

## REVIEW ARTICLE

 LIBERTY EXPOSED: QUENTIN SKINNER'S *HOBBES*  
AND *REPUBLICAN LIBERTY*

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Quentin Skinner in *Hobbes and Republican Liberty*, the culmination of a series of excellent essays and books, takes as his subject Hobbes' concept of freedom, tracing its development as a series of responses to prevailing positions that both incorporates them and trumps them. Skinner's dedication to investigating Hobbes' rhetorical strategies has born some unusual fruit. Not only do we see the enormous problems that Hobbes set himself by proceeding as he did, but Skinner's careful analysis allows us to chart Hobbes' ingenuity as he tried to steer a path between the Charybdis of determinism and the Scylla of voluntarism – not very successfully, as we shall see. The upshot is a theory of individual freedom and civil liberty to challenge the classical republican tradition

## 1. HOBBES AND THE PROBLEM OF LIBERTY

Hobbes' concept of freedom is deeply problematic, not least because it sits in a determinist framework, signalled as early as his debate over freedom and necessity with Bishop Bramhall in 1645. It is not even clear where in the tradition of western thought about freedom to locate it, much less how to reconcile it with a determinist metaphysics. Quentin Skinner, in a series of elegant essays and books including, his seminal, 'Hobbes and the Proper Signification of Liberty', *Liberty before Liberalism*, and now *Hobbes and Republican Liberty*, has taken Hobbes' concept of freedom as his subject, tracing its development as a series of responses to prevailing positions that both incorporates them and trumps them.<sup>1</sup> Skinner's dedication to investigating Hobbes' rhetorical strategies has born some unusual fruit. Not

<sup>1</sup>See Quentin Skinner, 'Thomas Hobbes and the Proper Signification of Liberty', *Transactions of the Royal Historical Society* 40 (1990): 121–51; Skinner, *Liberty before Liberalism* (Cambridge, 1998); Skinner, *Hobbes and Republican Liberty* (Cambridge, 2008). Because this is a review essay in which I focus on the central arguments, many aspects of Skinner's excellent work go undiscussed. Space does not permit me to discuss, for instance, the contemporary iconographic material with which Skinner illustrates his case. I would like to thank John Rogers, this journal's excellent editor, for his comments.

only do we see the enormous problems that Hobbes set himself by proceeding as he did, but Skinner's careful analysis allows us to chart Hobbes' ingenuity as he tried to steer a path between the Charybdis of determinism and the Scylla of voluntarism – not very successfully, as we shall see.

That Hobbes felt compelled to deal with this concept which sits so uneasily in his metaphysical system may be more a product of accident than design. As a courtier's client he was commissioned by the Earl of Newcastle to write his first *pièce d'occasion* on undivided sovereignty as the Short Parliament of 1640 sat. *The Elements of Law, Natural and Politic* was perhaps a subject, as Deborah Baumgold suggests, that Hobbes was at this point least prepared to treat.<sup>2</sup> However, after a hasty resort to Bodin,<sup>3</sup> one of the rare cases in which he acknowledges his sources, Hobbes comes up with something that sets him on the path of his great political works, *De Cive* and *Leviathan*. Why would freedom be critical? Well, to begin with, the context of *The Elements* raised constituency issues, whether to side with parliament or the king over Ship Money, and constituency issues involve choice, which in turn presupposes freedom. The sources of undivided sovereignty, also raise fundamental issues of freedom: does sovereignty ultimately lie with the people, who may voluntarily transfer it to a sovereign, or is it the king's by divine right? Hobbes answers this question by an extended parable, transition from the state of nature to civil society by way of the social contract. But the very parable that he 'chooses', opting for a strong form of voluntarism which does not sit at all well with his determinist metaphysics, makes the problem harder to resolve.

Two distinctively different traditions of liberty characterize western political thought, and they appear in succession – leaving aside determinist

<sup>2</sup>See Deborah Baumgold, 'The Difficulties of Hobbes Interpretation', *Political Theory*, 36 (2008): 827–55, who argues that Hobbes's peculiar method of serial composition and insertion of new material into a prepared skeleton outline both led to inconsistencies, but also allow for a type of archeological deconstruction in which we can see the development of Hobbes's system in terms of those parts which are most complete, foreshadowing his mature system, and those that are less complete. See also my reply, along with Baumgold's response, Springborg, 'The Paradoxical Hobbes, a Reply to Baumgold, 'The Difficulties of Hobbes Interpretation'', *Political Theory*, forthcoming.

<sup>3</sup>Hobbes, *The Elements of the Law Natural and Politic*, edited by Ferdinand Tönnies, second edition, edited by M. M. Goldsmith (London, 1969) 27.7, 172–3 (chapter, paragraph and page numbers); noted in Skinner, *Hobbes and Republican Liberty*, 60, citing Jean Bodin, *Les six livres de la république* (Paris, 1576) 2.1. 219. Skinner, 192, notes the indebtedness of Hobbes to Bodin on the power of sovereigns over subjects 'to keep them in awe' in *Leviathan* xvii, §13, 88/109, citing Richard Knolles translation, *Six Bookes of the Republique*, (London, 1606) 6.4, 706. Note, citations to *Leviathan* unless otherwise noted are to *Leviathan [1651]*, with selected variants from the Latin edition of 1668, edited by Edwin Curley (Indianapolis, 1994), referencing chapter (small Roman numerals), section (§), pagination of the Head edition/and of the Curley edition.

traditions that deny freedom, to which Hobbes properly belongs. The first is as old as the Roman Law of the Twelve Tables of the fourth century BC,<sup>4</sup> but is most succinctly stated in Justinian's *Digest*, in the opening passages that treat *De statu hominum*: 'the chief distinction in the law of persons is that all men are either free or else are slaves'.<sup>5</sup> The notion of liberty as freedom from domination, which Skinner, Pettit<sup>6</sup> and others locate as the heart of Republicanism or Roman liberty, is, I suggest, a free translation of the first principle of Roman Law, 'liber non servus': 'a free man is one who is not a slave'.<sup>7</sup> It was a distinction appropriate to a slave society and to say that this primary distinction characterizes all slave societies is more or less tautological. Freedom, correspondingly, consists in the enjoyment of 'their own power' that free men, as opposed to those living 'under the power of a master', and subject to his will, enjoy.<sup>8</sup> Skinner thus defines 'the nerve of ... republican theory' as 'that freedom within civil associations' which 'is subverted by the mere presence of arbitrary power, the effect of which is to reduce the members of such associations from the status of freemen to that of slaves'.<sup>9</sup> Much turns on the notion of 'arbitrary power', as we will later see, but that Hobbes also emphasized the freeman/slave distinction is significant.<sup>10</sup>

A later tradition of freedom grew up, evident in Rousseau for instance, and indebted to the Stoics, to whom Hobbes otherwise owes so much. In this tradition freedom is the ability to erect a principle of behaviour and follow it, a concept of liberty that does not presuppose a slave society, rather to the contrary, and does not therefore take as primary the freeman-slave

<sup>4</sup>For an account of freedom under the Roman Republic see Patricia Springborg, 'Republicanism, Freedom from Domination and the Cambridge Contextual Historians', *Political Studies*, 49 (2001) No. 5: 851–76.

<sup>5</sup>'Summa itaque de iure personarum divisio haec est, quod omnes homines aut liberi sunt aut servi', *Digest of Justinian*, edited by Theodor Mommsen and Paul Krueger, four vols (Philadelphia, 1985) vol. 1.5.3, p. 15; Skinner, *Hobbes and Republican Liberty*, x.

<sup>6</sup>See principally Philip Pettit, *Republicanism, A Theory of Freedom and Government* (Oxford, 1997).

<sup>7</sup>One of the most remarkable features of this new book is the way in which Skinner rehabilitates Henri de Bracton's *De Legibus et consuetudinibus Angliae* (*On the Laws and Customs of England*, c.1235), as one of the earliest efforts to meld English Common Law to Roman law, in the European reception of Roman civil law that set early modernity on its path. See Skinner, *Hobbes and Republican Liberty*, x–xi.

<sup>8</sup>'[cives Romani] sunt suae potestatis ... [non] sunt in aliena potestate', *Digest of Justinian*, 1.6.4, 18; Skinner, *Hobbes and Republican Liberty*, x.

<sup>9</sup>Skinner, *Hobbes and Republican Liberty*, x.

<sup>10</sup>For Hobbes's indebtedness to Roman Law, see Otto von Gierke, *Natural Law and the Theory of Society, 1500 to 1800*, edited and translated by Ernest Barker, 2 vols (Cambridge, 1934); and Springborg, 'Leviathan, the Christian Commonwealth Incorporated', *Political Studies*, 24 (1976) No. 2: 171–83. (Reprinted in *Great Political Thinkers*, edited by John Dunn and Ian Harris (Cheltenham, Elgar, 1997), vol. 2, pp. 199–211).

distinction, but addresses the moral consequences of freedom for the author-agent. A notion of 'subjective freedom', it puts emphasis on the power of the will to choose good above evil, even against one's interests, owing much to pietism (thus representing Rousseau's enduring debt to Calvinist Geneva), and culminating with Kant. It was a notion that Hobbes could not and would not accommodate, had he dreamed of it, running up against his determinism as it does. Such a heroic idea of liberty, characteristically expressed in superogatory acts, would to Hobbes be positively dangerous, as the root of the right of resistance and other forms of counterproductive behaviour. It was in any event put out of reach by his mechanistic psychology and the way in which he defined the will.

In fundamental respects Hobbes shares most with the Roman civil law tradition, positing a primary distinction between freedom and slavery, to which classical republicanism, with its emphasis on 'freedom from domination' also belongs; and yet he is the enemy of classical republicanism, believing it to be the ideology of those very 'democraticall gentlemen' whom he excoriated in *Behemoth* for bringing down civil war and regicide on the heads of Englishmen.<sup>11</sup> Although Hobbes rejects the inference classical Republican theory draws from the fact of the 'liber non servus' distinction, he nevertheless remains within the paradigm. For him too, freedom is a *status*, or spatial distinction, denoting distinctive zones of behaviour: one, that of slaves, highly constrained; the other, that of freemen, relatively unconstrained. Covenanting oneself into obedience to a sovereign, especially in the extreme case of the subjection of the vanquished to a victor, has its analogue in the freeman consigning himself into slavery, and Hobbes goes so far as to see a continuum between these different states of subjection, but one demarcated by law. In each case men lose their capacity for natural liberty: the slave, by being enslaved, forfeits *the capacity* to act; the free man, by covenanting, forfeits *the right* to act.

So far so good, and as Richard Tuck has so nicely demonstrated, Hobbes is well within the Roman Law tradition of natural right as it was later coopted by the Church as Natural Law.<sup>12</sup> Hobbes' doctrine of freedom comes up against a far greater problem when confronted with his materialism, which serves to undermine Roman Law's most basic concepts, and indeed all metaphysical entities and abstract ideas. Hobbes' materialism is such that 'matter in motion', which in humans takes the form of the circulation of the blood and corpuscular biology, produces action in a morally neutral form. Will is the last appetite of the sensations pushing against the pull of fear.<sup>13</sup> It is rational only in the modern sense of rationality: in being the efficient outcome of a causal process. The laws of

<sup>11</sup>Hobbes, *Behemoth, or The Long Parliament* [1679], edited by Ferdinand Tönnies, introduced by Stephen Holmes (Chicago, 1990) 39.

<sup>12</sup>Richard Tuck, *Natural Rights Theories: Their Origin and Development* (Cambridge, 1979).

<sup>13</sup>Hobbes, *The Elements*, 12.2, 61–2; Skinner, *Hobbes and Republican Liberty*, 20.

natural reason, if they are indeed more than the maxims of self-preservation, are simply means–ends calculations and are infallible only in the sense that they are deduced with certitude. We are left with the option of either construing Hobbes' claim regarding freedom and servitude as supporting a false antithesis – because the movement of bodies politic is simply a continuation of the movement of natural bodies – or of construing it as an analogical argument behind which lies a paradox yet to be resolved.

## 2. NATURAL LIBERTY AND NATURAL RIGHT IN *THE ELEMENTS*

That Hobbes takes the antithesis between the study of natural bodies and bodies politic seriously we are signalled by the separate publication (whether or not authorized by Hobbes, in fact) of *The Elements of Law* in the two parts by which it is organized: *Humane Nature*, published in February 1650, which sets forth in thirteen chapters 'the whole nature of man, consisting in the power natural of his body and mind'; and *De corpore politico*, in which he seeks to demonstrate how men so constituted may attain 'sufficient security for their common peace', published three months later.<sup>14</sup> Hobbes operates on the assumption that the study of bodies 'natural' and 'politique' takes dual paths. The study of bodies politique, which is called 'civil philosophy',<sup>15</sup> proceeds by definition of terms, 'to put such principles down for a foundation, as passion not mistrusting, may not seek to displace'.<sup>16</sup> Given that the generation of ideas, as the reflex of sensations,<sup>17</sup> belongs to the materialist substratum of action, it is difficult to see how the passions, belonging to that substratum, could displace them, but this is a paradox that belongs to the much bigger picture of the role of ideas, undermined by Hobbes' sensationalist psychology.

The context in which Hobbes discusses liberty in *The Elements* is the state of nature, where the natural liberty that man enjoys is equivalent, he claims, to natural right.<sup>18</sup> Men are so constituted as 'to will and desire *bonum sibi*, that which is good for themselves, and to avoid that which is hurtful'.<sup>19</sup> Above all they are motivated to avoid 'that terrible enemy of nature, death,

<sup>14</sup>Skinner, *Hobbes and Republican Liberty*, 18.

<sup>15</sup>See the table of 'the Severall Subjects of Knowledge' in Hobbes *Leviathan*, ch. 9, edited by Richard Tuck, revised student edn (Cambridge, 1996) 61 (Curley edn, ix, 40/48); Skinner, *Hobbes and Republican Liberty*, 19.

<sup>16</sup>Hobbes, *The Elements*, xv; Skinner, *Hobbes and Republican Liberty*, 19.

<sup>17</sup>Hobbes, *Leviathan*, ch. 1, 'Of Sense'.

<sup>18</sup>Hobbes, *The Elements*, 14.6, 71; Skinner, *Hobbes and Republican Liberty*, 35, who notes that Arrigo Pacchi already pointed this out. See Pacchi, 'Diritti naturali e libertà politica in Hobbes', in *Scritti hobbesiani* (1978–1990) edited by Agostino Lupoli (Milan, 1998) 145–62, at 151–5.

<sup>19</sup>Hobbes, *The Elements*, 14.6, 71; Skinner, *Hobbes and Republican Liberty*, 36, who notes that Hobbes repeats the same argument in *De Cive: The Latin Version*, edited by Howard Warrender (Oxford) Clarendon edition, 2, 1.7, 94.

from whom we expect both the loss of all power, and also the greatest of bodily pains in the losing of it'.<sup>20</sup> Men not only seek self-preservation above all, Hobbes maintains, but they have a right to do so, for that 'which is not against reason', is allowed as a 'RIGHT, or *ius*'.<sup>21</sup> Therefore, since 'it is not against reason that a man doth all he can to preserve his own body and limbs, both from death and pain', he does it of right.<sup>22</sup>

Skinner claims that it is perfectly consistent of Hobbes to make the sweeping claim that liberty of nature grants to everyone 'a right to do whatsoever he listeth to whom he listeth',<sup>23</sup> and that it nicely echoes Aristotle's *Politics* book 6 in the English translation of 1598, where 'tokens' of liberty are defined as the liberty 'to live as men list'.<sup>24</sup> Is this the case? Why should a philosopher committed to a determinist metaphysics and atomistic physics, who postulates self-determination as a primary human drive, take the extra and unnecessary step of claiming that they have a 'right to self-determination' and that this was guaranteed by the 'liberty of nature'? Is this not a *reduction ad absurdum* with respect to rights, and especially their treatment by the late Scholastics who promulgated early modern rights doctrines applied to slaving in the New World? Were they perhaps Hobbes' target?

If natural liberty entails natural right, in what does the latter consist precisely? Do these notions simply represent fictions, or surrogates for mechanisms of psychological determinism that our cognitive structures do not allow us fully to understand? How in general does Hobbes' understanding of psychological mechanism impact on the status of concepts? Are physiological structures parallel to mental structures, as Descartes maintained? Or do we take a clue from the programmatic statement at the beginning of *The Elements*, Chapter 14, where Hobbes claiming to be discussing 'the whole nature of man, consisting in the powers natural of his mind and body', in fact conflates the mind/brain problem?<sup>25</sup> Do physiological structures exhaust the mental, as the emphasis on 'powers natural' of the mind and body would suggest? Does Hobbes rather harbour the hope, like Freud two centuries later, of describing them scientifically?<sup>26</sup> Most importantly, where does this leave any meaningful concept of freedom?

Was it for circumstantial reasons that Hobbes, commissioned, as we know, by his patron, the Earl of Newcastle to seek the sources of undivided sovereignty, 'chose' to resolve the problem after Bodin by the application of

<sup>20</sup>Hobbes, *The Elements*, 14.6, 71; Skinner, *Hobbes and Republican Liberty*, 36.

<sup>21</sup>Hobbes, *ibid.*, 14.6, 71; Skinner, *ibid.*, 35.

<sup>22</sup>Hobbes, *ibid.*, 14.6, 71; Skinner, *ibid.*, 36.

<sup>23</sup>Hobbes, *ibid.*, 14.10, 72; Skinner, *ibid.*, 37.

① <sup>24</sup>Aristotle, *Politiques, or Discourses of Government*, trans I. D. (London, 1598) 6.2, 340; Skinner, *Hobbes and Republican Liberty*, 37.

<sup>25</sup>Hobbes, *ibid.*, 14.1, 70; Skinner, *ibid.*, 34.

<sup>26</sup>Sigmund Freud, *A Project for a Scientific Psychology* (Vienna, 1895).

Roman or civil law, thus painting himself into a corner? This is a question too large to answer here, and nor does Skinner raise it. Suffice to say with Skinner that what is certainly not consistent is for Hobbes to claim that ‘we also possess the *right to make our own judgments* about what specific actions may be necessary to keep ourselves from pain and death’.<sup>27</sup> If will is the last appetite, the right to make our own judgements is out the window! Hobbes makes a further telling slip, both in *The Elements*, and later in *De Cive*, by suggesting that one’s liberty ends at the point at which one *wills* to covenant, all the time maintaining that the will is simply the last act of deliberation in creatures who constantly revise their perceptions of what conduces to their benefit in the struggle to avoid pain and death and so ‘live as they list’.<sup>28</sup> ‘For where liberty ceaseth, there beginneth obligation’, he unequivocally declares, taking promises as the outcome of a process of ‘consideration of reciprocal benefit [as] covenants and signs of the will, or last act of deliberation, whereby the liberty of performing, or not performing, is taken away, and consequently . . . obligatory’.<sup>29</sup>

It is of course precisely because human beings are incapable of consistent judgement in the (Aristotelian) sense of dispassionate deliberation about reciprocal benefit, producing binding commitments that follow from decisions, that covenants are necessary. However, if, according to Hobbes, human beings are incapable of judgement in the usual (Aristotelian) sense, they are also incapable of making promises in the usual sense, understood as binding the will. Hobbes’ lapse on both the issues of judgement and promising, again suggests, I would argue, a residual scholastic concept of the faculty of the will. It is a clue, I think, that Hobbes had still had not fully worked out the ontology and epistemology of his position on freedom and necessity. Whether within the constraints of his system humans are ever in fact capable of calculating ‘reciprocal benefit’, a corollary of deliberation and judgement as normally understood, is another matter. It is a persistent problem in Hobbes’ epistemology that we are not given the material basis for the calculation of ‘enlightened self interest’, dictated by his laws of natural reason, that his system to be coherent would require.

### 3. HOBBS ON JUDGEMENT AND THE FACULTY OF THE WILL

Hobbes had set out his basic case on freedom as early as 1645 in the debate called by Newcastle against Bramhall, and published in an unauthorized version as *Of Liberty and Necessity* in 1654. It had attracted an offended reply from Bramhall in his *Defence of True Liberty* of 1655, but it was only in the early chapters of *Leviathan*, and his answer to Bramhall,

<sup>27</sup>Skinner, *ibid.*, 37, my emphases.

<sup>28</sup>The position of Aristotle, *Politiques*, (London, 1598) 6.2, 340; Skinner, *ibid.*, 37.

<sup>29</sup>Hobbes, *ibid.*, 15.9, 78; Skinner, *ibid.*, 45.

*The Questions concerning Liberty, Necessity and Chance* of 1656, that Hobbes supplied a full ontology and epistemology for the position on freedom of the will that he had taken a decade earlier. Ridiculing Bramhall in the latter work, as Skinner points out, Hobbes denies that ‘a free agent is someone who acts according to his rational as opposed to his licentious will’.<sup>30</sup> A free agent is someone who ‘can write or forbear, speak or be silent, according to his will’ and no more.<sup>31</sup> Since deliberation takes the form of ‘alternate appetite, and not ratiocination’, there can be no such thing as ‘rational will’.<sup>32</sup> To say of an agent that he acts according to his will is no more than to say that he acts according to his last appetite; and this does not distinguish him from other animals, ‘for appetite and will in man and beast’ are ‘the same thing’.<sup>33</sup> As Skinner nicely puts it: ‘With these shockingly reductionist observations about the geography of the human soul, Hobbes rests his case.’<sup>34</sup>

Hobbes, in fact, gives no satisfactory account of mind in *The Elements*, just as he gives no satisfactory account of the ontology of the Laws of Natural Reason, which move it. It seems that his too is a dualistic system along the lines of his nemesis, Descartes, except that for Hobbes the mental or spiritual realm is simply an epiphenomenon of the physical and therefore lacks its own integrity. Physiological structures cannot account for the power of ‘will’ and voluntarism except as epiphenomena. This causes a deflation of the spiritual and emotive aspects of mind, which is also unconvincing when juxtaposed to the power Hobbes attributes to the passions and ‘imagination’. The project of the Cambridge Platonists was precisely to account for the ‘spiritual’ in a more meaningful way, and undoubtedly they are his target, as he was theirs.<sup>35</sup> This systematic deflation has fatal consequences for any concept of freedom as the power to ‘own’ one’s self as an actor capable of responsibility for one’s own actions. Hobbes’ deflationary accounts of deliberation leading to decision, and ‘conscience’ as ‘consciousness’ run along parallel lines, further consequences of the excitation that moves the nerves and strings controlling behaviour.<sup>36</sup> So, for instance, Hobbes in discussing ‘conscience’ gives the aetiology of the concept as a secondary, metaphorical and, by implication, imprecise usage of the adjective ‘consciūs’, Latin for ‘sharing knowledge, privy, in the know,

<sup>30</sup>Skinner, *ibid.*, 33–4, citing *The Questions Concerning Liberty, Necessity, and Chance*, 38, 50, 234, 450.

<sup>31</sup>Hobbes, *The Questions Concerning Liberty, Necessity, and Chance*, 38; c.f., also 50; Skinner, *ibid.*, 34.

<sup>32</sup>Hobbes, *ibid.*, 450, 234; Skinner, *ibid.*, 34.

<sup>33</sup>Hobbes, *ibid.*, 365; c.f., also 35; Skinner, *ibid.*, 34.

<sup>34</sup>Skinner, *ibid.*, 34.

<sup>35</sup>On Hobbes and the Platonists, see Patricia Springborg, Introduction, Chapter 5.3, to Hobbes’s, *Historia Ecclesiastica*, critical edition, including text, translation, introduction, commentary and notes by Patricia Springborg, Patricia Stablein and Paul Wilson (Paris, 2008) 184–200.

<sup>36</sup>See Hobbes, *Leviathan*, Introduction and chapter 1.

aware, conscious of, conscious of guilt'; and therefore included in its horizons of meaning:<sup>37</sup>

When two or more men know of one and the same fact, they are said to be CONSCIOUS of it one to another. And because such are fittest witnesses of the facts of one another, or of a third, it was and ever will be reputed a very evil act for any man to speak against his *conscience*, or to corrupt or force another so to do, insomuch that the plea of conscience has always been hearkened unto very diligently at all times. Afterwards, men made use of the term metaphorically, for the knowledge of their own secret facts and secret thoughts; and therefore it is rhetorically said that the conscience is a thousand witnesses. Last of all, men vehemently in love with their own new opinions (though never so absurd), and obstinately bent to maintain them, gave those their opinions also that revered name of conscience, as if they would have it seem unlawful to change or speak against them; and so pretend to know they are true, when they know, at most, that they but think so.

The fatal consequences of this confusion are finally apparent in the *foro interno/in foro externo* distinction, for all its subtlety in separating out the private from the public realm as a zone of relative freedom of belief – of course, since the contents of the mind are fully determined by sensationalist psychology, 'freedom' on this understanding is relative indeed, meaning no more than non-culpability. But from the perspective of *The Elements* all this lies in the future, awaiting the full development of *Leviathan*.

Skinner remarks, citing Baumgold, that it is odd, in light of his preferred strategy to proceed by definition in the study of political bodies, or civil philosophy, that Hobbes nowhere supplies a formal definition of liberty.<sup>38</sup> But, once again, since Hobbes subsumes liberty under the freedom of movement characteristic of natural bodies engaged in perpetual motion unless impeded, freedom strictly speaking belongs to the materialist substratum of natural bodies, and not the superstructure of bodies politic at all. Accordingly, Hobbes' first discussion of human freedom is placed at the conclusion of his discussion of the powers of mind, in which he describes the prerequisites for human action as the 'liberty to do or not to do'.<sup>39</sup> Consistent with the laws of matter in motion, decision, which terminates the mental processes of *de-liberation* by which it is arrived, constitutes, tautologically, 'the taking away of our own liberty'.<sup>40</sup> In terms of its mechanism, deliberation is precisely the struggle between the push of our appetites, as the impetus (*conatus*) to action against the pull of our fears, which would immobilize us: for 'in deliberation the last appetite, as also the

<sup>37</sup>Hobbes, *ibid.* vii, §4, 30/36. I owe this observation to Johan Tralau, who cites it in his essay 'Hobbes against the Liberty of Conscience'.

<sup>38</sup>Skinner, *Hobbes and Republican Liberty*, 19, citing Deborah Baumgold, 'The Composition of Hobbes's *Elements of Law*', *History of Political Thought*, 25 (2004) No. 1: 16–42, at 25–7.

<sup>39</sup>Hobbes, *The Elements*, 12.1, 61; Skinner, *ibid.*, 20.

<sup>40</sup>Hobbes, *ibid.*, 12.1, 61; Skinner, *ibid.*, 20.

last fear, is called WILL (viz.) the last appetite will to do; the last fear will not to do, or will to omit'.<sup>41</sup>

This account differs from Aristotle's account of voluntary conduct only in  
 410 Hobbes' presumption of a materialist substratum of 'bodies in motion' in  
 terms of which it can be scientifically demonstrated. It is not surprising,  
 then, that he resorts to Aristotle's example in the *Nicomachean Ethics*  
 (1110a) of the man who 'throweth his goods out of a ship into the sea,  
 to save his person',<sup>42</sup> as an example of the most extreme predicament  
 415 that can be caused by the pull of fear and the push of passion, but that  
 is nevertheless resolvable by decision. It is also a parable for his distinction  
 between the two paths to sovereignty: covenanting out of fear and  
 sovereignty by acquisition or conquest. Covenanting out of fear, like the  
 man throwing his goods overboard to avoid shipwreck, is 'no more against  
 420 his will, than to fly from danger is against the will of him that seeth no other  
 means to preserve himself'. Although apparently acting from compulsion,  
 his decision is an act of will and 'altogether voluntary'.<sup>43</sup>

Both covenanting out of fear in the state of nature, then, and treating for  
 peace by submitting to a conqueror, are acts of deliberation in which the last  
 425 appetite determines the will. They demonstrate the Epicurean and Stoic  
 principle of psychic determination to which Hobbes subscribes: the  
 attraction of pleasure and avoidance of pain. In either case, Hobbes insists,  
 our behaviour is equally the product of will as the last action in the causal  
 chain, and there is 'no reason why that which we do upon fear, should be  
 less firm than that which we do for covetousness'.<sup>44</sup> In other words, in terms  
 430 of binding action, about which he is concerned in seeking valid grounds for  
 covenant, negative sanctions work as well as positive incentives. Hobbes in  
*The Elements* has plenty to say about voluntary behaviour as the product of  
 negative sanctions (the negative concept of freedom, or 'freedom from',  
 as Isaiah Berlin would have it) but is remarkably silent about positive  
 435 incentives (leading to Berlin's positive freedom, or 'power to').<sup>45</sup> In Chapter  
 22, where he treats sovereignty by acquisition, Hobbes makes what 'appears  
 to be a slip', however, in distinguishing momentarily between a 'voluntary  
 act of subjection', on the one hand, and 'yielding by compulsion', on the  
 other, as Skinner notes.<sup>46</sup> It is as if he is not yet willing to give up the  
 440 scholastic (Platonist, Aristotelian) understanding of judgement as produced  
 by the faculty of the will, in favour of the 'materialist' (Stoic, Sceptic and  
 Epicurean) notion whereby judgement is the last movement of the mind,  
 determined by will as the last appetite.

445 <sup>41</sup>Hobbes, *ibid.*, 12.2, 61–2; Skinner, *ibid.*, 20.

<sup>42</sup>Hobbes, *ibid.*, 12.3, 62; Skinner, *ibid.*, 21.

<sup>43</sup>Hobbes, *ibid.*, 12.3, 62; Skinner, *ibid.*, 23.

<sup>44</sup>Hobbes, *ibid.*, 15.13, 79; Skinner, *ibid.*, 23.

<sup>45</sup>Isaiah Berlin, *Two Concepts of Liberty* (Oxford, 1958).

450 <sup>46</sup>Hobbes, *ibid.*, 22.2.127; Skinner, *ibid.*, 23.

Rejection of the scholastic ‘faculty of the will’ Hobbes nevertheless considers just as important a breakthrough as his rejection of species theory in favour of Lucretian *simulachra*.<sup>47</sup> The notion that objects send out replicas of themselves, accessible to the senses as receptors, Hobbes by the time of *Leviathan* had come to see as the sort of categorical regress to which Ockham’s razor could fruitfully be applied. In the same way he viewed the faculty of the will as a fictitious entity more properly treated as the last event in a cause-event sequence. Bishop Bramhall saw through it. He ‘confounds the faculty of the will with the act of volition’, Bramhall in his *Defence of True Liberty* of 1655, loudly wailed.<sup>48</sup> By failing to acknowledge that volitions arise ‘from the faculty or from the power of willing, which is in the soul’, he further denies ‘the power of the reasonable soul’, owed to God ‘who created and infused the soul into man, and endowed it with this power’.<sup>49</sup>

That, indeed, is just what Hobbes denied and he made no bones about it, declaring there to be no such thing as a faculty of the will.<sup>50</sup> Just as he confesses in the 1668 Appendix to the Latin *Leviathan* to having once subscribed to species theory, which disqualifies most of the substantive arguments against his authorship of *The Short Tract* of 1636,<sup>51</sup> so we see in

<sup>47</sup>See the Latin *Leviathan, Thomae Hobbes ... Opera Philosophica quae Latine scripsit omnia*, edited by Sir William Molesworth, 5 vols (London, 1839–45), (henceforth *OL*) vol. III, p. 537, discussed by Karl Schuhmann in his, ‘Le Short Tract, première oeuvre philosophique du Hobbes’, *Hobbes Studies*, 8 (1995): 3–36. For Lucretius on ‘simulachra’, see *De rerum natura* 2.167–83, and 5.156–234.

<sup>48</sup>See John Bramhall in Hobbes, *The Questions Concerning Liberty, Necessity, And Chance*, in *The English Work of Thomas Hobbes*, edited by William Molesworth (London, 1841) 11 vols (henceforth *EW*) vol. 5, 360; Skinner, *Hobbes and Republican Liberty*, 25.

<sup>49</sup>Bramhall in Hobbes, *The Questions Concerning Liberty, Necessity, and Chance*, *EW* 5.373; Skinner, *Hobbes and Republican Liberty*, 26.

<sup>50</sup>Skinner, *Hobbes and Republican Liberty*, 25, notes that Hobbes ‘implicitly repudiates the entire scholastic understanding of the will as one of the permanent faculties of the human soul, the faculty that enables us freely to will and thereby freely to act’, and that Bramhall saw through it. In fact Hobbes explicitly rejected the faculty of the will, see, *The Questions Concerning Liberty, Necessity, and Chance*, *EW* 5.2, 22 and 36.

<sup>51</sup>Karl Schuhmann and Gianni Paganini defend Hobbes’s authorship of this work, held in the Cavendish collection, on philosophical grounds (see Karl Schuhmann, ‘Le Short Tract, première oeuvre philosophique du Hobbes’, *Hobbes Studies*, 8 (1995): 3–36; and Gianni Paganini, ‘Hobbes, Gassendi e la psicologia del meccanicismo’, in *Hobbes Oggi*, edited by Arrigo Pacchi (Milan, Franco Angeli, 1990) 351–445). Noel Malcolm, offers counter arguments, supported by paleographic analysis, to establish the authorship of Robert Payne, William Cavendish, Duke of Newcastle’s chaplain. See Noel Malcolm, ‘Robert Payne, the Hobbes Manuscripts and the ‘Short Tract’’, in *Aspects of Hobbes* (Oxford, Clarendon Press, 2002) 80–146. One argument for the *Short Tract* not being a work by Hobbes would seem to be the author’s explicit subscription to the notion of ‘sensible species’, which Hobbes was so scornfully to dismiss in both *Leviathan* and the *Historia Ecclesiastica*. (*Lev.*, i, §5 4/7; *Lev.*, ii, §9, 7/11; and *Hist. Eccl.*, lines 1643–60). There had been a time when Hobbes had subscribed to species theory in fact, as he admits in the 1668 Appendix to the Latin *Leviathan*. See the 1668 Appendix, §93 (*OL* vol. III, p. 537) translated by Wright, 366, where Hobbes, probably referring to his early Oxford education in the scholastics, notes:

this slip in *The Elements* in which he makes a categorical distinction between a ‘voluntary act of subjection’ and ‘yielding by compulsion’, proof perhaps that he once also subscribed to the scholastic notion of the faculty of the will. Inconsistencies in Hobbes, who gives the appearance of being a remarkably systematic thinker, are usually telling, and in fact he does not always succeed in applying Ockham’s razor when it comes to a regress of superfluous entities, as in the case of the passions. If he is willing to abandon the faculty of the will as the reification of physiological processes, why retain the passions? What about reason? The will is the more palpable of the three parts of the soul in the long tradition of philosophy of mind that dates from Plato.

In *The Elements* we have further evidence of a residual scholastic account in Hobbes’ characterization of freedom in the state of nature as a state of ‘blameless liberty’, or positive freedom,<sup>52</sup> in which the agent, enjoys ‘natural liberty’, defined as the liberty ‘of governing himself by his own will and power’.<sup>53</sup> While this account ‘of men considered in mere nature’ might be thought of as describing the condition of ‘his majesty’ the wilful baby, by Freud’s account, whose very powerlessness becomes a source of its power to control those around it, Hobbes’ notion of one’s ‘own will and power’ does suggest the will as a faculty that one has the power to ‘own’. Liberty, Hobbes defines at the opening of Chapter 14 of *The Elements*, as the liberty ‘of using our own natural power and ability’,<sup>54</sup> a definition once again smacking of the faculty of the will. It is true that one’s ‘own will and power’ as the liberty ‘of using our own natural power and ability’ are terms that can be redescribed, consistent with a materialist ontology, as epiphenomena, chains of causes belonging to a physiological mechanism, activated by sensation and terminating with action. This Hobbes already hints, although he is not yet at the point at which he gives such a redescription, which awaits *Leviathan*.

#### 4. ARBITRIUM AND ‘ARBITRARY’ WILL

Skinner maintains that Hobbes in *De Cive* enters waters uncharted in *The Elements*, treating human freedom as a sub-species of the more general rule

I do recall however that at one time I thought that body was only that which met my touch or sight. And so I thought that body was also the image (*species*) of a body that appears in a mirror or in a dream or even, to my wonder, in the dark. But then I considered that those species disappeared, so that their existence did not depend on themselves but on some animated entity, and they no longer seemed real to me but only appearances (*phantasmata*) and the effect of things working on the organs of sense. And so I knew that they were incorporeal.

*OL* vol. III, 537, discussed by Karl Schuhmann in his, ‘Le Short Tract’. For Lucretius on ‘simulachra’ see *De rerum natura* 2.167–83, 5.156–234.

<sup>52</sup>Hobbes, *The Elements*, 14.6, 71; Skinner, *Hobbes and Republican Liberty*, 34.

<sup>53</sup>Hobbes, *ibid.*, 14.11, 73, my emphases; Skinner, *ibid.*, 35.

<sup>54</sup>Hobbes, *ibid.*, 14.6, 71; Skinner, *ibid.*, 35.

governing the motion of bodies: unobstructed movement; a rule that governed not only humans as natural bodies but also other inanimate bodies 'such as (to cite his own example), bodies of water and their power to move without restraint'.<sup>55</sup> Hobbes is quite self-conscious about his innovation, which he casts in the broad ambit of civil law issues of freedom and slavery. 'I know of no writer who has previously explicated what is meant by *liberty* and what is meant by *servitude*', he declares,<sup>56</sup> for, '*liberty* is commonly taken to be doing everything according to our own judgment, and with impunity',<sup>57</sup> and '[i]t is not possible to render such a definition compatible with life in a *civitas* or with the peace of humankind'.<sup>58</sup> Since, according to the attested truth as stated in his verse autobiography, the *Vita carmine expressa*,<sup>59</sup> 'the only thing that is real in the whole world is motion', it follows that 'LIBERTY, to define it, is nothing other than *the absence of impediments to motion*'.<sup>60</sup>

In an exposition also without parallel in *The Elements*, Hobbes proceeds to treat the impediments to liberty as falling into two classes: the first *impedimenta externa* and *absoluta*, the second *impedimenta arbitraria*.<sup>61</sup> The first, or external impediments, are a check on liberty imposed by the structure of the external world; they check movement by making it physically impossible, as when a man on a journey 'is checked on both sides by hedges and walls from trampling on the vines and crops bordering upon the road'.<sup>62</sup> Those impediments that fall into the class of *arbitraria* ('*alia [impedimenta] sunt arbitraria*'), are 'those which do not absolutely impede motion, but do so *per accidens*, that is to say by our own choice' ('*quae non absolute impediunt motum, sed per accidens, nimirum per electionem nostram*')<sup>63</sup> – as in the curious case of 'a man on a ship who is not impeded from throwing himself into the sea if he is able to will it', the Aristotelian case that Hobbes had introduced in *The Elements*, and to which he now reverts in a 'somewhat bizarre adaptation'.<sup>64</sup>

<sup>55</sup>Skinner, *ibid.*, 108, citing chapter 9 of *De Cive*.

<sup>56</sup>neque enim quod sciam, a quoquam scriptore explicatum est quid sit *libertas*, & quid *servitus*', Hobbes, *De Cive*, 9.9, 167; Skinner, *ibid.*, 109.

<sup>57</sup>vulgo omnia nostro arbitratu facere, atque id impune, *libertas* ... iudicatur', Hobbes, *De Cive*, 9.9, 167; Skinner, *ibid.*, 108.

<sup>58</sup>quod in civitate, & cum pace humani generis fieri non potest', Hobbes, *ibid.*, 9.9, 167; Skinner, *ibid.*, 108–9.

<sup>59</sup>toto res unica mundo/ Vera ... [est] motus', Hobbes, *OL*, vol. 1, lxxxix, lines 111–12, 119; Skinner, *ibid.*, 109).

<sup>60</sup>LIBERTAS, ut eam definiamus, nihil aliud est quam *absentia impedimentorum motus*', Hobbes, *ibid.*, 9.9, 167; Skinner, *ibid.*, 109.

<sup>61</sup>Hobbes, *ibid.*, 9.9, 167; Skinner, *ibid.*, 110.

<sup>62</sup>Hobbes, *ibid.*, 9.9, 167; Skinner, *ibid.*, 111.

<sup>63</sup>Hobbes, *ibid.*, 9.9, 167; Skinner, *ibid.*, 111.

<sup>64</sup>Skinner, *ibid.*, 111, citing Hobbes, *ibid.*, 9.9, 167: 'qui in nave est, non ita impeditur quin se in mare praecipitare possit, si velle possit'.

It is not entirely clear what we should make of *per accidens*, but it seems that this peculiar reversion to the Aristotelian terminology of causality is designed to circumvent resort to the faculty of the will by suggesting the outcome as the last event in a (contingent) cause–event sequence. What in any event is most striking about the distinction between objective and subjective impediments to liberty is an emphasis on will and choice that once again seems inconsistent with Hobbes’ determinism, but it is rather obscured by the fact that Skinner translates *arbitraria* as ‘arbitrary judgements’ in the modern sense of ‘arbitrary’ as non-accountable, whereas Hobbes uses the term neutrally to mean decisions or judgments as the product of our will or choice, in the usual classical Latin and Neolatin senses. Hobbes’ point was not that the man being unimpeded in being able to throw himself into the sea if he could will it was arbitrary in the modern sense, but simply that if he could not will it, he could not do it. The will in these cases was an impediment to action *per accidens* because, in the absence of external and non-negotiable impediments to action, the failure is entirely internal to our own judgement – a failure of will. It may in fact be read as the perfect illustration of the struggle between the push of our appetites against the pull of our fears, the latter with the power to immobilize us: for ‘in deliberation the last appetite, as also the last fear, is called WILL (*viz.*) the last appetite will to do; the last fear will not to do, or will to omit’.<sup>65</sup>

*Arbitrium* and its cognates signal the freedom of the will controversy, and when Hobbes agreed to debate the topic of freedom and necessity with Bramhall he was quite well aware, I am sure, of the long history of this *topos*, from the great Neoplatonist Augustine’s emphasis on free will, argued against Evodius in *De libero arbitrio*, and subsequently taken up by Pelagius in his treatise of the same name against Augustine and Jerome.<sup>66</sup> Closer to Hobbes’ own day it became a major humanist *topos*, argued between the Epicurean, Lorenzo Valla, to whom Hobbes otherwise owed

<sup>65</sup>Hobbes, *The Elements*, 12.2, 61–2; Skinner, *ibid.*, 20.

<sup>66</sup>See Augustine *De Libero Arbitrio*, Book I, AD 387/9; Books II and III *c.* AD 391–5; and Pelagius’ work of the same title, written to counter criticism from Augustine and Jerome. Pelagius (AD *c.*360–*c.*420) a monk and theologian, probably British, preached the heresy of Pelagianism, rejecting the idea of original sin and maintaining that man is master of his own salvation, first in Rome from *c.*380, and then from 410 in Africa, where Saint Augustine denounced his ideas, and later in Palestine. He wrote *De Libero Arbitrio* in 416 and was excommunicated by Pope Innocent I in 417. Augustine’s work on freedom of the will, significantly, includes observations concerning the consequences of the Fall that intersect with Hobbes’s doctrine of the state of nature, arguing that the loss of innocence, triggered by malfeasance of the will, necessitated coercive government, which would not have been necessary in man’s prelapsarian condition in which equity would have demanded democracy. See R. A. Markus, *Saeculum: History and Society in the Theology of St. Augustine* (Cambridge, 1970) Appendix B ‘*De Civitate Dei* XIX.14–15 and the Origin of Political Authority’, citing *De lib. arbit.* 1.15.31–2. See also Ernest L. Fortin and J. Brian Benestad, *Classical Christianity and the Political Order* (New York, 1996) 52.

so much, Erasmus of Rotterdam and then Luther, all in treatises of the same name.<sup>67</sup> It is unlikely, then, that he would mistake the modern meaning of ‘arbitrary’ for the usual Neolatin meaning of the term *arbitria* as simply decisions or judgments arising from the will. Skinner nevertheless goes on to note that ‘[t]he significance of arbitrary impediments has remained unacknowledged even in the best recent commentaries’, citing Philip Pettit’s treatment of freedom as absence of external obstruction in *De Cive* and *Leviathan*;<sup>68</sup> and confessing ‘I previously inclined to this [Pettit’s] view myself’.<sup>69</sup>

When discussing Hobbes’ distinction in *De Cive* between subjective and objective impediments to our freedom, that is to say impediments which ‘can be ‘arbitrary’ as well as corporal, ‘impeding our movement not absolutely but rather as a result of our choice’’,<sup>70</sup> Skinner does translate ‘arbitrary’ as meaning the product ‘of our choice’. However, he goes on to note that it is a further feature of *libertas civilis* that we have by ‘the power of natural necessity’ the right ‘to limit the operation of arbitrary impediments ‘in order to preserve [our] life and health’’.<sup>71</sup> Here again Skinner misconstrues *arbitraria*, rephrasing Hobbes’ point thus: ‘If this is your predicament, you will not be arbitrarily impeded by any fears about the punishments you may incur in consequence of performing the action in question, even if these punishments may be extremely severe’.<sup>72</sup> In fact, however, this is not the point Hobbes was making, but rather the same point as before: that there is a distinction between *impedimenta absoluta*, which are physical impediments, on the one hand, and those which we impose upon ourselves by our

<sup>67</sup>See Lorenzo Valla, *De libero arbitrio* (1439), Erasmus, *De libero arbitrio diatribe sive collatio* (1524), and Luther’s *De Servo Arbitrio, On the Bondage of the Will* (1525), his reply to Erasmus’s work on freedom of the will, the humanist’s first public attack on him. At issue here also was the question raised by Augustine, whether human beings after the Fall are free to choose good or evil and, by implication, whether or not they were free to choose their own government, or whether political coercion is their punishment for sin. See also Aquinas, *De gratia Christi et de libero arbitrio* On Hobbes’s indebtedness to Valla, to the point of replicating many of his arguments, see the many excellent works by Gianni Paganini, in particular, ‘Hobbes, Valla and the Trinity’, *British Journal for the History of Philosophy*, 40 (2003): 183–218.

<sup>68</sup>Hobbes, *The Elements*, 12.2, 61–2; Skinner, *Hobbes and Republican Liberty*, 20.

<sup>69</sup>Skinner, *ibid.*, 111 n. 106, citing Philip Pettit, ‘Liberty and Leviathan’, *Politics, Philosophy and Economics*, 4 (2005): 131–51 at 137, 140; and his own ‘La teoria evolutiva de la libertad de Thomas Hobbes’, *Revista de estudios politicos*, 134 (2006–7) 64–5. He expresses here his indebtedness to Kinch Hoekstra for his assistance in reassessing ‘the place of arbitrary impediments in the evolution of Hobbes’s theory of freedom’. *Impedimenta arbitraria* are indeed of great interest in Hobbes’s theory of freedom, but not on the interpretation of *arbitraria* that Skinner gives.

<sup>70</sup>Hobbes, *De Cive*, 9.9, 167: ‘quae non absolute impediunt motum, sed ... per electionem nostram’; Skinner, *ibid.*, 117.

<sup>71</sup>Skinner, *ibid.*, 118, citing Hobbes, *De Cive*, 9.9, 167: ‘quae ad vitam & sanitatem tuendam sunt necessaria’.

<sup>72</sup>Skinner, *ibid.*, 118.

own choice, which are *impedimenta arbitraria*, on the other; and that the former are non-negotiable and, therefore relatively uninteresting, whereas everything turns on the latter.

Much rides on the term *arbitraria* and its cognates, key to the very definition of republican liberty as Skinner gives it in the preface to his book, where the distinction between slave and freeman is first raised. The condition of the freeman is distinguished from that of the slave precisely in terms of ‘the loss of liberty suffered by slaves aris[ing] from living ‘under the power of a master’ and hence in subjection to his *arbitrium* or arbitrary will’, Skinner insists, citing Justinian’s *Digest*, 1.6.4, 18: ‘in potestate sunt servi dominorum’.<sup>73</sup> However, if we look at the Latin, in fact ‘arbitrary’ will is not specified, or even necessarily implied. This is no trivial point, because to interpret *arbitrium* as *arbitrary* will not only turns a critical value-neutral term into a term of opprobrium, but indeed it runs counter to the very spirit of the term, which is that this judgement or decision, far from being capricious, is the outcome of a legal process. Indeed, there is no more impeccable source for this usage than Cicero; but in even the most general usage of the term this sense is uppermost. So, for instance, according to Lewis and Short the primary meanings of *arbitrium*, ‘(from arbiter -tri (m) a spectator, eyewitness)’, are ‘(1) in general a coming near, a being present; and (2) judgement or decision of an arbitrator’; it has the further meaning, ‘(3) (by transference from the sphere of judicial proceedings) of judgement, opinion, decisions’; and the tropological meaning, ‘(4) mastery, dominion, authority, power, will, or free-will’.<sup>74</sup> Chambers Murray’s *Latin-English Dictionary* emphasizes even more strongly the derivation of the term from legal process, giving the primary meanings of *arbitrium* as ‘(1) intrusion, presence; (literally) the award or decision of an arbitrator, which was to be given in accordance with ‘equity’’, and citing Cicero: ‘*judicium est certae pecuniae arbitrium incertae* ‘the judgement is of determined money, but the equity is not settled’. Further meanings include ‘(2), by transference, the award, decision of any umpire: *libera arbitria agere*, ‘to exercise free choice’ (Livy, Caesar, and Horace)’; and finally ‘the decision of any matter, control, direction, etc.’<sup>75</sup>

Turning to the meaning of *arbitrium* and its cognates in Roman Law, which is where Skinner rests his case, we find once again that it is the relatively neutral word for ‘decision’ or ‘judgment’, but even more specifically as the outcome of rule of law. So, while ‘*arbitrari* denote “the activity of an *arbiter*”, *arbitrarius* means “depending upon the decision of a judge (*iudex*), as in *actiones arbitrariae*” while *arbitrium* is simply “the

<sup>73</sup>Skinner, *ibid.*, x.

<sup>74</sup>See Lewis and Short. See also the *Oxford Latin Dictionary*, 3 vols (Oxford, 1968–80).

<sup>75</sup>See the Chambers Murray *Latin-English Dictionary*, by Sir William Smith and Sir John Lockwood, (London/Edinburgh, 1933, repr. 1988).

decision of an arbitrator (*arbitratus*), or judge”<sup>76</sup> To restore the meaning of *arbitraria* requires that we adjust the definition of republicanism accordingly: it is ‘freedom from domination’, where domination is to live at the will of a master, but a master governed by rule of law or due process. This revision closes the gap between monarchy and republicanism considerably and would be compatible with constitutional monarchy, or the ‘mixarchy’ of the Parliamentarians in Hobbes’ day.

## 5. LIBERI HOMINES IN THE ELEMENTS AND DE CIVE

Leaving this issue aside, important though it is, what Skinner does emphasize is the significant increase in the restrictions on freedom’s ambit between *The Elements* and *De Cive*. Preferring the Roman model of the *pater familias*, and making a bold show of conflating Aristotle’s spheres of power, political, paternal and despotic, Hobbes in *De Cive* comes clean about what the liberty of the freeman, whether as subject, father, son or servant, consists of. Although defended in Roman Law language, it is a position that allows more or less unlimited restrictions on the freedom of the citizen as long as they fall short of slavery.<sup>77</sup> Why would he do it? It is worth remembering that if *The Elements* was written as a brief for the Earl of Newcastle in the circumstances of the Short Parliament, *De Cive* was written for Hobbes’ charge in Paris, the Prince of Wales and future Charles II and therefore had a different focus. As a policy manual for the Prince it tested the limits of absolutism and what the Prince might learn about the advantages that a Civil Law based system could furnish him.

This is precisely what Hobbes’ project to my mind comprises, its development from *The Elements* to *De Cive* to *Leviathan* always tending in the direction of testing the limits of restrictions upon liberty consistent with the status of the freeman as opposed to the slave, which become more and more extreme. While in *The Elements* the distinction between a free man and a slave is construed positively, from the point of view of the freeman, by *De Cive*, Hobbes has adopted an extreme view of the restrictions that absolute sovereignty can place on citizens, whose scope for movement is only superior to that of slaves in that they are not shackled, and who are still technically free as long as they are not imprisoned. As Skinner

<sup>76</sup>See the online *Encyclopedic Dictionary of Roman Law*, by Adolph Berger: [books?id=iklePELlR6QC&pg=PA341&lpg=PA341&dq=arbitraria+Latin+dictionary&source=web&ots=OgU0ECuM0l&sig=N3maN7YHtk6SVXR-w\\_T\\_rxKeXF8&hl=en&sa=X&oi=book\\_result&resnum=2&ct=result#PPA366,M1](https://www.jstor.org/stable/2983141)  
[books?id=iklePELlR6QC&pg=PA341&lpg=PA341&dq=arbitraria+Latin+dictionary&source=web&ots=OgU0ECuM0l&sig=N3maN7YHtk6SVXR-w\\_T\\_rxKeXF8&hl=en&sa=X&oi=book\\_result&resnum=2&ct=result#PPA366,M1](https://www.jstor.org/stable/2983141)

<sup>77</sup>Hobbes, *De Cive*, 9.9, 167; Skinner, *ibid.*, 118.

notes: '[w]hereas Hobbes's last word in *The Elements* had been that subjects are scarcely any freer than slaves, [in *De Cive*] he now prefers to stress that even slaves are scarcely less free than subjects'.<sup>78</sup>

770 Skinner, for some reason, finds Hobbes' doctrine of liberty in *De Cive* more palatable than the version that precedes it in *The Elements*. He speaks of '[this] reversal of emphasis' as 'enabl[ing] Hobbes to stage one final and overarching rhetorical coup', which was to persuade 'subjects of absolute sovereigns that they are no less entitled to think of themselves as possessing *libertas civilis* than those who live in democracies or free states', and thus 'to  
775 present his argument as a theory of citizenship', hence warranting the title, *De Cive*.<sup>79</sup> He finds in *De Cive* 'a tone of determined reassurance' that he contrasts with 'a self-consciously sombre note' in *The Elements* on the subject 'of freedom and subjection'.<sup>80</sup> I cannot agree. I think that Hobbes was not well-intentioned in dealing with the liberty of subjects, a chimerical  
780 freedom in any event given his determinist ontology. Therefore, the confident tone of *De Cive* registers not reassurance, but satisfaction at his success in whittling away the scope for freedom in the epiphenomenal world of law and citizenship. Moreover, I think that my view can be vindicated in terms of the increasing outrage with which Hobbes' doctrine was received as  
785 it progressed through the three works.<sup>81</sup>

*De Cive* marks a self-confessed breakthrough for Hobbes, once he realized that he could give an account in which submission to government that was compatible with 'civil liberty' or *libertas civilis*.<sup>82</sup> In *The Elements*, 'civil liberty' would be an oxymoron, for at this point Hobbes saw freedom and civil society as antithetical. He loudly proclaimed, 'freedom cannot stand together with subjection';<sup>83</sup> and the state of natural freedom 'is the state of him who is not subject';<sup>84</sup> while the state of civil subjection necessarily entails 'loss of liberty'.<sup>85</sup> In *The Elements* Hobbes even referred to the notion of *liberi homines* in civil society as a form of self-deception, arguing that when a man 'calleth himself, though in subjection, a FREEMAN',<sup>86</sup> he is asking 'no more but this, that the sovereign should take notice of his ability and deserving, and put him into employment'.<sup>87</sup> As Skinner remarks, '[h]aving unmasked the vanity of these self-styled and  
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<sup>78</sup>Skinner, *ibid.*, 122, citing Hobbes, *De Cive*, 9.9, 167.

<sup>79</sup>Skinner, *ibid.*, 122–3.

<sup>80</sup>Skinner, *ibid.*, 121.

<sup>81</sup>See Jon Parkin's excellent *Taming the Leviathan: The Reception of the Political and Religious Ideas of Thomas Hobbes in England 1640–1700* (Cambridge, 2005).

<sup>82</sup>Hobbes, *ibid.*, 9.9, 167; Skinner, *ibid.*, 116.

<sup>83</sup>Hobbes, *The Elements*, 27.3, 169; Skinner, *ibid.*, 54.

<sup>84</sup>Hobbes, *ibid.*, 23.9, 134; Skinner, *ibid.*, 54.

<sup>85</sup>Hobbes, *ibid.*, 24.2, 139; Skinner, *ibid.*, 54.

<sup>86</sup>Hobbes, *ibid.*, 23.9, 134; Skinner, *ibid.*, 79–80.

<sup>87</sup>Hobbes, *ibid.*, 27.3, 170; Skinner, *ibid.*, 80.

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self-deceiving *liberi homines*, Hobbes is ready for his lethally deflating summary':<sup>88</sup>

Freedom therefore in commonwealths is nothing but the honour of equality of favour with other subjects, and servitude the estate of the rest. A freeman therefore may expect employments of honour, rather than a servant. And this is all that can be understood by the liberty of the subject. For in all other senses, liberty is the state of him that is not subject.

Lethally deflating it may be, but Hobbes' account of *liberi homines* is also ruthlessly consistent. In commonwealths, to which the Roman Law principal *liber non servus* still applies given that the institution of indentured service still exists, freemen, unlike servants, could expect to share equally in the honours (also translatable from the Latin as 'offices') conferred by the state. The 'freedom' of the subject in civil society lives on only in the aspiration to office – a tiny space in the seventeenth century – as that which differentiates him from servants or slaves. Of course Hobbes must have been aware of the practice of the sale of offices in seventeenth century France and the context in which it was argued, the Roman Law *merum imperium* debate, to which Bodin's intervention was critical, and this was perhaps his nod to Bodin.<sup>89</sup> A careful check needs to be made of Hobbes' use of the term *servus*, however, which in Latin is equally servant or slave. Nor am I so sure that his position in *The Elements* is so different from his final position in *Leviathan*.

## 6. LIBERTAS CIVILIS, LEVIATHAN, AND THE REPUBLICAN TRADITION

There is certainly a change in emphasis in *De Cive*, where freedom and subjection are no longer antithetical because Liberty is now defined principally in terms of freedom of movement: 'We can say that everyone possesses a greater or lesser amount of liberty, depending on the greater or lesser amount of space in which they are able to move, so that a man who is held in custody in a large prison has more *liberty* than a cramped one'.<sup>90</sup> An outrageous affront to the name of liberty! Civil liberty or *libertas civilis* now is no more than a question of 'the different ways in which a man can move himself', and the more scope for movement he has, 'the more civil *liberty* he

<sup>88</sup>Hobbes, *ibid.*, 23.9, 134; Skinner, *ibid.*, 79–80.

<sup>89</sup>See Myron Piper Gilmore, *Argument from Roman Law in Political Thought, 1200–1600* (Cambridge, MA: 1941).

<sup>90</sup>Hobbes, *ibid.*, 9.9, 167: 'Et est cuique *libertas* maior vel minor, prout plus vel minus spatii est in quo versatur; ut maiorem habeat *libertatem* qui in amplo carcere, quam qui in angusto custoditur'; Skinner, *ibid.*, 116–17.

may be said to possess’;<sup>91</sup> from which it follows that ‘in this sense all servants and subjects are free, who are not chained up or incarcerated’.<sup>92</sup> It is an argument Hobbes will extend in *Leviathan* to insist that there is as much freedom under monarchies as under republics, and in Constantinople as in Lucca, mocking Orientalists and republicans both.

*De Cive* may seem to mark a sea change from *The Elements* in terms of the increasing restrictions on freedom’s ambit, but can we be sure that it is not simply a difference of context that accounts for the difference of emphasis? In *The Elements* Hobbes, addressing the champions of mixed government, made one exception to the rule that freedom was incompatible with subordination to government, and that was for those who lived in a democracy: ‘Aristotle saith well’ that ‘*the ground or intention of a democracy, is liberty*’.<sup>93</sup> I wonder. Is this not another example of Hobbes’ killing irony? Freedom in a democracy is also by fiction: ‘each individual becomes a subject, but the people as a body becomes the bearer of sovereignty’, as Skinner puts it.<sup>94</sup> Only thus is it consistent of Aristotle to maintain ‘*that no man can partake of liberty, but only in a popular commonwealth*’.<sup>95</sup> In direct democracies, such as the Athenian, people rule themselves, but by fiction; whereas in all other cases people do not rule themselves but rather, submit to government. It follows then, ‘seeing freedom cannot stand together with subjection’, that, as in a monarchy, ‘liberty in a commonwealth [which is not a *direct* democracy] is nothing but government and rule’.<sup>96</sup> It is a small step to Hobbes’ claim in *Leviathan* that we cannot infer that a particular man in Lucca has more freedom than in Constantinople, which is just a tautology.<sup>97</sup>

There is written on the turrets of the city of Lucca in great characters at this day the word LIBERTAS, yet no man can thence infer that a particular man has more liberty, or immunity from the service of the commonwealth, there than in *Constantinople*. Whether a commonwealth be monarchical or popular, the freedom is still the same.

Here, Hobbes invokes his famous argument about ‘the silence of the law’: neither in Lucca nor in Constantinople can the state regulate everything and, where it does not regulate, ‘men have the liberty of doing what their own reasons shall suggest for the most profitable to themselves’.<sup>98</sup> More

<sup>91</sup>Hobbes, *ibid.*, 9.9, 167: ‘quo quis pluribus viis movere se potest, eo maiorem habet *libertatem*. Atque in hoc consistit *libertas* civilis’; Skinner, *ibid.*, 117.

<sup>92</sup>Hobbes, *ibid.*, 9.9, 167: ‘quo sensu omnes *servi & subditi liberi* sunt, qui non sunt vincti, vel incarcerati’; Skinner, *ibid.*, 117.

<sup>93</sup>Hobbes, *The Elements*, 27.3, 170; Skinner, *ibid.*, 76.

<sup>94</sup>Skinner, *ibid.*, 76, citing Hobbes, *ibid.*, 20.3, 109.

<sup>95</sup>Hobbes, *ibid.*, 27.3, 170; Skinner, *ibid.*, 76.

<sup>96</sup>Hobbes, *ibid.*, 27.3, 169; Skinner, *ibid.*, 76–7.

<sup>97</sup>Hobbes, *Leviathan*, xxi, §8, 110/140; Skinner, *ibid.*, 162.

<sup>98</sup>Hobbes, *ibid.*, xxi, §6, 108/138.

For seeing there is no commonwealth in the world wherein there be rules enough set down for the regulating of all the actions and words of men (as being a thing impossible), it followeth necessarily that in all kinds of actions by the laws

importantly, Hobbes goes on to argue, restating the extreme position of *De Cive*, 'if we take liberty in the proper sense, for corporal liberty (that is to say, freedom from chains and prison), it were very absurd for men to clamour as they do for the liberty they so manifestly enjoy'.<sup>99</sup> This, as far as he is concerned, clinches the argument about liberty. 905

In the short space of time between his writing *The Elements* and *De Cive*, between the Short Parliament and the Long Parliament, civil war had broken out in England, and *Leviathan* was written in its aftermath. In *Leviathan*, as a consequence, the grand *public law* tradition of liberty as freedom from domination has been reduced to vanishing point. What remains are the *private* freedoms of civil society, freedom of trade, of contract, of domicile, of diet, and the right to live and raise one's children in peace.<sup>100</sup> 910

the liberty to buy, and sell, and otherwise contract with one another; to choose their own abode, their own diet, their own trade of life, and institute [educate] their children as they themselves think fit; and the like. 915

Hobbes never moves far from his original positions, but the change of emphasis is marked. What began in *The Elements of the Law* as a specification of positive rights commonly enjoyed under Roman Law, the right 'to all things necessary for life', such as right of access to 'fire, water, free air, and place to live in',<sup>101</sup> by *Leviathan* becomes a negative specification of *the limits* to liberty. Liberty is now nothing more than the right to the necessities of life consonant with self-preservation. It is hard to imagine a meaner definition, for even animals take this right. Correspondingly, if in *De Cive* freedom was simply the absence of shackles that demarcated a free man from a slave – one more turn of the screw – by *Leviathan* it is completely vacuous, nothing more than freedom of movement, a *reductio ad absurdum* surely designed to mock us all. Brough Macpherson was undoubtedly right to see Hobbes as an early spokesman for possessive individualism, in his emphasis on the economic freedoms the citizen (misnomer though that noble term is in Hobbes), might still enjoy in the private sphere.<sup>102</sup> Moreover, Hobbes could even accommodate those Liberals who persist in seeing a fund of liberty at the heart of his doctrine, in the *in foro interno/in foro externo* distinction and his 920 925 930 935

praetermitted [passed over] men have the liberty of doing what their own reasons shall suggest for the most profitable to themselves.

Skinner does not include this citation.

<sup>99</sup>Hobbes, *Leviathan*, xxi, §6, 108/138. Skinner does not include this argument, expanded slightly in *OL* vol. 3, p. 161. 940

<sup>100</sup>Hobbes, *Leviathan*, xxi, §6, 108/138. Skinner notes, *Hobbes and Republican Liberty*, 168, that in the Latin *Leviathan*, *OL* vol. 3, p. 161, the examples are deleted.

<sup>101</sup>Hobbes, *The Elements*, 17.2, 88; Skinner, *Hobbes and Republican Liberty*, 54.

<sup>102</sup>C. B. Macpherson, *The Political Theory of Possessive Individualism Hobbes to Locke* (Oxford, 1962). 945

permissiveness about private belief,<sup>103</sup> as long as one construes these liberties as no more than the economic freedoms of individuals in the private sphere – which Neoliberalism condones! At what cost to freedom in the grand tradition!

950 Where does this leave Republican Liberty? Skinner too sees freedom as the casualty of Hobbes' system, which is the fork in the road to the future. As it all transpires, the parliamentarians came through unscathed and 'mixarchy', or liberal constitutionalism, as it came to characterize governments from ancient Rome to modern America and France, eventually triumphed, although in Britain as constitutional *monarchy* rather than  
955 republicanism. As for Hobbes himself, he perversely enough became the godfather of libertarianism,<sup>104</sup> that brand of liberty defined as allowing individuals to 'live as they list' – evidence enough that Hobbes on liberty has rarely been understood! Not only do libertarians and liberal constitution-  
960 alists claim in Hobbes the wrong provenance for their views, but they also persist in seeing in his *in foro interno/in foro externo* distinction a well-intentioned gesture in the direction of personal liberty, or freedom of belief. In fact, of course, it is quite the opposite. It merely registers Hobbes' pessimism about the limits to the sovereign's control over a subject's private  
965 beliefs, for the very good reason that they are not in the control of the subject him/her self, but rather the efflux of environmental stimuli.

Only as a consequence of Skinner's painstaking scholarship can we see the series of knots that Hobbes tied in our concept of liberty, hoping to achieve what Henry II and Henry IV of France and their model, the Gallic Hercules, never did achieve, which was to tie the ears of subjects to the lips of their  
970 sovereign, so that they were necessarily constrained to do his will.<sup>105</sup>

But as men (for the attaining of peace and conservation of themselves thereby) have made an artificial man, which we call a commonwealth, so have they

975 <sup>103</sup>For one of the most recent statements of the liberal position and Hobbes's doctrine of the 'internal' and 'external' courts, see Lucien Jaume, 'Hobbes and the Philosophical Sources of Liberalism', in *The Cambridge Companion to Hobbes's Leviathan*, edited by Patricia Springborg (Cambridge, 2007) 199–216.

980 <sup>104</sup>See, for instance, the classic statement by Robert Nozick, *Anarchy, State, and Utopia* (Oxford, 1974).

985 <sup>105</sup>Hobbes, *Leviathan*, xxi, §5, 108/138. Skinner, in 'Thomas Hobbes on the Proper Signification of Liberty', 137. The Gallic Hercules, mentioned by Diodorus Siculus, and the Syrian Rhetor Lucian, was a primitive giant clad only in a bearskin, wielding club and quiver, 'drag[ging] after him a great crowd of men tethered by their ears to his tongue', to stress that in fact this giant did not need clubs, because rhetoric did the trick. See Lucian, 'Heracles' in *Works*, edited by A. M. Harmon (Loeb edn, London, 1913) 1.63. The Gallic Hercules was a feature of the iconography of both Henry II and Henry IV of France, precisely because of this attribute that Hobbes selects. See Lawrence M. Bryant, 'Politics, Ceremonies, and Embodiments of Majesty in Henry II's France', in *European Monarchy, its Evolution and Practice from Roman Antiquity to Modern Times* (Stuttgart, 1992) 12–54; and Patricia Springborg, 'Hobbes's Biblical Beasts, Leviathan and Behemoth', *Political Theory*, 23 (1995) No. 2: 353–75, esp. section 4, 'Leviathan and the Gallic Hercules', 363–9 and notes.  
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made artificial chains, called civil laws, which they themselves by mutual covenants have fastened at one end to the lips of that man or assembly of men to whom they have given the sovereign power, and at the other end to their own ears.

What kings could not do unto men, they have, according to Hobbes, done unto themselves. No classical republican here, no liberal constitutionalist, and no libertarian either!

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