

Hobbes and the theory of social contract as the context for Kant's political philosophy

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If we are to deal with Kant's political theory, we must put it in the context of social contract theories. The theory of social contract has a central place in Kant's political theory and by placing it in this tradition, we shall be able to see where his theory is in accordance with the tradition, and where it differs from it.

Social contract theory as a mode of political thought has dominated the Age of Enlightenment, but we can also see a revival of such theories in today's political philosophy. We can trace the origins of social contract theory in ancient and medieval thought to Augustine, who built on Seneca and Cicero, to William of Ockham and Nicholas Cusanus, and find a number of basic elements for such a theory in Francisco Suarez, a Spanish writer who saw common political consent as necessary for people to be gathered together in one political body. Talking about its origins, we can also mention the tradition of natural law theory, developed by Grotius, Althusius, Lipsius and Selden, which was subsequently included in a large part in theories of social contract by many of its greatest authors.

The idea of individual moral autonomy, grown within the movements of Reformation and Protestantism and applied to politics, provided the intellectual basis for a social contract theory. At its heart is the idea that legitimate government is the artificial product of the voluntary agreement of free moral agents, and that there is no »natural« political authority. So its basic preoccupations are questions of legitimacy of the state and of consent of the people to the form of government.

The golden age of social contract theory was the period 1650-1800, beginning with Hobbes's *Leviathan* and ending with Kant's *Metaphysical Elements of Justice*¹ and it also includes writers such as Locke, Rousseau and Spinoza.

So let us first take a look at Hobbes's classical theory of social contract which was the basis for all the following social contract theories. Hobbes's purpose was to give the theory of stable and human commonwealth and the theory of sovereign power within it as its precondition. Commonwealth or civil society is an »artificial« product, established by each of its members with his consent as an act of will, what distinguishes it from »state of nature«. Thus Hobbes says:

1. See David Miller et al., eds., *The Blackwell Encyclopaedia of Political Thought*, Basil Blackwell, Oxford 1987, article *Social Contract* by Patrick Riley.

»The right of all sovereigns is derived originally from consent of every one of those that are to be governed.«²

Hobbes's theory of social contract, and the same can be claimed for all contractarianism, is a doctrine of »will and artifice«, as maintains Michael Oakeshott. We shall to some extent follow Hobbes's argument with his brilliant and famous *Introduction* to the 1946 edition of *Leviathan*. Oakeshott points out one fundamental conclusion which underlies all Hobbes's political theory and contains what was in Hobbes's view the fundamental »law of nature«:

»Where there is a number of men, felicity is impossible of attainment unless each man acts so as not to do to another what he would not have done to himself.«³

The conditional and negative form of the conclusion are both essential, claims Oakeshott, because conclusions of reasoning are necessarily conditional and because Hobbes's conception of the character of the individual is such that one man can promote the felicity of another only negatively by forbearance, not by activity. Hobbes himself claims that this conclusion belongs to the »unwritten laws«, and explains:

»Unwritten laws are all of them laws of nature.

And first, if it be a law that obliges all the subjects without exception, and is not written, nor otherwise published in such places as they may take notice thereof, it is a law of nature. For whatsoever men are to take knowledge of for law, not upon other men's words, but every one from his own reason, must be such as is agreeable to the reason of all men; which no law can be, but the law of nature. The laws of nature therefore need not any publishing, nor proclamation; as being contained in this one sentence, approved by all the world, Do not that to another, which thou thinkest unreasonable to be done by another to thyself.«⁴

It is not mere coincidence at all, although it may appear as such for someone, that this unwritten law of nature is stated in almost Kantian words. All tradition of social contract theory namely speaks about universal and natural laws in this manner. And the other name for such natural laws, as Hobbes says, is *moral laws*. Hobbes's other conclusions regarding establishment of a commonwealth, logically follows from this first one:

»1) Where there is a number of men, felicity is impossible unless each man is willing, in agreement with each other man, to surrender his natural right to

2. Thomas Hobbes, *Leviathan*, (1651) ed. Michael Oakeshott, Basil Blackwell, Oxford 1946, III, ch. 42.

3. Michael Oakeshott, *Introduction to Hobbes's Leviathan*, in: Thomas Hobbes, *Leviathan*, p. xxxvi. Cf. Thomas Hobbes, *Leviathan*, I, ch. 14, p. 85; I, ch. 15, 103; II, ch. 26, 177; III, ch. 30, 226.

4. Thomas Hobbes, *Leviathan*, II, ch. 26, p. 177.

*pursue his own felicity as if he were alone in the world, the surrender being equal to all men.*⁵

This is the only way of achieving the principal goal of a commonwealth or civil society, namely security of each of its members and maintaining peace, because the exercise of the natural Right, that is unlimited use of power of each individual in pursuing his good, leads in war of all against all, and therefore frustrates those desirable ends. So the exercise of this natural Right must be surrendered equally from all, with a primal agreement and covenant performed by all:

*»2) Where there is a number of men, felicity is impossible unless each man performs his promises under the agreement he makes with each other man.*⁶

Commonwealth members are bound by their covenant, the covenant of surrendering the unlimited natural Right, and therefore this Right cannot be held intact. But this, of course, does not mean, that they had surrendered all means of pursuing felicity. To surrender an absolute right to do something on all occasions does not mean to give up the right of doing it on any occasion. Men are free to do all things that do not frustrate the ultimate end of establishing the commonwealth or – for to maintain that end (that is, peace and security of each member) is the purpose of laws of the commonwealth – that are not forbidden by laws. When law is silent, an individual is sovereign. Therefore:

*»3) Where there is a number of men, felicity is impossible unless it is understood that, notwithstanding any agreement entered into, no man shall be held to have promised to act in such a way as to preclude his further pursuit of felicity.*⁷

This is, in a few short statements, a starting point of the Hobbes's doctrine. But it is also its core, for these conditions are foundations on which the whole theoretical building rests. And every commonwealth, in Hobbes's view, stays with these conditions and collapses, if they are not fulfilled.

The right and only duty of a sovereign, be it a man, or an assembly of men, or, as in the case of England, the King in Parliament, is to make laws. As Oakeshott says, the sovereign has the general duty of being successful,⁸ so he cannot make any laws, but good laws. And such are those that are not frustrating the principal end of commonwealth. Because by making a covenant all the people have established a commonwealth, they have authorized the laws of the sovereign by their consent. *»It is in the laws of a commonwealth, as in the laws of gaming, whatsoever the gamesters all agree on, is injustice to*

5. Michael Oakeshott, *Introduction*, p. xxxvii. Cf. Thomas Hobbes, *Leviathan*, I, ch. 14, p. 85.

6. *Ibid.* Cf. Thomas Hobbes, *Leviathan*, I, ch. 15, pp. 93-6.

7. *Ibid.* Cf. Thomas Hobbes, *Leviathan*, I, ch. 14, pp. 86-7; II, ch. 21, p. 142.

8. *Ibid.*, p. xl.

*none of them,*⁹ says Hobbes. So it cannot be said for any law, made by the authority of a sovereign, that is unjust. But law must also be a good one, that is, needful, made for the good of the people, and necessary, for only such laws have the true aim of a law. It should set hedges and then not stop travellers, but keep them on their way. The good of the sovereign and good of people are inseparable, so the sovereign that has weak subjects, or wants power to rule them at his will, is himself weak. Nor is there the only danger of making unnecessary laws in their superfluity, but it also lies in the fact that in making wrong laws, the sovereign makes laws that are insufficient to defend the people, which is the principal task he must perform.

Hobbes was often accused and condemned as an absolutist or even a totalitarian, but that is not true at all. Indeed he maintains that sovereign power in all commonwealths ought to be absolute,¹⁰ but this claim is easily understood, if we know first that the alternative of such power is perpetual war of every man against every other, and second that in the case where every command or, what is the same, law of the sovereign will can be obeyed or disobeyed by choice, or in the case where we have a number of unauthorised powers in society that can prevent realisation of, or even annulate any law, the result would be the same as in the former case; civil society could no longer exist.

But Hobbes maintains that liberty of the subjects is consistent with the unlimited power of the sovereign,¹¹ if this power corresponds to the demands we describe above, of course. How is this possible?

Although we can distinguish civil law and the law of nature as written and unwritten law, Hobbes maintains that they contain each other and are of equal extent.¹² Laws of nature or moral laws, namely equity, justice and gratitude, are, in the condition of nature, only qualities that dispose man to obedience and peace. They become laws only when the commonwealth is established and when they become civil laws or commands of the commonwealth. Only then are they binding and have the power to punish the breach of such a law.

»The law of nature therefore is a part of the civil law in all commonwealths of the world. Reciprocally also, the civil law is the part of the dictates of nature. For justice, that is to say, performance of covenant, and giving to every man his own, is a dictate of the law of nature. But every subject in a commonwealth, hath covenanted to obey the civil law; either one with another, as when they assemble to make a common representative, or with the representative itself one by one, when subdued by the sword they promised

9. Thomas Hobbes, *Leviathan*, II, ch. 30, p. 227. As we can see, Wittgenstein was not so innovative in this respect.

10. *Ibid.*, II, ch. 20, p. 136.

11. *Ibid.*, II, ch. 21, p. 139.

12. *Ibid.*, II, ch. 26, p. 174.

obedience, that they may receive life; and therefore obedience to the civil law is part also of the law of nature.«¹³

The only reason why law was brought into the world is to limit the absolute and unrestricted natural liberty of men. But as we see, Hobbes's words are not mere constation. They consist in the demand that the relation between civil laws and laws of nature must be such as described.

We can also see why, as Hobbes says, all laws need interpretation,¹⁴ including the laws of nature, the only valid interpretation being that of the sovereign power. For laws must speak equally to all subjects, not being subjected to arbitrary interpretations of different authorities or even each and every individual, as is the case, for example, with the mere laws of nature. One can see in this Hobbes's principal egalitarianism or, on the other hand, authoritarianism, but we shall rather say that this aligns him among the first theorists of the Rule of law, and among the strongest.

In spite of the fact that laws of nature too need interpretation of the sovereign power, civil laws are limited by the laws of nature in the sense that only such law can be made a civil law, which is not contrary to the laws of nature. So Hobbes maintains that subjects are bound to obey all laws, which are not contrary to moral law, that is to say, to the law of nature.

»Which also is evident to any man's reason: for whatsoever is not against the law of nature, may be made law in the name of them that have the sovereign power.«¹⁵

Moral law, or the law of nature, is therefore the limitation of civil law or civil legislation, a fact that has not been pointed out so often about Hobbes's theory. Nor is this all: even the sovereign must act in accordance with the laws he has made. In another case we cannot talk of the Rule of law. So a man has, even if he has a controversy with the sovereign, a liberty to sue for his right in a court of justice.¹⁶ We are thus approaching to the liberty of subjects.

»Liberty, or freedom,« as Hobbes defines it, and this is a classical definition, *»signifieth, properly, the absence of opposition; by opposition I mean external impediments of motion.*«¹⁷ And now follows the passage that Isaiah Berlin would later take as an example of a »negative« definition of liberty:

»A FREEMAN, is he, that in those things, which by his strength and wit he is able to do, is not hindered to do what he has a will to.«¹⁸

The greatest liberty of subjects depends on the silence of the law, although even obedience to the law leaves to a subject the freedom to perform an act

13. *Ibid.*

14. *Ibid.*, p. 180.

15. *Ibid.*, p. 188.

16. *Ibid.*, II, ch. 21, p. 143-4.

17. *Ibid.*, p. 136.

18. *Ibid.*, p. 137.

which the law commands, in a way he holds most appropriate. But the *true liberty* of a subject according to Hobbes, is not one of these, but the *liberty to disobey*. Hobbes therefore asks: »*What are the things, which though commanded by the sovereign, he [the subject] may nevertheless, without injustice, refuse to do.*«¹⁹ We must know, »*what rights we pass away, when we make a commonwealth*«, because »*there being no obligation on any man, which ariseth not from some act of his own*«. ²⁰ So liberty of subjects in a commonwealth, says Hobbes, consists in liberty from the covenants they made. But even the act of man's submission to the authority of the commonwealth, that is, the sovereign, which is at the same time the act of establishing the commonwealth and the institution of sovereignty, consists in both man's *obligation* and *liberty*. This act was, of course, performed with one particular end, namely security of a man and his life in peace and therefore limitations of his liberty as well as the extent of his obligations, are to be justified only from this particular end. So »*it is manifest, that every subject has liberty in all those things, the right whereof cannot by covenant be transferred.*«²¹ Thus subjects have liberty or the right to protect their lives, bodies and persons and not to hurt or injure themselves in any way or abstain from any thing, without which they cannot live. So if interrogated, man does not need to accuse himself or testify against himself. Even »*if the sovereign command a man, though justly condemned, to kill, wound, or maim himself ... yet hath that man the liberty to disobey.*«²²

This liberty to disobey is entirely in accordance with subject's consent, necessary for the existence of commonwealth. As Hobbes states it:

»*Again, the consent of a subject to sovereign power, is contained in these words, I authorise, or take upon me, all his actions; in which there is no restriction at all, of his own former natural liberty...*«²³

The consent is namely, as we already have seen, limited by the end for which commonwealth and the institution of sovereignty were established and exist. Hobbes says in a famous passage:

»*It followeth therefore, that*

No man is bound by the words themselves, either to kill himself, or any other man; and consequently, that the obligation a man may sometimes have, upon the command of the sovereign to execute any *dangerous, or dishonourable office, dependeth not on the words of our submission; but on the intention, which is to be understood by the end thereof. When therefore our refusal to obey, frustrates the end for which the sovereignty was ordained; then there is no liberty to refuse; otherwise there is.*«²⁴

19. *Ibid.*, p. 141.

20. *Ibid.*

21. *Ibid.*, p. 142.

22. *Ibid.*

23. *Ibid.*

24. *Ibid.*, emphasis mine.

We can see clearly enough how easy it was for later writers to build on these grounds. Once the right to refuse a command or disobey authority is proclaimed, one must only expand the list of man's rights or »natural rights« and he could even justify revolution or the people's right to revolution on these grounds. All liberal tradition has been built on this foundation. We have such a case in Hobbes, too. If the sovereign is unable to perform tasks for which his power was instituted, the civil society dissolves again back in the state of nature and a new form of commonwealth could be established. However, if we use term »revolution« for such a process, it must be mentioned that the word »revolution« in Hobbes's time still had its old sense of return to normal condition or restitution, what indicates syllable »re« in the word *revolutio*. It means, therefore, establishing a normal and stable form of civil revolution from absolute monarchy over a wide and a restricted parliament, from that to Cromwell's dictatorship and back over oligarchic mediated forms to restored monarchy under Charles II. The later sense of the word »revolution« as something radically new, as progress and development, appeared only in Kant's time with the French revolution.²⁶

There was a wide discussion about Hobbes's theory of political obligation, from Warender to Macpherson. And if we say with Oakeshott that a man who has authorized the sovereign, and is thus bound by his own act, has therefore also a *moral obligation* to obey the laws of the sovereign,²⁷ we can see that his solution is basically the same as Kant's. The same is true with their theories of society again. So Hobbes could said in his *Behemoth* of English revolution consent. If the subjects have a moral obligation to obey the authority, but may disobey things contrary to the moral or natural law, this is entirely in accordance with Kant's *principle of publicity*. Kant's consideration that enlightenment and progress for society must come from above, from the monarch, is as well close in its spirit with the thinking of Hobbes. Therefore it could be no surprise that both agree in opinion that the sovereign power should not be disputed. However, according to Hobbes, subjects have a general right to petitions, while Kant would reserve a place for complaints about injustice within the limits of the public use of reason and the freedom of press he demanded. But we can agree with Habermas, who rightly says that Hobbes has made room for the development of the concept of *public opinion* and for its influence upon public and political matters.

But Hobbes also knew that the exact extent of rights and liberties of the subjects is not to be found in the books of moral philosophers, that it depended

25. Thomas Hobbes, *Behemoth*, ed. F. Toennies, London 1889, p. 204.

26. See Hannah Arendt, *On Revolution*, Viking, New York 1963, and Reinhart Koselleck, »Historische Kriterien des neuzeitlichen Revolutionsbegriffs«, in: *Vergangene Zukunft*, Suhrkamp, Frankfurt am Main 1979; Slovene translation by Seta Knop: »Zgodovinski kriteriji novodobnega pojma revolucije«, in: *Filozofski vestnik* 2/1990.

27. Michael Oakeshott, *Introduction*, p. lix. Cf. Thomas Hobbes, *Leviathan*, p. II, ch. 21, 141; II, ch. 26, 142, 187-8.

on circumstances, and that there is more liberty in one commonwealth and less in another; a view which will be shared later by Montesquieu.

Hobbes indeed claimed that *auctoritas non veritas facit legem*, that authority and not the truth makes laws. Enlightenment managed to turn this principle around and promote a view, that law must become rational, general, abstract and permanent, being therefore an equivalent to rational truth. This, as we have seen, is not far from Hobbes's theory, in fact his theory contains all these demands, but he is simply not naive. He is rationalist enough to see and acknowledge all these claims, but he knows that authority could not be entirely reduced to truth, and that a certain extent of authority in indispensable. Besides that, we must not forget the fact that Enlightenment was building on his theoretical foundations.

So we cannot agree with Jessop that Hobbes is an untypical English writer and that *Leviathan* is the most non-English book on political philosophy.²⁸ Recent works by historians of political thought such as Pocock, Dunn, Skinner and Tuck, who revived him and the importance of his theory, have even shown that he had no such a little defenders, followers and advocates as Oakeshott thought. His influence has been enormous. It still is and cannot be overestimated; he and his theory resist all attacks upon them.

But his opponents were and are still many. And not only opponents who condemn him, but also those who involve themselves in theoretical controversies with him. Perhaps it is true, as Oakeshott says, »that his age excused in Spinoza what it condemned in Hobbes; but then Spinoza was modest and a Jew, while Hobbes was arrogant and enough of a Christian to have known better.«²⁹

One of the greatest theorists of natural law, Samuel Pufendorf, paid him a critic's tribute, since then repeatedly endorsed:

»Anyone competent in these matters will affirm that he has examined the structure of human and civil society so deeply that few of his predecessors will bear comparison with him. Where he errs he makes us consider matters which otherwise had not occurred to us ... Those who condemn him with most contempt are those who have least read or understood (lectus aut intellectus) him.«³⁰

Also Leibniz, his great contemporary, declared that »he was to be counted among the deepest minds of the century.«³¹ He provided a theoretical construction to solve the problems of modern political theory and with the same gesture, he created a powerful and influential *myth* within a political

28. See T. E. Jessop, *Thomas Hobbes*, Longmans, Green & Co., London 1960, p. 17.

29. Michael Oakeshott, *Introduction*, p. li.

30. Samuel Pufendorf, *De jure naturae et gentium* (1672), Latin-English edition »On the Law of Nature and Nations,« trans. C. H. and W. A. Oldfather, in: *The Classics of International Law*, 1934, preface.

31. Quotation is taken from T. E. Jessop, *Thomas Hobbes*, p. 33.

philosophy, in which respect he is to be compared only with Plato. *Leviathan* is a *minimum condition* of society among individuals and is by no means destructive for them. For civil society is a negative gift; it has no power to bring about man's felicity. It only removes some of the circumstances that frustrate pursuit of felicity, it just makes possible that what is desirable.

All in all, what is so disturbing about Hobbes? His theory is not obsolete as, for example, Filmer's. He is an extremely modern writer; such is his language and so are the problems he dealt with. He is an individualist, nominalist, materialist and a rationalist, even a liberal, though not proclaiming it. He is still contemporary, theoretically stimulating and indispensable as a theoretical reference point. And from here originates the compulsion to refute him again and again.

Hobbes's *Leviathan* is, let's say with Oakeshott, the greatest, perhaps the sole masterpiece of political philosophy written in the English language so his context should be the whole history of political philosophy. We shall now try to place it in that context and examine the influence it had and still has on modern political philosophy.

John Locke is the first of the most famous social contract theorists to come after Hobbes. His theory bears a great deal of Hobbes's influence. The thinking of Hobbes entered his doctrines much deeper than only to the extent, necessary to express a difference in their political opinions, as has long been commonly held. Hobbes's theory was of systematic importance to Locke,³² and though Locke indeed rejected some of Hobbes's conclusions, he used his theoretical construction and modified it, but the basic assumptions remained.

So the framework of the theory of the state of nature and establishing a civil or »political society«, as Locke also named it, is the same in his theory as in that of Hobbes. People voluntarily enter the political society for the means of preservation and security of their property; that is their life, liberty and estate. They have to establish the community with supreme legislative power which should make laws, equal for all members, to prevent their rights and security. So Locke states:

»There, and there only is Political Society, where every one of the Members hath quitted this natural Power, resign't it up into the hands of the Community in all cases that exclude him not from appealing for Protection to the Law established by it. And thus all private judgement of every particular Member being excluded, the Community comes to be Umpire, by settled standing rules, indifferent, and the same to all Parties; and by Men having Authority from the Community, for the execution of those Rules, decides all the differences that may happen between any Members of that Society, concerning any matter of

32. Peter Laslett, *Introduction to Two Treatises of Government by John Locke*, in: John Locke, *Two Treatises of Government*, Cambridge University Press, Cambridge 1988, p. 67-8.

right; and punishes those Offences, which any Member hath committed against the Society, with such Penalties as the Law has established; Whereby it is easie to discern who are, and who are not, in Political Society together.»³³

Those who had not established such common authority or political society to be ruled by laws are still in a state of nature. Of course, the consent of the people to the form of government has the basic role in such theory, so Locke says: »Voluntary Agreement gives the ... Political Power to Governours *for the Benefit of their Subjects, to secure them in the Possession and use of their Properties.*«³⁴ In Locke's theory of social contract or, in his words, *original compact*, men must first agree unanimously to come together as a community and pool their natural powers so that they can act together to uphold one another's rights, then they must agree by a majority vote to set up legislative power and other institutions, and finally impose taxes on the subjects in order to maintain essential operations of the community.

To this point, Locke differs only slightly from Hobbes. Even when Locke claims that people cannot transfer their rights to life and liberty to the arbitrary power of another, we can see that he has just expanded the list of rights compared with those Hobbes wrote about.

Just like Hobbes, Locke understands social contract or the original compact as something that must be constructed, as human construction for which there is no support in nature. And so he further asks what kind of construction should be made so that men would achieve security without being arbitrarily subjected. He is preoccupied with the question of *legitimacy* and is interested in minimal conditions for *legitimate* political society under which it could originate and stay in existence. The first condition, and in this he agrees with Hobbes, is that:

»The Legislative, or *Supream Authority, cannot assume to its self a power to Rule by extemporary Arbitrary Decrees, but is bound to dispense Justice, and decide the Rights of the Subject* by promulgated standing Laws, and known Authoris'd Judges.«³⁵

But this is not enough for Locke. For government must protect men's rights to life, liberty and property. Only in that case will it be legitimate and its power would rest on the consent of the people. Here lies Locke's real shift of emphasis or rather innovation in social contract theory – sovereignty rests with the people, just as men have kept their natural rights to life, liberty and property even when entering civil society. Indeed legislative power in political society is supreme and sovereign. However, its authority depends on the consent of the people, so that we can speak of sovereignty of the people.

33. John Locke, *Two Treatises of Government* (1689), ed. P. Laslett, Cambridge University Press, Cambridge 1988, II, ch. VII, § 87, p. 324.

34. *Ibid.*, II, ch. XV, § 173, p. 383.

35. *Ibid.*, II, ch. XI, § 136, p. 358.

Locke tries to provide a solution which would guarantee desired legitimate civil order. To this end, people should be represented by an assembly which holds legislative power while executive and federative powers remain with the King. Although the King remains sovereign in that that he has a right to dissolve the legislative assembly, is himself answerable to the legislative body. Thus Locke designs a doctrine of division of governing powers, of check and countercheck, in which those who possess authority are limited in their powers and responsible for their actions, for his purpose is to avoid tyranny in any form. By transferring sovereignty to the people and in the doctrine of the division of powers which divides Hobbes's absolute and united sovereignty lies the real contribution of Locke to the history of social contract theory.

Locke is known as a theorist of resistance too. As we have seen, he believes kings also have responsibilities to their subjects, not merely to God. The authority of the government rests on the consent of the people and must maintain this consent and protect the rights of the subjects. If it fails to do so and becomes a tyranny, disobedience and revolt could also be justified, as a means of restoration of proper political order which a tyrant had violated, that is in Polybius's sense of the word »revolution«. Similarly Burke claimed that only tyranny could justify the overthrow of authority. An absolute monarchy is for Locke a form of war, not of government, because men remain in a state of nature with their rulers. So if the rights of the subjects have really been violated, which no authority could determine for certain, those who resist tyranny must appeal to heaven for their justification, and they are responsible to God for the legitimacy of their decision.

It was long held that the whole book from which we take Locke's argument, namely *Two Treatises of Government*, was aimed as an attack on Hobbes. Now we know that this had not been the case. Recent work by historians of political thought has shown that the second book as well as the first was aimed against Filmer. Thus professor Laslett has pointed out:

»If Locke wrote his book as a refutation of Sir Robert Filmer, then he cannot have written it as a refutation of Thomas Hobbes. It is almost as mistaken to suppose that he was arguing deliberately against Leviathan as to believe that he wrote to rationalize the Revolution. There would have been no point whatsoever for the intellectual champion of the Whig exclusionists to produce one more criticism of Hobbes.«³⁶

For Hobbes was a theorist, not a politically important figure. But Filmer represented in itself the established order, against which Locke was fighting. Patriarchalism of Robert Filmer was the right target and Locke had it in mind all the time while writing *Two Treatises*.

36. Peter Laslett, *Introduction*, p. 67.

Another correction concerns the date of composing *Two Treatises* and its political status. Laslett also points out that Locke's »*Two Treatises* is an Exclusion Tract, not a Revolution Pamphlet.«³⁷ That is to say Locke's most influential work have been written as early as ten years before Locke deemed it safe to publish it, its composition therefore belongs to the hot debate about the form of political government in England around 1680. When the book was published in the year following the *Glorious Revolution* of 1688, it was just partly changed and modified to be adapted to the means of justification of the revolution, already carried out. Therefore it is clear that the position he adopts in this work is not just an apology for a succeeded revolution, but a call for a revolution to take place.

At least three other things need to be mentioned about Locke's theory of social contract. The first concerns the theoretical conception of how civil society is derived from the state of nature. For Locke, namely, men are »driven into« civil society by a compulsion of nature itself, but this is not true just for Locke. The same can be said about all tradition of social contract theories, this is one of its main presuppositions. The same can also be shown for Hobbes. Although he, as well as Locke, regards a civil society as an artifact and not as something natural, it is the product of human mental activity, namely of will and reasoning. But this activity belongs to human nature, therefore the cause of civil society lies in nature. Or, as Hobbes says, civil law which is the condition of civil society, is also a part of the dictates of nature.

If we put things that way, we can regard the civil state or living under the law as something belonging to the »nature« of man, and respectively life in a bare state of nature as not worthy of man and his dignity. In that context will later be possible, for example, for Adam Smith to talk about order of »natural liberty«, that is to say lawful order which enables men to enjoy liberty »natural« for them; liberty which is a part of their nature. And if this is so and this is the characteristic of all tradition of social contract theories from Hobbes onwards, the fact that Kant stated things in such a way in his theory cannot be regarded as an innovation of his.

The second remark concerns the status of Locke as one of the greatest theorists and advocates of revolution. We have explain how this word was understood in Locke's time. A later shift or turn-round of meaning of this word can, among other things related to this process, such as an emergence of radical movements, also explain the fact that a great deal of the so-called revolutionary consequences of Locke's theory was later read into his theory by readers of liberal and socialist tradition.

In that fashion was created what one might term the »Lockean paradigm«; a view of history as progressing through different kinds of succeeding

37. *Ibid.*, p. 61.

revolutions. For the right of people to revolt was over-emphasized in this view and because of the fact that this was not even Locke's view, scholars like Dunn, Skinner and above all, Pocock are right to stand against the so-called »Lockean paradigm« and endeavour to bring about a change of paradigm in political thinking. And the central place in this change of paradigm takes the figure of Hobbes and his role as a political thinker.

Thirdly, Locke has articulated the »Law of opinion«, a precursor of the concept of *public opinion* as a basic means of exercising public influence on making laws and the execution of government. For Locke the »Law of opinion« consists of the secret, tacit consent of the people and is connected with reason, for reason is given to men by God and reason is the rule between men. The law of nature itself demands the rule of reason and common equity, thereby law of nature is equated with the law of reason. Once the law of nature is connected with the moral law as being its other name, and both are equated with the law of reason, for Locke as well as for Hobbes, the road is open for Kant's similar theoretization.

Because a fundamental natural right is the right of governing, this right should be brought under the direction of the law of reason. This is to be achieved by representatives drawn from the main body of the governed and forming an assembly, that is a legislative power. Governing by a majority rule, they should act also with responsibility towards the minority, because laws are dependent on common consent, as Locke says. But it is not so simple as Habermas, himself an adherent of the project of Enlightenment too, suggests. He describes this project as a demand, that governing as the execution of will should be replaced by rationality and reason, found in publicity and public opinion. As Burke, an author of the doctrine of virtual representation which Locke implies at all points, later says, government is indeed *not a matter of will*, in which case the will of the people should be superior, *but a matter of reason*,³⁸ which is to be informed in parliamentary debate. It is true that public opinion is of general importance, Burke is very well aware of this, but because it consists not only of reason, but of numerous different, opposed wills of individuals, it should be brought into parliament and have the power of its argument tested in parliamentary debate. In this sense we can then say that public opinion is the only legitimate source of general and abstract, one would say rational, laws.

Locke's theory had an enormous impact, which can hardly be overestimated and was exercised in the American and French Revolutions and the whole history of liberalism, social contract and natural rights theories. From him, the road leads to Rousseau and Kant. However, two writers draw very different

38. Burke used this formulation in his famous *Speech to the Electors of Bristol (1774)* as a definition of virtual or independent representation. Cf. Edmund Burke, *Burke's Politics*, ed. R. J. S. Hoffman and P. Levack, Knopf, New York 1949.

conclusions from his theory. Rousseau prepared theoretical or rather ideological groundings for French Revolution, while Kant denied any right to revolution at all. Two problems which Locke had to deal with, namely the making of general and neutral laws within properly organized political society on the one hand, and acknowledging the role of public opinion on the other, could also be approached on Kant's terms as the noumenal and phenomenal aspect of political life.

We can now move to one of Hobbes's greatest contemporaries, Benedict de Spinoza, who was also strongly influenced by Hobbes's theory of social contract. Spinoza understood his political theory as continual polemic with Hobbes's theory. As we know, he first took over Hobbes's theory of social contract in its original form, but later gradually abandoned it, claiming that it is unnecessary and superfluous. He found it not in accordance with its final consequences and, besides that, with his own basic philosophical suppositions.³⁹

Spinoza abandoned the theory of social contract to give advantage to the view he held more appropriate, namely the view on politics and political matters in terms of power, the other crucial concept in political theory. It is obvious that his conclusions and consequences were radically different from those of Hobbes.

The natural law, in a sense of law which directs human behaviour in the state of nature, claims Spinoza, remains at work in a state or civil society as well. Because he found the theory of natural law on power of the individual as well as any other political body, he claims that with entering civil society men do not give away any rights, but gain even more of them, because they acquire power to do more things. The supposition of social contract and covenant which makes it possible he held as needless and useless, because if one has the power to break it, it can no longer exist. This is one's natural right, for whatever can be done or someone is able to do, by this very fact is already in accordance with natural law. Man has as many rights as he has power.⁴⁰ So rights, of course, cannot be transferred or passed away.

From this aspect, political society is inevitably just an enlarged form of the state of nature, of the war of everyone against everyone else. The state is the totality of the powers of its members and its power is to be measured from there. Its existence and condition depends on balance of powers within it. The same applies to the laws at work in such a state. Spinoza regards as important only the efficiency of laws, no matter by what means they are enforced or carried out. Law is law if it is obeyed, and only thus is to be measured the

39. He adopts Hobbes' theory of social contract in *Tractatus Theologico-politicus*, Amsterdam 1670, and *Ethica*, in: *Opera Posthuma*, Amsterdam 1677. But he no longer speaks of it in his *Tractatus politicus*, also in *Opera Posthuma*. Cf. Benedict de Spinoza, *The Political Works*, ed. A. G. Wernham, Clarendon Press, Oxford 1958.

40. Benedict de Spinoza, *Tractatus Politicus*, II, 4.

ability of a law-giver. It should use passions of individuals so that it would seem as if they are guided by reason.

Like everything in the world, the state has the right and also an obligation to maintain its power and endeavour to prevent its existence. Therein lies its limitation and therefore it must be aware of the consequences of the acts it performs. Thus it should govern according to the good of its citizens and balance the power of its citizens in the best possible way to maintain social bonds. Having no firm guarantees for this desired end, we cannot get rid of the opinion that there is some plan of (god's) providence lying behind his view on political philosophy.

Although the final result could be the same as in Hobbes's case, namely that the state is as strong as the strength of its members, it would be difficult to deny that in Spinoza's theory there is not much place for the rule of law, justice and equity, on which Hobbes and Locke so strongly insist. Although Hobbes claimed, similar to Spinoza, that there exists a restless desire for power in all men and that power is a *conditio sine qua non* of felicity, he invested a great effort to limit the power of individual with the rule of law, in order to prevent him to injure or make injustice to another. We can see no such effort in Spinoza. Regarding covenants that man made as vain, he also undermines the foundations for legal order and opens the way for Rousseau. Even Spinoza's views on the balancing of powers in the state are far from Locke's principal concern to make the separation of powers the basic means of achieving a stable and lasting legal and political order.

Finally we can establish that most of Spinoza's arguments against Hobbes are not arguments against Hobbes at all. Thus is, for example, in the case of rationalism of which he condemned Hobbes. In Hobbes's theory, commonwealth is the creation of will, not of reason, as we have already shown. So the counter argument to his theory, namely that it is unlikely that men would reasonably recognize the benefits of uniting in a commonwealth and then do so, does not and cannot stand.

While Hobbes constructs the theory of social contract and the commonwealth to be regarded as, in Kantian terms, the regulative ideas of reason, we can see Spinoza as occupied with the phenomenal side of the state and political society. From all that has been said, we may be allowed to suggest that Spinoza's theory is closer to democracy, while Hobbes's is closer to liberalism.

We can now move to Rousseau's theory of social contract which is in many ways a Hobbesian theory turned around. Rousseau made famous the word »social contract«. He placed it in relation with the »general will«, which cannot be represented. Both concepts, as they appear in his theory, have foundations in his pessimistic views about civilization and history, which corrupt man and his natural goodness. While the state of nature is peaceful and men exist in it in their natural goodness, social man is competitive and

capable of intentionally harming others. The costs of civilisation are therefore greater than its benefits.⁴¹ So Rousseau admires a rather idealized life in a community such as ancient people were living in and prefers the good of the community to that of the selfish individual.

We can easily see how Hobbes's theory is turned upside down here. While in Hobbes's theory men entered civil society to live in peace, Rousseau stated things opposite. Forgetting that today's community is already a civil society and a civilised one, under the cover of return to nature he offers the destruction of civilised society, to be replaced with the idealized utopian vision of harmony. To such utopian political projects, Burke and Bentham could easily answer that demand for something is not yet a supply of it, and that they have no means of guarantee or preserve what they promise.

Such a society would be ruled by the public, but in such way that it would mean the abolition of any government. Every citizen would be submitted to the community and its general will. There would be no place for privacy. At the same time, all laws must be agreed by everyone, so that political life would become a continual plebiscite. But there would also be no place for public discussions, because he celebrated only the primitive opinion of people, such as they had, in his view, in the »state of nature.« Political life would consist of unanimous public meetings, not of discussions and polemics with rational arguments, consent demanded there would be consent of the heart, not of rational will, for he did not trust the power of an argument as he did not trust a man as he is, but as he should be.

Rousseau therefore succeeds in the most naive way in his imaginary realization of the project of Enlightenment, *veritas non auctoritas facit legem*. Truth therefore entirely substitutes laws and must be the same for all. This would, of course, be democracy, but democracy of non-public opinion.⁴² Rousseau thus set against the notion of negative liberty or freedom, whose development we have followed till now, a concept of »positive freedom« as an answer to the alienation of civilised civil society and a remedy for the evils of civilization. His solution means the destruction of civilisation, its overthrow, if necessary also by violent means. His view of harmony is a harmony of equal minds. Public and common interests prevail over individual and private interests and positive freedom is therefore freedom of one prescribed form of life. So Rousseau's theory of social contract turns the whole tradition of these theories

41. Rousseau explains morally corrupting influence of modern society in his *Discourse on the Sciences and Arts* (1750) and his vision of the development of »natural man« into »social man« in *Discourse on the Origin of Inequality* (1755). He developed his theory of social contract in *Du contrat social* (1762). Cf. Jean-Jacques Rousseau, *The Social Contract*, ed. R. D. Masters, St. Martin's, New York 1978.

42. Jürgen Habermas, *Strukturwandel der Öffentlichkeit*, Herman Luchterhand Verlag, Berlin 1962. Slovene translation by Ivo Štandeker: *Strukturne spremembe javnosti*, Studia humanitatis, Ljubljana 1989, p. 116. About Rousseau, see also ch. 11, 12.

upside down, even Locke's concept of the sovereignty of the people is through his notion of general will modified to the extent that it becomes unrecognizable.

Thus we have outlined the historical development of »social contract« theories and have drawn out a theoretical context, influenced by Hobbes's political philosophy, which is at the same time a necessary context for understanding Kant's political theory, its polemical edges, its strong and also its weak sides. This is a context in which Kant's theory is to be set and compared with. Kant had great predecessors and as every great thinker, he often involved himself in a controversy with them. From that context, his polemical intentions and his success in the polemics is to be measured the real value and consistency of his theory.

Once Kant was involved in the centre of controversies about social contract theory, he primarily had to answer to the challenge presented by Rousseau. He refuse his conclusions and positive solutions, maintaining on the value of the negative liberty and individual autonomy. Yet there remains the question, if he himself succeeded in escaping all the dangers of the concept of positive freedom. Regarding the concept of the division of powers, he returned to Locke. In many other cases, as in insistence on the rule of law, we can say that he returned to Hobbes.⁴³

Because the core of Kant's doctrine of social contract is the same as Hobbes's and his views on many important issues accord to a very considerable degree with that of Hobbes, as we have tried to shown in this paper, while their differences are far more difficult to be pointed out, we could in conclusion suggest that although Kant has often strongly condemned Hobbes, Kant's theory of social contract, that is to say, his political philosophy, is much closer to that of Hobbes that Kant himself would be prepared to admit.

We will end our inquiry into the history of social contract theories here. Given the extent of Hobbes's influence upon those theories, we can say without hesitation that as long as the post-Renaissance modern European state will survive, Hobbes's political theory would be one of the key accounts of it. And probably we can also, although this should be demonstrated in more details than we have the opportunity to do here, say something similar about Kant's political theory.

43. For some informations about Kant's relations to Hobbes, Locke and Rousseau, cf. Roger J. Sullivan, *Immanuel Kant's Moral Theory*, Cambridge University Press, Cambridge 1989, ch. 16, 17, pp. 233-260. Cf. also Hans Reiss, *Kant's Political Writings*, trans. H. B. Nisbet, Cambridge University Press, Cambridge 1970.

