

Hobbes and Rawls on Political Power

JOSEPH GRCIC
Department of Philosophy
Indiana State University
jgrcic@indstate.edu

ABSTRACT

The social contract tradition of political legitimacy has a long and complex history. John Rawls believed himself to be working in this tradition of Locke, Rousseau and Kant, but not that of Hobbes whose *Leviathan*, he remarks, “raises special problems.” Rawls never specifies what these problems are but there are indeed very serious problems with Hobbes’ political theory. I argue that Hobbes’ theory is an ideology fashioned in a chaotic social environment where self-preservation was precarious at best. His theory is based on his belief that there were only two alternatives for political order given the human condition as he saw it at the time, chaos or absolute power. This false dichotomy was one that Rawls and most other theorists did not accept. Hobbes’ theory conflicts with Rawls’ conception of rights, the purpose of government, and the nature of the person. Hobbes’ theory is a form of ethical foundationalism and is what Rawls calls a comprehensive doctrine unacceptable in Rawls’ political liberalism.

1. *Hobbes*

John Rawls understood himself to be working in the tradition of Locke, Rousseau and Kant, but not that of Hobbes whose *Leviathan*, he remarks, “raises special problems.”¹ Rawls never specifies what these problems are but there are indeed very serious problems with Hobbes’ political theory and an analysis of his political thought and a comparison with the framework of Rawls will highlight these problems and shed light on both political paradigms.

Hobbes’ political philosophy marks a major break from the ancient Greek and medieval political theories. Rather than base his ideas on the authority of the ancients, revelation or on empirical study of actual societies, Hobbes sought to construct a political theory on what he considered to be a logically deductive basis which he understood to be the only source of certainty. At the same time Hobbes lived in a time of social and religious turmoil and political instability which deeply influenced his thinking.

The foundations of Hobbes’ political philosophy are his metaphysics,

1. Rawls, John, *A Theory of Justice*, Cambridge: Harvard University Press, 1971, p.11, n4.

theory of human nature and ethical theory. Hobbes defended a materialist ontology and saw the cosmos as constituted by nothing more than space and matter in motion. The laws of motion that apply to inanimate objects also apply to animals and humans as well and Hobbes sought to construct his political philosophy in terms of his materialist ontology. As will be evident below, this is especially clear in his writings on human psychology where individual behavior is reduced to the cause/effect movement of the basic passions.²

Ethical theory plays a pivotal role in political philosophy in general but what Hobbes' ethical theory actually holds is in some dispute.³ Hobbes' ethics has often been variously interpreted as a form of subjectivism, objectivism, relativism or egoism. It is clear that Hobbes saw human nature as consisting of two basic passions, desire and aversion. There is no "summum bonum" or highest good but good and evil are relative to human wants. For Hobbes life is a series of desires and when one is satisfied, another replaces it and happiness consists in acquiring what persons desire and avoiding what they hate. What stimulates desire humans call "good" and what arouses hatred humans call "evil." Different individuals may find different things desirable and different things hateful and so good and evil is to that extent relative to the individual. However, Hobbes believed there are universal emotions such as the fear of death and the avoidance of pain that do form the basis of social and political order. For Hobbes, there seems to be no morality in the state of nature prior to the creation of the sovereign before which there are only prudential judgments of one's self-interest.⁴

However, Hobbes analysis of what he calls the "laws of nature," as universal and immutable seem to suggest non-relativistic ethics. Hobbes defines the law of nature as a "general rule found out by reason, by which a man is forbidden to do that which is destructive of his life..."⁵ However, it is fairly clear that given his definition, the apparent contradiction can be made consistent by seeing that the Hobbesian laws of nature are rules of rational self-interest not norms of an absolute ethics independent of society.

Egoism can be held as a descriptive or a normative theory and Hobbes seems to have held both versions. As an empirical theory about human motivation generally termed psychological egoism, it holds that persons are always motivated by and act on the basis of what they perceive to be their self-interest and their good. As an ethical or normative theory it holds that all persons have a basic obligation to act to promote their own interests even to the detriment of others. Although Hobbes states in some of his writings that

2. Hobbes, Thomas, *Leviathan*, A. Martinich, ed., Ontario: Broadview Press, 2005, Part I, Ch. 1, pp. 23-9.

3. Hampton, Jean, *Hobbes and the Social Contract Tradition*, Cambridge: Cambridge University Press, 1986, pp. 42-51, 92-4.

4. *Leviathan*, ch. 6, s7.

5. *Ibid.*, ch.14, pp. 99-103.

not all helping others is irrational, he does claim that sacrificing one's life is always irrational.⁶

For Hobbes, the desire for power is a basic human drive since power is the necessary means for happiness and getting what humans desire. Consequently, the more power one has the more likely one will achieve one's desires. Our desires are, for Hobbes, endless and so is the human need for power which only ends in death.⁷

According to Hobbes, there are two kinds of power, natural and instrumental. Natural power is the power of a healthy body, intelligence and strength. Instrumental power is acquired by virtue of being born into a particular society and social class and includes wealth, reputation, friends, political connections and knowledge. Virtues, for Hobbes, have no intrinsic value but only as a means to power.⁸

An essential component of Hobbes theory of human nature is his belief in human equality. This equality is a physical and intellectual equality in that, as Hobbes puts it, the weakest, under the right circumstances, can kill the strongest.⁹ Since all persons are equal in this sense, all have an endless desire for power to satisfy their desires, and given a scarcity of power and the goods necessary to satisfy desires, competition for power and conflict are inevitable. In addition to the competition for power, the other major cause of conflict are fear of death and injury and the desire for glory. Given such an analysis of human nature a condition without government has some clear implications for Hobbes.

The condition without a common power or authority Hobbes terms the "state of nature." Hobbes does not claim that there was ever such a state throughout the world, but he does believe it is still in existence among the independent nations of the world who have no power over them. He also believed that native Americans were still in such a circumstance.¹⁰

Given the infinite desire for power, the state of nature is, for Hobbes, necessarily a state of constant war and threat of war "of every man against every man." In such a condition, there is no industry, agriculture, private property or civilization at all. Hobbes reinforces his claim that war is the natural state of mankind in some ordinary observations of human behavior. He notes that all take precautions against robbery and violence even in society by locking their doors and other measures for self protection.

The state of nature Hobbes describes is far more stark than in most contract theories being a state without any morality or justice and permeated by a constant power struggle. In this harsh state of nature there are no moral

6. Hobbes, Thomas, *Elements of Philosophy*, Oxford: Oxford University Press, 1986, pp. 24-6.

7. *Leviathan*, Ch. 10, pp. 67-9.

8. *Ibid.*, Ch. 10, p. 71.

9. *Ibid.*, Ch. 13, p. 95.

10. *Ibid.*, Ch. 13, p. 97.

or legal limits to anything and every person has a right to everything even another's life. Life is reduced to such a primitive, violent and crude level that Hobbes call it "solitary, poor, nasty, brutish and short."¹¹

Human beings are, according to Hobbes, rational creatures with an inborn desire for life and pleasure and, as such, seek a way to escape the amoral, lawless and chaotic state of nature they find themselves in. At this point in his argument Hobbes introduces the idea of the "laws of nature" as immutable laws which exist in the state of nature and which are not fundamental moral rules necessary for social order as understood by Aquinas and Locke among others, but rather precepts of prudential reason promoting survival and motivating humans to move to a more secure and comfortable life. The laws of nature give humanity what Hobbes calls the "natural right" to self-preservation. By "right" Hobbes does not mean a moral or legal notion but simply the natural liberty to act in one's own enlightened interest.¹²

In the *Leviathan* Hobbes discusses nineteen laws of nature including such laws that require one to show gratitude, excuse those who ask for pardon, impartiality of judges and not to be judge in one's own case, among other laws. All these laws are reducible according to Hobbes to a form of the golden rule, "Do not do to others which you would not want done to yourself."¹³

The laws of nature as understood by Hobbes can obligate humans in two ways, in "foro interno" or internal forum of mind and "foro externo" or forum of external behavior. Hobbes explains that in our internal conscience, the laws of nature are always valid but not always in actual external behavior when in a state of nature others do not follow them so that obeying the laws of nature (except that of self-preservation) would disadvantage one. Prudential reason guides persons in the state of nature to preserve themselves either through war or peace, whichever is more advantageous.¹⁴

As we have seen, Hobbes' state of nature is a state of war and as such everyone is in danger of being killed, the first law of nature is to escape the condition of war and "seek peace and follow it." The second law of nature follows from the first according to Hobbes and states that people in the state of nature would lay down their right to all things if others agree to the same in the interests of escaping the state of war and moving towards a state of peace and security.

A mutual transfer of rights Hobbes calls a "contract." One can transfer or "lay down a right" according to Hobbes in two different ways. One way is by simply renouncing it and getting nothing for it and the second is by

11. Ibid., Ch.13, p. 99

12. Ibid., Ch. 14, pp. 100-1.

13. Ibid., Chs.15, pp.111. (in *De Cive* he lists twenty laws of nature)

14. Ibid., Ch. 15, pp. 112-8.

transferring it to some individual or group. The latter is what transpires in the creation of the sovereign. As rational beings, humans perform a voluntary transfer of rights for some perceived good or benefit.¹⁵

There are three kinds of contracts and two ways of indicating one's assent to a contract according to Hobbes. A covenant occurs when one party delivers what is agreed to while the other party agrees to deliver in the future. A promise is a contract where both parties agree to deliver something on the future and a gift occurs where one party transfers a right and the other accepts the gift.¹⁶ One way of consenting to a contract Hobbes calls "express" which means saying the actual words of the contract. Another sign of performing a contract without words Hobbes calls by "inference" from silence, some actions or absence of actions. Covenants are void or cease to exist either by forgiveness or by performance.

Given the laws of nature, human rationality and the tendency for self-preservation, Hobbes explains that individuals in the state of nature are in a state of war and so see the need to escape that turbulent state by forming some kind of central power or government. They decide to "confer all their power and strength upon one man or upon one assembly" and so make that person or group the authority to act for each person of the society. Later Hobbes qualifies this by noting that no one can or should give up the right to survival; this then is the only limit to the contract. The actual words of the contract or covenant "I authorize and give up my right of governing myself to this man or to this assembly of men on this condition, that you give up your right to him and authorize all his actions in like manner."¹⁷

However, this agreement need not be unanimous but only a majority decision. If some refuse to consent to the contract, they would be destroyed since they would then be in a state of nature with respect to the others. This agreement creates a "sovereign," a common political power, and what Hobbes calls a "commonwealth" which he also calls the "leviathan." A sovereign created by agreement Hobbes calls sovereignty by "institution." However, a sovereign can also be created by conquest where one commonwealth overpowers another.¹⁸

For Hobbes, a contract is nothing without the power of enforcement or "covenants without the sword are but words."¹⁹ Words cannot keep a contract effective but two ways are effective, the fear of the consequences of breaking the contract and the "glory" of not breaking it or needing to break it. Hence, the sovereign must have all the necessary power to enforce the contract and the people keep their contract strictly out of fear of punishment and death.

15. *Ibid.*, Ch. 15, pp. 117-9.

16. *Ibid.*, Ch. 15, pp. 119-21.

17. *Ibid.*, Part II, ch. 17, pp. 190-2.

18. *Ibid.*, Part II, ch. 19, pp. 143-4

19. *Ibid.*, Part II, ch. 20, p. 149.

Hobbes is careful to make a crucial claim absolutely clear, that the contract, as he defines it, can only be among members of a group, not with the sovereign. He explains that the sovereign cannot be in a contractual relationship with anyone and still remain sovereign and gives an intriguing argument in support of this claim. Hobbes explains, that to be party to the contract, the sovereign would have to contract with the group as a whole or with each individual member. But, Hobbes, notes, that there is no “group” until there is a sovereign and so this contract is impossible. As for making a contract with each individual member, once the contract is made, Hobbes notes, only the sovereign has the power to enforce it hence any individual who claims the contract was violated by the sovereign would have no recourse.

There is an infinite regress argument used by Hobbes. In Hobbes’ perspective, for any contract to exist, there must be an enforcer of that contract. If that enforcer is also party to a contract, then there is a need for another enforcer of that contract, and so ad infinitum. Hence, the sovereign or enforcer can not be party to any contract.

Hobbes goes on to argue that just as the sovereign cannot be party to any contract, he cannot make a contract with any religious institution either. Religion played a central role in the social and political turmoil of the time but Hobbes’ own beliefs are often unclear and generally considered idiosyncratic and outside mainstream theological orthodoxy at the time. Though given his materialist ontology some considered him an atheist and some interpreters still do while others see Hobbes more of a deist where the deity is a supreme intelligence not a personal entity, he maintained that the supreme being was not a spirit but a kind of material being. Hobbes also claimed that the resurrection of humanity will bring back the physical body and saw heaven as a physical place filled with saved resurrected persons. As for Hell, Hobbes took a symbolic view of this doctrine and claimed that unrepentant sinners will simply not be resurrected and so spend eternity as nothingness. His description of religion as essentially a form of political control of society, “Fear of power invisible, feigned by the mind, or imagined from tales publicly allowed [is] religion.”²⁰ supports the interpretation that Hobbes was not a Christian thinker but rather one of the first secularists who was reluctant for obvious reasons to admit it publicly.

Regardless of Hobbes’ actual theological beliefs, it is clear that he saw social upheaval in his own time as due to human nature and the role of individuals who sought to give their interpretation of scripture a political implementation. The only way Hobbes saw to ensure domestic tranquility in an age of religious animosity was to demand that there can be no contract between individuals and God either only between God and the sovereign but

20. *Ibid.*, Part II, ch. 21, p. 159.

he rejected the theory of the divine right of kings. To argue for a separation of church and state would, in Hobbes' political model, place a limit on the sovereign which could only be enforced by another sovereign and the infinite regress argument reappears. Hence, Hobbes concludes, there can be no division between religion and the state and the sovereign has unlimited power to determine the content and expression of religious beliefs.²¹ The church is absorbed into the all-powerful arms of the state in Hobbes' world.

It follows from Hobbes' analysis that there can be no universal church for all churches or religious communities are subject to different sovereigns. All church officials derive their power and authority not from God but from the sovereign. Churches have authority only on spiritual matters as defined by the sovereign. Hobbes did not claim the sovereign had to be a Christian but the citizens had to obey him in any case even to the public rejection of Christianity if that is what the sovereign demanded. However, Hobbes notes that the sovereign cannot control the private thoughts of the people hence the people would be free to believe as they wish as long as they kept it private.

Hobbes observes that some religious sects have claimed that the breaking of the covenant with the sovereign is permitted for it will give them special favors in the afterlife in heaven. Hobbes replies that no one knows what the afterlife is like and whether people will be rewarded or punished. Although most scholars believe he did so incorrectly, Hobbes used quotations from the Bible to support his political views for an absolute sovereign and the subjection of the church to the state.

Hobbes outlines three types of possible sovereigns based on how many individuals rule. Monarchy is rule by one, aristocracy is rule by several and democracy is the rule of many or all. The best form of government for Hobbes, is, once again, the form that can best keep the peace and prevent the state of war of all against all.

Hobbes states that he prefers the monarchical form of rule for several reasons.²² First, the monarch, as any man, seeks wealth and a good reputation. Attaining these goals is based on whether the community is wealthy and peaceful and so, Hobbes concludes, the monarch has an interest in maintaining the common good. A monarch is also more able to receive good advice from wise individuals but other forms of government are not since they are more open to corruption by wealth and seductive demagoguery and so tend to listen only to the wealthy not the wise. A monarch cannot disagree with himself but in a group, there is disagreement, envy and other disruptive emotions. A king can be more consistent in his policies but an assembly given to new members will tend to be more inconsistent in its rule and thus a greater likelihood of war. Hobbes grants

21. *Ibid.*, Part II, ch. 22, p. 167.

22. *Ibid.*, Part II, ch. 22, p. 177.

that monarchy is not perfect either but claims it is better than the alternatives. He notes that under a monarchy flatterers may be enriched by the sovereign and critics crushed, but he believes all forms of government are open to this only more so. Another problem Hobbes mentions with monarchy is that of the problem of succession. Once a king dies his replacement may be an infant or someone else related by blood or someone the sovereign has chosen who is incompetent in various ways. Hobbes believes the sovereign can make plans to prevent this.

As for aristocracy or democracy, Hobbes holds that since there is by definition no common power above them, the individuals will be in a state of nature with respect to each other and so be unable to keep peace in the community. Given his understanding of human nature, a plural sovereign of the aristocracy will self-destruct due to the endless desire for more power on the part of each member. And given that there is no universal binding moral system, no appeal to common values is also possible. The same problems apply to democracies as well in which in addition, there will also be more corruption because it is easier to conceal these activities in governments where many are involved. In *The Elements of Law* Hobbes defines “A democracy is no more than an aristocracy of orators.”²³

From this also follows according to Hobbes that the sovereign can do no injustice since justice is defined by the contract. Given the interpretation that the laws of nature as construed by Hobbes are in essence nothing but prudential norms, then there are no independent moral standards prior to the contract as defined by Hobbes. For Hobbes, justice simply means obeying the contract and injustice is any violation of the same as determined by the sovereign.

Hobbes also argued that the sovereign cannot be divided into different powers as some political philosophers such as Aristotle had suggested. A division into the judiciary, legislative and executive power was impossible for Hobbes since, for Hobbes, any dispute between them requires a supreme power to resolve hence wherever the power resided had the real power and was the sovereign.

The logic of Hobbes’ contract idea makes it clear that since the contract creates moral and legal duties and since there is no contract between the sovereign and the people, there are no moral or legal limits to the sovereign. The logic of Hobbes’ theory clearly entails that the individual has no inalienable rights, except the right to self-preservation, while the sovereign has the right to tax and take any and all goods of the people, make laws, appoint judges, make war and peace, reward and punish, or, in other words, do anything at all. The law is simply the will or whim of the sovereign nor is the

23. Molesworth, William, ed., *The English Works of Thomas Hobbes*, London: John Bohn, 1966; *Elements of Law* p. 128

sovereign subject to it nor can the sovereign be punished in any way. In short, the sovereign Hobbes describes is that of a totalitarian form of government where political power is absolute and wields total power.

In a commonwealth, liberty of the subjects only exists as allowed by the sovereign. Law is a command of the sovereign but the sovereign is not himself subject to the law. Where the sovereign has made no law, the subjects are free to do as they will. As mentioned in the analysis of the contract, the right to self preservation is unalienable and hence the only liberty that a person has in opposition to the sovereign is the liberty of self preservation. If the sovereign loses the ability to protect the people, then the people are free to look for another sovereign,. However, in this case the people are in a state of nature with respect to the sovereign and may be destroyed without injustice as well.

A change in the sovereign can mean a complete revolution in all aspects of Hobbes' society. There is no continuity necessitated between sovereigns but all depends on the will of the new sovereign where tradition and past sovereign acts have absolutely no force or legitimacy in the new commonwealth. Judges have no independence and must interpret and apply the law as the sovereign wishes or pay the consequences.

Hobbes, to his credit, was aware that his paradigm of an unlimited state may sound harsh to some. His reply was simply that the only alternative to an absolute sovereign is civil war, which was far worse as Hobbes saw it. The lack of any sense of an alternative to these two extremes is an indication of the many problematic aspects of Hobbes' political theory.

Having presented a sketch of Hobbes' political ideas, a comparison to the radically alternative theory of Rawls will be clearer.

2. Hobbes and Rawls

Prima facie, the theories of Rawls and Hobbes seem so dissimilar, one defending a totalitarian absolutist ruler and the other a liberal welfare state democratic system, that a comparison seems too obvious to outline. However, there are in fact some similarities and an analysis will illuminate both perspectives and the nature of the contract.

The first question Rawls must consider is under what conditions the decision about the preferred form of government should be made. His answer is what he calls the "original position."²⁴ The original position is what Hobbes called a state of nature except that for Rawls it is purely hypothetical or imaginary. The original position is a thought experiment which includes

24. Ibid., p. 17-22,

what Rawls calls the "veil of ignorance."²⁵

The veil of ignorance is an imaginary veil required by the idea of the original position. It is necessary, Rawls argues, because, following his interpretation and extrapolations from the ethics of Immanuel Kant, it excludes information which is not morally relevant or is a product of factors that are unjust. Information excluded involves gender, social class, race, religion, intelligence, jobs, education, and personality. This information must be disregarded, Rawls claims, because knowing these facts would bias the decision about the basic structure of society.

By excluding the information spelled out by the veil of ignorance, Rawls believes he has reduced each person to the essential core person, what all persons have in common as human beings. All that is left is rational freedom, the understanding of human nature which includes general needs which Rawls calls "primary goods." Primary goods are goods all persons need, regardless of the goals one has. These necessary means include the right to life, liberty, self-esteem, income and wealth.

Given the above description of the choice situation, Rawls claims that "justice as fairness," a form of welfare liberalism, would be chosen by the hypothetical members of the original position. Justice as fairness attempts to blend the central values of democracy, liberty and equality, in what Rawls believes is a more just synthesis. This Rawlsian liberalism is defined by two principles:

1. Equal Rights: Each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others.

2. Social and economic inequalities are to be arranged so that they are both:

a. reasonably expected to improve the condition of the least favored, (difference principle)

b. attached to positions open to all (fair equality of opportunity).²⁶

The first principle is not new but simply guarantees a democratic system where all would have the greatest liberty compatible with the similar liberty of others. These liberties would include those mentioned in the US constitution's bill of rights such as the freedom of speech, religion, and the like.

Rawls accepts that some differences in income and wealth are morally acceptable because he sees them as necessary incentives to motivate people to take on a lengthy education and training and the responsibilities that come with such positions. These inequalities, however, are just only if two conditions are met. The first condition is the difference principle which holds that all economic inequality must benefit the least advantaged or the

25. *Ibid.*, pp.136-42.

26. *Ibid.*, pp. 60-61, 302.

poorest members of society. Rawls believes that people in the original position would accept the difference principle because they would not know if they were in that lowest level of society or not. They would want to make their life the best it could be if they in fact found themselves in that situation. According to Rawls, the amount of economic inequality must be kept at the minimum while still ensuring economic efficiency and the welfare of the lower classes.

The second condition on economic inequality is what Rawls calls the principle of “fair equality of opportunity.” Rawls’ understanding of fair equality of opportunity does not mean equality of result where all have the same income or wealth. He understands that in a free society people will make different choices, have various lifestyles and so have unequal wealth. Fair equality of opportunity does not simply mean the formal equality that there should be no laws excluding a priori certain people from certain jobs, but, rather in addition, it requires the existence of equal starting social conditions for all. This means providing an equally good education and other conditions that influence one’s chances in life. For Rawls, life is a race and a fair race requires all persons start from the same point in the starting line regardless of their socioeconomic origins. With the basic outline of Rawls theory clear, let us consider the relevant aspects of Hobbes’s theory.

3. *Contract*

The social contract theory of state as understood by Rawls is a metaphor for certain values and assumptions about persons, society and what constitutes legitimate political authority and a just society. As already discussed, the Rawlsian contract presupposes an ethical context based on what Rawls calls “considered judgments” which are used to construct the original position; as Rawls puts it, “the principles of justice for the basic structure of society are the object of an original agreement...that free and rational persons concerned to further their own interests would accept in an initial position of equality as defining the fundamental terms of their association.”²⁷ Though there are some suggestions of the possibility of some form of a welfare state even in Hobbes the role of government in Rawls’ vision is one that, in essence as he sees it, maximizes freedom and promotes equality and efficiency.²⁸ This is in stark contrast to Hobbes where the government’s function is to exclusively prevent the dreaded war of all against all which can only be done through an unlimited sovereign which exemplifies as close as possible the opposite of

27. Rawls, *Theory*, p.11

28. *Leviathan* Part II, ch 24.

Rawls' liberal model. These dramatically differing visions of politics flow logically from the differing assumptions and claims of Hobbes and Rawls.

One way of understanding the vast theoretical differences between Hobbes and Rawls is to explore the relationship of the ethical, the factual and the political realms which Rawls calls the difference between the "rational" and the "reasonable." For Rawls, the idea of the rational is a nonmoral concept where individuals act to achieve their goals based on the best evidence and on the efficient means to achieve the goals, which may include immoral acts. The reasonable is for Rawls "a moral idea involving moral sensibility" where "reasonable persons are ready to propose, or to acknowledge when proposed by others, the principles needed to specify what can be seen by all as fair terms of cooperation."²⁹

In *A Theory of Justice* Rawls seems to suggest at one point that the goal in theory was to derive the reasonable from the rational in the context of the original position.³⁰ But in general in *Theory* and in *Political Liberalism* Rawls clearly rejects the idea that one can derive the ethical from the merely factual in claiming that one cannot derive the moral notion of the "reasonable" from the amoral notion of the purely rational.³¹ By contrast, Hobbes theory can be seen as an attempt to derive the reasonable from the rational. It seems fairly clear that Hobbes believes that there is no morality as generally understood prior to the contract since Hobbes claims there is no society prior to the contract, (interpreting the laws of nature as prudential norms) and consequently there can be no relationship in the moral domain between the populace and the sovereign. The transition from the amoral rationality to moral rationality applies only to the contracts among the populace, not with respect to the sovereign.

It is questionable whether to choose a sovereign as Hobbes describes is even rational for individuals. Many critics have noted that Hobbes' contract merely recreates a state of nature at another level, that between the sovereign and the people, thus putting the populace in an even worse condition than before.³² Given Hobbes' description of the state of nature, the only reason people have to obeying their contracts is the fear of punishment, which Rawls would certainly not consider a moral but a prudential reason. The rational selection of sovereign would be impossible in the approach of Hobbes since for Hobbes the pre-political is pre-social and hence no rational evaluation of candidates would be possible. There could be no competition among individuals in a free forum where ideas and policies would be debated.

29. Rawls, *Justice as Fairness*, pp. 6-7.

30. *Theory*, p. 16.

31. Rawls, John, *Political Liberalism*, New York: Columbia University Press, 1993, p. 53.

32. Sorell, Tom, *The Cambridge Companion to Hobbes*, Cambridge: Cambridge University Press, 1996, pp. 208-234.

Hobbes' attempt to derive the reasonable from the rational Rawls would consider questionable at best.

Hobbes' contract is also in conflict with his idea of natural law. Natural law, as understood by Hobbes, are norms of self-preservation and the promotion of rational self interest. To make a contract as Hobbes describes wherein the sovereign is not party to the contract and is in fact not, limited in any way, places the society and the individual in a state of nature and hence a state of war with respect to the sovereign, would be contrary to self-reservation since the sovereign has greater power than any individual in the state of nature. Consequently, the relationship that fundamentally under-determined would be unpredictable and consequently unreliable in protecting one's life.

Hobbes' merging of the ethical and the political leads to other problematic aspects of his theory. The problems emerge whether one interprets Hobbes' contract as hypothetical or as historical or both. Speaking in a historical mode, Hobbes calls the relationship of the independent governments in a state of nature because there is no common power to which they must answer to. Hobbes also mentions the ever-present possibility of a state of nature given the precautions persons take against robbery and crime even in society.

As historical, one could argue that the contract is a practical impossibility without the assumption of a minimal moral social order, which order, according to Hobbes, comes into existence only after the sovereign is created. Given Hobbes' description of the state of nature as having no culture or civilization, it would certainly lack the idea of a contract and all that the contract entails. Specifically, the contract, according to Hobbes, is a process whereby each person contracts with each other starts while the state of nature still exists and only ends in a selection of a sovereign. Since the state of nature still exists while the process starts and continues, the contract cannot be valid since it cannot span the absolute divide for the state of nature and state of society intact since the part in the state of nature is null and void. The impracticality of it is reminiscent of Locke's argument that the right to property cannot be based on consent of all people for by the time this was achieved, all would starve.

If one takes a hypothetical interpretation of Hobbes' contract to avoid the above difficulties, other problems occur at a different level. Hobbes claims that the contract emerges from an amoral state of nature but since the contract is generally understood to be a moral metaphor for an exchange of rights and a creating a relationship of mutual duties and rights, it logically entails the pre-existence of moral notions such as promise keeping, moral rights and duties. But there are no moral or legal rights as commonly understood in Hobbes state of nature but only powers, desires and aversions.

A simple prudential conception of contract is unstable for without a moral context, there are no internal reasons for obedience, hence the need of overwhelming external force of the Hobbesian sovereign.

The merging of the ethical and political has another significant consequence. The sovereign though powerful is not omnipotent or omniscient. Since, as Hobbes saw it, people are egoists it would be in the interest of all to try and break the contract when in their interest. Hobbes answer is that it would be irrational to do this since no one is omniscient and so the risks of being discovered are real and the consequences serious. This answer many find weak for in some situations it may be rational to cheat and try to escape punishment. Hobbes also brings in the religious answer and argues that God will punish the amoralist and contract breaker. But his answer is inconsistent with what Hobbes stated elsewhere that no one knows God's judgments or what will happen in heaven.

There is also empirical evidence that political institutions as understood by Hobbes are not necessary for social order.³³ Based on current social research, there exist what social scientists call "acephalous" groups which have a moral system and a social order but without an institutionalized political structures. These pre-industrial groups have no centralized leadership, minimal role differentiation, or political forms as normally understood. In these small groups, the power of the sovereign is replaced by the power of socialization where the cohesive norms and forces of family, tradition, religious belief and rituals are inculcated and internalized by the members of the community.

Hobbes seems to anticipate the above point when he actually implies that a sovereign as he envisions it is not absolutely necessary for social order. This is apparent when he claims that the state of nature still exists among, referring to the native Americans, the "savage people in many places of America."³⁴ Hobbes adds that they live in a "brutish manner" but nevertheless they do live. Hence Hobbes claims about the need for a sovereign, absolute or limited, is factually false on current evidence and even was inaccurate according to his own assessment. Though granted these groups tend to be small and primitive tribes, it is nevertheless a counterexample to Hobbes' universalistic claim that social order and survival are dependent on an absolutist political superstructure.

Hobbes' claim that no social order is possible without political order leads to other problematic consequences for his theory. His claim that the sovereign cannot make a contract with the group or with the individuals is relevant here. As for the impossibility of making a contract with the

33. Dowse, Robert, E. John A Hughes, *Political Sociology*, New York: John Wiley & Sons, 1972, pp. 25-6, 90-92.

34. *Leviathan*, Part I, ch 13.

individual because the sovereign has the power to ignore and crush the individual, shows once again this is not a contract theory but purely a power relationship. As for the group, Hobbes is clearly assuming that society cannot exist without a political sovereign. Rawls and most social scientists would argue that social order is not based primarily on political institutions but on socialization and the more basic institutions such as the family and religious institutions. Consequently, Rawls would argue, there is indeed a “group” prior to the sovereign and it is therefore possible for the group to enter into a contract.

This argument may be also used against Hobbes when he states that the sovereign can be an assembly. Recall Hobbes states that the sovereign can be a man or an assembly of men. If there is an assembly then there must be some kind of contract among them to ensure coordination and unified action. But since there can be no contract without a sovereign, then there must be another sovereign to enforce that contract and so forth ad infinitum.³⁵

4. *Stability*

Rawls discusses the relation of society and politics in his analysis of social stability. Rawls, like Hobbes, was concerned with the question of political and social stability but their solution to the problem were very different. They both reject anarchism as unfeasible and agree that social order requires the potentially coercive order of a political system but Hobbes believed only an absolute political sovereign could produce stability and social order.³⁶

Rawls’ ideas of a well-ordered society illuminates the contrasting paradigms of Hobbes and Rawls. The desirable society Rawls calls a “well-ordered society.”³⁷ In its ideal form it is a society which promotes the good of its members and is regulated by a public conception of justice. It is a society where all or nearly all accept the basic principles of justice and the basic structure consisting of the main political and social institutions satisfy the principles of justice. Thirdly, a well-ordered society is one where citizens generally and willingly live and act upon their sense of justice.

According to Rawls, a well-ordered society is also a stable society. In general, stability means that the society in question is founded on a firm foundation of human psychology, ethical norms and relevant factual beliefs as indicated by what Rawls calls “reflective equilibrium.”³⁸ A stable society is

35. *Liberalism*, op. cit., pp. 158-9.

36. *Theory*, op. cit., p. 240.

37. *Theory*, pp. 453-462; Samuel Freeman, ed., *Rawls: Collected Papers*, Cambridge: Harvard University Press, 1999, pp. 232-36.

38. *Political Liberalism*, pp. 38-40.

based on a foundation of ethical, social and political considered judgments and as such is not likely to change radically or in an unpredictable manner outside the parameters defined by the basic structure.

There are three different types of stability possible according to Rawls. These Rawls calls stability as a “modus vivendi,” or the “balance of political forces” or stability “for the right moral reasons.”³⁹ In a modus vivendi situation, the parties support a social system not because the system reflects their moral beliefs but because it is a pragmatic compromise preferable to no agreement or a state of war. In stability as a balance of forces, the stability is achieved through the equilibrium of military and political forces in a society divided in a radical manner. In what Rawls calls stability for the right reasons, citizens support the system freely as reflecting deeply held values and beliefs.

A Rawlsian stable society for the right reasons is one where the basic rights and duties as defined by the two principles are woven into the core of the basic structure and given a special priority. Secondly, a stable society is one where the basic principles are an essential part of public reason, the public debate on constitutional issues, and where citizens can persuade each other to solve disputes based on their common values imbedded in the basic structure. The third requirement of a stable Rawlsian society is one where the basic institutions engender the corresponding sense of justice and virtues in those participating in it. These virtues are the habits of reasonableness, fairness, the spirit of compromise and reciprocity. The idea of reciprocity is the idea that all who participate in society and do their part are to benefit from social cooperation according to public and agreed rules.

A society is stable if it meets the three conditions above and to the degree it can overcome what Rawls calls “disruptive inclinations” or temptations to act unjustly.⁴⁰ In stability there is a kind of harmony between the social and political systems and human psychology. A stable social order does not ask too much of its members, as Rawls believes a society based on utility might, nor does it ask too little and so make social order impossible.

Hobbes theory contradicts the Rawlsian idea of well-ordered and stable society on many levels. In Hobbes there is clearly no free acceptance of the basic structure but rather fear is the basis of social harmony. Though entered into to establish peace, there is no guarantee that Hobbes’ sovereign will in fact create peace at all or a peace preferred by the populace since there is no public conception of justice because the sovereign is not party to the contract which defines justice.

The stability operative in Hobbes is of the type Rawls calls modus vivendi or a balance of forces, not for the right moral reasons. In this type of stability, justice between the sovereign and the people cannot meaningfully exist and

39. *Ibid.*, pp. 158-9.

40. *Theory*, 454.

so is not institutionalized in Hobbes' basic structure, even if one could reasonably say there is a basic structure in the Hobbesian state as understood by Rawls.

There is a radical flaw, Rawls would claim, in Hobbes' theory due to Hobbes' claim that the sovereign cannot be party to the contract. A political system based on fear alone is unstable which is why all societies have a process of socialization whereby members internalize the basic norms and beliefs of their society. Without this basic framework, most political theorists would argue that political order would be impossible.⁴¹

5. Division of Power

The merging of the ethical and the political is also central in Hobbes' rejection of the division of powers in the sovereign. A division of powers can only exist in a preexisting context of an independent ethical and social framework and the rule of law which provides a structure wherein potential problems within the division of power can be resolved. Within a context of social and moral structures, a division of power is possible since the government is within the rule of law and embedded in a social framework which regulates the relationship between the different functions of the state. A division of power is incoherent in an amoral and asocial context where power is understood in physicalist terms as energy or the ability to cause change derived from Hobbes' materialist metaphysics. In such a materialist paradigm where power as brute force is operative, a balance of power would be a form of uneasy truce among equals, an unstable situation inevitably reduced to violence and the emergence of a dominant force. Power understood as the legal right to define, implement and enforce norms within a domain defined by constitutional structure has no such paradoxes or limitations.

6. Rule of Law/Bureaucracy

A commonly accepted minimal definition of a legitimate government includes the idea of the authority of an organized monopoly of force within a geographic area, the right to make, apply and adjudicate laws within a framework, and collect taxes to perform the functions of government. All these functions, to distinguish a legitimate government from a criminal enterprise of mere power, assumes that the activities of the state are done in

41. Parson, Talcott, *Toward a General Theory of Action*, Cambridge: Harvard University Press, 1967, pp. 197.

the interest of the common good. In Hobbes' system though the sovereign is created to maintain peace, the nature and reality of the common good is defined and judged by the sovereign.

For Hobbes justice is procedurally defined as any act whatsoever of the sovereign. Since the sovereign is not party to the contract, he cannot, by definition, do any injustice. By definition, any act, even against the common good, is, according to Hobbes, a legal and just act. Hobbes is also clear that, contrary to the classical understanding of the law of nature, the Hobbesian version of the law of nature is not an independent standard of justice for the meaning of what constitutes the laws of nature is determined solely and finally by the sovereign.

Moreover, it is necessarily entailed that there are no political procedures mandated in Hobbes and hence there is no rule of law but rather the rule of men or the rule by decree. Hobbes is definitively within the tradition of legal positivism when he defines law as a command of the sovereign. All laws are created by the will of the sovereign who has the unlimited power to determine their meaning and enforce them.

The rule of law ideal, on the other hand, requires that the law is supreme, that all are subject to the law, and all state functions must be within the defined boundaries of the law. The state must act consistently in applying the law and treat cases which are relevantly similar in similar ways. The rule of law, central to Rawls' conception of a well ordered society and justice, is clearly absent in Hobbes and is another indication of the radical divergence between the two theorists.⁴²

A large complex modern state requires the rule of law which means that society is organized by publicly known and understood general, coherent, complete, consistent and clear determinate set of norms which can guide human behavior. Without it members of a society are not only insecure in their rights but also incapable of planning for the future and taking appropriate actions to meet their goals. The rule of law allows predictability in human interaction and the security of knowing within limits, the possible actions of the state in the future and so plan to avoid unpleasant consequences and aspire to realize desirable state of affairs. All these conditions are absent in the Hobbesian state where the rule of law would be judged an irrational limit on the absolute sovereign. And, interestingly enough, Hobbes claims that one of the principles of the law of nature require that judges be impartial.

Since the sovereign is not limited in any way by the law, Hobbes is essentially advocating a rule by decree wherein the sovereign may issue orders at an ad hoc basis. There would be no predictability, continuity or security and hence social order and economic and social development a

42. *Theory*, pp. 235-43.

practical impossibility. To run a state bureaucracy and large complex society even in pre-industrial age requires a stability and consistency in law and social and political functioning

The rule of law ideal is generally considered to necessitate the independence of the judiciary. The role of the judiciary is to interpret and implement the laws to resolve disputes. It must do so in fidelity to the law and not from fear of negative consequences from the sovereign if it should rule in a manner displeasing to the sovereign. To do so means using rational and consistent criteria of evidence and objective interpretation of the law. Though what is objective is difficult to define in all cases, still the rule of law requires that irrelevant factors such as fear of displeasing the sovereign and fear of losing ones employment or life not be factors in applying the law.

But the independence of the judiciary is impossible in Hobbes for a separation of powers is impossible in his system. Separation of powers is possible if the pre-political is not the pre-social and socialization can shape individuals to act more or less consistently with the main norms of the social group without which social order is impossible.

In addition to the rule of law and closely related to it is the need of modern society for a bureaucracy, a military and advisors. A bureaucracy is, simply put, a trained and somewhat cohesive group of variously skilled and educated functionaries to maintain the necessary functions of government and so maintain social order. The bureaucratic elite exercise governmental power through their positions based, ideally, on their education, training and identity created through common beliefs, values and interests. The power of an elite is also enhanced by the lack of organization, ignorance and apathy of the masses.

To control bureaucrats by threats alone, which is the only tool Hobbes' model would allow, would be impractical and inefficient.⁴³ It would be impossible simply because the sovereign cannot be omnipresent or omniscient to control the bureaucracy by threats alone. The more efficient method according to social theorists would be to regulate the administrative structures through proper socialization and a system of rewards and punishments. To implement such a system is to limit the sovereign and, again, to create a form of an implied contract between the bureaucrats and the sovereign, something Hobbes would not allow.

The second fundamental flaw in Hobbes' approach is to ignore the need for counselors. Given the facts that no human sovereign is omniscient and infallible, there is need for counselors to advise the sovereign on various complex matters which inevitably arise, especially in modern, complex technological societies. But given the unlimited nature of the sovereign's power, candid and objective counsel would be difficult if not impossible to

43. Dowse, *op. cit.*, p.18.

give since advisors would be afraid to give frank and critical advise to the sovereign whose wrath and anger could have no limits. The sovereign, therefore, could not get rational advise and so could not rule rationally.

Finally, to control society the sovereign at the very minimum needs to cooperation of the military and police forces. This implies that the relationship between the sovereign and the military cannot obviously be one of mere coercion for the simple reason that the military has the tools of coercion. The relationship must be one, ideally, of mutual benefit hence, there must be in effect a kind of implied contract and in a sense a divided government, again, something Hobbes rejected, between the military and the sovereign since for the sovereign to rule successfully the armed forces must act in agreement with the sovereign.

7. *Human Nature/Egoism*

In addition to the metaphysical framework, ethical theory and theory of society, political theories must have, either explicitly or implicitly, a theory of human nature. Hobbes' theory of human nature has been critiqued by various commentators as pre-scientific and as overlooking the well-established fact accepted by Rawls, that human nature is plastic and, to a degree, molded by environmental and social forces.

Ethical egoism, as an integral part of Hobbes' theory of human nature, has specifically been subject to much critical analysis.⁴⁴ Egoism has an empirical and normative forms and Hobbes seems to have held both versions.⁴⁵ Hobbes egoistic vision of humanity as asocial and motivated purely by a desire for power and self-interest has been attacked as denying the existence of compassion and social feeling that does seem to exist among at least some people to varying degrees. Ethical egoism has the counterintuitive consequence that makes this altruistic behavior immoral.

Some have claimed that ethical egoism is not an ethical theory at all. As they see it, being moral requires one consider the needs and well-being of others not just that of the agent. Others question the normative theory as not very useful in conflict resolution since non-violent conflict resolution seems to require a consideration of the good of the other.

Others have also questioned whether ethical egoism can be derived from the empirical claim of psychological egoism. This attempt to derive a moral conclusion form purely empirical premises of psychological egoism, even if true, commits the is/ought fallacy.

44. Sorell, op. cit., pp. 167-9.

45. *Leviathan*, ch.6, p. 56.

Rawls rejects Hobbesian egoism and other forms of egoism for several reasons in addition to those discussed above. Rawls believes it is reasonable that principles of justice conform to certain “formal constraints.”⁴⁶ These formal constraints are logical and conceptual conditions necessary if principles of justice will help resolve conflicts and assign basic rights and duties. These formal conditions are, first, that the principles must be general with no reference to proper names or particulars. Generality is necessary because principles of justice are applicable across generations. Principles must also be universal and apply to all moral persons. For example, to hold a principle such as “Everyone is to serve my interests” meets the condition of universality (all) but not generality since it refers to a specific individual, the speaker. The formal conditions include publicity in that all must know what the principles are. Further, principles must help order conflicting claims specifying how claims can be ranked. Finally, principles of the basic structure must have “finality” meaning the principles are to be the highest court of appeal in adjudicating claims morally superior to law and custom and self-interest.

Rawls claims these formal conditions are sufficient to rule out any form of the three types of ethical egoism. The first type of egoism Rawls terms “first person dictatorship”-“Everyone is to serve my interests.”; the second he calls the “free-rider”- “Everyone is to act justly except for myself, if I choose not to.”; and the third form he class “general egoism”: “Everyone is permitted to advance his interests as he pleases.”⁴⁷ For Rawls, the generality requirement rules out first person dictatorship and the free rider form since both have a proper name or a definite description. Generality does not eliminate general egoism but the ordering condition makes general egoism inadmissible for Rawls. General egoism, the type Hobbes seems to be defending, cannot resolve competing claims or rank competing claims since all claims are equally valid. The only recourse is force or cunning. Rawls considers any form of egoism incompatible with the moral point of view.

8. *Comprehensive/Political Doctrines*

Another stark contrast between Hobbes and Rawls emerges in Rawls’ later work *Political Liberalism*. In *Theory*, Rawls presented his theory as an integral part of what he later calls a “comprehensive doctrine” complete with an explicit metaphysics, theory of human nature and an ethical system.⁴⁸

46. *Theory*, op. cit., p.130.

47. *Ibid.*, p. 124.

48. *Liberalism*, op. cit., pp. 12-8.

Hobbes' theory is a comprehensive doctrine since, as we have seen, is a paradigm with all those elements (metaphysics, ethics, theory of human nature, society) typical of traditional political theory.

In *Political Liberalism* Rawls sees a world of ideological and religious pluralism lacking a consensus about metaphysics, human nature and other issues. As such, a comprehensive theory such as developed by Hobbes would be untenable. Indeed, Hobbes' theory and its presuppositions was not widely accepted in his own time, especially given the virulent religious conflicts, that Hobbes correctly saw that a totalitarian sovereign and coercion and terror were the only possibilities for social order. As Rawls points out, unless there is some minimal consensus in the ethical realm, the alternative for social order is the coercive power of the state to establish order. Luckily for Rawls, there is such a minimal consensus in the realm of considered judgements necessary for a legitimate political structure.

9. Conclusion

Hobbes saw the need for conflict prevention and resolution as a condition for social order but confused the need for final authority in conflict resolution with that of absolute authority. Social order requires that disputes be resolved in a systematic and final form for society not to devolve into chaos. The resolution of a conflict need not be absolute power, indeed cannot be absolute, which entails the plethora of problems explored.. What is needed is a limited power in a social system of generally accepted norms, values and procedures which can resolve conflicts in a peaceful manner.

Hobbes' theory is more ideology than philosophy fashioned in a brutal and chaotic social environment where self preservation was precarious at best. His theory is based on his belief that there were only two alternatives for political order given the human condition as he saw it at the time, chaos or absolute power. This false dichotomy was one that Rawls and most other theorists did not accept. Power and coercion are necessary conditions for some minimal social harmony but hardly sufficient.