

## Comparisons of the Nature of *Law* and *Duty* in Hobbes and Kant: Leviathan vs. Critique of Practical Reason

### 1. Introduction

First, a statement of purpose: I will undertake a limited analysis of the ethical-moral implications of the issues of *dutifulness* and *legality* in two different philosophical contexts. The two books in question are Thomas Hobbes's "Leviathan" (1651) and Immanuel Kant's "Critique of Practical Reason" (1788). The first book is political philosophy while the latter falls under moral philosophy. Other books by the same authors would perhaps be more equivalent in terms of dealing with the same issues, but I think that these two seminal books represent the essentials of the practical philosophy of the two thinkers. There are clear differences, but also some similarities, in the ethical outlook of these two philosophers. Notably, both philosophers have a strong motivational bias – that is to say, both of them incorporate theories of human folly, striving, reason and emotional drive into their theories: Kant, of course, being a "philosopher of faculties" *par excellence*, fits easily into the psychological camp. His deontological ethics is applied *rationality* (as the name of his book implies). Hobbes, on the other hand, is often interpreted as a thinker of early socio-psychology and even an aspiring anthropologist. Crucially, Hobbes's theory of social formation rests of a kind of *rational* choice theory, compounded by other psychological factors and instincts acting as incentives, including fear (of death and conspiracy). Consequently, both of them have a certain ethics where Reason and "lower" emotions are battling for dominance; they are both *rationalists* (although Kant is an idealist and Hobbes a materialist). So, they are both concerned with human *motivation*, Hobbes in terms of social adaptation and Kant in terms of self-reconciliation.

I have chosen to omit direct quotations in favour of paraphrasing, simply to save space. I think an exegetic reading of the two texts side-by-side would give similar conclusions, or at least I hope so.

### 2. (Outer) Law vs. (Inner) Conscience

In Hobbes, the concept of *Law* refers to the relationship between man and society, whereby it is "objectively" and unequivocally defined as the definite source of *Duty* for the citizens of a Commonwealth. In Kant, on the other hand, Law refers to the relationship between man and his

actions (regulated according to the categories of pure understanding), and a strict distinction is made between “mere” legality and “authentic” (pure, worthy, quasi-holy) inwardly dutifulness. For Hobbes, since *Law=Duty*, all that is required is to act in accordance with the law (externally defined by the sovereign). For Kant, on the other hand, it is *not* enough simply to obey laws grudgingly; no, one has to *feel* the moral imperative as the source and ground of one’s own actions – not as a sensuous (natural, social) or even supersensuous (divine) *external* command but as an *internal* (internalized) imperative of autonomous reason in its pure and practical dimension. Kant would reverse the formulation and say *Duty=Law*, i.e. duty begets responsibility, but duty itself is not the result of any obligation to any “letter of the law.” Good laws are, of course, binding, but bad ones are not if they go in opposition to natural duty. (As we will see, Hobbes would agree on this, but *only on one point*, namely, in relation to the natural propensity towards peace-seeking and self-preservation, or what he calls the *first natural law*. Kant’s conception extends much wider.)

Kant is a philosopher of **pure ethics**. In his scheme of moral duty (the categorical imperative) the will and its maxims are regulated according to the principles of pure practical reason, that is, according to reason’s postulates for categorically regulated *praxis*. Freedom is postulated as not only possible (as in his first critique) but also as *necessary* for the fulfilment of man’s duty as a created being with unique access to the intelligible, supersensible domain.

Hobbes, on the other hand, as a **political** philosopher, is concerned with explaining the cohesive force of society by means of hypothetical scenarios, what calls “state of nature” and “state of civility” – the “bad” and the “good” social condition – or, more accurately, the pre-social condition versus the social condition proper. The Commonwealth (Leviathan) is established via a binding social contract, whereafter the Sovereign rules as the sole, ultimate and unlimited authority. Under *law*, under the Sovereign, man forfeits certain of his natural rights in order to live longer, better and happier and to prosper in peace. There is no account for active, moral citizenship in Hobbes. On the contrary, man’s “choice” is limited to two crucial steps: 1) The renunciation of (non-essential) natural rights in the establishment of the socially coordinating supra-legal authority in the form of the Leviathan and its representative body, the Sovereign. Hobbes defines the Sovereign as an “Artificiall Person” presented as the effective authority and the sole moral arbiter of the society and its (his) subjects. This step corresponds to the move from the dreaded “state of nature” to the state of peaceful coexistence under a common authority. Indeed, Hobbes says people have “chosen” to relinquish their (nonessential) rights and their effective authority in favour of a supervening third party (who, nonetheless, is not, strictly speaking, party to the contract but *above* and *beyond* it). In this sense one has “chosen” subjection. 2) The second step after the first (hypothetical) stage of renouncing one’s effective authority is to live *in accordance with the law*.

One “chooses” to be obedient and a good citizen. But this is simply an extension of the first step, and its natural consequence. One has, of course, certain rights and liberties, but (as we will see) the range of personal authority is highly limited, and effectively mediated by the will of the Sovereign.

A) Kant, then, proposes an *ethical* theory of (active) *creation* of duties for *oneself*.

B) Hobbes presents a *social* theory of (passive) *observance* of duty for *common good*.

### 3. On Effective and Ultimate Causes

To clarify the distinction between Hobbes and Kant, consider the following maxim, presented here in its positive and negative formulations: *Do (not do) onto others that which you would (not) like to have them do onto you*. The question is: how would Kant and Hobbes justify this dictum? In fact, the Golden Rule is an important principle for both philosophers, yet they have different justifications for its validity. It would of course be appropriate to provide in depth commentary on texts at this point, but I will be content to summarize their ethical positions as follows: 1) For **Hobbes**, there is no *natural*<sup>1</sup> justification for this principle. In the state of nature, people have no rational incentive to cooperate with one another (except haphazardly and expecting treachery at every point) since there are no *guarantees* of safety and rule enforcement. Still, there *is* a justification for following the golden rule, but it is a *social* justification: man is bound, by one-sided contract (because the sovereign is not “responsible” to anybody, certainly not to those who wanted him there), to follow the law to the best of his ability - this is duty. Because of this contractual obligation (to one another and to the Sovereign), a guarantee comes into existence which makes it possible to behave in a way that is socially beneficial and, indeed, ultimately beneficial to the individual interests of each citizen (as rational beings concerned with their self-regard). So, ultimately, the social guarantees and pressures of the commonwealth *demand and make possible* the following of the golden rule (although Hobbes would not put it exactly in these terms); the golden rule is binding because *breaking* it would launch people back into a state of anarchy, war and brutish nature. 2) For **Kant**, on the other hand, the situation is altogether different. In his Critique, he makes a famous distinction between “acting *from* duty” and “acting *in accordance with* duty.” The latter implies “merely” law-abidingness - as in when a person pays income tax without really wanting to. The former would be the case if someone really paid income tax willingly, recognizing the necessity for it - even *without* the threat of punishment (from the Sovereign). So, Kant’s

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<sup>1</sup> Of course, just what exactly Hobbes means by “natural” – as in “natural rights – is a difficult question to settle. This is a debate I wish to avoid in my current paper, but it is unclear, at least, whether man’s natural rights are coextensive with “the state of nature” or whether one has, all things considered, certain “natural” propensities towards civility and ethics.

conception of duty goes beyond mere *obedience* and *accordance* with the law. The same with the Golden Rule: it becomes a binding maxim (according to the Categorical Imperative) if and because it stands as a universalizable principle for rational action, taken up *for its own sake*, from a sense of duty. Such individual freedom (to self-legislate) is the *sine qua non* of authentic moral worth for Kant. No such luck for the citizen of the commonwealth in Hobbes. With the sole exception of “natural rights” (and these are vaguely defined and codified) which are always (automatically, as it were) retained, there is no guarantee of autonomy or freedom for the sovereign’s subject. Law is duty; duty is to law. The subject shouldn’t start inventing rules of his own, at least if they conflict with the proper and established laws of the society. So much for self-legislation of one’s action!

Yet, we should remember the central paradox of Leviathan: the subject, precisely to the extent he is completely and without exception without any legislative freedom of his own, is not only the target of the sovereign’s legislative commandments but at the same time the *author* of these very same laws. The subject, before becoming a subject (either through conquest or institution of sovereignty), in *a state of nature* – which is a state of every man against every man or, in Hobbes’s technical terminology, *a state of war* – is the author of his own actions and the executioner of the same. This pre-social state, which Hobbes associates with anarchy (the word literally means “lack of rule”, i.e. lack of the sovereign), is the free state where everything is permitted. Yet one is not free in the *positive* sense: one is only *potentially* happy, prosperous, victorious, successful, wealthy etc... In fact, one is never (or rarely) *actually* any of these things, because in the state of nature (war) one has no guarantees. One may have *the chance* to prove his supremacy over everybody else, but since the outcome depends on the contingencies of one’s life, the hap encounters with other people, the trust (never guaranteed) in other people’s good faith and many other variables, the expected result is longwinded misery and early death: One’s life, in Hobbes’s famous phrase, is “solitary, poor, nasty, brutish and short.” In general, nothing is guaranteed and, in the long run, every little gain (such as property, liberty, happiness, integrity of the person) is endangered in the absence of law and order. So, *without and before* the state of civilized co-existence under the umbrella of the sovereignty, man lives, as it were, expecting everything and getting nothing, while *within and after* the birth of the commonwealth, man lives, expecting perhaps not much but *something* at least, and having his desires reciprocated within the full effect and scope of the law and according to the principles of justice instituted by the sovereign. One can hope, after having given up the absoluteness of one’s freedom, to earn modestly, prudently, commodiously, justly, appropriately and *enough* (where “enough” is defined as “enough to prevent dissatisfaction leading to mutiny”). The difference between the state of nature and the state of civility lies in this expectation of outcome: one exchanges - *not* any absolute freedom of nature’s

paradise – but the illusory, treacherous and hazardous freedom of natural strife and war for the necessary shackles and binds of civilization, in order to *relativize* and *actualize* freedom, i.e. to actualize what in man's pre-civil nature was but a vain expectation of plenty.

So, again, the case is not that in state of nature man is free and in the commonwealth man is enslaved; on the contrary, one is *even freer* to fulfil one's purposes, life plans and projects when the legality of contracts is guaranteed and enforced. It is true that one enters the deal (the social contract) by relinquishing certain rights, but these rights are ultimately not rational (according to Hobbes) – and certainly not inalienable. 1) These rights are not **rational** in the sense of being conducive to furthering one's self-interest. For example, the right to other people's property (remember that property laws do not exist in the state of nature) is not a *rational* right because holding it as a Kantian universal maxim would lead to a state of lawlessness where pure power would determine the security of individual holdings. In such a state, Hobbes holds, one's own interests are not secured against alien threat. Consequently, it is not rational (i.e. not conducive to self-interest) to hold dear the right to other people's property or any other anti-social, anti-commonwealth natural right. Of course, it *is* a rational principle of action if we have absolutely no guarantees of other people respecting our established property boundaries. In such a state of war (defined as the *potentiality* for a conflict between people) the rational course of action is one of maximizing one's acquisitions, but this sort of reasoning is *only* superficially rational, because *even more rational* would be to forgo one's insistence on unlimited, natural rights in favour of a clearly defined and guaranteed system of rights and responsibilities where we can expect (for the most part) to be treated as co-citizens by our neighbours and to focus our attention and time on other things, such as furthering our own life plans and projects without fearing sudden attacks by people conspiring against us. Hobbes expects us to recognize that the state of civility guarantees *not only security but also freedom* (in this limited and positive sense). This is why it is most urgent to respect the Law and be a good citizen. 2) These rights are not **inalienable**. This is more difficult to see based on a reading of Leviathan alone. However, if we think of Hobbes's analysis of society as a rational (even Rationalist) account of *what course of action makes sense* for people, we can see how one could say, somewhat provocatively, that it would be a mistake of reasoning to assume the inalienability of anti-social, non-social and pre-social rights (such as the right to unlimited property acquisition). Some rights, of course, *are* inalienable, such as the first natural law in Hobbes: the principles of peace-seeking and self-preservation. But I will argue that this is the full extent of it, that there is no libertarian argument to be found in Hobbes. In fact, there is not even any *liberal* argument for freedom to be found in Hobbes. For him, freedom is a thing of the (hypothetical-mythical) past – the state of nature – and only of *exceptional* circumstances of the present (such as

threat to life or property). Freedom is that which, as he says, is reserved for the subject outside of the law. So, if there is no law banning public dancing, it is allowed. More seriously, the right to free speech can be allowed, or restricted at will, by the sovereign as he pleases. Consequently, the rights to dancing and free speech are not inalienable rights at all. In fact, even the right of worship and private opinion is subject to restriction. This clearly points to the fact Hobbes considers many rights as dispensable. These same rights, many of them anyway, are held dear by modern commentators on rights, including Kant. To sum up, Hobbes 1) does not value liberty (in the broader sense) very high and 2) has a very restricted and social conception of what counts as inalienable and rational.

Kant, as we know, presents a rational-liberal argument for freedom as the *freedom-to-subject-oneself-to-duty*. For Kant, there is a consciousness which puts forth principles of actions, binding to oneself and others according to rational-universal dictums. For Kant, man (alone) chooses morality, just like men (together), for Hobbes, choose social coexistence. Both present a theory of the genesis of duty. Yet, by contrasting the two thinkers, we reveal also their major differences: 1) For Kant, the source of all morals is practical reason itself. The logic of Kantian ethics never leaves the human being and his or her immediate authority; that is to say, all *duty* is *freely* acquiesced to. One *chooses* a particular (universalizable) pattern of behaviour. There are “objectively” duties for human beings, but these duties are completely rationally self-inflicted – not haphazardly or “however one pleases,” but as the proper, willed course of practical action. Kant opposes any theory where one just follows a custom, a habit or an external law. He doesn’t want to see the source of all morals (the rational subject) subjected to any form of bad faith. And because he opposes all duty-conception that depends on mere externality, he would oppose Hobbes’s theory where one has to obey even bad laws (for Hobbes, in the long run, *any* sovereignty is preferable to anarchy). It is not a virtue to obey laws for their own sake. No: Laws, as duties, need to be *directly externalized manifestations of practical Will*. **Kant presents a theory where there is no difference between the legislator and the subject.** 2) If Hobbes’s theory of social contract formation is hypothetical and illustrative, no one *actually* chooses anything. If the theory is hypothetical, even the *choice* is hypothetical. Consequently there is no “freedom-to-choose” beyond the fact of being born into a given society. And how exactly does one “choose” the place and time of one’s birth? There is no such problem for Kant, because one chooses (ethical principles, social cooperation, Christian faith...) constantly, i.e. one constantly makes the effort to follow one’s conscience and the duties it has set for itself. Hobbesian citizens have “once” (hypothetically) chosen to be subjected to an externalized system of control. Even if its *ultimate* “authority”, as Hobbes claims, is the subject himself (hypothetically), this is little consolation - one can never *at this very instance* revisit this choice and modify, annul or renew it. Indeed, Hobbes claims that the social contract, once

established, can never be revoked. The *effective* authority of the social order is the sovereign who no longer cares what you think. *This is not a choice, but a mouse trap.*

Still, the strange device of *subjecting freedom to law/duty* is shared by Hobbes and Kant:

- 1) For Hobbes, free men have always-already “chosen” unconditional subjection to the Law. Acting according to the law (duty) presents a viable alternative to exercising one’s unrestricted freedom (conscience). Acting in accordance with the (*any*) law is a must.
- 2) For Kant, (autonomous) freedom (of reason and will) is something fundamentally preferable to (heteronomous) obedience to an authority. True freedom *is* acting-from-duty. Being a good citizen *may or may not* correspond to acting from (authentic i.e. self-authored) duty. But the self-legislated duty (as a law) weighs down **as if** it were an external impingement.

#### 4. Theological considerations

One last point of comparison between the two philosophers is the question of how, exactly, does God (as the ultimate source of morals) fit into the social scheme of Hobbes and the psychic scheme of Kant? In the two philosophers, we have surprising similarities regarding the status of God as the ultimate legislator of morality and duty – surprising, because their concepts of duty and law, as seen before, are vastly different. In fact, both of them are Christian thinkers, loosely defined, but both of them are borderline heretics in their *interpretation and use* of Christian doctrine. At any rate, I find it interesting that *God, Nature, Reason and Will* are largely interchangeable in Kant (as dimensions of the same field of explanation). The same goes with Hobbes, for whom “the laws of nature” are “god’s laws” *rationaly* deciphered. Of course, the main difference is the emphasis put on the concepts of Will and Freedom (and Free Will), since Hobbes does not concern himself with any individualistic, phenomenological or liberal accounts of human psychology. For him, the rationality of dutiful obedience to laws does not depend on *choice* except *hypothetically*; not historically or socially or *really*. Laws - whether laws of god, of nature, or of society - are provided as givens in a social context. Laws are presented as maxims to follow, period. Any cognizance of the intricacies of, or justifications for, the given laws is accidental and not necessary for the ordering of society. This goes for divine as well as secular laws. God’s laws are rationally and transparently present, but they do not have to be *believed* any more than one has to *believe* that it is wise or morally appropriate to defend one’s self against a rapist – one simply *has* to defend one’s self against a rapist, and one does so anyway (instinctively, rationally, obviously), so there is no big deal. For Kant, there *is* a big deal, since one would have to define and analyze the practical act of self-

defence from the point of view of universal moral principles. But Hobbes is not a moral philosopher in the modern sense. Overall: for both, *God's laws are rational laws are natural laws*.

## 5. Conclusions

With regard to the aims and purposes (and consequences) of their philosophies, Hobbes and Kant are radically different - so different, in fact, that they could be said to represent opposing poles of moral actant theory. (These statements, as stated in the introduction, concern only the limited domain of the two texts in question, and should not be expanded hastily to cover the field of difference between the two philosophers in respect to their complete *oeuvres*.) Yet we have also noted several key similarities. I think the most important conclusions to draw here are as follows:

**Kant:** The ultimate authority (*the legislator*) of all action and duty, and of all practical precepts, is the mind (Reason/Will/Subject etc.). The executioner is the very same. Mind → Duty → Law.

**Hobbes:** The ultimate authority of the Commonwealth is *man in a state of nature*, but the effective and *unquestionable* authority of society, and also its active legislator and executioner, is the Sovereign. There is no transitive chain similar to Kant's, because the "choice" of instituting sovereignty is not a historical and effective cause to anything, certainly not to particular laws. (Mind →) Sovereign → Law → Duty.

When Hobbes says that the Subject is the author of his own subjection, this *sounds* similar to Kant's idea (at least in his Second Critique) that Reason is the author of its own duties. But the very un-Kantian move in Hobbes is *the renunciation of self-authority*. Kant would probably say that such a renunciation of individual sovereignty (a deputizing of a second or third party) is an act of bad faith. The Kantian scheme of following *lawfully* the *duties* of one's *mind* is a perfectly self-contained (perhaps even solipsistic) account of practical reasoning. There *is*, as we have seen, a realm for natural liberties in Hobbes, but these are rather limited and not *effective* in the everyday operation of social life. The legislative functioning of society is "outsourced" to the monster Leviathan. On the contrary, Kant wants the ultimate *authority* of our morality (which both philosophers agree is *human reason*) to also be seen as its *effective* authority. We are responsible for both *presenting and upholding* conceptions of justice. Our rights are *present* and *actual*, we are always responsible for our choices, and duty is not coextensive with simple law-abidingness. This also elucidates the difference between early Modernity (which Hobbes represents) and the Enlightenment (which Kant represents): rights and responsibilities became seen to be tied to each other in conscience.