

Interpreting Hobbes on Civil Liberties and Rights of Resistance

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In contemporary Western liberal democracies, the term “civil rights” or “civil liberties” refers to a cluster of rights, freedoms, or entitlements that people have simply by virtue of their membership in society. The cluster includes, for instance, freedom of conscience and expression, freedom from torture or arbitrary arrest, privacy rights, and procedural protections such as the right to a fair trial. In the United States, civil rights have come to refer particularly to freedoms from discrimination and rights to equality, and are associated with mass movements for social justice. The fundamental shared feature of this cluster of rights is that they constrain the legitimate exercise of state power.

In the seventeenth century, the philosopher Thomas Hobbes also argued that there are some inalienable rights that people necessarily retain when they enter into the social contract. Parties to the social contract could not give up these rights, even if they tried. Further, Hobbes conceives of those rights as rights *against* the sovereign, albeit only in the sense that they are rights to disobey or resist a particular exercise of sovereign power. But that is where the similarity with “civil rights” as we now think of them ends.

For Hobbes, people outside civil society (i.e., in the state of nature) have in effect unlimited natural rights; those rights are limited only by their conscience, as they interpret the limitations imposed by natural law. They give up almost all their natural rights when they institute a commonwealth and become its subjects, but there are rights that every subject retains. The most prominent is a right of self-defense, which Hobbes primarily conceives as the right to resist the state’s attempts to kill you. This right of self-defense applies even when the state has properly tried you and sentenced you to death. There is the right to resist “wounds, chains, and imprisonment” (*Leviathan* 14.8; see also 14.29). There is the right to refuse to testify against yourself and to lie in court to protect yourself or certain

other people who stand in a certain relation to you; Hobbes mentions spouses, parents, children, and benefactors (*Leviathan* 14.30; *De Cive* 2.19). There is the right to refuse to go to war or to flee the battlefield (*Leviathan* 21.16). There is also, perhaps surprisingly, the right to refuse to obey commands that would cause serious harm to one's reputation (*De Cive* 6.13). Finally, there is the right to use certain necessities of life; Hobbes mentions air, food, water, a home, medicine, and the use of fire (*Leviathan* 21.12; *Elements of Law* 1.17.2).

These rights are all rights of resistance or disobedience, and they have a particular normative status. Many scholars agree that Hobbes's retained rights are what contemporary legal theorists, following Wesley Hohfeld, call "privileges," "liberty rights," or "permission rights," where having the right to do X gives you the moral permission to do X.¹ A "claim right," by contrast, affords the right holder not just a permission to do X but it also generates a duty on others to respect that right. For Hobbes, civil rights – the inalienable rights of subjects – are permission rights only. They are "the particulars of the true liberty of a subject," which he explains as "the thing[s] which, though commanded by the sovereign, he [a subject] may nevertheless without injustice refuse to do" (*Leviathan* 21.10). For Hobbes, a right is a *liberty*, a freedom from obligation. So, while Hobbes thinks that subjects have a right of self-defense, all he means by it is that if a subject refuses to obey a command to commit suicide or resists the imposition of the death penalty, she has not committed a wrong, an "injustice" in Hobbes's terminology. She never gave up the right to protect herself and so she is morally permitted to do so. But there is no corresponding duty on anyone else to respect her right. In this sense, then, Hobbes's use of the word "right" is quite different from our own.

Hobbes's views on rights raise a host of questions for contemporary readers. Thus, this chapter first provides an overview of the problems and possibilities of a relatively new approach to Hobbes commentary that boldly tries to apply some of Hobbes's theory to contemporary issues that did not exist in Hobbes's own time. Then, in trying to establish more grounding in the text of Hobbes for some of these issues, we will turn to a discussion of explorations of Hobbes's own formulation of individual inalienable rights, considering what I call "local" and "global" issues in his theory.

¹ There is debate about the suitability of Hohfeldian taxonomy for capturing the nuances of Hobbes's account of the normativity of rights and obligations (Hohfeld 1920). See, for example, Curran, *Lost in Translation* (2006) and *Can Rights Curb the Hobbesian Sovereign?* (2006). For a response to Curran and a defense of using Hohfeldian language to describe Hobbes, see Yates 2013.

Contemporary Applications

Although Hobbes's views on civil rights and liberties do not coincide with present-day views, there have been some notable attempts to apply Hobbesian insights to issues of contemporary concern. In the last few years, three volumes devoted either in whole or in significant part to such applications have been published: *Feminist Interpretations of Thomas Hobbes* (Pennsylvania State University Press, 2012), *Hobbes Today: Insights for the 21st Century* (Cambridge University Press, 2013), and *Hobbesian Applied Ethics and Public Policy* (Routledge, 2017). Since it is unlikely, and in some cases impossible, that these issues would have occurred to Hobbes, this body of work is not Hobbes interpretation in any traditional sense. Rather, these scholars are asking what Hobbes might have said about various issues had he been exposed to them; or, more precisely, they are asking what follows from Hobbesian principles in the context of certain debates about which Hobbes himself could not have known.

Notably, some of these inquiries come from feminist philosophers. For example, Joanne Boucher argues that Hobbes's views on self-preservation can be marshaled in defense of women's right to abortion. For Boucher, Hobbes's right of self-defense "intersects with and may be seen as deepening [Judith Jarvis Thomson's and Eileen McDonagh's] arguments in favor of abortion rights" (2012, 221). Similarly, Joanne H. Wright (2012) invokes Hobbes's views on the nature of consent to illuminate feminist debates over elective breast augmentation. Eleanor Curran (2017) uses Hobbesian arguments in support of the right of same-sex couples to marry. Other scholars have focused on some of the standard topics in applied moral philosophy such as medical ethics (Rhodes 2017), physician-assisted suicide (Boucher 2017), and informed consent (Adams 2017).

Other scholars address topics that Hobbes himself acknowledged but cast those topics in more contemporary terms. Here, we find discussions on how Hobbes can be applied to free speech (van Mill 2017), the welfare state (Narveson 2017), terrorism (Anderson 2017), fiscal policy (McArthur 2013), global justice (James 2013), and human rights (Green 2013). Since Hobbes had views on how the government should manage its finances, what services it should provide to subjects, and how it should conduct itself in relation to other states, these discussions have stronger ties to Hobbesian discourse than discussions on, for example, surgical breast augmentation. Because Hobbes was one of the forefathers of "realpolitik," it is not surprising that people turn to him to think about challenges facing current

international relations. Even these scholars, though, must fill in certain blanks in Hobbes's arguments to adapt them to contemporary problems.

It is important to note that this is a particular genre of writing, asking what Hobbes would have said about an issue that did not or could not arise in his time. It is striking how many of those who are writing in it claim to fit Hobbes into a framework that is palatable to contemporary audiences, most often a liberal one. One possible explanation for this is that academics tend to be fairly liberal, and so they mine the history of philosophy for figures and ideas that seem to support their own political leanings. Interestingly, though, the figure in question here is *Thomas Hobbes*, not John Locke or John Stuart Mill, whose views lend themselves much more readily to the liberal project. On the contrary, Hobbes is one of the figures most associated with authoritarianism, and arguably saw himself as an enemy of what we would now associate with civil rights or liberties.

This genre, then, involves a selectivity in focus. I offer this observation not as a criticism. I believe there is value in this kind of exercise, and I myself have contributed to all three volumes mentioned above. It is noteworthy, however, that scholars who write in this genre tend to draw on certain parts of Hobbes's theory: his individualism, his emphasis on the limits of political obligation in terms of natural rights, and his arguments about the moral constraints on how the sovereign should rule. They tend not to invoke, for example, his defense of monarchy or his criticisms of limited or divided government.

Applications of Hobbes to contemporary issues are thought provoking and controversial, and it will be interesting to see how these discussions continue to develop. New topics for application are likely to emerge. How, if at all, can Hobbesian principles be applied to Internet privacy, for instance, or genetic engineering? As new issues arise, scholars will likely reread Hobbes for new insights. It is best, however, to come to these discussions on the soundest possible footing – that is, beginning the inquiry first and foremost with attention to Hobbes's text and the nature and quality of the arguments therein. The remainder of this essay, therefore, attends to fundamental interpretive and philosophical questions about Hobbes's articulated views on civil rights.

Local and Global Disputes

What does a survey of the larger landscape of scholarly commentary on this specific aspect of Hobbes, the inalienable rights of subjects, reveal?

In the history of commentary on this subject in roughly the last half century, two main areas of inquiry emerge. First, there are what we might call “local” questions about the account of civil rights itself. What exactly are the rights that Hobbes thinks people retain? He is clear on the right of self-defense, but others are ambiguous or merely gestured at. What are his arguments in favor of these rights? Do those arguments work? That is, are they logical and plausible? Second, there are “global” issues concerning the place of that account within his larger political theory. Is his account of retained rights consistent with his theory *as a whole*? Is it compatible with his insistence on absolutism, his prohibition on justified rebellion, and/or his description of the social contract? The local and global issues are logically distinct, though the scholars who have spent the most time with Hobbes on the rights of subjects tend to address both; notable examples include Jean Hampton (1986), Gregory Kavka (1986), Susanne Sreedhar (2010), and Eleanor Curran (2007).

Local questions raise a host of thorny issues. Hobbes devotes relatively few words to the issue of retained rights, at least directly; nonetheless, understanding his account of those rights is no easy task. There are two places in *Leviathan* where we find explicit attempts to justify the inalienability of the right of self-defense. The first appearance of the right of self-defense in *Leviathan* reads as follows:

Whensoever a man transferreth his right, or renounceth it, it is either in consideration of some right reciprocally transferred to himself or for some other good he hopeth for thereby. For it is a voluntary act, and of the voluntary acts of every man the object is some good to himself. And therefore there be some rights which no man can be understood by any words or other signs to have abandoned or transferred. As, first, a man cannot lay down the right of resisting them who assault him by force, to take away his life, because he cannot be understood to aim thereby at any good to himself (*Leviathan* 14.8).

Later in that same chapter, he repeats his insistence that the right of self-defense is inalienable. He says, “to promise that which is known to be impossible is no covenant,” and explains that “the promise of not resisting force in no covenant transferreth any right, nor is obliging” (*Leviathan*, 14.25) because

man by nature chooseth the lesser evil, which is danger of death in resisting, rather than the greater, which is certain and present death in not resisting. And this is granted to be true by all men, in that they lead criminals to execution and prison with armed men, notwithstanding that such criminals have consented to the law by which they are condemned (*Leviathan*, 14.29).

Here, the right of self-defense is represented as the right to resist punishment, and this is how Hobbes usually discusses it. James Martel calls it “the right to kick and scream on the way to the gallows” (2000, 34). A favorite scholarly illustration of Hobbes’s claim is the case of Socrates: on Hobbes’s account, he had the right to refuse to drink the hemlock. If he had refused, Socrates would have been executed anyway, just as Martel’s criminal who kicks and screams on his way to the gallows ends up hanging just the same.

Hobbes’s right of self-defence thus threatens to be futile in the face of the state’s aggregated power. Nonetheless, he does give explicit, specific, centrally located *arguments* that the right of self-defense is inalienable. Indeed, the very first thing he does after explaining how rights in general can be alienated is to argue that there are some rights that it is impossible to alienate. It is clear that Hobbes took the inalienability of the right of self-defense to be an important, nonnegotiable part of his theory.

Some clues to the wider importance of this right can be found in Hobbes’s defenses of it. Commentators identify distinct arguments in the text, though they carve up the terrain in different ways and label the arguments differently. Claire Finkelstein finds the “argument from benefit,” the “argument from involuntariness,” and the “argument from incapacity” (2001, 338–9). Jeremy Waldron identifies the “argument based on the unintelligibility of any covenant purporting to renounce the liberty of self-defense” and the “argument based on the impossibility of performing any such covenant” (2000, 719). Sreedhar names the “conceptual impossibility argument” and the “psychological impossibility argument” (2010, 30–2). Gregory Kavka simply calls them “the first argument for inalienability” and “the second argument for inalienability” (1986, 322–3).

One common factor among these diverse commentators is that they tend to reconstruct the core arguments along the same lines. The scholars mentioned above, in particular, tend to agree that these arguments – as Hobbes presents them in *Leviathan* chapter 14 – do not work. In the various formulations of the argument, the crucial premise is that death is the worst evil: there can be “no good to oneself” in suffering it (*Leviathan* 14.8); it is always the “greater evil” (*Leviathan* 14.29).

While one of the ideas Hobbes has traditionally been associated with is the claim that humans act in their own self-interest and that avoiding death at all costs is the fundamental element of self-interested behavior, most commentators have rejected this part of Hobbesian psychology.² It is not difficult to imagine scenarios in which death is not the greater evil, and it is

² Hobbes himself seems to recognize that there can be fates worse than death (e.g., *De Cive* 13.6).

possible for people to choose it. For some, dishonor or damnation might be worse. Even if death were the worst possible thing, it is possible to see how it might be in a person's best interest to transfer the right to resist it. Claire Finkelstein offers one such counterexample:

For one can readily imagine situations in which a person might seek to benefit by abandoning his right to resist attackers. Suppose you have a knife to my throat, and you threaten to kill me now unless I agree to give up my right to self-defense for all future occasions. It would clearly be to my benefit to accept the terms of the agreement for the sake of avoiding certain death now. At least, as Hobbes would say, there is time of life gained (2001, 338).

The explicit formulations Hobbes gives of the inalienability argument are notoriously problematic. But does the failure of the explicit arguments for the right of self-defense in *Leviathan* chapter 14 mean that subjects in Hobbes's commonwealth *do not* have the right of self-defense? That seems to be the position of some scholars (see, for example, the discussion of Steinberger below). However, even some of Hobbes's harshest critics on this point ultimately admit that Hobbesian subjects would have a right of self-defense after all. After rejecting the official arguments Hobbes gives for the right of self-defense, Gregory Kavka is content to say that people have it anyway. Kavka reasons that the social contractors would deem it "pointless" to give up the right of self-defense and so they would retain it (1986, 336). In contrast, Finkelstein argues that Hobbesian social contractors would actively choose to keep their right of self-defense because they would want "the right to reject the sovereign's authority in the event that he no longer rules with their welfare as his primary guiding principle. In other words, by retaining the right to self-defense, they have retained a natural right to revolution" (2001, 357–8). For both Finkelstein and Kavka, Hobbesian social contractors are able to give up their right of self-defense, but they would choose not to for one reason or another. In other words, it is not that they *cannot* give up the right of self-defense; it is that they *will not*.

Note that the Kavka/Finkelstein move has two important features. First, they explain the retention of the right of self-defense using reasons Hobbes did not give, and in the case of Finkelstein, using reasons Hobbes would reject. Pace Kavka, Hobbes did not think that subjects have a right of self-defense merely because it was pointless to give it up. Finkelstein claims that social contractors would decide to retain the right of self-defense because they want a right of revolution in case the sovereign abuses his power. They retain it as what she calls, "the central political protection" (2001, 332).

Finkelstein's position would have been totally alien to Hobbes, since the centerpiece of his political theory is the prohibition on revolution, which is "warre renewed" (*Leviathan* 28.23). In the preface to *De Cive*, Hobbes describes the very purpose of the work to be the prevention of rebellion and regicide (8). Second, the conclusion that Kavka and Finkelstein establish is not the conclusion that Hobbes himself wants to establish. Hobbes thinks of the right of self-defense as *inalienable*, that it is impossible to give up. Kavka and Finkelstein establish a much weaker thesis, namely, that though the right of self-defense can be given up, it would not be. They think the right of self-defense is un-alienated, not that it is inalienable. In the context of theorizing about rights, that is a significant difference.

In my own work, I have tried to articulate an interpretation of the Hobbesian right of self-defense that avoids both of these implications (Sreedhar 2008, 2010). I agree that the official arguments of *Leviathan* chapter 14 are indeed weak, at least as they are usually understood; however, I argue that we can reconstruct a successful argument for the right of self-defense by appealing to ideas found elsewhere in Hobbes. My account aims (1) to establish the relevant conclusion (that it is impossible for social contractors to alienate the right of self-defense), and (2) to support that conclusion with reasons that Hobbes not only accepts but actually articulates himself at other places in the *Leviathan* and, importantly, in *The Elements of Law* and *De Cive*.

However, there is a way in which my interpretation is not as far from the Finkelstein/Kavka position as it first might seem. My reconstruction depends on making a distinction between the social contract that establishes the commonwealth and grounds all political obligation and other contracts, which could serve any number of purposes and contain any number of provisos. I think that Hobbes's own arguments do not support the claim that the right of self-defense cannot be given up in any contract whatsoever. Instead, I think he can only support the inalienability of the right of self-defense in the social contract. Luckily, this is, in my view, the only contract he cares about where self-defense is concerned.

If the story ended there, it would be complicated enough. But Hobbes is no fan of the facile, and his views on inalienable rights take some unexpected turns. He extends his account of retained rights, adding rights that range from the ordinary (the right to resist wounds as well as death, the right to refuse to testify against oneself) to the remarkable (the right to refuse military service) to the bewildering and downright odd (the right to refuse to obey commands to do things that are entirely safe but dishonorable and the right to refuse to incriminate a benefactor). Readers have been

understandably perplexed and even annoyed. Why would the right to defend yourself from physical harm give you the right to defend your reputation? The right to refuse to testify against yourself, which Hobbes sees as including the right to lie in court, seems to be a fairly natural extension of the right to resist punishment, but why does this right cover giving testimony against your benefactor? Is Hobbes really defending the right to be what we would now call a draft-dodger or a deserter? Hobbes gives little or no explanation for most of these additional rights. It is clear from the way he introduces the “true liberties of subjects” in *Leviathan* chapter 21 that he thinks of them as derivatives of the original inalienable right of self-defense, but he gives frustratingly little idea about how that derivation is supposed to go.

It is hard to know what to call these other rights. I refer to the “corollaries” of the right of self-defense. Finkelstein talks about Hobbes’s “panoply of defensive rights” (2013, 57). There are a variety of other titles commentators have come up with to refer to this strange collection of additional rights that Hobbes claims subjects retain in a commonwealth. None of these labels is particularly satisfying. The dissatisfaction we feel at attempts to capture what Hobbes is talking about reflects, I think, something important about his thought. He probably did not have a coherent, well-defined, or developed idea of these retained rights, either individually or as a whole. For some, the fact that his remarks seem so ambiguous and odd is a reason to dismiss or disparage them. For example, Glenn Burgess (1994, 69) refers to these corollary rights as “peripheral, of little practical political significance, perhaps even embarrassing logical implications of his own theory that Hobbes would have liked to sweep under the carpet.” For others, it is an invitation or challenge to figure out what he had in mind and how it is all supposed to fit together in his account. I will now turn to some of the most notable attempts to understand and clarify various other retained rights in Hobbes’s philosophy. Understanding and clarification does not, however, entail justification or endorsement. Many of those who have excavated the text to provide insight into his thinking on the corollary retained rights conclude that they do not fit into the Hobbesian theoretical edifice. Making headway on this problem does not, therefore, necessarily lead to a more favorable view of Hobbes.

Hobbes’s views on military service have received some attention in the secondary literature because his claims about it are striking: although he considers that a drafted soldier has the right to flee the battlefield “without injustice,” an enlisted soldier – one who has “enrolleth himself a soldier, or taketh imprest money” – does not (*Leviathan* 21.16). Apparently, then, he

thinks it *is* possible to give up one's right of self-defense, understood to be the right to take the necessary means to protect one's life. Deborah Baumgold (1983, 1988) was among the first to devote attention to this matter and she resolves the conflict in the following way. She reads Hobbes as offering a theory of role duties and argues that people in their role *as soldiers* can give up their right of self-defense, but they cannot give it up in their role *as subjects*.

There are many more local problems about how to make sense of these various rights of resistance, how we should understand in what they consist and on what grounds they are justified. I argue that there is a coherent account of retained rights that can be reconstructed. I identify three principles in Hobbes's political theory – “the reasonable expectations principle”; “the fidelity principle”; and “the necessity principle” – and attempt to demonstrate that all Hobbes's examples of retained rights can be explained by one or more of these principles (Sreedhar 2008, 2010). By making a distinction between what he calls “mere obedience to law” and “fidelity to law,” Larry May (2013) likewise defends Hobbes's claims about rights. Eleanor Curran (2007) also thinks that there is a coherent account of retained rights, though she interprets them as positive rights. It is extraordinarily difficult to iron out the details of many of Hobbes's claims about retained rights, so there is much more work to be done on the local level. Different types of difficulties appear on the global level.

On a global level, critics charge that Hobbes's inalienable rights generate an inconsistency in his political theory because his doctrine of retained rights is incompatible with other central commitments: his account of absolute sovereignty and/or his prohibition on rebellion. The problem of rebellion poses the largest conceptual and practical threat to the cogency of the Hobbesian commonwealth. If critics like Finkelstein are right that Hobbes must allow for rightful rebellion, then not only was Hobbes confused when he claimed that rebellion was always wrong but he has also introduced a fatal contradiction into his own system. Hobbes's contemporary, Bishop Bramhall, was the first to make this sort of charge, famously calling *Leviathan* a “rebel's catechism” (1995, 145). If correct, this accusation is indeed devastating for Hobbes, since a main aim – if not *the* main aim – of *Leviathan* was to turn men away from rebellion. More than three hundred years later, Jean Hampton developed this criticism, arguing that it is the ultimate downfall of Hobbes's theory; she says, “this problem is so serious that it renders the entire Hobbesian justification for absolute sovereignty invalid” (1986, 197).

Another way to put this criticism is to say that Hobbes's inalienable rights are inconsistent with absolute sovereignty (Gauthier 1988; Warrender 1957). The most extreme defense against such a charge of inconsistency is simply to deny that Hobbes was committed to one of the assertions. Peter Steinberger (2002) takes this route, denying that Hobbesian subjects have inalienable rights of resistance against their state. Steinberger says,

The authority of the [Hobbesian] state *qua* state is absolute and unlimited, hence the obligation of the citizens is equally absolute. But when the state fails to accomplish the things it was designed to accomplish – when, indeed, it subverts the very ends for which it was created – then the contract that the citizens had entered into with one another has now been abrogated, hence has been rendered null and void, in which case the state is literally no longer. The citizens are no longer citizens but are immediately plunged back into a condition of mere nature, and each individual is obliged only to maximize his or her interests as he or she determines. (859)

When the conditions for the right of self-defense or any of its corollaries kick in, the person (no longer a citizen or subject) encounters a hostile power (no longer a state, even though it calls itself one). Steinberger's solution to the problem is admirably clean. He defines it away. Steinberger emphasizes Hobbes's care with definitions, and argues that the state, properly understood, is the entity that protects subjects, so whatever unprotected people are resisting, it is not their state. Since the state is the thing that protects citizens, "the right to resist is never a right to resist the state" (860). It is, rather, the right to protect oneself when the state fails. It is tempting to go this semantic route, since it preserves both Hobbes's absolutism and wholesale prohibition on rebellion.

Steinberger gives the strongest and most developed articulation of this position, but we find similar moves made by others in the secondary literature.³ For example, Johan Olsthoorn (2014) argues that there is no such thing as a rebellious subject because once a person is rebelling, he or she is no longer a subject. Unlike Steinberger, Olsthoorn does not generalize the point to encompass Hobbes's entire account of political disobedience; instead, he limits his argument to the case of rebellion.

³ Renato Janine Ribeiro says, "People absolved of their allegiance because their lives are threatened by the ruler recover their full right of nature. They are no longer subjects, so we cannot talk of rebellion" (2011, 57). See also Davis (2006). Lloyd makes a similar point, though not in the context of resistance. She says, "Acceptance of protection is enough to make me a member (assuming I have no prior incompatible obligation); and lack of protection is enough to extinguish my membership" (1992, 72).

While this solution is attractive, it has certain shortcomings that are common to all such attempts to define away the problem. It is clear that Hobbes does think of some of the cases as situations where lack of protection serves to end the person's membership in civil society – for instance, when a soldier is taken prisoner of war or when the garrison is under the control of another sovereign. But it is equally clear that this is not how Hobbes views many of the cases of justified resistance. The person who lies under oath to protect herself or her benefactor is not, therefore, also freed from all her political obligations such that she is no longer morally required to, for example, pay taxes. This is simply not how Hobbes conceives of retained rights. He talks about them as rights of *subjects*. Perhaps it is better to interpret Hobbesian sovereignty as less than absolute, à la Gauthier, rather than take on Steinberger's position on Hobbesian political obligation.

Steinberger tacitly recognizes this; he says that Hobbes must allow a “full-fledged theory of revolution,” but immediately qualifies this, adding “or its functional equivalent” (856). He has to add this qualification because, strictly speaking, revolution is impossible on Steinberger's account: as soon as subjects rise up, they are in the state of nature and there is no state for them to rebel against.

Steinberger is not alone in seeing a semantic problem here. To whom do we ascribe Hobbesian rights of resistance? Are they rights that are exercised by members of the commonwealth or are they simply expressions of the full natural right of people in the state of nature?

Maximilian Jaede (2016) directly confronts the semantic problem and offers an interesting way out. He stipulates that there is no fact of the matter about whether someone is a subject or not and argues that it is the duty of sovereigns to decide. Jaede's solution thus incorporates the question whether rebels remain subjects into the existing Hobbesian edifice, making it just another question that comes under the sovereign's purview for authoritative interpretation.

At this point, it is helpful to take a step back and discuss three considerations in the secondary literature as a whole. The first is the difficulty arising from a lack of clear boundaries around the set of retained rights; the second is a question about judgment; and the third is attention to the duties of the sovereign.

First, it is common for scholars to interpret Hobbesian retained rights as broad, including life, liberty, and what Steinberger calls a “relatively commodious, free and happy life,” the “good life” with a “plausible array of creature comforts” (2002, 858, 857). Hobbes seems to be positing that if

obeying a command makes the quality of your life fall below a certain level, you have the right to disobey that command. This idea of a threshold for a decent life, what I call a “minimum quality of life” (Sreedhar 2010, 99), unites the various permissions to disobey orders to testify against loved ones or those you depend on economically, claims about retaining the right to food, air, and medicine, and even the claim about disobeying commands that so threaten one’s reputation that one might prefer death to the dishonor that results. However, the boundaries are unclear at the local level; Hobbes does not give us a way to delineate with any certainty where that threshold lies. As a result, Hobbesian resistance rights have a tendency to expand, and this tendency motivates worries about his views on rebellion and absolutism on the global level. On these grounds, Hampton argues that Hobbesian political obligation ceases to be genuine obligation; rather than being obligated to obey, subjects engage in a series of “expected-utility calculations” (1986, 201).

This seems to me one of the central sources of problems for Hobbes: he is clear that people leave the state of nature not simply to preserve their lives but for hopes of a *better* life, yet he is unclear about exactly what that means. Moreover, there is obviously a connection between the various disparate rights to resist sovereign power and the lack of this “better” life. But since he does not tell us exactly how bad one’s life has to be in order for the right to resist to kick in, he opens himself up to all sorts of challenges. Thus, what he seemed to conceive as a relatively narrow set of resistance rights has tempted some interpreters to call into question all instances of political obedience.

A second ambiguity in Hobbes generates a related question: who has the right to judge? For Hobbes, people have the liberty to disobey commands that threaten to make their lives fall below a certain level of quality or security, though as I said above, it is not clear where that level is. But does the right to judge whether there is a right to resist belong to the subject or the sovereign? On the one hand, the “true” liberties of subjects are the parts of natural right that are retained in the social contract, and the Hobbesian right of nature is a right of judgment, namely, a right to act on one’s own judgment about what is necessary for one’s self-preservation. Thus, it seems that the subjects themselves will judge whether or not their lives are sufficiently good to warrant their obedience to law. On the other hand, people surrender their rights to act on their own judgments when they agree to the social contract. It is my view that, contra Jaede, the retained rights must be rights of judgment on the part of the subjects who retain them. But this remains an open question.

Of course, it is also the case that subjects *will* judge, whether they have the *right* to or not. As Alan Ryan points out, this inevitable consequence of Hobbes's theory seems to invite subjects constantly to judge the quality of the sovereign's rule and might thereby foment rebellion.

Because it was built on individualist and rationalist foundations, [it] must, in spite of its author's intentions, leave room not only for individual resistance but also, in extremis, for fully fledged rebellion. *Leviathan* may well have framed the minds of many gentlemen to a conscientious obedience, but it also framed in many others a disposition to ask whether the sovereign had failed to secure our peace and safety or was visibly about to do so (1996, 241).⁴

Rightfully or not, people will judge the quality of their lives under any given sovereign's rule and resist or rebel accordingly. Notice that this way of putting the point avoids the semantic problem about whether to call "rebels" "subjects" just as it disallows any semantic solutions. It holds whether the rebels are thought of as subjects or as occupants of the state of nature.

Other scholars take a different approach, embracing a putative Hobbesian right of rebellion, instead of trying to explain it away. Claire Finkelstein sees this as a benefit for his theory, as do Eleanor Curran and Renato Janine Ribeiro. Though it is only a permission right, Finkelstein argues, it holds some sway over the motivations of sovereigns; she reasons that sovereigns who knowingly and purposefully violate the self-defense rights of their subjects violate natural law and are accountable to God, which gives sovereigns a reason to respect such things.⁵ Interestingly enough, these kinds of interpretations move the discussion closer to the question with which this essay began about how Hobbes can be relevant today. Hobbes himself would never have countenanced a right of rebellion, but most people now take this right to exist. As difficult as it is to iron out the details of Hobbes's account of retained rights, perhaps it is even more difficult to determine whether this account strengthens or weakens his political theory as a whole.

Here, I will make a final observation about what commonly arises in discussions that take up these subjects. While scholarly discussions about

⁴ For a similar point, see Shelton (1992, 260). Similarly, Clarendon, one of Hobbes's contemporaries, protests that Hobbes is "so cruel as to devest his Subjects of all that Liberty, which the best and most peaceable men desire to possess, yet he literally and bountifully confers upon them such a liberty as no honest man can pretend to, and which is utterly inconsistent with the security of the Prince and People" (Clarendon (1995, 234)).

⁵ In this sense, Finkelstein's project, like Kavka's before her, must be *Hobbesian*.

Hobbes's retained rights range from the annoyed (Burgess 1994) to the intensely critical (Hampton 1986; Ribeiro 2011) to the laudatory or apologetic (Sreedhar 2010; May 2013), they almost inevitably converge on the same topic: the role of the sovereign in preventing the problematic exercise of these rights. When acting rightly, the Hobbesian sovereign is a beneficent dictator. Civil society should provide the basic necessities of life, the provision of which grounds political obedience. For example, Ribeiro suggests that the sovereign "pave the way for economic development" so subjects can pursue their various desires and thus avoid the discontent that might motivate and perhaps justify their disobedience (2011, 44). I maintain that sovereigns should avoid going to war unnecessarily because doing so threatens to trigger the right to disobey by putting conscripted soldiers in danger (Sreedhar 2013). Others have suggested that we rethink Hobbes's views of motivation. Perhaps Hobbes needs subjects to be motivated by what S. A. Lloyd (1992) calls "transcendent interests" — interests that override the interest in temporal self-preservation — in order to secure a sufficient percentage of the population who are willing to risk their lives for their country. A crucial function in this regard is the civic education that Hobbes so firmly insists on.

It appears, then, that Hobbes's arguments about resistance rights have as much to do with the behavior of the sovereign as they do with what subjects are allowed to do. Perhaps this approach is more direct (or less tendentious) than it seems, though: Hobbes's supreme political belief is that subjects serve their own self-interests best when they establish and maintain a stable sovereign authority. The existence of these rights may represent a means to curtail certain exercises of sovereign authority that would ultimately be self-destructive to that authority. Of course, for Hobbes, the sovereign's duty to act for the welfare of the people is a duty to natural law and God, not to the people, and the significance of this cannot be understated (see, e.g., Lloyd 2009, 33–49). Nevertheless, in the critical discourse about Hobbes, interpreters ultimately steer the conversation toward what duties sovereigns have to prevent subjects from being in the kinds of conditions where they would be justified in rebelling. The convergence among commentators on this point is telling. Whatever ambiguities and concerns civil rights introduce into Hobbes's philosophy, the solution to those problems, in practice if not in theory, lies with the Hobbesian sovereign and his or her ability to create and maintain the kinds of conditions in which most subjects have as little cause to exercise their civil rights as possible.

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