

The State of Nature and Its Law in Hobbes and Spinoza

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Spinoza uses the traditional language of the theorists of natural law, but what he says in that language subverts the tradition. He says, unequivocally, some rather shocking things, things we often, rightly or wrongly, associate with the name of Hobbes: notably, that in the state of nature, right is identical with power, and that if the civil state did not exist, everything would be permitted.¹ But Hobbes is actually rather ambivalent about advancing such doctrines. Spinoza is not. Though some readers of Spinoza have been able to find only a close agreement between his view of natural law and that of Thomas Aquinas,² in fact his rejection of the natural law tradition is thoroughgoing and radical; his law of nature is one which

prohibits nothing except what no one desires and what no one can do: not disputes, not hatreds, not anger, not deception; without qualification, it is not averse to anything which appetite urges. (TTP xvi, 9, III/190/30–33)

This could hardly be said of natural law in Thomas, or even in Hobbes. In this essay I seek to understand and evaluate the reasons for this boldness.³

I shall defend three theses: (1) that what appears on the surface to be the main argument for this rejection (the argument we find stated first in

TTP xvi, and repeated, with interesting variations, in TP ii) is, for a number of reasons, not adequate; (2) that a much better argument for the identity of right and power may be found in the chapter on divine law (TTP iv); and (3) that if that argument is not conclusive, it at least constitutes a powerful argument against natural law as it was conceived in the Judaeo-Christian philosophical tradition.

Before examining Spinoza's arguments, though, I want to document my claim that Spinoza's position on natural law is indeed more radical than that of Hobbes. We know, of course, that Hobbes says that the state of nature is a war of all against all,⁴ and that in this war, nothing can be unjust (L xiii, 13, 188). Though we may define justice in scholastic fashion as a constant will to give to every man his own, this concept has no application unless there is a sovereign whose power can determine what belongs to each man (L xv, 3, 202). We know also that Hobbes says that "covenants without the sword are but words" (L xvii, 2, 223), from which it seems to follow that no contract in the state of nature is valid, that we are never bound to perform what we have promised unless there is a sovereign capable of making sure that everyone who has promised does what he has promised to do.

And yet . . . and yet Hobbes' position is more complicated than many people realize. For example, though he is sometimes taken as the prototype of a certain kind of amoralism regarding the conduct of war,⁵ he does not accept, or not without reservation, the maxim that the laws are silent in time of war. Consider the following passage from *The Elements of Law*:

It is a proverbial saying, *inter arma silent leges*. There is little therefore to be said concerning the laws that men are to observe one towards another in time of war, wherein every man's being and well-being is the rule of his actions. Yet thus much the law of nature commandeth in war: that men satiate not the cruelty of their present passions, whereby in their own conscience they foresee no benefit to come. For that betrayeth not a necessity, but a disposition of the mind to war, which is against the law of nature . . . nothing but fear can justify the taking away of another's life. And because fear can hardly be made manifest, but by some action dishonourable, that bewrayeth the conscience of one's own weakness; all men in whom the passion of courage or magnanimity have been predominant, have abstained from cruelty; insomuch that though there be in war no law, the breach whereof is injury [i.e., a violation of right], yet there are laws the breach whereof is dishonour.⁶

There are some standards, even in war. I presume that the killing of unarmed prisoners would be one kind of action Hobbes would be likely to regard as dishonorable.⁷ He assumes that in war the rule of each person's

actions is his own “being and well-being.” To that extent he remains an egoist. But in some men the “passion of courage or magnanimity” is sufficiently dominant that their conception of what is in their interest does not permit certain forms of cruelty. Those of whom this is not true Hobbes stigmatizes as weak.

Again, Hobbes can be surprisingly rigorous about contracts in the state of nature. If I promise a robber who is threatening me that I will give him a reward if he gives me my freedom, and if in fact he gives me my freedom, I am obliged to do what I promised.⁸ Though covenants of mutual trust may generally be invalid in the state of nature, Hobbes’ mature position seems to be that this is true because generally in the state of nature, i.e., in the absence of a power capable of compelling both parties, there is a reasonable suspicion of nonperformance by the other party.⁹ But if, for whatever reason, I enter into such a covenant and the other party removes all my fear by performing what he has promised, then I am bound by my promise. This is a rigor Spinoza explicitly rejects in the TTP:

Suppose a robber forces me to promise him that I will give him my goods when he wishes. Since, as I have already shown, my natural right is determined only by my power, it is certain that if I can free myself from this robber by deceptively promising him whatever he wishes, I am permitted to do this by natural right, to contract deceptively for whatever he wishes. (xvi, 17; III/192/10–16)

And this is not a special exception Spinoza makes for cases of promises extorted by threats. He holds quite generally that

no contract can have any force except by reason of its utility. If the utility is taken away, the contract is taken away with it, and is null and void. (xvi, 20, III/192/25–27)¹⁰

So even in a non-coercive situation, if I make a foolish promise and come to recognize its foolishness, I am not bound by it (TTP xvi, 18). With respect to promises, Spinoza, unlike Hobbes, adopts for people in general the lack of moral constraint Machiavelli is usually thought to recommend only for princes.¹¹

But does Hobbes not hold, with Spinoza, that might makes right? Certainly some people have said so, and with reason. But the textual situation is complex and others have challenged this reading of Hobbes.¹² Hobbes does say, in *The Elements of Law*, that in the state of nature “*irresistible* might . . . is right” (I, xiv, 13, my emphasis). One question we face is just what that qualification signifies. In the context Hobbes seems to think of irresistible power as something one man might possess over another:

A man therefore that hath another man in his power to rule or govern, to do good to, or harm, hath right, by the advantage of his present power, to take caution at his pleasure, for his security against that other in the time to come.

Hobbes does, of course, postulate a rough equality of power between “men of mature age” (I, xiv, 2); the inequality he envisages here would seem to stem either from the infancy or from the temporary indisposition of one of the parties. The corresponding passage in DC (i, 14) argues that, just as a man in health may compel one who is sick or one “of riper years” may compel a child, so “the conqueror may by *right* compel the conquered.” A later passage in DC pushes the analogy still further, using the fact that any irresistible power confers a right of dominion to explain God’s sovereign right over men:

if any man had so far exceeded the rest in power that all of them with joined forces could not have resisted him, there had been no cause why he should part with that right which nature had given him. The right therefore of Dominion over all the rest would have remained with him, by reason of that excess of power whereby he could have preserved both himself and them. They therefore whose power cannot be resisted, and by consequence, God Almighty, derives his right of sovereignty from the power itself. (xv, 5)

It is not, as Hobbes says in *Leviathan* (xxxii, 5, 397), because God is our creator, or gracious to us, that we are obliged to obey him, but because he is omnipotent.

Nevertheless, Hobbes’ final word on this subject seems to be that talk of an irresistible human power is purely hypothetical, since a power which is strictly irresistible is found only in God. So only God can be the beneficiary of the equation of irresistible might with right. This is clearest in “Of Liberty and Necessity”:

Power irresistible justifies all actions, really and properly, in whomsoever it be found; less power does not, and because such power is in God only, he must needs be just in all actions, and we, that not comprehending his counsels, call him to the bar, commit injustice in it. (English Works IV, 250)

The corresponding passage in *Leviathan* is not so explicit in limiting the doctrine that might makes right to God, though the general tenor of the passage is otherwise similar.¹³

In line with this restriction, Hobbes writes in *De cive* that if, in a democracy or aristocracy,

some one citizen should, by force, possess himself of the Supreme Power, *if he gain the consent of all the citizens*, he becomes a legitimate monarch; *if not*, he is an enemy, not a tyrant.¹⁴

This will be consistent with the teaching of DC i, 14, provided we insist that the power of such a citizen either can never be “sure and irresistible” or can be sure and irresistible only if the citizen has won the consent of all other citizens. But I cannot see how it will be consistent with the claim of *Leviathan* that there is “a mutual relation between protection and obedience” (Rev & Conc 17, 728), i.e., that subjects are obliged to obey (and hence that the sovereign has a right to command obedience) just so long as the sovereign has sufficient power to protect his subjects (xxi, 21, 272). This latter doctrine seems to base the sovereign’s right on something rather less than sure and irresistible power, and to make the consent of *all* the citizens irrelevant.

The passages we have been looking at do not fit into any simple chronological pattern. I conclude, then, that Hobbes does not so much change his position as he does vacillate on the issues discussed here: the existence of obligations in the state of nature and the relationship between right and power. I find no vacillation on these points in Spinoza, though his position is not without its ambiguities.

Our subject now is Spinoza’s bolder position and the reasons for it. Let’s note first an interesting absence: there seems to be no sign in Spinoza of the following, presumptively Hobbesian, argument:

1. In war any action against the enemy is permissible.
2. The state of nature is a war of every person against every other person.
3. Therefore, in the state of nature any action against any other person is permissible.

I call this a “presumptively Hobbesian” argument, since it certainly seems to be the argument of L xiii, 13, however much the preceding section of this paper may have raised doubts about Hobbes’ commitment to the first premise and the conclusion.¹⁵ Perhaps the reason for this absence is that Spinoza would not accept the second premise of the Hobbesian argument.¹⁶ He does, of course, think that life in the state of nature would be¹⁷ quite wretched, and that one of its undesirable features is lack of security. But his emphasis is rather on economic disadvantages:

A social order is very useful, and even most necessary, not only to live securely from enemies, but also to spare oneself many things. For if men were not willing to give mutual assistance to one another, they would lack both skill and time to support and preserve themselves as far as possible. Not all men are equally capable of all things, nor would each one be able to provide those things which, alone, he most needs. Everyone, I say, would lack both powers and time, if he alone had to plow, to sow, to reap, to grind, to cook, to weave, to sew, and to do the many other things which support life, not to

mention now the arts and sciences, which are also supremely necessary for the perfection of human nature and its blessedness. For we see that those who live barbarously, without an organized community [*politia*], lead a wretched and almost brutal life, and that still it is not without mutual assistance, such as it is, that they are able to provide themselves with the few wretched and crude things they have. (TTP v, 18–20, III/73/13–27)

There is, then, some cooperation even in the state of nature. In the *Political Treatise* Spinoza will say that by nature men are enemies (TP ii, 14; III/281/10). But I take this to be a broad generalization, not a strictly universal one. It holds to the extent that men are subject to affects which generate conflict, such as anger, envy, hate, etc. It does not hold in the common enough case when they are dominated by other affects, such as love, or pity. And it will not hold in the rare case when they are governed by reason.

If Spinoza cannot, for lack of agreement with a crucial premise, use the presumptively Hobbesian argument, what is his argument for his shocking equation of right with power? On the face of it, it is the argument Spinoza uses in TTP xvi, 2–4, and redeploys, with what may be a significant variation, in TP ii, 2–3. Let's take the earlier and simpler version of the argument first:

By the right and established practice of nature I mean nothing but the rules of the nature of each individual, according to which we conceive each thing to be naturally determined to existing and acting in a certain way. For example, fish are determined by nature to swimming, and the large ones to eating the smaller, so it is by the supreme right of nature that fish are masters of the water, and that the large ones eat the smaller.

For it is certain that nature, considered absolutely, has the supreme right to do everything in its power, i.e., that the right of nature extends as far as its power does. For the power of nature is the very power of God, who has the supreme right to do all things. But because the universal power of the whole of nature is nothing beyond the power of all individuals together, it follows from this that each individual has a supreme right to do everything in its power, or that the right of each thing extends as far as its determinate power does. (III/189/12–25)

The first paragraph here states a conclusion: that everything in nature has a right to act as the laws of its own nature determine it to act. The second paragraph derives a reformulation of that conclusion from a set of metaphysical and theological premises:

1. God has the supreme right over all things, i.e., the right to do whatever he can do.

2. The power of nature (considered absolutely)¹⁸ is the power of God.

These two premises lead to the intermediate conclusion that

3. Nature, considered absolutely, has the right to do whatever it can do.

To get from his intermediate conclusion to the final conclusion about what individuals in nature have the right to do, we need a further premise:

4. The power of the whole of nature is nothing but the power of all the individuals in nature.

From 3 to 4 Spinoza concludes that

5. Everything in nature has a right to do whatever it can do.

For Spinoza what a thing can do is equivalent to what its nature determines it to do.

What are we to say about this argument? We might approach this question by asking why Spinoza would expect his seventeenth-century audience to accept it. That, in effect, is the tack Alexandre Matheron takes, in the best explanation of this text I am aware of.¹⁹ Matheron begins boldly, contending that Spinoza justifies his conception of right

by a reasoning which, like all reasoning, must necessarily rest on premises known through themselves, which implies that he has at the beginning a certain idea of right, evident to him as it is to his readers, and that it is in making explicit the content of this "given true idea"²⁰ and in reflecting on it that he arrives at the desired conclusion. (p. 81)

I think this does capture Spinoza's conception of what he is doing, and of what, if not all reasoning, at least all demonstrative reasoning must do. Matheron compares the situation in the TTP with that in the *Ethics*, where Spinoza begins with a definition of God which he takes to be known through itself, viz., that God is an absolutely infinite being, and proceeds to derive from that definition the identification of God with nature. I believe the comparison is apt.

But what this talk of a given true idea, known through itself, amounts to is an idea accepted in the intellectual tradition of his time: in the case of right, an idea of right shared by Grotius and Hobbes and the learned jurists to whom the TTP is addressed. That seems fair enough to me. Any argument must proceed from some assumptions which, in that argument at least, are not themselves argued for. Unless we place overweening confidence in a supposedly infallible faculty of intuition, the natural and best place to start is with assumptions which would also be made by those whom we judge to be the most impressive thinkers of our time on the

topic in question. Grotius and Hobbes are plausible candidates for that status in the realm of early seventeenth-century natural law theory.

Matheron has some interesting things to say about both Hobbes and Grotius.²¹ But the payoff of this discussion, as far as the understanding of Spinoza's argument is concerned, comes in the following passage:

No one will contest the fact that God has over all natural things a sovereign right, i.e., as much right as he has power; he has the right to do to them everything he is physically capable of doing, which is to say, everything. But to derive our own individual rights from God's, there is no need [as was the case in Grotius' theory] . . . to invoke any original "gift" [of rights to man from God]; our individual rights do not result from a transfer of right agreed to by God, they *are* God's rights; if we take into account Spinoza's metaphysics, the derivation becomes an identity; in fact, Spinoza tells us, the power of nature is identical with the power of God; therefore, nature as a whole has as much right over its own parts as it has power. But the whole of nature is nothing but the totality of natural individuals. Hence, each individual has as much right over itself and other individuals as it has power. (88–89)

It is helpful, I think, to be reminded that God's sovereignty over his creation was a point of agreement in the juristic tradition Spinoza inherited. That Grotius assumes God's sovereignty appears, e.g., in the following passage:

So if God should command that anyone be slain, or that the property of anyone be carried off, murder or theft—words connoting moral wrong—will not become permissible; it will not be a case of murder or theft, because the deed is done by the authority of the Supreme Lord of life and property.²²

It is no accident that Grotius takes an assumption equivalent to the sovereignty of God²³ as axiomatic in the proto-geometric argument of *De jure praedae*. And we've seen Hobbes maintain the doctrine of God's sovereignty, though he does not seem always to regard it as axiomatic, but rather the conclusion of an argument, and though he may vacillate in the way he holds it, sometimes arguing in a manner which reverses the direction of Spinoza's argument,²⁴ sometimes insisting that any power less than omnipotence does not confer rights of dominion.

It's intriguing also to think that the spinozistic metaphysic might provide a better solution to a Grotian puzzle than Grotius himself had. If God is the sovereign lord of our lives and of all finite things, we might ask, how can *we* have any rights in anything? Grotius' answer was that God gave them to us in the donation of Genesis 1:26–30.²⁵ Spinoza's way of moving from God's absolute right to the rights of his creatures avoids reliance on scripture and it also obviates a problem Grotius' appeal to

scripture skates over, viz., that in Genesis the divine donation is to man as a species, not to individual men. Grotius cites Justin, with approval, as maintaining that initially the earth and all things on it were “the common and undivided possession of all men, as if all possessed a common inheritance.”²⁶ “*In consequence*,” Grotius adds, optimistically, “each man could at once take whatever he wished for his own needs” (ibid., my emphasis). But if all men possess the earth and its fruits *in common*, it need to be explained how individuals are free to take what they need when doing so involves appropriating for themselves goods to which their fellow men have an equally good claim. On Spinoza’s understanding of God’s sovereignty, this problem simply does not arise.

Matheron’s account, however, also calls attention to a problem which he does not address: if the first assumption of our argument is a proposition “known through itself,” in the sense of being accepted without question in the tradition to which Spinoza is responding, the second assumption clearly does not have that status. It is rather a claim peculiar to Spinoza’s metaphysics, one which Spinoza well knows is contrary to the assumptions his contemporaries usually made: “[The multitude] imagine two powers numerically distinct from one another, the power of God and the power of natural things” (TTP vi 1–2; III/81/3–19). In this context I think we must not equate the multitude with the unlearned; rather I take it to include the ordinary run of theologians. For according to Spinoza, this assumption of two distinct powers is made by anyone who accepts miracles as a demonstration of the power of God. Contrary to these theologians, Spinoza assumes, in a number of passages in the TTP,²⁷ that the power of nature is identical with the power of God. But so far as I can see, he does not *argue* for that identity in any of these passages. And it seems he should have argued for it, not just assumed it. If it should be suggested that Spinoza does argue for this identity in the *Ethics*, we must remember that he wrote the TTP for an audience which did not have access to the *Ethics*.

Perhaps Spinoza recognized this defect in the argument of the TTP. For when he redeploys that argument in the TP, he supplies an argument for the controversial premise:

Any natural thing whatever can be conceived adequately, whether it exists or not; therefore, just as the beginning of the existence of natural things cannot be inferred from their definition, neither can their perseverance in existing. For their ideal essence is the same after they have begun to exist as it was before they existed. Therefore, just as the beginning of their existence cannot follow from their essence, neither can their perseverance in existing. They require the same power to continue to exist as they do to begin to exist.

From this it follows that the power of natural things, by which they exist, and hence, by which they produce effects,

can be none other than the eternal power of God. For if any other power were created, it could not preserve itself, and hence, could not preserve natural things, but to persevere in existing it would also require the same power it would require to be created. (TP ii, 2; III/276/13–26)

We might summarize this new part of the argument as follows:

- (a) No definition of any finite thing in nature entails the existence of that thing.
- (b) Therefore, the continuance of any finite thing in existence requires explanation just as much as the beginning of its existence does.
- (c) No other finite thing can provide the required explanation, since it too requires an explanation both for its beginning to exist and its continuing to exist.
- (d) What explains the fact that finite things begin to exist, and continue to exist, and hence, the fact that they are able to produce effects, can only be the power of God.
- (e) Therefore, the power of natural things is the power of God.

Point (a) is certainly not problematic. The inference to (b) may be problematic, insofar as many philosophers (e.g., Locke) have been disposed to think that the beginning of a thing's existence requires explanation in a way that its continuance in existence does not. But Cartesians, I think, will accept all of (b)–(d),²⁸ though they may still wish to resist the conclusion Spinoza draws.

In any case, given (e), the argument can now pretty much follow the lines of the TTP:

From this fact—that the power of natural things, by which they exist and produce effects, is the very power of God—we easily understand what the right of nature is. For since God has the right over all things, and God's right is nothing other than his power itself, insofar as this power is considered to be absolutely free, it follows that each natural thing by nature has as much right as it has power to exist and produce effects, since the power of each natural thing is nothing other than the very power of God, which is absolutely free. (TP ii, 3, III/276/27–277/2)

This is essentially the same as the argument of TTP xvi. It relies crucially on the assumption of God's sovereignty over all things (step 1 above). It has now provided an argument for what was treated as an unargued assumption in the TTP (step 2 above). It makes no use of the assumption stated in step 4 above, that the power of the whole of nature is nothing but the power of all the individuals in nature. Because the argument is couched from the beginning in terms of the power of natural things, rather than the power of the whole of nature, that reduction is not necessary. The

only new element here is that this version of the argument makes explicit what was probably taken for granted in the earlier version of the argument, viz., that God's right over all things is based on his power.

But therein lies a problem. Making that assumption explicit highlights the fact that the juridical tradition on which Spinoza is building here is not in agreement about the basis of God's sovereignty. Grotius and Hobbes may well agree on the verbal formula that God has the supreme right over all things. Hobbes, as we have seen, bases that right on God's irresistible power. Grotius does not. Consider the following famous passage from *De jure belli ac pacis*. Grotius has been arguing that there is a law of nature, and that its essence lies in leaving to others what belongs to them, or in fulfilling our obligations to them:

What we have been saying would have a degree of validity even if we should concede what cannot be conceded without the utmost wickedness, that there is no God, or that, if there is a God, He is not interested in human affairs. The very opposite of this view has been implanted in us partly by reason, partly by unbroken tradition, and confirmed by many proofs, as well as by miracles attested by all ages. Hence it follows that we must, without exception, render obedience to God as our Creator, to Whom we owe all that we are and have; especially since, in manifold ways, He has shown Himself supremely good and supremely powerful, so that to those who obey Him He is able to give supremely great rewards. . . .²⁹

Grotius' project is to develop a theory of natural law which will make that law intelligible independently of the will, or even the existence, of God, not because he thinks God does not exist, but because he thinks God's claim on our obedience is based not merely on his power, but also on his goodness. And if he is to say, nonvacuously, of God that God is good, then there must be a standard of goodness which is independent of God. That is why he holds that even God cannot change the law of nature:

Measureless as is the power of God, nevertheless it can be said that there are certain things over which that power does not extend; for things of which this is said are spoken only, having no sense corresponding with reality and being mutually contradictory. Just as even God, then, cannot cause that two times two should not make four, so He cannot cause that that which is intrinsically evil be not evil. (DJBP I, i, 10, 5, 40)

So when Grotius says that God is "the Supreme Lord of life and property" (DJBP I, i, 10, 6), he does not mean by that what Hobbes would. The law of nature is not valid simply in virtue of having been commanded by God. God commands as he does because he recognizes the validity of a law which does not owe its validity to his arbitrary will (DJBP I, i, 10, 1).

And when we think about this divergence within the tradition Spinoza is working from, we see that there is something more than a little odd about Spinoza's starting, in each version of this argument, from the assumption of God's sovereignty over his creation. The very use of this concept seems to presuppose a personal conception of God which Spinoza explicitly disavows in the TTP, a conception of God as the King of Kings. If "it is only because of the multitude's power of understanding and a defect in their thinking that God is described as a lawgiver or prince, and called just, merciful, etc." (TTP iv, 37, III/65/28–30), what sense is there in describing him as having the supreme right over all things?



I find, then, no satisfaction in the official arguments of the TTP and the TP for the thesis that in the state of nature right is identical with power. So I turn instead to the discussion of natural law in TTP iv. Spinoza begins that chapter by giving us a general definition of law:

The word "law" taken without qualification means that by which each individual, or all the members of a species, or some members of the species, act in one and the same fixed and determinate manner. . . . (TTP iv, 1; III/57/23–25)

He explains immediately that this definition embraces two kinds of law: either (1) the fact that the things act in the same way follows from the nature or definition of the thing; or (2) it follows from a decision taken by men.

We might suppose that it is only laws of the second kind which allow exceptions. If a way of acting follows from the definition of the thing, all the members of the species must act in that way. Spinoza gives as an example the law of physics, according to which

every body, when it encounters another smaller body, loses as much of its motion as it communicates to the other body. (iv, 2)

We might suppose that (if this is really a law of physics) there are no bodies of which this law does not hold true. Nevertheless, the law according to which

Men give up something of the right they have by nature and bind themselves to a certain way of life (ibid.)

insofar as it depends on a human decision (or rather, a number of human decisions), may not be universally true. It may happen that some men do not make this decision. In this case, only some members of the species act in one and the same way.

In any case, this definition of law is only provisional. It is a very broad definition, which encompasses both scientific laws, which describe

how things necessarily act, and the laws of the state, which prescribe how men should act. And Spinoza is aware of the difference between these two kinds of law, as he shows when he says that the word law seems to be applied to natural things only metaphorically (iv, 5; III/58/28–29). He knows that philosophers often use this metaphor;³⁰ he often uses it himself,³¹ but with the awareness that it is a metaphor; it is not a metaphor for every philosopher who uses this language.³²

But Spinoza has another reason for rejecting the definition with which he begins. “Commonly,” he says,

we understand by law nothing but a commandment, which men can either carry out or disregard, since law confines human power within certain limits, beyond which it extends, and does not command anything beyond human powers. . . .
(iv, 5; III/58/29–33)

We naturally think here of Hobbes:

Law in general is not counsel, but command; nor a command of any man to any man, but only of him, whose command is addressed to one formerly obliged to obey him. (L xxvi, 2, 312)

Although Spinoza recognizes that a definition like this is common, nevertheless, he does not accept it, preferring to define law as

a rule of life which a man imposes on himself or on others for some end. (TTP iv, 5; III/58/33–35)

There are several interesting differences here between Spinoza and Hobbes.

First, Hobbes presupposes a situation in which a person (perhaps God, perhaps a man) addresses a commandment to another (a man, in this case), previously obliged to obey him. Perhaps it is only by prudence that Hobbes admits the possibility that law is a commandment of God. When he says that it is improper to call the laws of nature *laws* (for they are rather “theorems concerning what conduces to the conservation and defense of themselves”—L xv, 41, 217), he is careful to add that

if we consider the same theorems as delivered in the word of God, who by right commandeth all things, then are they properly called laws.

But this addition, I think, is only a defensive maneuver. The Latin version of this passage does not contain the final phrase, and I believe that, in this passage at least, the Latin version is prior to the English.³³

Spinoza—perhaps because he regards democracy as the most natural form of government—permits law to be a rule which man imposes on himself. Most laws, of course, are rules of life prescribed to men by the command of another man (TTP iv, 70), because most men do not see the

true end of laws. For them it is necessary for a legislator to establish rewards and punishments. If we think only of this case, it will seem normal to us to conceive law as a command one person imposes on others, and to think of the person subjected to law as a slave. But that would be too restrictive a definition. We can impose a law on ourselves. Moreover, Spinoza does not insist that the man to whom the rule of living is addressed is previously obliged to obey the man who imposes that rule. As a result, his definition is more clearly positivistic than that of Hobbes.

Nevertheless, the most significant difference is that for Spinoza it is always man who imposes this law, not God. Although he speaks of a divine law, that law is divine, not in virtue of its source, but in virtue of its end. The divine law is a law which has as its object the true knowledge and love of God (TTP iv, 9; III/59/25–28). Human law is law which has for its end the security of life and the state.

Spinoza does not immediately offer any argument for this bold restriction. But a bit later on in the chapter on divine law (§§ 23–37) we do find an argument which has as its conclusion that it is only by a defect in our knowledge that we can conceive God as a legislator or a prince prescribing laws to men. Spinoza thinks we can easily deduce this conclusion from the nature of the divine will. The first premise is that

- (1) God's will and his intellect are really one and the same thing, and are distinguished only in relation to the thoughts we form of the divine intellect (iv, 23; III/62/30–32).

From this premise, according to Spinoza, it follows that

- (2) the affirmations and negations of God always involve a necessity, i.e., they are eternal truths. (iv, 25; III/63/10–12).

From this second stage of the deduction, it follows that

- (3) if God has really forbidden an act of a certain kind, it would be impossible for a man to break this commandment (iv, 26; III/63/12–15).

But,

- (4) a law is a rule of living which the man to whom the law is addressed can either carry out or disregard, as it seems good to him, taking into account the possible consequences of obedience or disobedience.

Perhaps Spinoza does not state this assumption explicitly, but I find it to be suggested by his remark about Adam, who ate the fruit of the tree of the knowledge of good and evil: Adam must have perceived God's revelation, not as an eternal and necessary truth, but as a law,

i.e., as a rule establishing that a certain profit or loss will be the consequence of a certain action, not from the necessity and nature of the act performed, but from the good pleasure and absolute commandment of a prince. (iv, 27: III/63/23–25)

The thought here seems to be that even an egoist can disregard a commandment if he thinks that the loss he might suffer is contingent, and that the person who has imposed the commandment might not impose the punishment. But he cannot disregard it if he conceives the command as an eternal truth, which joins the penalty to the forbidden action by a necessary connection. If Spinoza does, as I think, assume (4), then he does retain that element in the common conception of law, according to which a law must be “a command which men can either carry out or neglect” (iv, 5, III/58/29–31).

The next step is then that

- (5) A law which would be a commandment of God, prescribing to men like a legislator or prince, is an impossibility.

Insofar as it is a *law*, it would be a rule which the person to whom it is addressed could break. Insofar as it is a law *of God*, it would be a rule which the person to whom it is addressed could not break. We can conclude, then, that

- (6) Every concept of natural law which conceives it as a divine commandment, prescribing to men like a prince, is incoherent.

That, I think, is the fundamental justification for the definition of law which makes it a rule of living necessarily imposed by man on himself or on other men.

Suppose that our argument, up to this point, is sound. How does this justify the equation of natural right with power? I take it that Spinoza’s view would be that the notion of a limitation on our natural rights, of a natural obligation to do something we are capable of not doing (or a natural obligation not to do something we are capable of doing) will make sense only if the concept of natural law as a divine commandment makes sense.³⁴ So if (6) is true, natural right is identical with power.

To this the reply might be that the whole point of Grotian natural law theory was to free the concept of natural law from this dependence on theology. We saw this in the passage from the Prolegomena cited above. That is why Grotius defines the law of nature as a dictate of right reason, rather than as a dictate of God (DJBP I, i, 10, 1). But to this Spinoza might reply, with Hobbes, that it is improper to regard the dictates of reason, as such, as laws; insofar as they are the dictates of reason, they are merely theorems about what conduces to our preservation. Only if we regard them as being also divine commands can we properly regard them

as laws, imposing on us an obligation which would limit our natural rights (Cf. L xvi, 41, 216–17).

How does the argument stand then? A defender of traditional natural law might reject the assumption that in God will and intellect are one and the same thing. This seems to me to be the premise most likely to be controversial. Elsewhere³⁵ I have suggested that Maimonides, Ockham, and Descartes make the assumption Spinoza requires, and that St. Thomas does not. We might add that Spinoza himself seems not accept this assumption, since he denies, in the *Ethics* (IP31), that intellect and will pertain to *natura naturans*, i.e., (by IP29S), to God. How, then, can we defend his use of it?

We might consider the argument which depends on the assumption of the identity of will and intellect in God as an *argumentum ad hominem*, in the sense that it depends on an assumption which Spinoza himself does not accept, but which he believes that his opponent would accept. But this seems an unsatisfactory result, if we take it that Spinoza intends, in this argument, to appeal only to propositions which are known through themselves, and hence, common ground between him and his opponents. The argument would have a defect exactly opposite to that of the argument in TTP xvi: instead of depending on assumptions Spinoza accepts and his opponents don't, it would depend on assumptions his opponents (perhaps) accept and he doesn't. This would leave it quite mysterious what Spinoza's own reasons for accepting this conclusion might be.

Perhaps the solution to this difficulty is to regard the argument as a kind of *reductio ad absurdum* of the position of Spinoza's opponents: if we think there is a natural law which restricts what we can legitimately do (i.e., which imposes on us obligations, say, not to do something we can do), we must think of that law as a divine command, where God is conceived as a personal being, possessing an intellect and a will; if we conceive of God as possessing an intellect and a will, we must conceive of his will as being identical with his intellect; the argument can then proceed as before, culminating in the conclusion that the concept of such a law is incoherent.

But suppose we do, in this way (on the analogy of E IP17S, II/62/30ff), treat the ascription of will and intellect to God as merely hypothetical. Why, if we ascribe will and intellect to God, must we conceive them as identical? In his geometric exposition of *Descartes' "Principles of Philosophy"* (IP17C) Spinoza derives the identity of the divine will and intellect from God's simplicity, and this is no doubt good Cartesian doctrine (cf. Descartes' Letter of Mersenne of 27 May 1630). But why should Descartes think that the identity of will and intellect follows from God's simplicity? After all, Descartes also thinks the human soul is a simple substance, but he doesn't think the human will and

intellect are identical.³⁶ Spinoza must, I think, regard the attempt to distinguish will and intellect in God as misguided. It's not immediately obvious what is at stake in affirming or denying this identity, but perhaps reflection on the case of the human will and intellect will provide a clue.

When Descartes claims that the *human* will and intellect are distinct, what he seems to have in mind is that there might in man be a conflict between will and intellect in that we might reject what our intellect presents to us as true.³⁷ Belief, for him, is a complex mental phenomenon involving two elements, a contribution of the intellect and a contribution of the will, each of which is necessary, and neither of which is sufficient, for belief. The contribution of the intellect might be captured in the phrase "what seems to me to be the case on the basis of the relevant evidence." In the special case of certain clear and distinct ideas, the "relevant evidence" might simply be the internal character of the idea. Those ideas are ones we cannot, under any circumstances, refuse our assent to. Other ideas, which do not have that immediate assent-compelling character, may nevertheless become clear and distinct, and hence, assent-compelling, when we come to see their connection with ideas which are intrinsically clear and distinct. But Descartes insists that, where an idea is not clear and distinct, it can seem to us to be the case on the basis of definite evidence and that I can nevertheless reject what the intellect suggests. Our ability to refuse assent to ideas which are not clear and distinct is his reason for claiming that we must recognize the will as a factor distinct from the intellect, whose contribution is equally necessary to the occurrence of a judgment.

Now Spinoza rejects this analysis of human judgment. He thinks that the will and the intellect are identical even in man. But that's a line of thought we need not pursue for our purposes. Descartes and Spinoza are in agreement that the will and the intellect are identical in God. Why? A possible answer is that the kind of conflict between will and intellect which Descartes insists on in the case of man is just inconceivable in God. Man's ability to reject ideas which his intellect presents to him depends on the fact that those ideas lack clarity and distinctness. But this is a defect which cannot be present in God, who is, by definition, an absolutely perfect being. Whatever seems to God to be the case must be the case and must be known to him to be the case. A fortiori, he must believe it to be the case. There can be no conflict between God's intellect and his will. Whatever God understands to be the case, he must also will to be the case. And given his omnipotence, what he wills to be the case cannot fail to occur.

I suggest, then, that Spinoza viewed the identity of will and intellect in God as entailed by the concept of God as supremely perfect and as entailing God's predestination of all human actions. Now whether or not the philosophers of the Judaeo-Christian tradition agreed about the identity

of will and intellect in God, the dominant tradition certainly agreed that God was supremely perfect and that his perfection entailed predestination.³⁸ Where there might be disagreement would be over the question whether God's predestination of all men entails the necessity of all human actions. Aquinas certainly maintains that it does not, on the ground that some predestined actions are nonetheless freely chosen, and hence, contingent (ST I, xxiii, 6). But by Spinoza's time the leading Christian philosopher had declared that, though it was certain that we had free will, and certain that everything was preordained by God, our finite intellects could never grasp how these certain truths might be consistent with one another.³⁹ Spinoza quite reasonably regarded this as a confession of defeat, from which we should conclude, not only that free will is an illusion, but that the concept of natural law which presupposes it is equally bankrupt. Unpleasant though his conclusion may sound, Spinoza has a strong argument for the claim that in the state of nature power is the measure of right.

NOTES

This paper is an expanded version of a paper presented at the Spinoza conference in Almagro, Spain, in October 1990, which is to appear in French in the proceedings of that conference. I am much indebted to the participants in that conference for their comments on the original version of the paper.

1. Cf., for example, the *Theological-Political Treatise* (TTP) xvi, 7, III/190/13-14, and the note attached to TTP xvi, 16, III/263/12-17. I cite the TTP by chapter and Bruder section number, followed by the volume, page, and line numbers in the Gebhardt edition. Similarly for the *Political Treatise* (TP), though in that case the section numbers are Spinoza's own.
2. See, for instance, Errol Harris, "Spinoza's Treatment of Natural Law," *Spinoza's Political and Theological Thought*, ed. C. de Deugd (Amsterdam: North-Holland, 1984) 66.
3. I allude here to the famous remark Hobbes is supposed to have made after he had read the TTP. I have discussed that remark in detail in "'I Durst Not Write So Boldly': or, How to Read Hobbes' Theological-Political Treatise," forthcoming in *Hobbes e Spinoza*, ed. Emilia Giancotti (Naples: Bibliopolis.???) In that article I focus on the similarities and differences between Hobbes and Spinoza on such theological issues as miracles, prophecy, and the authority of Scripture. But one conclusion we might draw from the present article is that Hobbes may have had in mind boldness in his treatment of natural law. Robert McShea (*The Political Philosophy of Spinoza* [New York: Columbia UP, 1968]) thinks there is "hardly any doubt" that Hobbes is referring to Spinoza's views on religion (154), though he also argues that in political theory "Spinoza was a more consistent Hobbist than Hobbes" (138).
4. E.g., in DC i, 12, or *Leviathan* xiii, 8, 185. References to *Leviathan* (abbr. L) are first to the chapter and paragraph number, then to the page number in the Macpherson edition (New York: Penguin, 1968). References to *De cive* (abbr. DC) will be to chapter and section; references to *The Elements of Law* (abbr. EL) will be to part, chapter, and section.

5. E.g., Michael Walzer seems to have Hobbes very prominently in mind (along with Thucydides) in defining the "realism" he is attacking in *Just and Unjust Wars* (New York: Basic Books, 1977).
6. I, xix, 2. It is a nice question whether DC v, 2, where the same issue arises, is consistent with this.
7. Cf. Grotius, *De jure belli ac pacis*, III, xiv, 3 (Abbr. DJBP).
8. Except where keeping my promise is forbidden by the civil law. Cf. EL I, xv, 13; DC ii, 16; L xiv, 27, 198.
9. Cf. L xiv, 18–20, 196–97 and DC ii, 11 with EL I, xv, 10. The earliest work is free of the requirement that the suspicion of nonperformance be reasonable, which first appears in the first edition of DC and is modified in the second edition. I have discussed this evolution in more detail in "Reflections on Hobbes: Recent Work on his Moral and Political Philosophy," *Journal of Philosophical Research* 15 (1989–90): 169–250. See particularly 179–81.
10. Is this doctrine consistent with the teaching of the Ethics? See Alan Donagan (*Spinoza* [Chicago: U of Chicago P, 1988] 172f), who reads E IVP72 as committing Spinoza to a fairly rigoristic view about the sanctity of promises. In personal correspondence, Donagan suggests the Spinoza's views may have "matured" after writing the TTP. If we assume the the TP is at least as late as the final version of the *Ethics* (as I would), then TP ii, 12, and iii, 14–17, seem to count against any attempt to eliminate the discrepancy by postulating a change of view. Full treatment of this issue is beyond the scope of this paper, but see Don Garrett, "'A Free Man Always Acts Honestly, Not Deceptively': Freedom and the Good in Spinoza's *Ethics*," in *Spinoza: Issues and Directions*, ed. E. Curley and P.-F. Moreau (Leiden: Brill, 1990).
11. Cf. Hallam's remark, cited in C. E. Vaughan, *Studies in the History of Political Philosophy*, I (1960): 82: "In this treatise of Politics, especially in the broad assertion that good faith is only to be preserved as long as it is advantageous, Spinoza leaves Machiavelli and Hobbes at some distance and may be reckoned the most phlegmatically impudent of the whole school." (*Literary History of Europe*, iv, sec. 76) That Machiavelli really would limit his counsel to princes seems to me unclear. A key passage in *The Prince* (xviii, final par.) suggests a broader application: "*nelle azioni di tutti gli uomini, e massime de' principi, dove non è giudizio a chi reclamare, si guarda al fine*, in the actions of all men, and especially of princes, where there is no court of appeal, one judges by the result." The translation is Bull's (Penguin, 101). Strictly speaking, this sentence is merely descriptive, not prescriptive, in spite of the way it is translated by, e.g., Adams (Norton, 51) or Bondanella & Musa (Viking Penguin, 135). But since Machiavelli generally assumes that we should do unto others as we can reasonably expect them to do unto us, the boundary between description and prescription is negotiable. What is most interesting for our purposes is the implication that people who are situated as princes are, with no sovereign over them to adjudicate disputes, can be expected to act as princes do. On Machiavelli's assumptions, this would entail that people in a state of nature should behave as princes do in civil society.
12. For the ascription, see, for example, Vaughan, op.cit., vol. I, 66–67, or J. W. Gough, *The Social Contract* 2nd ed., (Oxford, 1957) 105. For rebuttal, see Howard Warrender, *The Political Philosophy of Hobbes* (Oxford, 1957) 312–23. McShea also ascribes to Hobbes the doctrine that might makes right, though only in a qualified way: this is what Hobbes sometimes says, and should always say if he were to be consistent with his most fundamental convictions (op. cit., particularly 139 and 144). For an interesting recent discussion, see Greg Kavka, *Hobbesian Moral and Political Philosophy* (Princeton, 1986), 355–57.
13. If I understand him correctly, Warrender takes the doctrine to be limited even further, to God's political power, i.e., to his capacity to alter the will of his subjects, apparently by making threats they cannot, on reflection, ignore (op.cit., 312–16). The key text here is DC xv, 7. Warrender's intention seems to be to suggest that the irresistible power which justifies God's actions involves a kind of consent on the part of man.

If so, then I think he is misreading Hobbes, who insists in that same passage that the “obligation which arises from contract . . . can have no place here.” The book of Job is paradigmatic for Hobbes on this subject, and he certainly does not present God’s right of sovereignty over Job as being based in any way on Job’s consent (Cf. DC xv, 6; L xxxi, 6, 398–99).

14. DC vii, 3, my emphases. A later passage in DC (xii, 3) tells us that one who commands without right, and is therefore an enemy, may rightly be killed, whether he is a tyrant or not.
15. It does not seem to be the argument of either EL I, xiii, or DC i, where the natural right of all to all (which = 3) seems to function a premise in reaching the conclusion that the state of nature is a war of all against all (= 2). On this, see Jean Hampton, *Hobbes and the Social Contract Tradition* (Cambridge, 1986) 60–61.
16. Perhaps Hobbes himself does not think the state of nature is literally a war of all against all. He does seem to envision some, limited cooperation in the state of nature (e.g., in L xvii, 3–5), as Greg Kavka has pointed out (op. cit., ch. iv). I discuss this in “Reflections on Hobbes,” sec. 2.
17. Or rather, *is*, since Spinoza does not think of this condition as merely hypothetical. Like Hobbes (e.g., DC Pref, 14; L xiii, 8), Spinoza takes the state of nature to be simply any condition where there is no government with the power to “keep men in awe.” So the Hebrews, after the exodus and before the covenant to Mt. Sinai, were in a state of nature (cf. TTP v, 26–27, xvii, 26–27), just as any people would be who were living through a civil war in which neither side had effective control over the territory.
18. I supply this qualification, which is not explicit in the sentence I am paraphrasing, because it seems we must take it to be implicit, given the conclusion Spinoza derives from it. I take “nature considered absolutely” to be equivalent, in this context, to “nature considered as a whole.”
19. “*Spinoza et la problématique de Grotius*,” *Anthropologie et politique au XVII^e siècle* (Paris: Vrin, 1986) 81–101.
20. Alluding to the *Treatise on the Emendation of the Intellect*, sec. 75, II/28/27ff.
21. E.g., he contends (85) that it is really Grotius who is at the origin of what Macpherson has called possessive individualism.
22. DJBP I, i, 10, 6. Quotations from DJBP generally follow the Kelsey translation (Oxford, 1925, *Classics of International Law*), though I will sometimes modify that translation, as in this instance, substituting “murder” for Kelsey’s “homicide,” since it does not seem accurate to say of the English term “homicide” that it implies criminality.
Grotius is no doubt thinking here of passages like 1 Samuel 15:3, where God commands Saul not to spare any of the Amalekites, but to kill them all “man and woman, infant and suckling, ox and sheep, camel and ass.” Saul’s unwillingness to comply led to his rejection by God. Cf. Grotius’ discussion in *De jure praedae*, trans. G. L. Williams and W. H. Zeydel (Oxford: Clarendon Press, 1950) 4 (abbr. DJP).
23. Viz., that what God has shown to be his will is law. Cf. DJP, 8.
24. I.e., in DC xv, 5, Hobbes’ argument seems to be: if a man could have irresistible power over other men, he would have an absolute right over them; men can’t have such power, but God can; therefore, God’s right of dominion is absolute. So Hobbes there moves from the human case to the divine, whereas Spinoza moves from the divine case to that of any individual in nature.
25. A donation repeated in Genesis 9:1–3, cf. DJBP II, ii, 2, 1.
26. DJBP II, ii, 2, 1. Cf. DJP, 11.
27. E.g., i, 44, III/28/11–12; iii, 9, III/46.5–6; vi, 9, III/83/8–9, xvi, 3, III/189/20.
28. See, for example, the Third Meditation, AT VII, 48–49, or the Geometric Exposition at the end of the Second Replies, Axiom II, AT VII, 165.
29. DJBP, Prolegomena, sec. 11, Kelsey, 13.

30. Cf. TTP xvi, 53n: "philosophers call the common rules of nature, according to which everything necessarily happens, laws." (III/264/11–12). Perhaps he is thinking here of Descartes (cf. *Principles* II, 37) or even of St. Thomas, who gave the word law a very broad sense (ST I-II, 90, 1) and whom Suarez criticized for having used the word in a sense which applies not only to men, but also to every other creature (*De legibus* I, i, 1).
31. E.g., in E III Pref, IIP2S, IVP50S, P57S, etc.
32. Cf. Descartes, Letter to Mersenne, 15 April 1630: "Don't be afraid, I beg you, to affirm and publish everywhere that it is God who has established these laws in nature, as a king establishes the laws in his kingdom" (AT I, 145). Of course Descartes uses a metaphor here, in that he compares God to a king; but for him it is literally true that scientific laws (including the eternal truths of logic and mathematics) are God's commandments.
33. Tricaud has offered arguments which I find persuasive for the conclusion that a large part of the Latin *Leviathan* was written before the English, in spite of the fact that it was only published seventeen years later. Cf. L xxvi, 8, where Hobbes says without qualification that the laws of nature are not properly laws, and that that is what he had said in the previous passage.
34. By a natural obligation I mean one which does not depend on any human legal system. The connection I attribute here to Spinoza between natural obligation and natural law is not one I can recall him making explicitly, but it seems implicit also in Suarez, *De legibus*, II, vi, 6, and in Pufendorf, *De officio hominis et civis*, I, ii, 3–5. So I take it to be a natural point for a seventeenth-century philosopher to make against the Grotian claim that there can be a natural obligation independently of the divine will. See the discussion in *Moral Philosophy from Montaigne to Kant*, ed. J. B. Schneewind (vol. I, Cambridge, 1990), 88–89, 157–58 or in Jean Barbeyrac's translation of DJBP, *Le Droit de la guerre et de la paix*, (Amsterdam: 1724), regarding section 11 of the *Prolegomena*.
35. "Spinoza on miracles," *Spinoza nel 350° anniversario della nascita*, ed. E. Giancotti (Naples: Bibliopolis, 1985).
36. For the simplicity of the soul, see the Sixth Meditation, AT VII, 86. For the distinction between intellect and will in man, see the Third Meditation, AT VII, 56–61.
37. For a more detailed discussion of this topic, see my article "Descartes, Spinoza and the Ethics of Belief," *Spinoza, Essays in Interpretation*, ed. E. Freeman and M. Mandelbaum (Open Court, 1975). Spinoza's most extended treatment of the identity of will and intellect in God occurs in the *Metaphysical Thoughts* II, vii–ix.
38. I think we can let Thomas Aquinas represent the tradition. Cf. ST I, iv, 1, on God's perfection, and I, xxiii, 1, on his predestination of men.
39. Descartes, *Principles* I, 39–41.