural law theory that had changed its underlying principle from one of law to one of right.

Now we can return to the question of whether or where Hobbes's theory of rights fits in to the natural law tradition.

ii. Hobbes - New (Natural) Rights - Rights as a Requirement of Nature

We would like to argue that for Hobbes a right is a *requirement of nature* and that this way of looking at rights marks both a contribution to and a departure from

traditional natural rights theory as outlined above. What does this notion of a *requirement of nature* mean? As we have argued above, the rights described by Hobbes represent the freedoms and protections that are necessary if individuals are to be able to live together in peace, without undue fear. Given what Hobbes says about the nature of man it is inevitable that the state of nature will be a state of unending war. In this state we have a "blameless liberty" to all and any actions we deem necessary in order to preserve ourselves.

How does this notion of a right as a *requirement of nature* fit with traditional theories of natural rights? We have suggested that the rights described by Hobbes could on the one hand be called natural rights, but it should now be clear that although they are what is required by our nature, he does not argue that they are dictated by a law of nature that comes from God. (Although the rights described under the second law of nature could be said to come from the laws of nature and he does say at the end of Chapter 15 in *Leviathan* that we could "consider the same Theoremes, as delivered in the word of God, that by right commandeth all things;" which would enable us to properly call them laws, yet we would argue that Hobbes does not consistently suggest that the laws of nature are laws that come from God. Rather, he states that they are precepts given to us by reason that tell us what we must do in order to best preserve ourselves. If there were no God our reason would still give us the same set of precepts for our preservation. Also, the other "protected right" that we have discussed is the natural right to preserve ourselves which is defined by Hobbes as a *right of nature* and not part of the laws of nature). Pufendorf, when

discussing the law of nature, makes clear the necessity for *his* argument, of God as its author and criticizes Grotius for removing Him.

> [F]or such dictates of reason to have the force of law it must be presupposed that God exists and that His providence governs all things, especially humankind. For we cannot support Grotius's claim, in the *Prolegomena,* that natural laws "would have a certain validity even if we should grant what cannot be granted without the greatest impiety: that there is no God, or that He does not care about human affairs." For if anyone went so far as to assume that impious and absurd hypothesis . . . then those dictates of reason could in no way have the force of law, as this necessarily supposes a superior. . . .(Pufendorf 1994, 154,155).

We have already seen, however, that Grotius *had* taken the theological premise out of natural law theory, so, is the non-dependence of Hobbes's theory on theological premises enough to discount it as a theory in the natural law tradition? The answer must be no. Grotius is accepted as a natural law theorist and natural rights theorist. But in Hobbes's theory the need for natural rights is not seen as coming from a need for natural justice as dictated by the law of nature with or without God as its creator. It is not because of the dictates of a divine *or ideal order* that people have rights which must then be protected out of obedience to or respect for the natural law. In *Leviathan* there is no clearly stated divine origin of the law of nature, but *nor is there an ideal law of nature based on a notion of perfect justice.* Hobbes appeals only to the following:

1. the nature of man, (knowledge of which is reached by empirical observation and introspection).

_ 2. the necessary outcome of that nature if man is let loose in a world without political order where resources are scarce, i.e. a war of each against each.

_ 3. the conditions that must obtain if man is to escape from the state of war and enter a state of peace.

The conditions that are required for peace include the protecting of certain liberties which Hobbes calls *rights*. We must be free to preserve ourselves and to live with one another without constant fear for our personal safety. As long as we are in the state of nature we will be subject to the threat of attack from every other individual. It is necessary therefore that we transfer some of our rights, such as those to invade the bodies of others, to each other, so that we are left with only the right to our own bodies and a duty not to interfere with others' exercise of their rights over their own bodies. And our inalienable right to preserve ourselves must be carried with us into civil society where it will be protected by a sovereign who can guarantee our safety and secure the peace. These rights, that we are calling *requirements of nature,* are dictated by the conditions that are necessary if we are to have a chance of living a commodious life.

Let us look at Grotius again in order to clarify the difference between Hobbes's theory and a more traditional natural law theory.

1. Natural Law is the Dictate of Right Reason, indicating that any act, from its agreement or disagreement with the rational [and social *] nature [of man] has in it a moral turpitude or a moral necessity; and consequently that such act is forbidden or commanded by God, the author of nature.

2. Acts concerning which there is such a Dictate are obligatory, [morally necessary] or are unlawful, in themselves, and are therefore understood as necessarily commanded or forbidden by God; and in this character, Natural Law differs, not only from Human Law, but from Positive Divine Law, which does not forbid or command acts which, in themselves and by their own nature, are either obligatory or unlawful; but, by forbidding them makes them unlawful, by commanding them makes them obligatory. (Grotius, 1853, bk.I. ch. I., X, 1.- 2).

Grotius, despite his proposition that the law of nature would exist even if God did not, remains wedded to the notion of a divinely created nature of man imbued with a rationality that will inform him of the rightness or wrongness of acts, which acts will necessarily be forbidden or commanded by God. According to Hobbes, however, we should obey the laws of nature *because and only if* they will help us to preserve our lives, *not* because we are obligated to a moral law rooted in our (divinely created) nature. (Strauss 1952, viii, *Lev.* 15, 36,37). Grotius also talks of essences, as in the following passage.

> For as the essence of things, when they exist, and by which they exist, does not depend on anything else, so is it with the properties which follow that essence: and such property is the baseness of certain actions, when compared to the nature of rational beings. And God himself allows himself to be judged of by this rule. (ibid., bk. I. ch. I, X, 5).

Hobbes, as a nominalist, argues against essentialism and so differs from Grotius also on this point and we will say more about this below in the next section.

For the traditional natural law theorist, morality is stamped on the human mind with reason as its conduit. For Hobbes, self-preservation is stamped on the human mind and reason, in serving preservation, shows us that morality is the best means to achieve that preservation.

This is not to say that Hobbes's theory should be seen as having no connection with natural law theory. There are many echoes of it to be found in Hobbes's writing - he describes laws of nature that are given to us by reason and that comprise the moral law. He shares with the natural law theorists the view that self-preservation is a natural and morally justified impulse, that all individuals are of equal worth and importance and that there is a fundamental right to defend ourselves. Indeed it should be clear from the above sections on the natural law and natural rights tradition that Hobbes's theory shares much common ground with it. And yet what is more important than the shared language and history is the difference in the principles upon which Hobbes's theory is built. It is the principle of self-preservation that provides the basis for the theory and it is from this principle and its application to how people might live in a society that Hobbes builds his political and moral system. Strauss puts it in the following way; "Hobbes attempts to deduce natural right, natural law, and all the virtues . . . from the principle of self-preservation." (Strauss 1952, 15). The principle of self-preservation requires no further justification for Hobbes. It stands on its own and does not require, as traditional natural law theorists had it, the fact of God's creation of man to endow it with a divine purpose and a "higher" reason for man's survival. We have only our material selves, according to Hobbes, and our prime mover is fear rather than God. It is our fear of death and our desire to live safely that inspire us to discover the laws of nature and to institute a sovereign who will protect us.

> The Passions that encline men to Peace, are Feare of Death; Desire of such things as are necessary to commodious living; and a Hope by their Industry to obtain them. And Reason suggesteth convenient Articles of Peace, upon which men may be drawn to agreement. These Articles, are they, which otherwise are called the Lawes of Nature:" *(Lev.* 13, 14).

> The only way to erect such a Common Power, as may be able to defend them from the invasion of Forraigners, and the injuries of one another, and thereby to secure them in such sort, as that by their owne industrie, and by the fruites of the Earth, they may nourish themselves and live contentedly; is to conferre all their power and strength upon one Man, or upon one Assembly of men, *(Lev.* 17, 13).

An Aside: Hobbes Avoids Some Pitfalls of Traditional Natural Law/Natural Rights Theories

The rights Hobbes describes are not, or at least not obviously, attached to a theory of natural law in the tradition outlined above, although some of the terminology is shared and there are echoes of natural law theory in Hobbes's writing. What is important, in this context, for his theory of rights, is that it does not have overtly theological premises (Hobbes "excludes knowledge of God's nature from the scope of philosophy" [Zarka in Sorell, ed., 1996, 64]), and it does not include statements of "necessary natural fact" (MacDonald, in Waldron ed., 1984). This is significant in that it means that Hobbes's theory does not fall prey to the sorts of criticisms that have plagued traditional natural rights theories. MacDonald puts one such criticism in the following way:

There are an infinite number of different types of propositions and other forms of human utterance. I will, for my present purpose, notice three. (1) Tautological or analytical propositions which state rules for the uses of symbols or which follow from such rules within a linguistic or logical system. (2) Empirical or contingent propositions which state matter (sic) of fact and existence. Propositions which describe what does or may occur in the world and not the symbolic techniques employed in such description. (3) Assertions or expressions of value. With the help of this classification it may be possible to show that some of the difficulties of the doctrine of natural rights have been due to an attempt to interpret propositions about natural rights as a curious hybrid of types (1) and (2) of the above classification.

For in the theory which conceived of natural rights as guaranteed by a 'natural law', the position seems to have been considered in the following terms. The 'rights' of a slave, for example, derive from laws in any society which govern his artificial status as a slave. Yet he has a right to be free. But in virtue of what status and law ? Only it seems by his status of being a man like other men. This, however, is a natural status as opposed to one determined by social convention. Every man is human 'by nature'; no human being is 'by nature' a slave of another human being. There must then be an essential human nature which determines this status and a law governing the relations of human beings as such, independently of the laws of all particular societies concerning their artificial relationships. But essential human nature or human 'essence' is constituted by those properties expressed in the definition of 'human being'. And what is expressed or entailed by a definition is a necessary or analytic proposition. Thus by a logical fusion of the characteristics of two different types of proposition, statements about natural rights tended in this theory to be represented as statements of a necessary natural fact. (ibid., 23,24).

Theories of natural rights have been seen to involve such logical or linguistic errors or confusions and this has undermined their claims. Is Hobbes's theory vulnerable to such criticisms? As a first stab at answering this question, it seems not to fall prey to this kind of criticism, because while Hobbes does make statements about human beings and our nature as human beings, he does not make claims about a law that governs human beings *as such,* that is, human beings as defined by their essential or ideal nature. When Hobbes defines the first and second laws of nature it is as laws that apply to real men in real situations; in the state of nature they apply *in foro interno* and once a sovereign has been instituted they apply also *in foro externo*. The kind of idealized man described in the passage above by MacDonald who cannot, in some sense, be a slave, even though a real man can be, does not appear in Hobbes's theory. There is no idealized man who cannot wage war on his neighbors and who cannot retain rights of invasion, even though his real counterpart does. For Hobbes, who is both a nominalist and a materialist, there are only real men, who are warlike when insecure and peaceful when safe to be so. And the rights that must be protected are not part of a system of idealized rules that should always apply regardless of the positive laws that are in place. They are merely requirements that

must be met, if men are going to have enough freedom and protection to flourish, (with the possible future help of positive law and a sovereign to enforce them, in the case of the second law of nature), and in the case of the rights to self-preservation and peace, with the help of the sovereign's duty to protect them, or if he cannot then with the help of whoever can. In other words, there are certain conditions required by humans, involving their liberties and the protection of those liberties that seem to be necessary in order for them to be able to live together peacefully and productively and without unacceptable levels of fear. These requirements are matters of fact. Humans, as a matter of fact, require a certain amount of liberty and lack of threat if they are to flourish. Macpherson puts the point somewhat more succinctly in *The Political Theory of Possessive Individualism*, "Hobbes was the first to deduce rights and obligations from facts without putting anything fanciful into the facts." (Macpherson, 1962, 78).

Conclusion

Should we conclude then that Hobbes's theory is not one of natural law or that it is a natural law theory without the usual metaphysical baggage? His theory moves away from earlier natural law theories and is criticized by those such as Pufendorf who retained the theological premise. The "rights" Hobbes describes are natural rights yet he does not rely on the sorts of metaphysical entities mentioned above that are common to most if not all natural law theories. What he does rely on is the primacy of the right to preserve ourselves and the necessity in human society of protecting the freedom required in order to exercise that right. In as much as he is recommending that we conform to our nature which drives us to preserve ourselves, he is, perhaps, proposing a theory of natural law in the loosest sense. But we should not forget that Hobbes is a nominalist and a materialist and therefore will not be able

to countenance any appeal to the metaphysical entities or essences that have characterized much natural law theorizing. We can locate Hobbes's theory in the history of the natural law tradition and yet he departs from traditional natural law theory in so many ways that to call him a natural law theorist involves accepting a very broad definition of natural law.

In this section we have avoided discussing other versions of modern rights theory that are not attached to theories of natural law for two reasons. First, in order to keep to the subject of how our analysis of Hobbes's theory of rights fits into the historical context in which he was writing and second, to avoid getting involved in the debate about what kind of *moral theory* Hobbes can be said to hold. We have attempted, as far as possible, to concentrate on the political significance of what Hobbes says about rights. We started in Chapter 1 by showing that on the subject of rights Hobbes was a lot closer to the position of the parliamentarians, and indeed, to the radical parliamentarians, than he was to that of the royalists, during the Civil War period. In Chapters 2 and 3 we discussed the views of some important commentators on the subject of rights in Hobbes's political theory and presented our alternative analysis of Hobbes as a theorist who puts rights at the center of the theory. One important consequence of this is that by doing so he checks the tendency towards absolutism that so many have focused on in his theory. In this chapter we started with a proposition that there is a right to peace implicit in the theory and then tried to place his theory of rights in the context of the natural law theory tradition of his predecessors and contemporaries. It now remains to assess how the changes we have

proposed in the interpretation of Hobbes's theory should affect the way we regard his work in the history of political thought and this is the subject of the final section below.

3. Revising History - The Radical Denied? - Hobbes's True Place in the History of Political Thought

What are the consequences of our new interpretation of Hobbes's theory of rights? We have said (Chapter 3, Part III) that, given his strong theory of rights, we should no longer define his political theory as absolutist and we have shown that he should not be regarded as a straightforward royalist (Chapter 1). In this chapter we have shown that although he should not be seen as a traditional natural law theorist or natural rights theorist, he is closer to that tradition than has generally been supposed. What implications does this have for the way in which Hobbes should be regarded in the history of political thought? In what follows we shall explore this question and the connected subject of Hobbes's reputation.

i. The Problem: Hobbes's Reputation - The Monster of Malmesbury

We started in Chapter 1 with a discussion of the historical context of Hobbes's writing and some of the assumptions that have been made and continue to be made about his political allegiances during and just after the Civil Wars of the sixteen forties. We pointed out that in the Twentieth Century at least, he has usually been seen as a royalist, a supporter of Charles I and an absolutist.(4) What we know about the reaction of his contemporaries gives us a rather more complicated picture. Where one might expect him to have been vilified by parliamentarians and those running the republic during the 1650s and hailed by royalists, we find instead that first, he was criticized by some royalists who thought that *Leviathan* was written in support of Cromwell (5) and second, that his reputation was becoming so tarnished that by the 1660s even some former friends and admirers were anxious to dissociate themselves from the man and his ideas.(6) The term "Hobbist" came to be used not only as a term of abuse but also as one with an underlying political threat, much as the term "Communist Sympathizer" was used in the United States in the 1950s. To be branded a "Hobbist" was to be associated above all with atheism and in Europe in the latter half of the Seventeenth Century the accusation was a serious and destructive one. Samuel Mintz starts the preface to his 1962 book on contemporary reactions to Hobbes by illustrating this point.

> Hobbes was the *bete noire* of his age The principle objection to him, the one to which all other criticisms of him can ultimately be reduced, was that he was an atheist. He was the 'Monster of Malmesbury', the arch-atheist, the apostle of infidelity, the 'bug-bear of the nation'. His doctrines were cited by Parliament as a probable cause of the Great Fire of 1666. His books were banned and publicly burnt, and the ideas which Hobbes expressed in them in his lucid and potent style were the object of more or less continuous hostile criticism from 1650 to 1700. (Mintz 1962, vii).

The contemporary reaction to Hobbes's political theory (and indeed to all his philosophical writings) is inextricably tied up with the reaction to his perceived atheism and the need, even for those who did not think Hobbes *was* an atheist, to take account of the dangers of being associated with atheism. "It was not, . . . easy to acknowledge debts to Hobbes, and much safer to attack him. To claim the 'Monster of Malmesbury' as an ally was to court danger. . . . to be a Hobbist was identified with atheism, loose-living, and self-centredness." (G.A.J. Rogers in Rogers and Ryan ed., 1988, 3). This makes it difficult to unravel the political response to his theory from the religious or prudential response and equally difficult to discern the true impact and influence of the theory on contemporary thought. For while his critics (and even some of his admirers) castigated his work in public, some of them seem to have taken it more seriously than they admitted, because in method and sometimes also in content, there are contemporary writers who demonstrate Hobbes's influence. On the point about the use of Hobbes's method Mintz says,

> Hobbes's impact was subtle: he provoked intense hostility, but he also obliged his critics to employ his own method of rational argument. Their absorption of his method while they resisted his ideas is an extremely interesting feature of seventeenth-century rationalism. (ibid., pviii).

An example of the use of Hobbes's method by those who resisted his ideas is given by Noel Malcolm in his "Hobbes's Hidden Influences" (Rogers and Ryan ed. 1988) which will be discussed in greater detail below. In discussing the Cambridge Platonist Henry More, Malcolm says

> . . . in 1668 we find Henry More at long last publishing his moral philosophy, and the form in which he chose tc exhibit it is that of the geometrical method. We may agree immediately that the content of the work is far from the ethics of Hobbes. But the form of its presentation is similar, and I believe significantly so. . . . the geometrical style is unmistakenly, if reluctantly, present. It makes itself apparent from the first definition of Ethics as 'the art of living well and happily' through the twenty-three 'Noemata' or axioms, offered as clear and self-evident truths, no sooner understood than agreed. (Malcolm in Rogers and Ryan ed. 1988, 200/201).

More was no friend or admirer of Hobbes, indeed "much of his writing was directed against the threat of atheism as he saw it especially in Hobbes." (ibid., 200) and yet as we can see he did not escape Hobbes's influence. We shall see when we discuss Hobbes's relationship with the Royal Society below, how complicated his relationship was with other scientists and thinkers of his time and how his changing reputation changed some of those relationships.

ii. Acquiring a Reputation

From the 1650s onwards it is difficult to separate what people really thought of Hobbes's work from what they felt obliged to say in order to avoid being branded

atheists. To try to make sense of Hobbes's transition in the public eye from respectable scientist and tutor to the Earls of Cavendish and the Prince of Wales, to the "Monster of Malmesbury" whom very few wanted to be associated with; and to separate public posturing from the true reactions to and influence of his political theory, we shall look first, at Hobbes's relationship with the Royal Society and some of the men of the 'new science' who were its first elected fellows. In the history of Hobbes's relationships with some of these men we can trace the progression of public attitudes to Hobbes from respect to contempt.

The venom with which Hobbes and his work was treated by many contemporaries and near contemporaries has muddied the waters when it comes to assessing his reputation, his influence on other writers and his place in history. Mintz, for example, lists 104 works written against Hobbes in England between 1650 and 1700 (Mintz 1962, 157) and as Rogers says even this long list cannot be regarded as comprehensive (Rogers ed., 1995, xii, footnote 1). Such an outpouring of criticism has led many people to conclude that Hobbes was wildly out of step with his contemporaries and the thinking of his time. What we shall demonstrate below is that far from being out of step with current thinking, Hobbes was actually often too close for comfort to the thinking of those leading intellectuals of his time who were anxious to protect their reputations from the accusation of atheism.

The Royal Society

Hobbes's failure to be elected a fellow of the Royal Society (6) in spite of being a leading exponent of the new science is an example of what could be seen as something requiring explanation except that because of the controversy surrounding Hobbes it has usually been explained as a natural part of Hobbes's failure to be accepted in his own time because of his controversial views on religion, combined with personal enmities with some of the fellows with whom he had scientific disagreements.(7) [There have been some additional explanations such as Quentin Skinner's in 1969 that Hobbes was a "club bore", which Malcolm rejects (Malcolm in Rogers and Ryan ed. 1988), although he mentions some evidence for this sort of explanation, one example of which is in the form of Sorbiere's account of a visit to England in 1663.(8) Recounting a conversation with Charles II, Sorbiere said they had agreed that if Hobbes had been a little less dogmatic he would have been very useful to the Royal Society (ibid., 48/49)].

In his 1988 article on Hobbes's relationship with the Royal Society, (ibid.) Noel Malcolm questions the reasons for Hobbes's rejection and traces his relationships with various members of the Society before and after its formation in 1660. Malcolm makes the following comment on the standard explanation of Hobbes's exclusion from the Society, that he had made enemies of several of the founding fellows and that they kept him out.

> The true explanation, in other words, should be in terms of the particular, the commonsensical, and the all-too-human, as opposed to large-scale explanation in terms of fundamental ideological or religious issues dividing Hobbes from the Society. I would want to agree very strongly on the importance of these human contingencies; but I shall try to argue that such an explanation still leaves something unaccounted for, and that we must have some recourse to the large-scale categories of what may be loosely called ideology. And I shall also try to argue that a proper understanding of those wider issues does not involve falling back into the old-fashioned, straightforward explanation in terms of Hobbes's unacceptable heterodoxy; (ibid., 45/46).

He goes on, (referring to Skinner's 1969 article on Hobbes and the Royal Society (9)) "When Professor Skinner writes that a handful of fellows managed to keep Hobbes out, we want to know why this was such an apparently easy thing to do, given that Hobbes had more than a handful of friends and admirers in the Society." (ibid.) Malcolm looks at the history of Hobbes's relationships with some of the fellows and points out that three central figures in the Oxford Experimental Club, which is often seen as the main forerunner of the Royal Society, and of which Hobbes was a member (10), all had "high opinions of Hobbes's importance as a (sic) exponent of the new philosophy." (ibid., 53).

> In these men's eyes Hobbes was a man of the present - and, where his works were concerned, of the future. But he was also a figure to be respected because he represented the older generation of English scientists and mathematicians, men such as Walter Warner and William Oughtred. Remnants of the intellectual world of Great Tew and Oxford in the 1630s lingered on in Oxford and elsewhere, and added depth to Hobbes's reputation: . . . It is worth remembering that in 1650 they looked up to Hobbes, both as a Grand Old Man and as an innovator of whom much was to be expected. (ibid., 54).

Malcolm calculates that out of 56 fellows who joined the newly-formed Royal Society before March 1661, "no fewer than 15 are known to have been friends of

Hobbes, or members of his circle of patrons, or admirers of his works. And if we look back over the previous dozen years or so at the pattern of Hobbes's friendships and acquaintances, we find that he had belonged (and to some extent still did belong) to some of the main groupings of writers, philosophers, and practicing scientists among whom the origins of the Royal Society are usually identified." (ibid., 51).

When we consider this network of relationships and the esteem in which Hobbes must have been held in order to have had such relationships with leading members of the scientific and philosophical community of his time; his exclusion from the Royal Society becomes very much more puzzling. Malcolm raises an interesting question - why did Hobbes's friends never try to get him elected? It makes sense that those with whom he had acrimonious disagreements such as Boyle and Wallis (11) would not want him as a member, but why did his supporters and friends never try to get him elected? Would it not have been natural for them to argue against Hobbes's "enemies" in favor of Hobbes being made a fellow? Malcolm tells us that such an attempt was never made, "this despite the fact that Hobbes was on good terms with the King, whose patronage the fellows were keen to secure and strengthen, and despite the fact that Hobbes was perhaps the only living scientist . . . who had direct personal relations with Bacon, the Society's patron saint and arch-bestower of intellectual respectability." (ibid., 51).

Malcolm notes that Hobbes's relationships with some future members of the Royal Society changed quite dramatically during the 1650s. He remarks that while in the 1640s "[Hobbes] was thought of by many people principally as a scientist, and

that his reputation stood extremely high, on the basis of very little published work" (ibid.,) and even in 1650 there was a great deal of demand for works by Hobbes (12), yet by 1654 he was being publicly attacked by former admirers Seth Ward and John Wilkins, in their *Vindiciae Academiarum*, in which they implied that he was "dogmatic, magisterial, ignorant, unoriginal and out of date" (ibid., 55). Attacks on his theology followed starting with Ward in his *In Thomae Hobbii Philosophia Exercitatio Epistolica* . What had happened between the late 1640s and 1654 to explain this change in attitude? One factor Malcolm points to is Hobbes's criticism of the universities in *Leviathan* which had to be taken seriously as the *Barebone's Parliament* (13) had made a proposal to abolish the universities altogether (Seth Ward and John Wallis were both professors at Oxford). Another factor might be Hobbes's perceived anti-church government stance but Malcolm argues that most Oxford scholars were actually quite close to Hobbes on this subject, with Wallis an exception. The picture Malcolm paints is of the leading scientists and intellectuals of the time being almost forced to dissociate themselves from Hobbes as he acquired a reputation for heterodoxy. This was not so much because they were genuinely critical of Hobbes's ideas, on the contrary Malcolm suggests that they were sometimes "embarrassingly close" to his position, but rather because they needed to protect themselves and the new science from being stained by Hobbes's increasingly bad reputation. "[I]t was precisely because Hobbes still appeared in 1654 as an authoritative speaker on behalf of the new science that Wilkins and Ward took such trouble to attack him." (ibid., 54). "Hobbes's reputation for heterodoxy was growing

gradually during this period; Ward could see which way the wind was blowing, and decided that attack was the best form of dissociation; and he needed to dissociate the new science from Hobbes precisely because Hobbes was such a major spokesman of it." (ibid., 55).

After the Restoration in 1660, when the Royal Society was formed (on 28 November), the fellows were anxious to show that their views were not a threat politically or religiously.

> Hobbes was becoming an increasingly disreputable figure, both politically and theologically; and the people who felt that it was most in their interests to blacken his reputation further were the ones who were vulnerable to embarrassing comparisons between his position and their own. Most modern descriptions of the early years of the Royal Society still fail to give a sufficient sense of just how nervous of criticism the publicists of the Society were. The whole of Part III of Sprat's *History* , for example, is taken up with arguing that the Society is not a danger to government, manners, education, or religion; Sprat's words are so convincingly soothing that we may tend to forget that there *was* a great mass of hostile opinion that needed to be soothed. Critics associated the new science with Epicureanism and atheism, and these were not just the hysterical fears of the ignorant outsiders: this problem deeply exercised the minds of Fellows such as More and Boyle. Critics attacked the Latitudinarianism of some of the principal publicists of the Royal Society, seeing a link between their claims on behalf of reason in natural knowledge, and the rationalism of their religious views, which demoted doctrinal differences and questions of divinely ordained church-government in favour of moral virtues, peace, and comprehension. And critics insinuated that just as their views implied an 'indifferency' in questions of church-government, so too they implied an 'indifferency' in politics. (ibid., 60).

We can conclude that Hobbes was part of a larger and more complicated set of religious and political controversies than anything he had caused on his own. He was caught up in the conflict between the emerging rationalistic new science, and the religious and political ideologies of rational, individualistic liberalism that they were

bringing about; and the old order of orthodox theology and scholastic philosophy. The divine right of kings and the doctrine of obedience to all superiors were part of an ideology that was still deeply entrenched in many of his contemporaries, but it was increasingly being challenged by new ways of thinking. Once the unthinkable act of regicide had taken place in 1649 it must have seemed to some as though anything could happen. Unfortunately for Hobbes he was at least partly used as a scapegoat by the men of the new science and others. By attacking Hobbes they seemed to be attacking atheism and everything in the new thinking that was perceived as threatening. And by protecting their own reputations in this way they created the intellectual freedom for themselves to carry on work that had in some cases been clearly influenced by him.

Friends and Admirers, An Author in Demand

While the forces were gathering against him, Hobbes still had many friends and admirers and his works were still much in demand. It is important if we are to have a true picture of Hobbes's place in history, to balance the mention of some of those who wrote against him with some famous examples of people whose admiration for his work and respect for the man was not diminished over time. Perhaps the first and most obvious example is the family of the Earls of Devonshire with whom Hobbes lived for much of his life and who remained his patrons and supporters until his

death. The loyalty of such people as these could be said to be of a purely personal nature and have nothing to do with Hobbes's work, although his intellectual gifts were much admired by the family. Father Marinne Mersenne, however, who was himself a well-respected scholar, welcomed Hobbes into his circle of scientists and intellectuals in Paris in the 1640s and arranged for Hobbes to write one set of the objections to Descartes' Meditations. He also stayed a close friend and admirer until his death in 1648. Pierre Gassendi, likewise, a philosopher himself and fellow contributor to the sets of objections to Descartes' Meditations, who also moved in the circle around Mersenne in Paris was also a close friend and admirer of Hobbes. He reportedly received a copy of Hobbe's *De Corpore* when on his deathbed in 1655 and "greeted it with a kiss". (Malcolm 1994, Vol. II, 836). Samuel Sorbiere, also a scholar and publisher in his own right, and another member of the Paris circle, organized two printings of *De Cive*, wrote generously about Hobbes and visited him during his trip to England in 1663.(see note 8). After returning to France he then went to Amsterdam to negotiate the publication of a Latin edition of Hobbes's collected works. During the same trip, it is interesting to note that he had the conversation with Charles II mentioned above, where he referred to Hobbes as being too dogmatic for the Royal Society and was, interestingly, himself created a fellow of the Royal Society on the same visit, on June 22 1663.

John Aubrey is another example of someone whose admiration for Hobbes continued throughout his life and it is of course in his *brief lives* that we have one of the most valuable contemporary sources of biographical material about Hobbes.(see

Leviathan ed., Curley 1994, for excerpt on life of Hobbes). In 1663 Aubrey was also made a fellow of the Royal Society. This was, according to Malcolm, "a proper reflection of his interest in all kinds of learning (not merely antiquarian or topographical), including medicine, mathematics, and Baconian natural history." (Malcolm 1994, Vol. II, 780).

A comprehensive list of Hobbes's friends and admirers would be a good deal longer than the above but these few names suffice to illustrate the point that there were men, learned in the new science and philosophy who took Hobbes seriously and greatly admired him through the ups and downs of his public life. Hobbes's works were also much in demand during the period in spite of all that was written and spoken against him. As Macpherson points out:

> Certainly Hobbes's political books were bought. Most of them went through three editions very soon after publication. . . . Seventeen years after its first publication there was a brisk second-hand bookseller's market for it: Pepys's *Diary* has an entry for 3 September 1688: 'To my bookseller's for "Hobbes's *Leviathan*" , which is now mightily called for: and what was heretofore sold for 8s. I now give 24s. at the second hand, and is sold for 30s. it being a book the Bishops will not let be printed again." (Macpherson ed., 1968, 23/24).

Hobbes's reputation, then, was about as mixed as a reputation could be. He was respected and admired by men who were at the forefront of the new science and who were themselves well known scholars. He was supported and cared for most of his life by one of the leading aristocratic families in the land and his books were in great demand despite the dangerously controversial nature of some of their subject matter. (One biographer made the claim in 1691 that *Leviathan* had "corrupted half the

gentry of the nation", Anthony à Wood, *Athenae Oxoniensis* , quoted in *Leviathan* ed., Macpherson 1968). And yet at the same time, Hobbes was castigated by many during and after his lifetime. As his reputation for heterodoxy grew so did the list of people prepared to criticize him publicly. He also got entangled in lengthy and destructive disputes with people such as Bramhall, Wallis and Boyle and shortly after his death (1679) in 1683 *De Cive* and *Leviathan* were condemned and burned at Oxford.

It is out of this confused and complicated picture that we must try to ascertain how we should regard Hobbes today and one important element of that regard will be where he fits into the history of political thought. This in turn depends on how we interpret the theory and our interpretation of the theory will affect how we judge its influence. In other words if we decide that Hobbes is an absolutist with a weak theory of natural rights then he doesn't fit in to the liberal tradition of political theory that emphasizes individual rights and it looks as though he had very little influence say, on Locke. If, on the other hand we are right in arguing that he is not an absolutist and that he has a strong theory of individual rights then it seems we should place him either in the liberal tradition or as a forerunner of it and it starts to look as though he may have had a strong influence on Locke. This is to put the matter rather crudely and we shall try to answer more clearly in the next section, the question of Hobbes's rightful place in the history of political thought and make some suggestions concerning his possible influence on other thinkers.

iii. History Revised; Hobbes, his Theory and its Influence

The misinterpretation of Hobbes's theory has compounded the tendency to minimize his place in the history of political thought. If he is an absolutist, "The most famous apologist for absolute sovereignty to emerge in this period was, of course, Thomas Hobbes", (Smith 1994, 248) (see also, e.g. Martinich 1995, 5, Tuck 1979) and has a weak theory of rights, then, as we have said, he does not fit consistently into our view of our history, and particularly into subsequent political thought - the tradition of Locke's political theory, natural rights, constitutional monarchy, and the subsequent egalitarianism and individualism of the American and French revolutions; the tradition, in other words, of liberal political philosophy. He seems, rather, to be an anomaly, an awkward link between divine right theory and liberal political theory, a philosophically sophisticated writer who falls back on absolutism and authoritarianism in his justification of the state; a contractarian who justifies an absolute monarchy! But, once we recognize the centrality of his theory of rights and realize that this places a check on the power of the sovereign; (14) as we argued in Chapter 3 (see particularly the section on Hampton), then we can start to question the common view and see that he does, after all, fit into the liberal tradition to a greater extent than has generally been thought. Hobbes makes the lives of the subjects more important than the continuing power of the sovereign. If the sovereign's failure to protect the lives of his subjects releases them from their obligation to obey him then

his power is dependent upon his ability to protect his subjects. Further, if we grant that Hobbes must be allowing that it is the subjects who will make the judgment about when they are sufficiently unprotected to have the right to disobey the sovereign, then the subjects' exercise of their right to preserve themselves does indeed limit the power of the sovereign. We can also start to think about Locke in a slightly different way, not so much as the writer who kicked off liberal political theory just under forty years after *Leviathan,* but perhaps as the person who was influenced by the importance which Hobbes gives to the notion of (natural) rights, particularly his use of the inalienability of some rights. He might have developed his own theory to some extent as a response to Hobbes, not in the way that others have argued, i.e. as a reply to or refutation of Hobbes's absolutism, but rather as an improvement on a theory that he has some sympathy with. There have, of course, been commentators who have pointed to the influence of Hobbes on Locke in various ways, of which we shall say more below. What is different in our analysis is the denial of absolutism in Hobbes and, what follows from that, in terms of his influence.

What makes it particularly difficult to discern the extent of Hobbes's influence on other writers is their frequent reluctance to admit any influence or often even to admit that they had read Hobbes's work! The task is sometimes easier with people who were writing on the continent such as Pufendorf and Leibniz, who were happy to acknowledge debts to Hobbes.(15) Macpherson, in the introduction to his 1968 edition of *Leviathan* says the following:

> . . . the received picture of Hobbes as an isolated thinker, rejected by his contemporaries, without influence in his own time either on the reading public or on other political writers, and thus outside the main stream of political thought in the seventeenth century, is false. It is true, as we have noticed that his doctrine displeased many politicians and churchmen. Several of them launched weighty published attacks on it. They did so because they regarded it as dangerous, and as some of them made clear, they thought it dangerous because of the widespread acceptance it was attaining among the reading classes: . . . there is considerable evidence that Hobbes's central political doctrine had been received and ingested, much more fully than is generally recognized, into the main stream of serious political thinking in his own lifetime. (Macpherson ed., in Hobbes 1968, 23/24).

This is itself a controversial view of Hobbes and his influence, although there has also been some recent work in this vein, for example Rogers' 1988 article on "Hobbes' Hidden Influence" (in Rogers and Ryan ed. 1988) and the article in the same collection by Malcolm, already extensively quoted from (see above, Hobbes and the Royal Society). Both Rogers and Malcolm argue that Hobbes's writing was closer to the mainstream of contemporary philosophical thought than has often been thought to be the case. Rogers makes the following comments about the effect of Hobbes's reputation for atheism on reactions to his work by contemporaries,

> I wish to identify a likely consequence of this reputation for the reception of Hobbes in later seventeenth-century England. With such a reputation it seems reasonable to suppose that even when people read Hobbes they were unlikely to admit that they had been influenced by him, except in the sense that they might denounce him or at least one of his accursed doctrines. Few, that is, would admit either openly, or even to themselves, that Hobbes might have exercised any positive influence on them. Few, that is, would have been prepared to acknowledge that they might be in any way indebted to him. But the question which arises, and to which this paper is addressed, is whether Hobbes was nevertheless influential, albeit unacknowledged and unacknowledgeable. May we detect the fingerprint of Hobbes in the writings of those who would have wanted no such thing? (G.A.J. Rogers in Rogers and Ryan ed., 1988, 189).

Rogers focuses on Hobbes's ethical theory on account of its originality; "[t]here can be no doubting the originality of Hobbes's ethical system. The application of the geometric method, the axiomatization of moral principles, was a powerful new weapon in the armoury of the philosopher." (ibid., 199). In other words if people are going to be influenced by Hobbes's ideas, here is a likely area. Leibniz had made a similar comment, saying that Hobbes was the only person to have constructed anything like a demonstrative science of moral philosophy. (Malcolm 1994, 846). What Rogers argues is that people did "borrow Hobbes's good ideas without acknowledgment and even used them to attack him." (Rogers in Rogers and Ryan ed., 1988, 199). One of those Rogers picks out as having been influenced by Hobbes without wishing to acknowledge it is Locke. In writing about his belief in the possibility of a demonstrative ethics, Locke reveals, as Rogers points out, an uncanny closeness to Hobbes.

> The idea of a supreme Being, infinite in Power, Goodness, and Wisdom, whose Workmanship we are, and on whom we depend; and the *Idea* of our selves, as understanding, rational Beings, being such as are clear in us, would, I suppose, if duly considered, and pursued, afford such Foundations of our Duty and rules of Action, as might place *Morality amongst the Sciences capable of Demonstration:* wherein I doubt not, but from self-evident Propositions, by necessary Consequences, as incontestable as those in Mathematicks, the measures of right and wrong might be made out, to any one that will apply himself with the same Indifferency and Attention to the one, as he does to the other of these Sciences. (ibid., 203).

It has been argued before that Locke is closer to Hobbes than has been thought. Peter Laslett, for example, argues, in his 1964 introduction to Locke's *Two Treatises of Government*, that despite an extraordinary lack of evidence to show that Locke

read Hobbes or thought about his work, (16) he was never-the-less close to Hobbes on some issues. In *An Essay Concerning Human Understanding*, for example, he "shows clear signs of proximity to Hobbes, even on the critical subject of property and justice. 'Where there is no property there is no injustice' is a proposition as certain as any demonstration in Euclid." (Laslett in Locke, 1964, 72). This does indeed echo Hobbes in Chapter 13 of *Leviathan* (17). So, with Locke we can see that despite what appear to be fairly strenuous efforts to deny any interest in or influence by Hobbes, "'I am not so well read in Hobbes or Spinosa', he said in 1698, and made an ironical comment about 'those justly decried names'" (ibid., 73), we have evidence of what appears to be quite a strong influence. Laslett puts it in the following way:

> He seems to have been in the curious position of having absorbed Hobbesian sentiments, Hobbesian phraseology in such a way that he did not know where they came from: his early reading, never repeated, perhaps; or other men's books and the general discussion of Hobbes; or both.
>
> The exact literary relationship between the two men, then, is an interesting and intricate study. Locke never escaped the shadow of *Leviathan*, and in the controversy over his views on Christianity which grew so violent in the late 1690's he found himself directly accused of reproducing Hobbesian positions. (Ibid., 72).

We will never know how Locke "absorbed" Hobbesian sentiments or views but we do seem to be able to detect an influence whether conscious or not. Where we part ways from the view taken by Laslett, however, is when he draws a line between Locke and Hobbes on the question of absolutism. We should mention that the context of Laslett's discussion of the possible influence of Hobbes on Locke is that

Laslett is arguing that Locke was attacking Filmer when he wrote the *Two Treatises on Government* rather than, as had previously been suggested, attacking Hobbes. Laslett claims that it would have been pointless for Locke to "produce one more criticism of Hobbes, the most rejected, and politically the least important, of all the absolutist writers." (ibid., 67). So, in arguing that Locke was really attacking Filmer when he wrote the *Two Treatises*, Laslett also argues that, though not directly attacking Hobbes, Locke was clearly influenced by him and had even "absorbed" some Hobbesian sentiments if not doctrines. But what prevents Laslett from taking this latter argument any further is his conviction that Hobbes is an absolutist.

> Locke rejected Hobbesian absolutism along with Filmer's, of course: the word 'Leviathan' occurs in his *Second Treatise* , and there are phrases and whole arguments which recall the Hobbesian position, and must have been intended in some sense as comments upon them. Moreover, the thinking of Hobbes was of systematic importance to Locke and enters into his doctrines in a way which goes much deeper than a difference in political opinion. But this cannot alter the fact that Filmer's tracts occupy for the *Second Treatise* the position which has been traditionally reserved for the works of Hobbes. (ibid., 67/68).

And Laslett goes further.

> . . . Hobbes and Filmer shared nearly every one of the attributes of absolutism as it was rejected by the English parliamentarians - will as the source of all law and the form of all authority, the necessity of perpetual and absolute submission to the arbitrary dictates of an indivisible sovereign, the impossibility of mixed government. (ibid., 70).

This view of Hobbes as an absolutist, close to the position of Filmer, has already been shown to be at least open to question, in Chapter 1 and Chapter 3 above. And we can now see the point that we began with in this section clearly illustrated, that

the mistaken analysis of Hobbes's theory as absolutist causes a distortion in the picture of his influence on other writers. There is something strained, for example, in the way Laslett has to reconcile Locke's apparent influence by Hobbes and his closeness to some of Hobbes's doctrines, with his conviction that actually Hobbes is very close to the position of Filmer, whom Locke is trying to refute.

This might become clearer if we look again at what has been said above:

1. Locke's intention in the *Two Treatises* was to refute Filmer's defense of divine right theory

2. Locke was not trying to refute Hobbes

3. Hobbes's political theory is very close to Filmer's

4. Locke was reluctant to admit to any influence by Hobbes, probably because of Hobbes's reputation for atheism

5. There are detectable influences of Hobbes in Locke's writing on the levels of sentiment, method and *doctrine*

Number 5 above seems to be in conflict with number 3. If we take out 3, then there is no conflict.

If the evidence shows that Locke, or any other writer, was influenced by Hobbes and may have accepted some of his doctrines and this writer is an anti-absolutist then as long as Hobbes is believed to be an absolutist there is a limit to how extensive the influence of Hobbes will be seen to be. An influence might be admitted on certain doctrines or points of minor importance but it will never be said that a

writer is carrying Hobbes's ideas forward or developing his ideas. Such an influence could not be granted to one whose political theory is seen as fundamentally in opposition to that of the writer. (Of course it is possible to detect the influence of another writer on someone's writing even if the person is trying to refute that writer. But if the intention is to refute writer A, particularly in the case of a political doctrine, then the assertion of an influence of writer A on writer B can only be taken so far. We can say for example that Marx was influenced by Hegel but not that he was carrying on Hegel's doctrines or even his method.) If, on the other hand, we have been right in saying that Hobbes is not an absolutist and if we are right about the importance of his theory of rights then it is possible to argue that a writer such as Locke may well have been deliberately developing some of Hobbes's ideas while expressly denying any such influence because of Hobbes's reputation for atheism as discussed above. Of course we cannot offer any proof that if Locke was influenced by Hobbes he would have realized that Hobbes was not an absolutist and that he had a strong theory of rights. It is possible that he accepted some parts of Hobbes's thinking and rejected others and we cannot know for sure what he thought of Hobbes's theory, as he was so careful not to refer to it. We must remember, however, that there were people, such as Clarendon and Bramhall, who wrote to the effect that Hobbes supported Cromwell rather than Charles I and so it would not have been unusual at that time to see Hobbes as a non-absolutist and as someone who supported extensive natural rights for the subject. We must remember that it is to our ears that

such a view of Hobbes sounds strange; it did not sound strange to Hobbes's contemporaries.

In his attempt to explain Hobbes's influence on Locke in a way that takes into account their apparently contradictory political positions, Laslett says the following:

> The young Locke may well have gone through an experience which must have been common after 1651, when *Leviathan* appeared, and was much in demand, as Pepys tells us, in spite of its ugly reputation. Hobbes fascinated him, then and for the rest of his life. He found it an effort to reject his doctrine, though he did reject it very early. (ibid., 74).

One can only wonder what this "experience" is that Laslett is referring to. It sounds rather like a notion of tasting forbidden fruit, as though Englishmen went out in droves, in the 1650s, to buy a book full of doctrines which they entirely rejected and yet had an uncontrollable urge to read about. As though Hobbes's ideas held some kind of appeal at the same time as being repellent. This is fascinating psychological speculation, but is it an argument of any kind? Is there any evidence to support the claim of an "experience" Locke and others might have had or to support the assertion that it was an "effort" for Locke to reject Hobbes's doctrine? To fall back on this sort of psychological explanation makes it look as though there was no better explanation to hand and indeed, as we have argued above, this is quite understandable in the light of the tension between the perception of Hobbes as an absolutist and the need to explain what looks like a considerable influence on a writer such as Locke.

Once Hobbes's theory is understood not as an absolutist theory, as the received wisdom has it, but as a more complicated combination of what seem to be absolutist

and authoritarian strains checked by a strong theory of rights and an emphasis on the equality of persons and the importance of the individual; then we can begin to see how the analysis of Hobbes's place in history should change. First, as we discussed above, Hobbes's political theory can be, as it were, put into the history of the theory of natural rights, albeit as a rather veiled and unusual version. Second, we can begin to question Hobbes's influence on other political theorists such as Locke and in tandem to that exercise we can also ask who Hobbes was influenced *by*. It is standard practice to point to Grotius as an influence but it has also been suggested from time to time that the Levellers and other radicals might also have influenced him. Clarendon, for example, when discussing the following passage from *Leviathan*: "the honour of great Persons is to be valued for the beneficence, and the aids they give to men of inferior rank, or not at all; and that the consequence of partiality towards the great, raised hatred, and an endeavour in the People to pull down all oppressing and contumelious greatness;" then comments that "[this is] language lent to, or borrowed from the Agitators of that time." (18) (Clarendon 1676, 181). This clearly accuses Hobbes of sympathizing with some of the positions of the Levellers or other radicals. He also accuses Hobbes of,

> extreme malignity to the Nobility, by whose bread he hath bin alwaies sustained, who must not expect any part, at least any precedence in his Institution; that in this his deep meditation upon the ten commandments, and in a conjuncture when the Levellers were at highest, and the reduction of all degrees to one and the same was resolved upon, and begun, and exercised towards the whole Nobility with all the instances of contempt and scorn, he chose to publish his judgement; as if the safety of the People required an equality of Person, (ibid.).

and after quoting another passage from *Leviathan*; "[g]ood counsel, he says, comes not by lot or inheritance, and therefore there is no more reason to expect good advice from the rich, or the noble, in the matters of State, then in delineating the dimensions of a Fortress;" he comments that Hobbes "is very solicitous, *like a faithful Leveller*, that no man may have priviledges of that kind by his birth or descent, or have farther honour then adhereth naturally to his abilities;" (ibid., 182, my emphasis).

Hobbes's egalitarianism was recognized by contemporaries such as Clarendon as putting him close to the egalitarianism that was advocated by the Levellers and other radicals during the Civil Wars. This point is echoed in a modern commentary by Christopher Hill when he compares Hobbes to Winstanley, the spokesman for the Diggers.

> . . . [B]oth Winstanley and Hobbes were determined to penetrate to the bedrock of politics, to disregard the inessential; . . . they have curiously much in common. Both reject the Bible as a source of political guidance, and indulge in some daring biblical criticism. . . Both were fiercely anticlerical, . . . Both believed in the equality of man." (Hill, 1972, 388/389).

As we showed in Chapter 1, Hobbes does seem close to some of the radicals on the subjects of equality and rights and this raises the question of whether he was indeed influenced by for example, the Levellers or the Diggers. Again, if such an influence could be proven it would considerably alter the position in the history of political thought that Hobbes has usually been consigned to. It would take some detailed historical research to find out whether a case could be made that Hobbes was influenced by the Levellers or Diggers and it is quite possible that the evidence

simply isn't there. This is not to say, however, that it might not be true. It seems from our reading of Hobbes's theory that at least such an influence is not out of the question. It would not conflict with an analysis of the theory that picks out the protection of the rights of individuals and egalitarianism as central features. It is also possible, of course, that the Levellers and Diggers were influenced by Hobbes. *Leviathan* was not published at the time of the Civil Wars but the *Elements of Law*, which shares many though not all of the doctrines of *Leviathan*, was in circulation in manuscript form from 1640.

We have argued for some possible implications of the reading of Hobbes's theory and particularly of his theory of rights, that we have given above. We have shown that we need to rethink Hobbes's place in history, both in terms of the history of natural rights theory, to which we believe he has made an unrecognized contribution, (while at the same time departing from the theological and metaphysical doctrines of traditional natural law theory) and, more broadly, in terms of his place in the history of political thought and political theory. We have argued that he should be repositioned so that he is seen as more truly a part of the tradition of liberal political theory than most commentators have recognized and that his influences on subsequent liberal political theorists such as Locke should be investigated and re-evaluated. In short, the Monster of Malmesbury should be laid to rest and replaced with Hobbes, champion of individual rights and forerunner of liberal political theory.

Notes

1. By entailment here I mean semantic entailment, i.e entailment in the pragmatic sense that contained in the assumptions of A are axioms that could lead to B.

2. Samuel Pufendorf (1632-1694), prominent legal and political thinker, most famous for writing on natural law. Born in Saxony. Best known work, *On the Law of Nature and of Nations in Eight Books.*

3. Christian Wolff (1679-1754) A German philosopher and advocate for secular rationalism in eighteenth-century Germany.

4. See chapter 1, particularly section I,5

5. Clarendon, for example, says in the introduction to *A Brief Review and Survey*. . . ". . . it could not reasonably be expected, that such a Book would be answer'd in the time when it was publish'd, which had bin to have disputed with a Man that commanded thirty Legions, (for *Cromwel* had bin oblig'd to have supported him, who defended his Usurpation;)" (Clarendon 1676, 5). And John Wallis who, as Mintz points out had seemingly forgotten that he himself had served Cromwell as a cryptographer, said that *Leviathan* "was written in defence of Oliver's title, or whoever, by whatsoever means, can get to be upmost' (Wallis, *Hobbius Heauton-timorumenos*, Oxford, 1662, quoted in Mintz 1962, 13).

6. See for example the section in this chapter on Hobbes and the Royal Society.

7. Sommerville, for example says "Hobbes' reputation for heresy and atheism made it prudent for those whose views were (on some questions) uncomfortably close to his to dissociate themselves from him, and it is likely that this is why he was never elected to the Royal Society." (Sommerville 1992, 26) On disagreements Douglas Jesseph says "The principle form of Hobbes's confrontation with Britain's dominant scientific methodology was his prolonged and bitter dispute with Robert Boyle. . . . this exchange led to others, and Hobbes's once-considerable reputation as a natural philosopher was destroyed in the ensuing controversy. (Jesseph, *Hobbes and the Method of Natural Science* in Sorell ed. 1996). Tuck takes a rather different view by claiming that Hobbes was contemptuous of the science being done by members of the Royal Society, "The appearance in his lifetime of something resembling the practice of modern science, notably in the form of what Robert Boyle and the early members of the Royal Society were up to, attracted from him nothing but derision . . . The reason for his contempt was twofold. The first was that for political reasons . . . he mistrusted any privileged body of intellectuals who might come to have some kind of independent ideological authority over their fellow citizens-and presciently he saw

that modern scientists might form just such a new priesthood. . . . The second reason was that he mistrusted any great reliance on experimental evidence to prove the truth or falsehood of scientific theories. (Tuck, 1989, 49).

8. Samuel Sorbiere (1615-1670), friend of Hobbes, moved in Mersenne's circle in Paris.He studied medecine and the physical sciences. He organised the printing of second and third editions of De Cive. He travelled to London in June 1663, visited Hobbes, had an audience with Charles II and was created a fellow of the Royal Society.

9. Thomas Hobbes and the Nature of the Early Royal Society, Historical Journal, 12 (1969), 217-39

10. Seth Ward, in 1650 Professor of Astronomy and a leading figure in the Oxford experimental club, Ralph Bathhurst, firend and fellow-scientist of Ward, William Petty, another active member of the Oxford experimental club and "a lifelong friend and admirer of Hobbes" (Rogers and Ryan ed. 1988, 53).

11. Hobbes tangled famously with Boyle about Boyle's experiments with air pumps. See Shapin and Schaffer, *Leviathan and the Air-Pump*, and note 7. above. and with Wallis about mathematics, particularly about whether the circle could be squared. See Hardy Grant *Hobbes and Mathematics*, in Sorell ed. *The Cambridge Companion to Hobbes*, 1996.

12. Malcolm refers to the eagerness with which Hobbes's printed works were awaited both on the continent and in England in the late 1640s and even into the early fifties. See Malcolm in Rogers and Ryan ed., 1988, p51-54 and Pepys mentions in his diary that the price for a second-hand copy of *Leviathan*, which was much in demand, had gone up considerably. (See following section on "Friends and Admirers, an Author in Demand", in this chapter).

13. The *Barebones Parliament* was a new Parliament selected by Cromwell in 1653 after dismissing the Rump Parliament which had been sitting since Colonel Pride had purged the Long Parliament in 1648 after the defeat of Charles I by the Parliamentarian army.(He purged Parliament of 96 Presbyterian members leaving only 60).

14. "The Obligation of Subjects to the Soveraign, is understood to last as long, and no longer, than the power lasteth, by which he is able to protect them. . . . The end of Obedience is Protection; which, wheresoever a man seeth it, either in his own, or in anothers sword, Nature applyeth his obedience to it," (*Lev.* 21, 21).

15. For Pufendorf see section 2.i, c, in this chapter. Leibniz (1646-1716), showed great interest in Hobbes's work as early as in his dissertation for his bachelor's degree. In 1666 he referred to Hobbes as "[t]hat profoundest examiner of basic principles in all matters, [who] correctly proposed that every operation of our minds is a computation." (Malcolm 1994, 846). In 1671 he wrote in a letter "I am immersed as deeply as anyone in the philosophy of Hobbes's *De cive*. For me, all his points are diligently considered and thoroughly reasoned." (ibid.).

16. ". . . it cannot be shown that when he wrote Locke had had any recent contact with *Leviathan* or with any other work of Hobbes at first hand. If it were not for the passages in the *Second Treatise* which are Hobbesian in flavour or seem to have been directed particularly at him, we should not know that Locke was concerned in any way with Hobbes as a thinker at that time, for his notes, his diaries, his letters, his book lists and purchases show no sign of such an interest." (Laslett ed., in Locke 1964, 71). Laslett notes that Locke lent his copy of *Leviathan* in 1674 and didn't get it back until 1691 and that he owned no other political or philosophical work written by Hobbes. He also points out that "[t]he cumulative body of Locke's notebooks is very considerable, and it consists to a very large extent of citations of the books of other men, referenced and and arranged with monumental carefulness. It is a remarkable fact that it has not been possible to find a single referenced extract from the works of Hobbes in the whole Lockeian corpus. Only one citation has so far come to light, and that is not found in a notebook, but on the flyleaf of a volume in his library, published in 1668: even then the famous passage from *Leviathan* written there is given without its source, and might appear to the unwary reader to have been a sentiment written by Locke himself." (ibid., 73/74).

17. "To this war of every man against every man, this also is consequent; that nothing can be Unjust. The notions of Right and Wrong, Justice and Injustice have there no place. . . . It is consequent also to the same condition, that there be no Propriety, no Dominion, no *Mine* and *Thine* distinct; but onely that to be every mans that he can get; and for so long, as he can keep it." (*Lev.* 13, 13).

18. The Agitators were soldiers in the parliamentarian New Model Army, who were part of the Leveller movement and chosen specifically to whip the men up to political fervour.

CONCLUSION

Further Implications of Hobbes's Theory of Rights

The interpretation of Hobbes's theory of rights that we have argued for differs from any of the usual interpretations. Perhaps Strauss comes the closest, but although he stresses the importance of rights for Hobbes, he does not give the detailed analysis of particular rights that we have tried to give here. Because the "reading" on rights is different to that usually given by Hobbes scholars, we will now, in conclusion, say something about the further implications of this "reading" for the interpretation of Hobbes' political theory. In other words, we are asking - does the interpretation of rights in the theory that has been given here, effect the way we should interpret the theory in general or any other aspects or parts of the theory? In our concluding remarks we will suggest one area where it should make a difference and one area where it need not change the commentator's overall interpretation.

The Political Theory

The first area is that of the political theory in its purest sense; Hobbes's argument for Government. What we have said about rights will affect what we can say about the kind of government he is arguing for. We have already mentioned in Chapters 2 and 3, in the context of our discussions of Hampton and Tuck and in Chapter 4, in a more general discussion, the fact that Hobbes is interpreted by many modern commentators as giving an argument for *absolute sovereignty*. We have argued against that interpretation, to the conclusion that Hobbes's theory is not absolutist and that he actually ensures that the sovereign does *not* have absolute power. (see Chapter 3, particularly section on Hampton). Hobbes's theory of the rights of individuals checks the power of the sovereign and that is why the analysis that we have given, if correct, will affect the interpretation of Hobbes's political theory.

Hobbes's theory should not be seen as absolutist in the light of the arguments that have been given in Chapters 3 and 4 above. If the analysis of rights that we have given is accepted and if it is also accepted that Hobbes makes the *subjects* the judges of whether the sovereign is adequately protecting those rights, then the sovereign's power is clearly limited. The subjects have no obligation to obey a sovereign whom they judge to be failing to protect them and therefore it is in the subjects' power to decide whether or not the sovereign should rule. (Or at least they can decide whether the sovereign will rule as a sovereign by institution; Hobbes allows for the possibility

that the subjects may be conquered by a sovereign who they will obey in exchange for his protection. But presumably if the conquering sovereign then fails to keep the peace or to protect the right of the subjects they will become free again at some point to withdraw their allegiance from him.). If we are right in arguing that the sovereign's power is limited in these ways then he does not rule with absolute power and nor do the subjects completely submit themselves to the sovereign.

This has implications for many readings which specifically endorse the view that Hobbes supports absolutism. Indeed some writers use his supposed support of absolutism to argue for further interpretations of the theory. Tuck, for example, as we have already discussed in some detail in Chapters 2 and 3, uses Hobbes's supposed support of absolutism to argue his case that Hobbes should be included amongst the group he has called "conservative rights theorists". On the other hand, the assumption of absolutism has led to a view that ignores or explains away evidence of anything in the theory that would conflict with absolutism, such as a strong theory of individual rights, an implied right of rebellion or a radical egalitarianism. If the assumption of absolutism is given up it clears the way to a reading of the theory that can include these elements without analyzing them as signs of weakness or inconsistency.

We will now turn to the second area of Hobbes's theory mentioned above; the moral theory, where our arguments on rights may be accepted by commentators with differing readings of the moral theory, without conflicting with the reading itself.

The Moral Theory

We have tried, in the argument we have set out about rights in Hobbes's theory, not to get involved in the debate about what sort of moral theory Hobbes proposes in *Leviathan*.; we have even, for the most part, avoided the language of that debate, saying little about objectivity/subjectivity, consequentialism v deontology etc. (except in Chapter 2 where some reference to moral concepts was necessary while explaining, for example, Hampton's argument about rights). To this end we have also been careful to avoid specifying as *moral* duties, those duties that are correlated with what we have called claim rights. There are, of course, different kinds of duties or obligations, some of which are straightforwardly moral and some of which are not, depending on their grounds. ("Duties can be moral, legal, parental, occupational, etc., depending on their foundations or grounds. Audi, ed. 1995, 213). Included in those kinds of duties that are not necessarily 'moral' would be, say, a list of my duties as a janitor. These duties might include the mopping of floors at particular intervals and the disposing of garbage into the appropriate dumpster. There is some sense in which these duties are nothing more than tasks that form part of the requirements of the job. They could indeed be renamed "tasks" or "jobs to be done" without losing any of the meaning that they had when they were called duties. Someone might argue that I have a moral obligation to perform my duties if I have accepted the job. But this is a different point. Here the moral obligation would exist because I have contracted or

'promised' to perform certain duties and because I have made a contract or a promise I am therefore obliged to keep it. Leaving that point aside for the moment, let us say that my duties as a janitor, could be renamed "jobs" or "tasks" or "requirements of the job of janitor". It seems that we can safely say that my duties as janitor are not, per se, moral duties. They are merely what is required to get the job done, to achieve the results that employing a janitor is intended to achieve. Similarly, we would argue that the sovereign's "duties" to secure the peace and protect the lives of the subjects could also be seen in this way, as "requirements of the job of sovereign". In other words they are what is intended when a people agree to institute a sovereign. The purpose of setting up a commonwealth and instituting a sovereign is to see that peace will be secured and the lives and rights of subjects protected. It is the "job" of the sovereign to perform these tasks, namely securing the peace and protecting the individual subjects.

If some duties are not moral duties and can be defined instead as "the tasks of a job" and if the sovereign's duties to secure the peace and protect the subjects can be described in this way, then we have what we have called *claim rights* of subjects (to peace and preservation), that are correlated with *non-moral duties* of the sovereign. These rights, which we have defined as *requirements of nature*, (and of course rights are unimpeded freedoms to do or to forbear according to Hobbes, see Chapter 3, part I) need protecting if individuals are to be able to enjoy a commodious life, and so, to ensure their protection, we institute a sovereign. In other words we find someone or some assembly of people who are able to "do the job" of protecting the rights to

peace and preservation. If the sovereign fails to "do the job" he loses his power to rule and we are no longer obliged to obey him. If he fails, in other words, to perform the tasks which he was instituted to perform, he no longer qualifies for the job of sovereign.

On this analysis, we can say that the subjects have claim rights that are correlated with the duties of the sovereign and that *neither* the claim rights of the subjects *nor* the duties of the sovereign imply a particular moral theory because they can be applied in a non-moral way. The claim rights that we have called *inalienable rights, retained in the commonwealth* (see Chapter 3, Summary of Rights in the Theory), in other words, are not necessarily connected with the moral theory. The right to self-preservation, which men have in the state of nature is nothing more than a "blameless liberty" to do what our nature impels us to do, i.e. to preserve ourselves. It is, by Hobbes's definition of a right, a freedom to do or to forbear that is not part of his system of morality even though one might say that it forms the basis of that system, (i.e. the basis of the laws of nature, which comprise morality). Similarly, the duties of the sovereign to secure the peace and protect the subjects can be seen as independent of the moral theory. Hobbes does of course say that the sovereign "is the subject of God, and bound thereby to observe the laws of Nature" *(Lev.* 21, 7) but this means that he has moral duties as well as purely political duties.

The rights that we have called *inalienable rights, retained in the commonwealth* , must be protected if we are to be able to live a commodious life. If we were to ignore Hobbes's moral theory (whatever kind of moral theory it is) and stick to his

psychology, then he still gives an argument that in order to live a commodious life we must have certain rights and those rights could be protected by a sovereign. Those who read Hobbes to be a deontologist might argue that there are moral obligations even in the state of nature, that the laws of nature do apply in that state. Our reply to such an argument would be simply to say that even if that is true, if we were to ignore the moral theory there still remains a prudential argument for the need for the rights and their protection, as we have described. (And, indeed there are also prudential reasons for obeying the laws of nature, in the state of nature, particularly the first three laws, as we have argued in Chapter 3). If individuals are to live a commodious life, and all individuals *desire* to live a commodious life, then certain freedoms (rights) must be protected.

The other claim rights that we discussed in Chapter 3, namely, those brought into existence by the second law of nature are clearly attached to the moral theory that Hobbes proposes in *Leviathan*. He tells us that the science of the laws of nature "is the true and onely Moral Philosophy" *(Lev.* 15, 40). If the laws of nature comprise morality then we must accept that those duties that come into existence as a result of the second law of nature must, whatever else they might be, also be moral duties. On the analysis we have given in Chapter 4, however, of rights as requirements of nature, we can say that whatever moral theory we believe Hobbes to be proposing, the rights that are strengthened by the transfer and renouncing of those *rights of nature* which we would not want others to hold against us, the rights in other words that result from these transfers (that are now correlated with duties of non-

interference by others), these rights and duties are also *required* if we are to achieve peace and a commodious life. According to Hobbes they are also part of what morality requires but we do not need to agree on whether the moral theory is, say, egoistic or deontological, in order to agree that Hobbes says that we must renounce or transfer those rights of nature that we would not want others to hold against us.

Is it feasible to argue that Hobbes has a strong theory of rights, indeed, to say that he puts individual rights at the center of his political theory, and yet to remain agnostic on the question of what kind of moral theory he holds? The answer to this question is yes. We have not argued that Hobbes is an egoist nor have we argued that he is a deontologist, although we *have* said that he might be a natural law theorist, because he shares some of the assumptions of the natural law theorists, namely, that there are laws of nature, the same for all people, which are given to us by reason and which comprise the moral law. These shared assumptions with natural law theory are so minimal, however, that they would not conflict with a reading of Hobbes's moral theory as egoistic; if we were to say, for example, that the reason we should obey the laws of nature is that it is in our best interests to do so. In other words if Hobbes can be said to be a natural law theorist, his theory of natural law is one that rests on such *minimal* natural law premises that it does not commit him to natural law as a moral theory in the way that theory is usually understood. It does not, for example, include theological premises or a commitment to essences. Similarly, what we have said about Hobbes's account of the protection of rights does not conflict with either a deontological reading of the moral theory or an egoistic reading of the moral theory.

If one takes Hobbes to have an egoistic moral theory then the theory of rights we have described would be interpreted as part of an egoistic moral theory such that the reason why we should protect certain rights by transferring them to others is that to do so is in the individual's best interests because it will make her safer by helping her to escape the dangerous state of nature and enter a peaceful commonwealth. For the person who holds that Hobbes has a deontological moral theory the reason why we should protect certain rights by transferring them to others will be because the moral law states that we should and so we have a moral obligation to do so.

Final Thoughts

This thesis began in Chapter 1 with an examination of the historical, political context in which Hobbes wrote his mature political work, *Leviathan* . We argued there that to wrench Hobbes's political theory out of its context, as so many Hobbes scholars have done, is to miss the political significance of many of his arguments. When he states, for example, that individuals have an inalienable right to self-defense even against the sovereign; there are several ways to assess the significance of this proposal. If we look at it only in the context of the rest of the theory, we might conclude that it has little significance other than being a statement required by logical consistency (given that he has based the theory on the principle of the primacy of the

right to self-preservation). On the other hand, if one looks at the statement with the knowledge that the right to self-defense and the question of whether it must be given up to the sovereign or retained by the subjects in a commonwealth, was a central issue of political debate before and during the Civil Wars, it takes on a new significance. By arguing for the inalienability of the right to self-defense, even against the sovereign, Hobbes is arguing alongside the parliamentarians and radicals and against the royalists and divine right theorists. And Hobbes did not say that he was writing a purely philosophical work that should not be interpreted in the light of the political events and debates of his time. Indeed, in the "Review and Conclusion" of *Leviathan* he tells us that that work was "occasioned by the disorders of the present time" and "without other desire, than to set before men's eyes the mutuall Relation between Protection and Obedience;" (*Lev.* Review and Conclusion). This is not the statement of a man who wishes to discuss political philosophy detached from any particular political context.

We also drew attention in Chapter 1 to the received view that Hobbes was a royalist, or supported the royalist cause during the Civil Wars and we argued that there are good reasons to at least question this view. These two observations can be seen as two sides of the same coin. On the one hand Hobbes's political theory has often been analyzed without any reference to the context in which it was written, and on the other hand conclusions have been drawn too quickly and easily about his actual political allegiances and beliefs. Some of the consequences of these two tendencies in Hobbes scholarship were explored in the rest of the thesis.

In the second part of Chapter 1 we showed, by an examination of contemporary political writers on all sides of the Civil Wars, that on certain subjects, namely *rights* and *equality* , Hobbes is much closer to the parliamentarians and radicals than he is to the royalists. This raises some interesting questions which are examined in Chapters 2 and 3 about what Hobbes actually says about rights, about the importance he gives to rights in the theory and about Hobbes scholarship on rights which has been almost unanimous in arguing that Hobbes has a very weak theory of (natural) rights. Again, received opinion tells us that the natural rights of the subjects are nothing more than the freedoms enjoyed by everyone in the state of nature and that once in a commonwealth the remaining natural rights to self-defense and self-preservation, being mere liberty rights with no correlative duties, carry no clout against an all-powerful, absolute sovereign. The obvious conclusion can be drawn, that the rights of individuals in a Hobbesian commonwealth are of little real political significance; amounting to little more than the claim that every man, once cornered, may fight to the death in defense of his life against a sovereign to whom he has surrendered all power.

We argued in some detail against individual 'readings' of Hobbes's theory of rights in Chapter 2 and then gave our own, very different interpretation in Chapter 3. We argued there, unfettered by assumptions that Hobbes is an absolutist or an ethical subjectivist or an ethical objectivist, that when one looks at what Hobbes actually says about rights, a quite different picture emerges. Hobbes describes two kinds of protected rights, or as we have called them, claim rights. That is, he describes rights

that are correlated with the duties of others. The first kind of claim rights, which we have called *acquired rights*, come into being when we conform to the second law of nature. They are the result of our transferring or renouncing those invasive rights of nature which we would not want others to hold against us, for example our right "to one anothers body" (*Lev.* 14, 4). They create duties on the part of the transferor, to not interfere with the right-holder's exercise of her right.

The second kind of claim rights described by Hobbes, are what we have called *inalienable rights, retained in the commonwealth.* These rights - to self-defense, self-preservation and, as we have shown in Chapter 4, to peace, are protected by the duties of the sovereign. Let us look again at the passage in Chapter 21 of *Leviathan* where Hobbes says that,

> " . . . the Obligation of the Subjects to the Soveraign, is understood to last as long, and no longer, than the power lasteth, by which he is able to protect them. For the right men have by Nature to protect themselves, where none else can protect them, can by no Covenant be relinquished." (*Lev.* 21, 21).

Hobbes makes the power of the sovereign and the obligation of the subjects to obey him, dependent upon the subjects' judgment that he is protecting them. This gives primacy to the individual subject's right to self-preservation over the sovereign's right to rule and contradicts the view taken by many Hobbes scholars that Hobbes says subjects must give up their right to make judgments to the sovereign. This was recognized by Hampton as being the problem that "is so serious that it renders the entire Hobbesian justification for absolute sovereignty invalid." (Hampton 1986, 197, quoted in Chapter 2), because if subjects can make their own judgments about

whether their lives are being adequately protected, they may also decide whether or not to obey the commands of the sovereign. Hampton is right to say that this renders an argument for absolute sovereignty invalid. She is only wrong in thinking that Hobbes wants to make such an argument. If Hobbes had wanted to argue for absolute sovereignty he would not have made the subjects' rights to self-preservation inalienable (many contemporary theorists, including Grotius, Filmer and Clarendon argued that all individual natural rights should be given up to the sovereign) and he would not have then weakened the sovereign's power by making his right to rule dependent upon the subjects' judgment that they are being adequately protected.

Some of the consequences of the mistaken view of absolutism in Hobbes's theory were demonstrated, in Chapters 2 and 3 when discussing Tuck's suggestion that Hobbes belongs to a group of "Conservative Rights Theorists". We showed how the assumption of Hobbes's absolutism can lead to a distorted vision of his theory of rights. In Chapter 4, section 3, we gave a more general argument about the effect of the assumption of absolutism on the assessment of Hobbes's political theory; its place in the history of political thought and its influence on other writers such as Locke.

Similarly, in Chapter 2 we have shown how a commitment to other "readings" of the theory can also distort the analysis of what Hobbes says about rights. In Hampton's case, her conviction that Hobbes is an ethical subjectivist, together with an assumption that claim rights require an objectivist moral theory, leads her to reject her own intuition that Hobbes seems to introduce what could be defined as claim

rights when he describes the renouncing of rights under the second law of nature. Instead of accepting what the text says in a straightforward way she is forced to provide a "subjectivist way to interpret the passage". (see Chapter 2, section on Hampton).

In Warrender's analysis, Hobbes's notion of obligation is seen as central to the moral theory being proposed by Hobbes and it is through this notion that rights are defined. "The philosophically important sense" in which Hobbes uses the word "right", according to Warrender, is to specify "something that the individual cannot be obliged to renounce" (Warrender 1957, 19) or a "freedom from obligation" (ibid., 20). The use of *right* meaning what Warrender calls "entitlements against his fellow citizens" or what we would call claim rights, exist in Hobbes's theory, according to Warrender, only for the sovereign and those rights correlated with the obligations imposed by the sovereign on citizens. Having defined rights in this way Warrender is also forced into a strained reading of the second law of nature which we argued against in Chapter 2.

In writing this thesis we were led, from an awareness of the historical political context in which Hobbes devised his political theory, to an open mind on his actual political allegiances and beliefs, particularly with regard to royalism and absolutism. We then chose Hobbes's theory of rights as our focus and after looking at what some representative commentators have said, we examined what Hobbes himself says in *Leviathan*. This approach made it possible to disentangle the text from interpretations of it restricted by having to fit it to particular "readings" of the theory and from

assumptions such as that of absolutism. What the text of *Leviathan* has revealed is a notion of the natural rights of the individual as part of the basis upon which we can agree to form a civil society. By finding assurances of the protection of certain of our rights, from each other (under the second law of nature), and from the sovereign (when we institute the man or assembly who will secure the peace and protect our rights), we can escape the state of nature and provide ourselves with the opportunity for peace and a commodious life.

Bibliography

Ashley, Maurice. *England in the Seventeenth Century*. Harmondsworth, England: Penguin Books Ltd., 1961.

_____.*The English Civil War, A Concise History*. London: Thames and Hudson Ltd., 1974.

Aquinas, St. Thomas. *Summa Theologica, The Treatise on Law*. Transl. Manuel Velasquez. Velasquez and Rostankowski eds: 1985.

_____. Summa Theologica I-II; qq. 90-97, The Treatise on Law. R.J. Henle S.J., ed._ Notre Dame, Indiana: University of Notre Dame Press, 1993.

Audi, Robert ed. *The Cambridge Dictionary of Philosophy*. Cambridge: Cambridge University Press, 1995.

Baumrin B. H. ed. *Hobbes's Leviathan, Interpretation and Criticism*. Belmont, California: Wadsworth Publishing Company, Inc., 1969.

_____. "Hobbes's Egalitarianism: The Laws of Natural Equality". In *Thomas Hobbes De La Metaphysique a la Politique*. M Bertman & M Malherbe eds. Actes du Colloque Franco-Americain de Nantes, Librarie Philosophique VRIN Paris, 1989.

_____. "Hobbes on the Coextensiveness of Natural and Civil Law". In *Le Pouvoir et le Droit*. Louis Roux et Francois Tricaud eds.,73-83. Lyon: Universite de Saint-Etienne Press, 1992.

Berlin, Isiaih. *Four essays on Liberty*. Oxford: Oxford University Press, 1969.

Bernstein, Eduard. *Cromwell and Communism, Socialism and Democracy in the Great English Revolution*. New York: Schocken Books, 1963.

Blitzer, C.ed., *The Commonwealth of England, 1641-1660, Documents of the English Civil Wars, The Commonwealth and Protectorate*, New York: Capricorn Books, 1963.

Bobbio, Norberto. *Thomas Hobbes and the Natural Law Tradition*, Trans. Daniela Gobetti. Chicago: University of Chicago Press, 1993.

Clarendon, Edward, Earle of. *A Brief View and Survey of the Dangerous and pernicious Errors to Church and State in Mr. Hobbes's Book, entitled Leviathan.* Oxford: Bathurst, 1676.

_____ .*Clarendon's History of the Rebellion*, Vols I-III. Oxford: Clarendon Press, 1958.

_____. *Clarendon, Selections from The History of the Rebellion and Civil Wars and the Life by Himself.* London: Oxford University Press, 1966.

Coleman, Jules L. and Murphy, Jeffrie G. *Philosophy of Law, an Introduction to Jurisprudence*. Boulder, Colerado: Westview Press, Inc., 1990.

Dow, F.D. *Radicalism in the English Revolution 1640-1660.* Oxford: Basil Blackwell Ltd.1985.

Dworkin, Ronald. *Taking Rights Seriously.* Gerald Duckworth, revised edition, 1978.

d'Entrèves, A. P. *Natural Law, An Introduction to Legal Philosophy.* London: Hutchinson and Co. (Publishers) Ltd., 1951.

Eterovich, F.H. *Approaches to Natural Law from Plato to Kant.* Jericho, New York: Exposition Press, Inc., 1972.

Feinberg, Joel. *Social Philosophy.* New Jersey: Prentice-Hall, Inc. 1973.

Filmer, Sir Roberrt. *Patriarcha, The Natural Power of Kinges Defended against the unnatural Liberty of the People. By Arguments, Theological, Rational, Historical, Legall, in Patriarcha and Other Writings* ed. Johann P. Sommerville, Cambridge: Cambridge University Press, 1991.

Finnis, John. *Natural Law and Natural Rights.* (Oxford: Oxford University Press, 1980, reprint 1996). Page references to reprint edition.

Gauthier, David, P. *The Logic of Leviathan, The Moral and Political Theory of Thomas Hobbes.* Oxford: Oxford University Press, 1969.

George, Robert P. ed. *Natural Law Theory: Contemporary Essays.* Oxford: Oxford University Press, 1992.

Grotius, Hugo. *De Jure Belli et Pacis Libri Tres*, Vol. I, abridged trans. William Whewell D.D., London: John W. Packer, Publisher. 1853.

_____.*The Rights of War and Peace, including The Law of Nature and of Nations.* M. Walter Dunne, Publisher, 1901.

Hampton, Jean. *Hobbes and the Social Contract Tradition.* Cambridge: Cambridge University Press 1986.

Hill, Christopher. *Puritanism and Revolution, The English Revolution of the 17th. Century.* New York: Schocken Books, 1967.

_____. *The World Turned Upside Down.* London: (Maurice Temple Smith 1972, Peregrine Books, 1984).

Hobbes, Thomas. *Leviathan.* C.B. Macpherson, ed., London: Penguin Books, 1968. (First published 1651).

_____. *Man and Citizen.* ed., Bernard Gert, New York: Anchor Books, 1972.(Originally published as De Cive, 1642 and De Hominae 1657).

_____. *Behemoth.or the Long Parliament.* intro.by Stephen Holmes, Ferdinand Tonnies ed., Chicago: The University of Chicago Press, 1990. (First published 1682).

_____. *Human Nature and De Corpore Politico.* ed., J. C. A. Gaskin, Oxford: Oxford University Press, 1994. (First published 1640 as The Elements of Law).

_____. *Leviathan, with selected variants from the Latin edition of 1668.* ed. Edwin Curley, Indianapolis, Indiana: Hackett Publishing Company Inc. 1994. (first published 1651).

_____. *Considerations upon the reputation, loyalty, manners and religion of Thomas Hobbes of Malmesbury. Written by himself, by way of Letter to a Learned Person (John Wallis D.D.).* In the English Works, vol.4, ed., W. Molesworth, London: John Bohn, 1840.(Originally published 1662, under slightly different title).

Hohfeld, W.N. *Fundamental Legal Conceptions.* Yale: Yale University Press, 1923.

Hughes, Ann. *The Causes of the English Civil War.* New York: St. Martins Press, 1991.

Kavka, Gregory, S. *Hobbesian Moral and Political Theory.* Princeton: Princeton University Press, 1986.

Locke, John. *Two Treastises of Government, A Critical Edition with an Introduction and Apparatus Criticus by Peter Laslett,* Cambridge: Cambridge University Press, 1964. (First published 1690).

_____. *Second Treatise of Government.* ed., with Introduction by C.B. Machpherson, Indianapolis, Indiana: Hackett Publishing Company, Inc. 1980.

Macpherson, C.B. *The Political Theory of Possessive Individualism, Hobbes to Locke.* Oxford: Oxford University Press, 1962.

Malcolm, Noel ed. *Thomas Hobbes, The Correspondence Vols. I and II.* Oxford: Clarendon Press, 1994.

Martin, Rex. *A System of Rights.* Oxford: Clarendon Press, 1993.

Martinich, A. P. *A Hobbes Dictionary.* Oxford: Blackwell Publishers Ltd., 1995.

Mintz, Samuel I. *The Hunting of Leviathan, Seventeenth Century Reactions to the Materialism and Moral Philosophy of Thomas Hobbes.* Cambridge: Cambridge University Press, 1962.

Pollock, Sir Frederick.*Table Talk of John Selden.* London: Quaritch, 1927.

Pufendorf, Samuel. *On the Duty of Man and Citizen According to Natural Law.* Cambridge: Cambridge University Press.1994.

_____ *The Political Writings of Samuel Pufendorf.* Carr, Craig L.ed., Trans. Michael J. Seidler, New York: Oxford University Press, 1994.

Raz, Joseph. *Ethics in the Public Domain, Essays in the Morality of Law and Politics.* Oxford: Clarendon Press. 1994.

Rogers G.A.J. ed. *Leviathan, Contemporary Responses to the Political Theory of Thomas Hobbes.* Bristol, England: Thoemmes Press. 1995.

Rogers, G. A. J. and Ryan, Alan eds. *Perspectives on Thomas Hobbes.* New York: Oxford University Press, 1988.

Shaw, Howard. *The Levellers.* New York: Harper and Row, 1968.

Skinner, Quentin. "Hobbes on Sovereignty: An Unknown Discussion." Political Studies 13 (1965): 213-218.

_____. "Conquest and Consent: Thomas Hobbes and the Engagement Controversy" in *The Interregnum: The Quest for Settlement, 1646-1660*. ed. G.E. Aylmer: MacMillan Press Ltd., 1972.

Smith, David L. *Constitutional Royalism and the Search for Settlement, c. 1640-1649*. Cambridge: Cambridge University Press, 1994.

Sommerville, Johann P. *Thomas Hobbes: Political Ideas in Historical Context*. New York: St. Martin's Press, 1992.

Sorell, Tom, ed. *The Cambridge Companion to Hobbes*. Cambridge: Cambridge University Press, 1996.

State, S.A. *Thomas Hobbes and the Debate over Natural Law and Religion*. New York: Garland Publishing, Inc.,1991.

Strauss, Leo. *The Political Philosophy of Hobbes*. Trans. Elsa Sinclair, (Oxford: The Clarenden Press, 1936. Reprinted by The University of Chicago Press, 1952). Page references to reprint edition.

_____. *Persecution and the Art of Writing*. (New York: The Free Press, 1952. New edition by the University of Chicago Press, 1988). Page references to reprint edition.

_____. *Natural Right and History*. Chicago: The University of Chicago Press. 1953.

Taylot, A.E. *Thomas Hobbes*. Port Washington, New York: Kennikat Press, 1908.

_____ . "The Ethical Doctrine of Hobbes". Philosophy vol. XIII, (October 1938) reprinted in Baumrin ed., Wadsworth 1969, 35-48. (page references to Baumrin ed.).

Tuck, Richard.1979. *Natural Rights Theories, Their Origin and Development*.. Cambridge: Cambridge University Press, 1979.

_____. *Hobbes*. Oxford: Oxford University Press, 1989.

_____. *Philosophy and Government 1572-1651*. Cambridge: Cambridge University Press, 1993.

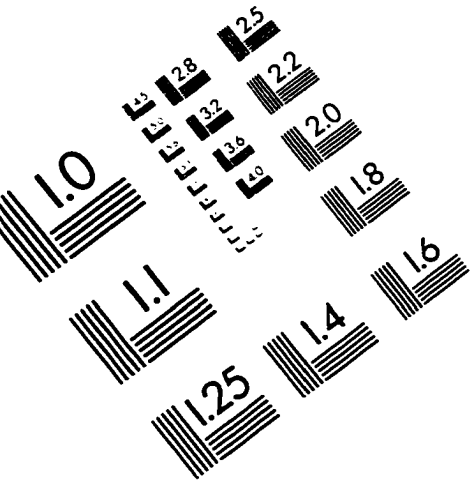
Waldron, Jeremy ed.*Theories of Rights*. Oxford: Oxford University Press, 1984.

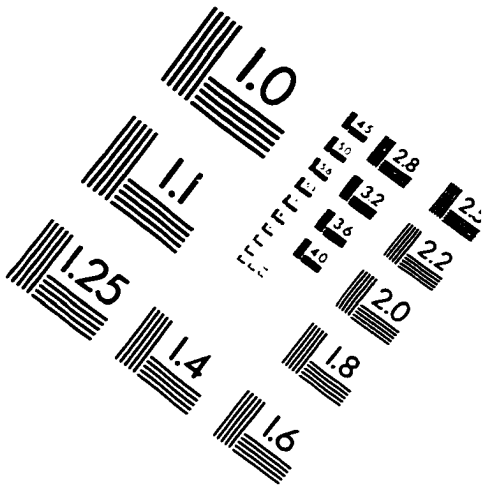
Warrender, Howard. *The Political Philosophy of Hobbes, His Theory of Obligation.* Oxford,England, The Clarenden Press 1957.

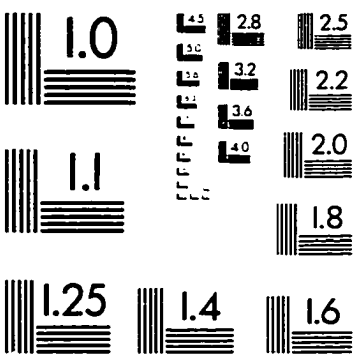
Wolfe, Don M. ed. *Leveller Manifestoes of the Puritan Revolution,* New York: Humanities Press, 1967.

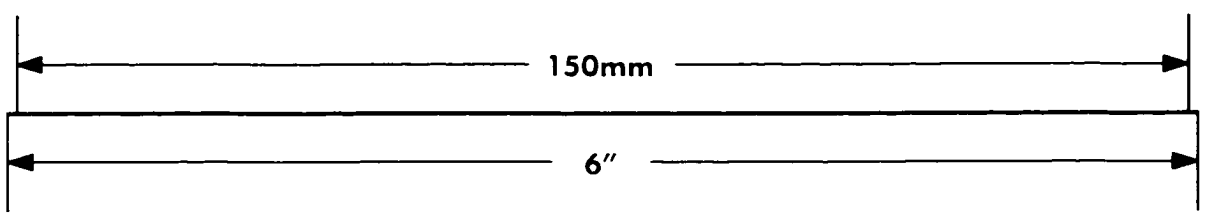
Woolrych, Austin. *Soldiers and Statesmen, The General Council of the Army and its Debates, 1647-1648.* Oxford: Clarendon Press, 1987.

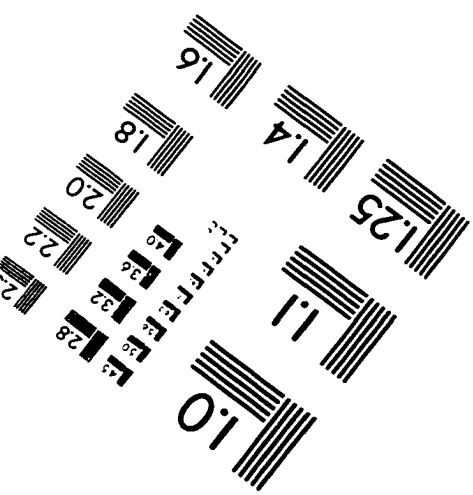
IMAGE EVALUATION TEST TARGET (QA-3)

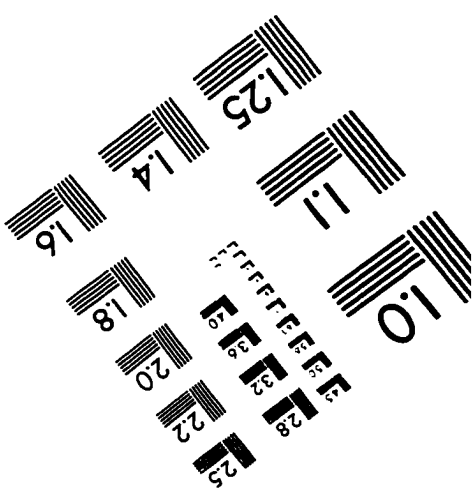












APPLIED IMAGE, Inc
1653 East Main Street
Rochester, NY 14609 USA
Phone: 716/482-0300
Fax: 716/288-5989