Thomas Hobbes is a precursor in human rights thinking. He also develops an important theory of natural law. However, his political theory contains a seldom recognized problem: natural rights are problematic in the sense that a citizen must surrender them to the sovereign but he cannot do so. Such rights are inalienable. But if he cannot surrender the rights he cannot join the commonwealth. In this sense his rights are too strong. I describe the problem and provide a solution to it. Finally, I draw three conclusions: first, rights can only work in the context of the commonwealth which, secondly, reflects the natural laws, and, thirdly, natural rights are different from human rights.

1. THE PROBLEM: NATURAL RIGHTS ARE PARADOXICAL

In medias res, Thomas Hobbes says that only one natural right exists, and this is the right to self-defense. Next he states that in social covenants the citizen surrenders or alienates his rights to the sovereign. This is to say that the citizen alienates his right to self-defense to the sovereign. This creates a problem, though. The right to self-defense is a natural right which, for that reason, cannot be alienated. The citizen always has it, just like any human being in the condition of nature has it. This is a problem because now the citizen both has and does not have the right to self-defense. And if he keeps this right, he cannot enter the commonwealth where the rule by the laws is a fact (it is not the rule of law because the sovereign is not subject to the laws).

In sum, here is the problem: Person P has surrendered all his rights to sovereign S. S sentences P to death. P has no right to resist as he has no rights left. Still P has, according to Hobbes, the right to resist. A corollary follows: P who has not surrendered his right to S is not a citizen of the commonwealth.
Hobbes says that the natural right to self-defense means, or actually it logically entails, that the person has right to everything, even to other person’s possessions and life. This may sound unintuitive, but a textual analysis shows that Hobbes reasons this way.

The RIGHT OF NATURE, which writers commonly call jus naturale, is the liberty each man hath, to use his own power, as he will himself, for the preservation of his own nature; that is to say, of his own life; and consequently, of doing any thing, which in his own judgment, and reason, he shall conceive to be the aptest means thereunto.

... And because the condition of man, (as hath been declared in the precedent chapter) is a condition of war of every one against every one; in which case every one is governed by his own reason; and there is nothing he can make use of, that may not be a help unto him, in preserving his life against his enemies; it followeth, that in such a condition, every man has a right to every thing; even to one another's body. (Leviathan XIV)

The last sentence contains a curtailed reference to cannibalism (see C. Avramescu, An Intellectual History of Cannibalism, Princeton UP, 2009, pp. 16-17, 244). One problem needs to be mentioned: When Hobbes moves quickly from the idea of a natural right as a right to self-defense to the right to everything he seems to move from rights as freedoms or liberties to claim-rights. I am free to defend myself, but it is a different thing to say that I have a right to your house, horses, and body. The latter expresses a claim to them, or it is a statement that they belong to me. Why would I be entitled to them? What Hobbes really wants to say is that I may subjectively perceive anything as a threat and act accordingly, and it is all in my right. This is clear but it does not explain the sudden emergence of claim-rights. Moreover, it is unclear if all things can be interpreted as personal threats. For instance, A. P. Martinich writes: “If a person needs one fish to live and there are ten fish available, she has the right to only one fish” (A Hobbes Dictionary, Blackwell, 1955; ‘Right of Nature’, p. 264). But one should keep in mind that in the condition of nature a person may read his needs just as he likes. He may not think that one is enough. Why would he leave nine good fish behind?

Now, it is really intolerable that you have a right to my body, even if I have my right to yours. I may not be hungry, so the situation is out of balance. This is one of the reasons why I want to accept the sovereign, the commonwealth, and its laws – and they are good reasons. Then a dilemma emerges: I cannot live in the condition of nature where people have such natural rights, but I cannot surrender my natural right, no one can – what to do?
I do not think this problem has received sufficient attention in literature, as central and worrisome as it is. For instance, Philip Pettit in his book, *Made with Words: Hobbes on Language, Mind, and Politics* (Princeton UP, 2008, pp. 128-29) naively says, first, that a citizen is free to defend himself when threatened by execution, and that even the natural law commands him always to take a lesser evil. Another natural law, actually the first, commands him to make war when peace is impossible (*Leviathan* XIV). Then Pettit says that this constitutes no problem in the commonwealth because this political system is created to protect the citizens anyway. But regardless of what Pettit says, a real problem exists if Hobbes insists that a citizen first surrenders his natural right of self-defense and then he does not. And surrender he must because his right is the impossible and implausible claim-right to everything, as he himself subjectively understands it:

... 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, that assault him by force, to take away his life; because he cannot be understood to aim thereby, at any good to himself. (*Leviathan* XIV)

Hobbes says here you can always defend yourself against imminent death. This is indeed plausible even if the rest of the story is not. The problem is that Hobbes now moves back to the original restricted idea of safety, that is, the threat of death. This is the first sign of trouble.

Hobbes’s political thought implies a strange contradiction at its crucial moment. Every Hobbes-scholar should be able to suggest his or her favorite solution, or at least recognize the problem. Here is my solution. When a citizen lives in a commonwealth under the laws of its sovereign, he must obey these positive laws. The laws also specify what rights he currently has, or what rights are transferred to him by the sovereign. However, he may not be safe in his present situation. If he is unlucky enough he may be met by one of the following sad fates: death-sentence, interrogation and punishment by torture, a POW-status, slavery, or life under an infidel sovereign. Suppose he receives the death penalty – let us deal with this simple and clear case first. A judge, let us imagine, as the representative of the sovereign and his positive laws, clearly and unequivocally states that the citizen will be executed soon. The citizen now knows that his personal safety is under threat. But he still has his natural right to defend himself, and thus he may rightly do whatever is needed when he tries to save his life. No restrictions can be put on his set of possible actions and strategies.

This sounds like a necessary and unproblematic solution to the problem;
actually the reader may still wonder what the problem is supposed to be. The problem is real, I regret to say. When the doomed citizen activates his right to self-defense, he does it for a good reason. But what is a good reason? He may consider any event or aspect of his social environment as threatening and act accordingly. He may think his next door neighbor is strange and unpredictable and therefore also threatening and dangerous to his life. So he kills the neighbor referring to his right to self-defense. What is wrong with this? The problem is that no commonwealth can tolerate its citizens’ claims to the right to self-defense in this broad sense. What a citizen must do is to rely on the positive law and the police, and thus refrain from action. The sovereign is supposed to safeguard them anyway:

And because the end of this institution [the sovereign], is the peace and defence of them all; and whosoever has right to the end, has right to the means; it belongeth of right, to whatsoever man, or assembly that hath the sovereignty, to be judge both of the means of peace and defence; and also of the hindrances, and disturbances of the same; and to do whatsoever he shall think necessary to be done, both beforehand, for the preserving of peace and security, by prevention of discord at home, and hostility from abroad; and, when peace and security are lost, for the recovery of the same. (Leviathan XVII)

The citizen now has no ‘right to judge’. Such a right is taken away from him. Next, notice how different the following two cases are: a death sentence is of the form ‘You, citizen x, will be put to death by means of some appropriate methods in a given place and at a given time’. There is not much room for different interpretations here. When the citizen suspects that his neighbor is dangerous to him, he reasons like this: ‘It seems to me that my neighbor is going to hurt me soon’. This is a subjective interpretation of the situation. No one else needs to agree but still the apparent death is a valid motive for action, at least in the condition of nature. In the commonwealth this can no longer be tolerated.

We are discussing the life in a commonwealth, not in the condition of nature. In the condition of nature no sovereign and his positive laws exist so that the individual person must form and rely on his own interpretation concerning any threats and hazards. Then he acts on the basis of his natural right to self-defense like everyone else. But, as I said, we are discussing the choices and strategies of a citizen. He is not allowed to interpret his neighbor as a threat to him, if the positive law and the police do not agree. Basically it is a matter of their ‘official’ interpretation of the case. The citizen may suggest to them that he is in danger, but that is all. This is different from a death-sentence because that specifies the threat and its realization in an unequivocal and objective manner. Now the citizen knows what will happen
to him if he does not quickly take some drastic action. He has a natural right to do so.

Notice that the source of the threat is the sovereign. Yet the sovereign is outside the positive law and hence he is not under the rule of law. The commonwealth is only ruled by the law. The law protects the citizens against other citizens; this is the idea of having the sovereign, by means of the original covenant. But nothing protects the citizens against the sovereign as a natural person. Hobbes writes some of his cruelest sentences here:

And therefore it may, and doth often happen in commonwealths, that a subject may be put to death, by the command of the sovereign power; and yet neither do the other wrong: as when Jephtha caused his daughter to be sacrificed: in which, and the like cases, he that so dieth, had liberty to do the action, for which he is nevertheless, without injury put to death. And the same holdeth also in a sovereign prince, that putteth to death an innocent subject. (Leviathan XXI)

Under these circumstances the reader may be tempted to argue that a citizen is always under a threat of harm – but not wrong – from the actions of the sovereign. How can the state of nature be avoided? Obviously the citizens must trust the sovereign and think that he is ultimately benevolent as his own success is dependent on the success of the society at large: they “desire with all their hearts, to conform themselves into one firm and lasting edifice” (Leviathan XXIX). Such a trust cannot be very strong. At the same time it is not a good idea to rebel as one gets punished. This brings about fear. Is it enough to keep the citizens at bay? I will present below a solution which is based on the citizens’ limited rights of interpreting their own situation as they like. If they have no real reason to be afraid of the sovereign, they should not be. This makes their fear manageable, unlike in the case in which they apply their own words to their supposed grievances without any limits. In that case they are back to the condition of nature where they trust nothing and nobody.

2. THE SOLUTION: THE RIGHT TO USE THE RIGHT WORDS

All this leads to one necessary conclusion: When a citizen enters the commonwealth, which is grounded on an original covenant, he does not really surrender his right to self-defense:

If the sovereign command a man (though justly condemned), to kill, wound, or maim himself; or not to resist those that assault him; or to abstain from the use of food, air,
medicine, or any other thing, without which he cannot live; yet hath that man the liberty to disobey. (Leviathan XXI)

On the contrary he merely suspends it in favor of the sovereign. What he really surrenders is his right to interpret, say, his social life, its various situations, and other people’s plans as he himself sees fit. In other words, as Hobbes indicates, he surrenders his right to use words as he sees fit, or as he likes. Now the words, their use, and their interpretation are the sovereign’s right which is expressed in his positive laws, in the actions of the law-courts, judges, and the decisions of the police. What I am saying is that the crucial step when we move from the condition of nature to a commonwealth is the changing right to use words as we like. Remember that the transition from the natural right to self-defense to the claim-right to everything is based on the subjective interpretation of the sources and the appearance of danger. Hobbes writes:

Theft, murder, adultery, and all injuries, are forbid by the laws of nature; but what is to be called theft, what murder, what adultery, what injury in a citizen, this is not to be determined by the natural, but by the civil law. For not every taking away of the thing which another possesseth, but only another man’s goods, is theft; but what is our’s, and what another’s, is a question belonging to the civil law. In like manner, not every killing of a man is murder, but only that which the civil law forbids; neither is all encounter with women adultery, but only that which the civil law prohibits. (De Cive VI, 16)

The seriousness of the situation is put thus in the Leviathan:

I observe the diseases of a commonwealth, that proceed from the poison of seditious doctrines, whereof one is, that every private man is judge of good and evil actions. This is true in the condition of mere nature, where there are no civil laws; and also under civil government, in such cases as are not determined by the law. But otherwise, it is manifest, that the measure of good and evil actions, is the civil law; and the judge the legislator, who is always representative of the commonwealth. From this false doctrine, men are disposed to debate with themselves, and dispute the commands of the commonwealth; and afterwards to obey, or disobey them, as in their private judgments they shall think fit. (Leviathan XXIX)

Here we seem to have two natural rights instead of one. We have the right to self-defense and the right to use the words freely as we personally see fit. Perhaps these two rights are not really independent of each other. They may be one single right in two different guises, although the right is called the ‘right to self-defense’. However, the right to use words as one likes is certainly a claim-right, in the sense that the person is entitled to his own interpretation of any situation. In other words, he expects other people to listen and agree. He uses his words to communicate his
ideas, hence the claim. If this is so, this right is in line with another natural claim-
right: the right to everything, also to his own subjective use of words, or “the pre-
sumption of making himself judge of good and evil.” (*Leviathan* XXIX)

Then we can say, as I want to do, that only in a situation where the dan-
ger which threatens a citizen is real, the citizen’s right to self-defense can be re-applied, or it is activated. When I say ‘real’, I mean an unequivocal and non-
subjective, official interpretation of the use of words. If this condition is not met, the activation of the right to self-defense is inappropriate, blameworthy, and in many cases also unlawful. Such a solution looks valid to me. The main problem is that Hobbes’s text does not directly validate it. Hobbes clearly believes that the sovereign has a right to fix the meaning of words in the fields of religion and the law, but he still says that the citizen retains his natural right to self-defense intact in the commonwealth although he also must be seen as having surrendered such a problematic right to the sovereign. This is an apparent contradiction which can be avoided only if we say that the right which is really surrendered is the right to use words as we like. We also need to study the cases of torture, POWs, slaves, and religious minorities separately; they do not seem to be as clear-cut as death-

My solution can now be criticized as follows. If the free use of words is a natural right, it cannot be surrendered to the sovereign. Unlike the right to self-defense, which the citizen can take back in certain cases, the right to use words will be permanently lost in a commonwealth. Two possible ways out can be mentioned. First, the right to use words is not really a natural right but a kind of bad habit or a corruption of language. A better solution is to say that a person has his right to everything in the state of nature, and this includes the use of any words one likes to use. Now, when one conditionally surrenders his all-inclusive natural right to the sovereign, he also surrenders the right to use words freely. When one takes back his right to self-defense, he takes back the corresponding linguistic right as well. Then he is once again free to act and talk as he wants.

The right to self-defense must be severely restricted in a commonwealth. This seems obvious but it is not easy to see what it means to say that a citizen who is to be executed has the right to do anything, absolutely anything, which may save him. We can ask, Has the doomed citizen the right to use any and every means to save himself? This question leads us towards an argumentative trap. If the citizen may now use any words and apply any interpretation to describe his own case, he is not only taking back his right to self-defense but also his right to interpretation and the subjective use of words. When this happens, the citizen has returned to the
condition of nature and has declared a war against his former sovereign. He has broken loose from the commonwealth. This may not look like much of a problem. Is it not intuitively clear that a person who is sentenced to die has also been ejected from the commonwealth? He is now outside the commonwealth and may resort to any means by means of which he can save his life, including any use of words. Alas, this case is not unproblematic, however obvious it seems.

Suppose that a citizen has been sentenced to die, next he escapes after killing a guard, and is finally re-captured. He will meet his executioner for sure, but what else? If he has the natural right to escape and do whatever this requires, then no positive law which satisfies the requirements of the natural law, as Hobbes understands it, can condemn him for doing so. This is to say that the citizen should not be punished for his escape and the killing of the guard. This is because he has his natural right to protect himself according to his own interpretation of the situation. The law may find the killing of the guard to be unnecessary, this is the matter of the right use of words according to the sovereign and his positive law; but the citizen may call it necessary and as such deem it covered by his natural right. If the killing is unnecessary, that is, not really a part of the escape, the citizen must receive an extra punishment.

Perhaps he faces severe torture before hanging, or some of his family must follow him to death. Notice the ambiguity here: whose interpretation of the case is followed? He would never admit his guilt. If the killing is necessary also according to the law such an extra punishment is not possible. If the law says the killing is unnecessary and the citizen holds that it is necessary from his point of view, the problem becomes difficult to solve. It is plausible to say that the sovereign's view wins, whatever the guilty party says. Or perhaps we can say the following. When in a commonwealth, a citizen has his limited right to self-defense and also his limited right to use the relevant words as he himself sees fit. Then when he activates his right to self-defense being under the lawfully declared, unequivocal and objective threat of death, he also activated his unrestricted right to use words as he sees fit. Then the citizen has really returned to the state of nature. However, what does it matter how he is then punished after he has been re-captured? He is not a citizen any more, and thus he is an outsider without any protection through the positive laws. Only if he is a citizen can he be protected by the positive law against the extra punishment. It seems to me that the only possible conclusion we can draw from these considerations is that the right to self-defense of a citizen means nothing. It has no operational meaning in the sense that his rights and their activation would not change his treatment at all in the hands of law-courts.
3. ADDITIONAL CONSIDERATIONS: TORTURE, PRISONERS OF WAR, AND RELIGION

Notice that the story does not end here. The sovereign may do anything he likes to a citizen without wronging him. This is what Hobbes says, and it indeed follows from his axioms. It is a bitter pill to swallow if you want to argue that Hobbes’s political theory makes sense, but what can you do? If a citizen is not protected by the law, why should he think that the sovereign is not threatening him just now and act accordingly? Of course the laws protect a citizen but, remember, only against other citizens, not against the sovereign. Hobbes does not want the rule of law. Here the solution to the problems is the usual one: if the sovereign does not explicitly and unequivocally express his intention to kill the citizen, the citizen has no right to take any counter-action. He is still bound by the rules of the social covenant. Again we see how absolutely crucial it is to maintain that a citizen has no right to use words as he likes and sees subjectively fit.

What does it really mean to say that a threatened citizen has the right to re-activate his right to self-defense? Notice that unlimited rights mean the condition of nature; and the limits to the rights mean commonwealth. The only possible answer to the question is this: it means nothing if we think of its real-world consequences. What Hobbes must mean is that it is a symbolic move which indicates the citizen’s move back to the condition of nature in relation to the sovereign. When the citizen activates his right to self-defense he moves out of the bounds of the commonwealth. Only when he does not activate his rights can he stay inside, which is to say that he trusts the use of words by the sovereign. He does not entertain the same kind of paranoid thoughts he used to do in the condition of nature. He trusts he is protected by the positive laws and the sovereign in the commonwealth. Because of this he does not use words as he might otherwise do in a totally unrestricted manner. When a clear and unequivocal threat emerges, everything changes. He now activates his rights and by so doing indicates that he has not moved back to the condition of nature.

A moot question concerns the nature of military service. It seems some readers of Hobbes think that a citizen would have a right to refuse to serve in the army. This problem does not concern only mercenaries; it also concerns conscription army soldiers:

But he that enrolleth himself a soldier, or taketh imprest money, taketh away the excuse of a timorous nature; and is obliged, not only to go to the battle, but also not to run from it, without his captain’s leave. And when the defence of the commonwealth, requireth at once the help of all that are able to bear arms, every one is obliged; because
otherwise the institution of the commonwealth, which they have not the purpose, or
courage to preserve, was in vain. (*Leviathan* XXI)

A simple but false argument might be presented: a citizen has partially sur-
rendered his rights in favor of his sovereign, or he has postponed indefinitely
the activation of them, and hence when the sovereign commands him to go to
war, the sovereign does something which is beyond the limits of the original
covenant. This is obvious nonsense. The citizens have conditionally surrendered
their natural rights to the sovereign in a wholesale manner, that is, all of them
in one package. They have no right to say that army service in time of war is an
unacceptable threat to them. The sovereign says what it is and he does not say
that the soldiers are sent to their death; he says instead that they are sent to war
which does not guarantee death: “For WAR, consisteth not in battle only, or the
act of fighting: but in a tract of time, wherein the will to contend by battle is suf-
ficiently known.” (*Leviathan* XIII). It is a risk unlike a death sentence; but there
are all kinds of risky positions in social life anyway. Of course if the sovereign
commands a suicide mission, those kamikaze soldiers must be volunteers. I do
not think Hobbes’s psychology allows for such self-destructive motions. He says
that the worst thing that may happen to a person is his sudden death, especially
if accompanied by torture.

We must draw a distinction between ‘I want you to die’ and ‘I want you to take
serious risks’. Only the first use of words triggers the self-protecting reaction bac-
ked up by some serious rights-talk. The citizen has no right to add to the second
sentence the words, ‘and die’, that is, to think that the sovereign says ‘I want you to
take some serious risks and die’. The citizen’s own words do not count in this situa-
tion. If he thinks they do, he is entertaining the thoughts of living in the condition
of nature in relation to the sovereign. And logically speaking he should then admit
that this applies to all his follows soldiers as the citizens of the commonwealth.

Next we need to pay attention to citizens who are tortured, POWs, enslaved,
or living under an infidel sovereign. First, it is evident that, as Hobbes says, “If a
man be interrogated by the sovereign, or his authority, concerning a crime done by
himself, he is not bound (without assurance of pardon) to confess it.” (*Leviathan*
XXI). But again, this means practically nothing as the law-court may torture him
anyway: “in a public trial he may by torture be forced to make answer.” (*De Cive*
II, 19). When a citizen is explicitly threatened by torture or he is tortured, he will
activate his rights and move outside the commonwealth. The harm associated with
torture is large and clear enough to warrant this, even without any words. I do not
see any problems here, except perhaps the finding the level of torture which can
be said to be serious enough. Can one use one’s own judgment here? If an explicit threat of torture can do that, can any threat at any level of seriousness do that? I do not think it is a good idea to answer affirmatively. Yet we need a way to determine when exactly the level of torture is serious enough, and here the sovereign and his laws obviously cannot help. But neither can the citizen’s subjective perception and opinion. We need to say that the level of fear determines the citizen’s decision whether to re-activate his natural rights or not:

For torture is to be used but as means of conjecture, and light, in the further examination, and search of truth: and what is in that case confessed, tendeth to the ease of him that is tortured, not to the informing of the torturers: and therefore ought not to have the credit of a sufficient testimony: for whether he deliver himself by true, or false accusation, he does it by the right of preserving his own life. (Leviathan XIV)

A POW can change sides, if otherwise his life is in danger. This is easy to accept because his former sovereign cannot protect him, and he obviously needs a new sovereign who can. In this situation he can only rely on his own, fully subjective use of words and do anything to protect himself. He is under no obligation to his former sovereign and thus no rhetoric of unpatriotic behavior or high treason may apply to him. He is totally free to do whatever he thinks is best for him in the situation. No one can constrain his use of words or impose an interpretation of them for him; he is momentarily back in the condition of nature:

... if a man taken prisoner in the wars, or overcome, or else distrusting his own forces, (to avoid death) promises the conqueror or the stronger party his service, that is, to do all whatsoever he shall command him. In which contract, the good which the vanquished or inferior in strength doth receive, is the grant of his life, which by the right of war in the natural state of men he might have deprived him of; but the good which he promises, is his service and obedience. By virtue therefore of this promise, there is as absolute service and obedience due from the vanquished to the vanquisher, as possibly can be. (De Cive VIII, 1)

If a citizen is living in a commonwealth of an infidel sovereign he must observe the sovereign’s laws, which creates a problem of course. The citizen cannot worship wrong gods because by doing so he will endanger his eternal life and happiness. This is a kind of ultimate risk which can compete with that of death. Some Hobbes-scholars, for example, S. A. Lloyd, Ideas as Interests in Hobbes’s Leviathan (Cambridge UP, 1992) and P. Martinich, The Two Gods of Leviathan (Cambridge UP, 1992), would say that this religious risk is worse than that of death, but Hobbes in fact does not say so. A person’s own death is his worst possible fate, and there is no fate worse than death. This is necessary because the sovereign power
is not possible without it. Anyway, the citizen cannot trigger off his rights in this case. He must still obey the sovereign’s commands and worship his wrong gods. This also shows that religious problems are not as serious as the questions of real life and death are.

Hobbes’s own semi-cynical advice is that you publicly worship the wrong gods but you confess your faith silently. This can be done because “human laws are not made to govern the consciences of men, but their words and actions. . . . Christians under an infidel are discharged of the injustice of disobeying him, in that which concerneth the faith necessary to salvation, by not resisting.” (The Elements of Law II, 6, 1). You rebel privately. You hold on to a minimal confession of your correct faith because “this proposition, Jesus is the Christ, to be the only fundamental and necessary point of faith” (The Elements of Law II, 6, 8). This should be enough to save the citizen’s life and protect him from eternal damnation. Here it is the case that the citizen can use his own words to describe the situation: no sovereign or his law will help him in this case. He must himself decide when to move over to his own private worship. In this sense he is a rebel inside the infidel sovereign’s commonwealth. As we have seen, in some cases a person will be moved back to the condition of nature because of his personal considerations of safety. Then he re-activates his natural rights which he never fully surrendered to the sovereign.

4. THE CONNECTION BETWEEN NATURAL AND HUMAN RIGHTS

The social context and the commonwealth must always be presupposed if we want to make sense of the natural rights and laws. In the chaos of the natural condition of mankind nothing really makes sense, not even the right to self-defense. The organized background of social life is beautifully described by Norman Yoffee in his book Myths of the Archaic State:

Legitimacy encompasses the society as a whole, offering to the elite themselves a rationale for inequality that goes beyond simple prestige. But that is not the chief force of legitimacy. Rather, the entire society must accept, however variably and with whatever degree of coercion, that its order is the only one and the right one, and must work to maintain that order or to contest those who are delinquent in, or incapable of, preserving the order. (Cambridge UP 2005, p. 40)

The basis of legitimacy for Hobbes is a social covenant which also makes it unnecessary to refer to one’s right to self-defense, at least in normal circumstances.
The main worry is to preserve the order which is also seen as the “only and the right one.”

Thomas Hobbes is a precursor of human rights talk, this much is clear. What is not clear is in what sense this claim is to be understood. Hobbes talks about natural laws and natural rights. The former are demands on every human being dictated by his or her own reason, which both finds these laws and validates them:

A LAW OF NATURE (lex naturalis), is a precept, or general rule, found out by reason, by which a man is forbidden to do that, which is destructive of his life, or taketh away the means of preserving the same; and to omit that, by which he thinketh it may be best preserved. (Leviathan XIV)

Hobbes also says they are commands of God, but this must be a rhetorical expression. I see the natural laws as rational prudential norms which dictate how to live a safe and prosperous social life. This is easy to see and accept; what is more difficult to prove is that they are the only possible set of such norms. But Hobbes thinks so. I cannot deal with the problem in this paper. Hobbes lists nineteen such laws in Leviathan but obviously more can be coined. De Cive mentions twenty laws, the last one being against gluttony.

We have already found out what the natural rights are and how they are applied in a commonwealth. The only right we have is the right to self-defense and its necessary counterpart to use words as we like and see fit. These are strong and problematic rights which have no place in a commonwealth. The sovereign protects us, and hence no natural rights are mentioned, except in some special circumstances. It is also possible to say that Hobbes's natural rights are some kind of proto-human rights, especially because they cannot be fully alienated. Instead they can be postponed or suspended, but when needed they are ready to be re-activated. In this sense they satisfy some essential requirements of human rights: They are inalienable, they belong equally to all, and they are unconditional and unquestionable.

The point is: human/natural rights cannot be realized except in a commonwealth whose laws reflect the natural laws – in the sense that the rights are no longer needed. Rights aim at safety and security against other citizens. This cannot be achieved in the condition of nature where the natural rights talk is an obvious source of trouble. But, the situation changes in a commonwealth. A citizen is now protected by means of the positive laws against other citizens, and in this sense the commonwealth satisfies the citizens’ rightful demand of safe life. He needs not activate his rightful demand for safety and the free use of words. He
does not need his natural rights because he lives well without them. As we have seen, it is the sovereign and his positive laws which form an exception to this. The reason is, if I may repeat myself, that the sovereign is not bound by the law which, again, is to say that he may lawfully or unlawfully threaten the citizen by death, torture, enslavement, or wrong religion. However, the citizen may have no reason to expect that the sovereign now presents an actual threat to him; as a citizen he is not free to interpret the situation as he wants. Positive laws protect him and satisfy the requirement of his natural rights as if they were human rights.

The realization of natural rights in a commonwealth means a happy, long, safe, and prosperous life, but only if the positive laws are good and right. Thus they should follow the natural laws. In this way natural rights and natural laws form one package which can be called proto-human rights. Their application allows the citizens to live a good life in the best sense of the term. But of course we do not have here real human rights, for the following reason. Human rights are supposed to protect a person even in the situation where no laws apply. These rights apply to persons regardless of status or citizenship, as well to soldiers, slaves, POWs, and prisoners. Hobbes's natural rights do not do this. I may defend myself which is not enough. The problem is that Hobbes's natural rights tend to be mere freedoms or liberties, not claim rights as the modern human rights are.

If a person is threatened with a capital punishment he has the right to fight against it (Hobbes) or he has a right to avoid it in the first place (human rights). The first alternative means action according to one’s own subjective interpretation and description of the situation. The second alternative indicates his speech-acts by means of which he expresses his grievances and presents his claims to some fundamental revisions. What he says is that his treatment is intrinsically unacceptable and in the moral sense impossible. He claims a right to be treated appropriately. This is very different from just fighting back. And as we noticed, such freedom needs to have no legal consequences at all. One is normally free to try resist and to avoid punishment – to a certain degree. The law recognizes this but may still treat you inhumanely. If you cannot fight back, that is the end of the matter, unlike in the case of human rights. In that perspective you have a valid claim for better treatment. You may now call other for help, which definitely increases your chances of success. We have already seen that Hobbes says that natural rights include a right to everything, which is a universal, unrestricted claim. This does not help at all. The claim must be so restricted that it applies only to my unreasonable, objectively interpreted, and excessive plight. My claim right has to be restricted, if it is to be
called a human right. I do not have a claim to what other people have. I do not have a claim to their bodies like a cannibal. I only have a claim to my own essential well-being.

Timo Airaksinen

NEPERLEIDŽIAMOS TEISĖS HOBBESO POLITIKOJE

Santrauka

Thomas Hobbesas yra vienas iš mąstymo apie žmogaus teises pirmtakų. Jis taip pat plėtoja svarbią prigimtinės teisės teoriją. Vis dėlto jo politinėje teorijoje glūdi retai kada pastebima problema: prigimtinės teisės yra keblios tuo, kad pilietis privalo jų atsisakyti suvereno naudai, bet jis negali to padaryti. Tokios teisės yra neperleidžiamos. Tačiau jei jis negali jų atsisakyti, negali tapti ir valstybės nariu. Šiuo atžvilgiu jo teisės per didelės. Aš aprašau problemą ir pateikiu jos sprendimą. Galop, darau tris išvadas: pirmą, teisės funkcionuoja tik valstybės kontekste; antrą, valstybė atspindi prigimties dėsnius; trečią, prigimtinės teisės skiriasi nuo žmogaus teisių.