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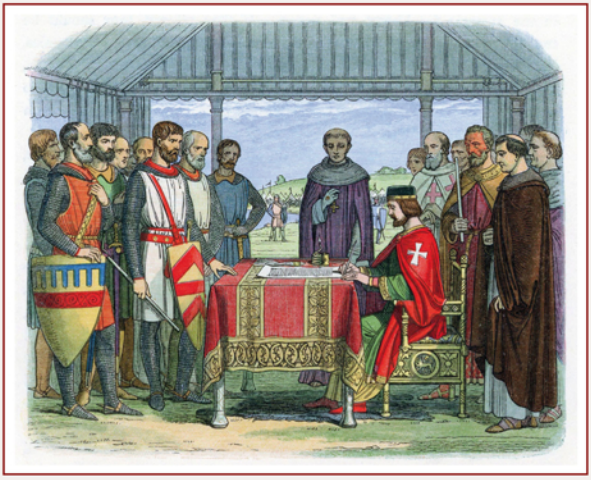

By

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Contract Theory in Historical Context

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For Daniel F. Baumgold

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AFTERWORD

PREFACE

The social contract is usually regarded as a quintessentially modern political idea, which telegraphs the root modern principles of popular sovereignty and governmental accountability to the people. By setting classic contract theory in historical context, these essays present a different view. Seventeenth-century contractarianism was a parochial genre, they argue, that addressed problems which disappeared with the advent of modern, electoral politics. A further theme is the parochial nature of the texts; several essays relate Hobbes's texts, in particular, to the 'history of the book' in the seventeenth century.

While my readings show the distance between classic social contract theory and modern electoral politics, in doing so they illuminate problems in the revival of contractarianism in the twentieth century. The impulse to be skeptical of abstract, universal formulations of the social contract, and instead to tie contract arguments to their contexts, reflects a common critique of Rawls's initial formulation in *A Theory of Justice*. As he would later acknowledge, the theory in fact builds in his local horizon. The essays in Part I of the volume extend this insight to Grotian, Hobbesian, and Lockean contract theories, making the argument that they centrally address the 'ancien regime' question of the right to resist tyrants. Part II examines the logic of universalizing, 'philosophical' contractarianism; these essays discuss the role of historical 'facts' in Hobbes's political theory and the origin of modern contract theory's curious mix of voluntarist and nonvoluntarist reasoning.

The first essay in the volume ("Hobbes's and Locke's Contract Theories: Political not Metaphysical") introduces the major themes of Parts I and II—namely, the subject, logic, and legacy of seventeenth-century contract theory. Inspired by John Rawls's admission that his twentieth-century contract theory builds in the horizon of modern constitutional democracy, the essay critically examines two truisms about seventeenth-century contract theory. The first is the stock view that the English case is irrelevant to the logic of *Leviathan* and the *Second Treatise*; the second, the Whiggish characterization of contract theory as an important step in the development of democratic sovereignty. Regarding the first, I show how Hobbes's and Locke's contract

theories logically build in their local horizon, in the specific sense that their political conclusions depend on introducing facts about hereditary monarchy. Second, I argue that the apparent continuity between contract theory and modern representative democracy hides a deeper discontinuity. Hobbesian and Lockean contract theories address an issue peculiar to the ancien regime—namely, whether and when it could be permissible to resist a legitimate ruler. This issue evaporated with the onset of electoral politics. Seventeenth-century contract theory is therefore better regarded as a sophisticated approach to an age-old issue that would soon disappear than as a stage on the road to democracy. For reasons both of logic and substance, Hobbes's and Locke's social contracts are properly described as ancien-regime theories of politics.

The second essay—"Pacifying Politics: Resistance, Violence, and Accountability in Seventeenth-Century Contract Theory"—looks at another facet of these theorists' preoccupation with the resistance question: their concern with the reality of unpacified politics. Medieval and early-modern thinkers inhabited a world in which political accountability customarily took violent forms, and it was this that gave the resistance question its force. Working out the idea of a pacified society was a principal problem for seventeenth-century social contract theory. Early in the century, Grotius' *De Jure Belli ac Pacis* (1625) defined the problem in terms that would be taken up in the subsequent theories of Hobbes and Locke. Grotius framed the idea that an organized political society must be a pacified—that is, a civil—society. In similar vein, both Hobbes and Locke made a ban on the use of force by private individuals the necessary and defining condition of political society. The 'Grotian problem' inherited by Hobbes and Locke was to specify the scope and limits of the requisite ban. Their opposing constitutional positions—absolutism combined with an individual right of self-defense, in Hobbes's case, versus Locke's defense of limited government and an extraordinary right of resistance—represented alternative solutions to the problem. Yet both were transitional figures who envisioned pacified societies but nevertheless assumed the reality of unpacified politics. Not until peaceful elections replaced violent rebellion as the usual means of governmental transition would the resistance question finally be resolved.

The essays in Part II critically examine the logic of universalistic contract formulations. Hobbesian contract theory is commonly taken to exemplify 'philosophical contractarianism,' a genre devoted to gen-

erating abstract, universal principles, in contradistinction to a 'constitutional contractarian' preoccupation with particular national histories of compacts between ruler and ruled. "When Hobbes Needed History" argues against the orthodox view that Hobbes *never* needed history. To be sure, he intended to construct an ahistorical argument, and his contract theory starts out this way in *The Elements of Law*. But political events forced him to make the argument more historical when they brought to the fore the question, 'Who is sovereign?'. So long as readers took for granted that England was a hereditary monarchy, Hobbes did not need to ground his principles in historical detail. However, when the success of the parliamentary cause dissolved that assumption, his political conclusions came logically to require the 'fact' of the Norman Conquest. This is made explicit in *Leviathan*, where Hobbes appeals to the Conquest as the defining constitutional moment in English history. In conclusion, I argue that his historical arguments are the strongest contractarian element in his theory because they combine voluntarism with the idea of foundational constitutional decisions.

Voluntarist and nonvoluntarist dimensions of contract thinking are the subject of the fourth essay, "Hobbesian Absolutism and the Paradox in Modern Contractarianism." Hobbes's defense of absolutism involves the dual claims that consent is the foundation of legitimate authority and that sovereignty is necessarily absolute. It is a paradoxical combination of claims: If absolute government is the product of choice, how can it also be the sole possible constitution? While all of Hobbes's contractarian successors have rejected his preference for absolutism, his dual claims have become commonplace. Since Hobbes, contract thinkers routinely assert that people will choose their preferred constitution and that it is the only possible one. The essay examines the genesis of this paradoxical argumentation: Hobbes's genius lay in merging Grotius's contractarian rationale with Bodin's analytic view that sovereignty must be absolute. The final section discusses related criticisms of Rawls's contract theory, and shows that these criticisms are also applicable to classic contract theory. Rawls inherited a genre already flawed by the impulse to combine voluntarist with nonvoluntarist reasoning.

Part III turns from the subject and logic of classic contract theory to the process of textual composition. The 'History of the Book' is a field that directs attention to the history and sociology of book and manuscript production. Contributing to the field, the essays in this section examine the process of composition of the three versions of

Hobbes's political theory, *The Elements of Law* (1640) and *De Cive* (1642 and 1647) and, finally, the masterpiece *Leviathan* (1651). A process of 'serial composition' was typical in the period and left its mark on Hobbes's arguments; the essays consider its effects and relate Hobbes's methods and circumstances to the practice and position of other early-modern authors.

The first essay—"The Composition of Hobbes's *Elements of Law*"—addresses the illustrative problem of dating the theory's original composition. Hobbes claimed to have written *The Elements* during the Short Parliament of the spring, 1640, and the claim has been accepted by many scholars. However, it seems unlikely that such a lengthy, systematic treatise could have been composed in so short a time. The essay closely examines the text to make the case that the bulk of *The Elements of Law* was written prior to the 1640 political crisis. What were likely written that spring were chapters defending absolutism; thus the evidence suggests that this least-admired part of Hobbes' political theory was also the least well thought out. The puzzle surrounding the composition of the *Elements* opens up general issues concerning Hobbes's method of writing, which are considered in the final essay.

"The Difficulties of Hobbes Interpretation" lays out common and idiosyncratic aspects of Hobbes's composition process and details interpretive difficulties created by that process. These are exacerbated by the paucity of reliable autobiographical materials. Interpretive difficulties are surveyed under three headings: (1) the process of 'serial' composition (meaning the production of multiple, often expanded, versions of a work), which was common in his period; (2) the relationship between Hobbes's three political-theory texts, which is basic to defining the textual embodiment of his theory and is controversial; and (3) his method of writing. The survey supports the thesis that some amount of inconsistency and muddle in Hobbes's arguments is attributable to his method of writing. The essay includes several appendices that outline the contents of the three versions of Hobbes's political theory and concretely demonstrate his process of revision and expansion.

Is the social contract tradition the most portentious development in political theory of the seventeenth century? In an "Afterword" I discuss an alternative tradition—theories of the absolutist state—in which Bodin, Grotius, and Hobbes are leading figures and which has affinities even with the philosophy of the great critic of contractarianism,

Hume. Where the contract tradition shared a common idiom, these theories shared a common political project: namely the construction of a state strong enough to control the religious conflicts that bedeviled post-Reformation Europe. The sensibility behind this project, however, was hardly one of state worship. Just as, later, there would develop a 'liberalism of fear,' which is born of awareness of the vulnerability to political harm of subjects in the modern world, theirs was an 'absolutism of fear,' rooted in a similar awareness of ordinary people's vulnerability. In their world, religious conflict, and elite conflict more generally, was the worst evil and a strong state necessary as its antidote. The tradition went out of fashion when the state became what early-modern theorists of the absolutist state had desired it to be.

When, two decades ago, I began thinking about the 'ancien regime' character of classical contract theory, I could not have imagined where the subject would take me, intellectually and personally. I have many colleagues and friends to thank for sharing their ideas, helping with mine, and generally keeping company along the way. To start with, I've been lucky to have smart and sympathetic political-theory colleagues in my home departments—first, Alfonso Damico and, more recently, Leonard Feldman. These essays could not have been completed without their suggestions and criticisms, nor would the journey have been so pleasant without their companionship.

The project bears the imprint of the Cambridge School of historians of political thought, which I first came to know through John Dunn. I have relied on his comradeship and expertise in the years since. More recently, Istvan Hont has given superb advice and recommendations on these essays and related projects. I am grateful to Wolfson College and Clare Hall of the University of Cambridge for their hospitality during the period in which the essays were completed. I thank Quentin Skinner and Richard Tuck for conversation and support during that time. I am also indebted to Hans Blom for helping bring this volume to completion and, in particular, for advice on the concluding chapter.

A number of other people have helped with various essays, including John Christian Laursen (chapter one), Alan Houston (chapter two), Tom Sorell (chapter three), Barbara Altmann and Iain Hampsher-Monk (chapter five), Mary Dietz and Richard Serjeantson (chapter six), and David Leitch (chapter seven). Gerald Berk, a long-time friend in my department in Eugene, helped me formulate a key argument in the first chapter. My deepest thanks go to two friends who

are also professors of politics, Jennifer Hochschild and Julie Novkov. Both have encouraged me, in large and small ways, for many years. This volume is dedicated to my son, Daniel. He has grown up during the writing of these essays, and I hope they reflect the influence of his generous and insightful nature.

With the exception of the Afterword, all the essays have been published previously. They are presented as originally published with some minor corrections and alterations in style. The only major correction pertains to the discussion of Hobbes's 'democracy first' argument in chapter five (see note 62). References have been standardized, with the exception that essays employ different editions of Hobbes's *Elements of Law*. Acknowledgements are collected in the preface.

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"The Difficulties of Hobbes Interpretation" was originally published in *Political Theory* 36/6 (Dec. 2008): 827–855. © 2008 Sage Publications. Reprint authorized by Sage Publications.

ABBREVIATIONS

In the notes, abbreviations have been used for the following frequently-cited works.

SB Bodin, Jean Bodin. *The Six Bookes of a Commonweale*. Translated by R. Knolles and edited by Kenneth Douglas McRae. Cambridge, Mass.: Harvard University Press, 1962. Reprint of 1606 ed. References cite the book, chapter, and page.

DJB Grotius, Hugo. *De Jure Belli Ac Pacis; Libri Tres*. Translated by Francis W. Kelsey. Oxford: Clarendon Press, 1925. References cite the book, chapter, section, and page.

DC Hobbes, Thomas. *De Cive: The English Version entitled in the first edition Philosophicall Rudiments Concerning Government and Society*. Edited by Howard Warrender. Oxford: Clarendon Press, 1983. References cite the chapter, section, and page.

EL(G) Hobbes, Thomas. *The Elements of Law Natural and Politic*. Edited by J. C. A. Gaskin. Oxford: Oxford University Press, 1994. References cite the chapter, section, and page.

EL(T) Hobbes, Thomas. *The Elements of Law: Natural & Politic*. Edited by Ferdinand Tönnies. Cambridge: Cambridge University Press, 1928. References cite the part, chapter, section, and page.

LV Hobbes, Thomas. *Leviathan*. Edited by C. B. Macpherson. London: Penguin Books/Pelican, 1968. References cite the chapter and page.

ST Locke, John. "The Second Treatise of Government," in *Two Treatises of Government*. Edited by Peter Laslett. Revised edition. Cambridge: Cambridge University Press, 1960. Reprint. New York: New American Library/Mentor, 1965. References cite the section and page number.

PART I

AN ANCIEN REGIME QUESTION: RESISTANCE

CHAPTER ONE

HOBBES'S AND LOCKE'S CONTRACT THEORIES: POLITICAL NOT METAPHYSICAL

In "Justice as Fairness: Political not Metaphysical," John Rawls admits that his twentieth-century version of contract theory builds in the parochial horizon of our time. "Justice as fairness is framed to apply to what I have called the 'basic structure' of a modern constitutional democracy."[1] "In contrast to what Nagel calls 'the impersonal point of view,'" he explains in *Political Liberalism*, "constructivism both moral and political says that the objective point of view must always be from somewhere."[2] By implication, Rawls's admission calls into question more than the abstract universality of *A Theory of Justice*: it should lead to a rethinking of classic contract theory generally.

According to standard accounts of contract thinking, *A Theory of Justice* belongs to a tradition of theorizing inaugurated by Thomas Hobbes and John Locke. They developed a genre of abstract, universalizing contract thinking that was sharply distinct from the older tradition of historical (or 'constitutional') contractarianism. A survey of the tradition explains:

> The theoretical ambitions and the aimed-for generality of thought of those who employed ['philosophical' contractarianism] tended to be greater than that of the alternative language, best described as constitutional contractarianism. . . . In constitutional contractarianism particular positive laws and the institutional inheritance of specific polities were more relevant and important, rather than universal propositions about all men and all politics.[3]

Rawls's admission prompts us to be skeptical about so thoroughgoing a contrast as it may confuse style with substance. If the universalistic clothing of the arguments in *A Theory of Justice* fails to imply a universal

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[1] John Rawls, "Justice as Fairness: Political not Metaphysical," *Philosophy and Public Affairs* 14 (1985): 224.

[2] John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), 116.

[3] Harro Höpfl and Martyn P. Thompson, "The History of Contract as a Motif in Political Thought," *American Historical Review*, 84 (1979): 941.

subject,[4] might not the same be the case for the theories of his great predecessors? In Rawlsian language: Mightn't Hobbes's and Locke's contract theories be 'political' rather than 'metaphysical' in nature?

Granted, the standard view corresponds—at least in part—to the authors' intentions as well to the style of their arguments. Like the Rawls of *A Theory of Justice*, Hobbes and Locke meant to be reasoning *sub specie aeternitatis*, as was characteristic of the natural-law tradition within which both worked (albeit in distinct—secular versus theological—variants). My skeptical question concerns their grasp as opposed to their reach. However much they intended to speak about and to humanity, a constructivist view of philosophy suggests that their achievement was necessarily more parochial.

To start with, it may be that the distinction between particular and universal—an argument for England versus an argument for humanity—did not strike them as self-evident in the way it does us. In terms of intentions, they clearly meant their theories to run on two tracks. Their universalistic arguments were meant to alter local politics, which they conceptualized within the inherited frame of monarchy.[5] If Hobbes and Locke aspired to universal philosophy, it is equally the case that they saw themselves as reformers of an established order. Hobbes wrote his political theory three times, starting in the late 1630s in the waning days of Charles I's personal rule. The project began as a brief for his patron, the prominent royalist Earl of Newcastle, in the political debates surrounding the Short Parliament,[6] and ended,

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[4] "Whether justice as fairness can be extended to a general political conception for different kinds of societies existing under different historical and social conditions, or whether it can be extended to a general moral conception, or a significant part thereof, are altogether separate questions. I avoid prejudging these larger questions one way or another" (Rawls, "Justice as Fairness," 225).

[5] Johann Sommerville holds a similar view of Hobbes's theory: "despite its veneer of scientific detachment and its pretensions to universal validity, [it] was constructed to support conclusions that were of the highest relevance to contemporary political circumstances in England" ("Lofty science and local politics," in *The Cambridge Companion to Hobbes*, ed. T. Sorell (Cambridge: Cambridge University Press, 1996), 247. See also, *Thomas Hobbes: Political Ideas in Historical Context* (New York: St. Martin's, 1992).

[6] The first version, titled *The Elements of Law*, circulated in manuscript in 1640. It was dedicated to William, Earl of Newcastle, with the explanation: "Now (my Lord) the principles fit for such a foundation [of a science of justice and policy], are those which I have heretofore acquainted your Lordship withal in private discourse, and which, by your command I have here put into method.... The ambition therefore of this book, in seeking by your Lordship's countenance to insinuate itself with those whom the matter it containeth most nearly concerneth, is to be excused" (Hobbes, *EL(T)*, "The Epistle Dedicatory," pp. xvii–xviii). After his flight into exile, Hobbes

in *Leviathan*'s "Review and Conclusion" (1651), with a justification of submission to Cromwell's regime. But he remained throughout a royalist, prepared to justify submission on the ground that this did the 'enemy' less good than refusal would have done and never prepared to defend the constitution of the Commonwealth.[7] *Leviathan*, he said later, "fights for all kings and for all those under any title who exercise the rights of kings."[8] After the Restoration, Hobbes welcomed the Restoration as a return to constitutional sanity. Summing up the history of the Civil War in *Behemoth*, he observed that sovereign power at last came full circle back to the Stuarts, "where long may it remain."[9] For his part, Locke surely hoped that power would not remain in the current Stuart's hands much longer. Yet he nonetheless tried to persuade readers of the *Second Treatise* that resistance to one king was unlikely to change the established order:

> The many Revolutions which have been seen in this Kingdom, in this and former Ages, still kept us to, or after some interval of fruitless attempts, still brought us back again to our old Legislative of King, Lords and Commons.[10]

No more than Hobbes did Locke desire something other than a continuation of the monarchy, albeit a properly constituted monarchy.[11]

Intentions aside, the real issue raised by Rawls's admission concerns the logic of Hobbes's and Locke's arguments. Is their parochial English horizon built into the logic of their theories? The standard interpretative view is that it is not. Even Peter Laslett, whose historical

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quickly revamped the second, political section of the *Elements* into a Latin work, *De Cive*, which appeared in a small edition in 1642 and in a second, larger edition in 1647.

[7] Hobbes, *LV*, "A Review and Conclusion," p. 719: "if a man consider that they who submit, assist the Enemy but with part of their estates, whereas they that refuse, assist him with the whole, there is no reason to call their Submission, or Composition an Assistance; but rather a Detriment to the Enemy." While the chapter endorses the Engagement principle of a "mutuall Relation between Protection and Obedience" (728), no mention is made of the Commonwealth.

[8] Thomas Hobbes, "The Autobiography of Thomas Hobbes," trans. B. Farrington, in *The Rationalist Annual, 1958*, ed. H. Hawton (London: Watts & Co, 1957), 27.

[9] Thomas Hobbes, *Behemoth or the Long Parliament*, ed. F. Tönnies, 2nd ed. (London: Frank Cass, 1969), 204.

[10] Locke, *ST*, §223, pp. 462–63.

[11] David Wootton ("John Locke and Richard Ashcraft's *Revolutionary Politics*," *Political Studies* 40 [1992]: 79–98) and John Marshall (*John Locke: Resistance, Religion and Responsibility* [Cambridge: Cambridge University Press, 1994], 278) argue that the Lockean—elective and contractarian—version of the ancient constitution was a novelty of the 1680s.

work reformed our understanding of the context of the *Second Treatise*, thought the English case irrelevant. "As a political theorist," he instructs in introducing the *Second Treatise*, "Locke made no appeal to history or tradition. Nothing in his book could be disproved by the discovery of new evidence about what had happened in England in 1066, or 1215 or 1642."[12] The first section of this essay will challenge this standard view through a close examination of the logic leading to Hobbes's and Locke's main political conclusions. We will see how the political conclusions of both theories depend, albeit in different ways, on introducing facts about the historic English monarchy.

Taking seriously the parochial horizon of classic English contract theory has the further consequence of calling into question the familiar periodization of the genre. The social contract is customarily regarded as a quintessentially modern political idea which telegraphs the root modern principles of popular sovereignty and governmental accountability to the people. On this view, it hardly matters that the great contract theories of the early-modern period were written in the context of an ancien-regime hereditary monarchy. That is not the world to which they belong. Rejecting the principles that animated it, they articulate ideas—about the source of legitimate authority and the relationship between ruler and ruled—that would come to be embodied in the institutions of representative democracy of the coming age.

Jean Hampton substantiates the view, in game-theoretic terms, in *Hobbes and the Social Contract Tradition*. Lockean contract theory and modern representative democracy share the root idea, she argues, that "rulers are hired by the people for reasons." Modern elections simply normalize what was, in contract theory, an extraordinary right to depose a legitimate government:

> The contractarian will say that the ability of the people to make such changes in who governs them, or in the terms of their governing, exist in the meta political game of *any* state. But in modern democracies this ability is incorporated into the political system such that it is subject to rules of the *object* political game. That is, in these regimes there is an attempt to define *within the object game itself* the meta political role that people inevitably have on the social contract view.[13]

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[12] Peter Laslett, "Introduction" to *Two Treatises of Government*, by J. Locke (New York: New American Library, 1965), 91.

[13] Jean Hampton, *Hobbes and the Social Contract Tradition* (Cambridge: Cambridge University Press, 1986), 284.

In the second section of the essay, I will argue, to the contrary, that seventeenth-century contract theory is more accurately periodized as an ancien-regime genre than as a modern one. Beneath the apparent continuity between contract theory and modern representative democracy lurks a deeper discontinuity. Hobbes's and Locke's contract theory address questions specific to the politics of hereditary monarchy, namely the questions of whether and when it could be permissible to resist a legitimate ruler. These questions evaporated with the onset of electoral politics. Seventeenth-century contract theory is therefore better regarded as a sophisticated approach to an age-old and soon-to-disappear issue than as a stage on the road to democracy.

The Assumption of Hereditary Monarchy

It is certainly the case that Hobbes's and Locke's contract logics do not appear to be embedded in any specific political formation. Locke's contractarian defense of the right of resistance presents this as a universal, inalienable right on the basis of several abstract arguments. First, he makes 'indifferent authority' the defining feature of civil society. It follows that absolute monarchy, in which subjects may not resist their rulers, "is indeed *inconsistent with Civil Society*, and so can be no Form of Civil Government at all."[14] Furthermore, he asserts that rational individuals would never consent to absolute government. To imagine they would is to suppose, in the oft-quoted metaphor, "that Men are so foolish that they take care to avoid what Mischiefs may be done them by *Pole-Cats*, or *Foxes*, but are content, nay think it Safety, to be devoured by *Lions*."[15] Indeed, human beings are not actually free to make a contract giving up the right of resistance, according to Lockean theology: "for Man not having such an Arbitrary Power over his own Life, cannot give another Man such a Power over it."[16]

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[14] Locke, *ST*, §90, p. 369. He explains in the next section: "For he being suppos'd to have all, both Legislative and Executive Power in himself alone, there is no Judge to be found, no Appeal lies open to any one, who may fairly, and indifferently, and with Authority decide, and from whose decision relief and redress may be expected of any Injury or Inconveniency, that may be suffered from the Prince or by his Order" (§91, p. 370).

[15] Locke, *ST*, §93, p. 372.

[16] Locke, *ST*, §172, p. 429.

Hobbes had tried to establish the reverse proposition—that unconditional sovereignty is a universal fact by virtue of the necessary structure of a social contract. He describes the contract as consisting in a mutual promise, among incipient subjects, not to resist the will of the sovereign, who cannot afterwards be held accountable by the people because he was not a party to the contract.[17] This is, Hobbes claims, a logical, not merely stipulative, account of the nature of a social contract. Granting the nominalist assumption that the 'people' as a corporate agent does not exist by nature, there simply cannot be a contract between the sovereign and the people as a whole; there is no such agent with whom an incipient sovereign could contract.[18] Somewhat harder to defend is the follow-up claim that accountability cannot be justified via the idea of a contract between the sovereign and each individual subject. To do so, Hobbes introduces in *Leviathan* the idea that each subject authorizes the sovereign's acts[19] and defines authorization as creating an identity between sovereign and subject that precludes accountability.

> He that complaineth of injury from his Soveraigne, complaineth of that whereof he himselfe is Author; and therefore ought not to accuse any man but himselfe; no nor himselfe of injury; because to do injury to ones selfe, is impossible.[20]

The latter may not be a good argument, but it is an abstract one.

Like Locke, Hobbes appears to derive his conclusions from general definitional premises rather than contingent constitutional facts. Yet closer inspection of both theories will show that, in different ways, the political force of their arguments depends on specifying facts about the local constitutional or legal order.

Hobbesian Political Logic

The core of Hobbes's theory of politics is the doctrine of absolutism, meaning specifically the proposition that rulers are not accountable to the people. This is made as an abstract claim applying to all forms of government. About his preference for monarchy, he was more modest,

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[17] Hobbes, *DC*, 5.7, p. 88, and LV, 18, p. 230.
[18] Hobbes, *LV*, 18, p. 230.
[19] Hobbes, *LV*, 17, p. 227.
[20] Hobbes, *LV*, 18, p. 232; see also 16, pp. 217–22, and 18, p. 230.

granting in *De Cive* that this is the "one thing alone I confesse in this whole book not to be demonstrated, but only probably stated."[21] Yet the specification of a particular constitution—namely, monarchy (or aristocracy)—turns out to be crucial to his defense of absolutism. That defense is devoid of political force without the specification of a monarchic constitution (or, conceivably, an aristocratic one).

This is evident in the logic of Hobbes's account of sovereignty. In democracy, the third possible form of government, the people reserve sovereignty for themselves and therefore rulers *are* accountable:

> If this power of the people were not dissolved, at the choosing of their king for life, then is the people sovereign still, and the king a minister thereof only.... And farther, though in the election of a king for his life, the people grant him the exercise of their sovereignty for that time; yet if they see cause, they may recall the same before that time.[22]

In principle, democracy is simply another form of absolute government. But in practice, a democracy with an executive agent is the same thing as a monarchy holding only conditional sovereignty.

Therefore, in order to know the nature of the relationship between ruler and ruled, and specifically to know whether or not rulers are accountable, the location of sovereignty must be specified. The key factual question is who controls governmental transitions. Monarchies are either absolute or elective (meaning conditional) depending on whether or not the people have reserved the right (and time and place) to choose a new ruler at the death of the old.[23] "If it be known who have the power to give the Soveraigntie after his death, it is known also that the Soveraigntie was in them before."[24] The effect is to make hereditary succession (which he defines as meaning the sovereign chooses his successor)[25] the sole criterion of absolute monarchy:

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[21] Hobbes, *DC*, "The Authors Preface to the Reader," 37 (emphasis omitted).

[22] Hobbes, *EL(T)*, II.2.9, p. 95; see *DC*, 7.16, pp. 113–14, and *LV*, 19, pp. 245–46.

[23] "Elective kings...are subjects and not sovereigns; and that is, when the people in election of them reserve unto themselves the right of assembling at certain times and places limited and made known; or else absolute sovereigns, to dispose of the succession at their pleasure; and that is, when the people in their election hath declared no time nor place of their meeting" (Hobbes, *EL(T)*, II.2.10, p. 96; see *DC*, 7.16, pp. 113–14).

[24] Hobbes, *LV*, 19, p. 246; see *EL(T)*, II.2.9–10, pp. 95–7, and *DC*, 7.15–16, pp. 113–15.

[25] E.g., Hobbes, *LV*, 19, p. 249.

> If… sovereignty is truly and indeed transferred, the estate or commonwealth is an absolute monarchy, wherein the monarch is at liberty, to dispose as well of the succession, as of the possession.[26]

When Hobbes was first formulating his theory of politics, prior to the Civil War, he and his readers would have taken for granted that the specific government at issue was a hereditary monarchy. Making reservation of a popular right to choose the king's successor the necessary condition of sovereign accountability only buttressed the assumption. Since no one contended that the English people controlled succession to the throne, Hobbes's argument had transparent political force and so the assumption of a monarchic constitution did not have to be spelled out in the theory.

To the extent there was something unusual about Hobbes's argument, it was the terms of his account of monarchic succession rather than his constitutional assumption. His 'absolutist' argument, privileging the king's will, contrasts with the traditional English subscription to common- or natural-law views of succession.[27] It is worth noticing that both traditional accounts are incorporated into the Hobbesian argument as subsidiary principles. Custom pertains, he says, in cases in which the monarch fails to appoint an heir because silence is "a naturall signe" of endorsement of custom. But when there is neither testament nor pertinent custom, then it must be assumed that a ruler wills the continuation of monarchy, and therefore 'natural' principles of preference (for children, first male, then female, then brothers, and so forth) are to be followed.[28] Presumably the point was to persuade Englishmen that traditional ways of thinking about the matter actually fit within his absolutist framework.

With the Civil War looming in the early 1640s, Hobbes took up a new topic: the possibility of changing a government. The sitting of the Long Parliament in November of 1640 soon led to debate over reform of the constitution. In the spring, 1641, the Triennial Act passed, which required the holding of a parliament every three years, and a variety of other reform measures were enacted later the same year. Charles

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[26] Hobbes, *EL(T)*, II.2.9, p. 95.

[27] See Howard Nenner, *The Right to be King* (Chapel Hill: The University of North Carolina Press, 1995).

[28] Hobbes, *LV*, 19, p. 250. In addition, Hobbes stipulates that it is a natural-law duty of sovereigns to appoint a successor in order to keep their nations from relapsing into civil war (19, p. 246).

I had long seen through such issues to a struggle for sovereignty; a 1629 letter declared that the Commons' "aim was 'to erect a universal, over-swaying power to themselves, which belongs only to us, and not to them'."[29] As Hobbes transformed the *Elements* into *De Cive*, he took up the idea that the people or the people's representatives might change a government. The new version observes that "some may inferre" from the description of a contract between incipient subjects "that by the consent of all the subjects together, the *supreme authority* may be wholly taken away." Although it literally cannot be imagined, Hobbes continues, that every single subject would consent to this, most people hold the erroneous opinion that a majority vote in a popular assembly would suffice. Subjects must therefore understand that "though a government be constituted by the contracts of particular men with particulars, yet its Right depends not on that obligation onely; there is another tye also toward him who commands." Hence:

> the government is upheld by a double obligation from the Citizens, first that which is due to their fellow citizens, next that which they owe to their Prince. Wherefore no subjects how many soever they be, can with any Right despoyle him who bears the chiefe Rule, of his authority.[30]

This second tie between subject and sovereign will be formalized in the authorization covenant of *Leviathan*, the express point of which is not only to deny sovereign accountability but also to bar changing the established form of government or deposing the sitting ruler(s). By virtue of the authorization relationship:

> they that have already Instituted a Common-wealth, being thereby bound by Covenant, to own the Actions, and Judgements of one, cannot lawfully make a new Covenant . . . without his permission. And therefore, they that are subjects to a Monarch, cannot without his leave cast off Monarchy, and return to the confusion of a disunited Multitude; nor transferre their Person from him that beareth it, to another Man, or other Assembly of men.[31]

Conceptually, all this adds to Hobbes's contract logic is the supposition that some form of government exists, with incumbent ruler(s).

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[29] This discussion is drawn from J. P. Kenyon, *The Stuart Constitution 1603–1688: Documents and Commentary* (Cambridge: Cambridge University Press, 1969), 191–93, quoting (193) from Charles I, "The king's Declaration showing the causes of the late Dissolution, 10 March 1629."

[30] Hobbes, *DC*, 6.20, p. 105.

[31] Hobbes, *LV*, 18, p. 229.

Nothing in the logic presupposes any particular constitution of government; however the new stipulation told readers they were not at liberty to change the government they had inherited. So long as readers filled in the logic with the assumption that the state at issue had traditionally been a hereditary monarchy, the implicit political import remained clear.

As the Civil War progressed, however, the shared horizon dissolved and abstract contract logic was no longer adequate for Hobbes's political purposes: He needed to appeal to historical 'facts.'[32] By the late 1640s, he could no longer assume that his readers would presuppose that England was or ought to be a hereditary monarchy. To justify their cause in the Civil War, parliamentarians advanced the radical claim that they were sovereign by virtue of representing the people.[33] Answering their claim, *Leviathan* focuses on the concept of representation and asserts that representation is simply a facet of sovereignty. "Where there is already erected a Soveraign Power, there can be no other Representative of the same people, but onely to certain particular ends, by the Soveraign limited." Still, this abstract statement left open the constitutional possibility that the so-called 'representatives' really were sovereign. And ruling out this possibility required Hobbes to specify explicitly a "manifest truth" about the constitution at issue: "in a Monarchy, he that had the Soveraignty from a descent of 600 years, was alone called Soveraign, had the title of Majesty from every one of his Subjects, and was unquestionably taken by them for their King."[34] Absent the Norman Conquest, in other words, England was not necessarily a hereditary monarchy, and if it was not a hereditary monarchy, the king might be accountable to parliament or the people.

Without the fact of the Norman Conquest or, what comes to the same thing, his readers' supposition that he was treating a hereditary monarchy, Hobbes's abstract contract logic could not answer the question, 'Who is sovereign?'. Answering this question is basic, within Hobbesian logic, to answering the all-important question of whether

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[32] This argument draws on the discussion in chapter three.

[33] E.g., Henry Parker, *Observations upon some of his Majesties late Answers and Expresses (*London, 1642): "In this Policy is comprised the whole art of Soveraignty… where Parliaments superintend all, and in all extraordinary cases, especially betwixt the King and Kingdom, do the faithfull Offices of Umpirage, all things remain in…harmony" (42); parliament is "to be accounted by the vertue of representation, as the whole body of the State" (45).

[34] Hobbes, *LV*, 19, pp. 240–41.

or not rulers are accountable to the people. He could initially formulate the theory entirely abstractly only because his audience would import to reading it the assumption that the referent was a hereditary monarchy. Once this could no longer be taken for granted, the supposition had to be expressly built into the argument through a historically explicit referent. Despite its 'philosophic' appearance, this is a 'constitutional contractarian' defense of absolute monarchy in which "the institutional inheritance of specific polities [is] most relevant and important."

In a curious, concluding twist, Hobbes would subsequently contradict himself and reject the historical story. In *Leviathan*'s "Review and Conclusion," he puts constitutional argument aside in favor of urging submission to the powers-that-be. Here, it is possession of power that matters rather than its history:[35] "As *if*," he writes scornfully, "the Right of the Kings of England did depend on the goodnesse of the cause of *William* the Conquerour, and upon their lineall, and directest Descent from him."[36] In context, the larger point is to urge the conquering regime to put the past out of mind[37] because: "For to the Justification of the Cause of a Conqueror, the Reproach of the Cause of the Conquered, is for the most part necessary: but neither of them necessary for the Obligation of the Conquered." The argument eased the way for the submission of royalists, though at the cost of obliterating differences between the regimes (to wit, "there is scarce a Common-wealth in the world, whose beginnings can in conscience be justified").[38] This clearly answers a different question from the constitutional arguments that had preoccupied Hobbes during the long Civil War decade: no longer was he concerned with how government should be structured but, instead, simply with whether it should be obeyed.[39]

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[35] It is, Hobbes says, an erroneous opinion "that they will all of them justifie the War, by which their Power was at first gotten, and whereon (as they think) their Right dependeth, and not on the Possession" (Hobbes, *LV*, "A Review and Conclusion," p. 721).

[36] Hobbes, *LV*, "A Review and Conclusion," p. 721 (first emphasis mine).

[37] "Therefore I put down for one of the most effectuall seeds of the Death of any State, that the Conquerors require not onely a Submission of mens actions to them for the future, but also an Approbation of all their actions past" (Hobbes, *LV*, "A Review and Conclusion," pp. 721–22).

[38] Hobbes, *LV*, "A Review and Conclusion," p. 722.

[39] For a contrary view of the significance of the defense of de facto authority in the "Review and Conclusion," see Kinch Hoekstra, "The *de facto* Turn in Hobbes's Political Philosophy," in *Leviathan After 350 Years*, ed. T. Sorrell and L. Foisneau (Oxford: Clarendon Press, 2004).

Lockean Political Logic

By contrast to Hobbes's constitutional arguments, Locke's core political thesis—that tyrants may be resisted—does not require any contingent constitutional assumptions. Under no legitimate constitution is resistance ruled out of court, in principle, in Lockean theory. Grant the definitional assertion that absolute monarchy is inconsistent with civil society, or the complementary propositions that rational individuals would not and could not enter into an absolutist contract; and it follows that the people always retain ultimate sovereignty and political authority is fiduciary in nature.[40] Hence it is always the case that rulers—whatever the form of government—may be resisted if they act contrary to the trust reposed in them.

Yet no one doubts that the *Second Treatise* is enmeshed in its ancien regime context. The generation since Laslett's pioneer work locating the *Second Treatise* in the context of the Exclusion Crisis of 1679–83 has seen numerous commentaries detailing Locke's parochial horizons—political, religious, and intellectual. Richard Ashcraft extended Laslett's work by making the case that Locke went beyond pamphleteering to participate actively in Whig conspiracies against Charles II and James II;[41] and John Dunn led the way in showing that the seeming modern liberalism of his thought is built on premodern, theological foundations.[42] In addition, we also know that Locke drew on familiar, inherited intellectual resources to conceptualize tyranny and resistance. The work is summarily described by Quentin Skinner as combining traditional 'private-law' resistance theory with a secular justification of resistance that had been developed by Huguenot thinkers in the 1570s.[43] Echoing radical Calvinists of the previous century, Locke holds that tyrants forfeit their authority and cease to be legitimate rulers; hence they "may be opposed, as any other Man, who by force invades the Right of another."[44] In support of this 'private law' argument, the conclusion of the *Second Treatise* introduces the figure

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[40] Locke, *ST*, §149, pp. 412–13.

[41] Richard Ashcraft, "Revolutionary Politics and Locke's *Two Treatises of Government*," *Political Theory*, 8 (1980): 429–86; *Revolutionary Politics & Locke's Two Treatises of Government* (Princeton, N. J.: Princeton University Press, 1986).

[42] John Dunn, *The Political Thought of John Locke* (Cambridge: Cambridge University Press, 1969).

[43] Quentin Skinner, *The Foundations of Modern Political Thought,* vol. II, *The Age of Reformation* (Cambridge: Cambridge University Press, 1978), 239, 338.

[44] Locke, "Second Treatise," §202, p. 448; see, also §232, p. 467; and Skinner, *Foundations*, vol. II, 198–99.

of "*Barclay* himself, that great Assertor of the Power and Sacredness of Kings"—even he held "That a King may be *resisted*, and *ceases to be a King*."[45] Barclay was an opponent of Buchanan, the Scottish Calvinist thinker whose mid-sixteenth-century *Right of the Kingdom in Scotland* first articulated the position, now famously associated with the *Second Treatise*, that the populace as a whole has the right to resist tyrants.[46] Also reminiscent of Huguenot argument of the previous century is Locke's legalistic view of political authority and tyranny, which will be treated at more length shortly.

> All these writers, from the *Réveille Matin* to the *Vindiciae*, habitually speak of the King as bound to respect positive law. He is bound to think of law as 'lady and mistress', and if he breaks the law habitually he becomes a 'tyrant'.[47]

Hence the question is not whether the *Second Treatise* is a work of its time but, rather, whether the historical context is built into Locke's arguments to any significant degree. Most scholars regard the local references as merely illustrations and applications of an abstract theory that can otherwise stand on its own, independent of the parochial context, and think that Locke used traditional materials to build a theory that escapes its ancien-regime horizon.[48] However, consider closely the logic of Locke's account of the right of resistance. In the climactic chapter of the *Second Treatise*, he tells us that resistance is justified when a government is "*dissolved from within*," which happens either: when the "*Legislative* is *altered*," usually through the misuse of authority; or "the Legislative, or the Prince…act contrary to their Trust."[49] These dual grounds recall sixteenth-century Huguenot theory, which distinguished 'tyrants by usurpation,' who seize power that is not lawfully

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[45] Locke, *ST*, §232, pp. 467–68, and §239, p. 473.

[46] Skinner, *Foundations*, vol. II, 301, 339, 343.

[47] J. W. Allen, *A History of Political Thought in the Sixteenth Century* (London: Methuen, 1960), 325; see, also, J. H. Franklin, "Constitutionalism in the Sixteenth Century: The Protestant Monarchomachs," in *Political Theory and Social Change*, ed. D. Spitz (N.Y.: Atherton, 1967), 122.

[48] Charles Tarlton has observed that "scholarly interpretations still resist treating *Two treatises* as mainly an activist tract and persist in characterizing it always as something loftier, viz. 'political philosophy', 'systematic moral apologia', and the like.…[E]ven critics friendly to a strictly historical approach have hesitated before the implications of Laslett's dicta that Locke wrote as a whig pamphleteer and for Shaftesbury's purposes" ("The Exclusion Controversy, Pamphleteering, and Locke's *Two Treatises*," *Historical Journal* 24 [1981]: 49).

[49] Locke, *ST*, §212 and §221, pp. 455–56, 460.

theirs, from 'tyrants by practice,' who use legitimate authority badly.[50] Locke, we will see, uses the distinction to refer, respectively, to overstepping constitutional authority or to violating the law.

The connection to the historical context is explicit in the case of the first criterion, 'alteration of the legislative':

> This being usually brought about by such in the Commonwealth who misuse the Power they have: It is hard to consider it aright, and know at whose door to lay it, without knowing the Form of Government in which it happens.[51]

Locke proceeds to stipulate a constitution of the English sort (although it is not labeled as such) in which "the Legislative [is] placed in the Concurrence of three distinct Persons":

> A single hereditary Person having the constant, supream, executive Power, and with it the Power of Convoking and Dissolving the other two within certain Periods of Time.
>
> An Assembly of Hereditary Nobility.
>
> An Assembly of Representatives chosen *pro tempore*, by the People.[52]

Stipulating a constitution is a necessary step in the argument insofar as the concept, 'misuse of authority,' requires a prior definition of the parameters of authority. Only within some constitutional framework—such as that of England—does it become possible to lay out specific grounds for rebellion. He proceeds to enumerate several scenarios which made transparent, though implicit, reference to the reigns of the last Stuarts. The legislative is altered when the king (1) sets up his arbitrary will in place of the laws; (2) hinders the assembly from meeting or acting freely; (3) meddles with elections, or the electors, contrary to the public interest; or (4) delivers the nation into subjection to a foreign power.[53]

On its face, the second criterion—violating the people's trust—is the point at which Locke's argument escapes from any contextual referent. His purpose in introducing the criterion is to license rebellion in advance of settled tyranny:

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[50] Skinner, *Foundations*, vol. II, 306–7; see, also, Allen, *History*, 320–21.

[51] Locke, *ST*, §213, p. 456.

[52] Locke, *ST*, §213, p. 456.

[53] Locke, *ST*, §214–17, pp. 456–58. In a passage presumably inserted after the Glorious Revolution, he adds that "such a Government may be dissolved" if the prince "neglects and abandons" his charge (§219, p. 459).

> To tell *People* they *may provide for themselves*, by erecting a new Legislative, when by Oppression, Artifice, or being delivered over to a Foreign Power, their old one is gone, is only to tell them they may expect Relief, when it is too late, and the evil is past Cure.

The people must have the right to act earlier, when rulers violate their trust by "endeavour[ing] to invade the Property of the Subject, and to make themselves . . . Arbitrary Disposers of the Lives, Liberties, or Fortunes of the People."[54] This turns out to be a legalistic argument, making reference to both natural and civil law. The claim that government exists to protect subjects' lives, liberties, and properties is originally founded in natural law. But, Locke says, we cannot count on natural law being applied and applied fairly; and, therefore, positive law is required to fill in the content of individuals' protection rights.

> Men unite into Societies, that they may have the united strength of the whole Society to secure and defend their Properties, and may have *standing Rules* to bound it, by which every one may know what is his.[55]

Hence, in chapter nineteen's explanation of the concept, 'violation of trust,' Locke invokes the need for, and importance of, positive law:

> The Reason why Men enter into Society, is the preservation of their Property; and the end why they chuse and authorize a Legislative, is, that there may be Laws made, and Rules set as Guards and Fences to the Properties of all the Members of the Society, to limit the Power, and moderate the Dominion of every Part and Member of the Society.[56]

In this way, legal definition of 'what is his' becomes basic to defining arbitrary rule.

Locke finishes his discussion of the concept, 'violation of trust,' by adducing additional constitutional examples. The

> *supreame Executor . . . acts* also *contrary to his Trust*, when he either imploys the Force, Treasure, and Offices of the Society, to corrupt the *Representatives*, and gain them to his purposes: or openly pre-ingages the *Electors*, and prescribes to their choice.[57]

These made implicit reference to James II's activities in 1688.[58]

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[54] Locke, *ST*, §220–21, p. 460.
[55] Locke, *ST*, §136, p. 404.
[56] Locke, *ST*, §222, p. 460.
[57] Locke, *ST*, §222, p. 461.
[58] Ashcraft, *Revolutionary Politics*, 546.

The legalism of Locke's political imagination has been widely remarked;[59] Kirstie McClure lays out the underlying logic in *Judging Rights*. In the period, she explains, the concept of property meant 'propriety,' which was "a morally loaded term connoting that which was properly 'one's own,' particularly as this was established by law."[60] What is 'one's own' being a matter of legal definition, the conceptualization of tyranny as the violation of subjects' life, liberty, or property necessarily took on a legalistic cast: "a legally constituted self-propriety [is] the experiential basis on which civil subjects might distinguish between the lawful and unlawful exercise of…power."[61]

While Locke's legalism is widely recognized, what is less well seen is that this legalistic logic builds a parochial context into his theory of politics[62] (although the context need not be the English ancien-regime context that he had in view). His criteria for knowing when resistance is justified, in the concrete, require either (a) specifying a constitutional context (for the charge of the misuse of authority) or (b) specifying a legal context (for crimes of violating subjects' property, broadly conceived). Rebellion, Locke said, is "an Opposition, not to Persons, but Authority, which is founded only in the Constitutions and Laws of the Government."[63]

The sense in which the political force of Locke's theory depends on the facts of the case is different than in Hobbes's case. In the earlier theory, the political force of the argument for unconditional

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[59] John Dunn, for instance, observes that "this [is] a theory of the restoration of an existing degree of legality rather than a conceptually primitive doctrine of tyrannicide" (*Political Thought*, 182). "The specific political doctrine which emerged from the work of 1679–81 and which made its publication such a natural gesture in 1690 was merely the dignifying of the legal order of the English polity" ("The politics of Locke in England and America in the eighteenth century," in *Political Obligation in its historical context* [Cambridge: Cambridge University Press, 1980], 60). See also L. G. Schwoerer, "The Right to Resist: Whig Resistance Theory, 1688 to 1694," in *Political Discourse in Early Modern Britain*, ed. N. Phillipson and Q. Skinner (Cambridge: Cambridge University Press, 1993), 251.

[60] Kirstie McClure, *Judging Rights: Lockean Politics and the Limits of Consent* (Ithaca: Cornell University Press, 1996), 17.

[61] McClure, *Judging Rights*, 239.

[62] An exception is James Tully, "Placing the 'Two Treatises'," in *Political discourse in early modern Britain*, ed. N. Phillipson and Q. Skinner (Cambridge: Cambridge University Press, 1993), who characterizes Locke as having a "constitution-enforcing" conception of rights: "the primary use of rights by Locke and republican-Whig writers is to constrain or limit the king or parliament to act within a known and recognized constitutional structure of lawfulness" (261).

[63] Locke, *ST*, §226, p. 464.

sovereignty depended on introducing specific constitutional facts. In Locke's case, the conclusion—that rulers are accountable to the people and may be resisted—does not depend on stipulating such facts, but the practical application of the argument does.[64] It may be helpful to draw a distinction between justifying the right of resistance per se and justifying resistance in particular cases.[65] The former is a Lockean universal. However, once he effectively defines tyranny as subverting a given constitutional order or violating subjects' legally-defined rights, justifying resistance in a particular case requires stipulating (as he does) the constitutional or legal context. Therefore, Laslett's statement that *nothing* in the *Second Treatise* could be disproved by the discovery of new historical evidence about the English constitution is too strong. The shape of the inherited constitution bore directly on the legitimacy of rebellion in the immediate context, although it did not touch the principle that the people always retain the right to remove tyrants.[66]

Given the integral role played by constitutional and legal assumptions in both theories, it is wrong to characterize them as 'philosophical' *rather than* 'constitutional' contract theories. They are both—that is, they are theories with pretensions to universality that nonetheless build the inherited English constitution and legal order into their logics. Oddly enough, since Locke was more willing than Hobbes to acknowledge the place of constitutional specifics in his argument, the connection is weaker in the logic of his theory. Still, the political force of his arguments requires a 'constitutional' contract argument that locates the theory firmly in some constitutional or legal context, and, for him, this context was the English ancien regime.

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[64] For similar arguments, see McClure, *Judging Rights*, 228–29 and 238 ("because the experiential judgment that grounds its expression is a cognizance of civil injury, its necessary frame of reference for existential civil agents must be a preexisting constitutional order").

[65] Dunn, *Political Thought*, notes a related, though smaller, argument: "The appropriate form of resistance varies to some extent with the constitution of society—in England for instance it appears not to be legitimate to attack the monarch himself. But its rationale is the same anywhere in the world and at any point in human history" (179).

[66] Perhaps the connection between the general and the particular was spelled out in more detail in the lost middle section of the *Second Treatise*, which may have dealt with English constitutional history (Laslett, "Introduction," 66; and Julian H. Franklin, *John Locke and the Theory of Sovereignty*, paperback ed. [Cambridge: Cambridge University Press, 1981], 122 n. 79).

Resistance: An Ancien-Regime Problem

However obvious the affinity between contractarianism and modern political sensibilities may seem retrospectively, the customary view that the social contract is a modern idea passes lightly over a curious historical anomaly. Contract thinking went into eclipse in the Anglo-American world just as representative democracy was being institutionalized in the late eighteenth and early nineteenth centuries. David Hume's famous essay, "Of the Original Contract," published in 1748, and the American Declaration of Independence of 1776, the last great contract statement in Anglo-American politics, are convenient markers of the demise of contractarianism in the English-speaking world. During the emergence of ministerial government in Britain and the constitutional founding of the United States, thinkers on the ground seem not to have found the idea of the social contract relevant to the new political order.

The fate of contractarianism in the modern era belies the Whiggish story of a direct line of descent from contract theory to modern electoral politics and representative democracy. If, as Whigs think, contract theory embodied the fundamental principles of modern political culture, why did utilitarianism overtake it to become the dominant mode of political philosophy in the nineteenth century? Rather than speculate about reasons for the demise of contractarianism, let us turn to the arguments of critics on the ground in the eighteenth century. The most famous, of course, was David Hume, whose criticisms helped make the genre obsolete.

In *A Treatise of Human Nature*, Hume straightforwardly claimed that his philosophy could do better than the contractarians' at resolving *their* main concern. "They wou'd prove, that our submission to government admits of exceptions, and that an egregious tyranny in the rulers is sufficient to free the subjects from all ties of allegiance." The principle is correct, but their reasoning is fallacious: "I flatter myself, that I can establish the same conclusion on more reasonable principles."[67] The key questions were: why, and how far, subjects are bound to obey their government; and when resistance is legitimate. Hume

[67] David Hume, *A Treatise of Human Nature*, ed. E. C. Mossner (Harmondsworth, Middlesex: Penguin/Pelican, 1969), 601.

claims that our shared interest in security and protection provides a better way of answering these questions than contract theory:

> There evidently is no other principle than public interest; and if interest first produces obedience to government, the obligation to obedience must cease, whenever the interest ceases, in any great degree, and in a considerable number of instances.[68]

This is a better way of thinking about resistance, Hume argues, for several reasons, negative and positive. "Of the Original Contract" is well-known for criticizing the empirical falsity of the contract metaphor: most people simply do not imagine that rulers' title to authority and subjects' duty of allegiance are founded on consent.[69] Furthermore, interest underlies the very duty emphasized by the contractarians—that of promise-keeping—as well as the duty of political allegiance.

> The obligation to allegiance being of like force and authority with the obligation to fidelity, we gain nothing by resolving the one into the other. The general interests or necessities of society are sufficient to establish both.[70]

Beyond the empirical falsity of contract and consent arguments, and the greater cogency of the principle of interest, Hume saw one very good political reason for rejecting contractarianism. That way of thinking is politically dangerous because it directs attention to enumerating exceptions to the general rule of obedience:

> as obedience is our duty in the common course of things, it ought chiefly to be inculcated; nor can any thing be more preposterous than an anxious care and solicitude in stating all the cases, in which resistance may be allowed.... Would [a philosopher] not be better employed in inculcating the general doctrine, than in displaying the particular exceptions, which we are, perhaps, but too much inclined, of ourselves, to embrace and to extend?

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[68] Hume, *Treatise*, 602, 604.

[69] David Hume, "Of the Original Contract," in *Essays: Moral, Political, and Literary*, ed. E. F. Miller (Indianapolis, Indiana: Liberty Fund, 1987), 469–70.

[70] Hume, "Original Contract," 481. Just previously, he poses the question: "What necessity, therefore, is there to found the duty of *allegiance* or obedience to magistrates on that of *fidelity* or a regard to promises, and to suppose, that it is the consent of each individual, which subjects him to government; when it appears, that both allegiance and fidelity stand precisely on the same foundation, and are both submitted to by mankind, on account of the apparent interests and necessities of human society?" (480–81).

"Maxims of resistance," he concludes, "are, in general, so pernicious and so destructive of civil society."[71] In similar vein, he explains in the *Treatise* that it is "impossible for the laws, or even for philosophy, to establish any *particular* rules, by which we may know when resistance is lawful."[72] Hume has the Glorious Revolution specifically in view here. Having stated that it is impractical to make specific rules about resistance, he notes that in mixed monarchies resistance is legitimate in circumstances either of tyranny or usurpation of power beyond constitutional bounds[73] and leaves off saying it is not his present purpose to show how even these broad principles apply to the late revolution.[74]

This last complaint indicates something important about the purpose of contract theory. As Hume saw it, contractarianism framed political analysis in terms of a casuistry of exceptions to the general principle of obedience. It promoted "an anxious care and solicitude" for detailing relevant cases and particular rules applicable to rebellion. Hume's complaint is nowhere better illustrated than by another eighteenth-century document, the American "Declaration of Independence." Opening with a Lockean rationale for the right of resistance per se and the principles governing its application, the bulk of the manifesto is devoted to enumerating specific points that justify rebellion in the current circumstance. Jefferson takes Locke's impulse to spell out how the resistance doctrine applied in the present constitutional case[75] to the extreme with a bill of indictment against George III detailing more than twenty-five separate complaints. For instance: "He

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[71] David Hume, "Of Passive Obedience," in *Essays: Moral, Political, and Literary*, 490–91.

[72] The impossibility, he explains, is of a practical nature, since one and the same act may be tyrannical in some circumstances and not in others (Hume, *Treatise*, 614).

[73] Hume, *Treatise*, 614–15; see also "Passive Obedience," 491–92. These dual grounds for rebellion are analyzed in Duncan Forbes, *Hume's Philosophical Politics* (Cambridge: Cambridge University Press, 1975), ch. 3.

[74] The passage opens with a question and concludes with a nonanswer: "But here an *English* reader will be apt to enquire concerning that famous *revolution*.... It does not belong to my present purpose to shew, that these general principles are applicable to the late *revolution*" (Hume, *Treatise*, 614–15).

[75] In a passage deleted by the Continental Congress (emphasized below), Jefferson took care to specify the colonial constitutional situation: "We have reminded" our British brethren "of the circumstances of our emigration and settlement here... *in constituting indeed our several forms of government, we had adopted one common king... but... submission to their parliament was no part of our constitution, nor ever in idea, if history be credited*"(Thomas Jefferson, "A Declaration by the Representatives of the United States of America, in General Congress Assembled," in *Social and Political Philosophy*, ed. J. Somerville and R. E. Santoni [Garden City, N.Y.: Doubleday/Anchor, 1963], 243). For the background and significance of Jefferson's statement, see Gordon

has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation till his assent should be obtained"; "He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature"; and "He has endeavored to prevent the population of these states; for that purpose obstructing the laws for naturalization of foreigners."[76] Hume might well have remarked a connection between this way of framing the crisis and the pernicious Jeffersonian opinion that "a little rebellion now and then is a good thing."[77]

"Of the Original Contract" identifies contractarianism with Lockean contract theory and ignores Hobbes's conservative version of the genre. Nevertheless, Hume's complaint about the school's preoccupation with detailing relevant reasons and cases has implications for the conservative version. Hobbes's absolutist contract can be seen as the mirror opposite of Locke's and Jefferson's—that is, an elaborate and complex set of reasons why tyrants may *never* be resisted. Indeed, Hobbes's obsession with elaborating a cogent and comprehensive series of responses to resistance questions is evident in the process, detailed above, of revision through the several versions of his political theory. From Hume's perspective, *Leviathan*'s "Review and Conclusion," which derives subjects' obligation from their interest in protection, must be counted the sole sensible part of his theory. Only the general principle that there is a "mutuall Relation between Protection and Obedience"[78] could have met with his approval, as opposed to Hobbes's massive contractarian denial of resistance rights.

There is, then, this second sense in which seventeenth-century English contract theory is rightly described as a parochial, 'political' genre. In addition to being framed with the institutions of hereditary monarchy in view, the genre addresses a species of problems specific to

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S. Wood, *The Creation of the American Republic 1776–1787* (Chapel Hill, North Carolina: University of North Carolina Press, 1969), 352.

[76] Jefferson, "Declaration," 241.

[77] Thomas Jefferson, "Letter to James Madison, January 30, 1787," in *The Political Writings of Thomas Jefferson: Representative Selections*, ed. E. Dumbauld (Indianapolis, Indiana: Bobbs-Merrill, 1955), 67. See also a letter to William S. Smith in the same year in which Jefferson exclaims, "God forbid we should ever be twenty years without such a rebellion" [Shay's Rebellion] and declares, "the tree of liberty must be refreshed from time to time with the blood of patriots and tyrants" ("Letter to William S. Smith, November 13, 1787," in *Political Writings*, 68, 69).

[78] Hobbes, *LV*, "A Review and Conclusion," p. 728.

the politics of those regimes. It was essentially the same question that confronted Englishmen in the seventeenth century and Jefferson and the colonists in the eighteenth: When is it permissible to remove an established government with legitimate title to govern? In order to answer this question, whether pro or con, reasons had to be given. The edifice of contract theory provided a philosophically well-elaborated way of arriving at good reasons for removing (or not removing) "a bad king with a good title," in Burke's phrase.[79]

Hume's complaint about the contractarians' casuistry of resistance indicates why the genre would become anachronistic when the center of British politics shifted from king to parliament and, in the colonies, the constitution of the United States institutionalized a representative national democracy. The signal fact about representative democracy is that it largely eliminates the need to give reasons for removing rulers from power. The question 'When may legitimate rulers be turned out of office?' is only problematic in representative democracies when the normal electoral mechanism fails.[80] Hampton's notion that elections normalize the extraordinary right in contract theory to depose a legitimate government is precisely and importantly wrong. Only in the vaguest and most general sense does the electoral mechanism incorporate the contractarians' 'meta game' into normal politics. Rebellions and elections are certainly two mechanisms whereby the people can depose rulers. But the contractarians' 'meta game' is fundamentally different from the normal game of representative democracies. Unlike subjects of hereditary monarchs, precisely what citizens of modern democracies do not need are reasons for throwing the bums out.[81]

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[79] Edmund Burke, *Reflections on the Revolution in France* (Garden City, N.Y.: Doubleday/Anchor, 1973), 35.

[80] Indeed, the American device for dealing with that eventuality—impeachment—has itself been seen as an anachronistic inheritance from ancien-regime politics. During the furor over impeachment in the Clinton administration, the *New York Times* noted that it had gone out of use in Britain by the end of the eighteenth century, replaced by parliamentary confidence votes (A. Cowell, "Impeachment: What a Royal Pain," *New York Times Week in Review*, 7 Feb. 1999, p. 5).

[81] Franklin, *John Locke*, makes a similar argument. In his view, the problem that Locke (and Lawson) solved was the justification of resistance in a mixed constitution. The modern world, except for the United States, has dispensed with executives who are constitutionally independent of the legislature, so the problem is now largely irrelevant; and their solution is outdated even in the United States because elections and impeachment now take the place of resistance. Hence, he concludes: "Locke's and Lawson's solution to the problem of removal is no longer required for a mixed constitution" (123–24).

So, instead of regarding classic English contract theory as the seed of modern democratic politics, we would do better to see it as the culmination of medieval resistance theory. The genius of the contract metaphor lay in giving structure to the casuistry of reasons and cases that made up resistance argumentation.[82] This is to suggest a parallel between *Leviathan* and the *Second Treatise*, on the one hand, and Filmer's *Patriaracha*, on the other. The latter has been described as the final coda of divine right theory. For their part, Hobbesian and Lockean contract theories completed some five hundred years of thinking about resistance questions.

A skeptic might consider this counterfactual. Suppose the political clock had stopped in the early eighteenth century, just following the great success of contract thinking in the Glorious Revolution. James II had been charged by the Convention Parliament with violating an original contract as well as with abdicating the throne by leaving England. While the second charge accommodated Tory conservatism, many thought the first contractarian charge more accurate to events.[83] Let us suppose, then, that England remained substantially what it was in the early eighteenth century—an ancien-regime hereditary monarchy bedeviled by the dynastic claims of the Stuarts. Thus erase from history the ascendance of parliament and the collapse, at midcentury, of the Jacobite cause, and perhaps we would now look back upon a flowering of contract theory *after* Locke.

Contract theory would not flourish again until Rawls invoked the genre to create a foil for utilitarianism. Interestingly, he purchased the relevance of the theory by accentuating the level of abstraction: "My aim," *A Theory of Justice* begins:

> is to present a conception of justice which generalizes and carries to a higher level of abstraction the familiar theory of the social contract as

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[82] "All Whig statements about resistance," Schwoerer observes, "were derived from some form of a theory of contract" ("Right to Resist," 238).

[83] The House of Commons' resolution, to which the Lords assented, stated "That King James the Second, having endeavoured to subvert the Constitution of the Kingdom, by breaking the Original Contract between king and people, and…having violated the fundamental Laws, and having withdrawn himself out of this kingdom, has abdicated the Government, and that the throne is thereby become vacant" (T. P. Slaughter, "'Abdicate' and 'Contract' in the Glorious Revolution," *Historical Journal* 24 [1981]: 330). For differing assessments of the significance of contractarian thinking in the Convention debates, compare Slaughter with J. P. Kenyon, "The Revolution of 1688: Resistance and Contract," in *Historical Perspectives: Studies in English Thought and Society*, ed. N. McKendrick (London: Europa, 1974), esp. 47–50.

> found, say, in Locke, Rousseau, and Kant. In order to do this we are not to think of the original contract as one to enter a particular society or to set up a particular form of government.[84]

How might he have rephrased this after the admission in "Justice as Fairness: Political not Metaphysical"? It might have been something along these lines: 'My "political" (as opposed to "metaphysical") conception of justice is inspired by the—equally "political"—theories of the classic contractarians. Some of their ideas—principally an absolute regard for individuals and a recognition of plurality—provide a basis for rejecting utilitarianism.[85] We must recognize, however, that those authors might not be able to see themselves in our appropriation and, in any case, they were intent on answering different questions.' The concept of a 'tradition' of contractarian thought and the notion that the contract is a distinctively 'modern' idea need to give way to an appreciation for the variety of parochial purposes for which ideas labeled 'contractarian' have been deployed.

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[84] John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971), 11.

[85] See Rawls, *Theory*, 27–29.

CHAPTER TWO

PACIFYING POLITICS: RESISTANCE, VIOLENCE, AND ACCOUNTABILITY IN SEVENTEENTH-CENTURY CONTRACT THEORY

The right to resist tyrants is one of the great resolved issues in political philosophy. For half a millennium after Aquinas this was as contentious a matter as the right to abortion is now in the United States. Yet the issue evaporated after the eighteenth century. The accountability of governments to the people and, in the extreme, a popular right of rebellion are political truisms across the world today. The Whiggish view that this marks the progress of liberty and the recession of hidebound conservatism mistakes evaluation for explanation. Besides which, it is dubious whether a secular decline in conservatism is a conspicuous feature of modernity. Resistance ceased to be contentious not because the world awakened to the correct view but because the issues in question themselves changed.[1]

A key development, which has been paid more attention in historical sociology than in histories of political thought, lies in shifting norms about the use of violence in domestic politics. Inhabitants of long-pacified 'modern' societies assume that domestic political conflict will not commonly take a violent turn and sharply distinguish the *extra*ordinary right of rebellion from ordinary politics. By contrast, both sides in medieval debates over the right of resistance took for granted that the principles of conditional authority and accountable government implied and legitimized violent conflict. This is evident, for example, in the defense of resistance offered by the conciliarist Jean Gerson (1363–1429). Writing at the time of the Great Schism in the Church, Gerson maintained "it is a mistake to claim that kings are free from any obligations towards their subjects"; "if they act unjustly towards their subjects, and if they continue in their evil behavior, then it is time to apply that law of nature which prescribes that we may repel force

[1] For the argument that doctrines must be understood in the context of the questions they are meant to answer, see R. G. Collingwood, *An Autobiography* (London: Oxford University Press, paperback ed., 1970).

with force."[2] The same assumption that accountability implied political violence underpinned the classic case for nonresistance, which was grounded on the Pauline statement in Romans XIII: "the power that is everywhere is ordained of God." Hence "the fact that the rulers are wicked and unjust does not excuse disorder and rebellion"; "outrage is not to be resisted, but endured."[3] In the absence of peaceful, electoral mechanisms for holding rulers to account, it was realistic to suppose that the only available responses to governmental malfeasance were forcible resistance or passive endurance.

With the benefit of hindsight, it is apparent that the resistance question conflated two, now largely separate, issues: the constitutional relationship between ruler and ruled; and 'private warfare,' meaning the use of force without sovereign authority. The latter was a ubiquitous feature of medieval society, encompassing all manner of the use of force by private individuals from vigilante justice to dueling to political violence.[4] The constitutional question of rulers' accountability would cease to be an issue only with the achievement, in practice and in theory, of a ban on private warfare, and particularly political violence, in all but extraordinary circumstances. Only in the context of a pacified society does the principle of governmental accountability lose its fearsome aspect and become an unremarkable, uncontentious feature of normal politics.

Working out the idea of a pacified society was a principal problem of seventeenth-century social contract theory. My purpose here is to show, more specifically, that this was a shared preoccupation of Hobbesian and Lockean contract theories. Despite their opposing *stands* on resistance, Hobbes and Locke were in this significant respect engaged in a common intellectual project. Furthermore, theirs was a

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[2] Jean Gerson, *Ten Highly Useful Considerations for Princes and Governors* (Antwerp, 1706), quoted in Quentin Skinner, *The Foundations of Modern Political Thought*, vol. II, *The Age of Reformation* (Cambridge: Cambridge University Press, 1978), 126–27.

[3] The first and third quotations are from Martin Luther, "Secular Authority: To What Extent It Should Be Obeyed" (1523), in *Martin Luther: Selections from His Writings*, ed. J. Dillenberger (Garden City, NY: Doubleday/Anchor, 1961), 366, 388. The second is from Luther, "Admonition to Peace" (1524), quoted in Skinner, *Foundations*, vol. II, 19.

[4] Two enlightening discussions of private warfare in the medieval period are J. L. Holzgrefe, "The Origins of Modem International Relations Theory," *Review of International Studies* 15 (1989); and Robert Bartlett, "'Mortal Enmities': The Legal Aspect of Hostility in the Middle Ages"(manuscript, University of Chicago, n.d.).

Grotian project: the problems concerning the nexus of violence and accountability which their theories work through had been framed by the Dutch jurisprudential thinker in *De Jure Belli Ac Pacis* (1625). In this regard, seventeenth-century social contract theory is better seen as a conversation among Grotian thinkers than as a quarrel between 'Leviathan' and constitutionalism.[5]

It was Grotius's genius to see behind the constitutional question of resistance rights to the more fundamental problem of private warfare. In the course of examining the complexities of the resistance issue, he framed the idea that an organized political society must, first and foremost, be a *pacified*—a 'civil'—society. The idea is echoed in Hobbes's and Locke's definitions of an organized political society. A "perfect City," in the former's words, is an association in which "no Citizen hath *Right* to use his faculties, at his owne discretion, for the preservation of himselfe, or where the *Right of the private Sword* is excluded."[6] According to the *Second Treatise*:

> Where-ever…any number of Men are so united into one Society, as to quit every one his Executive Power of the Law of Nature, and to resign it to the publick, there and only there is a *Political or Civil Society*.[7]

Making allowance for their differing views on the permissible use of force in a precivil "state of nature," Locke's "executive power of the law of nature," meaning the right to use coercion to enforce natural law, is the equivalent of the Hobbesian "right of the private sword." Both make a ban on the use of force by private individuals the necessary and defining condition of political society.

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[5] I am indebted to the work of Richard Tuck for this thesis and for much of my understanding of Grotian theory. In the past decade, he and Knud Haakonssen have done much to revive Grotius's reputation as a seminal moral and political philosopher. *De Jure Belli Ac Pacis*, which has long been narrowly considered a founding treatise in modern international law, is now being recognized as a work that shaped two centuries of moral and political philosophy. See Tuck, *Natural Rights Theories: Their Origin and Development* (Cambridge: Cambridge University Press, 1979); "Grotius, Carneades and Hobbes," *Grotiana* 4 (1983): 43–62; "The 'Modern' School of Natural Law," in *The Languages of Political Theory in Early-Modern Europe*, ed. A. Pagden (Cambridge: Cambridge University Press, 1987); and Haakonssen, "Hugo Grotius and the History of Political Thought," *Political Theory* 13 (1985): 239–65.

[6] Hobbes, *DC*, 6.13, p. 97. See also *EL(T)*, II.1.5, p. 85: "Where any subject hath right by his own judgment and discretion to make use of his force; it is to be understood that every man hath the like, and consequently that there is no commonwealth at all established."

[7] Locke, *ST*, §89, p. 368.

The 'Grotian problem,' which Hobbes and Locke inherited, was to specify the scope and limits of the requisite ban. In characteristic medieval fashion, Grotius conflated political resistance with individuals' right of self-defense and with accountable government. In doing so, he was working within the long-standing tradition of 'private law' argumentation on the resistance question. Illustrated, for example, by the Gersonian statement that was quoted earlier, the essence of private law thinking lay in equating individuals' natural right of self-defense with resistance to tyrannous rulers. Rooted in Roman and canon law, the doctrine held that tyrants reduce themselves to the status of ordinary felons, and therefore communities may resist tyranny just as ordinary people may resist felonius assault.[8] The analogy is the starting point for Grotius's consideration of the requisites of a civil society. But he was more successful in laying out competing, pertinent considerations than in resolving the resistance question. Unraveling the separate issues of political violence, self-defense, and governmental accountability was the problem Grotius set for later thinkers.

The Grotian Problem

> What difference is there between tranquil peace and the hurly-burly of war, if controversies between individuals are settled by the use of force?
>
> *The* Edict *of Theodoric*[9]

De Jure Belli Ac Pacis is a treatise on the legitimacy, causes, and rules governing "war," which Grotius defines, on Cicero's authority, as "the condition of those contending by force."[10] It is indicative of the gap between medieval and modem politics that popular sovereignty and governmental accountability are pertinent topics. As we will see shortly, they arise for consideration in connection with the subject of "private warfare"—"that which is waged by one who has not the lawful authority."[11] The distinction between private and "public warfare" ("waged

[8] The Roman and canon law roots of 'private law' doctrine and the development of the doctrine by Lutheran and Calvinist thinkers are treated extensively in Skinner, *Foundations*, vol. II, esp. 124–27, 198–204, 217–24, 234–35.

[9] Quoted by Grotius, *DJB*, I.3.2, p. 91.

[10] Grotius, *DJB*, "Prolegomena," p. 21; see also I.1.2, p. 33.

[11] Grotius rejects the distinction, which was central to Protestant resistance theory, between subordinate officials and ordinary citizens. To his mind, it is erroneous to

by him who has lawful authority to wage it")[12] does not, for Grotius, mark the division between illegitimate and legitimate violence. "The power to make war should be reserved to the king": but this, "it must be understood, refers to external war."[13] The complementary assumption—that private warfare can be legitimate—frames Grotius's consideration of popular sovereignty and governmental accountability: these figure as concepts relevant to specifying when force may legitimately be used by private individuals against the government.

Breaking from the theistic horizons of medieval thinking on the subject, Grotius meant to devise a natural law theory that "would have a degree of validity even if we should concede… that there is no God, or that the affairs of men are of no concern to Him."[14] For a substitute, he turned, in neo-Stoic fashion, to principles of nature and named self-preservation as the first principle and "right reason," whose object is moral goodness, as the second. These are principles that govern the use of force generally. War is lawful, he stipulates, when its end and aim is the preservation of life and limb and when it does not conflict with the purpose of society, which is to safeguard individuals' rights.[15]

On this basis, Grotius at the outset in *De Jure Belli Ac Pacis* conceives the question of the legitimacy of private warfare as a problem requiring balancing the right of self-defense with social utility. On the one hand, the root principle of self-preservation licenses (some instances of) private warfare: "private wars in some cases may be waged lawfully" because "the use of force to ward off injury is not in conflict with the law of nature."[16] How far, on the other hand, is the exercise of the natural right of self-defense consistent with the requirements of organized society? To attack this key question, Grotius starts with the relatively straightforward case of criminal violence. Arguing against the view that the establishment of public tribunals overrides the right

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hold that the latter may not resist tyranny but the former have a right and duty to do so (*DJB*, I.4.6, p. 146).

[12] Grotius, *DJB*, I.3.1, p. 91. The classificatory scheme also includes "mixed" warfare: "that which is on one side public, on the other side private."

[13] Grotius, *DJB*, I.4.13, p. 158; see also I.3.4, p. 97.

[14] Grotius, *DJB*, "Prolegomena," p. 13. Cf. Haakonssen, "Hugo Grotius," 248–49, who argues that this proposition drew on traditional scholastic philosophy and was not, in other words, a novel thought.

[15] Grotius, *DJB*, I.2.1–2, 4–5, pp. 51–53.

[16] Grotius, *DJB*, I.3.1, p. 91. See also II.1.16, p. 184, and, generally, II.1.3–7, pp. 172–75.

of self-defense,[17] he observes that even within organized political systems individuals retain the right to use defensive force in situations of extreme and imminent peril: "By the laws of all peoples known to us the person who in peril of his life has by means of arms defended himself against an assailant is adjudged innocent."[18]

Private warfare in the form of political resistance was a more complex matter, which Grotius could more clearly define than resolve. His insight lay in seeing that the issue was one of means as well as ends: that is, it concerns the admissibility of violence in civil society as well as the constitutional and moral relationship between ruler and ruled. Thus, in the first instance, Grotius defines resistance as an analytic issue concerning the necessary attributes of a state.[19] While "by nature all men have the right of resisting in order to ward off injury," this cannot be taken to license a "promiscuous right of resistance":[20]

> 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, only a non-social horde.[21]

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[17] Cf., e.g., *The Trew Law of Free Monarchies* (1598), in which James I rebuts the 'private law' brief for resistance by arguing that private citizens in organized societies may not use violence to defend themselves: "if it be not lawful to a private man to revenge his private injury upon his private adversary (since God has only given the sword to the magistrate) how much less is it lawful to the people, or any part of them (who all are but private men, the authority being always with the magistrate, as 1 have already proved), to take upon them the use of the sword, whom to it belongs not, against the public magistrate, whom to only it belongs." In David Wootton, ed., *Divine Right and Democracy* (Harmondsworth, Middlesex: Penguin, 1986), 101.

[18] Grotius, *DJB*, I.3.2, p. 92.

[19] Grotius also reproduces the traditional, Ciceronian definition of a state as a "complete association of free men, joined together for the enjoyment of rights and for their common interest" (*DJB*, I.1.14, p. 44).

[20] The latter phrase is taken from the translation of the passage in Barbeyrac's 1738 edition, as quoted by Tuck, *Natural Rights Theories*, 78–79. In this version, the conclusion reads, "if that promiscuous Right of Resistance should be allowed, there would be *no longer a State*, but a Multitude without Union."

[21] Grotius, *DJB*, I.4.2, p. 139. See also I.4.4, p. 143: "Now beyond doubt the most important element in public affairs is the constituted order of bearing rule and rendering obedience.… This truly cannot coexist with individual licence to offer resistance."

"As a general rule," then, "rebellion is not permitted by the law of nature," which rule is borne out, Grotius goes on to argue, by historical practice and by scriptural law.[22]

While significant for the idea that *some* limitation on the use of force is a defining feature of civil society, this Grotian formula left vague the extent of the necessary ban on political resistance. The problem is amplified, rather than resolved, in subsequent discussion. Having arrived at the "law of non-resistance," Grotius proceeds to recognize a series of exceptions based on competing natural right and contractarian principles. First, he reverts to the private law analogy between self-defense and political resistance by stipulating that "extreme and imminent peril" licenses private war in both the individual and the corporate case.[23] Hence "the right to make war may be conceded against a king who openly shows himself the enemy of the whole people," although such tyranny is not, Grotius thinks, a frequent occurrence.[24] Rebellion against a usurper of sovereign power, who has violated a mixed constitution or prior public law or gained power through an unlawful war, can also be licit.[25]

Relevant, last, is the constitutional relationship between ruler and ruled. It is here that popular sovereignty and governmental accountability enter the argument. Grotius was concerned to refute, as a general proposition, an apology for the right of resistance based on the opinion of universal popular sovereignty and, therefore, universal governmental accountability. In this connection, he framed a latterly infamous contractarian defense of absolutism, arguing by analogy that just as it is possible for individuals to enslave themselves, so too a nation can wholly transfer the right of self-government to an absolute ruler.[26] But this is a permissive defense of absolutism, in contrast to

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[22] Grotius, *DJB*, I.4.2–5, pp. 139–46.

[23] Grotius, *DJB*, I.4.7, pp. 148–56.

[24] Grotius, *DJB*, I.4.11, p. 157 (emphasis omitted) and I.4.3, p. 142.

[25] Grotius, *DJB*, I.4.13 and .15–19, pp. 158, 159–63. Other minor exceptions to the "law of nonresistance," which Grotius enumerates, include the right to make war on a king who has abdicated sovereign power or alienated the kingdom (I.4.9–10, p. 157).

[26] Grotius, *DJB*, I.3.8, p. 103: "At this point first of all the opinion of those must be rejected who hold that everywhere and without exception sovereignty resides in the people, so that it is permissible for the people to restrain and punish kings whenever they make a bad use of their power. . . . To every man it is permitted to enslave himself to any one he pleases for private ownership, as is evident both from the Hebraic and from the Roman Law. Why, then, would it not be permitted to a people having legal competence to submit itself to some one person, or to several persons, in such a way as

the strong analytic proposition, which Hobbes will defend, that sovereignty is necessarily unconditional. It is also possible, Grotius held, for there to be a historical contract between ruler and ruled providing for governmental accountability, retained popular rights, and therefore a right of resistance:

> If rulers [are] responsible to the people, whether such power was conferred at the beginning or under a later arrangement, [then] if such rulers transgress against the laws and the state, not only can they be resisted by force, but, in case of necessity, they can be punished with death.[27]

"For he who alienates his own right can by agreement limit the right transferred."[28]

On its face, this last contractarian argument contradicts the previous analytic proposition that a "promiscuous right of resistance" is per se incompatible with civil society. Either nonresistance is a constitutive attribute of organized political society or it is a circumstantial norm, varying between states. Furthermore, both analytic and contractarian lines of argument fit uneasily with the third pertinent Grotian concept—the natural right of self-defense. To say that "extreme and imminent peril" licenses defensive violence, in the case of individuals and of nations, cuts away at the analytic proposition that a promiscuous right of resistance is inimical to civil society and runs counter to the contractarian argument that nations may consent to absolute subjection.[29]

We can see, with the perspective of hindsight, that Grotius's mistake lay in conflating several different issues under the single heading of the resistance question. The apparent inconsistencies between his arguments disappear if their several topics are distinguished. Whereas the

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plainly to transfer to him the legal right to govern, retaining no vestige of that right for itself?" The influence of this line of argument on British political thinking throughout the seventeenth century is discussed by Tuck, *Natural Rights Theories*.

[27] Grotius, *DJB*, I.3.8, p. 156.

[28] Grotius, *DJB*, I.4.14, p. 159. This follows the stipulation: "If in the conferring of authority it has been stated that in a particular case the king can be resisted,…some natural freedom of action…has been reserved and exempted from the exercise of royal power."

[29] In *De Jure Naturae et Gentium Libri Octo* (1672), Samuel Pufendorf attempted to reconcile the natural right and contractarian Grotian arguments by distinguishing between defensive resistance "when a prince has become an enemy" and forcible resistance to rulers who "have not ruled in accordance with [the people's] desires." The former but not the latter is permissible even in nations that have entered into an absolutist contract. *De Jure Naturae*…, trans. C. H. Oldfather and W. A. Oldfather (Oxford: Clarendon, 1934), bk. VII, ch. 8, §6, p. 1110.

analytic argument concerns the inadmissibility of private warfare in civil society, his discussion of possible constitutional contracts treats the different issue of governmental accountability. These Grotian arguments point to contradictory conclusions only because Grotius assumes that constitutional accountability is a license for resistance and private warfare. Absent that assumption, his position comes down to one that many modern readers would find self-evident: civil society entails a ban on violent political conflict *and* constitutional governments are accountable to the people. His third natural right argument takes its force from the case of criminal violence and the customary right of individuals to defend themselves against criminal attack. This argument comes into contradiction with his analytic and contractarian defenses of absolutism because Grotius generalizes, in traditional fashion, from the individual to the political case—from a private right of self-defense to a political right of rebellion in situations of extreme and imminent peril.

I have next to show that these distinctions were worked out, in reverse sequence, by Hobbes and Locke. Hobbes's initial formulation of the social contract (in the first two versions of his political theory, *The Elements of Law* [1640] and *De Cive* [1642]) targets the problem of distinguishing the individual's right of self-defense from political resistance and of showing that the former, but not the latter, is consistent with the requirements of a pacified society. In turn, Locke's achievement was to strip the idea of a pacified society of its absolutist implications by showing how it could be rendered consistent with the principles of governmental accountability and an ultimate, popular right of rebellion.

The Hobbesian Solution

> If, in fact, the right of resistance should remain without restraint, there will no longer be a state, only a non-social horde.
>
> Grotius, *De Jure Belli Ac Pacis*, 1.4.2

> This *submission* of the *wils* of all those men to the *will of one man*, or *one Counsell*, is then made, when each one of them obligeth himself by contract to every one of the rest, not to resist the *will* of that *one man*, or *counsell*, to which he hath submitted himselfe.
>
> Hobbes, *De Cive*, 5.7

Grotius's idea of the state became Hobbes's definition of the political covenant in *The Elements of Law* and *De Cive*.[30] In so doing, Hobbes eliminated the inconsistency in Grotian theory between the analytic proposition that the right of resistance *must* be given up and the contractarian argument that the right *may* be retained in a historical contract between ruler and ruled. Replacing that historical question with the hypothetical one—'What would individuals in a brutish state of nature promise?'—Hobbes gives the consistent Grotian answer: incipient subjects would promise what Grotius had said must be promised to transform that brutish condition into a civil, political society—namely, nonresistance.

Working out the nuances of the promise preoccupied Hobbes as he wrote the first two versions of his political theory, although with the introduction in *Leviathan* of a different, 'authorization' account of the necessary political covenant the problem receded in significance. Why he altered the theory in this important way is a side question, which I have discussed elsewhere.[31] In focusing here on the nonresistance covenant, my goal is to bring out the Grotian lineaments of one strand of Hobbesian contractarianism, not to give an overview of his multiple social contract arguments.[32]

The nonresistance covenant has commonly been accounted by twentieth-century commentators as a poor solution to the problem of generating sovereign power.[33] To be sure, the covenant passages stipulatively equate nonresistance with cooperative support for the sovereign ("that is, that he refuse him not the use of his wealth, and strength").[34] But the nonresistance covenant offers a better and more interesting political argument if we conceive it, instead, along Grotian

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[30] The just quoted passage from Hobbes, *DC*, 5.7, p. 88, echoes *EL(T)*, I.19.10, p. 81.

[31] Deborah Baumgold, *Hobbes's Political Theory* (Cambridge: Cambridge University Press, 1988), chs. 2–3.

[32] It is worth notice that Hobbes's formulation of the concept of authorization also has Grotian roots. Cf. *LV*, 17, p. 227: "every one [is] to owne, and acknowledge himselfe to be Author of whatsoever he that so beareth their Person, shall Act, or cause to be Acted"; and Grotius, *DJB*, I.4.4, p. 141: "Under subjection the Apostle includes the necessity of nonresistance. . . . For the acts to which we have given our authorization we make our own."

[33] This interpretation is cogently argued by Hanna Pitkin, "Hobbes's Concept of Representation—II," *American Political Science Review* 58 (1964): 909–14. See also David Gauthier, *The Logic of Leviathan: The Moral and Political Theory of Thomas Hobbes* (Oxford: Clarendon, 1969), ch. 4; and Raymond Polin, *Politique et Philosophie chez Thomas Hobbes* (Paris: Presses Universitaires de France, 1953), ch. 10.

[34] Hobbes, *DC*, 5.7, p. 88; see *EL(T)*, I.19.10, p. 81.

lines, as a formulation of the necessary condition of a *civil society*. The pertinent equation is, then, not that of nonresistance and cooperation but, instead, the Grotian conflation of nonresistance with renunciation of the 'right of the private sword.' Hobbes indifferently describes the covenant promise, and the necessary condition of civil society, in both terms. In *The Elements of Law*, for example, a subject is defined as one who has "relinquish[ed] his own right of resisting" the sovereign, but shortly thereafter, Hobbes redescribes the covenant in terms of "relinquish[ing] the right of protecting and defending himself by his own power."[35] The latter description anticipates the definition of the state in *De Cive* that was quoted earlier: it is a "perfect city" in which "no Citizen hath *Right* to use his faculties, at his owne discretion, for the preservation of himselfe, or where the *Right* of *the private Sword* is excluded."[36] Thus, at the outset, Hobbes's defense of the absolutist principle of unconditional sovereignty relies on the medieval assumption that political resistance (and, therefore, accountable government) is synonymous with private warfare. No more than Grotius could he imagine that conditional sovereignty and private warfare were separable issues.

How can the idea that civil society requires a promise of nonresistance and renunciation of the 'private sword' be made consistent with the—also Grotian—principle of an unalienable right to defend oneself against violence? The paradox is plainly stated in *The Elements of Law*. Here, Hobbes contradicts himself by simultaneously asserting that a subject gives up "the right of protecting and defending himself by his own power" and that it is "necessary…that he should retain his right to some things: to his own body (for example) the right of defending, whereof he could not transfer."[37]

To resolve the paradox, Hobbes took the path of specifying with more precision how the right to use violence must be limited in civil society. He developed two pertinent distinctions: first, between the 'right to kill' and the right of self-defense and, second, between individual self-defense and political resistance. The first distinction concerns aggressive and defensive violence, rather than acts per se, and

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[35] Hobbes, *EL(T)*, I.19.10, p. 81, and II.1.5, p. 85.

[36] Hobbes, *DC*, 6.13, p. 97.

[37] Hobbes, *EL(T)*, II.1.5, p. 85, and I.17.2, p. 69. The latter passage continues with an enumeration of an expansive list of retained rights: "the use of fire, water, free air, and place to live in, and to all things necessary for life." The passage is reproduced in *DC*, 3.14, p. 68; and in *LV*, 15, pp. 211–12.

involves contrasting a "primitive" natural right of war with the narrower right of self-defense retained by individuals in civil society. "As long as there is no caution had from the invasion of others," Hobbes explains in *De Cive*, "there remains to every man that same *primitive* Right of selfe-defence, by such means as either he can or will make use of (that is) a *Right to all things*, or the *Right of warre*."[38] This juridical assumption, he expressly stipulates, is a necessary condition of the state of nature being a state of war:

> Seeing then to the offensiveness of man's nature one to another, *there is added a right of every man to every thing* whereby one man invadeth with right, and another with right resisteth; and men live thereby in perpetual diffidence, and study how to preoccupate each other; the estate of men in this natural liberty is the estate of war.[39]

It follows, then, that the first precept of natural law is *"that every man divest himself of the right he hath to all things by nature."*[40]

By the time he wrote *De Cive*, Hobbes had seen that divestiture of the "right to all things" is consistent with retention of a right of self-defense and is the basis for the state's monopoly on the right to punish. One of the principal revisions of the theory between the first and second versions is the insertion, in the discussion of possible contracts, of the caveat: "no man is oblig'd by any *Contracts* whatsoever not to resist him who shall offer to kill, wound, or any other way hurt his Body." "When a man is arriv'd to this degree of fear, we cannot expect but he will provide for himself either by flight, or fight." Neither is it necessary, Hobbes continues, that subjects should promise the sovereign, "If I doe it not, though you should offer to kill me, I will not resist."[41] Civil society does not require individuals to renounce the right of resistance in self-defense; it merely requires renunciation of the aggressive "right to kill," which becomes a state monopoly.[42]

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[38] Hobbes, *DC*, 5.1, p. 85. See also *EL(T)*, II.1.5, p. 85 (the passage is quoted in note 6 above).

[39] Hobbes, *EL(T)*, I.14.11, pp. 55–56 (emphasis added). The idea that natural right is a main cause of war in the state of nature is discussed by François Tricaud, "Hobbes's Conception of the State of Nature from 1640 to 1651: Evolution and Ambiguities," in *Perspectives on Thomas Hobbes*, ed. G. A. J. Rogers and A. Ryan (Oxford: Clarendon, 1988), 114–17.

[40] Hobbes, *EL(T)*, I.15.2, p. 58.

[41] Hobbes, *DC*, 2.18, pp. 58–59.

[42] Pufendorf adopted the distinction in *De Jure Naturae*: "the right of war which accompanies a natural state is taken away from individuals in a commonwealth";

> For in the meer state of nature, if you have a mind to kill, that state it selfe affords you a Right.... But in a Civill State, where the Right of life, and death, and of all corporall punishment is with the Supreme; that same Right of killing cannot be granted to any private person.[43]

Next, Hobbes develops the distinction between defensive and aggressive violence as a matter of defending oneself versus defending others: "Neither need the Supreme himselfe contract with any man patiently to yeeld to his punishment, but onely this, that no man offer to defend others from him."[44] This formulation closes the 'private law' loophole for rebellion in Grotian theory arising from the stipulation that 'extreme and imminent peril' overrides the 'law of nonresistance' in the cases of both criminal attack and tyranny. By distinguishing self-defense from defending others, Hobbes separates the two cases—permissible self-defense and impermissible political resistance.[45] Thus, in discussing the liberty of subjects in *Leviathan*, he makes a point of noting that men who have "resisted the Soveraign Power unjustly" nonetheless are entitled to bear arms subsequently in self-defense.[46] What Hobbes has done, in effect, is to limit the purchase of the right of self-preservation by defining the right more narrowly and literally

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"although individuals in a state are sometimes permitted to defend themselves by their own strength, that cannot properly be called a right to make war" (VII.7.8, p. 1299).

[43] Hobbes, *DC*, 2.18, p. 59; see also 10.1, pp. 129–30.

[44] Hobbes, DC, 2.18, p. 59. See also 6.5, p. 93, where he identifies the promise "not to assist him who is to be punished" as the foundation of the "sword of justice," that is, the sovereign's right to punish. The distinction between self-defense and defending others was also taken over by Pufendorf: "even if it be granted that sometimes it is not wrong for some one citizen to defend his safety by force against the most open injuries of a superior, yet it will not be allowable for the rest of the citizens on that account to drop their obedience and protect the innocent person by force" (*De Jure Naturae*, VII.8.5, p. 1109). By contrast, Whig writers in the 1680s, including Locke, denied the distinction and asserted a natural law duty to defend others. See Richard Ashcraft, *Revolutionary Politics & Locke's Two Treatises of Government* (Princeton, N.J.: Princeton University Press, 1986), 318–19, 330.

[45] Richard Ashcraft notes the appeal of this line of argument to moderate Tories and Whigs in the later Stuart period (*Revolutionary Politics*, 294).

[46] In this passage, however, Hobbes fails to distinguish defending others from defending oneself: "in case a great many men together, have already resisted the Soveraign Power unjustly, or committed some Capitall crime, for which every one of them expecteth death, whether have they not the Liberty then to joyn together, and assist, and defend one another? Certainly they have: For they but defend their lives, which the Guilty man may as well do, as the Innocent. There was indeed injustice in the first breach of their duty; Their bearing of Arms subsequent to it, though it be to maintain what they have done, is no new unjust act. And if it be onely to defend their persons, it is not unjust at all" (*LV*, 21, p. 270; cf. *EL(T)*, II.8.2, p. 134).

than had Grotius. It is specifically a right of *self*-defense, and Hobbesian nominalism rules out conceiving of a corporate or national 'self' to be protected from tyrannous government. For these reasons, political resistance is not an exercise of the private sword that is covered by the right of self-defense.

Subtracting Hobbes's medieval equation of conditional sovereignty with a license for private warfare, his position in *De Cive* comes down to the proposition that civil society requires a state monopoly on the 'right to kill' and ban on the use of the 'private sword' except for individual self-defense. To transform this fairly unexceptional view, which is compatible with a range of political constitutions, into a brief for absolutism requires introducing further empirical assumptions. Logically, the following brief for absolutism is a contingent argument and not an integral part of the nonresistance contract logic. First, as we have seen, the brief for unconditional sovereignty requires conflating resistance to established government with private warfare and therefore excludes the empirical possibility of nonviolent political conflict. Second, to support the principle of unified sovereignty, Hobbes introduces the contingent proposition that limited and divided sovereignty produces private warfare: "In every commonwealth where particular men are deprived of their right to protect themselves, there resideth an absolute sovereignty."[47] Proponents of limited monarchy deceive themselves, he explains, in thinking "they have made a commonwealth, in which it is unlawful for any private man to make use of his own sword for his security."[48] Similarly, the division of sovereignty "either worketh no effect, to the taking away of simple subjection, or introduceth war; wherein the private sword hath place again."[49] In sum, conditional sovereignty and divided sovereignty license private warfare because they institutionalize political conflict; absolutism is therefore the only political constitution that will support civil society. It is a parochial, medieval brief, which rests on the supposition that political conflict will escalate into armed conflict.

Indeed, there is a curious discrepancy between the nonresistance social contract and this defense of absolutism, which is indicative of Hobbes's transitional position in the history of ideas. The contract

[47] Hobbes, *EL(T)*, II.1.19, p. 91; see also *DC*, 6.13, p. 97.
[48] Hobbes, *EL(T)*, II.1.13, p. 88; see also *DC*, 6.13, p. 97.
[49] Hobbes, *EL(T)*, II.1.16, p. 89; the point is echoed in *DC*, 7.4, p. 108.

codifies the 'modern' norm banning private warfare, whereas his arguments for absolutism presuppose precisely the absence of this norm. Thus, on the one hand, Hobbes envisions a civil or pacified society, but, on the other, he assumes the reality of uncivil, violent politics.

The Lockean Solution

> Force, or a declared design of force upon the Person of another, where there is no common Superior on Earth to appeal to for relief, *is the State of War*.
> Locke, *Second Treatise of Government*, §19

Starting with the very suppositions about violence, civil society, and governmental accountability that underpinned Grotian and Hobbesian absolutism, Locke produced the definitive modern brief for the right of resistance, popular sovereignty, and the accountability of government to the people. To stand late medieval absolutism on its head, we will see, he conceptualized the right of rebellion in a way that defused and tamed the resistance question. But the lineaments of modern, pacified politics are only incompletely sketched in the *Second Treatise*. Locke, like Hobbes, is a transitional figure, who envisions pacified society, yet by and large continues to associate governmental accountability with violent political conflict.

Two root assumptions that Locke held in common with Grotius and Hobbes were that the use of force by private individuals is inimical to civil society and that the principle of governmental accountability licenses violent conflict and rebellion. As I noted at the outset, his definition of political or civil society echoes Hobbes's in making renunciation by private individuals of the right to use force the defining feature of civil society:

> There, and there only is *Political Society*, where every one of the Members hath quitted this natural Power, resign'd it up into the hands of the Community in all cases that exclude him not from appealing for Protection to the Law established by it.[50]

Locke's account of the state of nature differs from Hobbes's, of course, in placing natural law limits on the right of the private sword, which may legitimately be used only for the purposes of preserving property,

[50] Locke, *ST*, §87, p. 367. See also §89, pp. 368–69, and §171, p. 428.

broadly defined, and punishing violations of the law of nature.[51] But he does not imagine that these natural law limits spawn a peaceful society. In the absence of a common authority to decide disputes among people, according to one vein of Lockean argument, any outbreak of aggressive violence is likely to escalate into continuous conflict and this would make the state of nature an ongoing state of war: "In the State of Nature, for want of positive Laws, and Judges with Authority to appeal to, *the State of War once begun, continues*, with a right to the innocent Party, to destroy the other whenever he can."[52] The argument casts as right what Hobbes had observed as fact about the state of nature. So long as some are aggressive in that state, the latter had argued:

> If others, that otherwise would be glad to be at ease within modest bounds, should not by invasion increase their power, they would not be able, long time, by standing only on their defence, to subsist.[53]

From the insecurity of the state of nature, it follows for Locke that renunciation of the right of punishment and creation of a state monopoly on that right are the foundation of civil society and government:

> 'Tis this makes them so willingly give up every one his single power of punishing to be exercised by such alone as shall be appointed to it amongst them; and by such Rules as the Community, or those authorised by them to that purpose, shall agree on. And in this we have the original *right and rise* of both *the Legislative and Executive Power*, as well as of the Governments and Societies themselves.[54]

Yet Locke also, famously, defends the right of the people to remove a tyrannous government that violates the trust of the people. Where Hobbes translated the Grotian 'absolutist' contract from a contingent into a necessary proposition, Locke universalizes the Grotian 'accountability' contract: rulers are always, not merely sometimes, responsible to the people.

> The Legislative being only a Fiduciary Power to act for certain ends, there remains still *in the People a Supream Power* to remove or *alter*

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[51] Locke, *ST*, §171, p. 428. The idea that individuals in the state of nature possess the right to use the sword to enforce natural law was developed by Jacques Almain in an early sixteenth-century conciliarist tract: see Skinner, *Foundations*, vol. II, 118–19.

[52] Locke, *ST*, §20, p. 322.

[53] Hobbes, *LV*, 13, pp. 184–85.

[54] Locke, *ST*, §127, p. 397.

> *the Legislative*, when they find the *Legislative* act contrary to the trust reposed in them.[55]

The Grotian-Hobbesian absolutist contract is untenable for two reasons. As God's creatures, we are not at liberty to consent to slavery or to absolute subjection, and self-preservation is, therefore, a "Fundamental, Sacred, and unalterable Law."[56] To arrive at the conclusion that tyrannous governments may be forcibly resisted, Locke only needs to add (following Grotius but contra Hobbes) the private law principle that the inalienable right of self-preservation applies to societies as well as to individuals.[57]

Nonetheless, he agrees with Grotius and with Hobbes that the right of rebellion is *antithetical* to political society: "this Power of the People" to defend themselves against tyrannous government "can never take place till the Government be dissolved."[58] At this crucial point in the argument, Locke reverses and advances on the arguments of his absolutist predecessors by conceptualizing the right of rebellion as an extraordinary right, which comes into force only in the special circumstances of a "state of War":[59]

> Whenever the *Legislators endeavour to take away, and destroy the Property of the People*, or to reduce them to Slavery under Arbitrary Power, they put themselves into a state of War with the People, who are thereupon absolved from any farther Obedience, and are left to the common Refuge, which God hath provided for all Men, against Force and Violence.[60]

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[55] Locke, *ST*, §149, p. 413.

[56] Locke, *ST*, §149, p. 413; see also §23, p. 325.

[57] Locke, *ST*, §220, p. 459: "the *Society* can never…lose the Native and Original Right it has to preserve it self."

[58] Locke, *ST*, §149, p. 413. He distinguishes the dissolution of government, which tyranny produces, from the dissolution of society through foreign conquest (§211–12, pp. 454–56; see also §243, p. 477). Regarding the distinction, see Ashcraft, *Revolutionary Politics*, 575–77. Julian H. Franklin argues that George Lawson, in *Politica sacra et civilis* (1660), originated the argument that power reverts to the people upon the dissolution of government (*John Locke and the Theory of Sovereignty* [Cambridge: Cambridge University Press, paperback ed., 1981], chs. 3–4).

[59] Locke, *ST*, §212, pp. 455–56: "Civil Society being a State of Peace, amongst those who are of it, from whom the State of War is excluded by the Umpirage….When any one, or more, shall take upon them to make Laws, whom the People have not appointed so to do, they make Laws without Authority, which the People are not therefore bound to obey; by which means they come again to be out of subjection, and may constitute to themselves a *new Legislative*, as they think best, being in full liberty to resist the force of those, who without Authority would impose any thing upon them."

[60] Locke, *ST*, §222, pp. 460–61; see also §205, p. 450, and §226–27, p. 464.

The introduction of the technical concept of a 'state of war,' as a juridical condition distinct from civil society and from the state of nature, was a simple and brilliant conceptual move. It effectively defused the resistance issue by distinguishing the right of rebellion from private warfare. The right of rebellion does not violate the ban on private warfare that defines civil society because it is an extraordinary right that obtains only when tyrannous rulers have themselves subverted civil society.[61]

The idea of a 'state of war' was a natural extension of 'private law' resistance doctrine and, in effect, renders that doctrine compatible with the absolutists' position that resistance is inconsistent with civil society. Before Locke, other 'private law' thinkers had described tyrants as rebelling against the people,[62] and this was a stock argument of radical Whigs in the early 1680s.[63] From this point it was a short step to define the resistance situation as a special juridical circumstance. Nor was Locke alone in using the idea of a 'state of war.'[64] In a 1657 diatribe against Cromwell, *Killing Noe Murder*, for example, Edward Sexby had characterized a usurper as being in a "state of war with every man"; "therefore everything is lawful against him that is lawful against an open enemy, whom every private man has a right to kill."[65]

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[61] Locke, *ST*, §226, p. 464: "For when Men by entering into Society and Civil Government, have excluded force, and introduced Laws for the preservation of Property, Peace, and Unity amongst themselves; those who set up force in opposition to the Laws, do *Rebellare*, that is, bring back again the state of War, and are properly Rebels." See also §227, p. 464, and §212, pp. 455–56.

[62] Skinner, *Foundations*, vol. II, 201–2, discusses Luther's use of the argument in a *Warning to His Dear German People* (1531): tyrants "are the real rebels, since they are nothing but 'assassins and traitors', refusing to 'submit to government and law', and are thus 'much closer to the name and quality which is termed rebellion' than those whom they accuse of being in rebellion against their supposed authority."

[63] Ashcraft, *Revolutionary Politics*, 195–97, 392–405; and "Revolutionary Politics and Locke's *Two Treatises of Government*," *Political Theory* 8 (1980): 469–74.

[64] Ashcraft ("Revolutionary Politics," 444; see also *Revolutionary Politics*, 236) claims the concept, along with other key Lockean terms, first appears in James Tyrell's *Patriarcha non monarcha* (1681). He also quotes the use of the phrase in a 1682 tract by Robert Ferguson: "whensoever laws cease to be a security unto men, they will be sorely tempted to apprehend themselves cast into a state of war, and justified in having recourse to the best means they can for their shelter and defense' *(Revolutionary Politics*, 322).

[65] William Allen [Edward Sexby], *Killing Noe Murder: Briefly Discourst in Three Quaestions* (1657), in Wootton, ed., *Divine Right*, 374–75. My thanks to Alan Houston for bringing this point to my attention.

Does the concept of a state of war provide anything more than a conceptual solution to the problem of reconciling resistance with the idea of a pacified society? The supporting Lockean argument parallels Grotius's defense of the private law proposition that private warfare is legitimate in circumstances of extreme and imminent peril. He defines a "State of War" by the use of "force, or a declared design of force upon the Person of another, where there is no common Superior on Earth to appeal to for relief."[66] Just so, Grotius had said that private warfare is licensed within organized society when the "judicial procedure ceases to be available."[67] Locke then draws the traditional analogy between individual self-defense against immediate attack and collective defense against tyranny. Both are circumstances in which judicial relief is unavailable: "where [the law] cannot interpose to secure my Life from present force," a person is permitted the "liberty to kill the aggressor, because the aggressor allows not time to appeal to our common Judge, nor the decision of the Law."[68] Similarly, rebellion is legitimate when, in the face of tyranny, "the Appeal lies only to Heaven."[69] So far in the argument, there would appear to be little substantive difference between the Lockean concept of an extraordinary right of rebellion and the Grotian private law stipulation that imminent peril licenses private warfare.

To be more than a novel conceptualization, the distinction between civil society and a state of war needed to be accompanied by a distinction between violent resistance and the principle of governmental accountability. Only when, in practice and in theory, the latter principle came to be firmly separated from the specter of violent conflict would the resistance issue finally be tamed. This development is but sketchily anticipated by Locke, whose principal concern lay with justifying the right of rebellion rather than with elaborating various dimensions of accountability.

Let us turn, then, to his discussions of the political conditions of civil society. Having defined rebellion as an *un*civil action, Locke could controvert the absolutists' position that conditional authority is antithetical to civil society. To the contrary, he argues on both formal and

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[66] Locke, *ST,* §19, p. 321.
[67] Grotius, *DJB*, I.3.2, p. 92.
[68] Locke, *ST,* §19, p. 321.
[69] Locke, *ST*, §242, p. 477; see also §168, p. 426, and §207, p. 451.

empirical grounds, it is unconditional authority that violates the terms of civil society. In principle, absolute monarchy is inconsistent with civil society because an absolute prince remains, in effect, in a state of nature with respect to his subjects: there is no common authority to adjudicate conflicts between them.[70] An absolutist state is actually worse than the state of nature because in it subjects have renounced the right of punishment: "By supposing they have given up themselves to the *absolute Arbitrary Power* and will of a Legislator, they have disarmed themselves, and armed him, to make prey of them when he pleases."[71] Second, Locke calls into question empirically the (Hobbesian) contention that conditional authority fosters civil war.[72] Granted, the ambition of private men has sometimes been the cause of great disorder:

> But whether the *mischief* hath *oftner* begun *in the Peoples Wantonness*, and a Desire to cast off the lawful Authority of their Rulers; or *in the Rulers Insolence*, and Endeavours to get, and exercise an Arbitrary Power over their People; whether Oppression, or Disobedience gave the first rise to the Disorder, I leave it to impartial History to determine.[73]

If violence is inimical to civil society and if civil society requires conditional political authority, it follows that there needs to be an ordinary, institutionalized, and *nonviolent* process of holding governments to account: in short, civil society requires peaceful electoral politics. This final step in the development of the idea of pacified politics is only intimated in the *Second Treatise.* It is suggested by the statement that parliamentary sovereignty is the one form of government consistent with civil society: "the People…could never be safe nor at rest, *nor think themselves in Civil Society*, till the Legislature was placed in collective Bodies of Men, call them Senate, Parliament, or what you please."[74] Yet

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[70] Locke, *ST*, §90, p. 369; see also §94, pp. 372–74, and §174, p. 421. Cf. Hobbes, who argues from the absence of an authority to adjudicate conflicts between ruler and ruled to the absurdity of *conditional* sovereignty: "there is in this case, no Judge to decide the controversie: it returns therefore to the Sword again; and every man recovereth the right of Protecting himselfe by his own strength, contrary to the designe they had in the Institution" *(LV*, 18, pp. 230–31).

[71] Locke, *ST*, §137, p. 405; see also §93, p. 372.

[72] Locke, *ST*, §228, p. 465.

[73] Locke, *ST*, §230, pp. 466–67.

[74] Locke, *ST*, §94, p. 373. It is worth noticing, however, that Locke bases the statement on the principle that rulers must be subject to law, rather than on the requirements of civil society: "By [this] means every single person became subject, equally with other the meanest Men, to those Laws, which he himself, as part of the Legislative had established."

Locke expressly grants that popular consent may underwrite hereditary monarchy as well as 'elective' monarchy in which authority is held for life.[75] Rebellion being the sole mechanism of governmental accountability in these latter forms of government, it cannot be said to be a Lockean principle that a legitimate political society *must* have an electoral political system (and a peaceful electoral system at that).[76]

At the most, what can be said is that Locke preferred parliamentary sovereignty,[77] that he counted it among the tyrannous acts that dissolve government for a prince to interfere with parliamentary elections,[78] and, arguably, that he conceived of electoral politics and violent rebellion as alternative mechanisms for holding government to account. Richard Ashcraft has made the case that radical Whigs in the period, including Locke, presupposed the electoral alternative and came to espouse rebellion only after the failure of parliamentary efforts to exclude the Duke of York from the throne.[79] Perhaps this is Locke's meaning in an elusive remark at the conclusion of the *Second Treatise*:

> If any Men find themselves aggrieved…who so proper to *Judge* as the Body of the *People*…? But if the Prince, or whoever they be in the Administration, decline that way of Determination, the Appeal then lies no where but to Heaven.[80]

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[75] Locke, *ST*, §132, pp. 399–400.

[76] Cf. John Plamenatz, *Man and Society*, vol. 1 (New York: McGraw-Hill, 1963), 231: "Locke nowhere makes it a *condition* of there being government by consent that authority to make laws should belong to an elected assembly. Where…he condemns absolute monarchy as inconsistent with civil society and says that the absolute prince is in a state of nature in relation to his subjects, he is only attacking the doctrine that the prince is above the law and his subjects owe him unconditional obedience; he is not suggesting that, except where legislative power belongs to an elected assembly, there is no government by consent." See also 228–29, 237, 241.

[77] Locke, *ST*, §143, p. 410. His reasoning here echoes that discussed in note 74 above: parliamentary sovereignty serves the principle that rulers must themselves be subject to law. "Therefore in well order'd Commonwealths…the *Legislative* Power is put into the hands of divers Persons who duly Assembled, have by themselves, or jointly with others, a Power to make Laws, which when they have done, being separated again, they are themselves subject to the Laws, they have made; which is a new and near tie upon them, to take care, that they make them for the publick good." See also §138, pp. 406–7.

[78] Locke, *ST*, §216, p. 457.

[79] Ashcraft, *Revolutionary Politics*, chs. 5–7, 11.

[80] Locke, *ST*, §242, pp. 476–77. John Dunn interprets the passage in this vein in *The Political Thought of John Locke: An Historical Account of the Argument of the 'Two Treatises of Government'* (Cambridge: Cambridge University Press, 1969), 182.

To view elections as an alternative to the "appeal to Heaven" is not quite the same, however, as identifying a nonviolent electoral process as a necessary feature of a civil society. Locke pointed the way to that conclusion by conceptualizing the right of rebellion as an extraordinary right, but the complementary principle that civil society requires ordinary, peaceful means of holding government to account eluded him. Like Grotius and Hobbes, his attention remained fixed on violent political conflict.

Conclusion

> In some societies differences of interest and principle are much less dangerous to domestic peace than in others; they are not less dangerous because they are smaller but because the groups that differ have learned how to preserve the peace without giving up the principles or interests which divide them.
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> Plamenatz, *Man and Society*, 1.8

In the end, though, the realism of Locke's and Hobbes's political imagination bears remark fully as much as does their conceptual achievement in working out the idea of a pacified, civil society. The seventeenth century was an extraordinarily violent period in English politics, marked not only by the revolutions with which each was associated but by an exacerbation of violence in electoral politics as well. In the Civil War period, the parliamentary electoral process changed from a normal pattern of unopposed selection by local elites, in which avoiding divisive conflict was an important object, to a process in which contested races—often featuring intimidation, quasi-military trappings, and violence—were the norm.[81] J. H. Plumb has argued that this pattern of political instability continued through 1715, when it was abruptly replaced by a period of extreme stability:

> In the seventeenth century men killed, tortured, and executed each other for political beliefs; they sacked towns and brutalized the countryside.... This uncertain political world lasted until 1715, and then began rapidly to vanish. By comparison, the political structure of

[81] Mark A. Kishlansky, *Parliamentary Selection: Social and Political Choice in Early Modern England* (Cambridge: Cambridge University Press, 1986), esp. 182–83, 198–99, and 226–30.

> eighteenth-century England possesses adamantine strength and profound inertia.[82]

But the political stability of eighteenth-century England is still unusual—Locke's and Hobbes's fixation on violent political conflict remains a realistic assumption now as then. Politics is hardly pacified much of the time and in much of the world today. Instead of seeing Great Britain after 1715 or the United States as the embodiment of Locke's *Second Treatise*, it is in this respect more accurate to say that his theory is realized in those many times and places in which the principle of accountability is played out violently. In the centuries since Locke, his constitutional doctrine that political authority is fiduciary and conditional came to be commonly accepted; the norm of peaceful governmental transition has prevailed only in exceptional circumstances.

Because these exceptional circumstances are the context framing the canon of modern Western political thought, it bears reflection whether our liberal-democratic ideals are not exceedingly parochial. One does not need to embrace the seventeenth-century absolutists' position that civil society requires unconditional political authority to acknowledge that the incidence and perceived legitimacy of violent conflict profoundly affects the application of the liberal-democratic norm of governmental accountability. Contemporary liberal-democratic thinkers would do well to heed the Grotian concern with violence and to resurrect this fundamental aspect of the 'resistance question.'

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[82] J. H. Plumb, *The Origins of Political Stability: England 1675–1725* (Boston: Houghton Mifflin, 1967), xviii; see also 105.

PART II

AN ANCIEN REGIME HORIZON: PARTICULARITY AND UNIVERSALITY

CHAPTER THREE

WHEN HOBBES NEEDED HISTORY

We usually think of Hobbes's contract story as pseudo—not genuine—history. His is a species of 'philosophical' contractarianism, oriented toward establishing fundamental normative principles, rather than a 'constitutional' contractarian discussion of historical compacts between ruler and ruled.[1] Garbed in the pseudohistory of the contract metaphor, his accounts of the political covenant are nonetheless framed in the present tense. They counsel subjects in established states to understand their situation by reasoning 'as if' they found themselves in a contract situation. In this respect, Hobbesian theory contrasts with the defense of absolutism put forward by his great predecessor, Grotius. The latter had said it was possible and even rational in some circumstances to consent to absolutism. The Grotian argument told subjects that the character of their relationship to rulers and the structure of sovereignty depended on their national history of constitutional promises; Hobbes told them to contemplate a conjectural state of nature and imaginary constitutional convention.

Yet Hobbes occasionally made Grotian-sounding statements about the English constitution. In *Leviathan* and in his post-Restoration political writings, there are passages that appeal to the Norman Conquest as the definitive constitutional moment in English history. He declares, for example, in *Leviathan*:

> I know not how this so manifest a truth, should of late be so little observed; that in a Monarchy, he that had the Soveraignty from a descent of 600 years, was alone called Soveraign, had the title of Majesty from every one of his Subjects, and was unquestionably taken by them for their King.[2]

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[1] Harro Höpfl and Martyn P. Thompson, "The History of Contract as a Motif in Political Thought," *American Historical Review*, 84 (1979): 941.

[2] Hobbes, *LV*, 19, pp. 240–41. *Behemoth*, Hobbes's post-Restoration history of the Civil War, opens with the same assertion that "the government of England was monarchical…by right of a descent continued above six hundred years" (*Behemoth or The Long Parliament*, ed. F. Tönnies and intro. M. M. Goldsmith, 2nd ed. [London: Frank Cass, 1969], 1).

Such references are usually regarded as merely an illustrative application of the theory. They tie down the abstract social contract story in English history, but are otherwise ad hoc and of no theoretical consequence.[3] Such dismissal slights the possibility that Hobbes's political analysis might rest, at least to some degree, on the 'constitutional fact' of an actual compact.[4]

No one has ever doubted that he, along with everyone else, presupposed England to be a hereditary monarchy. When Hobbes initially framed his theory of politics, prior to the outbreak of the Civil War, the supposition did not need defense. But Parliamentarians' subsequent claims to a share in sovereignty, or the entirety of it, changed the agenda. These claims could not entirely be rebutted with abstract contractarian argument: to do that, Hobbes had to introduce a 'Grotian' account of English constitutional history. To the extent the theory came to require this historical dimension, it became less an explanation of the structure of sovereignty everywhere and always, and more a contingent account of the constitution of a particular nation-state.

Hobbes's Problem

Prior to the Civil War, when Hobbes was composing the first version of his political theory, *The Elements of Law* (1640), no one dreamt that the location of sovereignty in England could be a contentious matter. England was a hereditary monarchy. The pertinent question was whether or not sovereignty was absolute.[5] Hobbes set himself to answer

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[3] J. G. A. Pocock, *The Ancient Constitution and the Feudal Law: A Reissue with a Retrospect* (Cambridge: Cambridge University Press, 1987), 165; Quentin Skinner, "History and Ideology in the English Revolution," *Historical Journal* 8 (1965): 161, 168, 178.

[4] David Gauthier asserts that "a full contractarian understanding of political institutions and practices" requires more than a hypothetical constitution: it requires a "constitutional fact" ("Constituting Democracy," The Lindley Lecture, University of Kansas, 1989, 21 n. 17).

[5] Hobbes so described the pertinent issue in retrospective autobiographical remarks on the composition of *The Elements of Law*. "When the Parliament sat, that began in April 1640, and was dissolved in May following, and in which many points of the regal power, which were necessary for the peace of the kingdom, and the safety of his Majesty's person, were disputed and denied, Mr. Hobbes wrote a little treatise in English, wherein he did set forth and demonstrate, that the said power and rights were inseparably annexed to the sovereignty; which sovereignty they did not then deny to

that question with a nonhistorical contract argument about the necessary structure of sovereignty everywhere and always. In effect, it was an effort to wed two extant defenses of absolutism: Bodin's assertion that sovereignty is necessarily absolute and Grotius's contractarian argument that it is possible to consent to slavery and absolutism.

For the doctrine of the desirability and, indeed, necessity of absolute sovereignty, Bodin's *République* (1576, and in English translation, 1606) was a standard authority in early-Stuart England.[6] Bodin famously held that sovereign authority is the defining characteristic of a state,[7] and that sovereignty is both unconditional and unified. Sovereignty is the "greatest power to command," meaning the sovereign is bound only by natural and divine law and accountable only to God.[8] He saw divided sovereignty as impossible by definition, and undesirable in any case.[9]

The Elements of Law invokes Bodin as an authority on absolutism. It was rare for Hobbes even to mention writers with whom he agreed, yet here he goes so far as to quote the *République*. The subject is the impossibility of divided sovereignty: "if there were a commonwealth, wherein the rights of sovereignty were divided, we must confess with Bodin, Lib. II chap. I. *De Republica*, that they are not rightly to be called commonwealths, but the corruption of commonwealths."[10] In addition, Hobbes reproduces a related Bodinian distinction between (unified) sovereignty and (divided) administration;[11] and paraphrases

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be in the King; but it seems understood not, or would not understand that inseparability" ("Considerations upon the Reputation, Loyalty, Manners, and Religion, of Thomas Hobbes of Malmesbury," *English Works of Thomas Hobbes of Malmesbury*, ed. Sir William Molesworth, vol. IV [London: J. Bohn, 1840], 414).

[6] Bodin's influence on English political thought is detailed by J. H. M. Salmon, *The French Religious Wars in English Political Thought* (Oxford: Clarendon Press, 1959); and George L. Mosse, *The Struggle for Sovereignty in England* (New York: Octagon, 1968), ch. 2.

[7] A "commonweale" is a "lawfull gouernment of many families, and of that which vnto them in common belongeth, with a puissant soueraigntie" (Bodin, *SB*, I.1, p. 1).

[8] Bodin, *SB*, I.8, pp. 84–89.

[9] "Wherefore such states as wherein the rights of soueraigntie are diuided, are not rightly to bee called Commonweales, but rather the corruption of Commonweales" and, anyway, divided authority leads to "endlesse sturres and quarrels, for the superioritie" (Bodin, *SB*, II.1, p. 194).

[10] Hobbes, *EL(T)*, II.8.7, p. 137. The relevant passage in the *Republique* is quoted in the previous note.

[11] Hobbes, *EL(T)*, II.1.17, p. 90. In this discussion, Hobbes cites the examples Bodin had given of Rome and Venice (*SB*, II.1, pp. 188–90; see also II.7, pp. 249–50).

from the *République* the empirical generalization that there is a natural tendency toward consolidation of sovereign powers.[12]

Just preceding the quotation from the *République*, there is an odd discussion of sovereignty that makes sense in the context of Bodin's—but not Hobbes's—absolutist thinking. Hobbes is refuting the opinion that sovereigns are bound by their own laws: "this error seemeth to proceed from this, that men ordinarily understand not aright, what is meant by this word law, confounding law and covenant, as if they signified the same thing."[13] Since his sovereign is bound by neither law or covenant, the distinction is irrelevant in the Hobbesian context. However, the distinction between law and covenant figured importantly in Bodin's discussion of unconditional sovereignty. The Frenchman held the seemingly contradictory positions that the sovereign is not subject to human law and yet there is a relationship of mutual obligation between sovereign and subject.[14]

> We must not then confound the lawes and the contracts of soueraigne princes, for that the law dependeth of the will and pleasure of him that hath the soueraigntie, who may bind all his subiects, but cannot bind himselfe: but the contract betwixt the prince and his subiects is mutual, which reciprocally bindeth both parties.[15]

Hobbes must shortly have realized that this last point marked a crucial disagreement with Bodin:[16] the notion of a mutual contract between ruler and ruled, carrying obligations on both sides, was inconsistent with a full-fledged defense of absolutism.[17]

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[12] "For if one part should have power to make the laws for all, they would by their laws, at their pleasure, forbid others to make peace or war, to levy taxes, or to yield fealty and homage without their leave" (Hobbes, *EL(T)*, II.8.7, p. 137). Bodin had written, "the nobilitie which should haue the power to make the lawes for all . . . would by their lawes at their pleasure forbid others to make peace or warre, or to leuie taxes, or to yeeld fealtie and homage without their leaue" (*SB*, II.1, p. 194).

[13] Hobbes, *EL(T)*, II.8.6, p. 136.

[14] In return "for the faith and obeisance he receiueth," the sovereign "oweth iustice, counsell, aid, and protection" (Bodin, *SB*, I.6, p. 58; see also IV.6, p. 500).

[15] Bodin, *SB*, I.8, p. 93.

[16] In the parallel passage in the next version of Hobbes's theory, *De Cive* (1642), the distinction between law and covenant is omitted (*DC*, 12.4, pp. 148–49).

[17] Still, one can hear echoes of Bodin in the central principle of Hobbes's Engagement remarks in the conclusion of *Leviathan*: "the mutuall Relation between Protection and Obedience" (*LV*, "A Review and Conclusion," p. 728). Cf. Bodin's description of the contract between ruler and ruled quoted in note 14 above. Thus it can be argued that Hobbes ended up reproducing—not avoiding—the contradiction in Bodinian

In *De Jure Belli Ac Pacis* (1625), Grotius offered a contract argument more promising to absolutist theory.[18] The argument is framed to rebut the opinion that sovereignty always resides in the people and rulers are therefore always accountable to their subjects. Grotius's answer is that individuals and peoples are radically free to consent to slavery and to absolutism:

> To every man it is permitted to enslave himself to any one he pleases for private ownership… Why, then, would it not be permitted to a people having legal competence to submit itself to some one person, or to several persons, in such a way as plainly to transfer to him the legal right to govern, retaining no vestige of that right for itself? And you should not say that such a presumption is not admissible; for we are not trying to ascertain what the presumption should be in case of doubt, but what can legally be done.[19]

In some circumstances, moreover, it would be rational for a people to make such an absolutist contract, for example, to save themselves from destruction or desperate want.[20]

But Grotius is a thoroughgoing voluntarist: if an absolutist contract is possible, others are too.[21] In this frame, the sole standard for evaluating constitutions is popular consent:

> Just as, in fact, there are many ways of living… and out of so many ways of living each is free to select that which he prefers, so also a people can select the form of government which it wishes; and the extent of its legal right in the matter is not to be measured by the superior excellence of this or that form of government, in regard to which different men hold different views, but by its free choice.[22]

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theory between the principle of unconditional sovereignty and the notion that ruler and ruled have mutual obligations.

[18] Regarding Grotius's influence on Hobbes, see the work of Richard Tuck, especially *Natural Rights Theories: Their Origin and Development* (Cambridge: Cambridge University Press, 1979); and *Philosophy and Government 1572–1651* (Cambridge: Cambridge University Press, 1993), 304.

[19] Grotius, *DJB*, I.3.8, p. 103.

[20] Grotius, *DJB*, I.3.8, p. 104.

[21] He is not a thoroughgoing contractarian, however. Public authority can be acquired through war, "quite independently of any other source" (Grotius, *DJB*, I.3.8, p. 105). This seems to exhaust the possibilities: "The right to rule… cannot come into existence except by consent or by punishment" (II.22.13, p. 552). See note 25 below.

[22] Grotius, *DJB*, I.3.8, p. 104.

Grotius carries through by noting that conditional and divided sovereignty are possible contract choices.[23] Equally, it is a matter of constitutional choice whether or not a people retains authority to change the structure of government.

> The will of the people, either at the very establishment of the sovereignty, or in connexion with a later act, may be such as to confer a right which for the future is not dependent on such will.[24]

The upshot is a radically contingent, 'constitutional' contractarian defense of absolutism.[25] "In some cases the sovereign power is held absolutely"; "in some cases the sovereign power is not held absolutely."[26] To determine the terms of the relationship between subject and sovereign and the structure of sovereignty in any particular state, one must investigate that nation's history of constitutional agreements.

In framing his own social contract theory, Hobbes did not intend to follow Grotius down the path of historical contractarianism. He chose geometry over history as the model of political inquiry[27] and made no reference to the Norman Conquest in the first two versions of his theory. How to mount a theory combining the generality of Bodin's claims with Grotius's absolutist contract? This was Hobbes's problem.

It was a complicated undertaking to defend both components of absolutism, unconditional and unified sovereignty, in universalistic contract terms. Of the two lines of argument, Hobbes was more successful in showing why it is nonsensical to think that rulers are ever accountable to the people, although, as we will see shortly, the concept

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[23] "For he who alienates his own right can by agreement limit the right transferred" (Grotius, *DJB*, I.4.14, p. 159). See also I.3.17, p. 124: "Against such a state of divided sovereignty—having, as it were, two heads—objections in great number are urged by many. But, as we have also said above, in matters of government there is nothing which from every point of view is quite free from disadvantages; and a legal provision is to be judged not by what this or that man considers best, but by what accords with the will of him with whom the provision originated."

[24] Grotius, *DJB*, II.4.14, pp. 229–30.

[25] There are other, pertinent noncontractarian lines of argument in *De Jure Belli Ac Pacis* (see note 21 above). With respect to the right of resistance, in particular, Grotius sometimes takes the position that renunciation of the right is a defining characteristic of civil society. I survey his arguments on the subject in chapter two.

[26] Grotius, *DJB*, I.3.12 and .13, pp. 115 and 119 (emphasis omitted).

[27] For example, Hobbes, *LV*, 5, pp. 110–12 and 115–16; 9, pp. 147–48. His discovery of Euclid is reported in *Aubrey's Brief Lives* (ed. Oliver Lawson Dick, paperback ed. [Ann Arbor: University of Michigan Press, 1962], 150).

of a social contract ultimately became superfluous to this universalistic position. Regarding unified sovereignty, he would continue to claim, following Bodin, that sovereignty cannot be divided. But his defense of the principle came mainly to rest on prudential generalizations concerning the unhappy consequences of divided sovereignty.[28] For analysing the development of Hobbesian contractarianism, the arguments on which to concentrate concern unconditional sovereignty; and the place to begin is the 'nonresistance' covenant of *The Elements of Law* and *De Cive*.

From Resistance to Deposition

Hobbes's first version of the political covenant focuses on the prewar debate over the right to resist tyrannous rulers.[29] Where Grotius had said both nonresistance and resistance contracts were possible, Hobbes builds renunciation of the right of resistance into the generic definition of a political covenant: "Each one of them obligeth himself by contract to every one of the rest, not to resist the *will* of that *one man*, or *counsell*, to which he hath submitted himself."[30] This is more than a stipulative premise; it is supported with an analysis of the contract

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[28] By *Leviathan*, the Bodinian claim that divided sovereignty is impossible has receded in importance and Hobbes instead elaborates the prudential view that divided sovereignty leads to civil war. See, for example, chapter eighteen where he asserts, "this division [of sovereign rights] is it, whereof it is said, *a Kingdome divided in it selfe cannot stand*" (*LV*, p. 236; see, also, 29. p. 368). The definitional claim has not entirely disappeared, however. In chapter forty-two, Hobbes summarizes the argument of chapter eighteen as proving "that all Governments, which men are bound to obey, are Simple, and Absolute" (pp. 576–77). Cf. *EL(T)*, II.1.16, pp. 89–90, and *DC*, 7.4, p. 108, and 12.5, p. 150.

[29] The intellectual context of Hobbes's nonresistance covenant is discussed in Tuck, *Natural Rights Theories*, ch. 6. In *Philosophy and Government*, he situates *The Elements of Law* in the context of the Ship Money case, which concerned the somewhat different questions of royal prerogative and subjects' right of private judgment on matters of national security (298, 313–14).

[30] Hobbes, *DC*, 5.7, p. 88. Compare *The Elements of Law*: "because it is impossible for any man really to transfer his own strength to another…it is to be understood: that to transfer a man's power and strength, is no more but to lay by or relinquish his own right of resisting him to whom he so transferreth it" (*EL(T)*, I.19.10, p. 81). There are several caveats to the nonresistance definition of the covenant, although these are unimportant to the present discussion. The first is the limitation, "no covenant is understood to bind further, than to our best endeavour" (*EL(T)*, I.15.18, p. 62, and see II.1.7, p. 86; this caveat is discussed in Tuck, *Natural Rights Theories*, 122). Second, in *De Cive*, Hobbes adds the crucial stipulation that subjects retain the right of defending themselves against violence (*DC*, 5.7, pp. 88–9). I discuss the latter addition

situation that shows why, in principle, rulers cannot be accountable to the people and therefore may not be resisted.

Basic to Hobbes's analysis is the nominalist axiom that the 'people' as a corporate agent does not exist by nature: hence the contract must take place between individuals.[31] Since there is no sovereign in place with whom to contract, the parties can only be the incipient subjects.[32] Given a definition of 'injury' and 'injustice' as breach of covenant,[33] it follows that subjects have no basis for holding the sovereign accountable.[34]

The nonresistance covenant is a better argument than Bodin's definitional claim that sovereignty, being the "greatest power to command," precludes accountability to the people. Yet, as Hobbes came to realize, it is not essentially a contractarian argument. He admits in *De Cive*,

> The Doctrine of the power of a City over it's Citizens, almost wholly depends on the understanding of the difference which is between a multitude of men ruling, and a multitude ruled.[35]

The principles of nonaccountability and nonresistance can be derived simply from the nominalist idea that groups lack natural social agency. A 'multitude' gains agency only through institution of the sovereign and therefore there is literally no human body to whom the sovereign could be accountable. In effect, Hobbes has purchased the generality lacking in Grotius's account of a nonresistance social contract only by eliminating the voluntarist frame of the Grotian argument. A state in which rulers are accountable and therefore tyrants may be resisted is not among the "ways of living" that a people may choose.

Political events shortly brought another set of issues to the fore. With the outbreak of 'paper war' between King and Parliament in 1640, the very location of sovereignty and the claims of the Stuart monarchy on the allegiance of Englishmen came into dispute. Starting in *De Cive*, Hobbes saw the need to strengthen his account of subjects' ties to the

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in *Hobbes's Political Theory* (Cambridge: Cambridge University Press, 1988), 28–31, and, here, in chapter two.

[31] Hobbes, *LV*, 18, p. 230; see *EL(T)*, II.1.2, p. 84, and II.2.11, pp. 97–98; and *DC*, 6.1, pp. 91–92.

[32] Hobbes, *EL(T)*, II.2.2, p. 92; *DC*, 5.7, p. 88, and 6.20, p. 104; *LV*, 18, p. 230.

[33] Hobbes, *EL(T)*, I.16.2, p. 63; *DC*, 3.3, p. 62; *LV*, 14, p. 191.

[34] Hobbes, *EL(T)*, II.2.3, p. 93; *DC*, 7.14, p. 112; *LV*, 18, p. 230.

[35] Hobbes, *DC*, 6.1, p. 92 (emphasis omitted); see, also, 12.8, pp. 151–2. I discuss *De Cive*'s account of political agency in *Hobbes's Political Theory*, 41–45.

established government. He had come to realize that the nonresistance covenant left open the possibility of deposition:

> If…it were granted that [the sovereign's] *Right* depended onely on that contract which each man makes with his fellow-citizen, it might very easily happen, that they might be robbed of that Dominion under pretence of Right; for subjects being called either by the command of the City, or seditiously flocking together, most men think that the consents of all are contained in the votes of the greater part.

Of course it is unimaginable that every single subject would agree to depose the sovereign. And the opinion that a majority of subjects (or, more to the point, a parliamentary majority) has the right to do so is erroneous. Yet most men held this erroneous opinion, and more than logic was needed to refute it. Subjects needed to recognize their obligation to the sitting ruler: "though a government be constituted by the contracts of particular men with particulars, yet its Right depends not on that obligation onely; there is another tye also toward him who commands." In other words,

> the government is upheld by a double obligation from the Citizens, first that which is due to their fellow citizens, next that which they owe to their Prince. Wherefore no subjects how many soever they be, can with any Right despoyle him who bears the chiefe Rule, of his authority, even without his own consent.[36]

The idea of a tie between each subject and the sovereign is the basis for a new—'authorization'—version of the political covenant in *Leviathan*. This covenant consists in the mutual assertion, among incipient subjects, "*I Authorise and give up my Right of Governing my selfe, to this Man, or to this Assembly of men, on this condition, that thou give up they Right to him, and Authorise all his Actions in like manner*."[37] The formulation has four specific implications. First, it provides a further ground for the claim that rulers cannot be accountable to the people:

> because every Subject is by this Institution Author of all the Actions, and Judgments of the Soveraigne Instituted; it followes, that whatsoever he doth, it can be no injury to any of his Subjects; nor ought he to be by any of them accused of Injustice'.[38]

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[36] Hobbes, *DC*, 6.20, pp. 104–5.
[37] Hobbes, *LV*, 17, p. 227.
[38] Hobbes, *LV*, 18, p. 232. Grotius had suggested using the idea of authorization to justify the principle of nonresistance: "Under subjection the Apostle includes the

Second, it bars subjects from changing the form of government:

> they that have already Instituted a Common-wealth, being thereby bound by Covenant, to own the Actions, and Judgements of one, cannot lawfully make a new Covenant… without his permission. And therefore, they that are subjects to a Monarch, cannot without his leave cast off Monarchy, and return to the confusion of a disunited Multitude.

For the same reason, subjects may not

> transferre their Person from him that beareth it, to another Man, or other Assembly of men: for they are bound… to Own, and be reputed Author of all, that he that already is their Soveraigne, shall do, and judge fit to be done.[39]

This implies, fourth, that

> no man that hath Soveraigne power can justly be put to death, or otherwise in any manner by his Subjects punished. For seeing every Subject is Author of the actions of his Soveraigne; he punisheth another, for the actions committed by himselfe.[40]

The authorization covenant is transparently a defense of the Stuart monarchy. In so characterizing the relationship between ruler and ruled, Hobbes was telling his fellow subjects that they were bound to allegiance to the established government and must not seek to change it or depose the sitting ruler. There was, however, a hole in the argument. Although Hobbes's discussion of its implications is framed with a monarchy in view, authorization is a general formulation applying to all forms of government. Thus it leaves open the answer to a momentous question in the 1640s: 'Who is sovereign?'.[41] Opponents of the Stuarts, such as Henry Parker, claimed that Parliament was the final arbiter in the English constitution because it represents the people.[42]

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necessity of nonresistance.… For the acts to which we have given our authorization we make our own" (*DJB*, I.4.4, p. 141).

[39] Hobbes, *LV*, 18, p. 229.

[40] Hobbes, *LV*, 18, p. 232.

[41] Cf. Glenn Burgess, "Contexts for the Writing and Publication of Hobbes's *Leviathan*," *History of Political Thought* 11 (1990): 687–90.

[42] Henry Parker, *Observations upon some of his Majesties late Answers and Expresses* (London, 1642): "In this Policy is comprised the whole art of Soveraignty… where Parliaments superintend all, and in all extraordinary cases, especially betwixt the King and Kingdom, do the faithfull Offices of Umpirage, all things remain in… harmony" (42); Parliament is "to be accounted by the vertue of representation, as the whole body of the State" (45). Parker sometimes goes further and identifies Parliament with

The substance of the parliamentary claim could be rebutted, Hobbes saw, using his analysis of political agency. If the sovereign is the political agent of the nation, then representation is simply one aspect of sovereignty:

> A Multitude of men, are made *One* Person, when they are by one man, or one Person, Represented; … And it is the Representer that beareth the Person, and but one Person: and *Unity*, cannot otherwise be understood in Multitude.[43]

The alternative is divided sovereignty, which is inconsistent with the very purpose of government:

> the Soveraign, in every Commonwealth, is the absolute Representative of all the subjects; and therefore no other, can be Representative of any part of them, but so far forth, as he shall give leave: And to give leave to a Body Politique of Subjects, to have an absolute Representative to all intents and purposes, were to abandon the government … and to divide the Dominion, contrary to their Peace and Defense.[44]

If the point wasn't clear enough for his readers, Hobbes spells out its application to England. It is here that the earlier-quoted reference to the Norman Conquest appears. Although it is absurd to think that in a monarchy the people's deputies are their "absolute Representative," Hobbes admits that this is a commonly accepted view:

> In a Monarchy, he that had the Soveraignty from a descent of 600 years, was alone called Soveraign, had the title of Majesty from every one of his Subjects, and was unquestionably taken by them for their King; was notwithstanding never considered as their Representative; that name without contradiction passing for the title of those men, which at his command were sent up by the people to carry their Petitions, and give him (if he permitted it) their advise.

The moral is an admonition to the sovereign to "instruct men in the nature of that Office, and to take heed how they admit of any other generall Representation upon any occasion whatsoever."[45] The relevance to Charles I's present difficulties was obvious.

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the nation: "the whole Kingdome is not properly the Author as the essence it selfe of Parliaments" (5).

[43] Hobbes, *LV*, 16, p. 220.

[44] Hobbes, *LV*, 22, p. 275.

[45] Hobbes, *LV*, 19, p. 241.

In context, the reference to William's conquest is more than a polemical aside or an illustration. To fully rebut the Parliamentarians, Hobbes needed the fact of the Norman Conquest. Tying representation to sovereignty did not rule out the constitutional possibility that the so-called 'representatives' really were sovereign. Showing that this was not so required invoking constitutional history to establish that the government was a monarchy in which rulers had inherited their authority from a founding conqueror. In short, Hobbes needed history when he needed to answer the question of who was sovereign.

The appeal to the Norman Conquest points in the direction of a full-fledged historical contractarian argument. To wit, England was an absolute monarchy by virtue of subjects' consent to the Conquest; and the Stuarts had inherited their title to the throne from William. The extent to which this line of argument is consistent with Hobbes's larger contract theory has been obscured by his methodological statements and by the very different account of sovereign right which he gives in *Leviathan*'s "Review and Conclusion." That quite ahistorical defense of de facto authority will be considered shortly, but first let us examine Hobbism through historical contractarian lenses.

Hobbesian Historical Contractarianism

There was always a place in Hobbes's theory for empirical facts of the Norman Conquest sort. Neither version of the political covenant specifies which form of government subjects would adopt: they might choose to create a monarchy, aristocracy, or a democracy.[46] Nor do the covenants specify the length of the sovereign's tenure or rules governing succession and governmental transition. These matters were left to be filled in with the empirical facts of particular cases. These are not insignificant matters, either. The relationship between ruler and ruled hinges in some significant ways on the facts of each case.

It turns out that the key empirical questions, in Hobbes's mind, pertain to the rules for governmental transition. These serve as markers for determining questions of popular sovereignty in the real world. If the people, in setting up a monarchy, have not reserved the right (and time and place) to choose a new ruler at the death of the old, then they have "truly and indeed" transferred sovereignty and created absolute

[46] Hobbes, *EL(T)*, II.1.3, pp. 84–5; *DC*, 7.1, pp. 106–7; *LV*, 19, p. 239.

monarchy, "wherein the monarch is at liberty, to dispose as well of the succession, as of the possession."[47] If they have done so, they have created an "elective kingship," which is really a form of democracy in which they remain sovereign. The same logic applies to conditional sovereignty. Rulers are accountable to the people if the constitution provides for a popular right of assembly and specifies occasions for them to meet.[48]

Notice how this discussion of conditional sovereignty differs from Hobbes's 'philosophical' contractarian (i.e. nonresistance and authorization) accounts of the impossibility of such a constitution. This empirical discussion does not contradict the nonresistance and authorization formulations, since Hobbes is showing that 'conditional sovereignty' is a synonym for unconditional popular sovereignty. But this is a historical contractarian argument in which the relationship between ruler and ruled is seen to hinge on the nature of the foundational, constitutional contract, whereas the philosophical contracts are designed to make history irrelevant and eliminate alternatives to absolutism.

The topic of succession figures in a second way in the several versions of Hobbes's theory. While his political covenants are framed in the present tense, 'as if' subjects are selecting a government here and now, he did not ignore political change. He knew that change can undermine even the best-constituted government, so "it is necessary for the conservation of the peace of men," that provision be made for an "Artificiall Eternity of life." "This Artificiall Eternity, is that which men call the Right of *Succession*."[49] Although succession is not usually taken to be a major topic of Hobbes's,[50] it is, interestingly, the subject of the first and last of his writings. In *A Discourse upon the Beginning of Tacitus* (1620), which is a treatise on new princes in the style of Machiavelli, succession figures prominently: "Provision of successors, in the lifetime of a Prince…is a kind of duty they owe their Country, thereby to prevent civil discord."[51] He came back to the subject at the

[47] Hobbes, *EL(T)*, II.2.9. p. 95.
[48] Hobbes, *EL(T)*, II.2.9–10, pp. 95–7; *DC*, 7.16, pp. 113–15; *LV*, 19, p. 246.
[49] Hobbes, *LV*, 19, p. 247.
[50] An exception is Jean Hampton, *Hobbes and the Social Contract Tradition* (Cambridge: Cambridge University Press, 1986), 129–31.
[51] Thomas Hobbes, *Three Discourses: A Critical Modern Edition of Newly Identified Work of the Young Hobbes*, ed. N. B. Reynolds and A. W. Saxonhouse (Chicago: University of Chicago Press, 1995), 49.

end of his life, contributing to the Exclusion Crisis the opinion that a king cannot be compelled to disinherit his heir.[52]

Naturally, Hobbes's discussions of succession focus on hereditary monarchy, although the issue arises under other forms of government.[53] He defines 'hereditary' descent to mean that sovereigns choose their successor,[54] though as a supplemental principle something akin to fundamental law obtains.[55] To prevent civil war, they have a natural-law duty to name an heir.[56] If they fail to do this, the same natural law (to procure peace) dictates the supposition that the ruler intended the monarchy to continue.[57] The precise rules for determining succession in such cases may be matters of custom or, failing that, the "presumption of naturall affection."[58]

The inclusion of rules of succession in the generic social contract story indicates that, from the beginning, Hobbes saw the importance of the question 'Who is sovereign?' and conceived the answer in historical terms. Political events made the question more salient when he was composing *Leviathan* than it had earlier been. But that work's assertion that England's present form of government and sitting dynasty were inheritances, via the principle of 'hereditary' descent, from the Norman Conquest was fully consistent with the account he had always given of the way in which a contract creating absolute monarchy came to bind future generations.

Not only is the Norman Conquest interpretation of England's constitution consistent with the contract story which Hobbes had always

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[52] Quentin Skinner, "Hobbes on Sovereignty: An Unknown Discussion," *Political Studies* 13 (1965): 218.

[53] Hobbes, *LV*, 19, pp. 247–48.

[54] E.g., Hobbes, *LV*, 19, p. 249.

[55] Regarding the idea of fundamental law, see Hobbes, *LV*, 26, p. 334.

[56] Hobbes, *DC*, 7.16, p. 113; *LV*, 19, pp. 247–48.

[57] Curiously, though, when the principle of sovereign control comes into conflict with society's interest in a peaceful succession, Hobbes opts for the former: "If a Monarch shall relinquish the Soveraignty, both for himself, and his heires; His Subjects returne to the absolute Libertie of Nature; because, though Nature may declare who are his Sons, and who are the nerest of his Kin; yet it dependeth on his own will… who shall be his Heyr. If therefore he will have no Heyre, there is no Soveraignty, nor Subjection" (*LV*, 21, p. 273).

[58] Hobbes, *LV*, 19, p. 250. Cf. *EL(T)*, II.4.14, pp. 106–7, and *DC*, 9.12–19, pp. 126–28. In his post-Restoration *Dialogue between a Philosopher and a Student of the Common Laws of England*, Hobbes details the rules governing the "natural descent" of sovereignty in England, saying these go back to the Saxons and remain the law of the land (*English Works*, vol. VI [1840], 152–53).

told, that interpretation became a theme of his political writings after the Restoration. In *Behemoth*, his history of the Civil War, he offers this comment on Parliamentarians' rationalization of the trial of Charles I, for example. They based their action on popular sovereignty, but this was wrong:

> The people, for them and their heirs, by consent and oaths, have long ago put the supreme power of the nation into the hands of their kings, for them and their heirs; and consequently in the hands of this King, their known and lawful sovereign.[59]

Hobbes traces the legal order and property arrangements back to the Norman Conquest, as well. Laws, he declares in the *Dialogue… of the Common Laws*, are "commands or prohibitions, which ought to be obeyed, because assented to by submission made to the Conqueror here in England."[60] Similarly, subjects' estates derive from the initial distribution of land by William, who at the Conquest won possession of all the land of England.[61] That distribution is also the basis of subjects' duty to serve the king in war, since William had given away his lands in return for past and future military service: "whereby, when [Charles I] sent men unto them with commission to make use of their service, they were obliged to appear with arms."[62]

The most striking aspect of these historical contractarian comments on the English constitution is the assertion that title to the throne is inherited from William the Conqueror.[63] The assertion underwrites distinctions between sovereign right and power, rightful and usurped power, and between the legitimacy of government and citizens' obligation to obey. After the Restoration, Hobbes would emphasize the

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[59] Hobbes, *Behemoth*, 152.

[60] Hobbes, *Dialogue*, 24. This compares with Hobbes's well-known definition of law in the same work as "the command of him or them that have the sovereign power" (26).

[61] "The people of *England* held all theirs [estates] of *William* the *Conquerour*" (Hobbes, *LV*, 24, p. 297). "It cannot therefore be denied but that the lands, which King William the Conqueror gave away to Englishmen and others, and which they now hold by his letters-patent and other conveyances, were properly and really his own, or else the titles of them that now hold them, must be invalid" (*Dialogue*, 150). In *De Cive*, Hobbes makes the general point that the distribution of land by a conqueror is the basis of subsequent rights of private property (*DC*, 8.5, p. 119).

[62] Hobbes, *Behemoth*, 119.

[63] In addition to the passages quoted previously, see Hobbes, *Dialogue*, 21: "But say withal, that the King is subject to the laws of God, both written and unwritten, and to no other; and so was William the Conqueror, whose right is all descended to our present King."

distinction between sovereign right and power in *Behemoth*, concluding the work with the observation: "I have seen in this revolution a circular motion of the sovereign power through two usurpers, father and son, from the late King to this his son."[64] To the question "who had the supreme power?" after the dissolution of the Long Parliament in 1653, he replied: "If by power you mean the right to govern, nobody here had it. If you mean the supreme strength, it was clearly in Cromwell."[65]

Even when the Stuarts were out of power, Hobbes had been prepared to distinguish sovereign right from citizens' obligation to obey de facto rulers. *Behemoth*'s defense of their title to the English throne is prefigured in a discussion in *Leviathan* of the dissolution of government and the state:

> though the Right of a Soveraign Monarch cannot be extinguished by the act of another [i.e. through international or civil war]; yet the Obligation of the members may. For he that wants protection, may seek it anywhere; and when he hath it, is obliged (without fraudulent pretence of having submitted himselfe out of fear,) to protect his Protection as long as he is able.[66]

The distinction between the legitimacy of government and citizens' obligation to obey was an attractive view for many in the early Interregnum, though it is not one commonly associated with Hobbes.[67] But having traced through the historical-contractarian elements in his theory, one can see how the distinction has a place there. The principle of indefeasible sovereign right is implied by a historical-contractarian story that rests present government on a constitutional compact and hereditary descent.

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[64] Hobbes, *Behemoth*, 204; see also 135, 156, 195.

[65] Hobbes, *Behemoth*, 180.

[66] Hobbes, *LV*, 29, pp. 375–76. Cf. ch. 21, pp. 273–74: "if [a monarch] be held prisoner, or have not the liberty of his own Body; he is not understood to have given away the Right of Soveraigntie; and therefore his Subjects are obliged to yield obedience to the Magistrates formerly placed, governing not in their own name, but in his." A contradictory passage in *De Cive* is quoted in note 70 below.

[67] The distinction was a theme of an influential Engagement tract by Francis Rous, *The lawfulness of obeying the present government* (April 1649). See Glenn Burgess, "Usurpation, Obligation and Obedience in the Thought of the Engagement Controversy," *Historical Journal* 29 (1986): 519–21; and Quentin Skinner, "Conquest and Consent: Thomas Hobbes and the Engagement Controversy," in *The Interregnum: The Quest for Settlement 1646–1660*, ed. G. E. Aylmer, rev. paperback ed. (London: Macmillan, 1974), 83–4.

After the Restoration, Hobbes would insist that this was the view he had always held. He retrospectively described his Interregnum arguments in favor of Engagement with the new regime as narrowly concerning "what point of time it is, that a subject becomes obliged to obey an *unjust* conqueror."[68] Yet the post-Restoration claim has never been taken especially seriously, by Hobbes's contemporaries or by later readers.[69] He became known, instead, for defending de facto authority and taking an antifoundational view of sovereignty.

Mocking the Norman Conquest

The historicity of Hobbes's contract arguments has been obscured by his about-face in *Leviathan*'s "Review and Conclusion." There, counseling allegiance to the postregicide government, he abjures historical commitments and embraces de facto authority. With the issue of deposition moot, the salient topic was now conquest: this "(to define it) is the Acquiring of the Right of Soveraignty by Victory. Which Right, is acquired, in the peoples Submission, by which they contract with the Victor, promising Obedience, for Life and Liberty."[70] On the key point of indefeasible sovereign right, Hobbes had contradicted himself. Either sovereign right is contingent on others' acts—conqueror's victory and subjects' submission—or it is not.

As if to telegraph the contrast between this new stance and the account of sovereignty he had developed in connection with *Leviathan*'s authorization covenant, Hobbes goes on to mock the opinion that the Norman Conquest has authority over present political arrangements. Neither the justness of the Conqueror's cause nor the "artificial

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[68] Hobbes, "Considerations," 421–2. In the same passage, Hobbes also plays up the stipulation that a subject must "protect his Protection." The latter explains away his stance on Engagement as a justification for the actions only of royalists, but not a justification of the actions of the King's enemies (see Burgess, "Contexts," 678–79).

[69] Contemporary readings of Hobbism have been detailed by Quentin Skinner in a series of classic articles. See, in addition to the works cited previously, "Hobbes's 'Leviathan'," *Historical Journal* 7 (1964): 321–33; and "The Ideological Context of Hobbes's Political Thought," *Historical Journal* 9 (1966): 286–317.

[70] Hobbes, *LV*, "A Review and Conclusion," p. 721. Cf. *The Elements of Law*, where Hobbes mentions only that subjects' obligation transfers to the conqueror (II.2.15, p. 98); and *De Cive*, "If the Kingdome fall into the power of the enemy, so as there can no more opposition be made against them, we must understand that he, who before had the *Supreme Authority*, hath now lost it" (*DC*, 7.18, p. 116). See also the passage in *De Cive* quoted below in the conclusion in which Hobbes treats the possibility that subjects may choose not to consent to the conqueror's authority.

eternity" of legitimate succession can be the basis of sovereign right and English citizens' obligation:

> As if, for example, the Right of the Kings of England did depend on the goodnesse of the cause of *William* the Conquerour, and upon their lineall, and directest Descent from him; by which means, there would perhaps be no tie of the Subjects obedience to their Soveraign at this day in all the world.[71]

The accent, instead, is on the mortality of sovereignty:

> though Soveraignty, in the intention of them that make it, be immortall, yet is it…not only subject to violent death, by forreign war; but also through the ignorance, and passions of men, it hath in it…many seeds of a naturall mortality.[72]

Of the essence to the Engagement model is a different answer to the question 'Who is sovereign?' than Hobbes had given in the body of *Leviathan*. The about-face signaled by his rejection of the principle of indefeasible hereditary right comes down to a new, 'presentist' perspective on the location of sovereignty. It has been said that

> what Hobbes taught, and what Englishmen of the later Stuart century understood, was the value of civil peace. Legitimacy, as a result, was turned from a concept of government based in traditional right and hereditary monarchy, to government that was anchored instead in its acceptance by the subject in return for protection.[73]

Correct as a characterization of his position in *Leviathan*'s "Review and Conclusion," this misrepresents Hobbes's position in the 1640s and after 1660; in these periods he was a traditionalist. (Moreover, if one looks closely at the "Review and Conclusion," there seem to be limits to how far, even there, he was prepared to accept the implications of a 'presentist' position. Nowhere mentioned in the "Review and Conclusion" is the actual Engagement oath, which was to be "true and faithful to the Commonwealth of England, as it is now Established,

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[71] Hobbes, *LV*, "A Review and Conclusion," p. 721.

[72] Hobbes, *LV*, 21, p. 272. The quotation is from chapter twenty-one, "Of the Liberty of Subjects," rather than the "Review and Conclusion," but appears to have been written in the same period as the latter.

[73] Howard Nenner, "The Later Stuart Age," in *The Varieties of British Political Thought, 1500–1800*, ed. J. G. A. Pocock (Cambridge: Cambridge University Press, 1993), 206.

without a King or House of Lords."[74] To endorse a republic with parliamentary sovereignty was something he could never bring himself to do.)[75]

Conclusion

Which is the 'real' Hobbes? Is he better characterized as a philosophical contractarian, a historical contractarian, or an antifoundational defender of the powers-that-be? The first, to be sure, corresponds to his methodological intentions and aspirations. Yet the impulse to formulate a universalistic and contractarian defense of absolutism failed when political events forced him to confront the issue of deposition. He eventually had to recognize that the political force of his theoretical arguments depended on introducing contingent, historical 'facts' about the English constitution.

Furthermore, *Leviathan*'s appeal to the English constitution is consistent with Hobbes's earlier discussions of rules of succession, which give a historical coloration to his philosophical-contract story. These historical themes have been obscured by Hobbes's more influential Engagement remarks in the conclusion of *Leviathan*. Yet it is instructive, in this regard, to perform a thought experiment. Imagine that Charles I won the Civil War so that Hobbes never had occasion to write the "Review and Conclusion." This counterfactual is the right frame for reading the body of the work, since the main lines of his thinking were laid down well before the defeat of the Stuarts. Absent the confusion introduced by his well-known Engagement remarks, we can see the continuity between Hobbes's Civil War political theory and post-Restoration writings; see that he made historical-contractarian arguments throughout; and appreciate the ways in which English history became more prominent in his thinking over time.

If Hobbes was in some respects a historical contractarian, there is also ground for concluding that this Grotian line of argument is the strongest contractarian element in his theory. Among his several

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[74] Samuel Rawson Gardiner, ed., *The Constitutional Documents of the Puritan Revolution, 1625–1660*, 3rd ed. (Oxford: Clarendon Press, 1906), 391.

[75] After the Restoration, however, Hobbes was quite ready to state that Parliament had held supreme power in the period of the Engagement Controversy (*Behemoth*, 154–55; *Dialogue*, 17–18).

accounts of the relationship between ruler and ruled, this story is the only one that incorporates two defining features of contractarianism—voluntarism (i.e. the idea that political legitimacy issues from the assent of individuals)[76] and the idea of a constitutional compact.

Regarding the first, consider his apparently contractarian defenses of the principle of unconditional sovereignty—i.e. the nonresistance and authorization covenants. As we have seen, both covenant formulations actually rest on logical analyses of corporate agency and the necessary relationship between ruler and ruled. At base, Hobbes argues that unconditional sovereignty is a necessary (rather than chosen) feature of political relationships. Unified sovereignty is defended with a similar, definitional claim that this is also a necessary feature of sovereignty, along with the prudential generalization that divided sovereignty is a bad thing. Only the latter is potentially a voluntarist argument. But he was unwilling to follow Grotius and to grant that assent alone, not the merits of unified versus divided sovereignty, is the sole relevant criterion.[77] Thus in none of Hobbes's several defenses of unconditional and unified sovereignty is the political covenant more than illustrative: the basic reasoning is (variously) logical, definitional, or prudential.

The antihistorical model of *Leviathan*'s "Review and Conclusion," tying obligation to protection, is voluntarist but not contractarian. This is a voluntarist model, as the preceding defenses of unconditional and unified sovereignty are not, because it plainly rests the legitimacy of a conqueror's regime on the assent of subjects.[78] The possibility that assent might not be given is canvassed in *De Cive*: "if in a *Democraticall*, or *Aristocraticall* Government some one Citizen should, by force, possesse himself of the *Supreme Power*, if he gain the consent of all the Citizens, he becomes a legitimate *Monarch*; if not, he is an *Enemy* not

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[76] Patrick Riley, "How Coherent is the Social Contract Tradition?," *Journal of the History of Ideas* 34 (1973): 543.

[77] The Grotian position is quoted in note 23 above.

[78] It should be noted, though, that the "Review and Conclusion" includes the possibility of giving merely tacit consent, which Hobbes defines as living openly under the protection of a conqueror (*LV*, pp. 720–21). It can be argued that this diminishes the force of consent in the argument. In some of his previous discussions of conquest, the concept of consent is stripped of any effective force when Hobbes describes consent as hinging on the *conqueror's* choice. It is the conqueror who decides whether to treat the vanquished as though they have given consent by allowing them liberty, to keep them in bonds as nonconsenting slaves, or to kill them (*EL(T)*, II.3.3–4, p. 100; *DC*, 8.2–5, pp. 118–19).

a *Tyrant*."[79] While the model is voluntarist, it is not contractarian. Its root principle—"the mutuall Relation between Protection and Obedience"[80]—implies a utilitarian account of political obligation and legitimacy, emphasizing subjects' interest in having a government strong enough to protect them,[81] rather than a contractarian vision of binding constitutional decisions.

As against these last—philosophical and utilitarian—lines of argument, Hobbes's appeals to English history furnish the only thoroughly contractarian strand in his thinking. Consider the following statement:

> In the year 1640, the government of England was monarchical; and the King that reigned, Charles, the first of that name, holding the sovereignty, by right of a descent continued above six hundred years.[82]

Elucidated on Hobbesian principles, it implies the argument that England has an absolutist constitution because subjects transferred sovereignty to William the Conqueror and did not reserve the right or the occasion to hold the monarchy accountable. Had circumstances and choices been different at the founding, by implication, English rulers might be accountable to the people and England might not be a monarchy at all. In this constitutional argument, absolutism is a contingent, not a logical, feature of (English) government. Furthermore, by contrast to *Leviathan*'s "Review and Conclusion," the argument is foundational rather than utilitarian. Legitimate authority is seen here to derive from a constitutional compact and subsequent adherence to rules of monarchic succession, not from subjects' interest in being protected.

Is it perverse to conclude that when Hobbes needed history he was at his best as a contractarian thinker?

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[79] Hobbes, *DC*, 7.3, pp. 107–8.
[80] Hobbes, *LV*, "A Review and Conclusion," p. 728.
[81] This is Quentin Skinner's view: see, for example, "Ideological Context," 316; and "Conquest and Consent," 96.
[82] Hobbes, *Behemoth*, 1.

CHAPTER FOUR

HOBBESIAN ABSOLUTISM AND THE PARADOX IN MODERN CONTRACTARIANISM

One would be hard-pressed to find a political theory of the stature and influence of Hobbes's whose political arguments are as universally rejected as his have been. In the seventeenth century, those who shared his belief in absolutism disliked the secular grounding he gave it, whereas our democratic age applauds his secularism and rejects his absolutism. The consequence is that his arguments for absolutism, which are the core of his political vision, have received less sustained attention than his accounts of human nature, morality, and knowledge. However, by dismissing his defense of absolutism, readers miss the audacity of Hobbes's core political argument, which consists in the joint claims that consent is the foundation of legitimate authority and that sovereignty is necessarily absolute. How can this be? If absolute government is the product of choice, how can it also be the sole possible constitutional arrangement?

This question may actually be Hobbes's greatest—albeit problematic—legacy to subsequent contract thinkers, all of whom have rejected his preference for absolutism. Despite this, contract thinkers since Hobbes routinely assert the same paradox, which comes down to claiming that people will choose the theorist's preferred constitution and that it is the only possible one. Regarding Rawls's theory of justice, for instance, many critics have diagnosed one form or another of a similar tension between choice and legitimation, voluntarist claims and antivoluntarist arguments. Later on, after examining the genesis of the paradox in Hobbes's thought, I will discuss manifestations of it in later contract theory, especially Rawls's, and trace these back to Hobbism.[1] However my main purpose here is to lay out the genesis of this paradoxical combination of voluntarist and analytic arguments.

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[1] For an opposing view of the paradox, in which Rousseau is seen—and praised—as being the sole contract thinker to combine idealism with the requirement of an actual contract, see David Lay Williams, "Ideas and Actuality in the Social Contract: Kant and Rousseau," *History of Political Thought* 28 (2007): 469–95. He stresses the utility of each vein of reasoning and hence the benefit of combining them, whereas I focus

On the intellectual landscape of Stuart England there were two major theorists of absolutism: Jean Bodin and Hugo Grotius. Bodin's *République* (1576) appeared in English translation under the title *The Six Bookes of a Commonweale* in 1606, and Grotius published *De Jure Belli ac Pacis* in 1625. The separate influence of these works on Hobbes's political theory is a familiar fact of intellectual history; it is widely remarked that Hobbes drew on Bodin's concept of absolutism and on Grotius's account of natural law.[2] Yet historians have tended to view these as rival influences and therefore to debate whether his theory is more indebted to one or the other, often by emphasizing differences between Hobbism and the supposedly less-influential theory. With regard to the relationship between Bodin's and Hobbes's theories, J. H. M. Salmon and Quentin Skinner, for example, take opposing views. Salmon describes resemblances between Bodin's and Hobbes's conclusions as merely superficial and draws a series of contrasts: Bodin was vague about the origin of authority whereas Hobbes employed the contract device; Bodin was more optimistic about human nature than Hobbes, and saw humans as communal creatures by contrast to Hobbes's self-interested individualism; and Bodin recognized limits on the sovereign's actions, as Hobbes did not. Hence he concludes, "If Hobbes owed much to any one predecessor, then it would seem that he was indebted to Grotius."[3] By contrast, Skinner stresses their agreement on the principle of unconditional sovereignty and therefore maintains that in Bodin's theory,

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on the illogic of so doing. Williams's foil is Patrick Riley's classic on the subject, *Will and Political Legitimacy* (Cambridge, Mass.: Harvard University Press, 1982), which emphasizes the voluntarism of the tradition and praises Kant, in contrast, for transforming the social contract into an Idea.

[2] Bodin's influence on English political thought is detailed by J. H. M. Salmon, *The French Religious Wars in English Political Thought* (Oxford: Clarendon Press, 1959); and George L. Mosse, *The Struggle for Sovereignty in England* (New York: Octagon, 1968), ch. 2. Regarding Grotius, see citations in subsequent notes.

[3] Salmon, *French Religious* Wars, 113–14 (quotation, 113 n. 30). See, too, Alain de Benoist, "What is Sovereignty?," *Telos* 116 (1999): 99–118: "The problem with sovereignty is differently posed with Thomas Hobbes (1588–1679). While, in Bodin's theory, the idea of absolute sovereignty is oriented explicitly against feudal power, which implies granting the prince authority independent of his subjects' consent . . . Hobbes was the first to invoke a social contract" (104). David Parker makes a similar argument: "Law, Society and the State in the Thought of Jean Bodin," *History of Political Thought* 2 (1981): 253–85.

> Already the foundations are fully laid for Hobbes's later construction of 'that great Leviathan' as a 'mortal God' to whom 'we owe under the immortal God our peace and defence'.[4]

The Grotian connection is similarly disputed. Richard Tuck has sought in a number of works to resurrect Grotius's place in the development of European political thought and particularly to call attention to his influence on Hobbes's theory, which Tuck describes as "broadly Grotian" in character.[5] In rebuttal, Perez Zagorin titles an article, "Hobbes Without Grotius," which contrasts their accounts of natural law and right.[6] In the same vein, Johann Sommerville avers that there is "much to suggest that Hobbes would have disagreed profoundly with any claim that he belonged to the school of Grotius."[7]

There is merit on both sides in these disputes: While Hobbes embraced Bodinian absolutism, he differed with Bodin on a number of points, including the use of the contract device. Grotius, on the other hand, was well known for putting absolutism on a contractarian footing but, unlike Hobbes and Bodin, he saw absolutism as merely one among a variety of available constitutions. Debating the relationship between Hobbes and Bodin or Hobbes and Grotius misses the key point that his defense of absolutism combines elements from both predecessors' theories. Bodin had said that sovereignty must be absolute, while Grotius argued for the possibility of an absolutist contract. Taking the former, analytic (or dogmatic) claim from Bodin, Hobbes combined it with Grotius's permissive contract argument, and the

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[4] Quentin Skinner, *The Foundations of Modern Political Thought*, vol. II, *The Age of Reformation* (Cambridge: Cambridge University Press, 1978), 287.

[5] Richard Tuck, "Grotius, Carneades and Hobbes," *Grotiana* 4 (1983): 59. See also *Natural Rights Theories: Their Origin and Development* (Cambridge: Cambridge University Press, paperback ed., 1981), chs. 3–6; "Optics and Sceptics: The Philosophical Foundations of Hobbes's Political Thought" in *Conscience and Casuistry in Early Modern Europe*, ed. E. Leites (Cambridge: Cambridge University Press, 1988), 235–63; *Philosophy and Government 1572–1651* (Cambridge: Cambridge University Press, 1993), 305; and *Hobbes* (Oxford: Oxford University Press, 1989), 20–22.

[6] Perez Zagorin, "Hobbes Without Grotius," *History of Political Thought* 21 (2000):16–40. See also "Hobbes on Our Mind," *Journal of the History of Ideas* 51 (1990): 317–35.

[7] Johann P. Sommerville, "Selden, Grotius, and the Seventeenth-Century Intellectual Revolution in Moral and Political Theory" in *Rhetoric and Law in Early Modern Europe*, ed. V. Kahn and L. Hutson (New Haven: Yale University Press, 2001), 320. See also Tom Sorell, "Hobbes Without Doubt," *History of Philosophy Quarterly* 10 (1993): 121–35.

product was a strong—but also paradoxical—contractarian defense of absolutism.

Unfortunately, Hobbes left little by way of autobiographical material on the development of his thinking, even burning many letters late in life out of fear of parliamentary persecution. But in the cases of Bodin and Grotius, we have some concrete evidence of influence, which is more direct in the case of the former and circumstantial for the latter. Bodin was an exception to Hobbes's usual practice of ignoring other authorities.[8] In the first version of his political theory, *The Elements of Law* (1640), he referenced and even quoted *The Six Bookes of a Commonweale*. First, he cites Bodin as an authority on the proposition that sovereignty cannot be divided:

> If there were a commonwealth, wherein the rights of sovereignty were divided, we must confess with Bodin, Lib. II. chap. I. *De Republica*, that they are not rightly to be called commonwealths, but the corruption of commonwealths.[9]

It is a close paraphrase of a passage in the *Six Bookes* that explained, "Wherefore such states as wherein the rights of soueraigntie are diuided, are not rightly to bee called Commonweales, but rather the corruption of Commonweales." In addition, he quotes Bodin's empirical account of the instability of divided sovereignty. Bodin had claimed that

> the nobilitie which should haue the power to make the lawes for all… would by their lawes at their pleasure forbid others to make peace or warre, or to leuie taxes, or to yeeld fealtie and homage without their leaue.[10]

And Hobbes echoes,

> if one part should have power to make the laws for all, they would by their laws, at their pleasure, forbid others to make peace or war, to levy taxes, or to yield fealty and homage without their leave.[11]

While Hobbes does not appeal to Grotius's authority in a similar manner, nor do we have direct evidence that he read *De Jure Belli ac Pacis* or other writings, we know there was a copy of *De Jure Belli* in the library

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[8] M. M. Goldsmith, "Hobbes's 'Mortal God': Is there a Fallacy in Hobbes's Theory of Sovereignty," *History of Political Thought* 1 (1980): 37–40.

[9] Hobbes, *EL(G)*, 27.7, pp. 166–67.

[10] Bodin, *SB*, II. I, p. 194.

[11] Hobbes, *EL(G)*, 27.7, p. 167.

of Hobbes's aristocratic employer by (it appears) the early 1630s.[12] A number of circumstantial connections indicate his awareness of Grotian arguments. One connection runs through the writings of John Selden, who made the English case against Grotius's *Mare Liberum* (1609) in *Mare Clausum* (1618, revised and published in 1635).[13] In the spring of 1636, while on the Continent, Hobbes wrote to a friend in England saying he hoped to see Selden's work, and several months later reported to a patron that he was reading it.[14] That summer, he and Grotius were in Paris at the same time and had a mutual friend, the English ambassador Viscount Scudamore,[15] so they may conceivably have met although there is no record of this. When Hobbes first wrote his political theory, he outlined a project that seemed to shift his plan for a tripartite political science in a Grotianesque direction.[16] *The Elements*' outline refers, not to the familiar deduction from body to man to civil society, but instead to an "explication of the Elements of Laws, Natural and Politic, which . . . dependeth upon the knowledge of what is human nature, what is a body politic, and what it is we call a law."[17]

Grotian Contractarianism

It is commonplace to observe that Hobbes transformed contractarianism and inaugurated the genre of abstract, universalizing theorizing that we think of as essentially modern.[18] The transformation is described by Harro Höpfl and Martyn Thompson, who distinguish

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[12] Noel Malcolm, "Hobbes, Thomas (1588–1679)," *Oxford Dictionary of National Biography* (Oxford: Oxford University Press, online edition, 2006) [http://www.oxforddnb.com/view/article/13400, accessed 28 Nov 2007].

[13] The relationship between Grotius, Selden, and Hobbes is debated by Richard Tuck and Johann Sommerville. See Tuck, *Natural Rights Theories*, ch. 4; "Grotius and Selden" in *The Cambridge History of Political Thought 1450–1700*, ed. J. H. Burns (Cambridge: Cambridge University Press, 1991), 499–529; and *Philosophy and Government*, chs. 6–7. Cf. Sommerville, "Selden, Grotius," 320 and 335–37.

[14] Thomas Hobbes, *The Correspondence of Thomas Hobbes*, ed. Noel Malcolm (Oxford: Clarendon Press, 1994), vol. I, Letters 17 and 18, pp. 30 and 32.

[15] Noel Malcolm, "Biographical Register to Hobbes's Correspondents" in *Correspondence*, vol. II, 887–88.

[16] See Tuck, *Hobbes*, 20–23; and chapter five of the present volume.

[17] Hobbes, *EL(G)*, 1.1, p. 21.

[18] E.g., Seyla Benhabib, "The Methodological Illusions of Modern Political Theory," *Neue Hefte für Philosophie* 21 (1982): 47–74.

"philosophical" contractarianism from a long-standing historical or "constitutional" genre.[19] Philosophical contractarianism employed the language of natural law, a state of nature, and the social contract, whereas constitutional contractarianism treated the ancient constitution and fundamental laws. While the latter was an age-old form of argumentation, it was revived and intensified in the sixteenth and seventeenth centuries, as J. G. A. Pocock showed in *The Ancient Constitution and the Feudal Law*, by those who sought to limit newly-assertive monarchs.[20] Prominent examples of constitutional contractarianism include the *Vindiciae contra tyrannos*, a late sixteenth-century Huguenot resistance tract that derived conditional sovereignty from coronation oaths and was concerned, generally, with the positive legal rights of various bodies within the French state.[21] A century later in England, similar argumentation played an important part in the constitutional controversies leading to the Glorious Revolution;[22] the Convention Parliament charged James II with "breaking the Original Contract between king and people" as well as with abdicating the throne.[23] These examples display a preoccupation with the "particular positive laws and the institutional inheritance of specific polities," by contrast to the focus of the new philosophical contractarianism on "universal propositions about all men and all polities."[24]

The path from constitutional to philosophical contractarianism ran through Grotius's *De Jure Belli ac Pacis*. In a famous passage, so influential that a century and a half later Rousseau would devote a chapter in the *Social Contract* to rebuttal,[25] Grotius claimed that a people may consent to absolutism just as individuals may consent to slavery:

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[19] Harro Höpfl and Martyn P. Thompson, "The History of Contract as a Motif in Political Thought," *American Historical Review* 84 (1979): 932–33. See also J. G. A. Pocock, *The Ancient Constitution and the Feudal Law* (New York: Norton, 1967), esp. ch. 9; and J. W. Gough, *The Social Contract: A Critical Study of its Development* (Oxford: Clarendon Press, 1936), chs. 6–7.

[20] Pocock, *Ancient Constitution*, 16.

[21] Höpfl and Thompson, "History of Contract," 932–33.

[22] Höpfl and Thompson, "History of Contract," 942; Pocock, *Ancient Constitution*, 229–31.

[23] Quoted in Thomas P. Slaughter, "'Abdicate' and 'Contract' in the Glorious Revolution," *Historical Journal* 24 (1981): 330.

[24] Höpfl and Thompson, "History of Contract," 941.

[25] Jean-Jacques Rousseau, *The Social Contract*, trans. Maurice Cranston (Harmondsworth: Penguin, 1968), bk I, ch. 4.

> To every man it is permitted to enslave himself to any one he pleases for private ownership… Why, then, would it not be permitted to a people having legal competence to submit itself to some one person, or to several persons, in such a way as plainly to transfer to him the legal right to govern, retaining no vestige of that right for itself? And you should not say that such a presumption is not admissible; for we are not trying to ascertain what the presumption should be in case of doubt, but what can legally be done.[26]

Furthermore, in some circumstances it would be rational for a people to make such a contract:

> as, for example, if a people threatened with destruction cannot induce any one to defend it on any other condition; again, if a people pinched by want can in no other way obtain the supplies needed to sustain life.[27]

Thus Grotius legitimated the possibility of absolutism, defined as unconditional sovereignty, as well as slavery. However, it was a weak, because merely permissive, defense of absolutism: he granted that other forms of government, including divided as well as conditional sovereignty, were also possible. His argument parallels the just-quoted defense of an absolutist contract:

> Against such a state of divided sovereignty—having, as it were, two heads—objections in great number are urged by many. But, as we have also said above, in matters of government there is nothing which from every point of view is quite free from disadvantages; and a legal provision is to be judged not by what this or that man considers best, but by what accords with the will of him with whom the provision originated.[28]

Grotius's contract argument was basically an abstraction from historical contractarianism, which was a genre of first-order claims about historical contracts rather than second-order reflection on historical argumentation.[29] Stepping away from particular national histories of contracts, he advanced two general propositions: (1) legitimate authority is founded on consent;[30] and (2) a variety of constitutional

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[26] Grotius, *DJB*, I.3.8.1, p. 103.
[27] Grotius, *DJB*, I.3.8.3, p. 104.
[28] Grotius, *DJB*, I.3.17, p. 124.
[29] Pocock, *Ancient Constitution*, ch. 9. Early in his career, Grotius published a historical defense of the constitution of the new Dutch Republic, *De Antiquitate Reipublicae Batavicae* (1610): Hugo Grotius, *The Antiquity of the Batavian Republic*, ed. and trans. Jan Waszink (Assen: Van Gorcum, 2000).
[30] Grotius also recognizes conquest as a legitimate source of authority (*DJB*, I.3.8, p. 105; III.8.1, pp. 697–98; and III.15.1, p. 770).

compacts are possible, resulting in absolutism or divided and/or conditional sovereignty. In effect, this second proposition provided a rationale for a 'constitutional' contractarian focus on investigating constitutional histories.

As a way of thinking about politics, Grotian contractarianism accents human will and the contingency of political arrangements, rather than their rationality. While Grotius gave reasons why it would be rational to consent to absolutism in some circumstances, his purpose in so doing was to support the claim that such a contract is possible. Absolutism binds, by his account, not because of the reasons for which it is chosen, but simply because it *is* chosen. Annabel Brett has emphasized the centrality of "pure subjective liberty" in *De Jure Belli*.[31] This is a political philosophy that conceives human beings as radically free—even to choose to give up freedom, individually or collectively—and as obligated by virtue simply of our consent. Furthermore, since various constitutions are possible, it is a matter of contingency why states have the arrangements they do rather than other possibilities. This accent on freedom, choice, and contingency was foreign to much constitutional contractarian reasoning, which stressed the rootedness of constitutions in inherited custom and law.[32] Nonetheless, abstracting from that sort of historical sensibility, a constitutional contractarian would have been comfortable with the view that constitutional arrangements are the product of political strife and resolution, which always can have gone otherwise.

However, it would be wrong to suggest that Grotian contractarianism *in De Jure Belli ac Pacis* was as concerned with politics as constitutional contractarianism had been. While he provided a rationale for investigating political history, the work's influence lay in its secular

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[31] Annabel Brett, "Natural Right and Civil Community: The Civil Philosophy of Hugo Grotius," *The Historical Journal* 45 (2002): 41, 48.

[32] Pocock, *Ancient Constitution*. Consistent with his radical account of permissible contracts, Grotius held that a people could give up the right to alter constitutional arrangements in the future; however, being a merely permissive statement, this left the opposite possibility open in principle. See the discussion in Book II, chapter four of *De Jure Belli ac Pacis*. However, in the conclusion of the 1610 work on his own country, he had sounded like a typical historical contractarian: "we owe much to our ancestors, who have accepted a form of government, which was excellent in itself, and ideal for our character and ambitions, from the original founders… It is now our duty… firmly to defend this form of government, which is urged by reason, approved by experience, and recommended by antiquity" (Grotius, *Antiquity*, 115).

account of natural law and underlying moral psychology.[33] His defense of absolutism defined many of the questions with which social contract theory would thereafter be preoccupied: What kind of contracts can be made? What form of government would abstract individuals choose, and why? By extension, promise-keeping became a root issue (for which David Hume would criticize the genre a century later).[34] His argument admits contingency as a philosophical matter but the concern with abstract reasons moves away from the radical political contingency inherent in constitutional contractarian thinking. It is the difference between thinking of political contracts as political settlements—with the accent on the fact of settlement, and a concern with the way in which historical settlements structure political relationships in the present—versus a Grotian focus on reasons for making and keeping contracts. While Grotius maintained a constitutional contractarian appreciation for the variety of real-world settlements, he simultaneously started the process of transforming contractarianism into a branch of moral philosophy that would culminate in Rawls's *Theory of Justice*.

There is also to be found in *De Jure Belli* a noncontractarian discussion of sovereignty, a line of argument that reflects the widespread influence in the early seventeenth century of Bodin's political theory.[35] Immediately preceding the absolutist contract that was quoted at the start of this section, Grotius defines sovereign power as "That power… whose actions are not subject to the legal control of another, so that they cannot be rendered void by the operation of another human will."[36] "It is absolutely necessary," he declares, that authority "stop with some person, or assembly."[37] Furthermore, "sovereignty is a unity, in itself indivisible" and includes "the highest degree of authority, which is 'not accountable to any one'."[38] But in *De Jure Belli*, such universalistic statements are in tension with the contingent contract

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[33] Knud Haakonssen, "Hugo Grotius and the History of Political Thought," *Political Theory* 13 (1985): 239–65; Tuck, *Natural Rights Theories*; cf. Sommerville, "Selden, Grotius."

[34] David Hume, "Of the Original Contract" in *Essays: Moral, Political, and Literary* (Indianapolis: Liberty Fund, 1987).

[35] Regarding Bodin's influence on Grotius, see: Grotius, *DJB*, "Prolegomena," p. 29; and Julian H. Franklin, *Jean Bodin and the Rise of Absolutist Theory* (Cambridge: Cambridge University Press, 1973), 106–8.

[36] Grotius, *DJB*, I.3.7, p. 102.

[37] Grotius, *DJB*, I.3.8, p. 110.

[38] Grotius, *DJB*, I.3.17, p. 123.

argument for which he was best known. Thus, for instance, the passage claiming that sovereignty "is a unity," nevertheless continues with an attempted explanation of how both divided and conditional rule are possible.[39] Grotius makes an attempt to reconcile these positions by distinguishing sovereignty from the possession of sovereignty,

> Up to this point we have tried to show that the sovereignty must in itself be distinguished from the absolute possession of it. So true is this distinction that in the majority of cases the sovereignty is not held absolutely.[40]

Yet it is not clear what this might mean. Rather than concentrate on his effort to combine contractarianism with a definitional position inherited from Bodin, let us turn instead to see how Bodin had originally worked out the universalistic claim that sovereignty must be absolute.

Bodinian Absolutism

Bodin's *Six Bookes of a Commonweale* interjected into the development of political thought in the early-modern period the strenuous claims that personalized sovereignty is unconditional and perpetual.[41] "Soueraigntie is the most high, absolute, and perpetuall power ouer the citisens and subiects in a Commonweale"; "the prince or people themselues, in whome the Soueraigntie resteth, are to giue account vnto none, but to the immortall God alone."[42] With the further identification of legislative authority as the key mark of sovereignty, this translated into the proposition that sovereign power centrally consists "in giuing laws vnto the subiects in generall, without their consent,"

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[39] Grotius, *DJB*, I.3.17, p. 123: "nevertheless a division is sometimes made into parts designated as 'potential'…and 'subjective'…Thus, while the sovereignty of Rome was a unity, yet it often happened that one emperor administered the East, another the West, or even three emperors governed the whole empire in three divisions.

So, again, it may happen that a people, when choosing a king, may reserve to itself certain powers but may confer the others on the king absolutely."

[40] Grotius, *DJB*, I.3.14, p. 120.

[41] Skinner, *Foundations*, vol. II, 284–301.

[42] Bodin, *SB*, I.8, pp. 84, 86. Also, p. 85: "Soueraigntie is not limited either in power, charge, or time certaine."

while the sovereign is "not subiect to any law" (meaning human law, whereas divine and natural law govern all).[43]

Softening the assertion of unconditional sovereignty were a number of qualifications. Bodin saw rulers and subjects as having mutual ties: "for the faith and obeisance he receiueth," the sovereign "oweth iustice, counsell, aid, and protection."[44] In the same vein, he distinguished contracts between ruler and ruled, which "reciprocally bindeth both parties" from mere laws.[45] So, too, fundamental laws such as the Salic law in France were binding on sovereigns, and their successors could annul violations.[46] In addition, he held that absolute monarchs could not tax without the consent of representative assemblies of their subjects, except in emergencies.[47] In fact, Bodin preferred to accent the limits he placed on sovereign power rather than its broad scope. In the preface to the second edition of the *République*, he protested the charge that the theory gives too much power to one man by drawing attention to its inclusion of various limitations on sovereign authority.[48] In addition, the work classifies monarchies into three kinds, based on the criterion of the conduct of government: there is "lawful or royal monarchy," in which the prince obeys the laws of nature and respects subjects' liberty and property; "lordly monarchy," in which the prince is absolute master over subjects' goods and persons; and "tyrannical monarchy," in which the prince violates natural law and abuses his subjects and their property. Bodin maintained that most European monarchies were "lawful"—as opposed to "lordly"—in character.[49]

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[43] Bodin, *SB*, I.8, pp. 88–89, 98 (quotations on pp. 98 and 88). Indeed, Bodin held that "princes are more straitly bound than their subiects" by the law of God and nature: "For God taketh a straiter account of princes than of others" (104).

[44] Bodin, *SB*, I.6, p. 58; see also IV.6, p. 500.

[45] Bodin, *SB*, I.8, p. 93. Hobbes mentions this distinction, though it makes no sense in his own theory, just prior to the paraphrasing from the *République* that was quoted in the introduction (*EL(G),* 27.6, p. 166).

[46] Bodin, *SB*, I.8, p. 95.

[47] Bodin, *SB*, I.8, pp. 96–97. See Martin Wolfe, "Jean Bodin on Taxes: The Sovereignty-Taxes Paradox," *Political Science Quarterly* 83 (1968): 268–84; Julian H. Franklin, "Bodin and Locke on Consent to Taxation: A Brief Note and Observation," *History of Political Thought* 7 (1986): 89–91; and Franklin, *Jean Bodin*, 87–92.

[48] Bodin, *SB*, p. A71. See Julian H. Franklin, "Sovereignty and the Mixed Constitution: Bodin and His Critics," in *Cambridge History*, ed. Burns, 306–9; Franklin, *Jean Bodin*, ch. 5; Skinner, *Foundations*, vol. II, 293–300.

[49] Bodin, *SB*, II.2, pp. 200–1.

However, the key point is that none of the limits Bodin placed on sovereign power were enforceable. His admission of various qualifications and limits therefore functioned less to counteract his absolutist assertions than, as Julian Franklin recognized, to undermine traditionally recognized limits: "The *République* would help to show how all medieval checks on royal power could be deprived of binding force."[50]

Secondly, absolutism referred to unified control of the major rights of sovereignty—or, in other words, opposition to a mixed constitution. Just as with regard to unconditional sovereignty, Bodin framed unified sovereignty as a necessary proposition: "the soueraigntie is alwaies indiuisible and incommunicable."[51] But this argument turns out to be more empirical than the treatment of unconditional sovereignty and therefore less clearly universal. In the passage from the *Six Bookes* that Hobbes picked up and used in *The Elements of Law*, Bodin starts off by suggesting a necessary political dynamic for legislative authority to lead to de facto control of all powers: if the nobility should have the power to make laws, they would forbid others to make peace or war without their leave.[52] He continues by shifting to the different proposition that unified sovereignty would be the eventual outcome of divided sovereignty, although divided sovereignty is possible temporarily.

> Whereby it commeth to passe, that where the rights of soueraigntie are diuided betwixt the prince and his subiects: in that confusion of the state, there is still endlesse sturres and quarrels, for the superioritie, vntill that some one, some few, or all together haue got the soueraigntie.

Still, the veneer of universality is maintained through the definitional label that states in an interregnum period of divided sovereignty are "not rightly to bee called Commonweales, but rather the corruption of Commonweales."[53]

Bodin saw sovereignty, thus defined, as constitutive of a commonwealth: "many citizens…is made a Commonweale, when they are

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[50] Franklin, *Jean Bodin*, 106.

[51] Bodin, *SB*, II.7, p. 250.

[52] Franklin, "Sovereignty and Mixed Constitution," 302, explains that this has to do with the fact that Bodin thought of legislative power as very general in nature, and failed to distinguish between legislation and execution.

[53] Bodin, *SB*, II.1 p. 194. In Bodin's defense, Franklin, "Sovereignty and Mixed Constitution," 303–5, explains that mixed constitutionalism was not well thought out in legal ways in the sixteenth century.

gouerned by the puissant soueraigntie of one or many rulers."[54] Since he thought of sovereignty in personalized terms, this meant that it could only take one of three forms:

> it is to be knowne whether the prince that beareth rule be an absolute soueraigne; or not: for if he be no absolute soueraigne, then must the Soueraigntie of necessitie be either in the people, or in the nobilirie.[55]

However he introduced complexity by further distinguishing between sovereignty and the form of government:

> there is great difference betwixt the state, and the gouernment of the state: a rule in pollicie (to my knowledge) not before touched by any man: for the state may be in a Monarchie, and yet the gouernment neuerthelesse popular.[56]

The administration of government could be divided, as sovereignty could not be, as was illustrated with a diagnosis of the location of sovereignty in the Roman Republic:

> Wherefore in the Roman state, the gouernment was in the magistrats, the authoritie and councell in the Senat, but the soueraigne power and maiestie of the Commonweale was in the people.[57]

Thus deployed, the sovereignty/government distinction made plain that Bodin framed the concept of absolute sovereignty as an analytic device more than as a descriptive category.[58] When he said that sovereignty must be absolute—unconditional and unified—he meant

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[54] Bodin, *SB*, I.6, p. 49. Preston King, *The Ideology of Order: A Comparative Analysis of Jean Bodin and Thomas Hobbes* (New York: Barnes & Noble, 1974), 29: Bodin "broadly assumes that most organisations (most particularly the family and the state) can only enjoy a unity through the establishment and sharing of a single individual as head (a father or a sovereign). He is not absolutely consistent in this view, and that is why I resort to formulae of the kind 'he is *largely* inclined to believe'." See also Franklin, *Jean Bodin*, 23.

[55] Bodin, *SB*, II.5, p. 221.

[56] Bodin, *SB*, II.2, p. 199. With regard specifically to the distinction between sovereignty and the form of government, Bodin proclaimed that this was his discovery and pointed to its analytic utility: "But here happily some man will say, that none but my selfe is of this opinion… True it is that I cannot denie the same; yet this distinction neuerthelesse seemeth vnto me more than necessarie, for the good vnderstanding of the state of euery commonweal; if a man will not cast himselfe headlong into an infinite labyrinth of errours' (II.7, pp. 249–50).

[57] Bodin, *SB*, II.1, p. 190. Turning next to Venice, he argues that it was an aristocracy and not, as many thought, a mixed constitution. In Book Six, Bodin advocates combining monarchic sovereignty with mixed government (VI.6, p. 755).

[58] Goldsmith, "Hobbes's 'Mortal God'," 42; Franklin, *Jean Bodin*, 23.

that a person or persons holding such power could be identified in all states; and, in turn, the existence of such person(s) was the defining characteristic of a state.

Modern commentators identify several problems with the analytic argument—problems having to do, on the other side, with its connection to empirical realities and, on the other, with the relationship between analytic and prescriptive arguments.[59] On the one hand, empirical observation underlay Bodin's concept of sovereignty. "An enterprise that very likely started as an enquiry into the specific prerogatives of the ancient Roman emperors and the kings of France," Franklin observes:

> was transformed into a study of sovereignty in every kind of state. In Bodin's design, the basis for comparing states . . . was to determine and describe the locus of sovereignty in each. He was thus required to work out common principles of sovereignty that would apply to democracies and aristocracies as well as monarchies, and to variants of each of these in different times and places.[60]

On the other hand, the upshot of this process of abstraction was to produce a rationalizing concept that was of use principally for (re)interpreting the constitutions of extant states. Thus, for example, just as Bodin diagnosed absolute sovereignty amid the apparent republican structures of Rome and Venice, he deciphered monarchic sovereignty in the English constitution. And far from being analytically neutral, this diagnosis carried prescriptive force:

> I haue willingly set downe the ratification at large, to show that the soueraigntie wholly without diuision belonged vnto the kings of England . . . For the ratification of the estates . . . sufficeth not to show the power to commaund, but rather their consent to strengthen the acts.[61]

In the end, then, Bodinian absolutism was not so much an empirical generalization as it was an analytic doctrine reflecting the pretensions of weak early-modern rulers. This is patent, for instance, when Bodin explains what absolute monarchy entails:

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[59] Criticisms of Bodinian absolutism in the period (in particular, early seventeenth-century German works) are discussed by Franklin, "Sovereignty and Mixed Constitution," 312–23.

[60] Franklin, "Sovereignty and Mixed Constitution," 301. See also Skinner, *Foundations*, vol. II, 293. Franklin, *Jean Bodin*, criticizes Bodinian analytical absolutism as empirically inaccurate (ch. 7); in the same vein, see King, *Ideology*, 143–47.

[61] Bodin, *SB*, I.8, p. 98 (generally, pp. 96–98); see Franklin, *Jean Bodin*, 106.

> if the prince be an absolute Soueraigne, as are the true Monarques of Fraunce, of Spain, of England, Scotland, Turkie…and of almost all the kingdomes of Affricke, and Asia,…it is not lawfull for any one of the subiects in particular, or all of them in generall, to attempt any thing…against the honour, life, or dignitie of the soueraigne.[62]

But prescription-by-definition is a weak form of reasoning, lacking in foundations. One such foundation, as Grotius was to see, lay in asserting that absolute sovereignty could be the product of popular choice. Bodin had mentioned the possibility of popular delegation of absolute authority, but failed to develop its implications.[63] Hobbes's genius lay in recognizing the possibility and combining the contingent contractarianism of Grotius with the analytic absolutism of Bodin. The combination gave secular absolutist theory a rationale beyond that of mere definition.[64] Moreover, Grotius's radical formulation—that a people can entirely renounce the right of governing themselves—enabled Hobbes to eliminate the traditional limits on sovereignty that confused Bodin's account of absolutism.[65] Bodin's theory had deprived those limits of efficacy; Grotius eliminated the limits altogether. With respect to Grotius, Bodin's strong analytic position provided the inspiration for transforming absolutism from a historical, contingent possibility into a description of the necessary structure of the contractual relationship between ruler and ruled.

Hobbesian Contractarian Absolutism

Hobbes took over from Bodin the strong position that sovereignty must be absolute. In every political system, someone or some body possesses supreme authority; this sovereign is bound only by natural and divine law, not by civil law, and is accountable only to God. "In every perfect City…there is a *Supreme power* in some one, greater then which cannot by Right be conferr'd by men…that power…we

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[62] Bodin, *SB*, II.5, p. 222.

[63] Bodin, *SB*, I.8, p. 88: "But what shall we then say of him to whom the people haue giuen absolute power so long as he liueth?…If such absolute power bee giuen him purely and simply…it is certaine that such an one is, and may call himselfe a Soueraigne Monarch." King, *Ideology*, describes the argument as "suggestive" of "Hobbes's contractualism" (151).

[64] Franklin, *Jean Bodin*, 108.

[65] Johann P. Sommerville, *Thomas Hobbes: Political Ideas in Historical Context* (New York: St. Martin's Press, 1992), 164.

call ABSOLUTE."[66] Accompanying this analytic statement is, of course, also the prescription that absolute sovereignty is desirable: "*Soveraign Power ought in all Common-wealths to be absolute*." The passage alongside that marginal notation in *Leviathan* explains, "that the Soveraign Power . . . is as great, as possibly men can be imagined to make it." Yet, Hobbes continues, people do not generally understand that this is so:

> The greatest objection is, that of the Practise; when men ask, where, and when, such Power has by Subjects been acknowledged. But one may ask them again, when, or where has there been a Kingdome long free from Sedition and Civill Warre.[67]

Acknowledging absolutism carries, it seems, the double meaning of acknowledging that government *is* and *should be* absolute.

Hobbes's supporting contract arguments take both prescriptive and analytic tacks. Prescription came first, in the form of a deduction from an account of the state of nature in *The Elements of Law*. There Hobbes explained that "the knowledge of what covenants" would be made to set up a body politic "dependeth on the knowledge of the persons, and the knowledge of their end."[68] This is a statement with which Grotius would have agreed. However, where Grotius was intent on vindicating simply the possibility of an absolutist contract, Hobbes proceeds to fill in the proposition with a universal proposition about motivation—"The cause in general which moveth a man to become subject to another, is . . . the fear of not otherwise preserving himself"—that is rooted in a prior description of a hypothetical state of nature.[69] The familiar deduction follows: the goal is security; therefore individuals must be ready to subject their wills to a sovereign to the extent necessary to achieve security; and the upshot is a covenant of nonresistance. "This power of coercion . . . consisteth in the transferring of every man's right of resistance against him to whom he hath transferred the power of coercion."[70] With this initial contract formulation, Hobbes succeeds in transforming the Grotian position that it could be rational in some circumstances to choose absolutism into the universalistic proposition that absolute sovereignty is always the

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[66] Hobbes, *DC,* 6.8, p. 97. See also 6.14, p. 100 and 6.18, p. 103; *EL(G),* 20.18, p. 117, and 28.1 p. 172; and *LV*, 20, p. 257, and 30, p. 376.
[67] Hobbes, *LV*, 20, pp. 260–1.
[68] Hobbes, *EL(G)*, 20.2, pp. 109–10.
[69] Hobbes, *EL(G)*, 19.11, p. 107; see, too, *DC*, 5.12, p. 90.
[70] Hobbes, *EL(G)*, 20.5–7, pp. 111–12.

rational choice.[71] The state-of-nature deduction generates, in *Leviathan*, the famous proposition that

> 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… is, to conferre all their power and strength upon one Man, or upon one Assembly of men.[72]

In *Leviathan*, that universal prescription is accompanied by several analytic contract arguments to the effect that sovereignty *cannot* be anything but unconditional. This is so because, first, the sovereign cannot be party to the political covenant and, second, because the subjects authorize the sovereign's actions. The development of these contract arguments can be traced through the several versions of the theory, beginning with the *Elements*.

When he wrote that work, Hobbes had not arrived at either argument. While importing the Bodinian claim that "in every commonwealth where particular men are deprived of their right to protect themselves, there resideth an absolute sovereignty,"[73] Hobbes could not fully explain why this must be so. In particular, he had not fully thought through who was party to the contract, which would come to be key to analytic arguments in *De Cive* and *Leviathan*. The *Elements*' description of the political covenant leaves vague the identity of the parties: "The making of union consisteth in this, that every man by covenant oblige himself to some one and the same man" or council "to do those actions, which the said man or council shall command them to do; and to do no action which he or they shall forbid."[74] Only in connection with democracy, which is here said to be the original of all forms of government, does Hobbes specify the absence of a compact between ruler and ruled ("In the making of a democracy, there passeth no covenant, between the sovereign and any subject. For

[71] Grotius and Hobbes differed on the question of the extent of the necessary submission. Grotius opened up a small window for resistance in cases of extreme peril ('I do not doubt that to human law also there can be applied what love under such circumstances would commend' [*DJB*, I.4.3, p. 149]), while Hobbes allowed, more strongly, for an unalienated right of self-defense against violence (*DC*, 2.18, p. 58; *LV*, 14, pp. 192 and 199). See Tuck, *Natural Rights Theories*, 77–81, 122–25.

[72] Hobbes, *LV*, 17, p. 227.

[73] Hobbes, *EL(G)*, 20.19, p. 117.

[74] Hobbes, *EL(G)*, 19.7, p. 106.

while the democracy is a making, there is no sovereign with whom to contract").[75]

By the time he wrote *De Cive* (1642), Hobbes had realized that this claim about democracy holds universally. This work's description of the covenant specifies that submission of individuals' wills to the sovereign occurs "when each one of them obligeth himself by contract to every one of the rest, not to resist the *will* of that *one man*, or *counsell*, to which he hath submitted himselfe."[76] However, his explanation continues to refer to democracy specifically:

> *Democraty* is not framed by contract of particular Persons with the *People*, but by mutuall compacts of single men each with other. But hence it appears in the first place, that the Persons contracting, must be in being before the contract it selfe. But the *People* is not in being before the constitution of government, as not being any Person, but a multitude of single Persons; wherefore there could then no contract passe between the *People* and *the Subject*.[77]

As other forms of government derive from democracy, the absence of a tie between ruler and ruled carries over to them.[78]

Although the absence of a contract between ruler and ruled precludes accountability, there was, Hobbes realized while writing *De Cive*, a flaw in the argument:

> If notwithstanding it were granted, that their *Right* depended onely on that contract which each man makes with his fellow-citizen,... it may very well seem to them, that the *supreme authority* may by right be abrogated, so it be done in some great Assembly of Citizens.

Of course such abrogation would formally require the consent of literally every subject who had consented in the first place; however, Hobbes acknowledges, this is not something that most people understand. So, he replies,

> there is another tye also toward him who commands; for each Citizen compacting with his fellow, sayes thus, *I conveigh my Right on this Party, upon condition that you passe yours to the same*.

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[75] Hobbes, *EL(G)*, 21.2, p. 119.
[76] Hobbes, *DC*, 5.7, p. 88.
[77] Hobbes, *DC*, 7.7, p. 110.
[78] Hobbes, *DC*, 7.8–9, .11–12, pp. 110–12.

Therefore,

> the government is upheld by a double obligation from the Citizens, first that which is due to their fellow citizens, next that which they owe to their Prince. Wherefore no subjects how many soever they be, can with any Right despoyle him who bears the chiefe Rule, of his authority.[79]

This idea of a direct tie between ruler and ruled becomes, in *Leviathan*, a second account of the political covenant—the authorization account. Here the covenant promise adds the concept of authorization to the Grotian language of renouncing the "right of governing": "every man should say to every man, *I Authorise and give up my Right of Governing my selfe, to this Man, or to this Assembly of men.*"[80]

Although the universalizing, prescriptive case for absolutism is carried over in *Leviathan*'s famous description of a horrific state of nature and the motivation which this creates for submitting to strong government, that substantive argument is now accompanied by two fully developed logical accounts of the necessity of absolute sovereignty. At the start of the chapter on sovereign right, before turning as he had in the earlier versions to enumerate specific rights of sovereignty, Hobbes inserts a complete logical proof for unconditional sovereignty. First, because the sovereign is not a party to the political covenant, he cannot be accused of breaking promises to his subjects[81] (keeping covenants having previously been defined as the sole basis for defining injustice).[82] Why, next, is a contract between ruler and ruled impossible? The answer is twofold: it is impossible for the sovereign to contract either with the people as a whole or with each individual. Prior to the institution of the state, first, no such thing as a corporate agent—the people—is in existence: "With the whole, as one party, it is impossible; because as yet they are not one Person." Secondly, the

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[79] Hobbes, *DC*, 6.20, pp. 104–5.

[80] Hobbes, *LV*, 17, p. 227. He also added a chapter, just prior to the description of the covenant, which explains the concept of authorization (16, "Of Persons, Authors, and things Personated"). The idea can be found in Grotius's *De Jure Belli*: "For the acts to which we have given our authorization we make our own" (I.4.4, p. 141).

[81] Hobbes, *LV*, 18, p. 230: "Because the Right of bearing the Person of them all, is given to him they make Soveraigne, by Covenant onely of one to another, and not of him to any of them; there can happen no breach of Covenant on the part of the Soveraigne; and consequently none of his Subjects, by any pretence of forfeiture, can be freed from his Subjection."

[82] Hobbes, *LV*, 15, p. 202.

authorization relationship between each individual subject and the sovereign precludes multiple contracts with the multitude:

> if he make so many severall Covenants as there be men, those Covenants after he hath the Soveraignty are voyd, because what act soever can be pretended by any one of them for breach thereof, is the act both of himselfe, and of all the rest, because done in the Person, and by the Right of every one of them in particular.[83]

In effect, these analytic contract arguments provided an explanation for why Bodin was correct to say that sovereignty *is* absolute and, in so doing, they also swept away the traditional limitations with which Bodin had cluttered his theory. Furthermore, the deduction from the state of nature explained, as Grotius had done, why rational human beings could choose absolutism and went beyond Grotius to generalize this into the universal proposition that it is always the rational choice. It is an audacious set of arguments, explaining why what is the best constitution of sovereignty is simultaneously the only possible constitution. In the conclusion, I will return to compare this Hobbesian invention with later contract theories in the 'philosophical' mode.

Before that, though, we need to examine the third and last part of Hobbes's defense of absolutism, which is the case for unified sovereignty that he originally borrowed from Bodin. He took over the analytic formulation that the major rights of sovereignty "are incommunicable, and inseparable"as well as the further distinction between sovereignty and the form of government, which could be divided.[84] However, just as in the *République*, the supporting reasoning is empirical. In the *Elements*, as has been seen, Hobbes quotes Bodin's empirical hypothesis that divided sovereignty leads to de facto unified control of major powers. Alongside this, however, he develops his own, contrary hypothesis: "The division therefore of the sovereignty, either worketh no effect…or introduceth war."[85] This is explained at greater length in *Leviathan*, where he asserts that "unless this division"—between major rights of sovereignty—"precede, division into opposite Armies can never happen." And his England is the apposite example:

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[83] Hobbes, *LV*, 18, p. 230.

[84] Hobbes, *LV*, 18, p. 236. *EL(G)*, 20.17, p. 116: "But though the sovereignty be not mixed, but be always either simple democracy, or simple aristocracy, or pure monarchy; nevertheless in the administration thereof, all those sorts of government may have place subordinate."

[85] Hobbes, *EL(G)*, 20.16, p. 116.

> 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.[86]

When people believe (for instance) that sovereignty is separated from representation,

> that were to erect two Soveraigns; and every man to have his person represented by two Actors, that by opposing one another, must needs divide that Power, which (if men will live in Peace) is indivisible; and thereby reduce the Multitude into the condition of Warre.[87]

That is, elite division leads to civil war when rival elites mobilize ordinary people and transform political conflict into civil war. This empirical hypothesis yields a prescription of the need for popular acceptance of the unification of sovereignty: "there be few now (in *England*,) that do not see, that these Rights are inseparable, and will be so generally acknowledged, at the next return of Peace."[88] So it seems that divided sovereignty represents confusion rather than a genuine possibility.[89]

In the end, though, like Bodin, Hobbes papers over any discrepancy between empirical reasoning and a strong analytic claim for the necessity of unified sovereignty by simply defining away the possibility of divided government. To wit, regarding "mixt Monarchy… the truth is, that it is not one independent Common-wealth, but three independent Factions."[90]

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[86] Hobbes, *LV*, 18, pp. 236–37; see also 29, p. 368.

[87] Hobbes, *LV*, 19, p. 240. See also 29, pp. 370–71; *DC*, 6.11, p. 96, and 12.5, pp. 149–50.

[88] Hobbes, *LV*, 18, p. 237.

[89] Hobbes, *EL(G)*, 20.16, p. 116: "The truth is… the sovereignty is indivisible; and that seeming mixture of several kinds of government, not mixture of the things themselves, but confusion in our understandings, that cannot find out readily to whom we have subjected ourselves." However, elsewhere he implies that limited sovereignty is a genuine possibility: "A man to obtain a Kingdome, is sometimes content with lesse Power, than to the Peace, and defence of the Common-wealth is necessarily required," which is sometimes done out of ignorance and sometimes from the hope of regaining powers later. In any case, this is poor reasoning because foreign powers tend to take advantage of a weak ruler (*LV*, 29, p. 364 [emphasis omitted]).

[90] Hobbes, *LV*, 29, p. 372. He continues: "And therefore if the King bear the person of the People, and the generall Assembly bear also the person of the People, and another Assembly bear the person of a Part of the people, they are not one Person, nor one Soveraign, but three Persons, and three Soveraigns."

Paradoxical Contractarianism: From Hobbes to Rawls

Philosophical contractarianism, created by the amalgamation of Grotian and Bodinian briefs for absolutism, is contract theory shorn of contingency. Only by eliminating the permissive quality of historical contractarianism did contract reasoning become a philosophical genre. Where permissive contract reasoning mandated historical investigation of the kinds of contracts actually made by real peoples, the transformed genre directed attention to questions about human nature, morality, and rationality. But philosophical interest was purchased at the cost of advancing the paradoxical position that human beings would choose to have the relationship with their rulers that must exist between them. In the Hobbesian example, human beings would choose absolute government in order to avoid a horrific state of nature (and the danger of civil war); and an understanding of the logic of the social contract shows this to be the necessary structure of the relationship between ruler and ruled. While later contract thinkers would reject Hobbes's constitutional doctrine, his legacy lay in modeling contract reasoning without contingency.[91]

Broadly speaking, the outcome was the displacement of politics and contingency from the center to the periphery of contract theorizing and, ultimately, the depoliticization of the genre.[92] The distinction Bodin had drawn between the form of sovereignty, which is not contingent, and the form of government, which is, left a subsidiary space for variety and choice. In the *Elements*, Hobbes reproduced this distinction;[93] while dropping it from *De Cive* and *Leviathan*, he nonetheless continued to recognize the possibility of various forms of government and admitted that he had not demonstrated but only "probably stated" a preference for monarchy.[94] Locke and Rousseau would combine a definitive contract, derived from propositions about human nature, with acknowledgement of variety in possible forms of

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[91] Rosamond Rhodes reads Hobbesian and Rawlsian moral philosophy in similar fashion as making 'assent' the linchpin of obligation: "Obligation and Assent in Hobbes's Moral Philosophy," *Hobbes Studies* 15 (2000): 45–67; and "Reading Rawls and Hearing Hobbes," *Philosophical Forum* 33 (2002): 393–412.

[92] B. Honig, "Rawls on Politics and Punishment," *Political Research Quarterly* 46 (1993): 99–125.

[93] Hobbes, *EL(G)*, 20.17, p. 116.

[94] Hobbes, *DC*, "The Authors Preface to the Reader," p. 37 (emphasis omitted).

government. Thus Locke explains that applying contract principles, which are universal, to diagnosing tyranny in the real world requires specifying a particular form of government:

> It is hard to consider it aright, and know at whose door to lay it, without knowing the Form of Government in which it happens. Let us suppose then the Legislative placed in the Concurrence of three distinct Persons

or, i.e., a constitution of the English sort.[95] Rousseau, of course, combines the claim that sovereignty must be democratic with a consideration of alternative forms of government, in which connection he allows (in a passage often confusing to students) that "If there were a nation of Gods, it would govern itself democratically. A government so perfect is not suited to men."[96] Yet these prudential discussions and particular specifications are appendages to their hegemonic pronouncements on the nature of the relationship between ruler and ruled. They contrast, to cite an obvious example, with Machiavelli's awareness of contingency in the relationship between ruler and ruled, and his consequent preoccupation with understanding the politics of different governmental forms.

The consignment of traditional political topics and sensibility to the secondary topic of differences between forms of government opened the way to more thoroughgoing—and deliberate—depoliticization of the genre. In the opening of *A Theory of Justice*, Rawls explains that his transformation of contract theorizing into a genre of moral philosophy is accomplished by turning away from traditional concerns with the constitution of particular social and governmental arrangements.[97] Critics charge that his turn away from politics—seen as the realm of contingency, plurality, conflict, and negotiation—runs even deeper in his theory: by eliminating the stuff of politics, he created a profoundly, and not only topically, antipolitical theory.[98] It would be an error, though, to target critique exclusively at Rawls's twentieth-century revival of contract thinking: it is just as pertinent to early-modern philosophical contractarianism as it is to *A Theory of Justice*.[99] Rawls

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[95] Locke, *ST*, §213, p. 456.
[96] Rousseau, *Social Contract*, III.4, p. 114.
[97] John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press/Belknap, 1971), 11, 16.
[98] Honig, "Rawls."
[99] Benhabib, "Methodological Illusions."

inherited a genre[100] already flawed by the impulse to combine voluntarist with nonvoluntarist reasoning. By way of conclusion, I want to focus on three related criticisms of Rawls's contract arguments—they dissolve into (1) truth claims; into (2) cognitive, justificatory argument; and even into (3) disciplining argument—and explore the salience of these criticisms to classic philosophical contractarianism.

Michael Sandel lays out the tension between voluntarism and truth claims in Rawls's theory, a tension that generates rival—more versus less voluntarist—interpretations of his position. Is it Rawls's view that anything could be chosen in the original position and the outcome would be fair? Or, as Sandel thinks, is it "simply that, given their situation, the parties are guaranteed to choose the *right* principles"?[101] Notice that Rousseau's concept of the general will suffered from the same ambiguity. If the general will simply represents community consensus, anything will qualify so long as citizens reason in public-spirited fashion. On a less voluntarist reading, general will decision-making is a procedure for arriving at the right policy (although in Rousseau's theory, unlike Rawls's, the procedure does not guarantee the outcome). And here, too, textual evidence supports the less voluntarist interpretation. Rousseau distinguishes community consensus from the "always rightful"—i.e., objectively correct—general will:

> It follows from what I have argued that the general will is always rightful and always tends to the public good; but it does not follow that the decisions of the people are always equally right.[102]

Critics develop the less voluntarist interpretation of Rawls's theory into the further charge that its outcome—the principles of justice—is determined by the description of the original situation, rather than being the product of agents' choices in the original position.[103] *Mutatis mutandis*, doesn't this charge correspond with Hobbes's very intention? He meant precisely to deduce political conclusions from premises

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[100] For Rawls's interpretation of his predecessors' theories as various species of hypothetical argument, see the posthumously published *Lectures on the History of Political Philosophy*, ed. S. Freeman (Cambridge, Mass.: Harvard University Press/Belknap, 2007).

[101] Michael J. Sandel, *Liberalism and the Limits of Justice* (Cambridge: Cambridge University Press, 1982), 127.

[102] Rousseau, *Social Contract*, II.3, p. 72. Unanimity is symptomatic that the general will has been achieved (IV.2, p. 151).

[103] Kenneth Baynes, *The Normative Grounds of Social Criticism: Kant, Rawls, and Habermas* (Albany: State University of New York Press, 1992), 64; Sandel, *Liberalism*, 127–28; Benhabib, "Methodological Illusions," 68–69.

about human nature and, behind that, physical premises. The goal was exactly to delimit choice, as is clear in the introduction to the political covenant in *Leviathan*. There, he makes the strong claim that the "only" way to create political power adequate for defense against foreign invasion and civil war—the initial condition—is "to conferre all their power and strength" on a sovereign.

Rawls's critics argue, furthermore, that (1) he eliminates plural perspectives and selves, and therefore the theory articulates the reasoning of a single, rational deliberator;[104] and that (2) his 'contract' is of a cognitive rather than voluntarist sort. The first critique resonates with the present-day school of rational-choice interpretations of Hobbism, which sees in his account of the state of nature a precursor to the prisoner's dilemma and other game-theoretic problems.[105] The school finds it a virtue that Hobbism can be constructed as an account of the deliberations of a (singular) rational actor in an insecure situation.

The elimination of plurality leads, next, into an argument about the nature of the contract itself. Sandel and others think that Rawls's 'contract' is finally more cognitive than voluntarist in nature:

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[104] Sidney S. Alexander (1974) "Social Evaluation Through Notional Choice," *The Quarterly Journal of Economics* 88 (1974): 597–624. Rawls himself seems to have come out on both sides of this line of argument. In *A Theory of Justice*, he granted, "since the differences among the parties are unknown to them . . . each is convinced by the same arguments. Therefore, we can view the choice in the original position from the standpoint of one person selected at random" (*Theory*, 139). In response to criticism on this score, he responded by identifying two essential contract elements in the theory: publicity and finality. The contract device is required, first, because "reaching a unanimous agreement without a binding vote is not the same thing as everyone's arriving at the same choice, or forming the same intention. That it is an undertaking people are giving may similarly affect everyone's deliberations so that the agreement that results is different from the choice everyone would otherwise have made." Furthermore, "if we make an agreement, we have to accept the outcome; and therefore to give an undertaking in good faith, we must not only intend to honor it but with reason believe that we can do so. Thus the contract condition is a significant further constraint" (John Rawls, "Reply to Alexander and Musgrave," *The Quarterly Journal of Economics* 88 [1974]: 651). For a full discussion of the issues, on which I rely, see Jean Hampton, "Contracts and Choices: Does Rawls Have a Social Contract Theory?," *The Journal of Philosophy* 77 (1980): 316–19. Hampton sides with Alexander and argues that the requirements of publicity and finality make for a weak form of contractarianism, at best, and in fact do not require a contract at all. See, too, Sandel, *Liberalism*, 131–32.

[105] Jean Hampton, *Hobbes and the Social Contract Tradition* (Cambridge: Cambridge University Press, 1986); Gregory S. Kavka, *Hobbesian Moral and Political Theory*. (Princeton: Princeton University Press, 1986); Joe E. Hicks, "Philosophers' Contracts and the Law," *Ethics* 85 (1974): 18–37.

> The philosophical considerations by which Rawls would persuade us set out from the contractarian tradition. The well-ordered society he recommends 'comes as close as a society can to being a voluntary scheme' (13). But what begins as an ethic of choice and consent ends, however unwittingly, as an ethic of insight and self-understanding. In the final passage of the book, the language of choosing and willing is displaced by the language of seeing and perceiving, as the voluntarist image of Kant gives way to the cognitive image of Spinoza.[106]

Would this conclusion not be accurate to Hobbism, as well? Isn't Hobbes, like Rawls, engaged in explaining our situation to us such that we will then understand political authority? Substitute the concept of a 'state of nature' for the 'original position,' and Sandel's interpretation applies just as well to *Leviathan*:

> The secret to the original position—and the key to its justificatory force—lies not in what they *do* there but rather in what they *apprehend* there. What matters is not what they choose but what they see, not what they decide but what they discover. What goes on in the original position is not a contract after all, but the coming to self-awareness of an intersubjective being.[107]

In fact, Hobbes indicates at several important points that the key political problem is confusion and his goal, therefore, is to spread understanding. Recall, in this vein, several passages from *Leviathan* and *De Cive* that have been quoted previously. In one, the claim that "Soveraign Power…is as great, as possibly men can be imagined to make it" is followed up with recognition that this is not generally acknowledged, with the implication that this lack of understanding has been responsible for sedition and civil war.[108] Similarly, *De Cive*'s explanation of the need to recognize a direct tie between the sovereign and each subject is directed at rebutting the widespread (though false) opinion that majority consent in "some great Assembly of Citizens" would be sufficient to remove a sovereign.[109] Recall, too, Hobbes's emphasis on the importance of popular acceptance of the need for unified sovereignty. The cognitive coloration of Hobbes's reasoning became more pronounced over time as he gave increasing emphasis to political education. *Leviathan*'s chapters on causes of the dissolution of commonwealths and the duties of sovereigns, which conclude the

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[106] Sandel, *Liberalism*, 132; see also Honig, "Rawls."
[107] Sandel, *Liberalism*, 132.
[108] Hobbes, *LV*, 20, pp. 260–61.
[109] Hobbes, *DC*, 6.20, p. 105.

political second Part, are recast from the earlier versions with a new focus on dangerous doctrines and public instruction.[110]

Bonnie Honig suggests that the depoliticizing effect of Rawls's theory extends beyond substituting understanding for choice into disciplining the will itself. Two features of the argument point in this direction: repeatability and an appeal to introspection. By contrast to a voluntarist contract, which could go otherwise, Rawls's agreement will never go otherwise and therefore, she speculates, perhaps the point is something beyond identification of the principles of justice.

> Perhaps Rawls counts on the original position to issue not only in an intersubjective agreement among selves but also (repeatedly) in an intrasubjective ordering of the self according to the dictates of Rawlsian rationality and justice.

The repeatability of the contract narrative renders it a disciplining device, especially when this is abetted by introspection:

> In effect, the original position's myth of origins encourages citizens to respond to dissonance with introspection, a practice that supports the regime's broader efforts to privatize, naturalize, or dissolve the dissonant remainders of politics rather than politicize them.[111]

Repeatability is, at base, what Hobbes achieved with his transformation of Grotian contractarianism. This is simply another way of framing the essence of the paradoxical reasoning that he inaugurated: we can only choose what is, in fact, the necessary structure of political authority. Moreover, recall the claim with which *Leviathan*'s introduction famously concludes: "When I shall have set down my own reading orderly, and perspicuously, the pains left another, will be onely to consider, if he also find not the same in himself."[112] Might Honig's diagnosis of the specter of discipline behind the facade of choice not be accurate to Hobbism and the genre of social contract thinking he founded?

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[110] Compare Hobbes, *LV*, 29, pp. 365–68, and 30, pp. 376–85, with *EL(G)*, 27 and 28, and with *DC*, 12 and 13.

[111] Honig, "Rawls," 109–10. In similar vein, Hampton, "Contracts and Choices," concluded: "Therefore, understanding the deliberation in the original position as carried out by a single deliberator following the dictates of practical reason, rather than understanding it as carried out by many parties trying to forge a contract, is a far better way of showing how Rawls thinks a state organized according to the two principles is something to which we would *voluntarily* consent, its constraints and obligations recognized by us as *self-imposed*" (337–38).

[112] Hobbes, *LV*, "The Introduction," p. 81.

PART III

ANCIEN REGIME BOOKS: SERIAL COMPOSITION

CHAPTER FIVE

THE COMPOSITION OF HOBBES'S *ELEMENTS OF LAW*

> When the Parliament sat, that began in April 1640, and was dissolved in May following… Mr. Hobbes wrote a little treatise in English, wherein he did set forth and demonstrate, that the said power and rights were inseparably annexed to the sovereignty.[1]

The work to which this autobiographical statement refers is surely *The Elements of Law*,[2] which was the first of three versions of Hobbes's political theory and laid the pattern for the subsequent treatises, *De Cive* (1642) and *Leviathan* (1651). But Hobbes was recollecting more than twenty years after the fact, and the statement is puzzling. Did he actually write such a lengthy and systematic treatise in the span of less than a month? In his magisterial nineteenth-century biography, G. C. Robertson was suspicious, speculating that the *Elements* "must have been composed earlier, and not, as [Hobbes] suggests, with special reference to the parliamentary proceedings." "[T]he parliamentary debates had the effect," Robertson surmises, "only of stirring up Hobbes to the circulation of his views, whether privately (by manuscript copies) or otherwise."[3] Some more recent biographies accept Hobbes's statement at face value. Richard Tuck describes the *Elements* as a quick production, written for use by Hobbes's patron, Newcastle, as a brief in the debates of the Short Parliament.[4] Noel Malcolm comments that the work's dedication makes it sound like a "*pièce d'occasion*," while also observing that it is "an almost fully fledged statement of Hobbes's entire political philosophy" and "no mere polemical pamphlet."[5]

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[1] Thomas Hobbes, "Considerations upon the Reputation, Loyalty, Manners, and Religion, of Thomas Hobbes of Malmesbury," in *The English Works of Thomas Hobbes of Malmesbury*, ed. Sir William Molesworth, Vol. IV (London: J. Bohn, 1840), 414.

[2] Ferdinand Tönnies, "The Editor's Preface," in *EL(T)*, ix–x; and George Croom Robertson, *Hobbes*, cheap ed. (Philadelphia, n.d.), 50–1.

[3] Robertson, *Hobbes*, 52.

[4] Richard Tuck, *Hobbes* (Oxford: Oxford University Press, 1989), 19, 24.

[5] Noel Malcolm, "A Summary Biography of Hobbes," in *The Cambridge Companion to Hobbes*, ed. Tom Sorell (Cambridge: Cambridge University Press, 1996), 41 n. 52, 28, 27.

Attention to the text itself can help resolve the puzzle. Looking closely at the organization of the work, we will see that Robertson's suspicion was largely, but not entirely, on target. The bulk of the *Elements* appears to have been composed deliberately and systematically, and therefore was probably completed before the political crisis of the spring of 1640. However, the organization breaks down in later chapters. There are six chapters at the end of the work that depart from the prior manuscript, in form or content, in ways that suggest they may have been hurriedly written. A significant example is the odd claim, in the second chapter of Part II, that democracy is the original form of all government. It was hardly a position one would have expected to find in a work defending absolute monarchy, especially a work written in the context of the pre-War controversies between parliamentarians and the king over their respective powers. Hobbes, in fact, would jettison 'democracy first' from the revised theory presented in *Leviathan*, presumably due to the argument's unfortunate implication that England had once upon a time had a popular government.[6] The textual evidence, we will see, indicates that 'democracy first' was an argument cobbled together to bring an ongoing project to a hasty conclusion. This and other evidence suggest that Hobbes's memory of writing the *Elements* during the Short Parliament was accurate but incomplete, shorthand for a more complicated—and plausible—process of composition. It appears that *The Elements of Law* was largely, but not entirely, drafted by the spring of 1640, at which time the calling of the Short Parliament led Hobbes to finish it in short order.

Focusing on the puzzle of the composition of the *Elements* introduces a more general issue in Hobbes studies. The process of composition—of all three major texts—is a side of Hobbes's political arguments that merits more consideration. Quite foreign to our image of an independent author producing a single, finished text, authorship for Hobbes was complicated by patronage and exile, as well as by his own peculiar way of writing. These led him to produce three, progressively longer, versions of a single project over the span of something like fifteen years, and in two languages and countries. The substance of Hobbes's political theory cannot help but have been affected by its process of composition—in the *Elements*, to be discussed here, and later in *De Cive* and *Leviathan*.

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[6] A. P. Martinich, *Hobbes: A Biography* (Cambridge: Cambridge University Press, 1999), 156.

The Period of Composition

While we lack direct evidence dating the composition of *The Elements of Law*, hints can be patched together from Hobbes's activities and correspondence in the 1630s. Although this material is familiar to most Hobbes scholars, a review is useful before examining the text. The main issue is whether Hobbes was working on political and moral philosophy as well as scientific topics, such as optics, in the second half of the 1630s. A standard view, consistent with characterizing the *Elements* as a *pièce d'occasion*, is that he was not, but rather that the developing political crisis at the end of the decade interrupted an ongoing preoccupation with science.[7] But it is a mistake, I think, to frame political philosophy and science as alternative preoccupations.[8] The interests of which Hobbes left some record—in psychology, epistemology, and method—can be characterized as scientific, but they were also fundamental to the political theory presented in the *Elements*.

For almost all of his adult life, Hobbes was employed as a tutor and secretary to successive Earls of Devonshire. However, during the formative period of the 1630s, it was a cousin of the Devonshires, the Earl of Newcastle, who played a prominent role in his intellectual development and his political education. Newcastle and his brother, Charles Cavendish, were intrigued by the new science of the day and acquainted with leading European scientists and intellectuals. They put Hobbes in touch with these circles when, in the middle of the decade, he took a Devonshire charge on a grand tour of the Continent. In Paris, he became a friend of Marin Mersenne, a Minim friar who was the hub of an international circle of scientists and philosophers.

The extant correspondence from the two-year trip, 1634–36, indicates that it was a seminal period in Hobbes's development as a philosopher, during which he was ruminating on ideas and issues that would come to figure importantly in the *Elements*. A letter to Newcastle, written in Paris in August 1635, suggests he had started thinking about psychology, which would be the subject of the first section of the work. In a competitive spirit, Hobbes comments on reports of work

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[7] Malcolm, "Summary Biography," 26–27; and Tuck, *Hobbes*, 20. Cf. Robertson, *Hobbes*, 48–52.

[8] For a similar view, see E. G. Jacoby, "Thomas Hobbes in Europe," *Journal of European Studies*, 4 (1974): 63.

by Walter Warner, a scientist and mathematician who corresponded with Charles Cavendish:

> I would he could giue good reasons for y^e^ facultyes & passions of y^e^ soule, such as may be expressed in playne English. if he can, he is the first (that I euer heard of) could speake sense in that subiect. if he can not I hope to be y^e^ first.[9]

More specifically, Hobbes was pondering and discussing with Mersenne the idea that our perceptions are the product of motions coming from external objects and affecting the brain.[10] The idea is framed in the *Elements* thus: "image or colour is but an apparition unto us of that motion…which the object worketh in the brain."[11] He explains, further, that

> conceptions or apparitions are nothing really, but motion in some internal substance of the head; which motion not stopping there, but proceeding to the heart, of necessity must there either help or hinder that motion which is called vital.[12]

This denies the traditional, Aristotelian view that the qualities we perceive are inherent to external objects: "the subject wherein colour and image are inherent, is not the object or thing seen…that is nothing without us really which we call an image or colour."[13] Hobbes touched on the idea in correspondence to Newcastle in 1636[14] and would later recall pondering it, and the mechanical view of nature from which

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[9] Thomas Hobbes, *The Correspondence of Thomas Hobbes*, ed. Noel Malcolm (Oxford: Clarendon Press, 1994), Vol. I, Letter 16, p. 29. Malcolm supplies information on Warner, 29–30, nn. 3–4.

[10] An autobiography written several years before Hobbes's death recalls daily communication with Mersenne about this view of perception and the mechanical view of nature on which it was based. Hobbes writes in the third person: "When he was staying in Paris, he began to investigate the principles of natural science. When he became aware of the variety of movement contained in the natural world, he first inquired as to the nature of these motions, to determine the ways in which they might effect the senses, the intellect, the imagination, together with the other natural properties. He communicated his findings on a daily basis to the Reverent Father Marin Mersenne, of the Order of the Minim Brothers, a scholar who was venerated as an outstanding exponent of all branches of philosophy" ("The Prose Life," in *EL(G)*, 247).

[11] Hobbes, *EL(T)*, I.2.4, p. 3.

[12] Hobbes, *EL(T)*, I.7.1, p. 21.

[13] Hobbes, *EL(T)*, I.2.4, p. 3.

[14] Hobbes, *Correspondence*, Vol. I, Letter 21, p. 38: "motion is onely in y^e^ medium, and light and coulor are but the effects of that motion in y^e^ brayne."

it derived, during his travels.[15] Variants of the motion thesis were endorsed by other thinkers in Mersenne's circle, including Galileo, Descartes, and Gassendi.[16] Indeed Descartes would claim that Hobbes had taken the idea from him, which led Hobbes to assert that he had discussed it with Newcastle in 1630, prior to reading Descartes' theory.[17] While this may have been an exaggeration, it is certainly the case that Hobbes had worked out this view of perception by the middle of the decade.

Apparently he was also thinking about methodology during the continental trip. On an earlier journey, he had famously discovered and fallen in love with the deductive method of Euclidean geometry.[18] Johann Sommerville has detailed how association with the Mersenne circle helped develop the inspiration into a methodology. Hobbes's dedication to the *Elements* seems indebted, he shows, to a discussion of mathematics in a 1624 work by Pierre Gassendi. An Epicurean philosopher who would later become a good friend of Hobbes, Gassendi criticized Aristotelians as "dogmatic philosophers" hostile to mathematics.[19] The *Elements*' dedication opens in the same vein, with a distinction between "two kinds of learning, mathematical and dogmatical. The former is free from controversies and dispute," whereas "in the later there is nothing not disputable."[20] Descartes, too, was attracted by the model of geometry, and Hobbes had in hand a copy

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[15] Thomas Hobbes, "The Verse Life," in *EL(G)*, 257: "Whether on Horse, in Coach, or Ship, still I/Was most Intent on my Philosophy./One only thing i'th' World seem'd true to me,/…/One only True Thing, the Basis of all/Those Things whereby we any Thing do call./…/To Matter, Motion, I my self apply," The continuation of the passage is quoted below on p. 112.

[16] For an excellent account of this, see Tuck, *Hobbes*, 15–19.

[17] The claim appears in the dedication to a 1646 work on optics: "That which I have written… is grounded especially upon that w^{ch} about 16 yeares since I affirmed to your Lo^{pp} at Welback, that light is a fancy in the minde, caused by motion in the braine, which motion againe is caused by the motion of y^{e} parts of such bodies as we call *lucid*: such as are the sunne and y^{e} fixed stars, and such as here on earth is fire." Thomas Hobbes, "To the Right Honourable the Marquis of Newcastle" [dedication to "A minute or first draught of the Optiques," 1646], in *The English Works of Thomas Hobbes of Malmesbury*, ed. Sir William Molesworth, Vol. VII (London: J. Bohn, 1845), 468.

[18] John Aubrey, "Thomas Hobbes," in *Aubrey's Brief Lives*, ed. Oliver Lawson Dick (Ann Arbor, 1962), 150; and Hobbes, "Prose Life," 246–47.

[19] Johann P. Sommerville, *Thomas Hobbes: Political Ideas in Historical Context* (New York: St. Martin's Press, 1992), 14.

[20] Hobbes, *EL(T)*, p. xvii. See also I.13.3–4, pp. 50–51, where he defines the "*mathematici*" as those who employ the geometrical method.

of his *Discours de la méthode* in the autumn of 1637, after returning from the Continent. "In form and method," Sommerville concludes, "the *Elements* bore the stamp of Mersenne's group."[21]

There are indications that, in addition to psychology, epistemology, and method, Hobbes was reading natural law during his continental trip. In particular, he seems to have been interested in the ideas of the Dutch philosopher Hugo Grotius.[22] In the summer of 1636, he was reading John Selden's *Mare Clausum*, which was the English reply to Grotius's defense of freedom on the high seas, *Mare Liberum*. Grotius was Swedish ambassador to Paris at the time and friendly with the English ambassador, Viscount Scudamore, who, in turn, was acquainted with Hobbes.[23] Thus it is possible that there was a time in 1636, when they were all in Paris and Hobbes was reading Selden, during which Hobbes might have desired to talk with Grotius and accomplished a meeting.

Hobbes's studies continued after his return home in October 1636. There is a surviving letter of early 1637 from Kenelm Digby in which a current project on logic is discussed. "I am exceeding glad to heare you haue so perfect freedome both of minde and time to study; and do expect proportionable effects of them," Digby begins:

> In your Logike, before you can manage men's conceptions, you must shew a way how to apprehend them rightly: and herein j would gladly know whither you work vpon the generall notions and apprehensions that all men (the vulgar as well as the learned) frame of all things that occurre unto them; or whither you make your ground to be definitions collected out of a deep insight into the things themselues. Methought you bent this way when we talked hereof…[24]

Scholars think this probably refers to an early version of Hobbes's *De Corpore*, which was eventually to be published in 1655. The opening section of *De Corpore* is headed "Pars prima sive Logica," and there exists a manuscript of a rudimentary version of the work with the title

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[21] Sommerville, *Thomas Hobbes*, 15.

[22] On Grotius's influence on Hobbes's thinking, see Richard Tuck, *Natural Rights Theories: Their Origin and Development* (Cambridge: Cambridge University Press, 1979).

[23] Noel Malcolm, "Biographical Register of Hobbes's Correspondents," in Hobbes, *Correspondence*, Vol. II (Cambridge: Cambridge University Press, 1994), 887–88.

[24] "Sir Kenelm Digby to Hobbes, from Paris," in Hobbes, *Correspondence*, Vol. I, Letter 25, pp. 42–43.

"Logica, ex. T.H."[25] Nonetheless, although Digby seems to be referring to a different work, the method he discusses is on display in *The Elements of Law*. The work is framed in deductive fashion as a series of definitions of basic concepts, which appear in black gothic script in the manuscript.

In the political realm, Hobbes's return home coincided with the growth of the Ship Money controversy.[26] Ship Money was a tax levied by Charles I without parliamentary consultation or approval, which was challenged in court in 1637 in Hampden's Case over the refusal of a subject to pay. Although the judges supported the King, the case fed growing disenchantment with his regime, and it is surely unlikely that Hobbes was ignoring these events. In the preface to the second edition of *De Cive* (1647) he explained why he was to publish on politics shortly thereafter:

> my Country some few yeares before the civill Warres did rage, was boyling hot with questions concerning the rights of Dominion, and the obedience due from Subjects… And was the cause which (all those other matters deferr'd) ripen'd, and pluckt from me this third part.[27]

Hobbes may well have specifically had in mind the Ship Money controversy, which directly concerned "the rights of Dominion, and the obedience due from Subjects."[28]

The passage makes reference to his plan for a three-part series of works on body, man, and citizen. "I was studying Philosophie for my minde sake," he explains:

> I had gathered together its first Elements in all kinds, and having digested them into three Sections by degrees, I thought to have written them so as in the first I would have treated of a body, and its generall properties; in

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[25] Jean Jacquot and Harold Whitmore Jones, "Introduction" to *Critique du De Mundo de Thomas White*, by Thomas Hobbes (Paris: Librairie Philosophique J. Vrin, 1973), 16. Malcolm concurs in the identification (Hobbes, *Correspondence*, 49 n. 2).

[26] Robertson, *Hobbes*, 48; Tuck, *Hobbes*, 23–24; Sommerville, *Thomas Hobbes,* 17. Sommerville relates Hobbes's arguments to the immediate political context in "Lofty Science and Local Politics," in *The Cambridge Companion to Hobbes*, ed. Tom Sorell (Cambridge: Cambridge University Press, 1996), 246–73.

[27] Hobbes, *DC*, "The Authors Preface to the Reader," pp. 35–36 (emphasis omitted).

[28] Tuck, *Hobbes*, comments, "these must have been the 'questions' to which Hobbes was referring—the argument of the *Elements of Law* is particularly well judged as a contribution to the Ship Money debate, on the King's side" (24).

> the second of man and his speciall faculties, and affections; in the third, of civill government and the duties of Subjects…[29]

There is some dispute among scholars whether the plan actually predated the *Elements*; most think so, although Ferdinand Tönnies, who edited the 1928 edition of the work, disagreed.[30]

Within the work, the internal outline laid out in the first paragraph corresponds to the second and third sections of the plan, to which is added a final section on law:

> The true and perspicuous explication of the elements of laws, natural and politic, which is my present scope, dependeth upon the knowledge of what is human nature, what is a body politic, and what it is we call a law.[31]

Quite conceivably, the inclusion of law as a major subject heading, together with the work's title, *Elements of Law, Natural & Politic*, reflects the influence of Grotius's master treatise, *De Jure Belli ac Pacis* (1625).[32]

De Cive's preface indicates that Hobbes was working *simultaneously* on the several branches of his grand project. Having described the several parts, he continues: "Whilest I contrive, order, pensively and slowly compose these matters," the developing crisis intervened to "ripen and pluck" the political section.[33] Notice that he refers generally to ongoing study of "these matters," which implies work on the entire project. An autobiography penned in old age reminisces, in similar vein, about his catholic studies in the period:

> To various Matter various Motion brings
> Me, and the different Species of Things.
> Man's inward Motions and his Thoughts to know,
> The good of Government, and Justice too,
> These were my Studies then, and in these three
> Consists the whole Course of Philosophy:
> Man, Body, Citizen, for these I do
> Heap Matter up, designing three Books too.[34]

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[29] Hobbes, *DC*, "The Authors Preface to the Reader," p. 35 (emphasis omitted).
[30] Robertson, *Hobbes*, 38; Tuck, *Hobbes*, 19; Jacoby, "Thomas Hobbes in Europe," 62–63. Cf. Tönnies, "Editor's Preface," vii.
[31] Hobbes, *EL(T)*, I.1.1, p. 1.
[32] Tuck, *Hobbes*, 20–23.
[33] Hobbes, *DC*, "The Authors Preface to the Reader," pp. 35–36 (emphasis omitted).
[34] Hobbes, "Verse Life," 257–58.

From this evidence, it seems unlikely that Hobbes was working on science and *not* on political philosophy after his return from the Continent in late 1636. More probably, he spent the second half of the decade working on all three sections of the plan, and the political crisis of early 1640 simply led to the hasty completion of the psychological and political portions.

Insiders' Writing[35]

In 1640, *The Elements of Law* circulated in manuscript and would not be published for a decade, and even that 1650 publication may not have been authorized by Hobbes.[36] The dedication to the Earl of Newcastle is dated 9 May 1640, four days after the close of the Short Parliament.[37] Presumably Hobbes had been hurrying to finish it during the seating of the Parliament and, despite the date of the dedication, may actually have done so. Sommerville points out that Hobbes's recollection of the events indicates that the work was circulating during the Parliament.[38] "Of this treatise," Hobbes recalled, "though not printed, many gentleman had copies, which occasioned much talk of the author; and had not his Majesty dissolved the Parliament, it had brought him into danger of his life."[39]

We might assume that the *Elements* circulated in manuscript rather than being printed simply because of the urgent need, brought on by political events, to get it into circulation. While this is likely so, it is only part of the story; the method of production also had to do with patronage and with the significance of scribal publication in the mid-seventeenth century. For this part of the story, I rely on Harold Love's discussion of the genre in *Scribal Publication in Seventeenth-Century England*. A preference for scribal over printed publication was a holdover, Love explains, from the mores of Tudor England, when print

[35] Harold Love, *Scribal Publication in Seventeenth-Century England* (Oxford: Clarendon Press, 1993), 210.

[36] J. C. A. Gaskin, "A Note on the Texts," in *EL(G)*, xlvii.

[37] Martin Dzelzainis, "Edward Hyde and Thomas Hobbes's *Elements of Law, Natural and Politic*," *The Historical Journal* 32 (1989): 303–17, notes evidence that Hobbes edited the work after this date, altering whichever copy was available (313).

[38] Sommerville, *Thomas Hobbes*, 172 n. 42; see also Martinich, *Hobbes*, 122.

[39] Hobbes, "Considerations," 414.

publication was something of a social disgrace.[40] It was attractive for its exclusivity, since works that circulated only in manuscript could be kept safely within elite hands and away from the masses.[41] The *Elements* seems to have been intended for just such an elite audience. In the dedication to the Earl of Newcastle, Hobbes expressed the hope that the earl's favor would help "insinuate" the work "with those whom the matter it containeth most nearly concerneth."[42] Furthermore, its timing—well prior to the Civil War—fits Love's analysis.

> [A]s a vehicle for ideological debate within the governing class, we would expect to find it at its greatest vigour in the periods preceding the outbreak of national crises rather than during the actual crisis itself.[43]

Scribal publication could also be attractive as a means of avoiding censorship,[44] which may have been a Hobbesian consideration, although the work includes less of the controversial religious material than would appear in the subsequent versions.

The *Elements* was written, Hobbes also records in the dedication, at Newcastle's behest: "Now (my Lord) the principles…are those which I have heretofore acquainted your Lordship withal in private discourse, and which by your command I have here put into method."[45] Scribal publication served patrons' desire for advancement as well as authors'.[46] Newcastle was associated with the absolutist faction of Laud and Strafford, and we can suppose that the work was meant to support their cause at court as well as strengthen Newcastle's position with the King while also, last but not least, improving Hobbes's standing with Newcastle. As a link in a chain of patronage and dependence,[47] production of the *Elements* can be compared to the effort, not long before, by the Earl of Devonshire to have Hobbes elected to the Short Parliament.[48] Like that unsuccessful political initiative, the literary act

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[40] Love, *Scribal Publication*, 47, citing J. W. Saunders, "The Stigma of Print: A Note on the Social Bases of Tudor Poetry," in *Essays in Criticism*, vol. I (1951).

[41] Love, *Scribal Publication*, 177: "[S]cribal publication [w]as a means by which ideologically charged texts could be distributed through the governing class, or various interest-groups within that class, without their coming to the knowledge of the governed."

[42] Hobbes, *EL(T)*, p. xviii.

[43] Love, *Scribal Publication*, 184.

[44] Love, *Scribal Publication*, 185.

[45] Hobbes, *EL(T)*, xvii.

[46] Love, *Scribal Publication*, 192.

[47] Love, *Scribal Publication*, 179.

[48] See Malcolm's notes to the *Correspondence*, Vol. I, p. 171, n. 2.

grew out of Hobbes's material position and the practice of patronage in mid-seventeenth-century England; therefore production of the *Elements* is better understood as a social act rather than, as we might assume, the work of an academic working in isolation.[49]

The Text

If there is little autobiographical evidence from the 1630s bearing directly on the composition of the *Elements*, the work itself is unusually revealing. Its layout is worth considering, to begin with. The bulk of the work—four-fifths of the chapters, to be precise—is fleshed out on a skeleton of defined terms, which appear highlighted in black gothic script in the manuscript. This method of exposition corresponds to the geometrical method—of proceeding by way of axiomatic definitions—to which Digby's 1637 letter alluded. In chapter six of the work, Hobbes explains the method thus:

> The first principle of knowledge therefore is, that we have such and such conceptions; the second, that we have thus and thus named the things whereof they are conceptions; the third is, that we have joined those names in such manner, as to make true propositions; the fourth and last is, that we have joined those propositions in such manner as they be concluding. And by these four steps the conclusion is known and evident, and the truth of the conclusion said to be known.[50]

Appendix I shows how the bulk of the *Elements* is readily outlined as a series of highlighted definitions strung together with transitional explanations of the links between them.

For example, consider the first three chapters, which open with an outline of the work in entirety:

> 1. The general division of man's natural faculties[51]
> .1 The true and perspicuous explication of the elements of laws, natural and politic, which is my present scope, dependeth upon the knowledge

[49] See Lisa Sarasohn, "Was *Leviathan* a Patronage Artifact?," *History of Political Thought* 21 (2000): 606–31.

[50] Hobbes, *EL(T)*, I.6.4, p. 20. See, also, I.13.3, pp. 50–51: "they proceed from most low and humble principles, evident even to the meanest capacity; going on slowly, and with most scrupulous ratiocination (viz.) from the imposition of names they infer the truth of their first propositions; and from two of the first, a third;…and so on, according to the steps of science."

[51] Hobbes, *EL(T)*, p. xv (chapter title).

> of what is human nature, what is a body politic, and what it is we call a law.[52]

Chapter one proceeds to diagram the several natural faculties, distinguishing and cataloguing faculties of body versus faculties of mind, and concluding with a discussion of cognitive powers. In continuation, the next chapter (on the "cause of Sense") opens, "Having declared what I mean by the word conception . . . I come to the conceptions themselves, to show their difference, their causes, and the manner of their production."[53] Hobbes then proceeds to highlight, define, and explain the concepts "**Sense**" and "**Object**" of sense. Filling out the mental map, chapter three considers various other sorts of mental images, distinct from present perceptions, such as **Phantasy** or **Imagination**, **Sleep**, **Dreams**, **Fiction**, **Phantasms**, and **Remembrance**.[54]

The layout would seem to evidence the slow composition process that Hobbes described, retrospectively, in *De Cive*'s preface.[55] It also brings to mind Aubrey's account of the way in which *Leviathan* was composed:

> He walked much and contemplated, and he had in the head of his cane a pen and ink-horn, carried always a notebook in his pocket, and as soon as a thought darted, he presently entered it into his book, or otherwise he might perhaps have lost it.

Having previously outlined the work, he knew where an idea would fit: "He had drawn the design of the book into chapters, etc. so he knew whereabouts it would come in."[56] Likely as not, this had been Hobbes's way of working for some time, so the scaffolding of highlighted definitions may represent the initial outline of the *Elements*, which he subsequently filled in with argumentation.

The scaffolding breaks down and disappears from the last chapters of the work. Highlighted definitions are absent from Part II, Chapters 2 and 5 (comparing the origin and the incommodities of the several forms of government); 7 (on religious authority); 8 and 9 (on the causes of rebellion and the duties of rulers); and 10 (on law) (see

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[52] Hobbes, *EL(T)*, I.1.1, p. 1.
[53] Hobbes, *EL(T)*, I.2.1, p. 2 (capitalization in the chapter title is taken from "The Order" in the Harley 4235 manuscript).
[54] Emphasis follows the Harley 4235 manuscript.
[55] The passage was quoted above in the section on "the period of composition."
[56] John Aubrey, "The Brief Life," in *EL(G)*, 236.

Appendix 1). This may indicate that these final chapters were drafted hurriedly and without benefit of a prior outline.

It is also noteworthy, and possibly indicative of a hasty completion, that there is but one final chapter on the "nature and kinds of laws."[57] When outlining the work, Hobbes seems to have envisaged that the topic would form a more substantial theme of the manuscript, which was titled, after all, *The Elements of Law*. Recall the initial outline, in the first paragraph, in which law figures as a major subject; this is echoed in the outline that opens Part II. Civil law continues to be announced as a major theme: "In this part…shall be considered, the nature of a body politic, and the laws thereof, otherwise called civil laws."[58] Assuming the chapters were being written in order, this suggests that Part I had been completed prior to the calling of the Short Parliament and that Hobbes had begun Part II, still anticipating that law would be a major theme.

Democracy First

Turning from form to content, let us focus, first, on the two chapters in Part II that compare various forms of government—Chapter 2, "Of the three sorts of Commonwealth," and Chapter 5, "The incommodities of several sorts of Government compared."[59] The topic of the first is the way in which the several forms of government are instituted; the second treats their "conveniences, and inconveniences."[60] Chapter 2 is the locale for the curious claim that all governments are initially democracies. This is so, Hobbes explains, because the other forms of government require nomination of rulers and prior agreement on majority rule:

> The first in order of time of these three sorts is democracy, and it must be so of necessity, because an aristocracy and a monarchy, require nomination of persons agreed upon; which agreement in a great multitude of men must consist in the consent of the major part; and where the

[57] Note that this is among the chapters from which highlighted definitions are absent.

[58] Hobbes, *EL(T)*, II.1.1, p. 83.

[59] Capitalization in the chapter titles follows Harley 4235.

[60] Hobbes, *EL(T)*, II.5.1, p. 107.

> votes of the major part involve the votes of the rest, there is actually a democracy.[61]

Although the point amounts to no more than the logical technicality that the first step in creating a government must be agreement on majority rule, it nonetheless fits oddly in a defense of absolute monarchy. Presumably Hobbes saw this: the entire discussion is dropped from *Leviathan*.[62]

Even within the *Elements*, 'democracy first' is an anomalous argument. It appears in the third of three sequential chapters in the work—Part I, Chapter 19, to Part II, Chapter 2—that treat the political covenant, sovereign right, and forms of government. The previous two cover the same material as II.2, but without any mention of the idea of democratic foundations. In Chapter 19's presentation of the political covenant, consent to majority rule comes up only with regard to 'council' government (i.e., collective authority), in which everyone must agree to abide by the decision of a majority of the rulers.[63] Next, the first chapter of Part II covers the choice of a form of government and defines the three forms without suggesting a sequential relationship between them. Here, they are simply presented as alternatives:

> The first thing therefore they are to do, is expressly every man to consent to something by which they may come nearer to their ends;…that they allow the wills of the major part of their whole number, or the wills of the major part of some certain number of men by them determined and named; or lastly the will of some one man, to involve and be taken for the wills of every man.

If the first arrangement is chosen, the government is a "democracy"; if the second, an "oligarchy" or "aristocracy"; and if the third, a "monarchy."[64] Especially in a work otherwise so linear and deductive in character, it is curious that the 'democracy first' argument does not appear in these prior chapters and also curious that Chapter 2 goes back over previously treated material.

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[61] Hobbes, *EL(T)*, II.2.1, p. 92. Cf. *DC*, 7.5, p. 109: "Those who met together with intention to erect a City, were almost in the very act of meeting a Democraty."

[62] Here, and throughout the chapter, this discussion has been corrected. The original treated incorrectly the passage in *De Cive* quoted in the previous note.

[63] Hobbes, *EL(T)*, I.19.7, p. 80: The covenant is said to consist in every man "oblig[ing] himself" to a single or collective ruler; and, if the latter is the case, "then also they covenant, that every man shall hold that for the command of the whole council, which is the command of the greater part of those men."

[64] Hobbes, *EL(T)*, II.1.3, pp. 84–85.

Furthermore, in addition to dropping 'democracy first' from the text in *Leviathan*, Hobbes also in that work collapses the *Elements*' two chapters on the various forms of government into one, which substantively parallels the *Elements*' *second* chapter on various forms of government—Part II, Chapter 5. In *Leviathan*, it is Chapter 19, "Of the severall Kinds of Common-wealth by Institution, and of Succession to the Soveraigne Power." As Appendix 2 details, the *Leviathan* chapter carries over from (Part II) Chapter 2 of the *Elements* only a discussion of differences between absolute and elective kingdoms. The bulk of the *Leviathan* chapter on the comparison of various forms of government follows and expands on arguments made in (Part II) Chapter 5 of the *Elements*.

By all appearances, then, the earlier chapter (II.2) is a redundant discussion with an aberrant argument that Hobbes would later abandon. But why did the 'democracy first' argument appeal to him, especially in early 1640, since it seems so much better suited to the parliamentary cause than to Charles and Newcastle's? An answer lies in the argument's polemical purpose *within* the *Elements*. Far from indicating some initial softness toward popular government, the argument was a first stab at justifying the principle of unconditional sovereignty. Hobbes had hit on the idea that the absence of a contractual relationship between ruler and ruled—and therefore the absence of sovereign accountability—are self-evident in the specific case of democracy.

> In the making of a democracy, there passeth no covenant, between the sovereign and any subject.... For it cannot be imagined, that the multitude should contract with itself... to make itself sovereign;

Therefore "whatsoever the people doth to any one particular member... of the commonwealth, the same by him ought not to be styled injury."[65]

The point, then, of stipulating that democracy is foundational is to extend the same logic to all forms of government. When aristocracy or, by implication, monarchy evolves out of democracy, the absence of a constitutional compact between ruler and ruled carries over to the new form of government.[66]

By the time he wrote *Leviathan*, Hobbes had come to see that this pseudohistorical story of a progression between forms of government was unnecessary; unconditional sovereignty could be defended

[65] Hobbes, *EL(T)*, II.2.2–3, pp. 92–93.
[66] Hobbes, *EL(T)*, II.2.6–7, p. 94.

on other grounds, both common-sensical and analytic. First, he had realized that the absence of a contractual relationship between ruler and ruled in democracies is simply exemplary of a universal fact about all forms of government:

> [N]o man is so dull as to say, for example, the People of *Rome*, made a Covenant with the Romans, to hold the Soveraignty on such or such conditions… That men see not the reason to be alike in a Monarchy… proceedeth from the ambition of some, that are kinder to the government of an Assembly.[67]

Between the *Elements* and *Leviathan*, second, Hobbes reformulated the description of the political covenant to formalize and universalize the absence of a contractual relationship between ruler and ruled. The first version leaves it unclear who participates in the covenant:

> [E]very man by covenant oblige[s] himself to some one and the same man, or to some one and the same council… to do those actions, which the said man or council shall command them to do.[68]

By contrast, *Leviathan* makes explicit that the only parties to the covenant are the incipient subjects:

> Because the Right of bearing the Person of them all, is given to him they make Soveraigne, by Covenant onely of one to another, and not of him to any of them; there can happen no breach of Covenant on the part of the Soveraigne; and consequently none of his Subjects, by any pretence of forfeiture, can be freed from his Subjection.[69]

In fact, the process of improving the defense of unconditional sovereignty began soon after completion of the *Elements*. The first edition of *De Cive*, which was finished in November 1641, introduces this important specification that the covenant takes place between subjects only.[70] Hobbes's haste to revise the argument is still more evidence of his dissatisfaction with the defense of unconditional sovereignty in the *Elements* and, therefore, the likelihood that these discussions had been drafted under pressure of time.

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[67] Hobbes, *LV*, 18, p. 231.
[68] Hobbes, *EL(T)*, I.19.7, p. 80.
[69] Hobbes, *LV*, 18, p. 230.
[70] "This *submission*… is then made, when each one of them obligeth himself by contract to every one of the rest, not to resist the *will* of that *one man*, or *counsell*, to which he hath submitted himselfe" (Hobbes, *DC*, 5.7, p. 88).

Bodin

It may well be that the defense of absolutism was the major uncompleted piece of the manuscript prior to the calling of the Short Parliament. Recall that when Hobbes described writing a "little treatise" during the Parliament, he specifically characterized it as a defense of absolute sovereignty, which was intended to "set forth and demonstrate, that the said power and rights were inseparably annexed to the sovereignty." There is a second anomalous chapter on absolutism in Part II that also bears evidence of being hastily composed—this is Chapter 8, on the causes of rebellion.

Unusual for Hobbes, the chapter appeals to authority—in this case, the authority of Bodin, who was a standard source in mid-seventeenth-century England for the defense of absolutism.[71] Most unusually, Hobbes cites and actually paraphrases Bodin's argument regarding the impossibility of divided sovereignty:

> if there were a commonwealth, wherein the rights of sovereignty were divided, we must confess with Bodin, Lib. II. chap. I. *De Republica*, that they are not rightly to be called commonwealths, but the corruption of commonwealths.

As evidence for the proposition, he paraphrases an empirical Bodinian generalization on the effect of divided powers:

> if one part should have power to make the laws for all, they would by their laws, at their pleasure, forbid others to make peace or war, to levy taxes, or to yield fealty and homage without their leave.[72]

(Bodin had written, "the nobilitie which should haue the power to make the lawes for all…would by their lawes at their pleasure forbid others to make peace or warre, or to leuie taxes, or to yeeld fealtie and homage without their leaue.")[73]

Bodin is not named in connection with several further points in the chapter, but these are Bodinian arguments that run counter to mature Hobbism. In the paragraph preceding the quotation from the *République*, there is a curious rebuttal of the view that rulers are subject

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[71] This section draws on my discussion of Bodin's influence on Hobbes in chapter three.

[72] Hobbes, *EL(T)*, II.8.7, p. 137.

[73] Bodin, *SB*, II.1, p. 194.

to law. The position is Hobbesian, no doubt, but not the argument. The view, Hobbes says, issues from a confusion of law and covenant,[74] but this is irrelevant since Hobbes's sovereign is bound by neither. Where the distinction between law and covenant was important was in Bodin's discussion of unconditional sovereignty. There it underwrote the seemingly contradictory positions that rulers are not subject to law but, nevertheless, stand in a relationship of mutual obligation with their subjects:

> We must not then confound the lawes and the contracts of soueraigne princes, for that the law dependeth of the will and pleasure of him that hath the soueraigntie, who may bind all his subiects, but cannot bind himselfe: but the contract betwixt the prince and his subiects is mutual, which reciprocally bindeth both parties.[75]

But within Hobbes's theoretical framework, use of the Bodinian distinction simply made no sense.

In Chapter 8, also, Hobbes *endorses* Aristotle's view that liberty is the peculiar characteristic of democracies:

> And Aristotle saith well (lib. 6, cap. 2 of his *Politics*), *The ground or intention of a democracy, is liberty*…*For men ordinarily say this: that no man can partake of liberty, but only in a popular commonwealth*.[76]

Unsurprisingly, he would be at pains in *Leviathan* to correct the error and repudiate the idea.[77] In the *Elements*, he may have been following Bodin on the subject. According to the *République*, "the true nature of the people is, to desire libertie without restraint of bit or bridle whatsoeuer," although Bodin associates the point with Plutarch rather than Aristotle.[78]

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[74] Hobbes, *EL(T)*, II.8.6, p. 136: "this error seemeth to proceed from this, that men ordinarily understand not aright, what is meant by this word law, confounding law and covenant, as if they signified the same thing."

[75] Bodin, *SB*, I.8, p. 93. See also I.6, p. 58: In return "for the faith and obeisance he receiueth," the sovereign "oweth iustice, counsell, aid, and protection"; and IV.6, p. 500.

[76] Hobbes, *EL(T)*, II.8.3, p. 134.

[77] Hobbes, *LV*, 29, p. 369: "From the same books, they that live under a Monarch conceive an opinion, that the Subjects in a Popular Common-wealth enjoy Liberty; but that in a Monarchy they are all Slaves. I say, they that live under a Monarch conceive such an opinion; not they that live under a Popular Government: for they find no such matter."

[78] Bodin, *SB*, II.7, p. 250. Hobbes is likely to have come across this passage because it immediately follows a discussion of the impossibility of divided sovereignty.

One may surmise that Hobbes was led to make such mistakes, as well as to defer to Bodin's authority in the first instance, by a need to complete a defense of absolutism that was not, in fact, fully worked out in his mind. In order to finish the job in a hurry, he seems to have been writing with an open copy of the *République* close at hand.

Chronology of Composition

The evidence is not sufficient to distinguish with certainty which chapters were composed during the Short Parliament, but does permit reconstructing the range of possibilities. These are detailed in Table 1.

Table 1: Hypothesized Chronology of the Composition of *The Elements of Law*

Period of Composition		
Pre-Short Parliament	Part 1.	Concerning men as persons natural
	Part 2.	Concerning men as a body politic
Pre-Short Parliament	1.	Of the requisites to the constitution of a commonwealth
Short Parliament	2.	Of the three sorts of commonwealth
Pre-Short Parliament	3.	Of the power of masters
Pre-Short Parliament	4.	Of the power of fathers, and of patrimonial kingdom
?	5.	The incommodities of several sorts of government compared
?	6.	That subjects are not bound to follow their private judgments in controversies of religion
?	7.	That subjects are not bound to follow the judgment of any authority in controversies of religion…
Short Parliament	8.	Of the causes of rebellion
?	9.	Of the duty of them that have sovereign power
Short Parliament	10.	Of the nature and kinds of laws

Consider, first, the pattern of definitions highlighted in black gothic script. This starts to break down in the first half of Part II: highlighted definitions are present in Chapters 1, 3, and 4 (on sovereign right and patrimonial authority) but absent from the two chapters comparing forms of government—Chapters 2 and 5. The pattern breaks off completely in the midst of the next chapter (II.6), which

is the first of two making a Christian case for absolute sovereignty (see Appendix 1). Perhaps this marks the moment at which Hobbes switched into high gear to complete the manuscript under the press of political events and his patron's desire to use it in political debate. This would have left six chapters in Part II to be hurriedly drafted in the spring of 1640—Chapters 2 and 5, comparing forms of government; 7, which continues the religious case for political obedience; 8, on the causes of rebellion; 9, on the duties of rulers; and Chapter 10, the single chapter on the theme of law.

Focusing on Hobbes's arguments yields a more conservative estimate. There are three chapters in the second part of *The Elements of Law* whose content is curious in ways that suggest they were written hurriedly: Chapter 2, which defends unconditional sovereignty using the claim that all governments have democratic foundations; 8, which employs Bodin's *République* in defense of absolute sovereignty; and 10, the scanty final chapter on the subject of law. At a minimum, these chapters appear to have been drafted in the spring of 1640.

However, there is a line of evidence that may—or may not—contradict these hypothesized chronologies. At the start of chapters, Hobbes customarily locates the immediate topic in relation to those of surrounding chapters. These thumbnail introductory outlines are quoted in Appendix 1. They hang together and form a continuous logical sequence, without, in a notable instance, a break for the anomalous second chapter of Part II. Thus the first chapter of Part II of the *Elements* announces that subsequent chapters are organized in terms of the two ways of forming a state—"institution" and "compulsion."[79] "Having spoken in general concerning instituted policy," Chapter 2 opens, "I come in this [chapter] to speak of the sorts thereof…how every one of them is instituted."[80] The opening of Chapter 3 reiterates that the previous chapters treat "institutive" commonwealth, and turns the reader's attention to the new subject of "patrimonial" kingdom.[81] Chapter 5 then summarizes that previous chapters have covered "the nature of a person politic" and the three sorts of commonwealths; this chapter will take up "conveniences, and inconveniences" of govern-

[79] Hobbes, *EL(T)*, II.1.1, pp. 83–84.
[80] Hobbes, *EL(T)*, II.2.1, p. 92.
[81] Hobbes, *EL(T)*, II.3.1, p. 99.

ment, both in general and the specific varieties.[82] The sequence of introductory statements continues in a similar vein through the rest of the work.

It is possible that Hobbes had outlined the sequence of chapters of the work as a whole before starting to write and so, in the spring of 1640, had the task of hurriedly filling in the final pages. Alternately, the outline may have been drafted, and the introductory statements added, after the work was completed. But it could be, of course, that the work was written in a coherent and deliberate process from start to finish, and the outline simply evidences this. However, I am sceptical of this last possibility because the intellectual and physical evidence suggests a more uneven process of composition.

The Significance of the Process of Composition

In the classic "Meaning and Understanding in the History of Ideas," Quentin Skinner includes among the "mythologies" of interpretation that of coherence. The mythology "gives the thoughts of various classic writers a coherence, and an air generally of a closed system, which they may never have attained."[83] It is a particularly inviting myth with respect to Hobbes's theory of politics because he was one of the most logical and deductive of thinkers, who styled his argumentation on geometry. However, two aspects of his practice undermined the possibility of coherence—one idiosyncratic to his process of writing and the other common among writers in the period.

First, as we have seen, Hobbes had a tendency to slot new material into a preexisting framework without regard to how it fit with existing arguments, and without revising existing arguments to make the whole coherent. This introduced inconsistencies within texts, such as the aberrant second chapter of Part II of the *Elements*, in which the 'democracy first' argument appears. Consider, to take another example, the discussion of natural right at the start of chapter fourteen of *Leviathan*. Here, Hobbes begins by defining the "Right Of Nature" as "the Liberty each man hath, to use his own power, as

[82] Hobbes, *EL(T)*, II.5.1, pp. 107–8.

[83] Quentin Skinner, "Meaning and Understanding in the History of Ideas," *History and Theory* 9 (1969): 17.

he will himselfe, for the preservation of his own Nature." Just two paragraphs down, however, he introduces a more expansive—and contradictory—definition: "RIGHT, consisteth in liberty to do, or to forbeare . . . so that Law, and Right, differ as much, as Obligation, and Liberty."[84] If right and law are opposites, then natural right should not include the natural-law limitation of self-preservation, as it does according to the first definition. Scholars have treated the apparent inconsistency as a substantive problem in need of interpretation.[85] Yet the substantive problem may be simply another artifact of Hobbes's process of writing and thus illustrate, again, how that process could frustrate his ambitions of rigor.

Like other early modern thinkers, Hobbes rewrote and progressively expanded his political theory over the course of roughly fifteen years. "This little MS treatise," Aubrey said of *The Elements of Law*, "grew to be his book *De Cive*, and at last grew there to be the so formidable LEVIATHAN."[86] Hobbes may well have learned this process of composition from Bacon, for whom he early on served as a secretary.[87] Bacon produced thirteen editions of the *Essayes* between 1597 and 1625, and expanded the work from ten essays in the original to fifty-eight in a volume three times longer.[88] Hobbes's way of writing turned the process of expansion into yet another opportunity for introducing inconsistencies,[89] since he seems to have been content, oftentimes, to layer argument on top of argument. Commenting on this tendency, Glenn Burgess has suggested (with the work's new authorization argument specifically in mind):

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[84] Hobbes, *LV*, 14, p. 189.

[85] E.g., Tuck, *Hobbes*, 62–63, who argues that the first is Hobbes's "real" definition, which is consistent with the second by virtue of the right of private judgment. See also 109–12, for a discussion of rival views, notably Oakeshott's position that Hobbesian natural right is unlimited.

[86] Aubrey, "Brief Life," 236.

[87] Malcolm, "Summary Biography," 18.

[88] Michael Kiernan, "General Introduction" and "Textual Introduction" to *The Essayes or Counsels, Civill and Morall*, by Francis Bacon (Cambridge, Mass.: Harvard University Press, 1985).

[89] One of Hobbes's earliest critics thought he was vulnerable on this score. See Dzelzainis, "Hyde and Hobbes," 306: Hyde "thought it entirely possible to mount a damaging assault on Hobbes based on the inconsistencies between *Leviathan* and earlier expositions of his political theory: 'I dare say he will find somewhat in Mr *Hobbs* himself, I mean in his former Books, that contradicts what he sets forth in this, in that Part in which he takes himself to be the most exact, his beloved Philosophy.'"

> In terms of organization and structure, this…alteration in Hobbes's thinking does not so much *replace* his previous ideas as become laid on top of them. *Leviathan* has something of the character of a palimpsest.[90]

In this vein, consider those rival definitions of natural right in *Leviathan*, whose evolution can be traced back through the *Elements* and *De Cive*. In the first treatise, the parallel passage has the point of defining natural law, which Hobbes identifies with reason;[91] but the section expands in the next two versions to cover natural right as well. In *De Cive*, answering objections to the idea of natural law, Hobbes introduces a definition of "RIGHT"—namely that "which is not done against Reason."[92] This becomes, with revision, the second definition of natural right in *Leviathan* ("liberty to do, or to forbeare"); but Hobbes confuses matters by further introducing a definition of the specific concept, "right of nature," that builds in self-preservation. Here, again, is a case in which expansion generated inconsistency.

Of course expansion could also be an occasion for Hobbes to remove inconsistencies and improve the logic of his arguments. This possibility is illustrated in the evolution of the 'democracy first' argument. Apparently aware that 'democracy first' fit poorly with the rest of the theory in the *Elements*, Hobbes jettisoned the claim from *Leviathan*. In this instance, expansion served rather than frustrated his desire for rigor.

The overall impact of his method of writing, and of revising and expanding the treatises, can be measured only by building up case-by-case investigations of anomalies in his arguments.[93] *Leviathan* stands in need of a "textual archeology" that traces its "layers of sedimentation" in the development of chapters and arguments from the *Elements* through *De Cive* to the masterpiece. This work will, I suspect,

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[90] Glenn Burgess, "Contexts for the Writing and Publication of Hobbes's *Leviathan*," *History of Political Thought* 11 (1990): 690. (However I disagree with Burgess's characterization of the three "strata" in *Leviathan*—aboriginal democracy; authorization and representation; and, lastly, the de facto defense of Engagement—since it appears to me that the first is not part of the work. My suspicion is that Hobbes's composition process is more complex than Burgess's schema suggests.) See also Jacquot et Jones, "Introduction," 79: "l'ouvrage ne résulte pas d'une rédaction continue, mais d'une juxtaposition, dans un certain ordre, de pages écrites à divers moments."

[91] Hobbes, *EL(T)*, I.15.1, p. 58: "There can therefore be no other law of nature than reason, nor no other precepts of NATURAL LAW, than those which declare unto us the ways of peace."

[92] Hobbes, *DC*, II.1, p. 52.

[93] My thanks to Iain Hampsher-Monk for suggesting these concluding points.

explain away a number of problems of interpretation by showing them to be merely products of his process of composition. In cases such as 'democracy first' in the *Elements*, an interpretive explanation for inconsistency is misplaced and an explanation in terms of process more appropriate and accurate. We would do well to recognize that in Hobbes's case, by virtue of his unique practice as an author, issues of coherence are at least as much a function of process as of intent or logic.

Appendix 1
Outline of Chapter Topics and Definitions in *The Elements of Law**

Part I. Concerning men as persons natura

1. The general division of man's natural faculties
   .1: "The true and perspicuous explication of the elements of laws, natural and politic, which is my present scope, dependeth upon the knowledge of what is human nature, what is a body politic, and what it is we call a law" (p. 1).
2. The cause of sense
   .1: "Having declared what I mean by the word conception . . . I come to the conceptions themselves, to show their difference, their causes, and the manner of their production" (p. 2).
   Sense and **Object** of sense
3. Of imagination and the kinds thereof
   Phantasy or **Imagination**; **Sleep**; **Dreams**; **Fiction**; **Phantasms**; **Remembrance**
4. Of the several kinds of discursion of the mind
   .1: "The succession of conceptions in the mind" (p. 10).
   Discursion; **Ranging**; **Sagacity**; **Reminiscence**; **Experience**; **Expectation** or **Presumption** of the future; **Conjecture**; **Signs**; **Prudence**
5. Of names, reasoning, and discourse of the tongue
   .1: "Seeing the succession of conceptions in the mind are caused (as hath been said before) by the succession they had one to another when they were produced by the senses; . . . man . . . hath imagined and devised to set up a visible or other sensible mark . . . [to] bring to his mind the thought he had when he set it up" (pp. 13–14).
   Mark; **Name** or **Appellation**; **Positive**; **Privative**; **Universal**; **Singular**; **Equivocal**; **Understanding**; **Affirmation** or **Negation**; **True** or **Truth**; **False**; **Syllogism**; **Ratiocination**
6. Of knowlege, opinion, and belief
   Science; **Sapience**; **Supposed**; **Think**; **Opinion**; **Belief**; **Conscience**
7. Of delight and pain; good and evil
   .1: "In the eighth section of the second chapter is shewed, how conceptions or apparitions are . . . motion in some internal substance of the head; which motion not stopping there, but proceeding to the heart, of necessity must there either help or hinder that motion which is called vital; when it helpeth, it is called **Delight** . . ." (p. 21).
   Pain; **Hatred**; **Appetite**; **Aversion**; **Fear**; **Good**; **Evil**; **Goodness**; **Badness**; **Pulchritudo**; **Turpitudo**; **End**; **Fruition**; **Profitable**; **Use**; **Vain**; **Felicity**; **Sensual**; **Joy**; **Grief**
8. Of the pleasures of the sense; of honour
   .1: "Having in the first section of the precedent chapter presupposed that motion and agitation of the brain which we call conception, to be continued to the heart, and there to be called passion; I have thereby obliged myself,

as far forth as I can, to search out and declare, from what conception proceedeth every one of those passions which we commonly take notice of" (p. 24).

Honour; **Honorable**; **Worth**; **Reverence**

9. Of the passions of the mind

Glory; **Aspiring**; **False Glory**; **Vain Glory**; **Humility**; **Dejection**; **Shame**; **Courage**; **Anger**; **Revengefulness**; **Repentance**; **Hope**; **Despair**; **Diffidence**; **Trust**; **Pity**; **Hardness** of heart; **Indignation**; **Emulation**; **Envy**; **Laughter**; **Weeping**; **Lust**; **Love**; **Charity**; **Admiration**; **Curiosity**; **Magnanimity**; **Pusillanimity**

10. Of the differences between men in their discerning faculty and the cause

.1: "Having shewed in the precedent chapters, that the imagination of men proceedeth from the action of external objects upon the brain . . . and that the passions proceed from the alteration there made, and continued to the heart: it is consequent in the next place . . . to declare what other causes may produce such odds, and excess of capacity, as we daily observe in one man above another" (p. 37).

Dulness; **Fancy**; **Judgment**; **Wit**; **Levity**; **Gravity**; **Stolidity**; **Indocibility**; **Madness**

11. What imaginations and passions men have, at the names of things supernatural

.1: "Hitherto of the knowledge of things natural, and of the passions that arise naturally from them. Now forasmuch as we give names not only to things natural, but also to supernatural; and by all names we ought to have some meaning and conception: it followeth in the next place, to consider what thoughts and imaginations of the mind we have, when we take into our mouths the most blessed name of **GOD**" (p. 41).

12. How by deliberation from passions proceed men's actions

.1: "It hath been declared already, how external objects cause conceptions, and conceptions appetite and fear, which are the first unperceived beginnings of our actions . . . This alternate succession of appetite and fear . . . is that we call **Deliberation**" (p. 47).

Will; **Voluntary** Actions; **Involuntary** or **Mixed**; **Consent**; **Contention**; **Battle**; mutual **Aid**; **Union**; **Intention**

13. How by language men work upon each other's minds

.1: "Having spoken of the powers and acts of the mind . . . considered in every man by himself, without relation to others; it will fall fitly into this chapter, to speak of the effects of the same powers one upon another" (p. 49).

Teaching; **Learn**; **Persuasion**; **Controversy**; **Consent**; **Counselling**; **Promise**; **Threatening**; **Commanding**; **Law**; **Instigation**; **Appeasing**

14. Of the estate and right of nature

.1: "In the precedent chapters hath been set forth the whole nature of man, consisting in the powers natural of his body and mind, and may all be comprehended in these four: strength of body, experience, reason, and passion" (p. 53).

.2: "In this chapter it will be expedient to consider in what estate of security this our nature hath placed us" (pp. 53–54).

Right; **War**; **Peace**

15. Of the divesting natural right by gift and covenant
    .1: "What it is we call the law of nature, is not agreed upon, by those that have hitherto written" (p. 57).
    Natural Law; **Relinquish**; **Transfer**; **Free gift**; **Contract**; **Covenant**; **Oath**
16. Some of the laws of nature
    Injury; **Unjust**; **Ingratitude**; **Pardon**
17. Other laws of nature
    Pride; **Equity**; **Incroaching**; **Arbitrator**; **Virtue**; **Vice**
18. A confirmation of the same out of the Word of God
19. Of the necessity and definition of a body politic
    .1: "…And therefore till there be security amongst men for the keeping of the law of nature one towards another, men are still in the estate of war" (p. 78).
    .6: "And that this may be done, there is no way imaginable, but only union; which is defined chap. 12, sect. 8 to be the involving or including the wills of many in the will of one man, or…one **Council**" (p. 80).
    Body Politic; **Corporations**; **Sovereign**; **Subject**

Part II. Concerning men as a body politic

1. Of the requisites to the constitution of a commonwealth
    .1: "That part of this treatise which is already past, hath been wholly spent in the consideration of the natural power, and the natural estate of man…And lastly how a multitude of persons natural are united by covenants into one person civil, or body politic. In this part therefore shall be considered, the nature of a body politic, and the laws thereof, otherwise called civil laws" (p. 83).
    Democracy; **Oligarchy** or **Aristocracy**; **Monarchy**; **Laws Politic**
2. Of the three sorts of commonwealth
    .1: "Having spoken in general concerning instituted policy in the former chapter, I come in this to speak of the sorts thereof in special, how every one of them is instituted" (p. 92).
3. Of the power of masters
    .1: "Having set forth, in the two preceding chapters, the nature of a commonwealth institutive, by the consent of many men together; I come now to speak of dominion, or a body politic by acquisition, which is commonly called a patrimonial kingdom" (p. 99).
    Master; **Servant**; **Slave**; **Manumission**
4. Of the power of fathers, and of patrimonial kingdom
    .1: "Of three ways by which a man becometh subject to another…In the next place, we are to set down the third way of subjection, under the name of children" (pp. 102–3).
    Concubine; **Husband**; **Wife**; **Freeman**; **Family**; **Patrimonial kingdom**
5. The incommodities of several sorts of government compared
    .1: "Having set forth the nature of a person politic, and the three sorts thereof, democracy, aristocracy, and monarchy; in this chapter shall be declared, the conveniences, and inconveniences, that arise from the same, both in general, and of the said several sorts in particular" (pp. 107–8).

6. That subjects are not bound to follow their private judgments in controversies of religion
   .1: "Having showed that in all commonwealths whatsoever, the necessity of peace and government requireth, that there be existent some power . . . by the name of the power sovereign, to which it is not lawful for any member of the same commonwealth to disobey; there occurreth now a difficulty, which, if it be not removed, . . . maketh it unlawful for a man to put himself under the command of such absolute sovereignty as is required thereto" (p. 113).

Fundamental; **Superstruction**

7. That subjects are not bound to follow the judgment of any authority in controversies of religion which is not dependent on the sovereign power
   .1: "In the former chapter have been removed those difficulties opposing our obedience to human authority, which arise from misunderstanding of our Savior's title and laws . . . Now they who differ not amongst themselves concerning his title and laws, may nevertheless have different opinions concerning his magistrates, and the authority he hath given them" (p. 126).
8. Of the causes of rebellion
   .1: "Hitherto of the causes why, and the manner how, men have made commonwealths. In this chapter I shall show briefly, by what causes, and in what manner, they be again destroyed" (p. 133).
9. Of the duty of them that have sovereign power
   .1: "Having hitherto set forth how a body politic is made, and how it may be destroyed, this place requireth to say something concerning the preservation of the same" (p. 142).
10. Of the nature and kinds of laws
   .1: "Thus far concerning the Nature of Man, and the constitution and properties of a Body Politic. There remaineth only for the last chapter, to speak of the nature and sorts of law" (p. 147).
   .10: "And thus much concerning the elements and general grounds of laws natural and politic" (p. 151).

* Highlighting of key terms follows the Harley 4235 manuscript.

Appendix 2
Comparison of Chapters on the Several Forms of Government in *The Elements of Law* and *Leviathan*

Elements of Law (Part II)	*Leviathan*
Ch. 2. Of the three sorts of commonwealth	Ch. 19. Severall Kinds of Common-wealth by Institution, and . . . Succession
(ch. 1, ¶3)*	¶1–2: definitions of three kinds of government; names for bad forms
(ch. 1, ¶15–16)	¶3: England, a monarchy for 600 years; danger of subordinate representatives
¶1–9: democracy first; derivation of other forms of government	
¶2: no contract between ruler and ruled	(ch. 18, ¶4)
¶3: sovereign cannot injure subjects	(ch. 18, ¶6)
¶9–10: absolute vs. elective kingdoms	¶10–13: absolute vs. elective kingdoms
¶11: people = multitude; civil person	(ch. 16, ¶1, 13)
¶12–16: discharge of subjection	(ch. 21, ¶21–25)
Ch. 5. The incommodities of several sorts of government compared	
¶1: benefits (peace & preservation) same for sovereign and subjects	¶4: public and private interest most united in monarchy
¶2: conveniences and inconveniences to ruler and to ruled	
¶3: inconveniences to subjects in each form of government:	
¶4: assembly debate excites passions	¶5: counsel in monarchy and assembly government
¶5–6: since there are more rulers in aristocracy and democracy than in monarchy, there is more corruption potential	¶8: since there are more rulers in an assembly than in monarchy, there are more favorites
¶7: law more constant in monarchy	¶6: resolutions more constant in monarchy

¶8: monarchies less apt to civil war; disagreements in assemblies may lead to civil war

(ch. 4, ¶11–17)

¶7: disagreements in assemblies may lead to civil war

¶9: in dangerous times, assembly governments need dictators (temporary monarchs)

¶14–23: succession

* References in parentheses indicate parallels to other chapters.

Note:
This essay uses the 1928 Tönnies edition of *The Elements of Law* (Cambridge University Press) as well as the original manuscript, Harley 4235 (1640), British Library. Quotations (using modernized spelling) are taken from the Tönnies edition, although in a few cases (which are indicated in notes) capitalization or emphasis follows the Harley manuscript.

CHAPTER SIX

THE DIFFICULTIES OF HOBBES INTERPRETATION

There is a developing interest among Hobbes scholars in the idiosyncrasies of his texts. A generation ago, we became preoccupied with approaches to interpretation when Hobbes studies became the site for sophisticated applications of approaches as diverse as contextualist history and game theory. Now, attention is turning to the nature of the texts themselves. The concern links Hobbes studies into the field of the 'history of the book,' which treats the historical sociology of book and manuscript production.[1] Markers of the renewed interest in Hobbes's texts include a 2003 critical edition of *Leviathan*, edited by Karl Schuhmann and G. A. J. Rogers, who devote a volume to comparing seventeenth- through twenty-first-century editions;[2] François Tricaud's introduction and French translation of the Latin *Leviathan;*[3] as well as the ongoing project of Clarendon Press, under Noel Malcolm's direction, to produce a definitive collected edition that will supersede the nineteenth-century Molesworth.

It is illustrative that a recently-published volume of essays on *Leviathan After 350 Years* opens with a section on "*Leviathan* among Hobbes's Political Writings," in which the essays take on the question of whether *Leviathan* is continuous with, or distinct from, the earlier *Elements of Law* and *De Cive*.[4] Are they three independent texts or a single, reworked one? In the case of most classics in the tradition of political theory, the question of what constitutes the text would never arise. But in the case of *Leviathan*, it is basic. In this essay, I propose to lay out why the question arises and what it entails, as well as to explore

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[1] See, e.g., Robert Darnton, "What is the History of Books?," in *Books and Society in History*, ed. Kenneth E. Carpenter (New York: R. R. Bowker, 1983), 3–26; and D. F. McKenzie, *Bibliography and the Sociology of Texts* (Cambridge: Cambridge University Press, 1999).

[2] G. A. J. Rogers and Karl Schuhmann, *Introduction to Thomas Hobbes Leviathan* (Bristol: Thoemmes Continuum, 2003).

[3] Thomas Hobbes, *Léviathan: traité de la matière, de la forme et du pouvoir de la république ecclésiastique et civile*, trans. François Tricaud (Paris: Éditions Sirey, 1971).

[4] Tom Sorell and Luc Foisneau, eds., *Leviathan After 350 Years* (Oxford: Clarendon Press, 2004).

related problems of continuity and consistency among Hobbes's political-theory texts.

Hobbes studies have an amorphous subject due to his practice of serially composing multiple works with overlapping content and arguments. Common as a practice among early-modern authors, serial composition invites interpretive disputes over the definition of the relevant set of texts and the relationship between them, their continuity or lack thereof. In Hobbes's case, these problems are compounded by the particular way in which he went about serial composition. John Aubrey, a friend and his first biographer, described the method as it played out in the composition of *Leviathan*: Hobbes

> walked much and contemplated, and he had in the head of his Staffe a pen and inke-horne, carried always a Note-book in his pocket, and as soon as a notion darted, he presently entred it into his Booke.... He had drawn the Designe of the Booke into Chapters, etc. so he knew whereabout it would come in.[5]

When he slotted new material into preexisting frameworks, Hobbes did not always rework the text in the interest of consistency.

Hence the upshot of serially composing works in this fashion was to make consistency problematic both between and within works. *The Elements of Law* (1640), *De Cive* (1642, with a second edition in 1647), and *Leviathan* (1651) were produced in several languages over the course of the Civil War decade, and publication of related works continued through 1668. For any author, such a publication history could be expected to breed problems of inconsistency between works as the author's thinking changes and develops over time. In Hobbes's case, the tumultuous context, to which many changes in his arguments responded, only increased the occasions for inconsistency.[6] But it was his habit of slotting new material into old that made changes between works into a source of internal as well as external inconsistency. When he left old formulations standing next to new ones, the result was at least complication and, sometimes, contradiction. A well-known example is the dual accounts of the political covenant in *Leviathan*—nonresistance (an account which is developed in the *Elements* and

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[5] John Aubrey, *Aubrey's Brief Lives*, ed. Oliver Lawson Dick (Ann Arbor, Mich.: University of Michigan Press, paperback ed., 1962), 151. See note 21 below.

[6] For the argument that Hobbes's arguments should be read as "polemical intervention[s] in the ideological conflicts of his time," see Quentin Skinner, *Hobbes and Republican Liberty* (Cambridge: Cambridge University Press, 2008), esp. xvi.

De Cive) and authorization (new to *Leviathan*).[7] *Leviathan*, due to its place in the queue as well as the political shifts in place by the end of the Civil War decade, is the most complicated and multilayered of the texts. It is illuminating to compare it with, say, *Capital*. In both cases, interpreters trace the development of ideas through and from earlier texts; however, in Hobbes's case this development is inscribed *within* the masterpiece as well. It is as though interpreters had to confront not only an 'early' versus a 'late' Marx, but also a *Capital* that carried over layers of argumentation from the *1844 Manuscripts* and the *German Ideology*.[8]

Hobbes studies are further complicated by the fact that Hobbes burned much of his correspondence late in life, so we have little direct autobiographical evidence of his intentions, political or authorial. This is particularly the case for his political ideas. In the magisterial edition of the surviving correspondence, edited by Noel Malcolm, there are few letters on political ideas and political theory, and these do not offer major insights. Hobbes left two autobiographies, one in verse and one prose, but these were completed in the last decade of his life, long after he'd written his political theory.[9] Other, scattered autobiographical statements are suspiciously opportunist: during the Interregnum, he would profess support for the Republic but afterwards protest loyalty to the Stuarts. The paucity and uncertain reliability of this autobiographical evidence give the texts peculiar importance for understanding Hobbes's intentions, and yet the texts themselves are problematic. It seems perverse, or at least ill-luck for interpreters, that Hobbes studies have both a complicated object and limited autobiographical information.

The composition process behind Hobbes's political treatises generated three related problems, which are my present focus: an amorphous text; continuity and discontinuity among his political-theory texts; and the issue of consistency between and within works. Consider, to start with, the most basic of questions: What would a student

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[7] See Table 2 below.

[8] Glenn Burgess has characterized *Leviathan* as a palimpsest: "Contexts for the Writing and Publication of Hobbes's *Leviathan*," *History of Political Thought* 11 (1990): 690.

[9] See François Tricaud, "Éclaircissements sur les six premières biographies de Hobbes," *Archives de Philosophie* 48 (1985): 277–86. J. C. A. Gaskin's edition of the *Elements—TL(G)*—reprints translations of the two works: the "Prose Life," translated by Mary Lyons, and the "Verse Life" (anon. trans.).

assigned to read Hobbes's political theory check out of the library? His ideas were first circulated in a manuscript titled *The Elements of Law* in the spring of 1640, just following the close of the Short Parliament. In short order, Hobbes translated, reworked and expanded the treatise into a new volume, in Latin, titled *De Cive*, which circulated in a small, private edition in 1642. To this, he added a new preface and additional notes to produce a second, larger, and public edition in 1647. *Leviathan* appeared four years later, in England and in English. Nor is this all. A Latin version of *Leviathan* came out in 1668. There are also *De Corpore* (1655) and *De Homine* (1658), which cover some of the same territory as *Leviathan*. In a discussion of "Hobbesian Sources of *Leviathan*," Rogers and Schuhmann list five works as possible sources, adding to the above *De Motu* (1643, published in 1973 as *Critique du De Mundo de Thomas White*).[10] *Behemoth*, Hobbes's post-Restoration history of the Civil War, is sometimes added to the list for its retrospective evidence of the evolution of his political thinking.[11] It is thus literally the case that Hobbes's political theory is *not* embodied in a determinate text or texts: at this simplest of levels, the object of interpretation is ambiguous and contestable.

Interpreters do not even agree, secondly, about the relationship between the three core political-theory texts. The editors of major new editions hold different views. On the one hand, Noel Malcolm sees them as basically continuous: he describes *The Elements of Law* as presenting

> an almost fully fledged statement of Hobbes's entire political philosophy. His two later published versions of his theory, *De cive* and *Leviathan*, would develop further some of the points of detail, but the essential lineaments would remain the same.[12]

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[10] Rogers and Schuhmann, "Introduction" 19–21. Thomas Hobbes, *Critique du De Mundo de Thomas White*, ed. Jean Jacquot et Harold Whitmore Jones (Paris: Librairie Philosophique J. Vrin, 1973).

[11] E.g., Jeffrey R. Collins, *The Allegiance of Thomas Hobbes* (Oxford: Oxford University Press, 2005), 82.

[12] Noel Malcolm, A Summary Biography of Hobbes," in *The Cambridge Companion to Hobbes* ed. Tom Sorell (Cambridge: Cambridge University Press, 1996), 28. Many share this view, including: Quentin Skinner, "Introduction: Hobbes's Life in Philosophy," *Visions of Politics*, vol. 3 (Cambridge: Cambridge University Press, 2002), 9, 11; and M. M. Goldsmith, "Hobbes's Ambiguous Politics," *History of Political Thought* 11 (1990), 639.

Rogers and Schuhmann's introduction to *Leviathan* maintains, on the other hand, "*The Elements of Law* does not play any direct role in the elaboration of *Leviathan*…There is no ascertainable direct link between the two works." Only *De Cive* and *Leviathan*, in their view, are organically related.[13]

From debates about continuity, it is a short step to the bedrock issue of consistency among Hobbes's arguments, which in one form or another is central in much of the secondary literature. Two major illustrations are Hobbes's treatment of the relationship between church and state, and the addition in *Leviathan*'s "Review and Conclusion" of the seemingly noncontractarian principle of a "mutuall Relation between Protection and Obedience."[14] In the first case, controversy stems from a passage in *De Cive* that seems to assign the clergy independent interpretive authority, which contradicts the Erastian antipathy to clerical independence that Hobbes asserts elsewhere. In the second, the question is how the new argument squares with the contract theory that Hobbes had developed over the Civil War decade and that remains, of course, a centerpiece of *Leviathan*. Such inconsistencies merit (re)examination in light of Hobbes's writing process.

Recently, several commentators have conceptualized Hobbesian inconsistency as the root problem, in and of itself, that underlies many specific disputes. Lodi Nauta takes on the thesis of radical change and inconsistency *writ large*:

> It has become something of an orthodoxy among Hobbes scholars to see a dramatic change in Hobbes's intellectual development in the 1640s, that is, between the earlier works *The Elements of Law Natural and Politic* (1640) and *De Cive* (1642) on the one hand and *Leviathan* (1651) on the other. Various accounts have been given to explain these differences…but what they have in common is their stress on the radical character of Hobbes's turn of mind in that crucial decade of his exile.[15]

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[13] Rogers and Schuhmann, "Introduction," 45. They see some similarities between the accounts of human nature in *Leviathan* and the *Elements* but little in common between their political sections (p. 19). However, compare Karl Schuhmann, "Skinner's Hobbes," *British Journal for the History of Philosophy* 6 (1998): 121.

[14] Hobbes, *LV*, "A Review and Conclusion," p. 728.

[15] Lodi Nauta, "Hobbes on Religon and the Church between *The Elements of Law* and *Leviathan*: A Dramatic Change of Direction?" *Journal of the History of Ideas* 63 (2002): 577. See, also, "Hobbes the Pessimist?," *British Journal for the History of Philosophy* 10 (2002): 31–54.

Nauta argues, to the contrary: "there is much more continuity between the three works than this picture suggests" and therefore the "developmental" thesis concerning his radical change of mind is fundamentally mistaken.[16]

A second, more complicated view is laid out by Kinch Hoekstra, who identifies the developmental thesis as one of two characteristic approaches to the problem of inconsistency: "Faced with a brilliant philosopher who subscribes to such evidently contradictory doctrines, philosophers and historians tend to react differently." On the one hand, "Historians are inclined . . . to offer a developmental account, according to which Hobbes changed his mind over time as his circumstances changed." "Philosophers," on the other hand, "ascribe to Hobbes the view they take to be strongest, and regard the others as more or less unfortunate utterances." Hoekstra points out flaws in both approaches. The historical, developmental one makes the error of assuming consistency *within* works: when in fact, e.g.,"Hobbes upholds a *de facto* theory, a kind of royalism, and consent theory *in the same works*." And "the problem with the philosophical approach is that it dismisses much of what Hobbes says."[17] Instead, Hoekstra plumps for a third approach to interpretation, one in which the goal is to uncover an underlying conceptual consistency that ties together apparently divergent arguments—a "doctrine of doctrines."[18] At root, Hoekstra shares with Nauta the assumption that Hobbesian inconsistency must have a substantive, intellectual explanation. In common with the vast run of literature on specific disputes, their aim is to construct substantive explanations that tie together his arguments, whether at the level of particular topics or in the form of a grand, unifying theme.

The other possibility, to be examined here, is that inconsistency was simply the product of Hobbes's composition process. There may be *less* to the problem than interpreters commonly assume in the sense that, in some to many instances, it may have no deeper rationale than his way of writing. It is an unsettling thesis, which some may criti-

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[16] Nauta, "Hobbes on Religion," 578.

[17] Hoekstra, "The *De Facto* Turn in Hobbes's Political Philosophy," in *Leviathan After 350 Years*, 71–72. See, also, "Hobbes on Law, Nature, and Reason," *Journal of the History of Philosophy* 41 (2003), esp. 119.

[18] Hoekstra, "*De Facto* Turn," 54; see, too, 72–73. His candidate is "the position that subjects cannot rightfully publish doctrines contrary to those laid down by the sovereign as necessary for their peace and defence" ("II—The End of Philosophy [The Case of Hobbes]," *Proceedings of the Aristotelian Society* 106 [2006]: 45).

cize for dissolving the philosophical interest of Hobbes's arguments. Surely, it may be objected, it is more productive to engage with their substance than it is to trace their accretion through the several texts, regardless of what we may learn from the composition process. Even more unsettling may be the implied dissolution of the textual referent itself. In a paradoxical way, might study of the composition process not render interpretation more rather than less fluid? Through attending to the complexities of the composition process, do we not unmoor the theory and magnify the interpretive process into one of constructing text as well as meaning? Other critics, though less sceptical, may still wonder how knowledge of the composition process should affect interpretive practice and evaluation. If this study is more than a case in the history of the book, what guidance does it offer for Hobbes studies and for interpretation generally? These are questions to which to return in conclusion.

Serial Composition

Our interpretive landscape pits positivists, who hold that texts are discrete, "authorially sanctioned, contained, and historically definable" objects against constructivists, who see them "as always incomplete, and therefore open, unstable, subject to a perpetual re-making by readers, performers, or audience."[19] However in medieval and early-modern manuscript production, another possibility obtained: texts were unstable due to continual revision by their *authors*. Harold Love's study of *Scribal Publication* describes the process of continual authorial revision that manuscript production encouraged. When authors controlled the process of manuscript publication, texts could remain "obstinately in process." He proposes the label "serial composition" for the phenomenon of texts "subject to incessant revision." Whereas our "print culture" focuses on, and distinguishes among, the products of writing, serial composition could make process more important than outcome. Rather than assume that revised editions reflect an impulse to perfect a text, Love argues that the process of scribal production could be "one of change for change's sake or of an ongoing adaptation to the expectations of readers. Versions produced in this way do not

[19] McKenzie, *Sociology of Texts*, 55.

so much replace as augment each other." Hence we might do better to regard serial compositions as akin to "a musician playing variations on a favorite theme" rather than as efforts to produce a perfect text.[20]

The concept of a text did not, of course, change overnight with the introduction of print publication. Scribal culture influenced authorial practice in print publications throughout the sixteenth and seventeenth centuries. The practice of producing new works by expanding and reworking existing material was ubiquitous in the period. Francis Bacon, for whom Hobbes worked as a secretary as a young man, produced thirteen editions of his *Essayes* between 1597 and 1625; the work expanded from ten essays in the original to fifty-eight in a volume three times longer.[21] Other examples of serial composition include Foxe's widely read *Book of Martyrs*, which went through "four substantially different editions of ever-increasing size and complexity" between 1570 and 1583.[22] In the next century, there were six editions between 1621 and 1651 of Robert Burton's *Anatomy of Melancholy*, which grew in length from a third to a half million words.[23]

Against this background, let us turn to consider the serial production of *The Elements of Law, De Cive*, and *Leviathan*, looking at what we know about these texts (and also what we do not know). Hobbes's report of his development as a thinker is a familiar story and feeds his reputation for being one of the most logical of thinkers. In 1630, he fell in love with geometry.[24] For his work, this meant proceeding (as a correspondent put it later in the decade) on the basis of "definitions collected out of a deep insight into the things themselues" as opposed to common "notions and apprehensions."[25] Then came his plan for

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[20] Harold Love, *Scribal Publication in Seventeenth-Century England* (Oxford: Clarendon Press, 1993), 52–54.

[21] Michael Kiernan, "General Introduction" and "Textual Introduction" to *The Essayes or Counsels, Civill and Morall*, by Francis Bacon (Cambridge, Mass.: Harvard University Press, 1985). Aubrey reports that Bacon dictated to a secretary while walking (*Aubrey's Brief Lives*, 150), so it is conceivable that Hobbes modeled his way of working on observation of Bacon's practice.

[22] John N. King, "On Editing Foxe's *Book of Martyrs*," *Medieval & Renaissance Texts & Studies* 188 (1998), 53.

[23] Thomas C. Faulkner, "Robert Burton's Sources and Late Topical Revision in *The Anatomy of Melancholy*," *Medieval & Renaissance Texts & Studies* 188 (1998): 23.

[24] Aubrey, *Aubrey's Brief Lives*, 150; Hobbes, "Prose Life," 246–47; and Malcolm, "Summary Biography," 21 and n. 34.

[25] "Sir Kenelm Digby to Hobbes, from Paris," 17[/27] January, 1637, Letter 25 in Thomas Hobbes, *The Correspondence*, vol. I, ed. Noel Malcolm (Oxford: Clarendon, 1994), 42–43.

a unified science, progressing from physics to psychology to politics, which Hobbes claimed to have framed sometime after returning to England from the Continent in the mid-1630s. "These were my Studies then," he later wrote, "and in these three Consists the whole Course of Philosophy: Man, Body, Citizen, for these I do Heap Matter up, designing three Books too."[26]

The Elements of Law

Despite Hobbes's narrative, there is some reason to be skeptical as to whether, in fact, his first political-theory treatise, *The Elements of Law*, was actually a product of the plan.[27] The work opens with a different outline, progressing not from physics to psychology to politics but from psychology to politics to *law*:

> The true and perspicuous explication of the Elements of Laws, Natural and Politic, which is my present scope, dependeth upon the knowledge of what is human nature, what is a body politic, and what it is we call a law.[28]

It is clear, at least, that the geometrical model was in play. "The first principle of knowledge," Hobbes explains in the work:

> is, that we have such and such conceptions; the second, that we have thus and thus named the things whereof they are conceptions; the third is, that we have joined those names in such manner, as to make true propositions; the fourth and last is, that we have joined those propositions in such manner as they be concluding. And by these four steps the conclusion is known and evident, and the truth of the conclusion said to be known.[29]

Following through on this idea of science, most of the text is constructed around a scaffolding of defined terms, which are highlighted in black gothic script and linked with transitions sign-posting the progress of the argument.[30] However, the method breaks down in the last chapters of the work, where the scaffolding of highlighted terms is

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[26] Hobbes, "Verse Life," 257–58.

[27] It was Ferdinand Tönnies' view that the *Elements* was "drawn up independently, from and without any regard to the systematic plan, which probably did not yet occupy the philosopher's mind at the time when he wrote it" ("The Editor's Preface" to *EL(T)*, vii).

[28] Hobbes, *EL(G)*, 1.1, p. 21.

[29] Hobbes, *EL(G)*, 6.4, p. 41. See also 13.3, pp. 74–75.

[30] This discussion draws on chapter five.

absent from chapters twenty-one, twenty-four, and twenty-six through twenty-nine (on forms of government, religion, causes of rebellion, the sovereign's duties, and law).

What happened? The *Elements* was written at the direction of the Earl of Newcastle[31] during, Hobbes said in a much later autobiography, the Short Parliament that met for less than a month in the spring of 1640.[32] Yet it seems doubtful that he actually could have composed so lengthy and systematic a treatise in so short a period of time; and more likely that during that time he simply finished a manuscript that had largely been prepared over some longer stretch of time.[33] Perhaps the breakdown of the highlighted outline indicates that, after the calling of the Short Parliament, Newcastle pressured him to finish the work quickly. Curiously, too, those later chapters include aberrant, seemingly prodemocracy points: here, Hobbes identifies the constitution as the foundation of all governments and endorses the Aristotelian view that it realizes the principle of liberty.[34] Since absolutism is, overall, a major subject in the later chapters, it may be that Hobbes's foremost political argument started out as a hasty construction.

It may be further evidence of haste that the *Elements* circulated in manuscript rather than print. Hobbes signed the dedicatory epistle on May 9, 1640, although he continued to work on the manuscript in following months, making changes to whatever circulating copy was in his possession.[35] Yet he may have had other reasons, too, for employing scribal publication. The choice could be motivated, Love observes, by a desire to *limit* circulation: "scribal publication [w]as a means by which ideologically charged texts could be distributed through the governing class . . . without their coming to the knowledge of the governed."[36] In just this vein, Hobbes indicates in the dedication to Newcastle that the work was intended for a limited audience: "The ambition therefore of this book, in seeking by your Lordship's countenance, [is] to insinuate

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[31] Hobbes, *EL(G)*, p. 19: "Now (my Lord) the principles . . . are those which I have heretofore acquainted your Lordship withal in private discourse; and which, by your command I have here put into method."

[32] The passage is quoted below, at the start of the section titled "Three Texts or One (or Two)?."

[33] This suspicion echoes George Croom Robertson, *Hobbes* (Philadelphia: Lippincott, 1886), 52.

[34] Hobbes, *EL(G)*, 21.1 and 27.3, pp. 118–19, 164.

[35] Martin Dzelzainis, "Edward Hyde and Thomas Hobbes's *Elements of Law, Natural and Politic*," *The Historical Journal* 32 (1989): 313.

[36] Love, *Scribal Publication*, 177.

itself with those whom the matter it containeth most nearly concerneth,"[37] such as, possibly, the King and his closest advisers, Laud and Strafford.[38] In addition, the traditional 'stigma of print' in court circles might have made manuscript publication a better choice than print for Newcastle and Hobbes.[39]

De Cive

In late 1640, Hobbes fled into exile in Paris, where he took up connections with a circle of scientists and philosophers associated with Marin Mersenne, a French monk whom he had met on a mid-1630s trip to the Continent. By November of the following year, only a year and a half after the appearance of the *Elements*, he had completed the next in his trio of political-theory texts, the first edition of *De Cive*. Although it came out in print, in Latin, it was hardly more public a work than the *Elements*: the edition was small and semianonymous, signed only with Hobbes's initials. Patronage played a role in this publication, as it had in the case of the *Elements*. Where Newcastle had directed the production of that first work, now Mersenne took on the role. It was he who arranged for the publication of *De Cive*, and he subsequently circulated the work for comments.[40]

By early 1646, Hobbes had completed a second edition of *De Cive*. Published in Amsterdam early the following year, it gave the first fully public—large and signed—presentation of Hobbes's political theory. It was an enlargement of the first edition with the addition of a new preface and annotations in the text answering criticisms of the work.[41] Hobbes prepared it by recording the additions and notes on a copy of the first edition, from which the second was then printed.[42] Once again, patronage mattered. Samuel Sorbière, a member of Mersenne's circle,

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[37] Hobbes, *EL(G)*, p. 20.

[38] This is Johann Sommerville's suggestion in *Thomas Hobbes* (New York: St. Martin's Press, 1992), 17.

[39] J. W. Saunders, "The Stigma of Print: A Note on the Social Bases of Tudor Poetry," *Essays in Criticism* 1 (1951): 159.

[40] Karl Schuhmann, *Hobbes: Une Chronique* (Paris: Librairie Philosophique, 1998), 75ff; Malcolm, "Summary Biography," 28; and Howard Warrender, "Editor's Introduction" to Hobbes, *DC*, 6–7.

[41] The annotations are concentrated in the first chapters of the work—specifically, chapters 1–3 and 6, on the state of nature, natural law, and sovereign right—and the last chapters—14–16 and 18, on law and religion.

[42] Warrender, "Editor's Introduction," 41.

oversaw its publication in Amsterdam; letters to Sorbière indicate the work appeared only due to his and Mersenne's intervention.[43]

Hobbes offered a retrospective account of his enterprise up to that time in the preface to the second edition, which readers commonly take at face value. He claims to have been working from the very beginning—"some few yeares before the civill Warres did rage"—on the unified-science project and says *De Cive* was published out of sequence as a contribution to pre-War debates:

> Whilest I contrive, order, pensively and slowly compose these matters… it so happen'd in the interim, that my Country some few yeares before the civill Warres did rage, was boyling hot with questions concerning the rights of Dominion, and the obedience due from Subjects, the true forerunners of an approaching War; And was the cause which (all those other matters deferr'd) ripen'd, and pluckt from me this third part.[44]

However, there is evidence that this misrepresents the actual evolution of the project. While Hobbes clearly had adopted the familiar unified-science scheme by this time,[45] the statement of political intent directly contradicts the first edition. In November, 1641, he had written that he meant to *avoid* politics:

> I have also been very wary in the whole tenour of my discourse, not to meddle with the civill Lawes of any particular nation whatsoever, That is to say, I have avoyded coming a shore, which those Times have so infested both with shelves, and Tempests.[46]

At each step in the process leading to the second edition, Hobbes's personal situation and pressures associated with patronage played important roles. Would there have been an *Elements* had Newcastle not "commanded" its production? Would he have produced *De Cive* as quickly as he did, and/or in Latin, if he had not gone into exile, where he needed to establish himself with a new patron and intellectual coterie? Probably not, in both cases. Indeed, it may have been exile that induced him to use the genre of serial composition in the first place.[47] For the production of a work in a language accessible to

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[43] Warrender, "Editor's Introduction," 10–13. "Mersenne to Sorbière," 25 April 1646, and "Gassendi to Sorbière," 28 April 1646, Appendix A in Hobbes, *DC*, 297–98.

[44] Thomas Hobbes, *DC*, pp. 35–36 (emphasis omitted).

[45] The work's title includes the phrase "third section of elements of philosophy": *Elementorum Philosophiae Sectio Tertia de Cive*.

[46] Hobbes, *DC*, "The Epistle Dedicatory," p. 27.

[47] Hobbes's political theory is treated as an example of exile literature by Chris-

his new audience, it was surely faster to start with an existing manuscript than to begin entirely afresh. Subsequently, the process of serial composition itself became a complicating factor for his plan of a unified, deductive science, since the process of continual authorial revision and expansion of the texts only invited disorder.

Leviathan

Hobbes seems to have viewed the second edition of *De Cive* as the definitive statement of his moral theory, explaining in a 1646 letter that he aimed "to achieve in metaphysics and physics" (on which he was then working) "what I hope I have achieved in moral theory."[48] Indeed, the edition made his reputation on the Continent, and in the eighteenth century would be more influential than *Leviathan*.[49] Why, then, did he go on to produce *Leviathan*? It unfortunately is a question lacking a clear answer; we know remarkably little about why—or even when—*Leviathan* was composed. This is an area in which the paucity and uncertain reliability of the autobiographical materials particularly matter.

Today, most scholars follow Schuhmann in dating the composition to a single year—the winter 1649/50 through the winter of 1650/51—or an approximation thereof.[50] This is less than certain, however, because Hobbes's autobiographies indicate that he started the work in 1646, during the period in which he was mathematics tutor to the Prince of Wales and prior to a major illness in 1647.[51] After the illness, we know that he was absorbed for several years in the scientific section of the tripartite project.[52] But in 1649, he seems to have taken up politics

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topher D'Addario, *Exile and Journey in Seventeenth-Century Literature* (Cambridge: Cambridge University Press, 2007), ch. 2.

[48] "Hobbes to Samuel Sorbière," [22 May/]1 June 1646, Letter 42, in Hobbes, *Correspondence*, vol. I, p. 133. In "The Author's Epistle Dedicatory" to *De Corpore*, Hobbes says "Civil Philosophy" is "no older…than my own book *De Cive*" (*English Works of Thomas Hobbes of Malmesbury*, ed. Sir William Molesworth, vol. I [London: J. Bohn, 1839], ix). See, also, the "Verse Life," 258.

[49] Noel Malcolm, "Hobbes and the European Republic of Ideas," *Aspects of Hobbes* (Oxford: Clarendon, 2002), 459; "Summary Biography," 29; and "Citizen Hobbes," *London Review of Books*, 18–31 October 1984: 22.

[50] Karl Schuhmann, "*Leviathan* and *De Cive*," in *Leviathan After 350 Years*, 15–17; and Rogers and Schuhmann, "Introduction," 11–12. Malcolm, "Summary Biography," thinks *Leviathan* was probably begun in the fall of 1649 (31).

[51] Hobbes, "Prose Life," 248, and "Verse Life," 259.

[52] Rogers and Schuhmann, "Introduction," 9–11.

again, in response, it may be supposed, to the seismic political changes of the time.[53] But his intentions must remain opaque to us because he made various statements about them, suited to the changing political times. In the immediate moment, he told Edward Hyde that he wrote *Leviathan* because he had "a mind to go home"[54] and in 1656 proclaimed that the work "framed the minds of a thousand gentlemen to a conscientious obedience to present government."[55] Yet, after the Restoration he would protest that "Leviathan was written in defence of the King's power, temporal and spiritual."[56]

Whatever his intentions really were, in something like a year he managed to rework *De Cive*; add seven chapters on political topics along with one on authorization that supports a new version of the political covenant; and transform several chapters on religious topics into two entire Parts, which constitute exactly half the work in the manuscript copy that was presented to Charles II.[57] The new political chapters largely concern the conduct of government, as well as the relationship between ruler and ruled: they are chapters 21, "Of the Liberty of Subjects"; 22, "Of Systemes Subject, Politicall, and Private"; 23, "Of the Publique Ministers of Soveraign Power"; 24, "Of the Nutrition, and Procreation of a Common-wealth"; 25, "Of Counsell"; 27, "Of Crimes, Excuses, and Extenuations"; and 28, "Of Punishments, and Rewards." Since these additions surround what had been the concluding chapter of the *Elements of Law*, and last entry in its introductory outline, on the "Nature and Kinds of Law" (see Appendix II), this development can be said to have transformed a natural-law project into a more fully political one. Accomplishing these additions, as well as revising existing arguments, was a massive undertaking that recalls

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[53] Quentin Skinner, "Hobbes's Life in Philosophy," 15, 19. See, too, Collins, *Allegiance*, ch. 4.

[54] Edward Hyde, *A Brief View and Survey of the Dangerous Errors . . . in Mr. Hobbes's Book, entitled Leviathan* (1676), 8, quoted, e.g., in Malcolm, "Summary Biography," 31.

[55] Thomas Hobbes, "Six Lessons to the Professors of the Mathematics," *English Works*, vol. VII (1845), 336.

[56] Thomas Hobbes, "An Historical Narration concerning Heresy," *English Works*, vol. IV (1840), 407. The "Verse Life" elides the contradictory statements by asserting: "This Book Contended with all Kings, and they By any Title, who bear Royal sway" (259). In the dedication to Charles I of a 1661 work on optics, he seemed to apologize for the ambiguity: "I most humbly beseech your sacred Majesty not to believe so ill of me . . . nor to think the worse of me, if snatching up all the weapons to fight against your enemies, I lighted upon one that had a double edge" (*English Works*, vol. VII, 5–6, quoted in D'Addario, *Exile and Journey*, 57).

[57] This last, curious fact is noted in Rogers and Schuhmann, "Introduction," 50.

Hobbes's rapid completion of both the *Elements* and *De Cive*. He cannot have had time to render all the pieces that went into the work consistent with one another.

There was to be one more political-theory text: a Latin translation, by Hobbes, of *Leviathan*, which was published in 1668. Once again, there is disagreement over when it was actually composed and the disagreement bears on understanding the composition of his political theory. François Tricaud, in the introduction to his 1971 French translation, argues that there was a Latin 'proto-Leviathan' which predated the English version and was therefore intermediary between *De Cive* and that work.[58] Tricaud draws on earlier work by Zbigniew Lubienski and F. C. Hood, but his thesis is disputed by Schuhmann and Rogers, who stress the inferiority of the translation's Latin to that in Hobbes's earlier Latin works.[59]

George Croom Robertson observed in his classic 1886 commentary that "in truth, the whole of [Hobbes's] political doctrine…has little appearance of having been thought out from the fundamental principles of his philosophy."[60] It is clear that political crisis, Civil War, exile, as well as patrons' demands and directions, all pulled against Hobbes's philosophic aspirations. If we knew the complete story, filled in with lost information about *Leviathan*, the narrative would no doubt be even more complicated.

Three Texts or One (or Two)?

The conventional view, which is implicitly assumed in the preceding discussion, is that the three political treatises are related in the way that Aubrey said they were: "This little MS. treatise [the *Elements*] grew to be his Booke *De Cive*, and at last grew there to be the so formidable LEVIATHAN."[61] However, as I noted in the introduction,

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[58] François Tricaud, "Introduction de Traducteur," in *Léviathan* by Thomas Hobbes (Paris: Éditions Sirey, 1971), xix–xxix.

[59] Rogers and Schuhmann, "Introduction," 230–1. On the comparison of the English and Latin versions, see also Skinner, "Life," 29–31. For examples of additions and revisions to the Latin *Leviathan* that run counter to Tricaud's thesis, see R. W. Serjeantson, "Hobbes, the Universities, and the History of Philosophy," in *The Philosopher in Early Modern Europe*, ed. Conal Condren, Stephen Gaukroger and Dan Hunter (Cambridge: Cambridge University Press, 2006), 136–37.

[60] Robertson, *Hobbes*, 57; see, also, 38.

[61] Aubrey, *Aubrey's Brief Lives*, 151.

this is not without controversy: Schuhmann and Rogers argue against a direct link between the *Elements* and *Leviathan*. I will turn next to examine the texts themselves, which we will see largely support the conventional view. However, let us first consider the autobiographical evidence, which is more ambiguous.

At least in the materials that have come down to us, Hobbes makes remarkably little mention of the *Elements*. A single reference, in a later autobiography, recalls that "When the Parliament sat, that began in April 1640, and was dissolved in May following…Mr. Hobbes wrote a little treatise in English."[62] In addition, he clearly thought of *De Cive* and *Leviathan* as a twosome, and sometimes dated the project in a way that excluded the *Elements*. Writing during the Interregnum, for instance, he reported starting the project, "a little before the last parliament of the late king"—referring, in other words, to the Long rather than the previous Short Parliament:

> When every man spake freely against the then present government, I thought it worth my study to consider the grounds and consequences of such behavior.… And after some time I did put in order and publish my thoughts thereof, first in Latin, and then again the same in English.[63]

John Aubrey, although describing the three works as continuous, also grouped *De Cive* and *Leviathan* together as a decade-long project:

> After he began to reflect on the interest of the King of England as touching his affairs between him and the Parliament, for ten years together his thoughts were…chiefly intent on his *De Cive*, and after that on his *Leviathan*.[64]

However, Hobbes's silence about the *Elements* and his pairing of *De Cive* and *Leviathan* need not imply that the first was an independent

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[62] Thomas Hobbes, "Considerations upon the Reputation, Loyalty, Manners, and Religion, of Thomas Hobbes," *English Works*, vol. IV (1840), 414.

[63] Thomas Hobbes, "The Questions Concerning Liberty, Necessity, and Chance," *English Works*, vol. V (1841), 453. For the continuity between *Leviathan* and *De Cive*, see also the "Prose Life," 250; "Considerations," 426; and *LV*, "A Review and Conclusion," p. 727. Hobbes's friend, Robert Payne, reported in May 1651 that "Much of his *de Cive* is translated into" *Leviathan* ("Robert Payne à Gilbert Sheldon," in Schuhmann, *Chronique*, 123). By contrast, however, the passage from the second edition of *De Cive* quoted earlier, in the section on the work, seems to assimilate the *Elements* to *De Cive*: there, Hobbes mentions writing his political work "some few yeares before the civill Warres did rage," which on its face refers farther back than the November '41 first edition of *De Cive*.

[64] John Aubrey, "The Brief Life," in *EL(G)*, 235.

production. His references to the later works carefully specify that they were "books." For instance, after describing the "little treatise," he goes on to report that, later: "Being at Paris, he wrote and published his book *De Cive*, in Latin"; and subsequently, "he wrote and published his *Leviathan*."[65] In similar vein, his "Verse Life" notes, "I published…My Book *de Cive*."[66] Thus he seems to have drawn a modern distinction between manuscript and print production, and counted only the latter as publication. This implies that the *Elements* was a different sort of work, not that it was an unconnected one. Perhaps Hobbes regarded it as a draft of *De Cive*, which his patron had wanted to have circulated, precipitously, in the spring of 1640.

Hobbes further contributed to confusion about the relationship between the texts by a tendency to characterize *Leviathan* in terms of its new material, in particular the expanded treatment of ecclesiology and theology. His "Prose Life" (in which he refers to himself in the third person) explains:

> In that work he described the right of kings in both spiritual and temporal terms, using both reason and the authority of sacred scripture…He hoped that this work might convince his countrymen, especially those who had rejected the episcopacy, of its truth. He also wished at the same time to deal with theological matters in the text.[67]

Accurate as the statement is to the addition of the third and fourth parts of the work, it nevertheless ignores the first two parts, not only material carried over from the earlier texts but also the addition of the authorization conception of the political covenant and seven chapters on political subjects. We may surmise that the statement reflects what was at the forefront of Hobbes's mind as he completed *Leviathan* (or as he looked back upon it). But the selective stress on (only some) of the work's novelty makes such characterization misleading as a statement about the content and intent of the work overall.

Let us turn, now, to the texts themselves. How did the process of serial composition play out? Changes need to be tracked at two levels—the 'macro' sweep of major changes in structure and subject matter, and the 'micro' evolution of specific arguments. Below,

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[65] Hobbes, "Considerations," 415; see also 426.

[66] Hobbes, "Verse Life," 258. See, too, "Prose Life," 247 ("a short book…*De Cive*") and 250 ("the books *Leviathan* and *De Cive*").

[67] Hobbes, "Prose Life," 248. See also "Six Lessons," 335.

I present illustrative comparisons of both sorts. For 'macro' comparisons, Appendices I and II provide annotated outlines of the chapter organizations of the *Elements, De Cive*, and *Leviathan.* Appendix I shows the relationship between the first twelve chapters of *Leviathan* and chapters two through thirteen of *The Elements of Law*; these are chapters on human nature and knowledge that do not appear in *De Cive*. Overall, it shows substantial, but hardly complete, continuity in organization. A major change is the transformation of a section in the *Elements* ("Of the Faculties Motive"), covering three chapters (7–9), into a single omnibus chapter in *Leviathan* on the passions, which included moving some material elsewhere. There are also changes in chapter contents, which do not show up at this level of abstraction. For instance, the consolidation of the treatment of the passions in chapter six of *Leviathan* is accompanied by extensive reorganization and revision in the list of specific passions. Also, curiously, the title of chapter eight of that work, "Of the Vertues, commonly called Intellectuall, and their contrary Defects," is accurate to the organization of the parallel chapter in the *Elements* (ten), which counterposes virtues and their opposing defects; however this format is not actually used in the *Leviathan* chapter. Chapters eleven of *Leviathan* and thirteen in the *Elements* have the same topic—namely, social relationships—but different titles and different material.

Appendix II outlines comparison of all three works, starting where *De Cive* picks up with the 'state of nature' chapter. This appendix emphasizes illustrative parallels so as to show the substantial continuity between the works, while also noting some instances of reorganization. Like Appendix I, changes in chapter contents do not appear at this level of abstraction. The most obvious change overall is of course the great expansion in the treatment of religious topics in *Leviathan*, which begins on a modest scale in *De Cive*. There is also *Leviathan*'s added chapter on authorization (16) and the "Review and Conclusion," with its much-debated endorsement of de facto authority. Less often remarked, but clearly important to the subject matter, is the addition of the seven chapters in Part II that treat the art of ruling, subjects' liberty, and criminal justice.

Next, by way of illustrating how the process of serial composition played out at the level of specific arguments, Table 1 presents a 'micro' comparison of the parallel chapters on the state of nature; it charts significant changes and developments through the three versions. The most notable change is the transfer of discussion of natural

Table 1: Developments in the 'State of Nature' Chapters

Elements of Law	*De Cive*	*De Cive*, 2nd ed.	*Leviathan*
Ch. 14. Of the Estate and Right of nature	Ch. 1. Of the State of men without civill society		Ch. 13. Of the Naturall Condition of Mankind…
	§2: Origin of lasting societies: not good will but mutual fear.	Annotation regarding mutual fear, with examples of fearful behavior within organized society (which parallel "The Authors Preface to the Reader")[68]	¶10: examples repeated
§6–10: natural right	§7–11: natural right	Annotation regarding the state of nature; absence of injury and injustice there	*[natural right: moved to ch. 14]* ¶13: nothing unjust in war of all; no property
§11: state of war deduced: in the state of nature "to the offensiveness of man's nature… there is added a right of every man to every thing"	§12: deduction of the natural state of war: "If now to this naturall proclivity of men, to hurt each other… You adde, the right of all to all"		¶6–8: war of all deduced from "three principall causes of quarrel" in human nature; no mention of natural right
			¶10: confirmation from experience of "this Inference, made from the Passions," with examples that echo the 1647 *De Cive*, "Authors Preface to the Reader" and annotation to ch. 1 §2

[68] Hobbes, *DC*, "The Authors Preface to the Reader," pp. 32–33.

right from this to the following chapter in *Leviathan*, which has the effect of deleting natural right from the logical deduction that a state of nature would be a state of war. The table also shows how the arguments progressively evolved through the several versions, with several additions in *Leviathan* originating in annotations to the second edition of *De Cive*.

Hobbes's Way of Writing

We know that the texts evolved in this sort of way due to Hobbes's way of writing, which consisted, as Aubrey recorded about *Leviathan*, in jotting down notes as he walked and subsequently fitting them into an existing outline. Although Aubrey's report specifically refers to *Leviathan*, the method is also evident in *De Cive*, most obviously in the insertion of annotations in the second edition. It further complicated matters that Hobbes's framework was unstable: while inserting points and arguments, he also very often engaged in moving existing ones around. Altogether, the technique produced a distinctive kind of work, which has been described as "a juxtaposition, in a certain order, of pages written at different times" rather than a coherent, continuously composed treatise.[69]

The unit is frequently a topical block of several paragraphs, which expand and/or otherwise change shape and content between the several works. The treatment of madness in the *Elements* and *Leviathan* is illustrative. Chapter 10 in the first work, concerning differences between men "in their discerning faculty," has three paragraphs on the subject, first defining it (§9: "some imagination of such predominance above all the rest, that we have no passion but from it")[70] and then offering examples (§10–11). *Leviathan*, chapter 8 (on intellectual virtues and defects), opens discussion of madness with a parallel definition (¶16: "stronger, and more vehement Passions for any thing") and attributes it to "great *vaine-Glory*…or great *Dejection* of mind," as had the *Elements*.[71] But, while chapter 10 of the *Elements* concludes after the third paragraph on madness, in *Leviathan* Hobbes expands

[69] Jacquot et Jones, "Introduction" to *Critique du De Mundo*, by Hobbes, 79. See, too, Rogers and Schuhmann, "Introduction," 18.
[70] Hobbes, *EL(G)*, 10.9, p. 63.
[71] Hobbes, *LV*, 8, pp. 139–40.

the discussion by adding paragraphs on rage, melancholy, madness in multitudes ("the Seditious roaring of a trouble Nation"), etc.[72] Making the evolution even more convoluted, one of these paragraphs, on spirits and phantasms, relates to discussions in subsequent chapters of both works on the idea of incorporeal bodies.[73]

The process could have benign effect, as it does in the discussion of madness. It could even be helpful when, occasionally, Hobbes used revision to fix problems. A well-known example of this concerns the argument for absolutism. In the *Elements*, defending the proposition that sovereignty is necessarily unconditional, he asserted that all forms of government originate as democracies: since sovereignty is necessarily unconditional in democracies, it must be so in all successive forms of government.[74] However, he must have been uncomfortable with so prioritizing democracy: the discussion is dropped from *Leviathan* and the entire chapter dismantled, with its material distributed among several others (see Appendix II regarding the *Elements*, chapter 21).

Yet, as one would expect, his writing method also produced discrepancies and inconsistencies. Consider, in the most notable of instances, his several accounts of the political covenant (Table 2). The first account is vague with respect to the identity of the parties to the contract, while *De Cive*'s version adds the specifications that the parties are the incipient subjects and what they promise is nonresistance.[75] In *Leviathan*, famously, Hobbes adds the further idea that subjects authorize the sovereign's actions.

The evolution creates dual rationales for unconditional sovereignty in that work. Either sovereignty is unconditional because the sovereign is not party to the covenant or this is so due to the authorization relationship that ties subjects to the sovereign.[76] On the one hand, *Leviathan*'s account fills in a lacuna in the earlier version—namely the possibility that subjects might jointly decide to depose a ruler.[77] Yet, on the other hand, the two accounts also give inconsistent pictures

[72] Hobbes, *LV*, 8, pp. 140–45 (quotation appears on p. 141).
[73] Hobbes, *LV*, 8, p. 143; cf. *EL(G)*, 11.6–7, pp. 66–68, and *LV*, 12, pp. 170–71.
[74] Hobbes, *EL(G)*, 21.1–2, pp. 118–19. See *DC*, 7.5, p. 109.
[75] In the *Elements*, nonresistance is specified several paragraphs later (Hobbes, *EL(G)*, 19.10, p. 107), but the specification of a covenant solely among the subjects is attached specifically to democracy (21.2, p. 119).
[76] Hobbes, *LV*, 18, pp. 230, 232.
[77] See *DC*, 6.20, p. 105.

Table 2: Comparison of the Three Covenant Passages

The Elements of Law	*De Cive*	*Leviathan*
Ch. 19. Of the Necessity and Definition of a Body Politic	Ch. 5. Of the causes, and first Originall, of civill Government	Ch. 17. Of the Causes, Generation, and Definition of a Common-wealth
§7: "The making of union consisteth in this, that every man by covenant oblige himself to some one and the same man, or so some one and the same council, by them all named and determined, to do those actions, which the said man or council shall command them to do; and to do no action which he or they shall forbid, or command them not to do."	§7: "This *submission* of the *wils* of all those men to the *will of one man*, or *one Counsell*, is then made, when each one of them obligeth himself by contract to every one of the rest, not to resist the *will* of that *one man*, or *counsel*l, to which he hath submitted himselfe."	¶13: "The only way to erect such a Common Power . . . is . . . to appoint one man, or Assembly of men, to beare their Person; and every one to owne, and acknowledge himselfe to be Author of whatsoever he that so beareth their Person, shall Act, or cause to be Acted."

of the relationship between ruler and ruled: in *De Cive*'s version subjects have merely not to interfere with government, whereas *Leviathan* actively implicates them in its actions. Thus the addition complicates Hobbes's defense of absolutism, since side-by-side in *Leviathan* now stand the early 'no contract'/nonresistance formulation and the later authorization logic. It is a major example of the way in which his writing process could turn developmental inconsistencies *between* works into internal inconsistencies *within*, in particular, *Leviathan*.

Such layers of argumentation have created interpretive disputes about even the most essential aspects of Hobbism. Recall the debates concerning religion and de facto authority that I briefly noted at the start, and consider the extent to which they turn on textual issues. Parts III and IV of *Leviathan* have received sustained attention over the past several decades—attention that extends, in fact, even into questioning the usual emphasis on Hobbes's secular political topics. Religion, Jeffrey Collins claims in *The Allegiance of Thomas Hobbes*, was more than a discrete subject in *Leviathan*: "conventional scholarship on Hobbes has failed . . . to grasp the fundamentally religious

nature of the Hobbesian project."[78] The claim has an obvious textual dimension since the *Elements* devotes only two of twenty-nine chapters to theology and ecclesiology (see Appendix II). As he must, Collins separates *Leviathan* from that work, which he accomplishes by distinguishing "dynamic" from "static" elements of the theory and emphasizing the former. Furthermore, he orphans the *Elements* and groups *De Cive* with *Leviathan*:

> It is certainly true that *De Cive*, the *Elements*, and indeed *Leviathan* contain broadly similar discussions of familiar Hobbesian docrines: the state of nature, natural rights, contracted sovereignty, the dangers of mixed constitutions, and so forth. These are generally static features of Hobbes's political thought, and only their small details evolved during the course of the English Revolution. However, *De Cive* contained entirely new and extensive theoretical discussion on the proper relationship between temporal and spiritual authorities… [T]he expansion of religious theorizing in the…work is so considerable as to constitute a difference in kind, not just degree.[79]

Much hinges on his definition of the relevant corpus. The substantive thesis crumbles if one rejects Collins's view of the relationship between the core political-theory texts: if the three are related as a single project, in which religion is originally treated as a minor topic, then it cannot be accurate to characterize *Leviathan* as a "fundamentally religious" work.

Collins's thesis addresses an interpretive thicket initiated by a series of articles by Richard Tuck on Hobbesian ecclesiology. Tuck portrayed *De Cive*, not the *Elements*, as aberrant. He contrasted chapter seventeen of *De Cive*—in which Hobbes states that the sovereign "is oblig'd as a Christian…to interpret the Holy Scriptures by *Clergy-men* lawfully ordain'd"[80]—with *Leviathan*'s assertion that the sovereign possesses complete ecclesiastical authority. From this, he concluded that Hobbes "must himself have believed that to a great extent [*Leviathan*] had *superceded*" *De Cive*.[81] But, in turn, Glenn Burgess and Johann

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[78] Collins, *Allegiance*, 4. A similar claim was made by A. P. Martinich, *The Two Gods of Leviathan: Thomas Hobbes on Religion and Politics* (Cambridge: Cambridge University Press, 1992).

[79] Collins, *Allegiance*, 61–62, see too 69.

[80] Hobbes, *DC*, 17.28, p. 249.

[81] Richard Tuck, "Warrender's *De Cive*," *Political Studies* 33 (1985): 313–4 (quotation appears on p. 313; emphasis mine); and *Hobbes* (Oxford: Oxford University Press, 1989), 27–31, 73–74, 83–91.

Sommerville challenged Tuck's account of Hobbesian ecclesiology and, along with it, his account of the relationship between the texts. They argued that any differences on the subject between the *De Cive* and *Leviathan* are superficial; and Sommerville downplayed that passage in chapter seventeen of *De Cive* as an aberration *within* the work.[82] These interpreters basically hold different views on the relationship between the several texts and differ in emphasizing one or another argument within them. Their disagreement reflects more than the horizons they bring to interpretation: it is rooted in the complexity of the texts themselves.

Hobbes's defense of de facto authority in *Leviathan*'s "Review and Conclusion" has been much debated since Quentin Skinner's classic 1972 article on the subject, "Conquest and Consent: Thomas Hobbes and the Engagement Controversy."[83] Here, seemingly, the issue is the relationship of new material to the contract theory developed in the earlier works and central in the body of *Leviathan*. Tuck opts for the view that the de facto argument represented a simple about-face.[84] Hoekstra (as quoted in the introduction) thinks the argument was simply one among several inconsistent positions that Hobbes endorsed throughout the several versions.[85] In essence, one side sees the defense of de facto authority as a novelty of *Leviathan*, whereas the other frames it as simply an extension of his familiar account of "sovereignty by acquisition." Here again, a substantive dispute involves a root disagreement over continuity and innovation, which in turn hinges on relating and weighting passages within the evolving series of texts.

Let us return to the general problem, as framed by Nauta and Hoekstra: How should the relationship between Hobbes's political-theory texts be understood, given their evident discrepancies and inconsistencies? The evidence in Appendices I and II, as well as the several tables above, supports the general view that the three political-theory

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[82] Glenn Burgess, "On Hobbesian Resistance Theory," *Political Studies* 42 (1994), p. 76, n. 65. Sommerville, *Hobbes*, 125; see generally 119–27.

[83] Quentin Skinner, "Conquest and Consent: Thomas Hobbes and the Engagement Controversy," in *The Interregnum: The Quest for Settlement 1646–1660*, ed. G. E. Aylmer (London: Macmillan, 1972), 79–98. Skinner has, however, come to a different view on this subject: see "Thomas Hobbes on the Proper Signification of Liberty," *Transactions of the Royal Historical Society*, 5th ser., 40 (1990): 145 n. 155; and *Hobbes and Republican Liberty*, ch. 6.

[84] Richard Tuck, "Introduction" to *Leviathan* by Thomas Hobbes (Cambridge: Cambridge University Press, 1991), ix.

[85] See also Hoekstra, "*De Facto* Turn," 46.

texts are related and continuous, which as I have said is widely held. Yet the evidence suggests we need to think about continuity in a *new* way. Nauta and Hoekstra, much as they otherwise differ, accept the common equation of continuity with consistency and discontinuity with inconsistency. (Nauta writes, "There is no 'fundamental reversal' or 'new direction' in Hobbes's position, but rather a development and an extension of a line of thinking which is already clearly visible in the earlier works."[86] For his part, Hoekstra's purpose in identifying a thematic "doctrine of doctrines" is to reveal an underlying consistency beneath the twists and turns over time in Hobbes's argumentation.) However, Hobbes's method of writing actually pulled in a different direction. His habit of inserting new material into existing discussions made *inconsistency* as much or more likely a concomitant of continuity as consistency. Think, for instance, of the evolution of the covenant passages. They are clearly continuous insofar as Hobbes kept adding new material to old, but the process resulted in rival—inconsistent—versions of the covenant logic in *Leviathan*. In his case, continuity bred inconsistency and contradiction as much as the opposite.

Conclusion

Attention to compositional process cannot, on its own, resolve Hobbism's puzzles, but it can clarify interpretive disputes and make us wary about the selective use of textual evidence. To frame its import more specifically, recall the critical queries set out at the end of the introduction. How, to start with the least critical, should understanding Hobbes's compositional process affect evaluation of interpretations? Can it help us distinguish a better from a worse interpretation? The process of serial composition makes *textual plausibility* an important criterion of interpretation. Interpreters need to be careful, in the first instance, that claims about and characterizations of Hobbes's political theory are plausible in terms of the facts of composition and chronology. For example, a strong claim that Hobbes's 'political theory' is fundamentally religious is implausible, given the sparing treatment of religion in the *Elements*. Although a necessary condition of good interpretation, textual plausibility cannot be a sufficient condition since it is

[86] Nauta, "Hobbes on Religion," 594.

possible for a textually plausible interpretive thesis to be ill-considered or erroneous in other dimensions.

Textual specificity is an antidote to the radical sceptic's worry about the instability—the "openness"—of the textual embodiment of Hobbes's political theory. On the one hand, as we have seen, the theory's textual embodiment cannot be defined or circumscribed in the abstract and, in this sense, the sceptic is correct that it is a matter of interpretive construction just as much as is the construction of meaning. On the other hand, the textual embodiment can be settled, at least to a reasonable degree, with respect to specific arguments. While it may seem implausible to describe Hobbes's 'political theory' as fundamentally religious, it is credible to describe religion as a key 'dynamic' theme in *De Cive* and *Leviathan*. *Specificity* pertains to claims about Hobbes's intentions as well as descriptions of his theory. McKenzie cautions us that the practice of serial composition, especially when it results in layered, complex works, makes general statements about intentionality inherently suspect.[87]

However, could we not ignore the compositional process and get on with studying the arguments themselves? The mistake in this third critical query is to oppose process to substance. In the numerous cases in which Hobbes's arguments evolved over time, no such thing as *an* argument on a subject exists.[88] Furthermore, given his habit of layering new formulations on top of old, we have seen how multiple accounts can subsist within a single text. For such complex works, Hoekstra's criticism of 'philosophical' interpretation is apt: it is an error to identify one or another strand as Hobbes's definitive view. Rather, these are better regarded, as Love advised for serial compositions generally, as arguments that augment one another in the fashion of "variations on a theme." For these reasons, *textual archaeology*—meaning study of the process of composition—is a necessary aspect of interpretive work.

As matters now stand in Hobbes studies, however, textual archaeology is hampered by the lack of a multiple-text edition. Most desirable would be one that reproduces—side by side, section by section—*The Elements of Law, De Cive, Leviathan*, and even salient portions of the

[87] See McKenzie, *Sociology of Texts*, 36–37.

[88] Quentin Skinner makes this argument with regard to Hobbes's discussions of liberty in *Hobbes and Republican Liberty*, xv–xvi.

Latin *Leviathan, De Corpore* and *De Homine*. The closest approximations are marginal references in some editions, narrative comparisons, and charts showing chapter comparisons.[89] But these are difficult to follow or offer inadequate information, which leaves scholars needing to work out comparisons again and again in ad hoc fashion. A multiple-text edition would facilitate our analysis of the evolution of particular arguments and support systematic overviews of the larger sweep of changes through the multiple texts.

On a continuum of textual difficulty, Hobbes's political theory stands at the farther extreme away from the simpler texts produced by present-day compositional practices. He complicated the early-modern process of serial composition by the way in which he went about inserting new material and moving old around. Still, the standards that can help us make sense of the impact of process on his political theory—textual plausibility, specificity, and the need for textual archaeology—are more generally applicable. Interpretations ought always to be textually plausible, specific, and to take into account developments in an author's thinking. Otherwise, as Gadamer taught us, we risk eliminating the "horizon" of the text from the interpretive enterprise.[90]

[89] Warrender's editions of the English and Latin *De Cive*s give marginal references to parallels in the *Elements* and *Leviathan*; Rogers and Schuhmann, "Introduction," and Schuhmann, "*Leviathan* and *De Cive*," provide narrative comparisons; Gaskin's edition of the *Elements* charts chapter comparisons with *De Corpore* as well as the two other political works.

[90] Hans-Georg Gadamer, *Truth and Method*, trans. ed. by Garrett Barden and John Cumming (London: Sheed & Ward, 1975).

Appendix I
Chapter Parallels, *Leviathan* 1–12 and *The Elements of Law*, 2–13*

Leviathan, Part I: Of Man	*The Elements of Law*, Part I: Human Nature
1. Sense	2. Cause of Sense
2. Imagination	3. Imagination…
3. [T]he Train of Imaginations	4. Discursion of the Mind
4. Speech	5. Discourse of the Tongue
5. Reason and Science	6. Knowledge… ¶1 & 4. definition of science
6. Passions	§: "Faculties Motive" 7. Delight and Pain; Good and Evil
[10. Of Power, Worth, Dignity, Honour]	8. Pleasures of the Sense; Honour 9. Passions of the Mind
7. [T]he Ends…of Discourse	*[6.6–8]*
8. [Intellectual] Vertues…[and] Defects	10. Difference[s]…in Discerning faculty
9. Knowledge	*[6. Knowledge…]*
10. Power…Honour… ¶49–54: deliberation; will; voluntary action	*[8.5. HONOUR]* 12. …by Deliberation proceed Actions
11. Difference of Manners	13. How…Men Work [on] other's Minds
12. Of Religion	*[11. Imagination…[at] things Supernatural]*

* Chapter titles are abbreviated. Bracketed italicized references indicate changes in organization. In the construction of the appendices, the Gaskin edition of the *Elements—EL(G)*—has been augmented by the 1928 Tönnies edition (*EL(T)*).

Appendix II
Outline of *The Elements of Law*, Chapters 14–29, *De Cive*, Chapters 1–18, and *Leviathan*, Chapters 13–31, 39–43, including illustrative parallels*

The Elements of Law	*De Cive*	*Leviathan*
Part I (cont.)	Liberty	Part I (cont.)
14. Estate and Right of Nature	1. State of men without civill Society	13. Naturall Condition of Mankind
15. Divesting Natural Right	2. Law of Nature concerning contracts	14. Naturall Lawes, and of Contract
16. Some Laws of Nature §1: perform covenants	3. Other Lawes of nature §1–2: perform covenants	15. Other Lawes of Nature ¶1: perform covenants
17. Other Laws of Nature §1: acknowledge equality	§13: acknowledge equality	¶21: acknowledge equality
18. Confirmation . . . out of the Word of God	4. Law of nature is a divine Law	
		16. Persons, Authors . . .
	Empire	Part II: Common-wealth
19. Definition of a Body Politic	5. First Originall, of civill government	17. Definition of a Commonwealth
Part II: De Corpore Politico		
20. Constitution of a Commonwealth	6. Right of him . . . who [has] supreme authority	18. Rights of Soveraignes by Institution **¶3–5: political covenant precludes accountability**
specific rights of sovereignty	specific rights of sovereignty	¶6–15: specific rights of sovereignty
21. Three Sorts of Commonwealth	7. Three kindes of Government	*Subjects moved to chapters 16, 18, and 21.* *[Ch. 19 appears below.]*

Appendix II (*cont.*)

The Elements of Law	*De Cive*	*Leviathan*
22. Power of Masters	8. Right [of] Lords and Masters	20. Of Dominion Paternall, and Despoticall
23. Power of Fathers, and of Patrimonial Kingdom	9. Rights [of] Parents . . . and Kingdome Paternall	
§3: preservation basis of rightful dominion	§4: preservation	¶5: Preservation implies promise of obedience
		21. Liberty of Subjects
[Ch. 21.12–16: discharge of subjection]	*[Ch. 7.18: release from subjection]*	¶21–25: releases from subjection
24. Incommodities of Several Government[s]	10. Comparison of the three kinds of government	*[19. Severall Kinds of Common-wealth]*
	11. Scripture concerning the right of government	*[20. ¶16–17]*
		22–25, 27–28: Subject Systems; Public Ministers; Nutrition and Procreation of a Commonwealth; Counsell; Crimes; Punishments and Rewards *[Ch. 26 appears below.]*
25–26. Decision[s] [on] Religion Depend on the Sovereign Power		
27. Causes of Rebellion	12. Causes which dissolve all civill government	29. Things [tending] to Dissolution of a Commonwealth
28. Duty of them [with] Sovereign Power	13. Duties of those men . . . at the Helm of State	30. Office of the Soveraign Representative
29. Nature/Kinds of Laws	14. Lawes, and Sinnes	*[26. Civill Lawes]*
		[Ch. 31 appears below.]

Appendix II (*cont.*)

The Elements of Law	*De Cive*	*Leviathan*
	Religion	Part III: Christian Commonwealth **Chs. 32–38**
	15–17. Gods government by nature; old Covenant; new Covenant	*31*, 40–42. Kingdome of God by Nature; in Abraham [etc.]; Blessed Savior; Power Ecclesiastical
	17.19–21: nature of a Church	*[39. Signification of the word Church]*
	18. Things necessary for entrance into Heaven	43. What is Necessary for Reception into Heaven
		Part IV. Kingdome of Darkness **Review and Conclusion**

* Chapter and section titles are abbreviated. Bracketed italicized references indicate reorganization of material; new material is denoted in bold.

AFTERWORD

CHAPTER SEVEN

AFTERWORD: THEORISTS OF THE ABSOLUTIST STATE

> Bayle and Hume, as did Bodin, Grotius, and Hobbes, take it for granted that a thinker must defend, above all, the notion of the *sovereignty* of a state… Absolute *sovereignty*—not absolute *monarchy*—combined with a government which upheld the public religion, and which tolerated certain minorities, was thus a presumed condition of the well-managed and peaceful state.
>
> —Sally Jenkinson, "Bayle and Hume on Monarchy, Scepticism, and Forms of Government"

A focus on the social-contract tradition obscures a coherent line of thought that linked Hobbes (but decidedly not Locke) with Bodin and Grotius and that even has affinities with the outlook of the contractarians' best-known critic. This line of thinking could encompass Hume because it was defined by shared political concerns and goals rather than by a shared idiom for talking about politics or shared ideas about the desirable form of government. These thinkers held in common the conviction that only a strong state could resolve the religious conflicts that characterized their post-Reformation societies.

Although it can be described as the intellectual arm of early-modern state-building in northern Europe, we lack a handy term for the group. Nineteenth-century thinkers used the term 'absolutist' as a label to describe this stage in state-building by virtue of its characteristic projects of centralization and unification, but absolutism in the sense of unified and unconditional rule was defended only by Hobbes.[1] For the same reason, the group cannot be labeled with the negative term, 'antirepublican,' since all but Hobbes admitted at least the

[1] For a history of the term 'absolutist,' beginning with its usage by Hegel's successor at the University of Berlin, see Istvan Hont, *Jealousy of Trade: International Competition and the Nation-State in Historical Perspective* (Cambridge, Mass.: Harvard University Press/Belknap, 2005), 459–60. See also Nicholas Henshall, *The Myth of Absolutism: Change & Continuity in Early Modern European Monarchy* (London: Longman, 1992), ch. 1.

possibility of mixed government.[2] Their theories shared ideas with the Machiavellian-Tacitist 'reason of state' tradition but in various respects also differed from it, notably in Grotius's and Hobbes's use of the language of natural jurisprudence.[3] On a present-day political map, they might be labeled 'conservative,' but they were hardly so in the period; to the contrary, their theories attacked inherited political forms and did so using novel secular reasoning.

Lacking a better label, I will simply term them 'theorists of the absolutist state' in view of their shared preoccupation with the historical tasks that we now define as characteristic of early-modern European state-building. Although a broad (and anachronistic) category, it has the advantage of directing attention to the political project they had in common. They were theorists *of* the absolutist state in the sense that they saw construction of a strong state, capable in particular of controlling religious conflict, as the central problem of their societies.[4] The upshot of defining a Bodinian-Grotian-Hobbesian tradition in this way is a midrange interpretive focus, leveled somewhere between foundational philosophic assumptions and current political events. To be sure, all three were caught up in the politics of their day and, to varying degree, they attempted to offer philosophical foundations for their arguments, but they were also engaged in something more fundamental than the former and more worldly than the latter: they were abetting a transformation in the structure of their societies.

Is the trail of influence that links the three thinkers (which was detailed in chapter four) sufficient to warrant labeling theirs a 'tradition'?[5] If traditions are defined by a shared idiom, as is the case for

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[2] As the editors of the volume, *Monarchisms in the Age of Enlightenment*, point out, classic republicanism included a monarchic element (Hans Blom, John Christian Laursen and Luisa Simonutti, ed., *Monarchisms in the Age of Enlightenment: Liberty, Patriotism, and the Common Good* [Toronto: University of Toronto Press, 2007], 6).

[3] Cf. Noel Malcolm, *Reason of State, Propaganda, and the Thirty Years' War: An Unknown Translation by Thomas Hobbes* (Oxford: Clarendon Press, 2007), ch. 6, esp. 118–19, and Istvan Hont, *Jealousy of Trade*, chs. 1 and 7.

[4] See Preston King, *The Ideology of Order: A Comparative Analysis of Jean Bodin and Thomas Hobbes* (New York: Barnes & Noble, 1974), for a definition of absolutism in terms of *movement* towards centralization as opposed to its accomplishment, 83–84.

[5] It has seemed so to Quentin Skinner: "[T]wo main traditions of absolutist political philosophy" had "become established by the close of the sixteenth century. One of these was the providentialist tradition, later associated in particular with Filmer in England and Bossuet in France. The other was the more rationalist tradition stemming from Bodin and the neo-Thomists, and reaching its climax in the natural-law systems

contract theory, they do not. While essays in this volume have noted two other typical features of early-modern contract theories—namely, a tendency to combine voluntarist and nonvoluntarist claims (chapter four) and a preoccupation with the subject of resistance (chapters one and two), in other respects—visions of the best form of government most notably—contract theories were all over the board. As well as using different philosophical styles and idioms, Bodin, Grotius, and Hobbes also disagreed about forms of government. What they shared, instead, was an understanding of the state, its tasks and place in human life.[6] Conceptualized as the basis of a tradition, this understanding provides a context in which to locate and compare their discussions of local political issues and events, and it facilitates comparisons, more broadly, with other theories of similar outlook. Jenkinson's comment, quoted initially, picks out the two defining themes of the tradition: a concern with state sovereignty and a fear of religious civil war. To these I will add below: secularism; 'quasi-normativity,' meaning a habit of blending descriptive and prescriptive statements; and, lastly, a sensibility best described as the 'absolutism of fear.'

Bodin's *République* earned a place in the canonical history of ideas for the single idea that an ultimate authority, accountable only to God, is a necessary feature of the state as a political unit. "Soueraigntie," he wrote, "is the most high, absolute, and perpetuall power ouer the citisens and subiects in a Commonweale"; "the prince or people themselues, in whome the Soueraigntie resteth, are to giue account vnto none, but to the immortall God alone."[7] Just so, Grotius echoed, sovereign power is "That power . . . whose actions are not subject to the legal control of another, so that they cannot be rendered void by the operation of another human will."[8] And Hobbes in turn declared that "In every perfect City . . . there is a *Supreme power* in some one, greater then which cannot by Right be conferr'd by men . . . that power . . . we call

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of Grotius and Pufendorf. John Locke in the *Two Treatises of Government* may be said to have mounted the definitive attack on both these traditions" (*Foundations of Modern Political Thought*, Vol. II, *The Age of Reformation* [Cambridge: Cambridge University Press, 1978], 347).

[6] In the Conclusion of *Foundations*, vol. II, Skinner discusses the emergence, by the early seventeenth century, of a focus on a concept of the State (349–58).

[7] Bodin, *SB*, I.viii, pp. 84, 86. See the discussion of "Bodinian Absolutism" in chapter 4.

[8] Grotius, *DJB*, I.iii.7, p. 102. See chapter 4, above, on "Grotian Contractarianism."

ABSOLUTE."[9] However plausible or implausible, it was a timely idea that reflected and rationalized the centralization of political authority, which we characterize retrospectively as the key feature of early-modern state-building in Europe. It entailed, on the ground, a changed conception of rulers' authority: in a feudal political landscape, rulers were *primus inter pares* and were seen, as all political actors were, as possessors of a set of rights and prerogatives. But as multilayered, decentralized feudal polities turned into unitary nation-states, rulers' authority came to be thought of as "more unitary and abstract, more *potential*, as it were."[10] Bodin gave early-modern philosophers a language for conceptualizing the change.

Religious civil war was the problem for which absolutism was the solution. It was a matter of personal experience for these men, as it was for subjects across Europe. The backdrop to the absolutism of the *République* was the massacre of Huguenot leaders on St. Bartholomew's Day in 1572, to which Bodin was witness. Forty-six years later, Grotius came close to execution when his side lost in a 1618 Dutch coup that was brought on by intra-Protestant strife.[11] For his part, Hobbes often thought he was in personal danger and famously bragged that he was "the first of all that fled" the Civil War (almost two years before its start), a conflict which he attributed to the machinations of "ambitious ministers and ambitious gentlemen."[12] These experiences shine through in their arguments for absolutism—arguments, specifically, against resistance to established authority and divided sovereignty. The initial presentation of Hobbes's political theory, *The Elements of Law*, made plain the salience of absolutism to religious conflict. The first of two successive chapters on religion in the work, "Private Judgments in Controversies of Religion" (25), addresses religious grounds for resistance, which Hobbes tries to nullify and to convince readers,

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[9] Hobbes, *DC*, VI.xiii, p. 97. See the section "Hobbesian Contractarian Absolutism" in chapter 4.

[10] Gianfranco Poggi, *The Development of the Modern State: A Sociological Introduction* (Stanford: Stanford University Press, 1978), 74.

[11] Regarding Bodin, see Skinner, *Foundations*, vol. II, 284–86. Grotius was initially sentenced to death but this was later reduced to life imprisonment, partly, it must be said, because he testified against his patron, who was executed (Tuck, *Philosophy and Government*, 181–84).

[12] "Considerations upon the Reputation, Loyalty, Manners, and Religion, of Thomas Hobbes of Malmesbury," *English Works of Thomas Hobbes of Malmesbury*, ed. Sir William Molesworth, vol. IV [London: J. Bohn, 1840], 414; Thomas Hobbes, *Behemoth or the Long Parliament*, ed. F. Tönnies, 2nd ed. (London: Frank Cass, 1969), 23.

instead, "That in Christian commonwealths, obedience to God and man stand well together." The next is titled, "That Subjects are not Bound to Follow the Judgment of any Authorities in Controversies of Religion which is not Dependent on the Sovereign Power"; here, as the title telegraphs, Hobbes supplies religious arguments against divided church-state authority.[13] Similarly, Bodin's *République* had had the immediate ideological purpose of refuting Huguenot resistance theory.[14]

Also, consistent with their general hostility to divided authority, all three opposed church claims—whether Calvinist or Catholic—to supreme authority in religious matters, albeit in different ways.[15] While they shared a skeptical attitude toward this and other doctrinal claims, they were not in complete agreement on the best route to civil peace. Bodin urged rulers to tolerate the private exercise of religion and not to alter established faiths.[16] Grotius looked, instead, for toleration within a public church and paired this with a minimalist account of religion. "Every individual," he held, "is judge over his own religious conviction"; "the Church itself decides on the faith of the Church; but nobody has the right to decide on the faith of the Church inasmuch as it is public, except for him in whose hand and power all public bodies lie."[17] *De Jure Belli ac Pacis* reduces the "absolutely necessary" tenets of religion, which are "in the highest degree universal," to the proposition, "there is a divinity (I exclude the question of

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[13] Hobbes, *EL(G)*, "Chapters and Table of Contents," pp. 14–15. The work contains only one other chapter on religion, which contrasts with the lengthy treatment of the subject in Parts III and IV of *Leviathan*. That third chapter (18) supplies Scriptural confirmation for the laws of nature that were laid out in the previous two chapters (p. 10).

[14] Julian H. Franklin, *Jean Bodin and the Rise of Absolutist Theory* (Cambridge: Cambridge University Press, 1973), 41, 50–51; Skinner, *Foundations*, vol. II, 285: "Given this vision of the frailty of 'order' and the paramount need to maintain it, Bodin clearly saw his major ideological task…as that of attacking and repudiating the Huguenot theory of resistance, which he had come to regard as the greatest single threat to the possibility of re-establishing a well-ordered monarchy in France."

[15] Bodin, *SB*, I.9, p. 146; III.2, p. 290; III.3, p. 300.

[16] Bodin, *SB*, IV.7, pp. 535–39. See Skinner, *Foundations*, vol. II, 352.

[17] Hugo Grotius, *Ordinum Hollandiae ac Westfrisiae Pietas*, ed. and trans. Edwin Rabbie (Leiden: E. J. Brill, 1995), §118, p. 189. See Henk J. M. Nellen, "Hugo Grotius's Political and Scholarly Activities in the Light of his Correspondence," in *Property, Piracy and Punishment*, ed. Hans W. Blom (Leiden: Brill, 2009): 25–26; and Jan Rohls, "Calvinism, Arminianism and Socinianism in the Netherlands until the Synod of Dort," in *Socinianism and Arminianism: Antitrinitarians, Calvinists and Cultural Exchange in Seventeenth-Century Europe*, ed. Martin Mulsow and Jan Rohls (Leiden: Brill, 2005), 3–48.

there being more than one) and that he has a care for the affairs of men."[18] Hobbes defended another version of religious minimalism as well as the authority of the state over religion. He told fellow subjects, "All that is NECESSARY *to Salvation*, is contained in two Vertues, *Faith in Christ*, and *Obedience to Laws*"; moreover, all that God requires is "a serious Endeavour" of obedience.[19] By combining this doctrine with the institution of a state-controlled national church, he further explained, "it is not hard to reconcile our Obedience to God, with our Obedience to the Civill Soveraign."[20]

Part and parcel of their preoccupation with religious conflict was the secularism of their theories. All three were notorious for advancing secular arguments, which opened them to the dangerous charge of atheism. Grotius was the boldest, proclaiming in the opening pages of *De Jure Belli ac Pacis*: "What we have been saying would have a degree of validity even if we should concede that which cannot be conceded without the utmost wickedness, that there is no God, or that the affairs of men are of no concern to Him."[21] Hobbes burned correspondence, late in life, from fear of prosecution for heresy, and indeed in 1666 a parliamentary committee cited *Leviathan* as exemplary of books "as tend to Atheisme Blasphemy or Prophanenesse or against the Essence or Attributes of God."[22] The political foundation of their secularism is obscured if we regard their political theories as derivations from assumptions about individual psychology and morality, as the social-contract metaphor dictates. Regarding these thinkers as theorists of a

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[18] Grotius, *DJB*, II.20.46, p. 513. This was elaborated (though with the exclusion of polytheism) in terms of four principles that are common to "true religion" in all ages: there is one God; who is more exalted than anything we see; who cares for and judges human affairs, and is the creator of all things (II.20.45, pp. 510–11). This material is discussed in Richard Tuck's, *Philosophy and Government*, 184–95.

[19] Hobbes, *LV*, 43, pp. 610–11. He summarizes: "Whosoever therefore unfeignedly desireth to fulfill the Commandements of God, or repenteth him truely of his transgressions, or that loveth God with all his heart, and his neighbor as himself, hath all the Obedience Necessary to his Reception into the Kingdome of God: For if God should require perfect Innocence, there could no flesh be saved (611).

[20] *LV*, 42, p. 575, and 43, p. 624.

[21] *DJB*, "Prolegomena," p. 13.

[22] BL MS Harl. 7257 (journal of the House of Commons, 1665–6), p. 220 (17/[27] Oct. 1666), quoted in Noel Malcolm, "General Introduction" to Thomas Hobbes, *The Correspondence*, vol. I (Oxford: Clarendon Press, 1994), xxv. Regarding Bodin, see J. H. M. Salmon, *The French Religious Wars in English Political Thought* (Oxford: Clarendon Press, 1959), 23: he was "notorious as a rationalist in his religious opinions" and "was represented by Ben Jonson . . . as an atheist fit for the company of Machiavelli."

certain kind of state (or of the state at a certain period in European history) brings out, instead, the politics behind and embedded in their arguments. Secularism—together with the principles of toleration and/or religious minimalism—was a means to ending religious conflict by way of transcending it.

A focus on theories of the absolutist state directs attention to political subjects more generally, in contrast to the preoccupation with individual consent, interest, and obligation that characterizes contract thinking in our time. Looking at the tradition directs attention, first, to discussions of the state functions and bodies that were key to early-modern state-building—principally, taxation, the military, and a bureaucracy. A reading could focus on policy advice in these areas, as opposed to the formal legalities of absolutism or its philosophical foundations. Instead of concentrating on absolutism's license for tyranny—and therefore, as is often done, dismissing absolutism as the least interesting part of these theories—we need to analyze how the absolutist state was supposed to work. Consider, for instance, Hobbes's views on succession and governmental transition, which were discussed in chapters one and three. While these are rarely (if ever) regarded as important topics in Hobbism, I argue there that he would have to concur with Hume's insistence on their political importance.[23] More attention needs to be given, as well, to the observations about political dynamics that inform discussions of political institutions. Recall, for example, the parallel Hobbesian and Bodinian generalizations concerning the politics of divided power which were discussed in chapters four and five. Their humanist and jurisprudential languages do not sound like political 'science' to our ears. But unless these thinkers were blind state worshippers, which they were not, they must have had empirical, political grounds for preferring absolutism to accountable and divided government. For politically-inclined readers like myself, the theories come alive when we regard them as describing and analyzing politics in a political world very different from our own.

We also need to pay more attention to discussions of international relations, colonialism, and commerce, in the vein of recent work by Noel Malcolm and Edward Keene. Malcolm takes on the well-worn

[23] David Hume, *A Treatise of Human Nature*, ed. E. C. Mossner (Harmondsworth, Middlesex: Penguin/Pelican, 1969), 604–14, and "Of the Original Contract," in *Essays: Moral, Political, and Literary*, ed. E. F. Miller (Indianapolis, Indiana: Liberty Fund, 1987), 481–82.

'realist' equation of Hobbes's state of nature with the relationship between states. The equation mistakenly assumes, he shows, that states parallel individuals as agents; in fact, Hobbes's theory is guided solely by the principle of individual self-preservation and lacks a parallel concept of a right/duty of state preservation. Thus, *salus populi*, the good of the people *in the plural*, must be the literal aim of international as well as domestic policy, which way of thinking seriously limits the occasions for just war.[24] To what extent, one might ask, is this characteristic of early-modern absolutist theory more generally?[25] Keene's work on Grotius on international relations and colonialism (*Beyond the Anarchical Society*, 2002) is similarly provocative. As the colonial relationship of Europeans to non-Europeans evolved in the early-modern period, he argues, it instantiated Grotian principles of international relations that were quite different from the Westphalian model of mutually-independent states that came to prevail within Europe. In particular, a Grotian notion of the divisibility of sovereignty *across* territorial borders justified colonial relations as involving a "free exchange of legal rights" from indigenous leaders to metropole authorities (including such quasi-public entities as the Dutch East India Company).[26]

Last, I want to turn to two less-obvious themes that become apparent by considering theories of the absolutist state as a group: the 'quasi-normativity' of their reasoning, and their sensibility, the 'absolutism of fear.' By 'quasi-normativity' I have in mind the blending of descriptive and prescriptive statements that earlier (chapter four) I referred to as 'prescription by definition.' Bodin inaugurated a style of argumentation that employed descriptive statements for prescriptive purpose, as in the characteristic claim that absolute sovereignty, which is the desirable constitution of political authority, can be identified in every state. It was a style of argumentation similar to that found in early-modern 'reason of state' theorizing. Malcolm has observed about the latter that "it straddled the descriptive-normative divide: it was possible both to say (as Botero did) that rulers generally act out of interest, and to

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[24] Noel Malcolm, "Hobbes's Theory of International Relations," in *Aspects of Hobbes* (Oxford: Clarendon Press, 2002), esp. 441 and 448.

[25] See, e.g., the discussion of the principle of *salus populi* by Bodin, *SB*, IV.3, p. 471, in which a plural formulation is used to describe a moment of danger in Athens: "otherwise the Lacedemonians had vndone the citizens together with the citie."

[26] Edward Keene, *Beyond the Anarchical Society: Grotius, Colonialism and Order in World Politics* (Cambridge: Cambridge University Press, 2002), 82.

suggest that 'interest' constituted some kind of justification for acting."[27] Perhaps Bodin learned the style from Machiavelli or others of the 'reason of state' school; however, where those thinkers used it in connection with rulers' actions, he applied it to constitutional issues.

Once one notices 'quasi-normativity,' it becomes apparent that it littered the landscape of early-modern political and social philosophizing. In chapter four, I discussed contract theory's peculiar blend of voluntarist and nonvoluntarist claims, in the form of the typical assertion that a contract of a particular sort both would and should be chosen. This, clearly, is a variant of 'prescription by definition' and, I argued in that chapter, was something Hobbes appears to have learned from Bodin and which subsequently was passed down to Rawlsian theory. In this regard, therefore, it may be apt to conclude that 'modern' contract theory owes one of its most fundamental—and problematic—features to early-modern absolutist and reason-of-state argumentation. Moreover, the 'natural jurisprudence' of Grotius and Hobbes had a similar character inasmuch as they derived prescriptive natural law from propositions about human nature universally.[28] This is among the points at which there is an affinity between absolutist theory and Humean philosophy, albeit one that Hume missed (or ignored) by making Lockean contract thinking his foil. Where he might have noted a parallel between the 'naturalism' of his thinking and their natural jurisprudence, both being efforts to root philosophical principles in ordinary impulses and experience, he instead concentrated on how alien the contract story was to everyday political experience.

Many years ago, I framed the idea of viewing early-modern thinkers as observers on the ground of the development of the state in Western Europe. It was, I have come to realize, an anachronistic idea insofar as it presupposed a distinction between observation and prescription. Clearly these thinkers were innocent of the (Humean) knowledge that 'ought' cannot be derived from 'is'[29] and developed a hybrid in a number of different forms. It may not be speculating too wildly to

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[27] Malcolm, *Reason of State*, 95. I take the term 'quasi-normativity' from this discussion (94).

[28] Tuck, *Philosophy and Government*, esp. 190.

[29] Hume, *Treatise*, 520–21. Regarding the contrast between Hobbes and Hume on the issue, see C. B. Macpherson, *The Political Theory of Possessive Individualism: Hobbes to Locke* (London: Oxford University Press, 1962), 81–87.

suggest that it was a style of argumentation suited to the dependence and powerlessness of many early modern thinkers. How better to change the world than to convince others that it already (and always) is as the writer desires it to be?

Judith Shklar taught us about the 'liberalism of fear,' as distinct from the liberalisms of rights and of property.[30] There is what might be termed an 'absolutism of fear' to be found in some of the theories covered here. Hobbes, who had a better way with words than most, put it best:

> I [the 'Philosopher'] am one of the common people, and one of that almost infinite number of men, for whose welfare Kings and other sovereigns were by God ordained: for God made Kings for the people, and not people for Kings. How shall I be defended from the domineering of proud and insolent strangers that speak another language, that scorn us, that seem to make us slaves, or how shall I avoid the destruction that may arise from the cruelty of factions in a civil war, unless the King…have ready money, upon all occasions, to arm and pay as many soldiers, as for the present defence, of the peace of the people, shall be necessary? Shall not I, and you, and every man be undone?[31]

We find similar sentiments in the *République*. Bodin illustrated the danger of elite conflict with a story (attributed to Plutarch) about a "maid": "her suters enter into such a jelousie and passion, as that desiring euerie one of them to haue her to himselfe, they so instead of louing and embracing of her, most cruelly rent her in peeces amongst them."[32] Like Hobbes, he represented himself as a champion of the ordinary people, bragging, for instance, about successfully defending the third estate (the "Comminaltie") against the clergy, nobility, and king in a parliament at Blois in 1576.[33]

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[30] Judith N. Shklar, *Ordinary Vices* (Cambridge, Mass.: Harvard University Press/ Belknap, 1984), 237.

[31] Thomas Hobbes, A *Dialogue between a Philosopher and a Student of the Common Laws of England*, *English Works*, vol. VI (1840), 13. I discussed Hobbes's version of this sensibility in *Hobbes's Political Theory* (Cambridge: Cambridge University Press, 1988), ch. 7.

[32] Bodin, *SB*, IV.5, p. 494. A margin note summarized: "Contention betwixt great magistrats or courts, about their power and jurisdicton, alwais vnto the poore subject hurtfull" (III.6, p. 356). See, too, IV.4, p. 476: "cities, citisens, and Commonweales, vse commonly to be for nothing more turmoiled and troubled than by men for the obtaining of offices and honours. Also, *SB*, IV.7, p. 519: "if one shall say, That seditions, and ciuill warres, are good, hee might also say, that murders, parricides, adulteries, theft, and the subuersion of estates & Commonweales are also good."

[33] Bodin, *SB*, III.7, pp. 370–71. See Franklin, *Jean Bodin*, 90–91.

Inasmuch as Grotius saw a strong state as necessary to control civil disorder, he shared their sensibility, but in other respects he did not. It would have been disingenuous for someone who as a young man wrote briefs for the Dutch East India Company and was a close associate of the leader of the Dutch Republic, and who at the end of his life served as Swedish ambassador to France, to represent himself as an ordinary person.[34] Nor does his theory fit a model of 'defensive' absolutism. Where the emphasis on fear plays out in Hobbes's theory in a vision of a state organized to damp conflict at home and provide defense against attack from abroad, Grotius was intent on justifying a very different sort of entity, an aggressive state intent on dominating the race to colonize the outer world.[35]

When Jenkinson links Hume to the early-modern theorists of the absolutist state, it is the sensibility behind the 'absolutism of fear' that she has specifically in mind. "As with the theorists of absolute sovereignty, Hume assumes that the first purpose of government is to secure society from 'convulsions'." More particularly, she elaborates, "Hume continues to feel threatened by the historic memory of Catholic Christendom. In consequence, he continues to emphasize that in each society there must be an ultimate decision-making authority and that it must be a civil authority and not a religious authority."[36] Beyond this, Hume was, of course, a thinker of a very different stripe from the sixteenth- and seventeenth-century absolutists, and a strong state was more than merely an aspiration in eighteenth-century Britain.[37] He was, if not truly a conservative, at least an 'establishment' thinker, as could not have been said of the absolutist thinkers:[38] they were intent

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[34] To the contrary, writing *De Jure Belli ac Pacis* in exile, he describes himself as "undeservedly forced out from my native land" and now consigned to study in private and deprived of the opportunity for public service, which "I practised with the utmost degree of probity of which I was capable" ("Prolegomena," pp. 20–21).

[35] This contrast is drawn by Hont, *Jealousy of Trade*, 16–17.

[36] Sally Jenkinson, "Bayle and Hume on Monarchy, Scepticism, and Forms of Government," in *Monarchisms*, ed. Blom et al., 69, 71.

[37] Nicholas Phillipson discusses Hume's awareness of this transformation in *Hume* (London: Weidenfeld & Nicolson, 1989), ch. 2.

[38] Cf. David Miller, *Philosophy and Ideology in Hume's Philosophical Thought* (Oxford: Clarendon Press, 1981), who argues in the concluding chapter that Hume's thought had both liberal and conservative features and is better labeled an "establishment" ideology; and Anthony Quinton, *The Politics of Imperfection: The religious and secular traditions of conservative thought in England from Hooker to Oakeshott* (London: Faber and Faber, 1978), who labels Hume's philosophy "conservative rationalism" (45).

on changing the common understanding of political authority and thereby changing the nature of political authority itself.

Of course the 'absolutism of fear' was the very opposite of the 'liberalism of fear.' In Shklar's words, the liberalism of fear "concentrates . . . single-mindedly on limited and predictable government" because "it begins with the assumption that the power to govern is the power to inflict fear and cruelty and . . . no amount of benevolence can ever suffice to protect an unarmed population against them."[39] Born of the experience of religious civil war, the 'absolutism of fear' went out of fashion when the state became what early-modern absolutists had wished it to be. A remark by Hobbes in *De Cive* marks the gap between the absolutism of fear and the liberalism of fear: "Wherefore some *Nero* or *Caligula* reigning, no men can undeservedly suffer, but such as are known to him, namely, Courtiers, and such as are remarkable for some eminent Charge."[40] No modern philosopher could have written that. However, although the object of fear changed, we nonetheless still think about politics in ways—including the idea of the social contract—that were inaugurated by theorists of the absolutist state.

[39] Shklar, *Ordinary Vices*, 238–39.
[40] Hobbes, *DC*, X.7, p. 134.

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