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Thomas Hobbes Theory of Law and Justice with Contemporary Examples

AYUSHI SRIVASTAVA¹

ABSTRACT

Thomas Hobbes is considered an authoritative English philosopher and the founder of modern political philosophy. He considers himself to be a genuine discoverer of the 'science of politics.' All his political science theory was based on geometrical methods as proof. Such kind of political understanding, which was based on scientific evidence, was very much needed by his country, England because Thomas Hobbes believed that political conflicts were pulling apart his country. He was of the notion that different stands on who was the ultimate political authority in a commonwealth were one of the biggest reasons for 'civil war'. During his time, there was a great disagreement and conflict between the King Charles, and the parliament. In one of the episodes, for a war against Spain and France, king Charles tried to raise funds but his appeal was rejected by the parliament. Such tensions between the two authorities gave rise to a civil war. As a solution to escape this state of war and to maintain peace, Hobbes stated that there should be an unbiased and supreme sovereign power that has a complete say over all the political issues arising in a society. From this arrives his theory of law and justice and this research work aims to uncover the same.

Keywords: *Thomas Hobbes; Natural law; Leviathan; Civil law; Justice; Injustice; Peace.*

I. HOBBS'S DEFINITION OF LAW

Two very famous Latin words were often taken to be correlative by many juridical theorists. These two terms are- *lex and ius*, both could mean law when used². Thomas Hobbes instead of accepting this theory of correlation insisted on the fact that there is a stark difference between *lex and ius*. As for him, *lex* meant 'law', and *ius* meant 'right'³. Hence, there was a great disparity between Hobbes and many theorists like Grotius.

Grotius, in one of his works, specified that the term *ius* has the same meaning and force as the word *lex*. "Whenever *ius* word is taken in the broadest sense as a rule of moral actions imposing

¹ Author is a student at Rajiv Gandhi National University of Law, Patiala, India.

² David Undersrud, *On natural law and civil law in the political philosophy of Hobbes*, 35 HISTORY OF POLITICAL THOUGHT 683, (2014).

³ *Id.*

obligations to what is right (rectum). We need an obligation, for counsels and instructions of every sort, which enjoin what is honourable indeed but do not impose an obligation, do not come under the term lex or ius."⁴ Here, Grotius has tried to distinguish between *lex/ius* and obligations that are not imposed. According to him, *ius* in a broader sense means 'right'. Rights, just like laws, are the compulsory obligations that need to be fulfilled and taken care of by society. Whereas, there are certain instructions and set of rules that are not binding and are based on the discretion of the society. Hence, such orders do not come under the heading of *lex or ius*.

The best example of this in today's time can be "fundamental rights and fundamental duties". Fundamental rights come under the category of basic human rights that are conferred on the citizens whereas fundamental duties are just a moral obligation conferred on the state to maintain the "unity in diversity" of India. This is proven by the fact that, under articles 32 and 226 of the Indian constitution, fundamental rights are enforceable through supreme courts and high courts respectively but fundamental duties are non-enforceable.

Many philosophers used *ius* for 'law' as well as 'right' but Hobbes abrogated this hypothesis and chose to *lex* as a perfect term for the law. As stated by him in his work "Leviathan":

*"For though they that speak of this subject, used to confound 'jus', and 'lex', right and law, yet they ought to be distinguished, because RIGHT, consisteth in liberty to do or to forbear: whereas LAW, determineth, and bindeth to one of them: so that law and right differ as much, as obligation and Liberty, which is the same matter are inconsistent."*⁵ Hence, according to Thomas Hobbes, rights, instead of being obligatory, depend on the liberty to do or forbear. While distinguishing between the two, he simultaneously tries to differentiate between natural law and natural right.

According to Hobbes, selfishness is the basic human nature or in other words, human beings have the personality of evils. Society is based on power. The most powerful evil would dominate the lesser one and hence no one is given a sense of security in such a state of nature. There is a "war of all against all". He stated that "life in the state of nature is solitary, brutish, poor, nasty and small." In such a state of nature, humans have absolute freedom which also becomes a major issue. Society lacks the concept of justice and injustice. There is no place for right or wrong. Each person has a right over everything, but due to the lawlessness that prevails, these rights become meaningless. Thus, this leads to the concept of "supremacy of the most

⁴ *Id.*

⁵ Brian Leiter, Michael Sevel, *Philosophy of Law*, BRITANNICA (Aug. 12, 2016), <https://www.britannica.com/topic/philosophy-of-law/The-early-modern-period-1600-1800>

powerful person in the society.” According to Hobbes, all humans in such state of nature have equal ‘natural rights’ and thus they to protect their own lives, can take help of heinous acts like ‘murder’ and ‘robbery’. There is no authority to maintain law and order which leads to the need for protection and security. “The biggest evil” in the society, thus, takes control into his hands. This is the concept of “social contract” which means, “contract of all with all”⁶. The whole society comes together and appoints a ‘leviathan’ (evil) or king. Absolute power is given to the sovereign and this contract becomes irreversible. Laws made by such sovereigns are natural laws. By following such laws, people can live peacefully even in anarchy. Under such laws, the sovereign prevents people from doing acts that can put their lives and security in danger. Hobbes, thus brings into light, the protection of one’s body and life as a natural right, and the minds of humans themselves are capable of showing the correct path to safeguard this right in the form of natural laws.

This theory of Thomas Hobbes is very relevant even in contemporary times. If we observe the situation today, every nation is at war, either directly or indirectly, with each other to protect its self-interest. This can be seen right from world war I to the trade war between China and America. After World War II, America became one of the most powerful nations and developed organizations like ‘world trade organization (WTO)’, ‘world bank (WB)’, and ‘international monetary fund (IMF)’. Recently rising China has been a great threat to the USA. The war that is going on between India and Pakistan since 1947 is another example. Recent episodes of the surgical strike in response to the URI Attack and operation Bandar (Balakot airstrike) to avenge the Pulwama attack were some bold steps taken by India to safeguard its military and protection. To keep all these nations within a certain boundary of ‘right and wrong’ various platforms on international levels have been created. For example, the United Nations security council (UNSC) is chaired by 5 permanent members covering the most powerful nations in today's time- the USA, UK, France, Russia, and China. The international court of justice (ICJ), the international criminal court (ICC), the permanent court of arbitration (PCA), and the financial action task force (FATF) are few other examples. All nations have a natural right of preserving their self-interest but these nations come together to form various treaties and declarations to protect this right and maintain peace.

Hobbes opposes the doctrine of common law and believes that a sentence becomes a law only if it comes from a delegated authority (sovereign). For he has stated in one of his books

⁶ Sharon A Lloyd, Susanne Sreedhar, *Hobbes's Moral and Political philosophy*, STANFORD ENCYCLOPEDIA OF PHILOSOPHY (Jul. 12, 2020), <https://plato.stanford.edu/cgi-bin/encyclopedia/archinfo.cgi?entry=hobbes-moral>

named *de cive*, “a command of that person (whether man or council) whose instruction is the reason for obedience.”⁷ The essence of command upholds the true meaning of the law as per Hobbes. He has also tried to distinguish between the terms *counsel and command* in his works, *the elements of law* as well as in *de cive*⁸. He has defined counsel or advice as to the instruction that is followed because of their content. In other words, willingness to follow such counsels arise from their content. Whereas, this is the opposite in the case of a command. He states that commands are the instructions that are passed by the proper powerful authority and people follow them not because of their content but because there is the will of the commander or instructor. Thus, the conclusion is that laws are commands and not counsel. Laws are followed by the people because the sovereign wants them to do so.

In *Leviathan* Hobbes further states that since laws originate from the will of the authoritative person, it can be concluded that the main motive of such person behind making the law is his benefit⁹. There must lie some benefit of authority behind such command. In contrast, he says, behind counsel lies the benefit to the person to whom such advice is given and not to the one who is giving it. One of the major differences between counsel and command mentioned by Hobbes is that the command imposes an obligation on the people and hence are deemed to be followed in all possibilities but counsel on the other hand do not impose any kind of obligation as it depends on the will of the person to whom such counsel is given. Furthermore, Commands are always given by some delegated authority whereas counsel can be given by anyone. One of the most important requirements for the law is that it must be declared or in other terms, it must be ‘promulgated’. If a law is made by the legislature but the public at large is not aware of it or the authority fails to ‘declare’ the will of the authoritative person then, it will not come under the category of law. Let us understand this with the current concept that prevails in India, ‘legislature’, ‘executive’, and judiciary form the three organs of the union government. The parliament has the responsibility to pass laws with either a simple or special majority. The executive is responsible for running the administration of the states. They have the responsibility to declare the law and make people aware of them. Whereas, if such laws passed by the parliament conflict with the basic structure of the Indian constitution, then comes into play the judiciary for the rescue mission.

II. HOBBS ON NATURAL LAWS AND CIVIL LAWS

Hobbes mentions the concept of natural laws in his work, *Leviathan*. He defined natural law as

⁷ David Undersrud, *supra* note 2.

⁸ *Id.*

⁹ *Id.*

“a precept, or general rule, found out by reason, by which a man is forbidden to do that, which is destructive of his life or taketh away the means of preserving the same, and to omit, that by which he thinketh it may be best preserved.”¹⁰ As I have already mentioned earlier in this research work that according to Hobbes, the people in such a chaotic state of nature had complete right over their life and body and the same to safeguard it. Hence, natural laws were made by people or sovereign with the help of their reasoning ability and the sole purpose of such laws were to prevent human beings to act in a way that may harm his own life or someone else’s too.

(A) Laws of nature mentioned by Hobbes in *Leviathan*

Hobbes has mentioned nineteen laws of nature in his various works including *Leviathan*, *Elements of law*, and *De Cive*. In the “war of all against all” state of nature, no one, according to Thomas Hobbes, is safe and secure no matter how powerful he may be. Hence, the basic need of people is peace and this is the first law of nature¹¹. Thomas Hobbes, thus, derives the first two laws from nature with the help of ‘reason’. The first law is also described as ‘the fundamental law’ by Hobbes in both *Leviathan* and *de cive* as it is believed that all the other laws are concluded from the first law¹². The end goal of all human beings is to achieve peace. Those who can obtain it or endeavour it should follow it meticulously and those who have not achieved it yet should try all ways to do so until and unless war becomes the only solution. Now the question arises how should this peace be obtained in such a chaotic state of nature? The answer comes as the second law of nature which talks about giving up some rights¹³. Like mentioned previously, in a state of nature, every person has a right to everything and this is the major reason for war. To avoid this and to keep himself safe and protected, a person should be willing to give away his rights to the extent to which he feels necessary. By giving up Hobbes means to renounce or to transfer. By renouncing or transferring his right against any individual, a person does not give the latter some rights which were held by the former previously. Instead, the former tries to enjoy his original rights without any hindrance from the latter. This giving up on rights makes a person duty-bound in the future not to exercise the same rights against whom they have been renounced. There is a big exception to this law. A person cannot give away his right to resist an attack on his body or anything that can put his life in danger.

These two laws can be very well explained with the help of some contemporary examples. We

¹⁰ *Id.*

¹¹ Andre Munro, *State of nature*, BRITANNICA (May. 13, 2020), <https://www.britannica.com/topic/state-of-nature-political-theory>.

¹² *Id.*

¹³ David Undersrud, *supra* note 2.

all know the reason why the United Nations was created, don't we? After the first world war, 'League of Nations' was created with the basic purpose of achieving peace. Unfortunately, it failed to stop the second world war. After great bloodshed in the second world war, United Nations was created in the year 1945, by 51 nations, again with the same aim of maintaining peace and national security, develop healthy relations among the nations, and helping nations to eradicate severe problems like terrorism, poverty, illiteracy and so on¹⁴. At present, 193 nations are members of this organization¹⁵. The story does not end here. There are many examples where two nations, organizations are endeavouring to achieve peace. The recent episode of 'Abraham accord' is one of them. This peace treaty was signed between Israel, UAE, and the USA in August 2020. In the year 2019, the Nobel peace prize was conferred on the Ethiopian president, Abiy Ahmed Ali, as he made certain efforts to secure a peace deal with his neighbouring state, Eritrea¹⁶. In the biggest of events, US-Taliban peace agreements have surely made their place. A peace treaty between India and other countries like Nepal, Srilanka also is an attempt to secure peace. Examples of this theory are infinite.

Moving on to the second law, a very relevant example could be the theory of crime and self-defence. Let's take this concerning the laws in India. When a person gets right to everything, the right to certain heinous acts like murder, rape, robbery, theft, kidnapping, trespassing, infringement of one's privacy, and so on are already acquired by him. Hence by giving away some rights against others, Hobbes means, that to renounce those rights that can endanger the security of an individual himself and others as mentioned above. In India, all the above-mentioned acts come under the category of 'crime' and the one who performs is severely punished by the delegated authority. Hobbes also said that no person should give away the right to resist an activity that can cause him some harm. This can be understood by the provision of 'self-defence' as mentioned in the Indian penal code. If a person kills another or grievously injures him to protect his own body and property, then he is not liable for this murder as he has been given a complete right to resist to save himself. Hence, Hobbes has given great importance to 'self-preservation' in his entire philosophy of natural law.

In the third law of nature, Hobbes uses terms like 'justice', 'injustice', and covenants¹⁷. This law is based on the effectiveness of the second law and hence, is derived from it. According to this law, the shared giving up of some rights will be ineffective if the people who have done so

¹⁴ Jacques Fomerand, Cecelia M. Lynch, Karen Mingst, *United Nations*, BRITANNICA (Jan. 21, 2020), <https://www.britannica.com/topic/United-Nations>

¹⁵ *Id.*

¹⁶ The editors of Encyclopaedia Britannica, *Nobel Prize*, BRITANNICA (Jul. 6, 2020), <https://www.britannica.com/topic/Nobel-Prize>

¹⁷ Andre Munro, *supra* note 11.

do not stick to their obligations. He has explored the word justice in a narrower aspect. As he has mentioned that for him, the fulfilment of the valid covenant is justice whereas its non-fulfilment is injustice.

The next three laws in this series talk about certain moral values which according to Hobbes opens up the path to endeavour peace. These values are gratitude, compliance, and forgiveness¹⁸. Other laws that are based on some of the other moral values are ninth, tenth, eleventh, and twelfth. They talk against pride, arrogance, equity, and equal use of common things respectively. The seventh and eighth laws stand against cruelty and insulting language. The concept of equal distribution is mentioned in laws thirteenth and fourteenth. The next two laws, the fifteenth and sixteenth, talks about the peaceful resolution of disputes by mediation and arbitration. Seventeenth, eighteenth, and nineteenth laws talk about the basic principles that are applicable in the courts today. the eighteenth law is based on a very famous Latin phrase *Nemo judex in causa sua* that means, no one can be a judge in his own cause¹⁹. Hobbes says that if any person will receive any kind of advantage from a certain verdict, then he will not be allowed to judge this particular case. Nineteenth law says that all witnesses should be given equal importance and should be trusted equally. In other terms, no one should show more belief in one particular witness as compared to the rest.

Hobbes in *leviathan* describes civil law as:

*“CIVIL LAW is to every subject, those rules which the common-wealth hath commanded him, by word, writing, or other sufficient sign of the will, to make use of, for the distinction of right, and wrong, that is to say, what is contrary, and what is not contrary to the rule.”*²⁰

The aforementioned definition means that civil laws are those rules and regulations which are given by the commonwealth or sovereign in oral, written, or any other signal. Hobbes has mentioned two important qualities of civil law. The first quality is that these instructions by the sovereign help the people in distinguishing between right and wrong, justice and injustice, and what is to act opposite to the rule and what is not to act opposite to the rule. Talking about the second quality Hobbes says that civil laws are always reasonable²¹. He further explains the meaning of ‘reasonable’ by saying that it does not mean *Juris prudentia*²²(the philosophy of law) or the knowledge and intellect of a court’s judge but it means the reason of commonwealth

¹⁸ David Undersrud, *supra* note 2.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

or the lawmaker's command and thus a civil law cannot oppose the will of the commander.

Some theorists often confuse the concept of natural laws with the theory of divine commands. The one who does so believe that the civil laws are provided by the natural law, they exist simultaneously as a hindrance for the people in the society including the sovereign or the representative of commonwealth. Though these notions by various thinkers are not baseless, Hobbes has rejected them. The base behind such notions of divine commands comes from various phrases stated by Thomas Hobbes in his work *leviathan*. For example, "*the law of nature, and the civil law, contain each other, and are of equal extent.*"²³ This means that civil law is contained by natural laws. Natural law is a less formal version than civil as the former is not written while the latter is a well-written codified law given by the commander. Hence, natural law contains neither more nor less than civil law. Another argument in favour of this relation between civil and natural law can be: In *de cive*, Hobbes states that natural law should be duly followed for the maintenance of peace and a sense of security is needed to follow these laws. This security is ensured by civil laws and thus, civil laws are needed to follow the natural laws.

III. HOBBS ON JUSTICE, CRIME, AND PUNISHMENT

In such a state of war, and among all the selfish human beings (the theory of Thomas Hobbes which suggests that all humans are born evil), things that satisfy the desire of a man are just for him while things that do not do the same are unjust²⁴. As this state of nature shifts itself from that of war to civil society by the means of 'social contract', the terms that fall under the meaning of justice are created through the agreements that are made by the people among one another. As already mentioned before, that all people were naturally entitled to do whatever they want to. Even, murder and other such crimes. But under the second law of nature, as stated by Thomas Hobbes, to maintain and endeavour peace, people should tend to give away some right and this leads to the beginning of 'covenants.' Idea of justice and injustice has been stated by Hobbes in the third law of nature but it is a very narrow discussion²⁵. It's that, the definition of justice is based on the performance and non-performance of covenants as already mentioned before. For Hobbes, a 'just' person is the one who does 'just' acts. Acts that lead the path towards peace. If a just person does something 'unjust' then his nature is not going to change which means he remains 'just' as it is believed that the 'unjust' act may be a result of some

²³ *Id.*

²⁴ Wayne P. Pomerleau, *Western theories of justice*, INTERNET ENCYCLOPEDIA OF PHILOSOPHY, <https://iep.utm.edu/justwest>.

²⁵ The editors of encyclopaedia Britannica, *Natural Law*, BRITANNICA (Aug. 13, 2019), <https://www.britannica.com/topic/natural-law>.

error or provocation. An ‘unjust’ person usually commits acts that contradict the theme of ‘maintaining peace’ and is thus, guilty. He tends to disobey his own words just for the fulfilment of his desires. This is often termed as selfish and evil nature. They tend to do this because they believe that they will get away with it. Here comes the ‘sovereign’ into play to keep a check on such acts and punish those who break rules. Hobbes states, that the terms of justice or the ‘laws of justice’ should be in a codified version and should be implemented with strictness so that no one reasonably tries to break them. Hobbes says, “covenants without the sword are but words, and of no strength to secure a man at all.” For achieving a sense of security, one must sacrifice some of his liberty. According to Hobbes, in a state of nature, all humans have absolute power which opens up the path for a civil war. Hence, the sovereign should restrict some of the freedoms. People often criticized this on the thought that this will make the government extremely powerful, dominating, and corrupt. Hobbes gave a sarcastic reply to this criticism and stated that such a situation is far better than spending our entire lives with the fear of war. For him, the civil laws are similar to ‘artificial chains’ which bind us with the orders of the sovereign authority²⁶. Furthermore, to obey such orders is justice. While to disobey them is considered a ‘crime’ and as a criminal punishment, some kind of evil is inflicted with that who does crime. The reason behind such punishment is to develop a fear in the minds of people to not to break laws and thus, maintain law and order in the society²⁷. The severity of crime should be the decisive factor for the severity of the punishment. A state should not punish an innocent citizen deliberately. The Hobbes theory of justice resurrect the sophist theory and this is in sharp contrast to what other philosophers like Aristotle, Plato stated²⁸. This theory is not justified sufficiently as the basic elements that support it are certainly doubtful. Though it is unjustified to some extent, it can justify things to a great extent. The basic conclusion of Hobbes’ entire theory of justice is that to prevent injustice and maintain law and order, people should sacrifice their liberty as much as they can.

Let us understand this theory with an example. ‘untouchability’ in India has been abolished and the supreme authority has passed the orders in writing (mentioned in article seventeen of the Indian constitution). A ‘just’ person will give away his natural right to practice untouchability while an ‘unjust’ person will continue to do so. The former case highlights the concept of justice while the latter of injustice. Hence, a criminal punishment has been attached with the written orders which work as a deterrent. Without such a deterrent, it would not be

²⁶ Wayne, *supra* note 24.

²⁷ *Id.*

²⁸ *Id.*

possible to enforce this law. Finally, the government and its branches (sovereign authority) must keep a check and punish those who break the rule.

IV. CONCLUSION

The entire crux of Thomas Hobbes's philosophy on law and justice is that the basic need of civil society is peace. The ultimate end of all the natural and civil laws should be the establishment of peace. On the same grounds, Hobbes mentions the nineteen natural laws, which serve as a way out of the war and to civil society. He gives absolute power to the sovereign and suggests people follow all the orders religiously. The vision of Thomas Hobbes is real and very much applicable to politics in recent times. He has given importance to moral traits like honesty and forgiveness. All his thoughts were centered around the civil war that broke out in England between the king and the parliament and thus, all his theories can be very well connected with war and peace.
