

**Daniel Eggers, Hobbes, Kant, and the universal right to all things, or: Why we have to leave the state of nature**

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Among the peculiarities of Hobbes's moral and political philosophy, the universal 'right to all things' and the 'war of every man against every man' deserve pride of place. It is hardly an overstatement to say that the negative reactions that Hobbes received from his contemporaries, and continues to receive from many modern commentators, were to a large extent caused by these two elements of his theory. Hobbes's claim that the state of nature is a general state of war has earned him the dubious reputation of embracing an unduly pessimistic view of human nature. His claim that human beings have a natural right to all things has led commentators to complain that Hobbes equates right with might and to deny that he has a moral theory worth the name.

It hardly comes as a surprise, then, that both elements have given rise to extensive debates in Hobbes scholarship, especially if we keep in mind that both are awarded an essential role in Hobbes's overall argument. The purpose of the present paper is not so much to enter into the discussions which the two elements have caused in their own right, but to critically discuss a line of interpretation that claims quite a specific connection between them, which I will subsequently refer to as the *juridical interpretation of Hobbes's state of nature argument* (or *juridical interpretation* for short).

The juridical interpretation, which has been endorsed by commentators such as Peter Schröder, Dieter Hüning, Karlfriedrich Herb and Georg Geismann,<sup>1</sup> challenges the orthodox view that, for Hobbes, the state of nature needs to be abandoned because it is a state in which everybody's self-preservation is constantly threatened. According to the juridical interpretation, this empirical reading of the predicament of men's natural condition fails to account for what really lies at the heart of Hobbes's argument: the fact that the jural order of the natural state, as it is constituted by the universal right to all things, includes a logical contradiction. On this latter view, the necessity of leaving the state of nature is, above all, a jural necessity, the state of war being, above all, a conflict of natural right.

Although the juridical reading has repeatedly been rejected as inappropriate,<sup>2</sup> commentators have not usually attempted a more detailed refutation.<sup>3</sup> Moreover, while

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<sup>1</sup> See, for example, P. Schröder, *Naturrecht und absolutistisches Staatsrecht. Eine vergleichende Studie zu Thomas Hobbes und Christian Thomasius* (Berlin: Duncker & Humblot, 2001); P. Schröder, *Hobbes* (Stuttgart: Reclam, 2012); D. Hüning, 'Kant auf den Spuren von Thomas Hobbes?', in H. Robinson (ed.), *Proceedings of the Eighth International Kant Congress. Vol. II.* (Milwaukee: Marquette University Press, 1995); D. Hüning, *Freiheit und Herrschaft in der Rechtsphilosophie des Thomas Hobbes* (Berlin: Duncker & Humblot, 1998); D. Hüning, 'Von der Tugend der Gerechtigkeit zum Begriff der Rechtsordnung: Zur rechtsphilosophischen Bedeutung des *suum cuique tribuere* bei Hobbes und Kant', in D. Hüning and B. Tuschling (eds.), *Recht, Staat und Völkerrecht bei Kant* (Berlin: Duncker & Humblot, 1998); K. Herb, *Rousseaus Theorie legitimer Herrschaft. Voraussetzungen und Begründungen* (Würzburg: Königshausen & Neumann, 1989); K. Herb, *Bürgerliche Freiheit. Politische Philosophie von Hobbes bis Constant* (Freiburg; München: Alber, 1999); G. Geismann, *Ethik und Herrschaftsordnung. Ein Beitrag zum Problem der Legitimation* (Tübingen: Mohr Siebeck, 1974); G. Geismann, 'Kant als Vollender von Hobbes und Rousseau', *Der Staat*, 21 (1982), pp. 161–189; G. Geismann and K. Herb (eds.), *Hobbes über die Freiheit. Widmungsschreiben, Vorwort an den Leser und Kap. 1-3 aus De Cive (lt.-dt.). Eingel. und mit Scholien* (Würzburg: Königshausen & Neumann, 1988).

<sup>2</sup> See, for example, R. Bittner, 'Thomas Hobbes' Staatskonstruktion – Vernunft und Gewalt', *Zeitschrift für philosophische Forschung*, 37 (1983), pp. 389–403, p. 391f.; M. Esfeld, *Mechanismus und Subjektivität*

only a few commentators may have embraced the juridical interpretation in its entirety, others commentators have suggested a similar reading of Hobbes or have at least suggested that they accept the basic premise from which the interpretation takes its start, namely the claim that the notion of a universal right to all things is self-contradictory or self-refuting. Yet, once we accept this basic premise, it might be argued that we may, and should, reconstruct Hobbes's state-of-nature argument in terms of the juridical interpretation even if the juridical interpretation might not provide the best summary of what Hobbes actually says. In view of this possibility, there seem to be even more reasons for thoroughly examining the strength of the juridical interpretation and its basic assumption.

My aim in this paper, therefore, is twofold. First and foremost, I want to demonstrate that, given Hobbes's specific understanding of the notion of a natural right, there is no basis for arguing that a universal right to all things is self-contradictory or self-refuting, or that the jural order of the Hobbesian state of nature is defective in any relevant way: Being what is now commonly referred to as a 'liberty-right', the right to all things can consistently be granted to all individuals at the same time.

That Hobbes's theory does not, according to this line of argument, offer the conceptual tools needed for the juridical interpretation to actually get off the ground

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*in der Philosophie von Thomas Hobbes* (Stuttgart-Bad Cannstatt: Frommann-Holzboog, 1995), p. 320; B. Ludwig, *Die Wiederentdeckung des Epikureischen Naturrechtes. Zu Thomas Hobbes' philosophischer Entwicklung von De Cive zum Leviathan im Pariser Exil 1640-1651* (Frankfurt a. M.: Klostermann, 1998), p. 263f.; and U. Kleemeier, *Grundfragen einer philosophischen Theorie des Krieges. Platon – Hobbes – Clausewitz* (Berlin: Akademie Verlag, 2002), p. 131f.

<sup>3</sup> See, however, D. Eggers, *Die Naturzustandstheorie des Thomas Hobbes. Eine vergleichende Analyse von The Elements of Law, De Cive und den englischen und lateinischen Fassungen des Leviathan* (Berlin; New York: de Gruyter, 2008), ch. 5.

provides strong reasons for thinking that we should not interpret or reconstruct Hobbes's argument in terms of this interpretation *no matter what Hobbes actually says* about why the state of nature needs to be given up. However, given that Hobbes tends to quite happily embrace inconsistent claims in the framework of his overall philosophical theory, one might worry that the juridical interpretation could nevertheless appropriately capture Hobbes's view about why men cannot remain in the state of nature, or could at least capture an important part of this view. We can indeed find *prima facie* evidence for this assumption in the somewhat curious fact that Hobbes presents the universal right to all things as making an important and specific contribution to the state of war. Yet, if there is evidence that Hobbes sees the universal right to all things as inherently problematic, a defender of the juridical interpretation could legitimately ask why we should not develop our interpretation of Hobbes's overall argument with an eye to this evidence –rather than to the evidence suggesting a particular interpretation of the status of the right to all things? Why, in other words, should we cling to Hobbes's account of natural right as a mere liberty and ignore his argument for why the state of nature has to be abandoned – and not vice versa?

In order to fully refute the juridical interpretation, therefore, I shall, secondly, demonstrate that the juridical interpretation does not, after all, do justice to what Hobbes actually says about why the state of nature needs to be given up. My main goal in doing so will be to show that and to show how we can interpret the contribution to the state of war made by the right to all things in a way that does not commit us to the juridical interpretation.

## I.

To interpret the necessity of leaving the state of nature as a *jural* rather than an empirical or rational necessity amounts to viewing Hobbes's account of the state of nature as anticipating some of the essential features of Immanuel Kant's doctrine of right (or to see Kant as following in Hobbes's footsteps). As a matter of fact, there is evidence suggesting that Kant himself is one of the earliest advocates, if not *the* earliest advocate, of the juridical interpretation of Hobbes's state of nature argument. According to one of the statements in Kant's "Reflexionen," we ought not to view Hobbes's state of nature as an attempt to consider the *factual* relations of human beings in the absence of civil society, but rather as an attempt to consider their *jural* relations, and it is the peculiarity of these latter relations which provides the basis for the conclusion *exeundum esse e statu naturali*.

the state of nature: an Ideal of Hobbes. The Right [recht] in the state of nature is being considered here, not the Fact [factum]. It is demonstrated that it is not arbitrary [willkürlich] to leave the state of nature, but necessary by Rules of Right [notwendig nach Regeln des Rechts].<sup>4</sup>

That this understanding of the natural state is quite close to Kant's own is suggested by a lengthy passage in Kant's "Religionsschrift." Kant adopts Hobbes's claim that the state of nature is a "state of war of every human being against every other"<sup>5</sup> and adds, in

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<sup>4</sup> 19:99f (my translation).

<sup>5</sup> I. Kant, 'Religion within the boundaries of mere reason', in I. Kant, *Religion and rational theology*, ed. by A. W. Wood (Cambridge: Cambridge University Press, 1996), p. 132. [6:96]

somewhat more Kantian terms, that this “state of a lawless external (brutish) freedom and independence from coercive laws is a state of injustice and of war, each against each, which a human being ought to leave behind in order to enter into a politico-civil state.”<sup>6</sup> Moreover, in a footnote attached to this latter passage, Kant explicitly mentions Hobbes and specifies his agreement with the Hobbesian analysis:

Hobbes’s statement, *status hominem naturalis est bellum omnium in omnes*, has no other fault apart from this: it should say, *est status belli ... etc.* For, even though one may not concede that actual *hostilities* are the rule between human beings who do not stand under external and public laws, their condition (*status iuridicus*), i.e. the relationship in and through which they are capable of rights (of their acquisition and maintenance) is nonetheless one in which each of them wants to be himself the judge of what is his right vis-à-vis others, without however either having any security from others with respect to this right or offering them any: and this is a condition of war, wherein every man must be constantly armed against everybody else. Hobbes’s second statement, *exeundum esse e statu naturali*, follows from the first: for this condition is a continual violation [continuirliche Läsion] of the rights of all others through the presumption [Anmaßung] of being the judge in one’s own affairs and of not allowing any security to other human beings in theirs save one’s own power of choice [eigene Willkür].<sup>7</sup>

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<sup>6</sup> Kant, ‘Religion’, p. 132. [6:97]

<sup>7</sup> Kant, ‘Religion’, p. 132. [6:97]

The footnote not only re-emphasises the parallels which Kant saw between Hobbes's view of the state of natural liberty and his own, it also indicates what Kant took to be the crucial factor in Hobbes's argument. As Kant suggests, the necessity of leaving the state of nature springs from the individual's role of judging for himself about the necessary means of survival. It is in virtue of this role that the natural right of one individual constantly violates the rights of all others, and, according to Kant, it is this constant violation of rights that grounds the Hobbesian conclusion that the state of nature needs to be abandoned.

We can infer very much the same reading of Hobbes's theory from a passage in Kant's treatise "Zum ewigen Frieden," published about a year after the "Religionsschrift." Again, Kant signifies his acceptance of the Hobbesian idea that the state of nature is a state of war and emphasises that a peaceful state can only be achieved within the lawful condition of civil society. Moreover, he elaborates on the predicament of the natural state by claiming that an individual in the state of nature "already wrongs me [lädirt mich] just by being near me in this condition, even if not actively (*facto*) yet by the lawlessness [Gesetzlosigkeit] of his condition (*statu iniusto*),"<sup>8</sup> thereby suggesting that the reason why the state of nature has to be given up lies beyond the problem of factual or empirical conflict.

The idea that the natural rights of Hobbesian individuals are necessarily in conflict with one another and that the necessity of leaving the state of nature is primarily a consequence of the resulting defect in this state's jural order has been taken up by a couple of modern commentators, most notably by Julius Ebbinghaus and Georg

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<sup>8</sup> I. Kant, 'Toward perpetual peace', in I. Kant, *Practical Philosophy*, transl. and ed. by M. J. Gregor (Cambridge: Cambridge University Press, 1997), p. 322. [8:18].

Geismann, and subsequently by Karlfriedrich Herb, Dieter Hüning and Peter Schröder. Like Kant, these commentators focus on the *ipse iudex*-principle and on how this principle affects the extent of the natural right to self-preservation, even though they may place more emphasis on the fact that the right ultimately becomes a right to all things. While there are certainly differences in the ways in which these commentators interpret the universal right to all things and its problems, there is evidence that all commentators subscribe to three crucial claims. First, a universal right to all things is self-contradictory or self-undermining because one individual's right to all things necessarily negates the rights of all others. Or, as Geismann puts it:

As a right equally possessed by everybody [...] this natural right to all things is self-contradictory [steht mit sich selbst in Widerspruch] and annuls itself [hebt sich auf]: the right of one person amounts to the complete cancellation [vollständige Aufhebung] of the rights of all others. [...] Therefore, the state of nature as a state of the natural right to self-preservation is at the same time a state without any right [ein rechtloser Zustand] and hence self-contradictory [in sich widersprüchlich].<sup>9</sup>

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<sup>9</sup> Geismann, 'Kant als Vollender', p. 165 (my translation). See also J. Ebbinghaus, 'Das Kantische System der Rechte des Menschen und Bürgers in seiner geschichtlichen und aktuellen Bedeutung', in J. Ebbinghaus, *Gesammelte Aufsätze, Vorträge und Reden* (Darmstadt: Olms, 1968), p. 166; Geismann, *Ethik und Herrschaftsordnung*, p. 43; Geismann and Herb, *Hobbes über die Freiheit*, p. 128; Herb, *Rousseaus Theorie legitimer Herrschaft*, p. 21; Hüning, 'Kant auf den Spuren von Thomas Hobbes', p. 64; Hüning, *Freiheit und Herrschaft*, p. 83; Schröder, *Naturrecht*, p. 28f.; and Schröder, *Hobbes*, p. 18.



Secondly, the Hobbesian state of war is, first and foremost, a jural condition and not an empirical condition.<sup>10</sup> Thirdly, Hobbes's conclusion *exeundum esse e statu naturali* is essentially derived from the jural defect of the state of nature, not from the empirical problem of self-preservation: Quite independently of the possibility or probability of empirical conflict, the natural state needs to be given up in favour of civil society, a state of limited and therefore compatible civil rights.<sup>11</sup>

The above account may easily give the impression that the juridical interpretation is an exclusive feature of German Hobbes scholarship. As already indicated, however, certain strands in Anglophone Hobbes scholarship suggest a similar reading of Hobbes and indicate that a considerable number of commentators accept some of the crucial premises of the juridical interpretation. For example, Noel Malcolm, in his 1991 paper *Hobbes and Spinoza*, has expounded a view on the predicament of the

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<sup>10</sup> See, for instance, J. Ebbinghaus, 'Die Idee des Rechtes', in J. Ebbinghaus, *Philosophie der Freiheit. Praktische Philosophie 1955-1972*, ed. by G. Geismann und H. Oberer (Bonn: Bouvier, 1988), p. 162; Geismann and Herb, *Hobbes über die Freiheit*, p. 29 and 129f.; Herb, *Rousseaus Theorie legitimer Herrschaft*, p. 21f.; Herb, *Bürgerliche Freiheit*, p. 22; Hüning, 'Kant auf den Spuren von Hobbes', p. 64; Hüning, 'Tugend der Gerechtigkeit', p. 763; Schröder, *Naturrecht*, p. 20 and 28f.; and Schröder, *Hobbes*, p. 18.

<sup>11</sup> See, for example, Ebbinghaus, 'Das Kantische System', p. 166f.; Ebbinghaus, 'Die Idee des Rechtes', p. 162; Geismann, *Ethik und Herrschaftsordnung*, p. 43; Geismann and Herb, *Hobbes über die Freiheit*, p. 24f.; Herb, *Rousseaus Theorie legitimer Herrschaft*, p. 22; Hüning, 'Kant auf den Spuren von Hobbes', p. 75; and Hüning, *Freiheit und Herrschaft*, p. 87f. While Schröder does not explicitly raise this last point, he emphasises that the state of human nature is not relevant for the predicament of the natural state and that even an abundance of goods would not help to overcome this predicament (see Schröder, *Naturrecht*, p. 20 and 27). Moreover, he claims that Hobbes's state of nature argument is located on a juridical level and that the necessity to leave the state of nature is a consequence of the structural conflict that is constituted by the universal right to all things (see Schröder, *Hobbes*, p. 14 and 18f.).

state of nature which is quite reminiscent, if not of the juridical reading, then at least of the second assumption described above:

[...] the primary state of conflict between individuals posited by Hobbes is not a contingent, factual conflict, which might not exist if people ceased to be irascible or competitive, but rather a necessary jural conflict between people whose rights *overlap* or conflict in some sense with one another until they have been renounced.<sup>12</sup>

Malcolm's characterisation of the primary conflict of Hobbes's state of nature has been adopted by other Anglo-American Hobbes scholars recently. Thus, Martin Harvey, in his 2006 paper on Grotius and Hobbes, not only subscribes to Malcolm's view, but even seems to take for granted that this must be the correct way of looking at Hobbes's argument.<sup>13</sup>

In addition, there are quite a few commentators who suggest that they accept the first of the three assumptions, namely the idea that the notion of a universal right to all things involves some kind of logical contradiction. Simone Goyard-Fabre, for example, has emphasised that there are "paradoxes and contradictions"<sup>14</sup> inherent in Hobbes's

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<sup>12</sup> N. Malcolm, 'Hobbes and Spinoza', in N. Malcolm, *Aspects of Hobbes* (Cambridge: Cambridge University Press, 2002), p. 31.

<sup>13</sup> See M. Harvey, 'Grotius and Hobbes', *British Journal for the History of Philosophy*, 14 (2006), pp. 27–50, p. 44.

<sup>14</sup> S. Goyard-Fabre, 'Metamorphosis of the Idea of Right in Thomas Hobbes's Philosophy', in C. Walton and P. J. Johnson (eds.), *Hobbes's 'Science of Natural Justice'* (Dordrecht; Boston; Lancaster: Kluwer, 1987), p. 157. See also p. 154 and 156.

notion of natural right and argued that the natural rights of different Hobbesian individuals “annul themselves.”<sup>15</sup> In a similar vein, Gary Herbert has claimed that “natural right is self-contradictory”<sup>16</sup> in Hobbes, and Eleanor Curran has pointed out, if somewhat more cautiously, that “there is a contradictory element”<sup>17</sup> to Hobbes’s natural right. In fact, the idea that the notion of a universal right to all things is contradictory is one that we find in Anglophone Hobbes scholarship even before Kant goes on to outline the juridical interpretation in the writings mentioned above. Thus Samuel Clarke, in his second Boyle lecture, delivered in 1705 and published in 1706 under the name “Discourse concerning the Unchangeable Obligations of Natural Religion, and the Truth and Certainty of the Christian Revelation,” vehemently attacks the Hobbesian notion in the following manner:

[T]o say that one man has a *full Right* to the same individual things, which another man at the same time has a *full Right* to; is saying that two *Rights* may be contradictory to each other; that is, that a thing may be *Right*, at the same time that ’tis confessed to be *Wrong*.

For Instance; If every Man has a *Right* to preserve his own Life, then ’tis manifest I can have no *Right* to take any man’s Life away from him, unless he has first forfeited his *own Right*, by attempting to deprive me of mine. For otherwise, it might be *Right* for me to do That, which at the same time, because it could not be done but in breach of

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<sup>15</sup> Goyard-Fabre, ‘Metamorphosis of the Idea of Right’, p. 157.

<sup>16</sup> G. Herbert, ‘Thomas Hobbes: The Mediation of Right’, in C. Walton and P. J. Johnson (eds.), *Hobbes’s ‘Science of Natural Justice’*, (Dordrecht; Boston; Lancaster: Kluwer, 1987), p. 185.

<sup>17</sup> E. Curran, ‘Hobbes’s Theory of Rights – A modern Interest Theory’, *The Journal of Ethics*, 6 (2002), pp. 63–86, p. 67.

another Man's *Right*, it could not be *Right* for me to do: Which is the greatest Absurdity in the World.<sup>18</sup>

To be sure, there is evidence that neither Herbert nor Curran nor even Malcolm would be willing to follow the juridical interpretation all the way, and the same clearly holds for Clarke who takes the alleged contradictions in the notion of a universal right to all things as ground for rejecting Hobbes's theory of the state of nature. However, to admit as much as these commentators seem to do, namely that we cannot consistently grant a natural right to all things to different individuals at the same time, or that the individuals' rights would necessarily conflict with one another, invites just the understanding of Hobbes's argument we find fully developed in the works of Hüning, Schröder, Geismann, Herb and Ebbinghaus. In order to refute the juridical reading, therefore, it is important to pay attention to these somewhat weaker claims and to demonstrate that and why talk of 'self-contradiction' or 'conflict of right' with regard to Hobbes's right to all things is seriously misleading.

The prime advocates of the juridical interpretation base their interpretation of Hobbes's argument on the text of "De Cive," which they take to contain the best and most stringent account of Hobbes's state of nature theory. Moreover, they sometimes concede that the juridical status of the state of nature argument is not as obvious or palpable in Hobbes's other works, most notably in the English "Leviathan."<sup>19</sup> In order not to be flogging a dead horse, therefore, I will therefore mainly focus on the text of "De Cive" and will try to show that even with regard to this version of Hobbes's theory,

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<sup>18</sup> S. Clarke, *The Works. Vol. II.* (New York; London: Garland, 1978), p. 631.

<sup>19</sup> See Geismann, 'Kant als Vollender', p. 161; Geismann and Herb, *Hobbes über die Freiheit*, p. 25f. and 32f.; and Hüning, *Freiheit und Herrschaft*, p. 49f. and 53.

the juridical interpretation fails to provide an appropriate account of Hobbes's argument.

## II.

One reason why the account of "De Cive" may seem more sympathetic to the juridical interpretation than the text of "Leviathan" is that in the former work, and likewise in the even earlier text of "The Elements of Law," Hobbes introduces the natural right to all things within the framework of his derivation of the state of war. In "Leviathan," Hobbes addresses the natural right to self-preservation at the beginning of chapter 14, i.e. only after the derivation of the state of war in chapter 13 has already been completed. In contrast, in both "The Elements of Law" and "De Cive," he inserts an explicit deduction of the right to all things into his description of the various causes of quarrel. What is more, Hobbes suggests that the right to all things is itself to be counted among these causes and should be taken as at least partly responsible for the state of war.

Thus, after describing vainglory, self-defence, intellectual strife and the competition for goods as the primary sources of conflict in the state of nature,<sup>20</sup> Hobbes enters into an explicit discussion of natural right which proceeds in four argumentative stages. Hobbes begins by emphasizing that, given the dangers of the state of nature previously described, it is neither absurd nor reprehensible nor against right reason that individuals should try to defend their lives and limbs against possible attacks.<sup>21</sup> Since,

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<sup>20</sup> See T. Hobbes, *De Cive: The Latin Version*, ed. by H. Warrender (Oxford: Clarendon Press, 1983), I.4-I.6, p. 93f.

<sup>21</sup> See *De Cive*, I.7, p. 94.

he adds, the term ‘right’ refers to the liberty of acting in accordance with right reason, he concludes that every individual has a fundamental natural right to protect his life and limbs.<sup>22</sup>

The second stage of the argument consists in the claim that, in order to be of any use at all, this natural right must also cover the means necessary for achieving the end of self-preservation. Hobbes concludes, therefore, that every individual has a right to use those means and to perform those actions upon which his self-preservation depends.<sup>23</sup> The third step in the argument consists of a commitment to the *ipse iudex*-principle: every individual has a natural right to judge for himself whether the means he is about to use or the actions he is about to perform are necessary to the preservation of his life and limbs.<sup>24</sup> Hobbes’s ultimate conclusion, which is presented as the fourth and last step of his argument, is that every individual has a natural right to all things.

Nature has given to everyone a right to all things. [...] Now since whatever someone wants seems good to him because he wants it [quaecunque quis voluerit, ideò bona videntur quia ea vult], and either does contribute to his preservation or at least appears to contribute to it [possuntque vel conducere ad sui conseruationem, vel saltem conducere videri] (but of whether it really does so or not, we have in the preceding article made himself the judge, so that we have to hold as necessary whatever he himself judges to be so); and since by article 7, those things are done by right of nature, and are to be held to be so

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<sup>22</sup> See *De Cive*, I.7, p. 94.

<sup>23</sup> See *De Cive*, I.8, p. 94.

<sup>24</sup> See *De Cive*, I.9, p. 95.

done, which necessarily contribute [quae necessariò conducant] to the protection of one's own life and limbs; it follows that in the state of nature, all men are permitted to have and do all things [omnia habere & facere in statu naturae omnibus licere].<sup>25</sup>

Now there are obviously good reasons for doubting that Hobbes's deduction of the right to all things is valid. In particular, one may wonder whether the acknowledgement of the *ipse iudex*-principle entitles Hobbes to abandon his original criterion for the rightfulness of state of nature behaviour in the way he does. Hobbes's argument initially refers to the *necessity* of a means or an action for the self-preservation of the agent, and to the objective aspect of whether the means or the action *is* in fact necessary for the agent's preservation. However, in the conclusion above, he presents it as sufficient if the agent *thinks* that the means or the action is *conducive* to his preservation.

This new and far weaker criterion not only covers cases in which the means or action is merely conducive but not necessary, but also cases in which even the judgement that the means or action is conducive to the agent's self-preservation is mistaken – and is so by the agent's own fault.<sup>26</sup> Moreover, we may be willing to accept Hobbes's psychological claim that whatever a person desires, she will consider good or valuable just because she desires it. However, we may not be willing to accept the stronger claim upon which his conclusion ultimately depends, namely the claim that

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<sup>25</sup> *De Cive*, I.10, p. 95 (my translation).

<sup>26</sup> In my view, it is this double shift from necessity to conduciveness and from objective to subjective matters which allows Hobbes to have the natural right cover such a broad range of actions, and not so much a move from the narrow notion of self-defense to the broader notion of self-interest, as has been claimed by Tommy L. Lott (see T. L. Lott, 'Hobbes's Right of Nature', *History of Philosophy Quarterly*, 9 (1992), pp. 159–180, p. 166).

whatever a person desires, she will also consider conducive for her preservation. For example, there seem to be good reasons for assuming that the state of nature individuals may conceive of the use of certain drugs or of casual sexual relationships as goods, and perhaps even as important ones. However, there do not seem to be any strong reasons for assuming that they will, therefore, necessarily think that drugs or casual sexual relationships relevantly contribute to their individual self-preservation.

Yet, what is most important in our present context is the way in which Hobbes goes on to connect the discussion of the right to all things with his previous derivation of the several sources of conflict. Thus, in paragraph 12 of chapter I of “De Cive,” Hobbes arrives at his crucial overall conclusion according to which the state of nature is a state of war, and in doing so, he presents the state of war as a result of *both* the primary sources of conflict *and* the right to all things *taken together*.

If to the natural proclivity of men to provoke each other [Ad naturalem hominum proclivitatem ad se mutuo lacesendum], ..., you now add the right of all men to all things [si addas iam ius omnium in omnia], by which one rightfully attacks and the other rightfully resists, and from which arise perpetual suspicion and zeal of all towards all; and if you add how difficult it is to take precautions against enemies, with a small number and little equipment, who invade with the intention to surprise and subdue, it cannot be denied that the natural state of men, before they came together in society, was War; and not simply war, but a war of every man against every man.<sup>27</sup>

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<sup>27</sup> *De Cive*, I.12, p. 96 (my translation).



At first sight, it seems quite difficult to make sense of the kind of computation that Hobbes intimates: how are we to ‘add up’ the primary sources of conflict with the right to all things, given that the two aspects are located on quite different theoretical levels – the former aspect consisting of psychological and hence empirical facts, the latter consisting of normative and hence non-empirical facts or considerations?

There is, however, one obvious way of bringing the two aspects together. A central feature of normative principles is their action-guiding character: while normative principles are not themselves descriptions of how human beings behave or are likely to behave, they provide reasons for action that may – and are usually expected to – enter into an individual’s deliberations and thereby influence his or her behaviour. The fact that normative considerations possess a non-empirical status, therefore, by no means excludes the possibility of their having an empirical effect. There are no reasons for thinking that Hobbes’s overall theory should have no place for this kind of phenomenon: the various laws of nature he formulates are clearly described in normative terms, namely as “dictata rectae rationis”<sup>28</sup> or “dictates of Reason,”<sup>29</sup> and if Hobbes were to deny that normative considerations can have any effect on human actions, his efforts in trying to formulate and justify these laws would simply be a puzzle.

It seems, then, that in describing the right to all things as a cause of conflict, Hobbes might have in mind something like the above connection between normative considerations and actual human behaviour. The right to all things is of practical

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<sup>28</sup> *De Cive*, III.25, p. 117.

<sup>29</sup> T. Hobbes, *Leviathan*, ed. by N. Malcolm (Oxford: Clarendon Press, 2012), Ch. 15, p. 242. See also T. Hobbes, *The Elements of Law; Natural and Politic*, reprint of the 1889 edition by F. Tönnies, with a new introduction by M. M. Goldsmith (London: Frank Cass, 1969), I.18.1, p. 95.

relevance, on this interpretation, because it does *not* provide the individuals with any normative reasons not to follow the desires they happen to have. In this way, the right to all things, or, more precisely, the consideration that one has such a right, which we must assume to be acted upon by rational individuals in the state of nature, can indeed be said to make a specific, if negative, contribution to the state of war because it fails to keep rational individuals from acting on those passions that lead them into conflict with others. This can be further clarified if we imagine that Hobbes's discussion of natural right yielded a different, Lockean conclusion. Thus we may expect rational individuals who have the same natural desires, but form the diverging normative opinion or belief that there is a God-given natural law forbidding violence to have at least *some* tendency to refrain from actually employing force. The resulting state would, certainly, still be a state of insecurity and perhaps even one of frequent violent conflict. However, depending on our assumptions about how strongly individuals will be moved by their moral considerations, we may expect it to be less miserable than the Hobbesian state of war.

The idea, then, is that the natural right to all things adds to the state of war, at least in one sense of that word, but that it does so only in conjunction with the human passions that substantially or materially move the individuals to exercise their right to all things in a particular manner. On this view, the problem associated with the universal right to all things is not that this right constitutes a jural conflict or even that it provides an independent cause of empirical conflict. It is that the right to all things fails to provide a normative constraint for human behaviour that could indirectly contribute to the individuals' preservation. That this empirical interpretation of the state of war and of the contribution made by the natural right to all things must be the one Hobbes has in

mind is suggested by his further remarks on the universal right to all things. Thus, in the paragraph just preceding the one quoted above, Hobbes reflects on the situation in which the universal right to all things puts the state of nature individuals, and his emphasis is clearly on the empirical question of whether or not the right to all things tends to better the prospect of self-preservation.

However, it was of very little use to men [Minimem autem vtile hominibus fuit], that they should have such a common right to all things. For the effect [effectus] of this right is almost the same as if no right at all existed. For although everyone could say of all things, *this is mine*, he still could not enjoy [frui] them because of his neighbour who, with equal right [aequali iure] and equal force [aequali vi], claimed them to be his.<sup>30</sup>

It can be granted to the advocates of the juridical reading that in the above passage, Hobbes suggests that a universal right to all things is, in some way, equivalent to a universal right to nothing. The way in which this is true for Hobbes, however, has nothing to do with the fact that such a right would be self-contradictory or in any other sense conceptually impossible. What Hobbes is concerned with throughout the passage is the effect (“effectus”), that is, the factual consequences of the universal right to all things, and in particular the question of whether this right is in any way conducive or useful (“vtile”). The problematic result of the fact that all other individuals have the same right to all things is not that, for logical or conceptual reasons, no single individual can continue to *have* or *claim* a right to all things; it is that no single individual will be

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<sup>30</sup> *De Cive*, I.11, p. 96 (my translation).

able to *enjoy* (“*frui*”) this right, given that it will not provide him or her with the exclusive use of any desired good. This is suggested quite clearly by the concluding phrase of the passage which not only draws attention to the fact that other individuals will claim those very goods *by right* (“*iure*”), but emphasizes that they will also claim them *by force* (“*vi*”).

Accordingly, when Hobbes concludes in paragraph 13 that it would be unreasonable to remain in the state of war, he appeals to the empirical fact that life in such a state stands in opposition to the aim of self-preservation and hence fails to advance any individual’s good.

However, it can easily be judged how incompatible a permanent War is with the preservation of mankind or of any single man. [...] Anyone therefore who believes that one should remain in that state in which all things are allowed to all contradicts himself; for, by natural necessity, everyone desires his own good, but there is no one who can think that the war of all against all, which naturally adheres such a state, is good for him.<sup>31</sup>

Again, we may make a concession to the advocates of the juridical interpretation here, namely that the necessity of leaving the state of nature as a state of perpetual war is rooted in some kind of contradiction. However, the contradiction Hobbes appeals to is not one in the notion of a universal right to all things, but one within a person’s set of desires: what is wrong about wanting to remain in the state of war is that the desire to

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<sup>31</sup> *De Cive*, I.13, p. 96f (my translation).

remain in such a state is inconsistent with other desires that any rational individual will have, most importantly the fundamental desire for self-preservation.

We find a similar emphasis on the empirical consequences of the universal right to all things in chapter II of “De Cive,” where Hobbes explicitly argues that the natural right to all things needs to be abandoned.

For if every one should retain his right to all things, it necessarily follows that some would be attacking [inuaderent] by right, and others defending [defenderent] themselves by right (for every one by natural necessity strives to defend his body and whatever is necessary for its protection). Therefore, War would follow. Thus, he who does not give up his right to all things acts contrary to the logic of peace, that is, contrary to the law of nature.<sup>32</sup>

Again, Hobbes’s argument does not appeal to any problems with the *concept* of a universal right to all things, but to what empirically follows from such a right, namely invasion and defence or, in other words, actual fighting.

The view that the universal right to all things is only of minor importance for Hobbes’s state of nature argument, being relevant to this argument only insofar as the universal right to all things fails to keep the human passions from exerting their detrimental effects, can be supported by one further consideration appealing to the course of Hobbes’s subsequent discussion. If the true predicament of the state of nature was caused by the universal right to all things, or by defects in the natural state’s jural order that are purportedly being caused by this right, it would be hard to see how there

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<sup>32</sup> *De Cive*, II.3, p. 100 (my translation).

could ever be a remedy for the predicament of the state of nature, given Hobbes's particular way of conceiving of civil society.

We can see this by hypothetically conceding the basic premise of the juridical interpretation and taking one individual's right to all things to be capable of being in conflict with the rights of others. In order for there to be a conflict of right in this sense, we do not need to have a state with a *universal* right to all things. All that is needed for the supposed conceptual or logical problem to arise is that one individual has a right to all things and that at least one other individual has a right to something. Yet, if this kind of situation is sufficient for a defect in the jural order to be created, then the different strategies that Hobbes discusses as possible solutions to the predicament of the state of nature would not be able to provide such a solution at all.

One such strategy, which Hobbes only takes up in order to ultimately dismiss it, is the formation of defensive alliances. Given that the members of such alliances retain their right to all things with regard to all individuals who are not part of their alliance, the formation of defensive alliances cannot resolve the supposed jural deficit of the natural state but, at best, locally constrain it. The defenders of the juridical interpretation then not only owe us an explanation for why Hobbes takes up the issue at all, but also an explanation for the manner in which he ultimately rejects the strategy. Instead of drawing on any jural aspects or providing a conceptual or logical argument, Hobbes dismisses the strategy *on purely pragmatic grounds*, arguing that defensive alliances must be large in order to provide the necessary amount of security and that such large alliances will not be stable but suffer from internal disagreement.<sup>33</sup> That Hobbes takes up the issue at all in order to then challenge the pragmatic viability of defensive

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<sup>33</sup> See *Elements of Law*, I.19.3-6, p. 101-03; *De Cive*, V.3-6, p. 131-33; and *Leviathan*, Ch. 17, p. 256-60.

alliances, without even bothering to analyse the jural structures that such alliances impose on the state of nature, shows quite clearly that he identifies the predicament of the state of nature with the empirical problem of long-term self-preservation. It is only with regard to this problem that his pragmatic counter-argument bears any relevance.

However, things are even worse for the juridical interpretation. Once we accept the basic premise of the interpretation, it seems that we need to concede that even the strategy on which Hobbes finally settles, namely the establishment of civil society, fails to provide a solution to the original predicament of the natural state. The reason is that, according to Hobbes's specific understanding of sovereign power, not even civil society can be said to dispose of the human right to all things once and for all. As Hobbes suggests in all of his major political works, the sovereign is distinguished from the citizens in that he retains his original right to all things.<sup>34</sup> However, if this is how Hobbes conceives of the jural status of the sovereign, then it seems that even the jural order of civil society must be defective. Since Hobbes leaves no doubt that, upon entering into civil society, the future citizens retain at least *some* part of their natural right to all things,<sup>35</sup> we would still have the kind of jural conflict to which the juridical interpretation appeals, even if it would now be confined to the relationship between the sovereign and his citizens. Yet, this raises the question of how we are to conceive of the

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<sup>34</sup> For an explicit statement to this effect, see *Leviathan*, Ch. 28, p. 482. Further evidence can be found in Hobbes's claim that the sovereign is not himself part of the covenant that establishes his power as well as in the related claim that the sovereign cannot do any injury to his subjects which, according to Hobbes's definition of injury, would presuppose that he has entered into covenants with them and thereby given up parts of his natural right (see *Elements of Law*, II.2.3, p. 119, and II.2.7, p. 121; *De Cive*, VII.14, p. 155; and *Leviathan*, Ch. 18, p. 266 and 270, and Ch. 21, p. 330).

<sup>35</sup> See, for example, *Elements of Law*, I.17.2, p. 88f.; *De Cive*, II.18, p. 105 and III.14, p. 114; and *Leviathan*, Ch. 14, p. 202, and Ch. 15, p. 234.

supposed juridical state-of-nature argument in Hobbes, given that the argument for why we need to give up the state of nature in favour of civil society would crucially appeal to a jural aspect which the state of nature and civil society actually *share* with one another.

The first result of our examination of “De Cive,” then, is that the juridical interpretation hardly provides an appropriate analysis of Hobbes’s actual statements about why the state of nature needs to be abandoned and how this can successfully be done. While Hobbes establishes some kind of connection between the derivation of the state of war and the concept of the natural right to all things, it is clearly false to say that he primarily presents the state of war as a jural state of affairs or to say that his crucial conclusion that the state of nature and the right to all things have to be given up appeals to any logical inconsistency in the jural order of the natural state. The reason why the state of nature needs to be overcome is what the orthodox interpretation of Hobbes has always taken it to be: the fact that life in the state of nature is incompatible with the satisfaction of what is any rational individual’s first and foremost desire, namely the desire for self-preservation.

### **III.**

As argued in the introduction, to be able to show that the juridical interpretation fails to provide an appropriate analysis or representation of Hobbes’s actual statements might not be sufficient for a complete rejection of this interpretation. Even if one were willing to concede that Hobbes himself does not develop a juridical state-of-nature argument, one may still want to argue that he has at his disposal the conceptual tools such an argument requires. As we have seen, in order to defend the juridical reading along these



lines, one not only needs to downplay Hobbes's explicit statements about why the state of nature has to be left but also to discard certain other elements of his theory, such as his way of looking at the viability of defensive analysis or his claim that the sovereign retains his natural right to all things. However, some advocates of the juridical interpretation certainly seem willing to make these or similar concessions. Moreover, given that the juridical state-of-nature argument is conceived as logically independent of the anthropological assumptions underlying Hobbes's derivation of the state of war, and given that many commentators have been unwilling to wholeheartedly accept the anthropological assumptions in the past, we might actually have to gain something by reconstructing Hobbes's argument in terms of the juridical interpretation. We would be left with a Hobbesian argument for the necessity of civil society that does not commit us to any substantially pessimistic view about human nature.

In order to provide a comprehensive refutation of the juridical interpretation, therefore, we need to also demonstrate that the juridical interpretation rests on an inadequate understanding of the very conception of a universal *ius in omnia*. Given that the idea that Hobbes's universal right to all things is self-contradictory or self-undermining is one we also find in commentators who do not explicitly subscribe to the juridical interpretation of the state of nature argument, a discussion of the implications of the Hobbesian right to all things also seems important and worthwhile in its own right.

As already indicated, Hobbes's notion of a right to all things has given rise to an extensive debate, though we may note that this debate really started off only after Howard Warrender's influential study on Hobbes's theory of obligation. Somewhat ironically, one of the main points of contention has been the *extent* of the right to all

things. While some commentators have taken Hobbes's term at face value and claimed that the natural right is strictly unlimited,<sup>36</sup> most modern commentators argue that, in spite of its name, the right to all things is effectively limited by the agent's subjective judgement about what is, and what is not, conducive to his self-preservation.<sup>37</sup>

It is quite natural to think that the extent of the right to all things must have some bearing on the prospect of successfully reconstructing Hobbes's argument in terms of the juridical interpretation. Yet, although it has some such bearing, the juridical interpretation is not crucially dependent on the assumption that the right to all things is indeed unlimited. In discussing defensive alliances and the jural relationship between sovereigns and their subjects, I have already emphasised that, in order for there to be the kind of jural conflict the defenders of the juridical interpretation appeal to, it is sufficient if one individual has a right to all things while one other individual has any right to something at all. What needs to be added to this is that, in order for there to be a jural conflict in the relevant sense, nobody needs to have a strictly unlimited right: as long as we can plausibly assume that the desires of some state of nature individuals will

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<sup>36</sup> See, for instance, D. Gauthier, *The logic of Leviathan. The moral and political Theory of Thomas Hobbes* (Oxford: Oxford University Press, 1969), pp. 50-52; and Herbert, 'Thomas Hobbes', p. 182.

<sup>37</sup> See, for example, H. Warrender, *The political philosophy of Hobbes. His theory of obligation* (Oxford: Oxford University Press, 1957), pp. 59-61; G. S. Kavka, *Hobbesian moral and political theory* (Princeton: Princeton University Press, 1986), p. 301; B. Gert, 'Introduction', in T. Hobbes, *Man and Citizen*, ed. by B. Gert. (Indianapolis: Hackett, 1991), p. 19f.; R. Tuck, *Philosophy and government 1572-1651* (Cambridge: Cambridge University Press), p. 306; and D. Boonin-Vail, *Thomas Hobbes and the science of moral virtue* (Cambridge: Cambridge University Press, 1994), p. 72f. For a recent defense of the view, see also S. Sreedhar, *Hobbes on resistance. Defying the Leviathan* (Cambridge: Cambridge University Press, 2010), p. 12f. See also Malcolm who distinguishes between a 'moral' and a 'jural' right of nature in Hobbes and takes the former to be limited and the latter to be unlimited (see Malcolm, 'Hobbes and Spinoza', p. 33f.; and N. Malcolm, 'Hobbes's theory of international relations', in N. Malcolm, *Aspects of Hobbes* (Cambridge: Cambridge University Press), p. 445).

inevitably converge on the same objects and that these objects are equally covered by their respective rights to self-preservation – which is exactly the assumption Hobbes is arguing for – there will be a conflict of right in Hobbes’s state of nature and hence a defect in this state’s jural order.

The extent of Hobbes’s natural right to all things, then, does not present any obstacles to the juridical interpretation, no matter how exactly we define this extent. The true problem of the enterprise lies elsewhere. It is that the basic assumption that the natural right of one individual may stand in conflict or be inconsistent with the same right of another individual, which assumption we have provisionally granted above, is unwarranted. The reason has to do with the normative status of the right to all things.

A distinction that has become quite customary in moral and legal philosophy is the distinction between ‘claim-rights’ and ‘liberty-rights’. This distinction is usually traced back to the works of Wesley Hohfeld, even though Hohfeld himself does not use the terms and prefers to speak of ‘claims’ and ‘privileges’. Claim-rights are rights that correspond with duties in other persons: To say that person A has a claim-right to X implies that at least one other person B has a duty with regard to A’s having or enjoying X. Claim-rights can therefore be said to create legitimate demands. In contrast, liberty-rights do not correspond with any duties in other persons and do not create legitimate demands. They are mere normative liberties to behave in certain ways and can therefore be described as permissions: To say that a person A has a liberty-right to X implies that A may X, or that A is not under any duty or obligation not to X.

If we return to Hobbes’s works, we find ample evidence that Hobbes conceives of the fundamental right to self-preservation and the right to all things as liberty-rights. Thus, as we have seen, in paragraph 7 of chapter I of “De Cive,” Hobbes describes the

natural right as each individual's *liberty* of using her natural faculties in accordance with right reason ("libertas quam quisque habet facultatibus naturalibus secundum rectam rationem vtendi").<sup>38</sup> Accordingly, the claim that the individual must have the right to use the means necessary for her preservation made in paragraph 8, and Hobbes's statement of the *ipse iudex*-principle in paragraph 9 are solely concerned with what the agent *may* do and make no mention of any natural duties on behalf of others.<sup>39</sup> That the normative status of the natural right is, therefore, the status of a permission rather than that of a claim becomes even clearer in paragraph 10 where Hobbes explicates the concept of the universal right to all things by saying:

That is, in the pure state of nature [...] every man was permitted [licebat] to do all things and against anybody, and to possess, use and enjoy all things he wanted and could get.<sup>40</sup>

That the term 'right to all things' refers to an absence of obligation rather than to legitimate demands against others is also indicated by the fact that, in a footnote to the statement just quoted, Hobbes further explains the concept of a right to all things by saying that whatsoever is done in the state of nature cannot be an injury towards another person ("quod quis fecerit in statu merè naturali, id injurium homini quidem nemini

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<sup>38</sup> See also *Elements of Law*, I.14.6, p. 71 ("blameless *liberty* of using our own natural power and ability" [my emphasis]); and *Leviathan*, Ch. 14, p. 198 ("the *Liberty* each man hath, to use his own power, as he will himselfe, for the preservation of his own Nature" [my emphasis]).

<sup>39</sup> For a similar terminology, see *Elements of Law*, I.14.6, p. 71 ("every man may preserve his own life and limbs, with all the power he hath") and p. 72 ("it followeth that all things may rightly be done by him"); and *Leviathan*, Ch. 14, p. 200 ("that he may seek, and use, all helps, and advantages of Warre").

<sup>40</sup> *De Cive*, I.10, p. 95 (my translation).

esse<sup>41</sup>). The purely permissive character of the right to all things again emerges quite clearly from paragraph 13, in which Hobbes refers to the state of nature as a state in which everything is allowed to all (“in quo omnia liceant omnibus”<sup>42</sup>).

Given the unambiguous nature of these statements, it is hardly surprising that the permissive character of Hobbes’s natural right is widely acknowledged among Hobbes scholars. The view that Hobbes’s natural right to all things does not imply any duties on behalf of others can already be found in Pufendorf’s “De Jure Naturae et Gentium,” and it equally characterises the modern reception of Hobbes.<sup>43</sup> However, few modern commentators seem willing to subscribe to Pufendorf’s criticism that in virtue of its purely permissive character, Hobbes’s natural right lacks any real moral effect.<sup>44</sup> What

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<sup>41</sup> *De Cive*, I.10, p. 95.

<sup>42</sup> *De Cive*, I.13, p. 96.

<sup>43</sup> See, for example, Warrender, *Political philosophy*, p. 20f.; Gauthier, *Logic of Leviathan*, p. 30; J. Hampton, *Hobbes and the social contract tradition* (Cambridge: Cambridge University Press, 1986), p. 51f.; Kavka, *Hobbesian moral and political theory*, p. 315; Herbert, ‘Thomas Hobbes’, p. 184; Curran, ‘Hobbes’s theory of rights’, p. 66; E. Curran, ‘Can rights curb the Hobbesian sovereign? The full right to self-preservation, duties of sovereignty and the limitations of Hohfeld’, *Law and Philosophy*, 25 (2006), pp. 243–265, p. 246f. and 251; and Sreedhar, *Hobbes on resistance*, p. 13f. In some of her more recent publications, Curran challenges some aspects of the analogy between Hobbes’s natural right and Hohfeldian liberty-rights (see Curran, ‘Can rights curb the Hobbesian sovereign’; and E. Curran, ‘Lost in translation: Some problems with a Hohfeldian analysis of Hobbesian rights’, *Hobbes Studies*, 19 (2006), pp. 58–76). However, Curran’s main points are a) that Hohfeld’s notion applies to a legal setting quite different from the state of nature in which liberty-rights are complemented and effectively protected by further claim-rights and b) that even Hobbes’s natural right, though initially a ‘bare freedom’, receives such a protection once civil society is established – which points leave the permissive character of the right to all things fully intact. As far as I can see, the only commentator who directly contradicts the idea that Hobbes’s natural right is a liberty or permission is Leo Strauss who explicitly refers to it as a “claim” (L. Strauss, *The political philosophy of Hobbes. Its basis and its genesis*, transl. by E. M. Sinclair (Chicago: University of Chicago Press, 1952), p. 129).

<sup>44</sup> See S. Pufendorf, *De Jure Naturae et Gentium. Libri Octo* (Lund: Junghans, 1672), p. 320f.

is most important in the present context is that the prime advocates of the juridical interpretation present no exception here: Thus Geismann, Herb, Hüning and Schröder are all equally willing to concede that the natural right is a permissive right that does not imply any duties or obligations on behalf of others.<sup>45</sup>

However, this concession is by no means innocuous with regard to the juridical interpretation. A universal claim-right to all things cannot consistently be granted to all individuals, or even to two individuals, at the same time: The individual in question would then have both the right to do or use X and, because of the rights of others, a duty not to interfere with the doing or using of X by those others – which would clearly be inconsistent.

Yet, a universal liberty-right is not inherently inconsistent in this or in any other sense at all: The fact that one individual has a permission to do or use X is fully compatible with the fact that other individuals have the same permission, or, to put it differently: the idea that one individual does not have any duty to refrain from doing or using X is fully consistent with the idea that other individuals do not have any such duty, either. Of course, the possession of a liberty-right to all things, where all others have the same right, will not help anyone to achieve his or her goals any more than the absence of right altogether. However, this problem associated with the universal right to all things is not a conceptual problem, but just the same practical or empirical problem I have already discussed. Moreover, the problem that the universal right to all things does not provide me with the exclusive use of goods follows neither from the fact that this

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<sup>45</sup> See, for example, Geismann, 'Kant als Vollender', p. 164f.; Geismann and Herb, *Hobbes über die Freiheit*, p. 164f.; Hüning, 'Von der Tugend der Gerechtigkeit', p. 63; and Schröder, *Naturrecht*, p. 27.

right is universal nor from the fact that it is a right to all things. It follows from the fact that the fundamental right to self-preservation is a liberty-right in the first place.

The basic premise of the juridical interpretation, then, is false: Since Hobbes's natural right is a liberty-right, the notion of a universal right to all things is not self-contradictory, self-undermining or self-refuting at all, which means that the jural order of the natural state is not defective in any way – even if the jural order may do nothing to better the prospect of self-preservation. Similarly, situations in which two or more individuals desire the same objects as necessary or conducive to their preservation are not conflicts of right in any interesting sense of that word. They are simply situations in which equally permissible actions give rise to empirical or factual conflict. Just as we need to avoid any talk of the universal right to all things being self-contradictory, therefore, we should avoid talk of the natural right of one individual being in conflict with the natural right of another or references to a supposed antinomy of right or to the war of all against all as a primarily jural condition. Moreover, the empirical or factual conflict arising out of the exercise of the right to all things may be necessary in the sense of being practically necessary. But it is certainly not logically or conceptually necessary nor is it independent of a particular view about human nature and the external conditions of human life outside civil society, as both the professed defenders of the juridical interpretation and commentators such as Malcolm suggest.

What follows from this is that there is no way of successfully reconstructing Hobbes's state-of-nature argument in terms of the juridical interpretation, at least so long as we stick to Hobbes's own concept of the natural right to all things. Yet, a reconstruction that would ignore Hobbes's explicit statements about why the state of nature needs to be left *and* his statements about the viability of defensive alliances and

the jural status of the sovereign *and* introduce a concept of natural right entirely different from Hobbes's own can hardly claim to be 'Hobbesian' any more. Therefore, while there certainly is a jural dimension to Hobbes's theory of the state of nature, we ought not regard this dimension as crucial to the explanation of why the Hobbesian state of nature needs to be abandoned.

#### IV.

It has been argued in this paper that the juridical interpretation of Hobbes's state of nature argument, as forwarded by commentators such as Peter Schröder, Dieter Hüning, Karlfriedrich Herb and Georg Geismann, does not provide an appropriate rendition of Hobbes's actual arguments. While the universal right to all things certainly represents an important element of Hobbes's theory and is, at least in "De Cive" and "The Elements of Law," in some way connected with the derivation of the state of war, it does not make any independent or material contribution to the conclusion that the state of nature has to be abandoned.

Moreover, as the analysis of the normative status of the right to all things reveals, even the attempt to take leave from some of Hobbes's crucial statements and to reconstruct his state of nature argument in terms of the juridical interpretation fails. Being a permissive right, the right to all things can be granted to all individuals at the same time without any logical contradiction. The conflicts that, according to Hobbes, necessarily arise in the state of nature may therefore legitimately be described as conflicts by right, but not as conflicts *of* right.



In the end, then, while certain features of Hobbes's theory seem to have influenced Kant's later attempt to provide a juridical argument for leaving the state of nature, the idea that Hobbes already anticipates the Kantian argument is misleading. The analysis of the status of Hobbes's natural right helps us to see where Kant goes astray in his reading of Hobbes or where, at least, he tends to overemphasise the similarities between Hobbes's account of the state of nature and his own. Although a more detailed analysis of Kant's own position is beyond the scope of this paper, there is evidence that Kant's framework does not allow for natural right as a mere liberty and that this difference in thinking is what leads him to attribute to Hobbes a view on the natural state that is Kantian rather than Hobbesian.

According to the definition given in Kant's "Metaphysik der Sitten," the concept of right relates to a corresponding obligation.<sup>46</sup> Kant adds a qualifier to his definition, presenting it as applicable to the "moral concept of right,"<sup>47</sup> which might be taken to suggest that he wants to also allow for individual rights that do not correspond to any obligations or duties in others, i.e. for liberty-rights in the Hohfeldian sense. However, even if this were correct, it would not be very plausible to think that Kant conceives of the Hobbesian natural right in this very sense.

First, as Hobbes's frequent use of overtly moral language indicates, in particular his use of the phrase "blameless liberty" in "The Elements of Law," the natural right to self-preservation is clearly introduced as a moral concept. Secondly, the three additional

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<sup>46</sup> See I. Kant, 'The metaphysics of morals', in Kant, *Practical Philosophy*, p. 387 [6:230]. See also Kant's description of rights as "(moral) *capacities* for putting others under obligations" (Kant, 'Metaphysics of morals', p. 393 [6:237]) and his claim that "rights have reference to duties" (Kant, 'Metaphysics of morals', p. 395 [6:239]).

<sup>47</sup> Kant, 'Metaphysics of morals', p. 387. [6:230]

aspects by which Kant goes on to characterise the moral concept of right in the passage from the “Metaphysik der Sitten” all seem to straightforwardly apply to the Hobbesian right to all things as well, at least as long as we focus on the *ipse-iudex* principle in the way Kant himself does and put less emphasis on the material aspect of self-preservation.<sup>48</sup> Kant’s statements suggest, therefore, that his theory either has no place whatsoever for purely permissive rights or that he would at least not classify the Hobbesian natural right in this way, despite Hobbes’s own explicit description of this right as a mere liberty.

As a result of this characteristic difference in the way in which he and Hobbes conceive of right (or perhaps of natural right in particular), Kant acknowledges constraints on the notion of a right for which we do not find any counterparts in Hobbes’s theory. According to Kant, the possibility of uniting the “choice [Willkür] of one ... with the choice of another”<sup>49</sup> is a fundamental prerequisite of right. Accordingly, he takes the “limitation of the freedom of each to the condition of its harmony with the freedom of everyone”<sup>50</sup> to be conceptually implied in the concept. We do not find any such explicit conceptual constraints in Hobbes, his main interest lying instead in distinguishing right from law and liberty from obligation.

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<sup>48</sup> According to Kant’s characterisation, the moral concept of right i) has to do “only with the external and indeed practical relation of one person to another,” ii) “does not signify the relation of one’s choice to the mere wish (...) of the other, ..., but only a relation to the other’s *choice*,” and iii) does not take into account the “*matter* of choice,” i.e. “the end each has in mind with the object he wants” (Kant, ‘Metaphysics of morals’, p. 387 [6:230]).

<sup>49</sup> Kant, ‘Metaphysics of morals’, p. 387. [6:230]

<sup>50</sup> I. Kant, ‘On the common saying: That may be correct in theory, but it is of no use in practice’, in I. Kant, *Practical Philosophy*, p. 290. [8: 289f.]

As has been discussed, Kant claimed that the natural right of one Hobbesian individual violates the rights of all others and that in the state of nature, individuals wrong or injure one another in virtue of their natural rights. He therefore describes the state of nature as a state of injustice. The background for these claims is arguably provided by Kant's idea that there are provisional property rights in the state of nature.<sup>51</sup> Hobbes himself, in contrast, explicitly emphasizes that acting on the right to all things in the state of nature is not an injury towards any other person because the notions of justice and injustice are applicable only after the universal right to all things has been given up and property rights have been generated which, as Hobbes repeatedly suggests, can only successfully be done once the state of nature has been abandoned.<sup>52</sup>

Finally, while Kant refers to the *ipse-iudex* principle (which he takes to be responsible for the jural problem of the state of nature) in clearly negative terms, namely as a presumption ("Anmaßung") on part of the individual, Hobbes takes a much more affirmative stance and only points out the problematic empirical consequences of the principle. Therefore, while we may leave open whether Kant's approach can help us to provide a version of the state-of-argument that is superior to an empirical argument from self-preservation, there is ample reason for thinking that Kant does not provide us with the best interpretation of Hobbes's actual position and that we should not follow him or his present-day followers in our understanding of Hobbes's state-of-nature argument.

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<sup>51</sup> See Kant, 'Metaphysics of morals', p. 409f. [6: 256f.]

<sup>52</sup> See, in particular, *Leviathan*, Ch. 13, p. 196, and Ch. 15, p. 220. See also *Elements of Law*, I.15.10, p. 78, I.16.1, p. 82, and I.19.1, p. 100; *De Cive*, II.11, p. 102f., III.4, p. 109 and V.1, p. 130; and *Leviathan*, Ch. 14, p. 200 and 210, and Ch. 17, p. 254.

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