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Reinterpreting the Frameworks: Hobbes & Grotius on the Right of Resistance, Slavery, & *Ius Naturale*

By

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The seventeenth century marks several radical philosophical and political changes for Europe. For the former, the century saw the beginnings of challenges posed to conceptions of natural rights which dated to Aquinas based on new, and increasingly secular, interpretations of how individuals justly related to one another and their states. For the latter, the century was marked both by both an intensification of oceanic exploration and trade with non-European powers, and interstate and civil conflicts. These two matters are not unrelated; existing philosophical accounts governing rights and just relations between individuals and their states did not neatly encapsulate the new developments of the century, and these new events demonstrated insufficiencies in the contemporary accounts that new writers could address.

Two such writers who emerged during this period are Hugh Grotius and Thomas Hobbes. Individually, their respective contributions to political theory are already widely acknowledged; Grotius' formulation of international law regarding the seas as international territory and just war theory in *De Jure Belli ac Pacis* and *De Jure Praedae*, and Hobbes' formulation of natural rights based social contract theory in *Leviathan*. Grotius makes his contributions in response to Portuguese protestations against Dutch traders sailing to India in violation of their *Mare Clausum* doctrine. Hobbes develops his thought in the turbulence of the English Civil War.

Richard Tuck argues in *Natural Rights Theories* and *The Right of War and Peace* that Grotius ought be considered as a foundational thinker of natural rights in the period, and a formative influence on the natural rights theory of Hobbes. In *Natural Rights Theories*, Tuck argues that Grotius' *De Jure Belli ac Pacis* was "the first major public expression of a strong rights theory to be read in Protestant Europe," with Hobbes and those influenced by him being of "the tradition which [Grotius] had helped to develop (and which he had almost single-handedly

created in Protestant Europe)."[1] Tuck bases this claim on grounds that, in his view, Grotius provides the language necessary for formulating natural rights in a modern context. He draws attention to Grotius' dual arguments for individuals possessing the capability to renounce or trade away their natural rights, and that for those rights which are traded away or renounced, that this must occur from a rational basis. To Grotius, individuals do possess natural rights to life and liberty, which they are free to trade away to the state as a condition of societal membership; it cannot be assumed that any rights have indeed been traded ex ante, and those rights which are traded must rationally advance societal interests. Tuck terms this "interpretive charity."[2] Tuck argues "[t]his is the argument that Grotius had used to defend the possibility of resistance and common ownership *in extremis*, and it is the argument that was to occur year after year in the pamphlets of the English radicals."[3] And importantly for Tuck, "[t]here is no reason to suppose that anyone using this argument had to have read Grotius."[4]

However, this interpretation of Hobbes as following in Grotius' footsteps is criticized by Perez Zagorin. Zagorin grants that "[b]oth Grotius and Hobbes developed their moral and political theories as an answer to scepticism and moral relativism , which provided them with their starting point," but, to Zagorin, further attempts to illustrate a Grotian influence on Hobbes rests on "several mistaken judgments."[5] The first of these is that Tuck views Grotius as putting forth a novel rationalist basis for his positions, rather than relying on the humanist tradition. Zagorin argues that this style of rationalist inquiry was already evidenced by Grotius' time, pointing towards Aristotle and Descartes as examples. Zagorin dismisses the notion of Grotius employing a novel investigatory technique as, he argues, the references to mathematics in

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[1] Tuck, Richard. *Natural Rights Theories: Their Origins and Development*. Cambridge: Cambridge University Press, 1979. 80 – 81.
[2] Ibid, 143.
[3] All quotes are presented as they appear in their respective texts.
[4] Ibid
[5] Zagorin, Perez. "Hobbes Without Grotius." *History of Political Thought* 21, no. 1 (Spring 2000): 16-40. 18, 21.

Grotius are purely rhetorical, and the arguments themselves demonstrate their humanist bases based on their normative content.[6] The second criticism consists of Zagorin submitting that Tuck incorrectly considers Grotius' *ius naturale* as akin to Hobbes' natural rights. His position is that, for Grotius, *ius naturale* consists of a series of moral absolutes or necessities. Because they can be understood through reason, they are absolute in their prescriptions and proscriptions. Zagorin considers Hobbes to deny that a rational basis is sufficient to make *ius naturale* absolute, but instead that they are only suggestions until made into law by a legitimate sovereign.[7] This leads Zagorin to conclude[8] that "there is no sign that [Hobbes' thought] owes anything to Grotius."[9]

On a surface level reading, there are marked similarities between Grotius and Hobbes. However, whether those similarities go beyond the surface is the crux of the disagreement between Tuck and Zagorin. In this paper I will evaluate the claims made by Tuck and Zagorin as to what extent Grotius influences Hobbes' philosophy. In Section One, I will lay out the operative portions of Grotius' and Hobbes' views on human nature, society, and natural jurisprudence from *De Jure Praedae, De Jure Belli ac Pacis*, *Leviathan*, and *De Cive* respectively. I will then turn to Tuck and Zagorin to examine how both evaluate these arguments to develop their own opposing views. Section Two will begin with an extended discussion of natural jurisprudence to evaluate how Grotius' *ius naturale*. This is because how the term is to be translated, either in the objective as 'natural law' or in the subjective as 'natural right' is central to evaluating any potential similarities between the two. I will then turn to two case studies which further elucidate this; Grotius' and Hobbes' respective views on the right of resistance

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[6] Ibid, 21 – 23.
[7] Ibid, 28.
[8] Zagorin does include a third argument against Tuck, which centers of the respective degree of religiosity between Grotius and Hobbes. His contention is that Grotius' theory, while not directly reliant on God, is in no way incompatible with Christian scripture, with Zagorin pointing to Grotius' affirmations of faith in furtherance of this. This is then contrasted with an alleged incompatibility between Hobbes' position and the same. I do not consider the individual particular religious beliefs of Grotius or Hobbes to be indicative of any influence over the other, and this alleged dissimilarity will not be explored further here.
[9] Ibid, 37.

and the morality of slavery. Section Three will reevaluate the claims of Tuck and Zagorin in light of the previous section. I will then conclude by arguing that Tuck is correct in his argument that Hobbes in intellectually indebted to Grotius. However, I will likewise argue that Zagorin's evaluation of Grotius as sharing a direct intellectual link with the Catholic Scholastic tradition, rather than heralding the emerge of a new tradition as Tuck argues, is likewise correct. I will finally argue that the heart of the disagreement between Tuck and Zagorin is not entirely one of whether Grotius influences Hobbes, but rather to which if either tradition Grotius is linked.

Section One: Conceptual & Theoretical Frameworks of Grotius, Hobbes, Tuck, & Zagorin

Early in the *Prolegomena* to *De Jure Belli ac Pacis*, Grotius makes several observations regarding human nature which guide the rest of his theory. The first is that, like other animals, humans by nature are inclined to pursue their own interests. The second is that, by divinely given reason and a natural *ius*[10] it is rational for individuals to enter into societies. This is because, to Grotius, that individuals are not only motivated by pleasure and pain, but also that because humans are capable of planning well into the future as to how pleasure will be sought and pain avoided, society allows for those more intelligent to engage in the planning for society as a whole, and gives each person a familiarity with one another.[11] To Grotius, humans manifest the likeness of God, and as a result are capable of reason and free will, as well as the ability to form and uphold social arrangements based in both care for and domination of others. The result is that, far from being motivated strictly by pain and pleasure, individual moral motivation comes from human ethics and morals which may be subordinated to the state in the interest of justice.[12]

[10] Given the disagreement between Tuck and Zagorin as to the proper translation of *ius*, I will use the Latin throughout so as to avoid any inadvertent endorsement of one or the other until the issue of translation is considered properly in Section II, unless otherwise noted.
[11] Grotius, Hugo. *The Rights of War and Peace*. Edited by Richard Tuck, Jean Barbeyrac, and Knud Haakonssen. Indianapolis: Liberty Fund, 2005. Prolegomena.
[12] Nijman, Janne. "Grotius' 'Rule of Law' and the Human Sense of Justice: An Afterword to Martti Koskenniemi's Foreword." *European Journal of International Law*, vol. 30, no. 4, Nov. 2019, doi: https://doi.org/10.1093/ejil/chz068. 1112.

Rejecting the view that justice and equity are rooted in utility alone, Grotius instead attributes them to principles of natural *ius* stemming directly from God. To this Grotius adds an extension; because justice, equity, and society are things which should be accepted as God's will, "[t]he free will of God gives rise to another ius in addition to that of nature." This secondary *ius* is civil law, which humans are equally compelled by their reason to accept. This leads Grotius to argue that, because society and obedience to civil law are directly attributable to God, individuals must "have either expressly promised, or should be presumed from the nature of the arrangement to have tacitly" consented to their membership in their society.[13]

In making the state a moral agent though, Grotius makes clear that the only moral powers it holds are those which its members have granted it. There are four natural precepts which Grotius asserts as the bases of moral agency in individuals; that individuals have a right to self-defense, that they may possess property, that it is forbidden for individuals to rightly harm one another, and that one may not take the property of another. These principles are demonstrated as natural *ius* because "the common consent of mankind has shown to be the will of all, that is law."[14] Grotius then adds two further points governing individual conduct; that evil be corrected, and goodness rewarded.[15]

Importantly though, society remains greater than a simple amalgamation of individual interests. The requirements of justice and equity then are not only binding on each relation between atomistic individuals,[16] but also by natural *ius* which compels individuals to comport akin to an extended family.[17] This move from a personal to social *oikeiosis*[18] leads Grotius to

[13] Grotius, *The Rights of War and Peace*, Prolegomena.
[14] Ibid.
[15] Ibid.
[16] Ibid, I.II.III
[17] Brooke, *Philosophic Pride*, 51 – 52.
[18] In Greek, Οἰκείωσις. Variously translated as "appropriation, affiliation, or endearment," *oikeiosis* shares an etymological root with *oikos*, translated as "home." The notion appears first in a Stoic context with Zeno of Citium. A brief discussion of how the Stoic interpretation applies within Grotius' thought appears later in this section.

defend limited duties of cooperation between individuals of the same society, at least to the extent that they may not actively interfere in the affairs of others as a matter of justice.[19] Justice here consists only in a requirement of moderation of personal interest where that interest is harmful to the common good. This is because to act otherwise is contrary to the purpose of society, and by extension the requirements of natural *ius*.[20]

Despite this consideration of what is required by justice, it remains that individuals, rather than society itself, are the principle rightsholders. That society emerges in defense of them is, importantly, not a requirement of justice, but is instead an accidental occurrence. Where a state does come to exist, individuals are expected to obey its precepts, but only to the extent they have agreed to them as required by justice. This is because the power of the state "come[s] to the state from private individuals; and similarly, the power of the state is the result of collective agreement."[21] Individuals are not altered in their moral agency by membership in one state or another. Rather, each state derives its moral force from the agreement of its inhabitants.

Martin Harvey observes that, at first glance, this formulation appears Aristotelian on grounds that society appears not only as an expression of natural sociability, but also an essential element of human nature.[22] However, as Harvey points out, Grotius attributes his notion of society not to Aristotle, but instead the Stoics. Indeed, Grotius notes that the rationality behind the forming of a society is not to produce human flourishing or fellowship, but rather as a protection against violence.[23] This move into society not is in itself directly required by reason or a natural principle, but instead are in recognition of the natural weaknesses of individuals. Sociability is not directly natural in Grotius' formulation, but is instead a derivative principle

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[19] Grotius, *The Rights of War and Peace*, I.II.III
[20] Ibid, Prolegomena.
[21] Ibid, I.I.III.
[22] Harvey, Martin. "Grotius and Hobbes." *British Journal for the History of Philosophy* 27, no. 1 (2006): 27-50. 32.
[23] Grotius, *The Rights of War and Peace*, I.IV.VII

based in the recognition that, alone, individuals are weak and prone to violations of principles of justice.[24] Although the state is a natural occurrence, its purpose is for the demarcation of space for each individual acting as a moral agent to pursue their own ends. Indeed, Christopher Brooke observes a parallel Grotius draws between the human seeking of society and the Stoic notion of *oikeiosis*.[25] Indeed, quoting a 1738 translation of *De Jure Belli*, Brooke points out that

> amongst the Things peculiar to Man is his Desire of Society, that is, a certain Inclination to live with those of his own Kind, not in any Manner whatever, but peaceably, and in a Community regulated according to the best of his Understanding; which Disposition the Stoicks termed oikeiosis. Therefore the Saying, that every Creature is led by Nature to seek its own private Advantage, expressed thus universally, must not be granted.[26]

Individuals then are guided by their rational obedience of natural *ius* to consent to the formation of society by their interests in its observation and their own self-preservation.

Hobbes likewise provides a deeply nuanced view of human nature. In *Leviathan*, he observes that that each individual is motivated by both a desire for individual power and prestige which governs their conceptions of pain and pleasure,[27] and a desire for peace and common enterprise arising from the fear of death.[28] In the state of nature however, rational self-interest consists of nothing greater than "[c]ompetition of Riches, Honour, command, or other power [which] enclineth [individuals] to Contention, Enmity, and War: because the way of one Competitor, to the attaining of his desire, is to kill, subdue, supplant, or repell the other."[29] This is because, in the state of nature, individuals possess both the natural right to their own preservation, and the right to everything, which permits them to act in the preservation of their own lives and nature "and consequently, of doing any thing, which in his own Judgement, and

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[24] Edwards, Charles. "The Law of Nature in the Thought of Hugo Grotius." *The Journal of Politics* 32, no. 4 (1970): 784-807. doi:10.2307/2128383. 789
[25] Notably, Zagorin rejects this comparison as improper.
[26] Grotius, *De Jure Belli*, vol. 1, 79 – 81. In Brooke, Christopher N. *Philosophic Pride: Stoicism and Political Thought from Lipsius to Rousseau*. Princeton, NJ: Princeton University Press, 2012. 37 – 38.
[27] Hobbes, Thomas. *Leviathan*. Edited by Richard Tuck. Cambridge: Cambridge University Press, 2018. I.11.II.
[28] Ibid, I.13.VI.
[29] Ibid, I.11.III

Reason" see fits to those ends without any external resistance from others.[30] The result of this is a perpetual state of war between solitary individuals as the rational self-interest of each person, in the short term, makes rational any action regardless of its impact on another. Individuals then not only would not, but could not, act cooperatively or form societies as to do so would necessarily involve some degree of sacrificing of individual interests in the short term which, barring any external authority, Hobbes considers irrational.[31]

As noted by Arash Abizadeh, Hobbes' position that cooperative action within the state of nature is irrational stems from the inability of individuals to trust that others will uphold any brokered agreement. Although any given agent may reasonably conclude that his interests would be best served through some manner of peaceful social arrangement, this reasoning is necessarily tempered by the conditions that a sufficient number of others likewise reach the same conclusion and that any hypothetical agreement towards cooperative action would indeed hold. That these conditions cannot be guaranteed in the state of nature leads Abizadeh to contend that any attempted cooperation in this manner, rather than potentially satisfy individuals' desires, "may instead be a means of self-destruction.[32] Christopher Hill similarly contends that Hobbes may be viewed "as the high priest of competitive individualism" in his view of human nature.[33] In their natural condition, with all their rights intact, individuals were, on the Hobbesian interpretation, free to do anything as everything was permitted.

This allows Hobbes to introduce a point of contention between two rational interests. The former is the common enmity which drives individuals to act violently towards each other in furtherance of their individual self-interests, and the latter is the "generall rule of Reason, That

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[30] Ibid, I.14.I-II.
[31] Ibid, I.14.III – IV.
This again stemming from the right to everything.
[32] Abizadeh, Arash. *Hobbes and the Two Faces of Ethics*. Cambridge: Cambridge University Press, 2018. 173.
[33] Hill, Christopher. *The World Turned Upside down: Radical Ideas during the English Revolution*. Harmondsworth: Penguin Books, 1991. 388.

every man, ought to endeavour Peace"[34] in contrast to the natural state of war. This natural state however relied on individuals possessing both their natural right to self-preservation, and the rights to do everything in their power to pursue that end. The rational solution then was to enter into society, wherein individuals surrendered their rights to everything bar self-preservation in exchange for protection from individuals who had not. Notably, the formation of the state to Hobbes is not done in the interest of promoting human flourishing, but rather the natural desire for peace and avoidance of "Diseases; Rashnesse, with Mischances; Injustice, with the violence of Enemies; Pride, with Ruine; Cowardise, with Oppression."[35] Indeed, Hobbes did not consider entering into this state a sacrifice of liberty, but rather the protection of it, and living in accordance with natural law rather than natural men.[36] Importantly however, Hobbes' conception of the rationality underpinning this move is not purely calculative. Rather, Hobbesian rationality consists of the logical processing of otherwise normative precepts.[37] To Hobbes, the only principles of natural law are the desire for peace and the advancement of individual self-interest, with the former taking precedence over the latter. These two laws are what creates the Hobbesian rights to do whatever is necessary in their furtherance. And as noted by Abizadeh, that Hobbes limits reason to only a procedural function rather than a moral force in its own right precludes any natural limitation on individuals' actions.[38] Prior to the formation of Leviathan, each individual lived in a condition of full liberty, with the accompanying rights in defense. To Hobbes this consists of the absence of any external or moral prohibitions on action[39] as any determination of a given action or object as 'good' or 'bad' necessarily occurs at the level of the

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[34] Hobbes, *Leviathan*, I.14.V.
[35] Ibid, II.31.XLIII
[36] Ibid, II.1.1
[37] Abizadeh,. *Hobbes and the Two Faces of Ethics*, 50 – 51.
For example, $P \vee Q = \sim(\sim P \ \& \ \sim Q)$ would be rational (valid) regardless of what P or Q indeed represent.
[38] Ibid.
[39] Hobbes, *Leviathan*, I.14.II.

individual. From this, genuine normative disagreements would persist in spite of any dictates of reason. This is because Hobbes' rationality consists only of the rules of logic, such as implication, modus ponens, or modus tollens. The premises on which these logical functions are employed are by contrast normative, with their truth values determined by individuals' mental faculties or passions. This likewise precludes the possibility of innate sociability for Hobbes as cooperation or betrayal could be equally rational options between two agents. Abizadeh holds that a Hobbesian dictate of reason should be read as only those conclusions which are the outcome of correct reasoning. A rational outcome then need only be valid. Its soundness by contrast is predicated on the truth values of the normative premises.[40]

This however is not to say that the Hobbesian natural individual is entirely devoid of moral sensibilities. In all cases, natural law remains binding, and Hobbes even presents "[d]o not that to another, which thou wouldest not have done to thy selfe" as a natural maxim.[41] However, Hobbes likewise introduces an important caveat to individuals' moral senses by his 'in foro interno – in foro externo'[42] argument. He holds that, within each individuals' personal moral calculus, the former sense, all individuals are motivated to abide by all precepts of natural law. The latter though, which consists of physically acting on that moral sense, is constrained by the physical circumstances in which individuals find themselves. Hobbes' view is that, in the state of nature, natural law is equally binding 'in foro interno' as it is when living within a state. However, translating that moral sense into action requires a degree of security which does not exist in the state of nature, as acting on that sense without this presents the possibility of endangering the individual.[43]

[40] Abizadeh,. *Hobbes and the Two Faces of Ethics*, 33, 51.
[41] Hobbes, *Leviathan*, I.15.XXV.
[42] The English translation is 'In the internal forum' and 'In the external forum,' though some translations omit 'forum' entirely. 'Foro' is equally translatable as market or court.'
[43] Ibid, I.15.XXVI.

The Hobbesian state, Leviathan, then required the absolute moral subjection of individuals.[44] This occurs by means of the social contract, in which individuals divest themselves of their natural rights and instead entrust them to Leviathan.[45] This move likewise divests individuals of their personal evaluations of normative premises, and instead creates the state as a common moral arbiter to circumvent any obstacles to cooperative action. This is because the disagreements between individuals which stoked their enmity were not the results of improper reasoning, but rather a lack of shared moral premises on which to rationally judge the best course of action. The function of the state then is to supersede any individual moral determinations, and instead invest the state with the authority to create a shared moral framework upon which all individuals within the state would reason together. Provided then that all agents are indeed rational, each would reach the same conclusion as to what would rationally best suit their own interests.[46] Hobbes stresses that this is not a renunciation, but rather a transfer. The importance of this difference is that, because the moral authority to evaluate the normative value of various actions and the right of act on them are transferred to the state as a condition of membership, that transfer obligates the state to provide sufficient normative premises such that any individual may rationally find that those premises align with natural law, and are therefore rightly actionable.[47]

After joining this society, to act contrary to it would be necessarily irrational, and a breach of contract against society. Although an individual might be acting in a manner to which they were rationally entitled by right when they were their own moral arbiter, by joining that society they had surrendered their rights to this; the result being that the society as a distinct actor would cease to owe any protections to that individual.[48] It is from this that Hobbes crafts

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[44] Hill, *The World Turned Upside Down*, 390.
[45] Hobbes, *Leviathan*, I.14.VII – VIII.
[46] Abizadeh,. *Hobbes and the Two Faces of Ethics*, 57 – 60.
[47] Importantly, Hobbes does not consider all rights to be transferrable. This will be further discussed later in this paper. Ibid, I.14.IX.
[48] Hobbes, *Leviathan*, I.16.5

his image of Leviathan, which he describes as an artificial man, representing and composed of all individuals within society "which they themselves, by mutuall covenants, have […] given the Soveraigne Power."[49] Extending this analogy, each individual is no greater than a single cell. Within Leviathan, each is obligated by their covenant with Leviathan to act in deference to it on the understanding the body will look after its component individuals, with the covenant itself entered into out of self-interest. Submitting to Leviathan then created a society of equal and competing individuals under an absolute authority.[50] This sovereignty was necessarily absolute as a consequence of Hobbes' view of human nature as tending towards ill-considered action.[51] The conflict Hobbes is attempting to resolve here is that, while all people[52] were capable of understanding their rational interest in cooperative action, without the guiding hand of the sovereign they were liable to unbridled selfishness and short-term rather than long-term thinking as a result of circumstance.[53]

Christopher Scott McClure argues that Hobbes' definition is further complicated by his inclusion of personal honor within the category of self-interest.[54] He predicates this view on Hobbes' view of honor as being a status enjoyed by individuals when their individual attainments of power are recognized as having surpassed that of others.[55] This complication stems from individuals' honor not only persisting beyond death, but likewise because

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[49] Ibid, II.21.6
[50] Hill, *The World Turned Upside Down*, 389.
[51] In the sense that actions taken in the state of nature could not entirely be made to agree with natural law, due to the aforementioned concerns regarding individual security in the absence of the state.
[52] Admittedly Hobbes' formulation uses only masculine pronouns.
[53] Ibid, 391.
[54] This, and other points raised earlier in this section, serve to demonstrate that Hobbes' view of human nature is indeed quite social, with several passions inclining individuals towards some manner of cooperative action. However, that sociability is itself prevented from reaching its apotheosis without a strong guiding hand of the state by a lack of restraint. This is notable because Hobbes' description of the state of nature places nasty, brutish, and short on equal footing as solitary for descriptors of life in this condition.
[55] McClure, Christopher Scott. "War, Madness and Death: The Paradox of Honor in Hobbes's Leviathan." *The Journal of Politics* 76, no. 1 (October 7, 2013): 114-25. doi:10.1017/cbo9781316650035.006. 118 – 119.
Another way of understanding this point is that the short term personal interest driven actions of individuals occur as a result of a lack of a common base of law and power, which promotes the violent and insecure social dynamic. Human nature itself on this view is capable of lending itself to both violent and peaceful action based on circumstance. The circumstances which promote peaceful cooperation though are absent in the state of nature.

overcoming any fear of death in its attainment satisfies a core condition of achieving honor.[56] Noel Malcolm observes that the created Leviathan serves not only to represent the interests of each person, but that each person is instead taken up and incorporated into the state as an artificial person.[57] Rather than permit each natural person[58] to remain in their natural condition of war, peace may be actualized by stripping each person of their natural condition and uniting each into the larger body. In this manner the interests of each person are represented through the sovereign, as they become subsumed within "their common Representer," giving it "Authority from himselfe in particular; and owning all the actions the Representer doth" by virtue of its existing by the agreement of its constituents.[59] In addition, McClure contends that the sovereign achieves this by subsuming those actions which could have previously conveyed honor. Rather than allow individuals to attain honor on their own, the sovereign would instead be its only source.[60] Malcolm adds to this that the power of the sovereign then is not that of an entity which is supernatural or otherwise greater than the sum of its parts. It is rather an artificial consequence of rational action.[61]

These are the grounds on which Tuck and Zagorin base their disagreement. Tuck asserts that it was Grotius who made the "vital move" in offering a philosophical account of how an individual is subjugated to the state.[62] Prior to the move into society, each individual possessed an equal moral standing to all others, including any existing associations. Whatever sovereign entities did exist, they possessed no greater rights than any non-member individual or opposing

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[56] Ibid, 120 – 121.
[57] Malcolm, Noel. *Aspects of Hobbes*. Oxford University Press, 2002. 223.
[58] Hobbes' term for a given individual.
[59] Hobbes, *Leviathan*, I.16.11 – 12.
[60] McClure, "War, Madness and Death," 118.
[61] Malcolm, *Aspects of Hobbes*, 227 – 228.
[62] Tuck, Richard. *The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant*. Oxford: Oxford Univ. Press, 2010. 81 – 82.

state.[63] Within terrestrial bounds though, states could define a set territory over which they held dominion, these states existing to allow individuals to advance their own interests as a matter of natural law[64] without the threat of others acting akin to pirates or other seaborne marauders.[65]

Tuck's treatment of Grotius then draws attention to Grotius' principle of justice being derived from the naturally sociability individual necessarily being moderated by an agreement with the state. Indeed, Tuck's position is that "rights are the necessary subject-matter of justice," with *ius naturale* concerned with their maintenance.[66] He likewise draws attention to Grotius' arguments as possessing elements of natural obligation independent of any right possessed. In the Prolegomena of *De Jure Praedae*, Grotius asserts that the functions of justice are the preservation of the good, and the destruction of evil. From this, "two laws arise: first, *Evil deeds must be corrected; secondly, Good deeds must be recompensed*."[67] Tuck recognizes this claim as an assertion of a natural obligation for individuals not to actively harm others who had not harmed them, and to punish those who had.[68] The voluntary formation of the state then consisted of a transfer of these responsibilities from individuals to the state, which Tuck contends Hobbes believed to have demonstrated the rationality of his position by the same logic of a mathematical proof.[69] These natural responsibilities of each individual then would cease to be of concern to them.[70] This is because what liberty natural individuals had possessed with respect to the management of their own affairs or interference with those of individuals who had violated Grotius' principles of justice were delegated by each individual to become the responsibility of

[63] Ibid, 82.
[64] Given there is no debate as to whether this may be a moral principle which is capable of being possessed by any determinate entity, but is rather a natural compulsion of individuals, I feel comfortable addressing it as a law prior to the discussion of the definition of *ius* in Section Two.
[65] Tuck, *Natural Rights Theories*, 59.
[66] Ibid, 67.
[67] Grotius, Hugo. *Commentary on the Law of Prize and Booty*. Edited by Martine Julia Van Ittersum and Knud Haakonssen. Indianapolis: Liberty Fund, 2006. Prolegomena.
[68] Tuck, *The Rights of War and Peace*, 86.
[69] Tuck, *Natural Rights Theories*, 128.
[70] Tuck, *The Rights of War and Peace*, 88.

the association as a whole.[71] This he takes as evidence of Grotius understanding "liberty as a piece of property" sold by each individual to their respective states. Tuck holds that Grotius' view of liberty was one which permitted each individual to bargain with other entities over whatever property they possessed, property consisting of whatever was capable of being traded by contract. "Personal liberty was a part of man's property" Tuck asserts "because it was such a part that contracts were possible."[72] Natural individuals necessarily possessed natural rights within the Grotian state of nature on Tuck's view, as they could not have traded to the state what they did not already possess.[73]

Tuck's consideration of Hobbes as following Grotius on these points tracks closely with his observation of Hobbes having read John Selden's *Mare Clausum*, itself an attempted refutation of Grotius' *Mare Liberum*.[74] He begins by noting the surrendering of natural rights held by individuals through their natural liberty to the sovereign as a condition of societal membership.[75] For Hobbes though, this move is not a dictate of nature, but is rather a dictate of reason based on, but distinct from, normative premises. Because a natural life necessarily entails punishment by and for others as a result of genuine moral disagreements,[76] submitting to the state secures individuals with the minimal guarantee that these pains will not be arbitrary[77] and not a possibility arising from any contact with others. Again referencing Selden, Tuck submits that Hobbesian natural law holds as a key tenet what actions are necessary for the avoidance of

[71] Tuck, *Natural Rights Theories*, 62.
[72] Ibid, 69.
[73] Ibid, 60 – 61.
[74] The titles of these texts translate to *The Closed Sea* and *The Free Sea* respectively. Grotius' *Mare Liberum* was itself a portion of *De Jure Praedae* which was published during Grotius' own lifetime, and therefore well before the rest of the text. Much of Grotius' corpus was not published until his estate was sold off some two-hundred years following his death. However, *Mare Liberum* was published as a standalone text in 1609. I say attempted refutation not to endorse Grotius over Selden or the converse. Which account between the two is more convincing is not a matter under consideration here.
[75] Ibid, 119 – 120.
[76] Abizadeh,. *Hobbes and the Two Faces of Ethics*, 50 – 51.
[77] In the view of the afflicted individual. Presumably the inflicting agent will possess some rational basis for their action, although the principles underlying it are by no means guaranteed to be shared with the other party.

suffering. However, there is no natural enforcement mechanism. The only motivation for obedience is human reasoning finding it preferable to obey than suffer punishment by others.[78]

Yet this line of influence is exactly what is criticized by Zagorin. His characterization of Tuck's argument is that both Hobbes and Grotius develop their theories in response to skepticism and moral relativism. Grotius begins the argument with his development of a science of morality which balances human sociability against self-preservation by his creation of natural rights as held by individuals, which Hobbes then takes up with little modification.[79] Zagorin's criticisms of Tuck in this are that this argument implies that Grotius himself marked a major break from his contemporaries, such as Francisco de Vitoria and Francisco Suarez, and that it portrays Grotius as responding to skepticism at all.[80] In *Hobbes and the Law of Nature*, Zagorin, while granting his importance as a predecessor to Hobbes, argues Grotius' theory is not one of philosophy, but rather jurisprudence aimed at demonstrating how states should be bound by natural law, rather than offering a new interpretation of it.[81] Zagorin notes that, prior to Grotius, there had been an active debate as to the extent to which natural law would be binding if God did not exist. Grotius would reject this argument as spurious despite his defense of it. However, according to Zagorin, he did advance natural law through his argument that God could not alter what was absolute.[82] This allowed for the move that, because the laws of nature now could be viewed as entirely stable, reason rather than revelation could be used to determine natural duties and obligations.[83]

This, however, does not make Grotius a natural rights theorist as what rights individuals did have were not rights held by individuals qua individuals, but were instead moral protections

[78] Tuck, *Natural Rights Theories*, 126.
[79] Zagorin, *Hobbes without Grotius*, 18.
[80] Ibid, 19 – 20.
[81] Zagorin, Perez. *Hobbes and the Law of Nature*. Princeton University Press, 2010. 10, 16 – 17.
[82] On this view, if something is defined as evil by natural law, God could not make that thing good, just as God could not make 2 + 2 = 5.
[83] Ibid, 18.

afforded to them by natural law.[84] In this, Zagorin draws a distinction between objective and subjective natural *ius*.[85] Zagorin directly links Grotius' view on *ius naturale* from the Roman conception, which treated *ius* in the objective sense as matters of justice and therefore derived from nature, whereas *ius* in the subjective sense could only emerge from civil authorities.[86] Grotius cannot be entirely dismissive of this subjective sense of natural right given its centrality to the origin of society.[87] However, Zagorin locates them as "the creation of law, a part of the juridical order" rather than an independent moral force for Grotius,[88] as it would be for Hobbes.

Zagorin does grant that Hobbes likely had read Grotius and knew of his reputation. He evidences this by highlighting a passage from *Leviathan* in which Hobbes addresses at "the most learned authors," which Zagorin argues is aimed directly at Grotius, in which he comments on the lack of clarity between objective and subjective senses of right.[89] Hobbes' concern is that his predecessors have "confound *ius* and *lex*, right and law, […] Right consisteth in liberty to do or forbear, whereas Law determineth and bindeth to one of them; so that law and right differ as much as obligation and liberty."[90] Had Grotius indeed made this leap, as Tuck argues he did, Zagorin argues that Hobbes would not have had grounds to make this objection.

Following Leo Strauss, Zagorin's position is that it is Hobbes rather than Grotius who marks the change in thought from natural law to natural rights. To Zagorin, Grotius marks the end of the premodern natural law lineage, which had natural duty at its core. Hobbes by contrast marks the emergence of a new natural rights tradition, itself deeply connected to new questions

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[84] Zagorin, *Hobbes without Grotius*, 35.
[85] This issue is discussed at great length in Section II.
[86] Zagorin, *Hobbes and the Law of Nature*. 23 – 24.
[87] Harvey, *Grotius and Hobbes*, 35.
[88] Zagorin, *Hobbes and the Law of Nature*. 25.
[89] Ibid, 26.
[90] *Leviathan*, I.21.VI, in Ibid.

concerning human freedom.[91] Zagorin points to the absence of these considerations in Grotius as evidence of Hobbes beginning anew rather than following in his footsteps as Tuck suggests.[92]

From this, several key elements are evident. The disagreement between Tuck and Zagorin as to the relationship between Grotius and Hobbes comes down to where exactly a line is to be drawn. Prior to some point in the 17th century, discussions of political theory had centered around interpreting what duties and responsibilities individuals held as direct requirements of natural law. Thinkers of this tradition understood natural law, and its corresponding impositions, in terms of a dichotomy; either something was just, and therefore required, or unjust, and therefore prohibited. After this point though, the discussion moved in the direction of natural rights as held by individuals. On this new view, the moral imperatives were replaced by rights which individuals could exercise or trade off at their own will.[93]

Both Tuck and Zagorin agree that Hobbes falls after this point, that he is of the new tradition. The disagreement however is whether Hobbes is himself the originator of this new tradition, or whether Grotius precedes him in it. Zagorin endorses the former view, locating Grotius squarely within the old tradition, whereas Tuck portrays Grotius' thought as the point at which the new tradition came into being, with Hobbes merely building upon Grotius' thought.

Where Grotius falls in relation to this conceptual line then is central to settling or providing a commentary on the disagreement. How Grotius' thought aligns with or differs from Hobbes's will now be examined in light of two connected issues; the right of individuals to resist their sovereign, and the issue of slavery. The purpose of these connected case studies on certain principles is to illustrate the how Hobbes' account applies the natural rights view, and then to

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[91] Zagorin, *Hobbes and the Law of Nature*. 28 – 29.
[92] Zagorin, *Hobbes without Grotius*, 37.
[93] Zagorin, *Hobbes and the Law of Nature*. 28.

compare the view of Grotius. Although differences will exist simply by virtue of them being different thinkers, how the two accounts understand natural *ius* as either flexible or inflexible will be essential to parsing out where the line between traditions falls.

Section Two: Resistance, Slavery, and *Ius*

This section will begin with a consideration of the break in tradition between the objective and subjective senses of *ius naturale*. Hobbes is quite clear in his distinction between the two, with both conferring upon individuals distinct protections and liberties qua their moral status as individuals. Brian Tierney observes however that Grotius employs a dual definition of *ius* in his account.[94] Both are found by rationalist interpretations of God's will. However, this ambiguity allows for the term to be variously treated as either a law, derived for Grotius from divine mandate, or a right held naturally by individuals by their creation in God's image.[95]

Grotius divides what is covered under natural *ius* into three parts. The first signifies "meerly *that which is just*," the second "is a *moral Quality* annexed to the Person, *enabling him to have, or do, something justly.* I say, *annexed to the Person*," and the "third Sense of the Word *Right,* according to which it signifies the same Thing as *Law,* when taken in its largest Extent, as being *a Rule of Moral Actions, obliging us to that which is good and commendable.*"[96] As Tierney notes, Grotius' multi-part definition owes much to the Medieval scholastic tradition, and especially to Francisco Suarez's defense of human sociability as the origin point of all natural laws.[97] Martha Nussbaum portrays Grotius' view here as one which is directly descended from

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[94] A minor point of consideration in this is that of language. Grotius, although Dutch, wrote his texts in Latin whereas Hobbes mostly wrote in English, although he did prepare Latin translations. Although Latin does distinguish between *ius* and *lex*, both are translatable into English as "law." The Latin *lex* is equally translatable to refer to a legal statute or bill however, whereas *ius* may be understood to refer to a law, a legally binding oath, justice, a duty required either by law or justice, a legal right, or to the court itself. In Latin, which meaning was intended would have been based on context, which makes an entirely objective or correct assessment difficult. It comes down primary to interpretation how the term is to be properly translated/understood.

[95] Tierney, Brian. *The Idea of Natural Rights: Studies on Natural Rights, Natural Law, and Church Law*. Grand Rapids, MI: William B. Eerdmans Publishing Company, 1997. 324.

[96] Grotius, *The Right of War and Peace*, I.I.III – IX.

[97] Tierney, *The Idea of Natural Rights*, 317.

the ancient Stoics, and aimed as a direct challenge against proponents of *ius gentium*.[98] However, the thrust of Grotius' argument on her view is not only to establish an objective moral order, but to do so in a manner which endorses the view that humans possess a distinctly human moral character.[99]

All three definitions given by Grotius accomplish this in their own ways. Definitions I and III fit squarely within the scholastic tradition by their defining of moral status as an abstract dichotomy.[100] Definition II though is different. It instead annexes to each individual a moral standing of their own in relation natural law. Although to some extent still indebted to the old tradition, Definition II breaks from it by its focus on the individual, drawing from Stoic rather than scholastic bases.[101] If only the first and third definitions were to be considered, the only protections afforded to individuals by natural law would be, at least on Knud Haakonssen's view, a duty to preserve peace to the extent that other parties are not injured. While this may serve as a sufficient foundation for sociability, it denies the moral status of any individual in particular.[102] Tracing descent from Suarez, M. B. Crowe argues that human nature on this account may constitute the foundation of natural law, "but if it is identified with the natural law absurd results follow."[103]

The result is Grotius' *etiamsi daremus* argument, in which he asserts the validity of natural law even if God did not indeed exist, which renewed emphasis on the individual as a moral agent.[104] By nature, Grotius' position is that humans are social creatures desiring peace

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[98] Although a literal translation of this is 'The Law of the People,' here it is meant as whatever moral principles are accepted as permissible by societal custom.
[99] Nussbaum, Martha C. *The Cosmopolitan Tradition A Noble but Flawed Ideal*. Cambridge, MA: Belknap Press, 2019. 110.
[100] Haakonssen, Knud. "Hugo Grotius and the History of Political Thought." In *Grotius, Pufendorf, and Modern Natural Law*. Aldershot: Dartmouth Publishing Company Limited, 1999. 36
[101] M. B. Crowe, "The Impious Hypothesis: A Paradox in Hugo Grotius? In *Grotius, Pufendorf, and Modern Natural Law*, 10 – 12.
[102] Haakonssen, *Natural Law and Moral Philosophy*, 27.
[103] Crowe, "The Impious Hypothesis," 15.
[104] Nussbaum, *The Cosmopolitan Tradition*, 102 – 104.

who necessarily appropriate resources to advance their own interests. The upshot of this view is that human competition is naturally limited by a natural duty of respect owed towards others, with the state acting to systematize these relations rather than constrain them.[105] Haakonssen asserts that Grotius derives this view, at least in part, from the Aristotelian conception of justice, which entitled individuals to a fair consideration regarding the various benefits and costs afforded to them by their interactions with others and the state.[106] This view of justice was, at least for Grotius, still part of natural law as derived from the will of God and what is constituted by the first and third definitions. However, to borrow Aristotle's terminology, justice was a perfect right, itself divisible into imperfect rights of liberty, property, and contract.[107] Unlike perfect rights though, imperfect rights were possessable by individuals as a mechanism for the achievement of that perfect right as they understood it.[108] This is inclusive of individuals being permitted to enslave themselves or become subjects of authoritarian regimes, provided they determined by their own rationality that doing so served their interests.

Haakonssen argues that Grotius' *ius* is correctly understood in the subjective sense, as rights rather than as laws, on grounds that individuals necessarily trade at least some rights to the state in its formation.[109] These rights must originate with the people then on grounds that they must possess them in order to make that trade. However, this is only true of Definition II. Although Grotius' mixed use of the term *ius* to cover three distinct definitions adds a degree of ambiguity, as a whole his account bridges the objective and subjective senses. Definition II, though, is the central one for Grotius to offer his account for the origin of society. Grotius rightly

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[105] Ibid. 98 – 99.
[106] Haakonssen, "Hugo Grotius and the History of Political Thought." 50
[107] Ibid.
[108] This is in contrast to what would be required by divine will. Notably, Grotius' argument did not dispel with God entirely as a source of morality, but rather treated Him as an additional justification to human reasoning for what was truly right or wrong. Haakonssen, *Natural Law and Moral Philosophy*, 29.
[109] Haakonssen, "Hugo Grotius and the History of Political Thought." 36 – 37.

recognized that the conflicting unlimited claims of each individual to what they were entitled as a matter of justice would itself invariably lead to injustices. On this interpretation, natural law carried with it the corollary that all moral agents possessed the natural rights necessary to obey.[110] As noted by Anthony Pagden, Grotius' innovation, again drawing from Vitoria and Suarez, to define those corollary rights as individuals' property no different from any physical goods they owned.[111] Civil society was by definition centered around property, with property relations being the central form of exchange between individuals within their societies.[112] And by treating the natural justifications granted to individuals by natural law as rights, this move is what allows Grotius to defend his account of the origin of the state. Rights could be openly traded akin to cattle by the inference of Definition II. However, by the first and third definitions, rights trading was still bound by individual interest in a well-ordered society.[113]

For Hobbes, like Grotius,[114] individuals in the state of nature are only subject to natural laws, these being that individuals are naturally compelled to desire both peace and justice while also promoting their own interests.[115] However, as noted in Section One, these two natural interests may opposed to one another in practice. In ordering the laws of nature though, Hobbes submits that peace ought precede interest, arguing in *De Cive* that "the first law of nature (the foundation) is: *to seek peace where it may be had*,"[116] To have peace and self-interest coexist though, to Hobbes, requires that individuals sacrifice the ability to atomistically determine how their self-interest is morally evaluated.[117] In the pre-political condition, each individual is entitled

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[110] Strauss, Leo. *Natural Right and History*. Chicago, IL: University of Chicago Press, 1965. 185.
[111] Pagden, Anthony, "Dispossessing the Barbarian," In *The Languages of Political Theory in Early-modern Europe*. Cambridge: Cambridge University Press, 2012. 80.
[112] Ibid, 81.
[113] Tierney, *The Idea of Natural Rights*, 336.
[114] Admittedly Grotius does not refer to the state of nature as a concept in itself. His treatment is of the pre-political.
[115] Hobbes, *Leviathan*, I.14.V.
[116] Hobbes, Thomas, *On the Citizen*. Edited by Richard Tuck and Michael Silverthorne. Cambridge: Cambridge University Press, 1998. II.2
[117] See Section I for the discussion of this point.

as a matter of natural law to obtain and use whatever resources are necessary for its satisfaction as "what is done of necessity, or in pursuit of peace, or for self-preservation is done rightly [in that it accords with natural law.]"[118] Hobbes notes that this unrestricted view again leads to conflict, as it would permit each individual justly to claim the world as a whole. This would lead to each attacking each other and likewise defending while all possessing equal moral justification.[119] Hobbes uses this scenario to derive a subsidiary natural law, that "the right of all men to all things must not be held on to; certain rights must be transferred or abandoned."[120]

It is in the recognition of the excesses to which the right to everything[121] entitled individuals that Hobbes' division of natural law and natural right are found. Strauss observes that Hobbes recognized previous theories,[122] which had not treated what Hobbes considered the two primary laws of nature as opposed were idealistic in their interpretations of the strength public sociability could exert to smooth over the different directions in which those natural inclinations pulled individuals.[123] Rather than treat individuals as social creatures, Strauss contends that Hobbes views individuals foremost as asocial animals driven into society by "political hedonism" rather than any natural precept.[124] This partial denial of natural human character then is what requires Hobbes to endorse natural rights as a separate phenomenon from natural law.

Abizadeh however offers an alternative explanation for this move. Contra Strauss, he holds that Hobbes' position in this move is predicated on a wider interpretation of life; that life could not be "bare" existence, but rather that "the wider sense of preserving a life […] worth

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[118] Ibid, III.27.
[119] Ibid, II.3
[120] Ibid.
[121] Recall the distinction between this as natural right and natural law for Hobbes, as discussed in Section I.
[122] This is not to say that Hobbes necessarily considered this true of Grotius. It should be noted that Strauss himself endorsed a position similar to Zagorin in Hobbes' relationship with him. This though does not diminish the validity of his observations.
[123] Strauss, *Natural Right and History*. 167.
[124] Ibid, 169 – 170.

living."[125] On this view, natural law necessarily entails the presence of natural rights which may be traded as "[n]atural law dictates leaving the state of nature because a life permanently condemned to it would be […] a miserable life not worth living."[126] Natural law, as understood by Hobbes, was a binding moral force which obligated individuals' obedience. It was however, at least in part, open to interpretation. Natural right, while more definite in that it grants permission for actions which accord with natural law, derived its justificatory force from that same interpretation.[127] In the state of nature, the two were synonymous, as without any external constraints permission to fulfill moral obligations could be assumed as granted. This though is what introduced the tension between the two primary laws of nature in the first place.[128] Haakonssen observes, like Hobbes, that to pursue both at the same time "would be self-defeating" and lead to the war of all against all which Hobbes had cautioned against.[129] Natural law then required as a condition of its fulfillment that each individual live as socially as possible by voluntarily surrendering the natural rights which had allowed them as atomistic actors to comply with natural law.[130] Hobbes describes the contrary, in which natural rights are retained, as the life which is "nasty, brutish, and short."[131] Although natural law still served as the guide by which individuals founds their interests, to Hobbes it was far from the only moral consideration at play. This is because natural law, on his account, only set out the ends towards which individuals strove. The means to those ends had been delegated to natural rights.[132]

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[125] Abizadeh,. *Hobbes and the Two Faces of Ethics*, 136.
[126] Ibid.
[127] Hobbes, *Leviathan*, I.21.VI.
[128] Hobbes, *On the Citizen,* I.15.
[129] Abizadeh raises the same point.
Abizadeh,. *Hobbes and the Two Faces of Ethics*, 137.
[130] Haakonssen, Knud. *Natural Law and Moral Philosophy: From Grotius to the Scottish Enlightenment*. Cambridge: Cambridge University Press, 2003. 31 – 32.
[131] Hobbes, *Leviathan*, I.13.V.
[132] Haakonssen, *Natural Law and Moral Philosophy* , 35.

Turning now to the case studies, Hobbes' understanding of resistance comes as a right which individuals may not surrender upon formation of the sovereign. When the social contract is entered into to form Leviathan, Hobbes's position is that, in near all matters, the state is absolute. As with earlier and other contemporary thinkers,[133] Hobbes' view was motivated by his interpretation of the requirements and dictates of justice, but also to make each contracting individual secure in their lives and property.[134] To Hobbes though, this required subjugation to the state, as otherwise individual human nature would invariably lead to injustices.[135] Without the direct supervision of the state individuals were condemned to "the condition of a War of every man against every man."[136]

However, there is a limit on the extent to which the state may act towards this end. Despite his characterization of the state as a mortal God on earth, this 'God' did not possess the power to take a life.[137] Hobbes himself asserts that "A Covenant not to defend my selfe from force, by force, is alwayes voyd. For […] no man can transferre, or lay down his Right to save himselfe from Death, Wounds, and Imprisonment,"[138] which Quentin Skinner interprets to be an endorsement of resistance as an inalienable right. On Skinner's view, Hobbes' Leviathan's absolutism is limited by its teleology; because the state is formed to advance justice, the state is in violation of its purpose when it engages in injustices, thereby justifying its inhabitants in exercising the right to topple that sovereign.[139] Hobbes points out that individual concern about the absolutist state stems in no small part from misunderstandings of this moral binding of the

[133] Such as Vitoria, Suarez, Ockham, and Aquinas.
[134] Steinberger, Peter J. "Hobbesian Resistance." *American Journal of Political Science* 46, no. 4 (October 2002). doi:10.2307/3088438. 857 – 858.
[135] Hobbes, *Leviathan*, II.31.XLIII
[136] Ibid. II.16.XXI
[137] Skinner, Quentin. *The Foundations of Modern Political Thought: The Age of Reformation*. Vol. 2. Cambridge: Cambridge University Press, 1978. 178, 287
[138] Hobbes, *Leviathan*, II.14.XXV
[139] Skinner, *The Foundations of Modern Political Thought: The Age of Reformation*. 178.

state.[140] The retention of this right by each individual then imposes a strong restriction on the sovereign as although the sovereign is permitted to defend itself against revolting individuals, those same individuals are likewise justified in their revolt.[141] Where this does occur, the contract with the sovereign is rendered void and the transferred rights default back to each individual.[142]

Susanne Sreedhar observes that, at first glance, Hobbes' argument in favor of absolutism appear to run counter to individuals retaining at least a right of resistance. However, she argues that, despite Hobbes' commitment to absolutism, he should likewise be seen as advancing a theory of resistance rights.[143] Importantly, Sreedhar identifies this right in the subjective sense, as a permission granting right rather than an obligation imposing law.[144] However, this opens Hobbes to a potential paradox, in that a subjective right is the property of the individual and able to be freely traded, and yet the right of resistance, despite its subjective character, lacks the quality of being a property in that it cannot be traded.[145]

There are two potential solutions to this. The first is to refer back to the purpose of the state's inception being to uphold natural law. From this, the dissolution of the contract arises from the state failing to uphold its protection agreement by replacing rather than restricting the excesses of natural men.[146] Although Hobbes asserts "one must accept what the legislator enjoins as good, and what he forbids as evil," he likewise allows that "*knowledge of good and evil is a matter of individuals*" with just civil law following these necessarily shared positions.[147] Death

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[140] Hobbes, *On the Citizen,* VI.17.
[141] The upshot of this is that, in all likelihood, any single individual exercising this right, such as a condemned prisoner, would be exceedingly unlikely to succeed in, say, resisting his executioner, no matter how strong his moral justification for doing so may be. Rather, where the bulk of the population are united in their revolt though, success may be more likely, though in both cases the moral justification remains the same. Steinberger, "Hobbesian Resistance." 857.
[142] Ibid, 858.
[143] Sreedhar, Susanne. *Hobbes on Resistance: Defying the Leviathan*. Cambridge: Cambridge University Press, 2011. 1 – 3.
Sreedhar observes that it would be irrational for Hobbesian subjects to contract a Leviathan which lacked any legitimate means of resistance even where they judge that resistance as necessary. Compare this view to Tuck's interpretive charity argument regarding Grotius.
[144] Ibid, 8.
[145] Recall that on Hobbes' view any contract which trades this right is void.
[146] Ibid, 35.
[147] Hobbes, *On the Citizen,* XII.I

though is the ultimate evil as it precludes the possibility of any further good act or physical enjoyment.[148] The right of resistance then would as a necessary corollary arising out of natural law.[149] That it cannot be traded on this account would be because to do so would introduce the possibility of individuals trading away their ability to obey nature.

The second potential resolution revolves around whether the right of resistance is only inalienable in the social contract itself or is indeed inalienable in full. As observed by Sreedhar, a necessary component of a Hobbesian contract is trust between parties arising from the rational belief in those parties that the sanction for breaking that trust is greater than any gains achieved from the same.[150] However, when a party, having already entered into a contract with another, loses trust that the other party will fulfill the contract, Hobbes' position is again that the contract may be rightly voided.[151] This again returns to the original purpose of the state being to act as an enforcer against the excesses of natural individuals. However, while the state as a concept is a fixed feature, any given state is itself contingent. The transfer of rights by individuals to a given state is, by its contractual character, a mutual agreement that both parties will uphold their end of the deal.[152] If the individuals contracting the state into existence were to lose faith in that state's ability to protect their lives, Sreedhar proposes that not recognizing the contract as void by a right of resistance and thereby accepting death from the state would amount to those individuals committing suicide.[153]

This though does not entirely settle the issue of the right existing as non-transferrable property. The resolution to this is what Sreedhar terms "the necessity principle," that the only

[148] Ibid, I.VII.
[149] Compare to Grotius' argument on all rights existing for this purpose.
[150] Sreedhar, *Hobbes on Resistance*, 42 – 43.
[151] Hobbes, *Leviathan*, XIV.XX, in Ibid, 43.
[152] Sreedhar, *Hobbes on Resistance*, 44.
[153] Ibid, 46 – 47.

transfers of rights necessary for the social contract are those which are necessary for it to upheld.[154] The right of resistance, unlike a right to or against something, is not a right which requires anything external to a given individual. And because resistance is then a self-contained right, the state's function of ensuring peace is not compromised by individuals not surrendering it. This allows resistance to co-exist alongside what Sreedhar observes as Hobbes' universality principle; that the only rights which may be maintained by individuals entering into the social contract are those which may be held by all people while not jeopardizing the just functioning of the state.[155] On this view, the right of resistance could technically be capable of being traded. However, for the parties involved, there would be no benefit to doing so. In a sense, the retention of a right of resistance functions likewise as a guarantor of trust between individuals and the state by existing as an incentive for the state to uphold its contractual obligations, and counterbalancing the power of the state against that of the collective people. To surrender it removes the safeguard of trust that Hobbes locates as a central part of the contract which forms the state. It would be technically possible to do so, but that trade would, to Hobbes, be irrational and present opportunity for violations of natural law.

Another interpretation which resolves this potential paradox stems from Hobbes' own treatment of resistance in *Leviathan*. He holds that, in situations where the sovereign commands an individual to death, bodily harm, or to abstain from the necessities of life, that "hath that man the Liberty to disobey."[156] As discussed in Section I, Hobbes' justifies the state on grounds that it makes more possible obedience to natural law and, importantly, the rights which individuals transfer to the state on its formation are traded, rather than renounced. This implies that

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[154] Ibid, 49.
[155] Hobbes, *Leviathan*, XV.I – XXII, in Ibid, 50.
[156] Ibid, I.21.XI.
Notably, Hobbes likewise includes a protection against self-incrimination during criminal proceedings in the same section.

individuals get something in return. Hobbes notes that "[f]or it [the transferring of rights] is a voluntary act: and of the voluntary acts of every man, the object is some Good To Himselfe," this good being here the ability to live in accordance with natural law.[157] However, Hobbes likewise holds that there do exist certain rights "which no man can be understood by any words, or other signes, to have abandoned, or transferred" as their possession is so central to individuals' living in accord with natural law.[158] Foremost amongst these rights to Hobbes is that of resistance. Hobbes justifies this move by reference back to the purpose of the state, and the corresponding transfer of rights, as being "nothing else but the security of a mans person, in his life."[159] On this interpretation, the potential paradox of a subjective right of resistance is disproven by attaching to resistance a special qualifier. Unlike the rights to everything, which are transferred on grounds that they are capable of entitling individuals to act both towards or against accord with natural law based on happenstance, resistance is differentiated both by its being essential to individuals' continued existence and its lacking the potential to serve interests deleterious to natural law. The result of this is that the inability to trade the right of resistance derives not from its irrationality. Rather, that it is not amongst the rights to everything at all.

Grotius by contrast has no such provision, as Hobbes does, that a right of resistance may not be traded. He submits that once individuals have traded their rights for the formation of society, the powers which the state has over its citizens in regard to that which has been traded is absolute in all but the most extreme cases. Grotius' consideration of this point is that, because the state exists to fashion individuals into an extended family, individuals cease to be private individuals and instead become parts of the same whole. "[C]ivil Society being instituted for the

[157] Ibid, I.14.IX
[158] Ibid.
[159] Ibid.

Preservation of Peace, there immediately arises a superior Right in the State over" individuals towards that end.[160] The societal interest in public order precedes any individual right which by this point had been granted to the state by each individual for that purpose more generally. The purpose of the state was to ensure a common ground on which individuals pursued their own ends. In cases where this created a conflict between the state and a given individual, that the state represents the interests of many requires it to outweigh the individual. If this were not the case, Grotius submits that, rather than having a state, there would instead be a "Multitude without Union, […] without Government, loose and dissolute. [sic.]"[161] Tierney observes that Grotius' position should be understood as a defense of principles of friendship and mutual support between sociable individuals within which exists a moral duty not to violates the rights and obligations of others within a well-ordered society rather than a defense of tyranny.[162]

There is an exception to this though. Although what rights individuals may have had as prescribed by Grotius' second definition of *ius* will have already been traded, this does not diminish that, ultimately, they remain traceable to natural law in the objective sense. The various types of laws exist in a hierarchy, with objective natural law at the top, subjective natural law in the middle, and civil law at the bottom. In this, each derives its moral thrust from that above it in the hierarchy. While a civil state may act in a manner which is unjust, it cedes its moral authority.[163] Grotius concludes from this that regardless of the will of the sovereign, it acts unjustly when it commands evil, with this violation imposing on individuals a duty of disobedience against it.[164] Notably, this does not dissolve the contract; transgressions against

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[160] Grotius, *The Rights of War and Peace*, I.IV.II.
[161] Ibid.
[162] Tierney, *The Idea of Natural Rights*, 336.
[163] Straumann, Benjamin. "Early Modern Sovereignty and Its Limits." *Theoretical Inquiries in Law* 16, no. 2 (2015). doi:10.1515/til-2015-107. 428 – 429.
[164] Grotius, *The Rights of War and Peace*, I.IV.IV.

natural law do not mark the state as irredeemable. Rather, if the state "through Fear, Anger, or some other Passion deviates from the straight Path, that leads to publick Tranquillity; it ought to be considered as a rare Case, and an Evil which, as *Tacitus* observes, is made up by good Offices."[165] Although not an inalienable right of rebellion against the sovereign, Grotius' theory does contain a requirement of civil disobedience stemming from natural law.[166]

Where the state does comport with natural law though, to Grotius all individuals are free to trade whatever rights they please in their pursuit of justice, including the ability to enslave themselves to others, with this position extending as a corollary from his views on property and familial sovereignty.[167] Grotius submits that "[i]t is lawful for any Man to engage himself as a Slave to whom he pleases."[168] This statement is predicated on his view that, because individuals control their persons and are able to freely trade in their rights, no right is so absolute so as to be unable to be capable of being traded.[169] [170] Grotius asserts that "We have a Right, not only over Things, but over Persons too," with this form of right arising either from familial relations,

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[165] Ibid.

[166] Grotius likewise argues that this requirement to obey natural law though does not necessarily need to be met by resisting or reforming the existing state. Injustices taken by a sovereign against its subjects would likewise provoke an international response, as while transfers of rights and civil law do not cross borders, natural law is universal. This then creates a moral duty for other states to intervene against any state-sponsored injustice. (Ibid, II.XXV.vi – vii) A further point of consideration is that each individual must affirm their acceptance of the state for it to gain moral legitimacy over them. Grotius develops this position in a condemnation of Spanish enslavement of Native Americans. (Ibid, II.XXII.ix – xiii.)

[167] Grotius' arguments concerning property and its acquisition are far more extensive than as presented here. I have merely presented enough of his argument on the topic to make sense of his view on slavery, which is only a small portion of his overall thought on the topic. The issue of familial sovereignty is explained two footnotes down from here.

[168] Grotius, *The Right of War and Peace*, I.III.viii.

[169] Grotius makes this observation in reference to both "*Hebrew* and *Roman* Laws." Interestingly, Skinner observes that, at least for the Roman conception of the institution, rather than slaves being subject to active coercion or restraint, "they remain at all times *in potestate domini*, within the power of their masters. They according remain subject or liable to death or violence at any time." This is a quite different view from more common conceptions of chattel slavery. Although individuals on this view were not necessarily bound or otherwise actively threatened with violence, slavery here consisted of living without any rights against those actions by their masters as a result of their being traded. Formally, their compliance with the will of their master was voluntary. However, there would loom the threat of violence or some other recourse for non-compliance in the same manner of a child disobeying a stern father. In a sense, slaves to Grotius were not wholly the property of their owner, but instead were under his jurisdiction rather than their own. Where their master did not command them, they still retained their capacities as free individuals. However, they were "perpetually subject or liable to harm or punishment" by their masters as a result of trading to him their rights against such actions. Notably, Skinner observes that this same view of slavery was operative in England at the time of the English Civil War, and resistance against England devolving into a state of slavery motivated many of the Parliamentarian forces during the Civil War, most notably the Levellers. The connection of this view to Hobbes is explored later in this section.
Skinner, *Liberty Before Liberalism*, 38 – 42.

[170] Notably, Grotius has two accounts of slavery, one stemming from *ius naturale* and the other from *ius gentium*. The former is what is described above, which applies in cases of voluntary acceptance or, interestingly, as a punishment for crimes. The rationale behind this second point is that that individuals assent to this as a potential punishment upon joining the state, and by breaking the contract make themselves liable to this as a legitimate state action. The latter is concerned with the taking of slaves in times of war.
Nifterik, Gustaaf Van. "Hugo Grotius on Slavery." *Grotiana* 22, no. 1 (2001): 233-43. doi:10.1163/016738312x13397477910422. 234.

consent of the right deprived party, or as punishment for a crime,[171] the second of which is of interest here. As noted previously, because the state is "[t]he Union of many Heads of Families into one People," each individuals owes to the state a debt of labor in return for the benefits of being within the community.[172] The state exists then as a sovereign power in light of this; it is immune from any external legal action just as a father is immune from claims made by his son.[173] Grotius though divides voluntary slavery from involuntary, and, as noted by John Cairns, voluntary slavery carries with it a series of restrictions. Cairns asserts that the agreement between individuals where one becomes a slave to the other was necessarily predicated on both achieving some ends; his example is one individual providing labor in return for "aliment and other necessities of life."[174] In this exchange, although the two individuals are contractually related as master and slave, the master takes on responsibilities for looking after the basic welfare of the slave. Although Cairns' example specifies those responsibilities as existing from the contract itself, Grotius makes clear that those responsibilities are necessary rather than accidental parts of the agreement. The master is prohibited from acting unnecessarily cruelly towards his voluntary slave "for Nature does not permit this." Instead, "all he [the master] can do is to trust his Son [slave] to another, who undertakes to maintain him, and whom he substitutes in his own Stead for that Purpose."[175]

These limitations are necessary to avoid voluntary slavery becoming indistinguishable from that "most ignoble and scandalous Kind of Subjection, […] by which a Man offers himself to perfect and utter Slavery."[176] Unlike voluntary slaves, perfect slaves are not able to break the

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[171] Grotius, *De Jure Belli*, II.V.i.
[172] Ibid, II.V.xxii – xxiii.
[173] John Cairns, "Stoicism, Slavery, and Law: Grotian Jurisprudence and its Reception," In *Enlightenment, Legal Education, and Critique*. Vol. 2. Edinburgh: Edinburgh University Press, 2015. 374.
[174] Ibid
[175] Grotius, *The Right of War and Peace*, II.V.xxvi.
[176] Ibid, II.V.xxvii.

contract which establishes their slavery. Moreover, any children of perfect slaves themselves become slaves. This is because the slave master, by providing the basic necessities of life to the parents, by extension does the same for the child, and thereby becomes entitled to the labor of the child.[177] Importantly though, in no case is a master justified in killing a slave except as punishment for a crime. Although slaves may be injured justly, Grotius submits that to put one to death is a mark of "absolute and uncontrollable power" which violates nature.[178]

Slavery then to Grotius is a transference of liberty indistinguishable from the trading of other rights. Although this trade is still governed by natural principles, liberty is not so sacrosanct so as to enjoy any special moral protection. The liberty of individuals is akin to labor or physical possessions in that each individual possesses a right to use those possessions as they see fit.[179] By nature, each individual is free. However, this freedom is inclusive on Grotius's account of the freedom to consent to be unfree.[180] Any individual could, without violating natural law, accept the status as the property of another provided such exchange was voluntary.[181]

Hobbes though does not generally allow for an individual to accept voluntary enslavement. Like Grotius, Hobbes divides his account of slavery into two parts. His division though is of unbound and bound slaves. Both occur as a result of the capture of one individual by another in times of war, where slavery is accepted "on being captured or defeated in war or losing hope in one's own strength" as an alternative to death, though it may also occur where places himself under the command of another "for the sake of peace and mutual defense."[182]

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[177] Cairns, "Stoicism, Slavery, and Law: Grotian Jurisprudence and its Reception," 375.
[178] Grotius, *The Right of War and Peace*, II.V.xxviii
[179] Salter, John. "Hugo Grotius: Property and Consent." *Political Theory* 29, no. 4 (2001): 537-55. doi:10.1177/0090591701029004004. 540 – 541.
[180] Cairns, "Stoicism, Slavery, and Law: Grotian Jurisprudence and its Reception," 377.
[181] Grotius, following Aristotle, notes that some individuals are indeed natural slaves, whereas others might accept this status more on instrumental grounds. The point though remains the same, that an individual may freely consent to the condition of slavery regardless of their psychological character.
[182] Hobbes, *On the Citizen*, VIII.1.

Importantly though, slavery must be voluntarily accepted, admittedly under conditions of duress.[183] Although the slave accepts a duty to serve the master, this only remains true to the extent that the slave recognizes the duty as such. Hobbes asserts than it is a moral rather than physical force which binds this type of slave to his master. This manner of slave may be treated in any manner as the master sees fit provided the slave is not held in bondage. If "prisons, workhouses, or bonds" are employed, the unbound slave becomes bound, and therefore is returned to the state of nature as this, to Hobbes, is akin to the belligerency which the slave sought to avoid by accepting their status.[184] The second sort of slave is one who is held in bondage.[185] On this conception, there is no contract between master and slave; the relationship between the two is that of individuals within the state of nature. Importantly, in both cases the dominion of the master over the slave is absolute.

Importantly however, in neither case may a slave offer himself into slavery. The closest Hobbes comes to this is in the case of the war-slave. However, in that scenario the choice faced by the slave is akin to the original formation of the sovereign in that, following his presumable defeat in battle, his relationship to his captor is within the state of the nature, which would render the remainder of that slave's life nasty, brutish and short.[186] In that moment, the slave is faced with the choice of accepting subjugation or accepting death. In this limited scenario, self-preservation is served by accepting subjugation.[187]

[183] The question of Hobbes on consent is another matter entirely. Given a choice between subjugation and death, this choice can hardly be said to be free. Although outside the scope of this paper, exactly what constitutes consent, and its relation to coercion for Hobbes is a rich topic.
[184] Ibid, VIII 4 – 9.
This passage may at first appear misleading. The discussion beginning on the following page of Mary Nyquist's argument on Hobbesian linguistics offers some clarification.
[185] It is notable that the conditions Hobbes sets out for this second form of slavery are exactly those which violate the conditions of the first form.
[186] Were the slave to refuse to submit to his would be master in this scenario, there would be no moral prohibition on the would be master killing him instantly.
[187] Luban, Daniel. "Hobbesian Slavery." *Political Theory* 46, no. 5 (2017): 726-48. doi:10.1177/0090591717731070. 728.

As observed by Phillip Pettit, the relationship of master to unbound slave is the same relationship Hobbes applies to the sovereign and the citizen. The agreement between a master and a slave is in effect a scaled down contract functioning with the same purpose as that which establishes Leviathan.[188] When the contract is entered into voluntarily,[189] the status of the slave is that of the citizen. Indeed, the only difference is that "the FREE MAN is the one who serves only the commonwealth, while the SLAVE serves also his fellow citizen."[190] Interestingly, Pettit observes that, as a result of this view, the Hobbesian slave remains 'free' in a sense despite his status. He notes that Hobbes divides freedom into two portions, the freedom to make a decision, and the freedom to act on that decision.[191] The former form is surrendered to the master as a condition of the contract. The latter though remains of each individual provided the master does not physically restrain the subject.[192] [193] This divided view of freedom is, to Daniel Luban, what authorizes Hobbes to found slavery on trust rather than subjugation. Restrictions on the former form of liberty do nothing to change the moral status of either party, but rather serve only to change to whom the slave transfers his right. To restrict the latter form however, either by contract or force, amounts to a prohibition on the slave defending himself from force.[194] The result is that slavery of the latter sort violates natural law, and thereby allows the slave to invoke the right of resistance.

This though does not entirely settle why Hobbes does not permit an individual to accept slavery. Although to hold a slave in physical bondage is impermissible as an implication of the

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[188] Pettit, Philip. "Freedom in Hobbes' Ontology and Semantics: A Comment on Quentin Skinner." *Journal of the History of Ideas* 73, no. 1 (2012): 111-26. doi:10.1353/jhi.2012.0008. 114 – 115.
[189] Again noting Hobbes' 'interesting' views on consent.
[190] Hobbes, *On the Citizen*, IX.9
[191] Hobbes phrases the former as liberty, and the latter as freedom. Ibid.
[192] Given the analogy at play here between citizen and slave, subject seemed a neutral term to describe both.
[193] Pettit, "Freedom in Hobbes," 120 – 121.
[194] Luban, "Hobbesian Slavery." 729.
Recall that Hobbes asserts "A Covenant not to defend my selfe from force, by force, is alwayes voyd. For […] no man can transferre, or lay down his Right to save himselfe from Death, Wounds, and Imprisonment," Hobbes, *Leviathan*, II.14.XXV.

right of resistance, this moral restriction does not apply to slaves held by trust. However, as argued by Mary Nyquist, the issue is one of translation rather than substance. She notes that, unlike *Leviathan*, *De Cive* was originally written in Latin. The result is that Hobbes' discussion of slavery in the text is denoted in the original text by the word *servus*, which is equally translatable as 'servant' based on context.[195] The implication of this argument is that Hobbes' unbound slaves, those held in that condition by virtue of trust having voluntarily accepted that status, are not actually slaves but are rather servants. Assuming for the moment this translation is correct, a servant then would enjoy a significantly different status than that of a slave as the latter designation would be reserved only for those held in physical bondage.[196] In neither condition does the slave or servant enjoy liberty as Hobbes understood the term[197] as both recognize a master other than the sovereign. However, the servant recognizes his master in the manner Pettit asserts the slave does, as an ersatz sovereign who is himself below the sovereign proper; Nyquist notes this is the same manner of relationship Hobbes attributes to father and son.[198] By contrast, a slave 'recognizes' no sovereign, but remains within the state of nature and are liable to death, entitled by right to resist their captor at any time.[199] [200]

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[195] Nyquist, Mary. "Hobbes, Slavery, and Despotical Rule." *Representations* 106, no. 1 (2009): 1-33. doi:10.1525/rep.2009.106.1.1. 8. Nyquist calls direct attention to the Cambridge translation of *De Cive* for not making this distinction, and instead translating *servus* as 'slave' throughout regardless of context. It should be noted that she refers to this edition as "authoritative," and that it is this translation used primarily in this paper.

[196] To return briefly to Pettit's argument, what differentiates a slave from a servant is that a slave would lack the freedom to act on a decision, whereas a servant would lack the freedom to make the decision. It is worth noting that Pettit (and Luban) cite the same edition of *De Cive* that Nyquist attacks for this lack of clarity in translation of '*servus*.' Luban does however modify his quotes to some extent, referring back to the original as presented in the Oxford University Press edition edited by Howard Warrender. [Warrender, Howard, ed. *De Cive: The Latin Version*, Oxford, Oxford University Press, 1984.]

[197] This is to distinguish liberty from freedom. Hobbes argued that only the sovereign was free as it had no superior master. Liberty by contrast here only means to live within the commonwealth and obey no master except the sovereign.
Pettit, "Freedom in Hobbes," 119.

[198] Nyquist. "Hobbes, Slavery, and Despotical Rule." 10.

[199] Baumgold, Deborah. ""Trust" in Hobbes's Political Thought." *Political Theory* 41, no. 6 (December 2013): 838-55. doi: 10.1177/0090591713499764. 842.

[200] Like Grotius, Hobbes' view of slavery is indebted to the Roman conception of the institution. Recall Skinner's argument that in the Roman conception of the institution, rather than slaves being subject to active coercion or restraint, "they remain at all times *in potestate domini*," (Skinner, *Liberty Before Liberalism*, 38 – 42.) Baumgold points out that Roman slaves did enjoy some level of legal protection in that it was impermissible to kill a slave arbitrarily. Her argument is that Roman slavery is adapted into Hobbes' view as servitude rather than slavery itself. She notes that Hobbes in *The Elements of Law* accosts Emperor Justinian's *Pandects* (a systematized legal code compiled for the Eastern Roman Empire between 530 – 533 AD drawing on all extant Roman law at the time) for not adequately distinguishing slavery from servitude and noting the same issue of how to understand 'servus' highlighted by Nyquist. Servants then enjoyed a significant degree of liberality to the extent that, while recognizing in effect two sovereigns, one subordinate to the other, they were otherwise akin to citizens of both with all attached moral and

Turning to Hobbes' own 1651 translation of *De Cive*, he does indeed distinguish servants and slaves in the manner described previously as unbound and bound slaves. Hobbes asserts that "[t]he distinction of *Servants* into such as upon trust enjoy their naturall liberty, or slaves, and such as serve, being imprison'd, or bound in fetters."[201] On this translation, one becomes a servant or slave by the same method, capture in war, but what distinguishes one from the other beyond that point is whether the captive enters into a contract with their captor. A servant on this translation is one who, following his defeat in battle, accepts the status of servant

> not from a simple grant of his life, but from hence rather, That he keeps him not bound, or imprison'd, for all obligation derives from Contract [which] is defin'd to be the promise of him who is trusted. There is therefore a confidence and trust which accompanies the benefit of pardon'd life, whereby the *Lord* affords him his corporall liberty; so that if no obligation, nor bonds of Contract had happen'd, he might not onely have made his escape, but also have kill'd his *Lord,* who was the preserver of his life.[202]

In both cases Hobbes holds that the master has dominion over his slave or servant, and may sell either as if no different from any other form of property.[203] Moreover, should the master come to face the same choice as his servant or slave as to whether to become a servant to another, Hobbes asserts that this scenario gives rise to a hierarchy of dominion where a servant's master may himself be a servant to another, with this chain necessarily terminating with the state as the ultimate master.[204]

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legal protections. Although they promise obedience in return for their lives, this was no different to contracting with Leviathan. These individuals were then not only simply alive, but securely alive, the second of which was not of slaves proper. Notably, Baumgold points out that the issues of trust and contract are absent from the Roman account. Hobbes' slave held in bondage is akin to one who has rejected contractual servitude, but instead of being put to death, is instead forced into that condition through bondage. Although both are equally just on the Roman interpretation, the operative difference for Hobbes is that the slave has not assented to their condition. There is therefore no contract governing their relationship with their master which leaves them in an insecure position as although they are alive, they do not enjoy any legal or moral protections which that contract would guarantee.

Baumgold, ""Trust" in Hobbes's Political Thought" 841 – 843.

[201] Hobbes, Thomas, *Philosophicall Rudiments concerning Government and Society. Or, A Dissertation concerning Man in His Severall Habitudes and Respects, as the Member of a Society, First Secular, and Then Sacred. Containing the Elements of Civill Politie in the Agreement Which It Hath Both with Naturall and Divine Lawes. In Which Is Demonstrated, Both What the Origine of Justice Is, and Wherein the Essence of Christian Religion Doth Consist. Together with the Nature, Limits, and Qualifications Both of Regiment and Subjection (De Cive)*. London: Printed by J.G. for R. Royston, at the Angel in Ivie-lane, 1651. VIII.1

It should be noted the Oxford University Press edition edited by Warrender is a reprint of the above. [Warrender, Howard, ed. *De Cive: The English Version*, Oxford, Oxford University Press, 1984.]

[202] Ibid, VIII.2

[203] Ibid, VIII.6.

[204] Ibid, VIII.8.

Although exactly how *servus* ought be translated within the context of *De Cive* does not affect descriptions of Hobbes' thought, it does have implications for interpreting his view on slavery. If his account from *De Cive* is left undivided, in that *servus* is understood to be exclusively in reference to slaves, this account is fully permissive of an individual willingly becoming a slave under limited circumstances. By contrast, dividing the same into one of slaves and another of servants means that slaves in a strict sense cannot securely accept their status. The relationship of slave to master on this view is one of circumstance, with only force keeping the slave as a slave. A servant by contrast is bound by contract and bound only by a moral force. In *Leviathan* however, Hobbes makes clear his endorsement of the divided view, holding that those who accept "dominion" status "avoyd the present stroke of death, covenanteth either in expresse words, or by other sufficient signes of the Will, that so long as his life, and the liberty of his body is allowed him." Hobbes here by contrast directly equates the condition of slavery as arising from a the status of captive taken following combat, with the same natural relationship, as he expresses in *De Cive.*[205] Grotius by contrast has no division; both categories are held as slaves.[206]

Section Three: Reconciling the Frameworks

Two evident features of both Grotius' and Hobbes' thought are both their shared interpretations of the philosophical tradition but also their adaptations, modifications, and genuine contributions to it to suit their own ends. The former aspect of this is more closely associated with the position of Tuck, whereas the latter is closer to Zagorin. And as noted in Section I, the crux of their disagreement stems from the insistence on a bright-line division as to

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[205] Hobbes, *Leviathan*, I.20.VII.

[206] Cairns, "Stoicism, Slavery, and Law: Grotian Jurisprudence and its Reception," 378.
Given that Grotius wrote in Latin, this might potentially suggest introducing the same issue of translation which potentially plagues Hobbes. However, given that Grotius holds individuals held in either form of bondage as the property of their captor and liable to physical bondage or death at any time, whereas Hobbes places clear distinctions on his categories, suggests that Grotius does not have a servant/slave division.

whether Hobbes is contained within a new tradition stemming from Grotius or whether Grotius was amongst the last of the previous tradition of thought.

As discussed in Section II, both Grotius and Hobbes consider natural rights as the property of individuals, allowing them to trade these permissions to the state in furtherance of an externally defined common good. However, beyond this differences begin to emerge. Foremost amongst them is the nature of that external element which defines the common good. Within Grotius' tripartite definition of *ius naturale*, the first and third definitions, "meerly *that which is just*," and "*Right,* according to which it signifies the same Thing as *Law,* when taken in its largest Extent, as being *a Rule of Moral Actions, obliging us to that which is good and commendable*"[207] both portray normative valuations in relation to an abstract notion of 'the good' or some other incorporeal form. These correspond to the objective sense of the term, natural law, against which a given agent cannot claim moral justification while holding a contrary view. It is only in his second definition, "a *moral Quality* annexed to the Person, *enabling him to have, or do, something justly.* I say, *annexed to the Person*,"[208] that Grotius grants individuals a degree of independent moral agency. What is permissible under this second definition though is necessarily constrained in that it cannot contradict anything already evaluated by the first or third. Grotius is careful to outline a series of universal moral positions which, importantly, are binding on the individual regardless of any agreement or proximity to other temporal agents.[209] These moral dictates, as discussed in Section I, require between individuals some degree of cooperation and community regardless of their own normative views regarding interpersonal relations or the existence of any societal laws or norms. Hobbes by

[207] Grotius, *The Right of War and Peace*, I.I.III – IX.
[208] Ibid.
[209] Ibid, I.II.III

contrast may be read to endorse only Grotius' second definition,[210] with the resulting lack of overarching moral authority remedied by the state.

That Grotius' view contains elements of both objective and subjective definitions of *ius naturale* whereas Hobbes' is entirely subjective[211] serves well towards explaining their differing views on resistance and slavery. For resistance, two differ in that Hobbes under no circumstance allows the permission to resist a government which is actively harmful to the individual to be ceded.[212] Grotius by contrast says only that in certain circumstances to do so might be irrational, but is otherwise permissive of this.[213] Harvey characterizes both Grotius and Hobbes as offering defenses of absolutism along these lines, with the former being merely descriptive whereas normative for the latter.[214] However, as Harvey himself notes, although individuals on Grotius' view are free "to forgo all of their natural liberty, thereby creating an absolute sovereign through a process of voluntary enslavement, […] there is no necessarily compelling reason why they ought to have done so."[215] Haakonssen helpfully raises a similar point while expressing apparent confusion regarding Grotius' reasoning:

> it makes it hard to see why he talks of individual liberty in civil society as a matter of course, and it makes it particularly difficult to understand how rights considered as moral powers over others can be surrendered in a contract that has as its main rationale their more effective protection.[216]

Although Haakonssen does reach a resolution to this issue, this passage serves to highlight the degree of flexibility within Grotius' account. Unlike Hobbes, Grotius offers no clear

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[210] I do not mean to imply that Hobbes did indeed endorse this view. Rather, my argument is only that Hobbes' view, as discussed in the previous two sections, is wholly incompatible with Grotius' first and third definitions.
[211] An argument could be made that the moral dictates of the state serve as an ersatz objective definition. However, that the state is a human creation, taken alongside Hobbes' limitations on what may constitute a natural law, suggests that this view would be incorrect.
[212] Hobbes, *Leviathan*, II.14.XXV
[213] Grotius, *The Rights of War and Peace*, I.IV.II.
[214] Harvey, "Grotius and Hobbes." 45.
[215] Ibid.
[216] Haakonssen, "Hugo Grotius and the History of Political Thought." 42.

prescriptions as to how natural law ought be followed, only that it must.[217] Given that interpreting how to obey the natural law is left to the discretion of each community, Grotius' view is that human rationality ought decide what permissions are ceded to the state towards that end. On this view, all rights are *alienable* rather than any being *inalienable* or *necessarily alienated*. Hobbes' view is the contrary; other than for the few rights which he deems inalienable, all are necessarily alienated as their retention invites violations of natural law. Interestingly, both Grotius and Hobbes hold the same view on the purpose of the establishment of the state and its relation to its inhabitants.[218] However, it is in how they define their terms, and the degree to which the state serves as a judge of justice or its functionary which differentiates their views on resistance.

Properly assessing slavery though is, to some extent, complicated by the translation issue noted in Section II. Grotius' position is clearer by virtue of his permissiveness.[219] However, assessing Hobbes' view both on its own terms and in relation to Grotius' is dependent on whether Nyquist's division of Hobbes' *servus* into slaves and servants is accepted. If the division is rejected, Hobbes' position is markedly similar to that of Grotius. Although they differ as to how one may become a slave, both would then treat the status itself as a morally permissible response to upholding the natural requirement of self-preservation. Likewise, on both accounts, natural law enjoys the same position, and on both accounts imposes a series of duties and obligations on the slave and master.

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[217] This is in large part due to Grotius' endorsement of both a more extensive account of what is required of individuals by natural law, and the justification of natural law being independent of any human creation. That Hobbes initially locates a far greater degree of moral authority in each individual as separate and independent moral agents who may subjectively account for their own interests, in his view, precludes permissiveness like that of Grotius. Abizadeh helpfully points out that Hobbes' treated these moral judgments as arising from cognitive passions, senses, or the imagination, all of which arise from "imperceptible, internal motions in our body." He notes that Hobbes' likewise viewed the external origination of the same "as so much scholastic claptrap."
Abizadeh,. *Hobbes and the Two Faces of Ethics*, 30 – 31.

[218] Grotius, *The Rights of War and Peace*, I.IV.II.
Hobbes, *Leviathan*, II.31.XLIII

[219] Notwithstanding the few limitations Grotius does introduce as requirements of nature, such as that a slave cannot be put to death by his master.

Where the two differ on this reading is that Grotius has no division akin to Hobbes on the bound and unbound slave. The closest Grotius comes in this regard is his division of imperfect and perfect slavery, the latter itself having the subset of utter slavery. However, these divisions deal in temporality rather than the nature of the servitude itself.[220] Accepting Nyquist though changes this evaluation significantly. This reading limits Hobbes' account of slavery to those who have not consented to this condition, and are instead held in bondage by force rather than by contract. Grotius offers little in the way of a directly comparable situation. The closest scenario is that of the perfect and utter slave, which Grotius considers to have lost all degrees of liberty. However, not only does Grotius only offer a descriptive rather than justificatory account of this subset, the limited discussion of how natural law applies in this case offers the Grotian perfect and utter slave far more moral protection than the Hobbesian [bound] slave. Grotius' account, drawing heavily from Tacitus, holds only that a perfect and utter slave is one who is completely within the control of the master, and bar manumission is condemned to that status for the entirety of his life.[221] Importantly though, this relationship is still governed by contract rather than force, and Grotius is careful to note that any children born of slaves do not necessarily inherit that status.[222] Although Hobbes does not comment on this sort of scenario in particular, one may presume that a child born into the state of nature would enjoy no greater moral protection than an adult, and would by their age by unable to resist bondage.

Returning now to Tuck and Zagorin, it is clear both arguments contain elements of truth. Addressing Tuck first, he holds that Hobbes' mode of consideration constitutes the 'modern'

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[220] Grotius, *The Rights of War and Peace*, II.V.xxvi – xxx.
[221] Ibid, II.V.xxvii
[222] Ibid, II.V.xxix.
Grotius notes in the passage that while Roman law accepted that a child born to a slave was likewise a slave, he rejects this view as contrary to nature. Instead, he reasons out a series of conditionals taking into account the status of both parents which only apply if there is no applicable civil law governing the relationship.

theory of natural law.[223] Tuck asserts the right of resistance as a crucial point in Hobbes theory which he claims is directly descended from Grotius: An individual cannot trade his life in itself to the state, nor his right to resist the state when his life is directly threatened by it. In all other matters, the Hobbesian sovereign was absolute, and possessed not only the right, but also the duty, to claim anything from individuals where that taking served the common interest.[224] However, Tuck draws a clear connection between the right of self-defense and the right to punish transgressors on grounds that Hobbesian natural law did not legitimately allow for all things which were possible, but rather only that which furthered self-preservation.[225] The right to punish those who had harmed natural individuals was necessary to the extent that it might serve as a deterrent against harm. This right could be legitimately traded to the sovereign. A right to self-preservation though remained squarely within the domain of each individual on grounds that it was itself a foundational right on which all others existed; if one were to lack this right, and therefore be able to be killed by others as a matter of right rather than of power, this would negate all other rights and run counter to human nature.[226] A sovereign which commanded death to an individual, on Hobbes view, could not do so legitimately as this negated the purpose of individuals joining together under that sovereign,[227] Hobbes' view on the matter of resistance is, according to Tuck, that "no man can relinquish his right of 'protecting and defending himself by his own power'" as this would run counter "the primary right of nature."[228]

[223] It should be noted that this division in itself is not controversial. Although referred to by various names, this is the same break of tradition as referenced previously in this section. The possible point of confusion, as noted by Zagorin, is that the earlier tradition is called both 'natural law theory' and 'classical natural rights theory,' whereas the modern is both 'natural rights theory' and 'modern natural law theory' despite the division itself being the same. Which set of terms is used is a matter of preference. This should not be interpreted to read that where one tradition begins and the other ends is the non-controversial part. That is only that a break does exist.
[224] Tuck, *Natural Rights Theories*, 137.
[225] Ibid, 138.
[226] Ibid, 130.
[227] This is of course working from the assumption that preferring death is not a rational solution to the matter of the avoidance of suffering. Hobbes would likewise deny the rationality of this position.
[228] Ibid, 120.

Tuck argues that Grotius likewise holds self-defense as underlying "the character of the natural world, and in particular the fundamental principles upon which all creatures seem to act."[229] The state possesses the power on Grotius' view to prohibit acts of resistance where that resistance is inimical to the public good, dismissing self-interested resistance as a "promiscuous Right of Resistance."[230] This line notwithstanding, Tuck considers Grotius' argument on this point to be "Janus-faced," as despite his characterization of the text as somewhat absolutist, he argues it would be irrational for the original societal contractors to have indeed traded their right of resistance in its entirety.[231] Although all rights were, unlike on Hobbes' account, capable of being renounced, "interpretive charity requires that we assume that all were no *in fact* renounced."[232] It is this view of Grotius which Tuck argues would spread throughout Europe in the years following Grotius' death, and would come to dominate English political thought in the period. Tuck's view of "Grotius' theory of voluntary autocracy" then were, combined with the novel notion of certain rights being indeed inalienable, taken up by various factions during the English Civil War. His argument is that finding the correct balance between Grotius' principles and inalienable liberty were what motivated the disagreements between various factions and thinkers such as the Richard Overton, Anthony Ascham, and John Selden.[233] Grotius' offering of "the first major public expression of a strong rights theory to be read in Protestant Europe"[234] had become such a major figure in the background of English political though during the period is Tuck's justification for arguing Hobbes followed in Grotius' footsteps.

[229] Tuck, *Rights of War and Peace*, 100.
[230] DJB 338.
[231] Tuck, *Natural Rights Theories*, 79.
[232] Ibid, 80.
[233] Ibid, 143 – 157.
[234] Ibid, 80.

Tuck's argument then is certainly plausible if not convincing. However, his claims require some nuancing. Grotius' invocations of God in *De Jure Praedae* and *De Jure Belli* make no reference to whether he endorses Catholicism or Protestantism. However, this issue highlights the importance of the historical context.[235] Although weakening, Catholic influence was still palpable in contemporary Dutch intellectual circles, especially in Amsterdam.[236] And, as demonstrated by Haakonssen, Grotius' theory owes much to the preceding lines of Catholic reasoning.[237] Indeed, in 1617 Grotius authored a defense of Catholicism in response to Fausto Sozzini's non-trinitarian account of Christianity which had gained attention from the Polish Reformed Church.[238] Although writing in a Protestant state and a religiously mixed city, Grotius himself is deeply indebted to the Catholic tradition and its theology.[239] Tuck's view may be interpreted as two related but independent claims, the more limited one being only that Grotius' view is merely the first rights claim made in a Protestant region, and the more expansive containing implications that Grotius' novelty is specifically due to Protestant influence.[240] To delineate Grotius as marking a break with the Catholic tradition, as Tuck's position requires, appears untenable however. While certainly offering an expansive rights theory, and one which is not entirely requiring of Catholic theology to function,[241] Grotius' principles are far too

[235] An extended discussion of the historical contexts surrounding both Grotius and Hobbes may be found in the Appendix. Although neither comment directly on how either thinker is to be interpreted in relation to the other, both are immensely useful to understanding the non-philosophical pressures both thinkers were under.
[236] Geyl, Pieter. *History of the Dutch-speaking Peoples: 1555-1648*. London: Phoenix, 2001, 366 – 369.
[237] Haakonssen, *Natural Law and Moral Philosophy*, 26 – 28. Haakonssen's discussion on those pages is limited to Suarez. See Padgen, "Dispossessing the Barbarian," 82 – 84 for comparable positions held by Vitoria.
[238] Grotius, Hugo. *A Defence of the Catholic Faith Concerning The Satisfaction Of Christ, Against Faustus Socinus.* Translated by Frank Hugh Foster. Andover, MA: Warren F. Draper, 1889. *passim*.
[239] Rupp, Max G. "Hugo Grotius and His Place in the History of International Peace." *The Catholic Historical Review* 10, no. 3 (October 1924): 358-66. 359.
To reiterate Footnote Eight, my suggestion here is not that Grotius' own possible Catholicism is a primary motivator here. Rather, the discussion of religion is to demonstrate more Grotius' relationship to the faith and his Catholic predecessors, not his personal acceptance of it.
[240] Tuck, *Natural Rights Theories*, 80 – 81.
[241] Haakonssen, *Natural Law and Moral Philosophy*, 29.

interconnected with the Church to locate him more closely with Hobbes than his scholastic predecessors.[242]

Tuck's noting of the "fundamental principles" of Grotius' employment of both objective and subjective definitions of *ius naturale*, and the subjugation of both to an abstract intuitional sense of justice,[243] tracks with discussion of the same in Section II and earlier in this section. His own description of Grotian slavery in itself is sparse though. Despite this, his discussion of Grotius' view on property more generally offers a degree of insight. His characterization of this is that "[e]ssentially, what he [Grotius] had argued was that men were free to contract and bargain in all ways over all their property" and, importantly, "[p]ersonal liberty was a part of a man's property."[244] From this, there is no apparent conflict between Grotius' own view on slavery, that "[i]t is lawful for any Man to engage himself as a Slave to whom he pleases,"[245] and Tuck's understanding. The operative justifications on both accounts here are Tuck's observation that Grotius considers the self, and any attendant liberty, as mere property which may be traded freely, and Grotius' own holding that the ability to engage in such a trade is protected on the condition that such trade is consensual.[246] This argument from liberty as property likewise allows Tuck to explain Grotius' view of resistance, alongside a natural obligation to uphold peace.[247]

What designates Grotius as heralding the new tradition for Tuck though is limited to the singular move that the individual could possess the same manner of moral authority as the state. Although this would not be the case with the state established, that it was possible at all in a pre-

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[242] Rupp, Max G. "Hugo Grotius and His Place in the History of International Peace." *The Catholic Historical Review* 10, no. 3 (October 1924): 358-66. 366.
I grant that Rupp's account is quite dated. However, it serves well to highlight the direct connection between Grotius and Catholic principles more generally, rather than as filtered through by other early modern and medieval scholars.
[243] Tuck, *Natural Rights Theories*, 67 – 68.
[244] Ibid, 69.
[245] Grotius, *The Right of War and Peace*, I.III.viii.
[246] Ibid.
[247] Tuck, *Natural Rights Theories*, 72 – 73, 79.

political time is, to Tuck, what made possible any consideration of concepts such as the state of nature.[248] When Tuck first addressed this move and Hobbes' reception of it in the 1970s, he couched it in terms of the debates surrounding the extents and limits of rights during the English Civil War.[249] Grotius' account appealed to both the Royalist faction, who focused on the tradability of individuals' natural rights to the state, whereas the dissenting factions held from the same text that any such trade was permitted, but rejected the Royalist view that such trade had indeed occurred on grounds that such a trade would be irrational.[250] That Grotius did not delineate in exacting detail a form of government or manner of social relations is what allowed, in Tuck's view, these opposed camps both to claim Grotius, or at least his moral framework, in legitimizing their positions.[251] This splitting of the Grotian legacy then is for Tuck that to which Hobbes is responding, with Hobbes' modifications to Grotius serving to interpret Grotius in such a manner so as to deny any legitimacy to the anti-monarchy dissidents.[252]

Turning now to Zagorin, his first criticism, that Grotius is not wholly original in his thought, is a point which Tuck concedes.[253] Abizadeh adds to this that, although Hobbes' terminology and analogies are muddled, his epistemology and philosophy of mind are in agreement with those of both the earlier Scholastics and Descartes.[254]

However, Zagorin's view of Grotius as employing *ius naturale* in the objective sense only is questionable. Recall Grotius' tripartite division of *ius naturale*, and the second division assigning a degree of direct moral agency to individuals.[255] As discussed in Section II, Grotius'

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[248] Tuck, *The Rights of War and Peace,* 228.
[249] A far more extended discussion of the history itself is found in the Appendix.
[250] Tuck, *Natural Rights Theories*, 143.
[251] Ibid, 149 – 151.
[252] Ibid, 125 – 127.
Exactly how Hobbes attempted to diffuse these claims, especially in relation to those regarding slavery and resistance, are addressed in the Appendix.
[253] Tuck, *Natural Rights Theories*, 227.
[254] Abizadeh, *Hobbes and the Two Faces of Ethics*, 33.
[255] Grotius, *The Right of War and Peace*, I.I.iii – ix.

account of *ius naturale* requires that it at least contain within it the subjective interpretation. It is this move which allows Grotius to treat moral permissions and entitlements as property to be traded rather than as moral absolutes. Without this, Grotius could endorse neither his views on slavery or resistance as both are predicated on the transfer of rights made possible by the subjective account, as noted by Haakonssen as discussed in Section II.[256] However, this subjective element is only true of Grotius' second definition rather than his view of natural law taken as a whole. Zagorin's view appears correct as applied to the first and third definitions, which form a large amount of Grotius' moral framework.[257]

Zagorin does grant that Grotius does have a conception of rights. However, he contends that these rights are necessarily legal rather than natural rights.[258] On this reading, one's ability to sell one's self into slavery or take up arms against the state would not be vestiges of any individual moral agency held back from the state, but instead legal permissions granted by it. He predicates this view on grounds that Grotius lacks any extensive discussion of a state of nature or how a social contract would originate beyond a natural desire for cooperation. Zagorin likewise denies that Grotius paid any great attention to any conception of natural liberty.[259] Again though, as discussed in Section II, Grotius does endorse a natural ability of individuals to trade their property, including their persons, amongst each other in accordance with natural law.[260] Despite the sparse accounting of a Grotian state of nature, it does not follow that this natural ability is not a natural right, especially in light of the "*moral Quality* annexed to the Person, *enabling him to have, or do, something justly*" as the second definition of *ius naturale*.[261] It is only on the second

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[256] Haakonssen, "Hugo Grotius and the History of Political Thought." 36 – 37.
[257] I say this in reference to Grotius' extended discussions of what is required of and by individuals as dictates of nature. This is far more extensively discussed in Section II.
[258] Zagorin, "Hobbes Without Grotius," 35.
[259] Ibid.
[260] Grotius, *The Right of War and Peace*, I.III.viii.
[261] Ibid, I.I.v.

definition which Zagorin's claim appears questionable. As pointed out by Harvey, Grotius' innovation on the second definition was to treat it as a part of nature in its own right rather than as a corruption of it.[262]

Although studying the discussion from a separate angle, Harvey's proposal of a common milieu avoids a sharp division. His view is that the formal theory of Hobbes is at least traceable to if not directly derived from Grotius, but applied in a manner fundamentally opposed to Grotius' normative bases.[263] Similar to Tuck, Harvey highlights Grotius' treatment of rights as commodities naturally possessed but able to be traded to evidence this, the foundation of the legitimate state as predicated on their transfer, and a shared sense of moral pessimism.[264]

Despite the strengths in his argument though, Harvey downplays the importance of Grotius' predecessors in establishing his importance. In tracing this background, he points out the teleological assumptions underlying the state as expressed by Suarez and Vitoria, that the state exists as a rational occurrence necessarily instituted to satisfy intrinsic human requirements.[265] However, his treatment on the basis of this teleology is thin, noting only Aristotelian notions of socialization and Jean Bodin's claim that the purpose of the state is to contemplate God.[266] As noted by Haakonssen though, the religious foundation of this teleology is far deeper. Although ultimately traceable to Aristotle, far more important to the contemporaries of Grotius was to interpret what was required by faith and to disprove moral skepticism through scripturally grounded interpretations of human nature.[267] It was these notions

[262] Harvey, "Grotius and Hobbes." 35.
[263] Harvey, "Grotius and Hobbes." 28.
[264] Ibid, 33, 36 – 37.
[265] Ibid, 29 – 31.
[266] Ibid, 30.
[267] Haakonssen, *Natural Law and Moral Philosophy*, 24 – 25.

which had been the bases of natural law as the thought was that these factors were created by God, and that He willed them as such.[268]

However, natural law did not preclude civil law from existing provided the two did not conflict. Haakonssen uses Suarez to illustrate an already extant notion of civil contractarianism as natural law alone. However, Suarez does not prescribe any given political regimes, but instead leaves their nature to be determined by practical reasoning.[269] Tierney likewise points out the implications of this view on Suarez's political theory. Having already established a state based in the precepts of human nature,[270] he finds that this natural form of government then is democracy. This diffusion of power troubled Suarez. Tierney points out from this that Suarez's solution was to allow for political power to be delegated by the consent of the governed, which required the entitlements of natural law as "merely concessive or permissive" rather than absolutes.[271] This move corresponds to the differentiation of objective and subjective *ius naturale* (natural law and natural right) as discussed in Section II. Harvey, citing Tuck, notes Grotius' inheritance of this division from Suarez while pointing out Grotius' innovation with it was to view the objective and subjective senses as moral equals.[272] Haakonssen characterizes Suarez' interpretation of the same instead as concessions granted by natural law. He points out Suarez's treatment of natural rights as stemming from natural law's dictating both what is necessary and what is merely permitted to argue Suarez's view is that natural rights exist as a corollary of the requirement that natural law be obeyed.[273]

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[268] Haakonssen, "Hugo Grotius and the History of Political Thought." 44.
[269] Haakonssen, *Natural Law and Moral Philosophy*, 17.
Tierney raises the same point. Tierney, *The Idea of Natural Rights*, 310.
[270] Although abbreviated, the fundamentals of this argument can be found on pages 20 – 22.
[271] Tierney, *The Idea of Natural Rights*, 311.
[272] Harvey, "Grotius and Hobbes." 35.
Suarez had understood the subjective sense to be lesser in the sense that it was a necessary compromise due to human nature both pointing to democracy as the ideal form of government while at the same time suggesting to him a democratic regime was doomed to succumb to infighting. Grotius by contrast passes no judgment as to whether one sense is superior to the other.
[273] Haakonssen, *Natural Law and Moral Philosophy*, 23.

Breaking with Tuck though, Harvey is likewise receptive of the differences in position between Hobbes and Grotius namely on the nature of the state. Harvey rights attributes these differences to Hobbes' notion of natural law lacking any direct imperatives of human cooperation which allows Hobbes to endorse a "hyper-permissive" view in which all things which preserve the individual are just.[274] The state then to Hobbes may be read at a minimum only to ensure coerced cooperation, whereas the Grotian state instead serves as a genuine cooperative community.[275]

Conclusion:

As noted in Section III, the crux of the issue at hand is the hard division of two traditions and how Grotius and Hobbes ought be categorized between them. And as also noted in Section III, the degree of disagreement between Tuck and Zagorin towards this is minimal. As shown previously, Hobbes does indeed bear a good deal of similarity to Grotius, especially in his views on the content of natural law and natural right, with Zagorin's criticism of Tuck's comparison being at odds with the text. However, Zagorin does rightly point out that both Grotius and Hobbes are deeply indebted to their intellectual predecessors, in challenge to Tuck. Zagorin characterizes Hobbes as heralding the beginning of the tradition of natural right based 17th century liberalism[276] which would later be taken up by such figures as John Locke. On his view, Grotius, rather than ushering in this tradition as Tuck argues he does, is instead the last of the Scholastic absolutist line dating from Aquinas.

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[274] Harvey, "Grotius and Hobbes." 41 – 42.
[275] Ibid, 40.
See also Brooke, *Philosophic Pride*, 37 – 38. Brooke's consideration of Grotius on this topic is discussed in Section I.
[276] Zagorin, "Hobbes Without Grotius," 39.

However, as noted by Haakonssen, both Hobbes and Grotius engage with the respective extant traditions of natural jurisprudence to settle perceived ambiguities in previous accounts.[277] Grotius, while developing the tradition, is still deeply interconnected with those before him, foremost amongst them Suarez and Vitoria, most notably the latter's defense of Spanish colonial activity in the Americas.[278] Grotius, while innovative on what constitutes property and the relation of natural law to individuals as distinct moral agents, is still bound by Scholastic views on the relation of *ius naturale* to a distinct teleological outlook. Hobbes by contrast jettisons much this teleology. However, in spite of this, his first principles which undergird individuals' normative premises in their rational deliberations are traceable directly to Aquinas.[279]

This is not to say though that Grotius was unimportant to Hobbes. Although likewise drawing from Ockham and Bodin,[280] Hobbes' division of natural law and natural rights as independent and coequal concepts is directly attributable to Grotius.[281] What substantially differentiates their accounts is that applies to this division "an elaborate metaphysics and moral psychology" in place of "the minimal moral equipment of [Grotius]."[282] If the hard line may be abandoned for the moment, Grotius then is best viewed as a transitional figure, elaborating on the elements of his scholastic predecessors while at the same time laying the groundwork for a clearer break.

The weakness of this view is that, at least in part, Grotius' account had entered into the philosophical æther of the period. The account Hobbes reaches can be viewed uncharitably as little more than adding a distinct moral direction onto an otherwise Grotian methodology. This

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[277] Haakonssen, *Natural Law and Moral Philosophy*, 31.
[278] Padgen, "Dispossessing the Barbarian," 80 – 83.
[279] Abizadeh, *Hobbes and the Two Faces of Ethics*, 97.
[280] Skinner, *The Foundations of Modern Political Thought: The Age of Reformation*. 178, 287.
[281] Haakonssen, *Natural Law and Moral Philosophy*, 32.
[282] Ibid, 35.

though would necessitate a degree of ignorance as to Grotius' own moral precepts. This is because Grotius' permissiveness in regards to how individuals may interact with each other by right is guided by a strong account of an external moral law. That Hobbes lacks this feature necessitates a great restriction on rights governed interactions.

What the disagreements between Tuck and Zagorin serve to highlight though is that traditions of political thought, and any taxonomies of their thinkers, are not objective elements, but are rather conceptual apparati used to create more easily perceptible categories. What is at stake in this classification, as with any, depends on the degree to which these constructed categories are held in relation to one another. If Grotius is to be treated as a member of the Scholastic tradition, and therefore separate from Hobbes, this would serve to downplay his importance to later contemporaries. The contrary would preclude a full appreciation of Grotius' own background and underpinnings. To hold that Thales is of a different philosophical tradition than Heidegger, for example, would be uncontroversial, whereas Grotius and Hobbes far less so. Across any great expanse of time or space, a conceptual division may prove more valid by mere circumstance. However, this does not dismiss the notion that, in any contemporary given moment, these categories are instead best understood as schools of thought which, although perhaps separate, do indeed interact.[283] The categories of Scholastic or Liberal, and the lines of influence between thinkers of those categories, by no metric means that any given thinker did not or could not be influenced by one of another category. And more importantly, the disagreement between Tuck and Zagorin demonstrate both that, in some cases, thinkers may be rightly able to be affiliated with more than one philosophical tradition, and that these divisions are malleable frameworks imposed upon the past by later scholars to help make sense of it. This is not to say

[283] Recall that Hobbes was not too much younger than Grotius, and that *De Cive* and *Leviathan* (partially) were written while Grotius was living.

that these categories are not useful in understanding the transmission of ideas. Rather, that to consider them as inviolable and atomistic aspects is to deny the interactions which spur their development.

Hobbes is deeply indebted to Grotius for his methodological and theoretical underpinnings,[284] and especially so on his view of the right of resistance and slavery. However, Grotius's strong connection to his predecessors and his reliance on the individual will as directly connected to God's locate him as equally aligned with both his philosophical predecessors and successors. Each remain independent thinkers within a stream of thought composed of distinct but interconnected chapters.

[284] Haakonssen, *Natural Law and Moral Philosophy*, 34 – 35.

Appendix: Physical Constraints and Motivations

Grotius's *De Jure Praedae* and *De Jure Belli ac Pacis* were written in 1604 and 1625 respectively.[285] At this point in Dutch history, the United Provinces[286] had only been free from Habsburg[287] domination for around a generation. This though does not mean the Dutch Republic existed as a fully cohesive political entity. Although Spanish, and correspondingly Catholic, influences began to fade somewhat, there were great regional variances; more northerly provinces not only tended towards a more wholehearted embrace of Protestant sects, but also a stronger rejection of Catholic doctrines and practices as Spanish imports. The more southernly provinces by contrast tended not only to be more heavily populated by Dutch Catholics, but also as a result were less keen to wholesale reject all Spanish influence. Amsterdam, although located in the north, combined elements of both.[288] It was during this period that Grotius was establishing himself. Pieter Geyl notes that it was in the intellectually mixed heritage city of Amsterdam that Grotius first began to mingle amongst magistrates and other governing officials and from whom he would find a synthesis of scholastic and humanist traditions.[289]

A central issue governing Dutch thought at the time was how to balance Dutch political and economic concerns against the country's religious divisions. The Dutch economy at the time was primarily supported by maritime trade. Much of this though, if not directly with Spanish and Portuguese colonial possessions in Asia or the Americas, passed through waters claimed by those

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[285] As noted previously, neither text was published during Grotius' lifetime. Beyond a portion of *De Jure Praedae* being published as *Mare Liberum* in 1609, neither text would go beyond Grotius' personal papers until 1868.
[286] The full name of the country was The United Provinces of the Netherlands. Officially it was The Republic of the Seven United Netherlands. At this point, the provinces of Groningen, Frisia, Overijssel, Guelders, Utrecht, Holland, and Zeeland all shared a common religion and foreign policy. However, they were more a federation than possessing a distinct 'Dutch' identity, though they did certainly see themselves as not Spanish.
[287] Since the 15th century what is now the Netherlands had been under the control of the Habsburg family. At this point in union with modern Belgium, the lands came into the possession of the Austrian Habsburgs in 1482. This would be the case until Charles V, Holy Roman Emperor/Charles I of Spain ascended jointly to the Austrian and Spanish thrones in 1506. Upon his abdication, different Habsburgs would sit on both thrones, but the Netherlands passed to Spanish Habsburg administration until gaining independence following a revolt in 1581. Modern Belgium, known then as Flanders would remain a Spanish possession until 1714.
[288] Geyl, *History of the Dutch-speaking Peoples* , 290 – 293.
[289] Ibid, 320 – 322.

powers as part of their colonial empires.[290] Opposition to Spanish and Portuguese domination in international trade as an economic matter though had bolstered "Calvinist hatred of Spain" on religious grounds.

This issue had first come to a head in 1603, when a Portuguese vessel was attacked by a Dutch ship near Singapore. Grotius was hired to provide an account of the Dutch vessel's dealings. This account, and Grotius' findings, would become *De Jure Praedae*.[291] The Portuguese claim was that because they had been the first major European power to make contact with the Kingdom of Johor, they enjoyed by right the exclusive rights to trade with the state. Grotius' counter to this was predicated on the notion that the Dutch trade with Johor was itself occurring on the high seas, and therefore beyond the dominion of any political entity. He opens *Mare Liberum* with a differentiation of inland waterways and the seas, and a declaration that, while states have a right to control the former, the latter is governed by "the right of navigation and the liberty of traffic."[292] That liberty persists on the high seas is because, on Grotius' view, oceans are beyond the control of any governing body, and resultingly there is no authority to which the right of free navigation may be surrendered.[293] However, Grotius likewise closes off the possibility of a sovereign of the seas by contrasting that conceptual sovereign against those based on land. Sovereign states to Grotius are defined by their possession and control of a defined territory and population. The seas though fail to meet either of these conditions. They are rather a great expanse occupied by private transiting individuals. What affairs occur at sea then are not matters of states bound by natural law or social contracts, but are

[290] Ibid, 447 – 448.
[291] Borschberg, Peter. "Hugo Grotius, East India Trade and the King of Johor." *Journal of Southeast Asian Studies* 30, no. 2 (September 1999): 225-48. doi:10.1017/s002246340001300x. , 227.
[292] Grotius, Hugo. *The Free Sea*. Translated by Richard Hakluyt. Edited by Knud Haakonssen and David Armitage. Indianapolis, IN: Liberty Fund, 2004. 7.
[293] Grotius, *The Rights of War and Peace*, I.III.XVI

instead matters between natural individuals living temporarily beyond the moral restrictions imposed by membership within their respective societies.[294]

As noted by Peter Borschberg though, Grotius observed that the Kingdom of Johor acted in such a manner that it ought be considered as an independent political entity. Johor was not bound by any duties or rights to either the Portuguese or Dutch, but was rather an independent third party which could contract with either power as it saw fit.[295] From this, Grotius argued that Portuguese claims of control over trade with or near the kingdom violated its natural freedom. Following Vitoria, Grotius held that Portuguese prohibitions on free trade and communication between the Kingdom of Johor and whoever they saw fit to interact with gave those excluded parties, including the Dutch, sufficient justification for war.[296] The result was that Grotius argued the Dutch and Johor were in effect allies in a mutual conflict with the Portuguese, with the seizure of the Portuguese merchant vessel a legitimate act in defense of freedom of navigation.[297]

Geyl instead attributes the motivations of Grotius' defense of the Dutch position to the economic benefits of denying the Portuguese a monopoly on trade to Asia. On this view, ships or their cargoes which were covered by national protections and secured "peaceful commercial navigation" against "vexatious visitations or reprisals for private damage."[298] He notes that, prior to the incident involving the Portuguese vessel, various states in the region had sought to recognize Dutch traders. However, this had been opposed by the Portuguese who defended their

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[294] Ibid.
[295] Borschberg notes that that, because the King of Johor was by implication a monarch in his own right, that his watching the Dutch vessel seize the Portuguese ship meant he had assented to such action.
Ibid, 230 – 231.
[296] Ibid, 232.
Borschberg notes that because Johor was not a Christian state, Grotius instead was required to appeal to "Biblical history, the church fathers and medieval doctors, as well as established and often-cited authorities like Vitoria." Interfaith diplomatic dealings were still looked at sideways in European circles at the time; The Franco-Ottoman Alliance of 1535, still just about in living memory, had required King Francis I of France to personally explain to Pope Paul III why it was permissible to ally his Catholic kingdom with the Ottoman Empire, a Muslim state. Rather than attempt to justify a de-facto Dutch alliance with Johor along these lines, Borschberg submits that Grotius deliberately ignored this episode as precedent because of the controversy surrounding it.
[297] Ibid, 234.
[298] Geyl, *History of the Dutch-speaking Peoples*, 455.

claims of monopoly by force.[299] He evidences this by Grotius' later justification for the exclusion of English traders from the same region on grounds that freeing those waters from Portuguese control had been a Dutch expense.[300] Geyl does grant though that the economic motivations were at least clad in a moral veneer. Although the Dutch state stood to increase its revenue should the system advocated by Grotius come into effect, the arguments themselves "had been in fact aimed at the arrogance of the Spanish and Portuguese who wanted to appropriate the oceans."[301] Because the Dutch cause could be viewed, as Grotius argued, as in accordance with natural law, this made the Iberian position necessarily unjust.

This though would put Grotius into a complicated position as the dominant natural law traditions were grounded in Catholic scholasticism, the underlying theology of which was not shared by the various Protestant sects operative in the Netherlands.[302] Grotius' solution to this was, as Borschberg characterizes it, an attempt to "shed new light on an old problem by examining a host of issues in a general, theoretical manner disassociated from their original historical context."[303] This resulted in a manner of argument that both drew on classical notions of human sociability and medieval interpretations of trade with those of other faiths[304] to draw out themes of charity, civility, commence, utility, and friendly exchange between all as inalienable tenets of human nature.[305]

Grotius' argument to that effect was that God has not willed each part of the earth an equal proportion of the "necessities of life," but instead make each people more or less proficient in certain tasks. The result of this is that humans are forced to trade for mutual benefit, this itself

[299] Ibid, 458.
[300] Ibid, 465.
[301] Ibid, 344.
[302] Ibid, 499 – 501.
[303] Borschberg, "Hugo Grotius, East India Trade and the King of Johor." 237.
[304] These mainly concern trade with Islamic states. When written, the primary focus was on the permissibility of trade with the Ottoman Empire. Johor however was also a Muslim state.
[305] Ibid, 238.

being part of Grotius' view on human sociability. International trade then becomes "the highly prized fellowship in which humanity is united." To disrupt this by closing off portions to the sea is therefore a violation of natural law, and God created the ocean to facilitate unhindered trade in furtherance of this.[306] Geyl attributes the manner of argument to Grotius' attachment to principles of "famous Netherlandish liberty," which he views Grotius to have here codified as a part of natural law.[307] [308]

Hobbes, by contrast, doesn't publish *Leviathan* until 1651, just after the conclusion of the English Civil War. King Charles I of England, Scotland, and Ireland had come to power in 1625. At this point, the English political system was guided by an interpretation of natural which endorsed a limited view of divine right of kings. Although the monarchy did possess near absolute authority, it was limited by a general recognition of a natural liberty for all Englishmen. England was only a free state to the extent that these limitations were respected, with English civil law to direct "every private man to protect the [natural] liberty of every private man."[309] The conception of a free state, one which is guided by liberty, was, according to Skinner, one in which the matters concerning the citizens by nature are handled by the community itself, with the purpose of civil law being to codify what was already required by the natural rights of individuals. For their rights not to be respected was considered to be a condition of slavery.[310] A primary check on the power of the English monarchy in this respect was Parliament, which by tradition was the sole body empowered to levy taxes.

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[306] Grotius, *The Rights of War and Peace*, I.III.XVI
[307] Geyl, *History of the Dutch-speaking Peoples*, 502.
[308] Notably, Grotius, following Vitoria, predicated these principles on the rationality of their bearers. An irrational man then would not have the same degree of moral protection as a rational one on this formulation. Pagden points out that Vitoria's arguments to this effect were used by the Spanish to justify their own colonial empire, as while it constituted as impermissible injury to deprive another of his liberty, there was no such injury if the dispossessed individual was not considered as human. Pagden points out that Vitoria' reasoning allowed the implication that, when native peoples did not grant the Spanish what they wanted, they Spanish merely branded them as irrational.
Padgen, "Dispossessing the Barbarian," 82 – 87.
[309] Skinner, *Liberty before Liberalism*, 66 – 67.
[310] Ibid, 37, 44 – 45.

King Charles I had disbanded Parliament in 1629 and ruled without a direct source of income until 1640. However, although Charles had no legally or morally recognized right to levy taxes proper without the consent of Parliament, he were empowered to levy fines, fees, and 'special' taxes.[311] Contemporary Member of Parliament (MP) Henry Parker would deride Charles' actions here as being a "great g•p and breach in the rights and Franchises of England."[312] Skinner notes this subversion of accepted practice would have been viewed as an infringement on the liberty of England, as the levying of taxes by the monarch alone "involved the king in confiscating the property of his subjects by force." This portrayed Charles as a tyrant with the aim of placing the whole of England into a condition of slavery.[313]

Charles had likewise evoked the ire of Parliament and the populace over his religious policies. A revolt had broken out in Scotland in 1637 over Charles' insistence on the use of The Book of Common Prayer over The Book of Common Order in Scottish churches. However, lacking sufficient funds to quash the revolt, Charles led an army north to quash the Scots paid for by his irregular sources of income. However, lacking sufficient funds, Charles was forced to call a Parliament in 1640. Following further Parliamentary resistance, Charles charged several sitting MPs with treason. The result was the English Civil War. Charles would be executed in 1649, with Parliament forming a new government under Oliver Cromwell.

Sreedhar highlights Henry Parker's claims as indicative of popular rights discourse in England. She draws attention to his claims that his Charles' actions had been violations of natural law, and therefore all Englishmen were obligated to resist. Parker's position was that Charles' claiming of absolute power violated any contract between sovereign and subject, and as

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[311] These irregular modes of generating income were within the realm of acceptability for the monarch to raise without Parliamentary approval because they were intended to provide a degree of flexibility for the state in countering imminent threats such as invasion.
[312] Parker, Henry. *The Case of Shipmony Briefly Discoursed, According to the Grounds of Law, Policy, and Conscience. And Most Humbly Presented to the Censure and Correction of the High Court of Parliament*. London, 1640. 1
[313] Skinner, *Liberty before Liberalism*, 69

a result resistance was justified on grounds on self-preservation.[314] Hobbes though rejected these calls on grounds that the contract had not been violated. In *Behemoth*, Hobbes' history of the period, he asserts that the word of the King ought be considered to have the same moral force as the Bible. He argues from this a direct connection between the Church and the monarchy as sharing a common leader, such that to disobey the monarch is tantamount to an offense against God.[315] He uses this to justify Charles' collection of taxes without Parliamentary approval; Parliament could possess "no Authority, but what the Suream Ciuill Power guies them," and because "the Liberty of a State is not an exemption from the Laws," Parliament's refusal was a sin as Charles had acted within the bounds of his authority.[316]

Written well after the English Civil War in 1668, *Behemoth* serves as a historical accounting of Hobbes' views on the causes of and course of the conflict. His other texts though were written in the midst of the conflict and its aftermath. As proposed by Jules Steinberg, although Hobbes was indeed a practitioner of political philosophy, he was motivated to develop his theories "because of his obsession with the English Civil War."[317] He contends that an "accurate understand of Hobbes's political writings" necessarily depends on the "historical, political, and ideological circumstances associated" with the conflict.[318] This view though is strongly contested by Strauss,[319] who argues that Hobbes' abstractions of an ideal state are derived directly from Platonic and Aristotelian moral philosophy.[320] Steinberg's challenge to this is founded in Hobbes' statement "War, especially civil war, is the fruitful parent of political

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[314] Sreedhar, *Hobbes on Resistance*, 18.
[315] Hobbes, Thomas. *Behemoth or the Long Parliament*. Edited by Paul Seaward. Oxford: Clarendon Press, 2010. I.xxviii.
[316] Ibid.
[317] Steinberg, Jules. *The Obsession of Thomas Hobbes: The English Civil War in Hobbes Political Philosophy*. New York, NY: Peter Lang, 1988. 2.
[318] Ibid, 3.
[319] Admittedly not directly. Strauss' text on this topic was published well before Steinberg. Indeed, Steinberg cites Strauss in pointing out this controversy rather than the converse.
[320] Strauss, Leo. *The Political Philosophy of Hobbes: Its Basis and Its Genesis*. Translated by Elsa M. Sinclair. Chicago: Univ. of Chicago Press, 1952. 148 – 149.

speculation."[321] He draws attention to Hobbes's life spanning the late Tudor period and ascension of the Stuart dynasty through the Civil War and Restoration to argue this connection.[322]

Strauss asserts that Hobbes' lack of direct discussion of moral philosophy within his political philosophy is attributable to Hobbes's being fully grounded within the classical tradition. The concept of violent death being the greatest evil, and that the state and individuals should avoid it as a matter of virtue were, to Strauss, already settled issues upon which Hobbes merely proposed a reinterpretation of classical logic.[323] Steinberg by contrast emphasizes the connection of political authority to religious authority, and a correlation between rejection of Charles with membership in non-Anglican Protestant sects to offer an account of Hobbes' political views as derived from Anglican theology.[324] Hobbes did attribute the Civil War to these dissenting religious groups which "so furiously preach Sedition and animate men to Rebellion."[325] As Steinberg notes, politics and religion were viewed as inseparable in the 17th century.[326] Charles' attempts to force an Anglican prayer book onto Presbyterian Scotland could, in the thinking of the day, be viewed not as an oppressive act, but one which guaranteed that the Scots were proper citizens.[327] This presented the issue that the contemporary Anglican church was still in large part influenced by the Catholic Church; although nominally Protestant, the doctrine that "the monarch governs with the same kind of ominpotence that God manifests overall Christians" was both religiously controversial to members of more radical sects.[328]

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[321] Hobbes, *Leviathan*, I.xxxiii.66., in Steinberg, *The Obsession of Thomas Hobbes*, 47.
[322] Steinberg, *The Obsession of Thomas Hobbes*, 46 – 47.
[323] Strauss, *The Political Philosophy of Hobbes*, 152 – 153.
[324] Although the degree to which Hobbes' was himself a religious man is debated, it should be noted he was raised an Anglican. This is perhaps contrasted with his educational background. Hobbes attended Magdalen Hall, University of Oxford, which at the time only accepted Anglican students, and where he was educated is Aristotelian logic.
[325] Hobbes, *Behemoth*, II.xxxi.
[326] Steinberg, *The Obsession of Thomas Hobbes*, 47, 50 – 51.
[327] This is predicated on the notion that for one to be a citizen, one had to follow the dominant religion of the state. A Protestant subject of a Catholic king, for example, would not have been viewed merely as a citizen who practiced another faith, but as a potential fifth columnist on either the temporal or eternal plane.
[328] Ibid, 57.

This invocation of the right of resistance against a monarch who had supposedly violated natural law is what provides the necessary connection of religious to political authority. By attempting to refute any legitimacy of metaphysical claims made contrary to earthly authorities, Hobbes sought to undercut the claims of the dissenting factions which he blamed for the conflict.[329] He does not go about this though by rejecting an inalienable right of resistance, but instead by holding the sovereign immune to the invocation of such right by rendering it a mortal God on equal moral footing with God proper.[330] Although Hobbes, like Grotius, justifies his positions in reference to his views on natural law and human nature as derived from historical philosophical sources,[331] his position itself is thoroughly ideological. For Hobbes the English Civil War had been precipitated at least in part by moral claims which Hobbes rejected, and the conflict itself had led to a mass degree of suffering which to Hobbes was unnecessary.[332]

Ultimately though, Hobbes and Grotius are reacting to wholly different circumstances. Grotius' permissiveness is aimed towards a stable domestic order seeking to justify its expansion at the expense of others with whom there are no shared bonds of allegiance: His constraint was one of defending Dutch colonial activities against Spanish opposition using a novel interpretation of natural law which necessarily had to be compatible with both Spanish and Dutch[333] views. Hobbes by contrast is attempting to hold together fraying bonds within the crumbling domestic

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[329] Ibid, 180.
On the previous page Steinberg notes that his opposition to the Straussian position lies primarily in what he considers the "pre-determined and arbitrary conclusion required by the logic of a scholarly assumption about what 'pure philosophers' do and do not write about." The reason I treat this claim as valid is for two reasons. The first is that the contrary, as Steinberg notes, is to dismiss a significant amount of Hobbes' texts which deal directly with the physical concerns of the war. The second is that the position advocated for by Steinberg on Hobbes is already well accepted by scholars of Grotius. That Grotius, at least in part if not entirely, was motivated to give his accounts from the starting point of justifying the actions of Dutch traders or in response more generally to Dutch military concerns is a well conceded point, as evidenced by Geyl and Haakonssen, amongst others. It is internally contradictory to hold that Grotius could be influenced by these physical concerns and remain a philosopher while at the same time dismissing Hobbes' temporal context as a motivating factor on grounds that to take it into account is not what a philosopher is meant to do. This is not to say that either is not a competent philosopher, or that Strauss is wrong or is logically inconsistent in his individual evaluation. Rather, it is a comment on methodological consistency throughout this paper, and on methodology within the field of intellectual history and history of political thought..

[330] Skinner, *The Foundations of Modern Political Thought: The Age of Reformation*. 287.

[331] Haakonssen, *Natural Law and Moral Philosophy*, 32.

[332] Steinberg, *The Obsession of Thomas Hobbes*, 184.

[333] And therefore both Catholic and non-Catholic.

situation of his own state. Even if Steinberg is read as overstating the role of the Civil War as Hobbes' motivation, Hobbes' reassertion of absolute worldly political authority remains in sharp contrast to the dissenting factions of the period which argued their authority derived from metaphysical sources. Although Strauss' points on Hobbes drawing from classical tradition[334] are well taken, so too is Steinberg observance of Hobbes' equation of the division of religious and secular motivations as harmful to worldly stability,[335] which was clearly demonstrated to Hobbes by the events of the period.[336]

This is not to say that one or the other was not innovative in their interpretations. Rather, that Grotius' permissiveness as derived from a minimalist interpretation of natural law separate from and lesser than civilly recognized natural rights[337] would have made Hobbes' position untenable. Although Hobbes inherited his conception of right from Grotius, he necessarily moved it away from being a subset of jurisprudence into a fully-fledged moral force in response to circumstance. For Grotius, there was no imminent threat to his home state from within. Rather, his concern was on how to economically strengthen an already stable state. Hobbes' home, by contrast, was in the midst of civil strife. A lack of a strong moral commentary then, as Grotius had, risked the return to bloodshed as for Hobbes moral consensus of the magnitude present in Grotius' *corpus* could not be guaranteed.[338] To rest a consensus of what constituted justice on an individually interpreted view of God's will, as Grotius did, [339] to Hobbes invited religious and therefore political conflict. This necessitated a conception subordinated to the state rather than left to individual interpretation.[340]

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[334] Strauss, *The Political Philosophy of Hobbes*, 152 – 153.
[335] Steinberg, *The Obsession of Thomas Hobbes*, 180.
[336] Ibid, 2.
[337] Zagorin, *Hobbes and the Law of Nature*. 23 – 24.
[338] Harvey, "Grotius and Hobbes." 46.
[339] Haakonssen, *Natural Law and Moral Philosophy*, 34.
[340] Pleshkov, Alexey. "Master or Servant: Language in Thomas Hobbes' Political Philosophy." *SSRN Electronic Journal*, 2014. doi:10.2139/ssrn.2512784. 11.

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