

The background of the book cover is a minimalist landscape painting. It depicts a wide, flat beach in the foreground, leading to a calm ocean. The sky is a uniform, muted grey, creating a somber and contemplative atmosphere. The horizon line is low, emphasizing the vastness of the sky and sea.

CHANGES OF STATE

NATURE AND THE LIMITS OF THE CITY IN
EARLY MODERN NATURAL LAW

ANNABEL S. BRETT

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EARLY MODERN NATURAL LAW

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For Hilary

A NOTE ON THE TEXT

Most of the texts in this book are quoted in translation, which is my own except where otherwise stated. Where I do quote from the Latin, I have normalised spelling, expanded contractions, and omitted accents in accordance with modern conventions, but have kept the original punctuation. For ease of reading I have transliterated the few words of Greek that occur. In terms of editions, I have used a modern critical edition where possible; where not, I have used the first edition or the earliest available to me. I have in almost all cases preferred the vernacular form of proper names; where I have felt that there is a perhaps confusing difference between the vernacular and the Latin form, I have given the latter in brackets. The major exception to this policy is Hugo Grotius, who is so well-known by the Latin form of his name that to use the vernacular would be obstructive. Classical works are cited from the Oxford Classical Text, Teubner or Loeb series, without further details of publication, and by the single name of their author (e.g., Cicero or Seneca). A bibliography of all other works cited appears at the end.

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INTRODUCTION

ON THE THRESHOLD OF THE STATE

This is a book about what the sixteenth-century philosopher John Case called “the sphere of the city.”¹ By it he meant, and I mean, the political space that human beings have constructed as a space in which to live a distinctively human life. “City” here is not “city” in the sense of an urban environment, *urbs* in the Latin. “City” is instead the Latin *civitas*, a civic not a stone structure. Again, this is not, at least in the first instance, *civitas* in its sense as a city like London, but in its sense as synonymous with the *respublica*, the commonwealth. It is what, at the end of our period, Thomas Hobbes would define as nothing other than the state: “that great Leviathan called a Common-Wealth, or State, (in latine *Civitas*).”² It is a metaphysical, not a physical place. And yet it is central to this idea of the city that it is not something immediately given in nature but something that has to be built out of it, just as the walls of the *urbs* have to be built on a patch of ground. Both are constructed by a peculiar kind of agency, human

¹ John Case, *Sphaera civitatis* (Oxford 1588). See fig. 1. The sphere of the city is here depicted by analogy with the celestial sphere, with Elizabeth I as the *mobile primum* or “prime mover,” as the accompanying poem makes clear.

² Thomas Hobbes, *Leviathan* (1651), ed. R. Tuck (Cambridge: Cambridge University Press 1996), p. 9.



Figure 1 John Case, *Sphaera civitatis* (Oxford 1588) © The British Library Board. 8006.b.8.

agency, which itself has to be theoretically constructed as something that is not *unnatural* but is nevertheless distinguished from or discontinuous with all other kinds of natural agency. It is here that the focus of this study lies: not on “the sphere of the city” in itself, but in its aspect as something that is brought into being through processes of differentiation and exclusion on multiple levels.

In this sense, the central theme of this book is the conflicted relationship between nature and the city—the fraught intersection of the political and the natural world—in the natural law discourse of the later sixteenth and early seventeenth centuries, roughly the one hundred years between Francisco de Vitoria and Thomas Hobbes. In the course of this extraordinary century, marked by the outward expansion of European states across the globe and simultaneously by their internal implosion into civil war, the boundaries of political space were fundamentally contested not only at a practical but at a theoretical level, and the dominant (though by no means exclusive) idiom of that contestation was the universalising juridical language of natural law. What was forged in the process, culminating iconically in the Peace of Westphalia of 1648 and Hobbes’s masterpiece *Leviathan* of 1651, is commonly taken to have been nothing other than the modern, territorial nation-state. Here we have, at least in theory, the sovereign state, clearly demarcated as a juridical entity both against other sovereign states and against other kinds of human association; and a fortiori against the world of non-human nature, dominion over which it protects, facilitates, and indeed claims for itself. Three or four hundred years later, however, these clear lines of demarcation that define the state seem decidedly more fragile. They are under pressure conceptually from new theories of international relations, of cosmopolitanism and global justice, and of the moral, juridical, and political status of non-human nature, all of which question the sharp break between “inside” and “outside” upon which the modern state in theory rests.³ And that sharp break, that line of demarcation, is equally under pressure on the ground: from the waves of economic migrants who cross the frontiers of richer states, from the waves of the sea that threaten simply to wash away those of the poorer. It seems an apt moment, then, to look back at the formative moment of the modern state, training our focus precisely on the way that its

³ For “inside” and “outside,” see R. Walker, *Inside/outside: International relations as political theory* (Cambridge: Cambridge University Press 1993); for the challenge to boundaries in multiple senses, see for example S. Caney, *Justice beyond borders* (Oxford: Oxford University Press 2005), and M. Nussbaum, *Frontiers of justice: Disability, nationality, species membership* (Cambridge, Mass.: Belknap Press 2006). James Tully’s *Public philosophy in a new key* (Cambridge: Cambridge University Press 2008), esp. vol. II, draws these several dimensions together in a conception of political philosophy that itself centres upon the crossing of boundaries—*franchissement*—as a practice of freedom.



Figure 2 Thomas Hobbes, *De cive* (Paris 1642). Reproduced by kind permission of the Syndics of Cambridge University Library.

boundaries were theoretically constructed. What we find is not a settled conception but a tense negotiation that is still fruitful for our political thinking today.

I take as the central problem with which natural law discourse in this period wrestles that the city or state must pull away from nature to form itself at the same time as being grounded in nature to motivate and to legitimate it. The Hobbesian colouring of the way I have framed this problematic should be acknowledged at the start. If we look at the famous frontispiece to the first edition of *De cive* of 1642, we can see that it depicts three zones or spheres of being: *Libertas* or freedom, which governs the notorious "condition of meer Nature," a state of war of all against all; *Imperium* or sovereign power, which governs the civic state of peace that flows from the institution of a sword of justice; and *Religio*, religion, which is a depiction of the Last Judgement, above and beyond the two human worlds shown beneath.⁴ The border between the human and the divine—that middle dividing line—is not the subject of this book, deeply ambivalent and contested though it too was and is. Rather, we are concerned with the interface between the two lower pictures, the two figures that look out at us and challenge us for our choice. They are wholly distinct in every respect; the conditions they govern, seen in the background, are equally so. The city defines itself against nature in this sense. And yet at the heart of Hobbes's theory is the possibility of passage between the two, from nature to city and back again: the seeds of each are in each. A distinction that allows for passage, an either/or that is at the same time a mutual implication: this is the fine line that Hobbes's political theory treads; this is the uneasy frontier with which we are overall concerned.

Now it might be objected here that to use Hobbes to frame the entire question is to traduce all the other writers with whom we shall be concerned. For I have so far failed to define precisely what I mean by "nature," and herein lies the whole issue. Hobbes gets his definitional extremes, his either/or, by an animalisation—as his own words suggest, a brutalisation—of human nature outside the sovereign state, where "man is a wolf to man."⁵ But our other authors do not recognise the problem in these terms, because they will never concede that humanity stops at the city gates. Human beings differ from animals not through common subjection to a sovereign, but intrinsically, of their essence: *human* nature

⁴ Thomas Hobbes, *De cive* (1642), from the Latin text as edited by H. Warrender (Oxford: Clarendon 1983). See fig. 2.

⁵ Hobbes, *De cive*, dedicatory epistle to William Cavendish, 3rd earl of Devonshire (ed. Warrender, p. [73]).

is never “*nature nature*.” In consequence, there is a whole sphere of inter-human relationships outside the sphere of the city, governed by a common human nature and a common human justice that is more than simply where the sovereign’s sword falls. Passage between cities is *not* the same as passage between the city and nature: it is illegitimate, and dangerous, to run the two together. By all means talk about the boundaries of the state, but recognise that the boundary between the sovereign state and the broader human community is not the same as the boundary between the state and nature. It is on precisely this distinction that the cosmopolitanism of Francisco de Vitoria and his colleagues—which will constitute our starting point—rests.

These objections are entirely to the point. We shall be talking about legitimate travellers going about their business between cities, about transgressive vagabonds who roam around in the manner of wild beasts, and about the wild beasts themselves. There is a difference that it would be wrong to elide. But I would defend my theme nonetheless. In the first place, to insist on the distinctiveness of human nature does not take away the problem of the interface between the city and nature—the political and the natural—but pushes it one level lower, from the city limit to the limit of the universal human community. That limit is equally constructed and equally contested, as the continuing early modern debate over the existence of natural slaves, and their juridical and political status, so clearly shows. The distinction between human nature and “*nature nature*” is not always so clear-cut. And the boundary of the human in any case implicates the city, for part of what is seen to be distinctively human is the motivation and the capacity to form into political commonwealths. For most of our non-Hobbesian-minded authors, human beings are not only naturally capable of, but naturally desirous of forming into such communities; those who are not are not only on the margins of the state but on the margins of humanity. Finally, Hobbes’s determined stripping-away of the conventional pieties surrounding human nature speaks to a critical sensibility on the whole question of the human, its relationship to citizenship and to rights and its distinction from the animal. By using Hobbes’s polarity as an axis for my own analysis, I do not mean to subordinate the whole of the early natural law tradition to his problematic. Nor do I want to endorse his solution. As we shall see, that solution carries its own difficulties, problems that are more promisingly dealt with in other kinds of contemporary natural law theory. Rather, I use his line of attack to open up some of the key assumptions and lines of argument that structure these theories and give them their characteristic shape.

With this in mind, this book examines the pressures on the relationship between nature and the city, between “inside” and “outside,” from two angles. In a first move, it traces the genesis of the “sphere of the city”

as a distinctive sphere of being contradistinguished against natural being, starting with human nature itself and moving from there to trace the complex juridical universe in which humans alone act and in which they build the political spaces that are commonwealths or states. It is thus about the metaphysical boundaries of the city, the ontological ground on which its structure of laws and rights is erected, and it is about the complex negotiation involved in maintaining those limits in the face of a human life that can be neither wholly naturalised nor wholly politicised. But the book goes on from there to explore “inside” and “outside” in another sense, the sense in which a traveller goes “out” of one city and “into” another. Local motion or locomotion of this kind, metaphysically underprivileged in almost all of our authors because it is not an exclusively human phenomenon, is nevertheless an essential component of political or civilised life as they envisage it. By pressing on the city as a place of travel and stay, the book explores a further dimension of the interface between the political and natural lives of subjects, exposing a critical early modern tension between the commonwealth as a situated space and as a body that of its essence defies situation. It is here that the two senses of *civitas*, a city like Paris and a commonwealth like France, collide. The first kind of city is firmly situated within the walls of the *urbs*. It welcomes or excludes strangers at its gates, and travel is primarily perceived as being between cities in this sense.⁶ The second kind of city is in one way parasitic upon the first, its juridical structure represented by walls and turrets,⁷ its rationale borrowed from the protection and defence offered by those physical barriers. *Civitas* as commonwealth is unthinkable without such cities, places in which people live a civilised life and that spill over from the walls to civilise their environs, as the vista in the background to *Imperium* on Hobbes’s frontispiece so clearly shows.⁸ And yet, as we shall see, the local fixity that marks this kind of city challenges the juridical self-definition of the commonwealth, which must transcend place if it is to constitute itself a self-sufficient or sovereign juridical structure. In Carl Schmitt’s terminology but against his conclusions, *Ordnung* and *Ortung* do not fall easily together in this period; the wall is both representative and insignificant, the commonwealth both placed and placeless.⁹

⁶ See further below, ch. 7, p. 174, n. 23.

⁷ For the representation of *civitas* in this way, see Q. Skinner, *Hobbes and republican liberty* (Cambridge: Cambridge University Press 2008), pp. 47–50.

⁸ From a different perspective, Saskia Sassen stresses the importance of the political economy of urban territoriality, with its associated political culture and judicial structures, to the emergence of the national territorial state: *Territory, authority, rights. From medieval to global assemblages* (Princeton: Princeton University Press 2006), pp. 53–73.

⁹ C. Schmitt, *Der Nomos der Erde im Völkerrecht des Ius Publicum Europaeum*, 4th edition (Berlin: Duncker & Humblot 1997), esp. pp. 13–20, 36–48.