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Law, Order and Freedom

A Historical Introduction to Legal
Philosophy

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Chapter 4

Hobbes, Locke, and Spinoza

4.1 Hobbes

4.1.1 *Life*

Thomas Hobbes was born in 1588 in an English rural town, the son of a hardly literate and alcohol addicted church minister. Hobbes Junior was a typical representative of humanism: at secondary school he already translated a Greek tragedy into Latin; both his first and his last publications were translations of a Greek author into English; he, in addition, spoke fluent French and Italian and wrote poetry in almost all these languages. The most distinguished career possibility for a humanist was to enter into the service of a rich aristocratic family as secretary, private teacher, business representative and general adviser. Hobbes entered into this position with the household of the count of Devonshire. A mandatory climax in the education of a gentleman was the *Grand Tour*, a journey through France and Italy, which Hobbes on three occasions undertook with different generations of this family. Such a tour could last up to 5 years, and provided all kinds of opportunities to meet interesting people. In Venice, Hobbes linked up with distinguished representatives of scepticism.

After 1630, Hobbes started, following his employer, to take an increasing interest, first, in the new military technology, and, subsequently, in the new natural science which lay at its basis. He had a meeting with Galileo, and afterwards discovered in Paris the French philosophers in the circle around Descartes. Their project, to achieve a victory over scepticism with the help of physics, fascinated him, and he thought that he could execute this better than Descartes himself. Hobbes realised that the dualism of ‘thinking’ and ‘extension’ leads to insoluble problems concerning the relation between the two worlds. From 1637 (the year of *Discours de la Méthode*) he started to set down in writing his philosophical ideas.

In these years the political battle between king and parliament reached a peak. King Charles I prepared for an unpopular war to break up the trade hegemony of the Dutch Republic, and for this purpose raised an unpopular, and, according to many, unlawful tax. Intense discussions concerning the limits of monarchical powers followed. In this situation Hobbes decided to extend his philosophical system

to include a theory concerning state and law, in which he followed Grotius. Many copies of this manuscript, which defended the rights of the king, were distributed in England. When at the end of 1640 the parliamentary party gained the upper hand, Hobbes thought it wise to flee to France. He stayed there throughout the English civil war, in close contact with the Cartesians (also with Descartes himself), and continued with his main philosophical work in three parts, of which the political-philosophical part (*De Cive* (On the citizen, 1651)), was published by the Dutch publisher Elzevier.

This is not, however, the work for which he became famous. After Charles I had been executed and Cromwell had established his military dictatorship, Hobbes wrote in a period of one year a new version of his political philosophy, published it (in 1651) with the title *Leviathan* (a mythical monster from the book of Job in the Bible, which was supposed to represent the power monopoly of the state), and subsequently returned to England. The book is, like the previous one, a defence of the absolute power of the ‘sovereign’, but the followers of the king nevertheless saw it as a form of treason. For this there were two reasons. The civil war was not only caused by a conflict about political power, but also concerned the relation between state and church. Hobbes chose in this regard the position of Cromwell against that of Charles I: he rejected the existence of an Anglican state church, and argued for a state of affairs where local churches would be independent of central religious organs, such as bishops and synods, but subject to the state. In the second place, Hobbes defended the view that citizens owe obedience to the person or institution which effectively possesses the monopoly of power, whether or not this was obtained by legal means. This legitimization of a usurper was of course welcomed by Cromwell.

When monarchical power was reinstated in 1660, Hobbes was given a hard time by his former friends, although the king himself, Charles II, who had taken a mathematics course with Hobbes in Paris, placed him under his protection. A law which declared atheism a crime, and which was specifically aimed at Hobbes, was rejected at the last moment. It is this whiff of atheism which furthermore explains why the profound influence that Hobbes had on philosophy in the century after him was seldom openly acknowledged. He died in 1679.

4.1.2 Man and World

Hobbes’s philosophy elaborates on the discovery – which he alleged to have made independently of Galileo and Descartes – of the difference between subjective and objective qualities. If the impressions in our consciousness are simply the causal product of the activity of our senses, the central question becomes whether there is something in the world outside of consciousness which corresponds with these impressions.

To answer this question, Hobbes conducted a mental experiment which is at least as radical as that of Descartes. Suppose that the whole universe is destroyed, with the exception of one thinking being. This being would continue to watch in his private cinema the movie of his images (memories, fantasies). Would such a being

still have a reason to assume that an external world existed or had existed? Yes, Hobbes says, because something that moves – such as the movie of images – must be set in motion by something else. The only things that can move are material objects, or ‘bodies’. The only thing that can bring about the movement of a body, is the movement of another body. Thus: an external world with moving bodies exists (or at least existed). And, similarly, the movie of our images, our consciousness, is ultimately nothing but the movement of a body.

Hobbes is thus a materialist. He believes that only one kind of reality exists: material objects; therefore, no Platonic ‘ideas’, Aristotelian ‘substances’ or Cartesian ‘thinking entities’. The material objects move in accordance with natural laws, by means of which the movement of one body exercises an influence on other bodies. In order to understand the functioning of a complex system, for example, a watch or a solar system, one must proceed as follows. As a start one spreads out in thinking – or if one can, as in the case of a watch, in reality – the parts of which it consists. Of each of the parts one determines how it would move if no external influence at all would impact on it. Then one again joins together the parts one by one, in the course of which one can in each instance explain how, from the independent movements of the separate parts, the dependent movements of the combined parts take place. What would settle the matter would be the fact that the whole system indeed works as could be expected on the basis of one’s analysis. (The watch which one first took apart works again; the solar eclipse indeed takes place at the predicted time.)

In this sense human society also is a complex system, and to understand how this system works, one must first analyse it in relation to its parts: human individuals and the way in which they would ‘move’ independently of each other. This way of proceeding is characteristic of *methodical individualism*.

Human beings are material objects which have in common with other animals and plants that they are alive. What is unique to the movement of ‘life’? A coconut that falls from a tree, once it has landed on the ground, comes to rest by itself. Living beings are, however, organised in such a way that they preserve themselves. Life is thus a system of movements – absorption of light, and of food; protection against harmful influences from outside – to which every part must contribute for the continuation of the whole. Hence the organisation of a human individual is likewise aimed at preventing that its *vital motions* stop.

Some partial processes, for example, when a splinter causes a festering wound in the skin, happen involuntarily. In the case of other processes, for example, running away from an attacking terrier, an element of will comes into play. Such movements are aimed at satisfying certain desires. Ultimately such a movement is, however, not different from others: what appears in human consciousness as an object of natural desire – a banana, a bear hide, a sexual partner – are in essence what stimulates the vital movements of the specific individual, and, as a consequence, contributes to his preservation. The programming of the ‘material object’ is only made *conscious* in desire.

In addition to such desires, the object of which is naturally given, there are others too. People are able to learn from their experiences, and are in this respect specifically influenced by their experiences of pleasure and pain. When a specific state

of being is painful, the individual will in future avoid the occurrence of that state. 'Pain' is here nothing but the consciousness of a threat to the vital movements.

However, people are at the same time capable of generalising: they can recognise a state of affairs as one of the same kind which was experienced earlier as painful or pleasurable. They can, furthermore, recognise relations of cause and effect – 'causal' relations. Of this knowledge they make use in performing actions which produce states which were earlier experienced as painful or pleasurable. The ability of generalisation, and the recognition of causal relations, Hobbes calls *reason*, intellect.

Hobbes, thus, describes human beings as characterised by desires and intellect. Desires differ depending on the circumstances. When one has had nothing to drink for a day, thirst becomes one's overwhelming motive; but once the desire has been satisfied, it disappears and is replaced by another. There is, therefore, a continual succession of the most diverse desires.

Based on this description of human nature, Hobbes constructs his doctrine of values, the first part of his ethics. 'Good' and 'bad' always mean good and bad *for someone*; nothing is good or bad in itself. 'Good for me' is usually what fulfils my desires. This is not, however, the most essential definition. Normally my desires are directed at that which promotes my vital movements, but if this is not the case, then my desires themselves are flawed, and their fulfilment is only apparently good, not in reality. Thus it is, for example, possible that I desire something because I unjustifiably think that it will result in something else that is good for me. In this instance the mistake actually lies in my intellect. But it is also possible that I can obtain pleasure from something that actually inhibits my vital movements (see [Section 8.2](#) (psychoanalysis) and [9.4](#) (deconstruction)); there is then, so to speak, a system defect in my organisation. (Think of someone who gets a kick out of playing Russian roulette, or who suffers from serious depression. Hobbes himself thinks especially of people who are excessively proud or conceited.) The essential definition of 'good for me' is, therefore: what advances my vital movements, what serves my preservation as living being. (With this view Hobbes links up with Grotius.)

This doctrine of value is not, as is often stated, non-cognitivist (the view that moral statements cannot be evaluated as to their truth or falsity): it is a *fact* that it is not good for me to get cirrhosis of the liver; when someone is of the view that it is, then he is mistaken; and if I desire it myself, then it appears that I am seriously disturbed. The doctrine is certainly relativistic: what is good for one (rain for the farmer), can be bad for another (the same rain for a tourist).

4.1.3 *The State of Nature*

In order to proceed to the second part of his ethics, the normative theory of society, Hobbes still needs two hypotheses, the second of which he incidentally does not explicitly mention.

- (1) *People are more or less similar in respect of bodily and spiritual abilities.* Of course, there is a significant difference in physical power and intelligence, in general, but the differences amongst people themselves are small in comparison to that between man and ant, man and mouse, or even man and the primates.
- (2) *The world is finite.* From this follows that the objects which people require for the satisfaction of their desires are scarce.

We are now going to put the watch back together again. If people have all kinds of different desires, it can easily happen that two people want the same thing: a banana, a bear hide, or a partner. And from (2) it follows that it would not always be possible for both to satisfy their desires completely without additional costs. When I shoot too many bears, someone else would at least have to look longer to still find one, and perhaps there would be none left. *Scarcity*, in other words, occurs.

When both of us thus strive to obtain a scarce good, then, according to Hobbes, we become ‘enemies’; our interests clash, and, therefore, possibly, we ourselves as well.

Something needs to be added to this. The succession of desires is uninterrupted: I, therefore, know that I will in future have desires, but I do not know *which*; I can, after all, not predict which experiences I will have in the meantime. At this point Hobbes introduces a definition:

Power = all the means which someone has at his disposal to satisfy his present *and future* desires.

When I, as a rational being, am capable by my actions of obtaining the means to fulfil my wishes, but I do not as yet know what my wishes will be, then I realise that I will certainly do well should I gain as much power as possible. Wealth is, for example, a form of power, because it enables one to fulfil all kinds of different desires.

However, if everyone not only strives to realise his present desires, but, moreover, to obtain as much power as possible so that he experiences no problems with his future desires, then the possibility of conflict between our interests increases significantly. That empty piece of land: I have no time to build on it now, but it would still be good to permanently have it at my disposal, because who knows, next year I may also have a wife, a child, a slave (or a machine).

As soon as people start living together, the sources of conflict increase. Now hypothesis (1) attains importance, too. If people’s capacities diverged radically, conflict would naturally come to an end. The strongest would say to the weakest: you know, if we should fight, I would win. Let us, therefore, skip the fighting. A natural pecking order would thus develop, in terms of which the weakest submit themselves to the wishes of the strongest, and in exchange retain their lives, and perhaps protection. But if everyone is more or less equal – even the strongest must sleep, and can be overpowered by one who is weaker – then no one has to accept defeat in advance; then there is real fighting.

Up until now the fight was about scarce goods which everyone thinks he may in future need. But if one knows that one can at any moment be challenged to fight,

one is no longer simply interested in power from the point of view of one's current and future needs, but specifically from the point of view of one's chances in a fight. Then it is not only of importance how much power one has in an absolute sense, but specifically how much power one has in comparison with others. One not only wants to increase one's power, but, more specifically, the difference in power in relation to others. Power becomes a *comparative* good. A form of power which actually has only comparative value is honour or reputation. If people *think* that one is strong, then one is much stronger than when they think that one is weak. They would think twice before they attack one.

If people reach the point where their primary aim is to be stronger than others, it is every man for himself, for that would mean that they would use every chance they get to harm others, even if in an absolute sense they themselves would be worse off.

Hobbes makes explicit here the logic of escalation: once there is a source of conflict, then that conflict has an inherent tendency to extend itself infinitely. Note that Hobbes does not assume an inborn *Will to Power* or aggressive drive (see [Sections 7.5](#) (Nietzsche) and [8.2](#) (Freud)). His conclusions are not based on a pessimistic view of mankind. That things go wrong in this way, does not happen because people are 'bad' or stupid. Even the most pleasant and peaceful person would, precisely when he uses his brainpower, realise that he must use his opportunities to cause harm to others, whether or not he finds this pleasant: otherwise he would simply be worse off. (An insight that reminds us of Machiavelli.) The conclusion is, that in a state of scarcity an unrestricted war of all against all will develop amongst equal beings.

In such condition, there is no place for Industry; because the fruit thereof is uncertain: and consequently no Culture of the Earth; no Navigation, nor use of the commodities that may be imported by Sea; no commodious Building; no Instruments of moving, and removing such things as require much force; no Knowledge of the face of the Earth; no account of Time; no Arts; no Letters; no Society; and which is worst of all, continual feare, and danger of violent death; and the life of man, solitary, poore, nasty, brutish, and short (Hobbes 1988, pp. 64–65).

4.1.4 Social Morality

In this situation no unconditional moral norms apply. Suppose that one formulates some absolute norm, for example, a prohibition against torture or the taking of hostages. A situation can arise for anyone in which his position in the balance of power would worsen if he adheres to the norm, and whether such a situation arises only he can judge. Whoever binds himself unconditionally in war to moral norms, penalises himself in relation to a less scrupulous opponent. As every person uses his intellect to see how he can serve the realisation of his desires in the longer term, one cannot reasonably expect of any man that he would accept such impediments. In this sense everyone has an *unrestricted natural freedom*. That I have such a natural freedom does not mean that others have the duty to respect this freedom; it simply means that it makes no sense to prohibit me from doing something. Because, if in

my own judgment, I have no reason to hold myself to the prohibition, no one can expect of me that I still do so.

The situation is actually quite remarkable. Our presumption was that people are self-preserving organisms. They strive for things they suppose to be required for their self-preservation; their intellectual reflections stand in the service of this purpose. Now it appears that the rational choices they make in this way bring them into a situation in which everyone's self-preservation is in danger from one moment to the next. Must one not then say: but then the theory does not check out, it leads to a contradiction? The result is certainly remarkable, but not contradictory. Every fisherman has an interest in extending his fishing capacity; but if they all do it, they would empty the sea of fish. On its own, no industry has a sufficient interest in adopting environmental regulations; but if no one does this, in the long run, life and thus production also becomes impossible. We find here a general pattern. In a group of people every member has a choice between two actions: A or B (leave others alone; adhere to the quota; construct purifying installations; pay tax; *or not*). Everyone would prefer that all choose A rather than B, but the worst is to choose A, if the others choose B. If in this situation the whiff of suspicion arises that other group members will choose B, then some group members will choose B because of the fear that he who makes himself a sheep shall be eaten by the wolf; and the greater the number of people that follow their example, the wiser it becomes for the remaining ones to do the same. This is the negative spiral of mistrust which results in the war of all against all.

Luckily this is not the complete story. We are describing what happens in a society without state authority – a 'state of nature' – which is characterised by scarcity, and equality between people. We established the following: everyone there has grounds, every man for himself, to take decisions ('to choose B') which, all decisions taken together, leads to a permanent state of war (an empty sea, an uninhabitable world). However, this is a provisional description, where *the outcome itself has not as yet been taken into consideration*. Suppose that people realise that this will be the outcome. With this they are actually placed before a new choice. No longer the concrete choice of attacking a specific person or not, with the aim of changes in the balance of power which could be expected, but the general strategic choice for or against aggressive conduct, in light of the contribution it makes to the maintenance of the state of nature.

For Hobbes it is totally clear which choice the intellect prescribes: to abstain from aggression, as long as one can count on it that others would do the same; but if one can no longer count on that, to wage war with all means at one's disposal. It is thus a situation in which one has to give up one's natural freedom, because one realises that it is wise to place restrictions on oneself; and that is the state of affairs in which all others do it as well. When people reach the point where they expect each other to conduct themselves in a peaceful manner, then they all have grounds to comply with this expectation, and then it becomes reasonable to expect it from others as well. In that case, Hobbes states that they have obligations. Moral norms thus apply, after all, in the state of nature, but only conditionally: with the proviso of reciprocity. In theory, it would be possible for sensible people to arrive at

a state of peaceful anarchy, in which everyone abandons deception and violence in the expectation that all others would also do so.

Given the fact that the fundamental good for individuals is to preserve themselves, the fundamental precept to do everything that guarantees peace, as long as they can hope that others would do the same, applies to them. This fundamental precept Hobbes calls *the law of nature*. All other moral rules (Hobbes summarises fifteen of these: abide by your agreements; in the case of punishment have regard only to future advantage, not to the harm that was done; judge in a fair way, etc) consist in the more detailed elaboration of this precept, and thus all are subject to the same condition of reciprocity. Ethics is the science of cooperative actions which are necessary to guarantee the highest good, that is, peace; and morality is the totality of prescriptions that this science develops.

Such a morality is typically a *narrow morality*. To be sure, as in classical natural law, the doctrine of duty is here derived from the doctrine of value: obligations apply to everyone, because in this way one serves one's own fundamental good. (Kant would say that these are 'hypothetical imperatives' (Section 6.3.1).) However, for one thing, the doctrine of value has become extremely minimal; the foundation of moral norms is not a design of the good life, but simply self-preservation, and then, moreover, simply one's *own* self-preservation. (Even Grotius's *appetitus societatis* dissolves.) At the same time moral rules are restricted to norms for acting cooperatively, specifically for dealing with mutual conflict.

As Hobbes presupposes so little – only the value of self-preservation, and mental insight into the suitable means to ensure this – he believes that he is capable of defeating ethical scepticism, and of establishing a universally valid, albeit minimal morality. The validity of this morality is objectively verifiable. 'The Lawes of Nature are Immutable and Eternal; For Injustice, Ingratitude, Arrogance, Pride, Iniquity, Acception of persons, and the rest, can never be made lawfull. For it can never be that Warre shall preserve life, and Peace destroy it' (Hobbes 1988, p. 82). Moreover, whereas the doctrine of value was still relativistic (what is good for X, is not so for Y), the doctrine of duty is universal: the same basic moral laws apply to everyone. After all, I only have reason to adhere to these if I can expect that you will do the same; then the rule cannot apply only to me, and not to you.

4.1.5 The State

However, if peaceful anarchy is possible, why does it not exist? At this point in his argument Hobbes introduces an additional premise, as the theory would otherwise not be realistic enough: *people usually only use their intellect to a limited extent*.

The consequence is that the state of peaceful anarchy is not stable. Everyone would in fact always have reason to abstain from aggression and corruption, because from the point of view of self-preservation peace has absolute priority. But people sometimes allow themselves, either because of short-term advantage, or because of 'sick' desires, such as revenge and excessive pride, to be swept along, and then still do things which they know will harm their own interest in the long term, or

convince themselves that this is not the case. Others are, on more or less justifiable grounds, afraid of this, and in this fear find immediate cause for anticipatory aggression. Hence the downward spiral again takes effect; at a given moment it is beyond dispute that, by still adhering to the prohibition against aggression, one simply makes oneself into an easier prey for others. The war of all against all threatens anew. This time, not because everyone uses his intellect, but because some do not. Short-sightedness is the problem.

But something can, again, be done about this. Persons who have an inclination to contravene the (fundamental) moral precept even though it harms their own fundamental interests, can be prevented from doing so by attaching more inconveniences to the contravention which become operative immediately. Persons who act short-sightedly must be threatened with certain and prompt punishment. The threat can, of course, only be credible when, even though it may still fail, it is carried out irrevocably. This can only happen when the person or institution which carries out the punishment has more power at his or its disposal than that of any other person or association of persons in society. The link between sanction and the contravention of norms is thus only possible in a society if this is coupled with a *monopolisation of power*. Such a monopolist of power, Hobbes calls the 'sovereign'; the society in which he exercises his power, the 'commonwealth'. There can per definition in one commonwealth not be more than one centre of power; if there were to be more than one, the centres of power would not be able to threaten each other successfully with sanctions; and they would then in relation to each other still live in a state of nature, a state of anarchy, not in a commonwealth: if necessary, they resolve their conflicts through fighting, they cannot regulate these by the positing of norms. 'International law' is a contradiction in terms: a legal system can only bind the subjects of one sovereign. 'Separation of powers' is, for the same reasons, impossible.

There is necessarily only one sovereign per commonwealth; and his sovereignty is necessarily unlimited. This applies no less to a democracy than a monarchy. (That Hobbes does not completely exclude state forms other than a monarchy is actually inconsistent: because as soon as more than one person is included in a decision-making procedure, one must, after all, ultimately have the last word concerning the question whether the procedure was properly followed). Suppose that a sovereign were bound by certain obligations, whether or not laid down in a constitution. It only makes sense to speak of an 'obligation' when a norm applies which may not be contravened with impunity. Suppose then, that the sovereign breaches his constitutional obligations. There would then have to be an institution which has the task of punishing the sovereign for this. If the institution was capable of doing so, the so-called 'sovereign' would not really have a monopoly of power, and thus not be the real sovereign.

Hobbes does not deny that a sovereign has moral duties: he must promote the preservation of the life of his subjects, and thus, for example, guarantee to each a minimum level of subsistence; he may not interfere with property relations, and thus, for example, may only tax consumption, not income. However, these duties are not enforceable; if he breaches them, his subjects cannot derive from such breach a

right to disobedience or resistance. After all, even in a situation where the sovereign does not respect their property rights, they are still better off than in a state of total war of all against all. Only when the sovereign threatens their life, does their rational self-interest allow them to resist.

4.1.6 *The Social Contract*

One could couch the reasoning thus far in the form of a story. ‘People initially lived in isolation from each other. When they came together, there arose – for the reasons mentioned – a war of all against all. When everyone realised that this could not continue, they came together on a certain day to discuss the situation. They quickly came to the conclusion that peaceful anarchy because of the short-sightedness of people was impossible. For this reason they agreed to the following: Up until then everyone had established for himself which measures were necessary to ensure his self-preservation. Everyone indicated to each other that these decisions would in future, with his agreement, be taken by an Other and all of them designated the same Other for this purpose. The people are from then on, as a result of their mutual agreement, compelled to obey the person or institution authorised by them. They have irrevocably renounced their power to defend themselves to the best of their own insight.’

As a historical account this is of course unsatisfactory. (How did the hostile individuals succeed in all assembling at the same time and have an orderly discussion? Could each person bring his weapons along, and why were these then not used? But most important of all: consistent with the fundamental precept of natural law, everyone only has a duty to act in accordance with his agreements if he can count on it that the other parties to the agreement do the same. How did this trust come about?) Differing from Grotius, Hobbes does not, however, present this as a historical account; he knows quite well that in reality things happen like this only in highly exceptional instances. A commonwealth is, according to him, in reality usually established when one person or a group of persons appropriate for themselves a monopoly of power. How this happens is not relevant either, only *that* it happens. For in this way the basic problem of human society is solved, which otherwise would have led such society to civil war: the problem that conflicts are unavoidable for as long as everyone follows his own judgment concerning what is necessary for the preservation of his life. Because someone who monopolises power is necessary, all subjects have good reason to obey him when he is there. He, after all, ensures that uniform rules apply and are maintained, and in this way prevents chaos. When someone joins the commonwealth, the same reasons immediately apply to him. For this reason one may, according to Hobbes, *assume* that such a person also *promises* to obey the sovereign. In other words, the basis of obedience is not the contract; one infers the existence of a contract because there are grounds for obedience. What is then the sense of the concept of the contract? When one asks someone why he acts decently, then he may perhaps say: it is a kind of agreement that exists between us.

What he means with this is: I do it because I presuppose that the others do it too, and I know that the others do it because they presuppose that *I* do it. The foundation is *reciprocity*.

4.1.7 Law and Morality

Looking back, we find that this line of reasoning is constructed in three phases. In all three the question is posed: what must one, as sensible person, do in a situation of scarcity? Every phase is a correction of, or an addition to, the conclusion of the preceding one. The first answer reads: one must throw oneself into the battle with all one's weapons before one is eliminated oneself. If everyone follows this advice, the result is a war of all against all. Therefore the second answer reads: one must adhere to the moral constitution which prohibits aggression, for as long as one can count on it that others do the same. This answer is not so much mistaken, as irrelevant: for people are too short-sighted to count on it that they will adhere to the constitution, and then the necessary condition for it is not fulfilled. From this follows the third answer: as soon as a person or institution has attained a monopoly of power, one must obey him or it.

Is the third answer an addition to the second, or an alternative thereto? Is morality not superfluous as soon as a state exists with sufficient power to keep in line the smartest criminals? It appears that we can summarise the theory simply as follows: without a state, sensible individuals – about ones who act short-sightedly we do not have to speak here – become involved in a war of all against all; for this reason it is good that a sovereign appears that forces everyone, under the threat of sanction, to keep his hands to himself. Hobbes was indeed understood in this manner previously.

In accordance with this interpretation, the only reason for obeying the state is fear of punishment. One then needs quite a substantial state to guarantee arrest. For this reason the second phase is essential for Hobbes. The most important motive for everyone to adhere to the rules, is that one in this way contributes to the preservation of peaceful interaction with others. This motive would even have been sufficient if there were no people who act short-sightedly. The function of the state is not to create the main motive for obedience, but only the following: to create for some a supplementary motive for obedience, and in this way for others the condition (trust) for the main motive to be sufficient.

Actually, the state thus exists only to support morality, exactly as in classical natural law. (One difference is that it is here only a matter of a narrow morality. Another difference is that Hobbes is not an essentialist; we classified him in [Chapter 1](#) under 'naturalistic natural law'.) But suppose that a difference of opinion arises concerning the interpretation of morality: what exactly are 'Injustice, Ingratitude, Arrogance, Pride, Iniquity, Acception of persons'? In such an instance the sovereign must determine which interpretation is proper, because the sovereign must punish the contravention (and a separation of powers is impossible). One cannot now say that the sovereign is obliged to take account of certain limits to interpretation, because

we have already shown that the sovereign can have no enforceable duties. Everyone, thus, has grounds to regard the rules which the sovereign determines as the correct interpretation of morality, because the only other alternative is for one to stick to one's own interpretation. But if everyone adopted his own interpretation of the rules, then we would have no rules at all. This was exactly the problem that the sovereign had to solve.

For this reason only the sovereign has the right to interpret natural law. And whoever, according to Hobbes, interprets the law authoritatively, establishes it.

With this we have arrived at Hobbes's conception of law: law consists of the commands of the sovereign. Law is, on the one hand, dependent on morality. It requires obedience on the basis of the foundational moral principle to be peaceful as long as everyone else does the same. At the same time, law replaces morality as regards content: the sovereign establishes authoritatively what the foundational principle exactly entails.

In his political theory, Hobbes, just like the sceptics and Grotius before him, bids perfectionism farewell. The aim of the state is not to bring man to the complete realisation of his nature, to advance certain virtues, etc, but only to stem the tide of conflicts which flow forth from the diverging wishes of people in a finite world. The state does not serve the good life, but only the minimal condition for the good life: peace. (The relative natural law of Lutherans and Calvinists can be regarded as an intermediate step in this development; see [Section 3.2.](#))

At the same time his theory is not liberal, as little as that of Grotius. He does not say, 'and once the condition is fulfilled, everyone is free within the allocated limits to realise the good life as he himself views it'. The power of the sovereign is unlimited. If the sovereign prescribes a specific mode of life, then this is obligatory. This is not so because it would be just, but because peace is attainable only by means of obedience.

Peace is, thus, the only ideal which man secures by establishing a state institution; all other ideals are only realisable in so far as the sovereign allows room for them. Law itself only serves 'order', the prevention of a war of all against all. In its substance, law is not bound to any value at all: what the sovereign commands is law, irrespective of its content. It is, however, a precept of natural law to obey the sovereign.

The legal doctrine of Hobbes deviates as much from classical natural law ([Section 1.2.2.1](#)) as from the descriptive legal positivism of people like Bentham and Austin ([Section 1.2.3.1](#)). The latter are in agreement with Hobbes in so far as he says that everything the sovereign commands is law, and that there is no further moral criterion for the validity of law. They, however, conclude from this that something can be legally valid law, when it is morally completely unacceptable and does not deserve to be obeyed. For them there are two questions: what does law require, and what does morality require? The answers to these questions do not at all coincide. For Hobbes, on the other hand, there is only one question and *one* answer. There is always a moral reason to obey law, irrespective of its content: the preservation of peace as highest good. Hobbes is the characteristic representative of *order theory*; he is a normative legal positivist.

4.1.8 Commentary

In a kind of *Post Scriptum*, Hobbes himself formulates the most important objection that can be raised against his theory. (We will not discuss the reasons he mentions to overcome this objection.)

Think back to the example of overfishing. If everyone catches too many (B), I have no reason to adhere on my own to the quota (A): the fish stock would hardly be depleted less quickly and I would become poor more quickly. If I use my intellect, I would, however, rather prefer that everyone chooses A than B. Up to this point, Hobbes's story tallies. Posit now the unlikely scenario: that all other fishermen suddenly adhere to the Brussels guidelines. Hobbes says that in such an instance it would also be sensible for me to do so, but this does not necessarily follow. Reasoning – like Hobbes – from the perspective of my own interest, I not only have no reason to be the first to adhere to the rules, but as little reason to be the last to adhere to the rules.

Certainly, my own self-preservation is served with the transformation from general aggression to general peace, but all the same it would be still more advantageous for me to be the only one to withdraw myself from the prohibition on aggression. Irrespective of how much I desire peace, it is for me personally never advantageous to be peace-loving, not only when the others are aggressive, but also when they are peace-loving. And this, of course, applies to everyone. But if this is the case, then Hobbes's meticulous three-phase construction falls apart. For as long as every person simply thinks of survival based on his own interest, he cannot accept the fundamental *law of nature*, and the only possible way of making him abandon aggression is to force him to do so. The absolute police state, therefore.

If one wants to avoid this conclusion, one must be prepared to attribute to the people *in the state of nature* other motives on the basis of which they could accept the *law of nature*. History shows that problems, such as over-fishing and environmental pollution, are sometimes solved, however difficult it may be to do so: in the Middle Ages there was poor relief, and today, there is social welfare. In introducing this, states fulfil an essential function, without falling into an absolute police state (De Swaan 1988), and this is precisely the function that Hobbes prescribes. The most important problem is not that no one is prepared to contribute something except if force is used, but that everyone is scared that others do not contribute enough. Most people are willing to cooperate, as long as others also bear part of the burden, and do not parasitise. They are apparently prepared, even without force, to acknowledge moral duties *which cannot be reduced to their own interest*.

If we are allowed to make this addition to the premises, we can also correct the conclusion partially. Typical for Hobbes is his thinking in terms of social order: the commands of the sovereign require obedience, irrespective of their content. This is because everything is better than the state of nature with its war of all against all. However, if moral duties, which are irreducible to one's own interest, prevail in the state of nature, and people are to a certain extent willing to take these duties seriously, then our view of the state of nature need not be that dismal. And when our view of the state of nature is less dismal, an absolute state is likewise less necessary.

In that event we can place *qualitative* demands on the commonwealth, and ask of the sovereign that he guarantees these demands, and thus respect them, too. This is because the logic of the theory is to the effect that the commonwealth must always involve *progress* in relation to the state of nature.

We will see how the theory of Hobbes is corrected on both these points by John Locke. The result is *liberalism*.

4.2 Locke

4.2.1 Life

Around 1680 England experienced anew one of the high points in the lengthy battle for power between king and parliament. Charles II was childless; his successor was his brother James. The latter was, however, Catholic. Large groups in the House of Commons (representatives of medium-sized property owners and of the City of London) attempted by any means to exclude him from the succession. The leader of this opposition was the Earl of Shaftesbury; the circle around him would later become known as the *Whigs*. Shaftesbury's family doctor, as well as personal friend and adviser on economic, political and educational matters – again the typical position of a humanist in an aristocratic household – was the philosopher John Locke (1632–1704). He played an active role in these intrigues. Shaftesbury finally lost his suit and had to flee to Amsterdam, where he died soon after. Locke followed him into exile. For other conspirators a harsher destiny awaited. Algernon Sidney was executed, among other things because a manuscript was found in his house in which he had contested the theories of Robert Filmer. Locke, thus, did not flee for nothing: he had produced a similar polemical manuscript. According to Filmer, the court ideologue of the Stuarts, the king derived his power directly from God. He could, therefore, not be deposed by the people; as little could his legal successor to the throne be excluded.

During Locke's 6 year stay in the Dutch Republic, the tide turned. James II circumvented parliament, and, because of the measures he adopted in favour of Catholics, resistance against him grew. In the end it was not only the *Whigs* who wanted to dethrone him; representatives of the *Tories*, adherents of the notion of the divine authority of the king, also belonged to the delegation who went to request his son-in-law, the Dutch stadtholder William III, to intervene. In 1688 the *Glorious Revolution* took place; William and Mary became king and queen of England, after having signed a *Declaration of Rights* which confirmed the triumph of the parliamentary party. Locke returned with the ship that brought Princess Mary to England, and again took up his position as an influential political adviser behind the scenes. Again it was with the political leader of the *Whigs*, now Lord Somers, with whom he closely aligned himself. In 1690 he published the book *Two Treatises of Government* that he had written in opposition to Filmer. A large part of the manuscript had incidentally been lost for unknown reasons. He reworked it somewhat in light of the

changing circumstances: now it had to serve as a theoretical foundation for the right of Mary and William to the throne. In reality, Locke, however, still had oppositional intentions: he thought that much more drastic constitutional changes were necessary than those contained in the *Declaration of Rights*, to prevent the abuse of monarchical power in the future, as happened under the Stuarts. These views were still not popular, certainly not with William. Locke, therefore, published the book anonymously, and guarded his secret carefully. Only in his will did he confirm his authorship.

In the first of the two treatises, Filmer's views were refuted point by point with a great display of Biblical knowledge; the second set out Locke's own theory. He linked up with the doctrine of Grotius that people as such, independently of any state organisation, had rights. As we saw, Grotius used this idea mainly to underpin royal absolutism. The disadvantages of anarchy would be so great that people would necessarily come to the realization that there is only one way in which to make life tolerable: by jointly transferring their rights to a State. Locke is the philosopher who made the theory of 'natural' rights subservient to liberal politics. In the case of Locke too, the state is based on an agreement aimed at obviating the drawbacks of anarchy. However, with the agreement, people do not transfer all their rights; on the contrary, the logic of the agreement is precisely to be found in the guarantee of the original and inalienable rights to life, liberty and property. The purpose of the state is the protection of the individual rights of its citizens. When a government systematically violates these rights, it loses all authority. Citizens may then revolt and establish a government which better fulfils its purpose. According to Locke, they had done this in the case of the *Glorious Revolution*, and that was what king William III had difficulty in accepting.

4.2.2 *Law in the State of Nature*

Like his predecessors, Locke starts his argument with a description of the state of nature. The question immediately arises as to what he means with this notion: an initial situation of anarchy which actually once existed in the mists of time? This Locke indeed believes, but the historical interpretation is not essential for his argument. One could reconstruct this as follows. Question: what justifies the existence of a state? To answer this question we start off by thinking away the state. Suppose no state existed, which reasons could people then have to institute it? This argument thus primarily has the sense of a thought experiment.

The main point for Locke then is: if the state falls away, all rights which people can enforce against each other do not fall away. Not all rights are legal-positive rights; not all rights are dependent on (human) authority. People may not kill, mutilate, or enslave each other, whether or not a state exists to enforce this. If they were simply not allowed to do this because a government had prohibited it, then the authority of the prohibition itself could be based only on power. Then there would be no distinction between a legal and an illegal government, and the question

concerning the basis of the legitimacy of the state would be meaningless. This distinction between legal and illegal can be made only because criteria of legitimacy exist: moral precepts which apply independently of the existence of the state. These precepts combined, Locke calls (very traditionally) ‘natural law’. It is, thus, actually not law at all, in the sense of a totality of rules that is posited by a specific earthly authority. It is rather a morality: a totality of norms which applies to everyone all along; not derived from any authority, but itself the basis of all authority.

Natural law itself is theologically founded by Locke: it consists of norms which apply to people because they were created by God for a specific reason. God did not create anything with the intention of destroying it or damaging it: for this reason every person has an inalienable right to life, bodily integrity, and freedom.

The right to property, likewise, belongs to the fundamental rights. The existence of property relations thus cannot be a product of positive law either, but precedes it as norm and foundation. At the same time Locke does not, however, want to assume that property was granted by God (as Filmer, for example, claimed). He, therefore, adopts a similar kind of reasoning as in relation to the state: let us, to start off with, think away all private property. In the original position everything is shared by all people. In other words: the earth is still undivided, no one has a specific claim to specific objects, no one may exclude another from the use of any object.

This situation cannot continue to exist, not even for a day. Because even to eat one fruit from a tree, one must appropriate the fruit for oneself, withdraw it from the possible use of others. The fruit must, thus, be removed from the communal property. If this was not allowed, or if it was allowed only with the permission of all co-owners, everyone would quickly starve. This cannot be God’s intention for his creation.

Locke’s problem is, therefore, not actually to justify the existence of private property as institution, but to indicate how a rightful distribution of (original) property is established. If one starts off with an undivided nature, where do the first concrete property claims come from?

Locke’s famous answer to this question is: by way of labour. What happened between the moment upon which I encountered the fruit on the tree in undivided property, and the moment upon which I rightfully consumed it? I plucked the fruit from the tree, and in this way performed labour. No single part of nature is in its natural state suitable for human use; everything must be processed. Nature viewed in itself thus actually has no value, only nature processed by people. Labour is the source of all value. If I would, therefore, appropriate something for myself which was made by another, I would actually be parasitising on his effort. On the other hand, by removing something from the undivided property by means of labour, I do not per se have to disadvantage someone else. I only do this when, after my appropriation, not enough remains of nature for others to cultivate.

From this argument follows the so-called *proviso* of Locke, which still plays an important role in political philosophy (Nozick, [Section 10.7](#)). Everyone may transform from the communal property of nature into private property anything with which he can ‘combine his labour’, on condition that he leaves to others *enough*

and as good. The important question is, of course, whether this condition could be fulfilled in England in the year 1689, or in the world at the present time.

4.2.3 *The Formation of the Political Community*

We have seen up to this point that everyone in the state of nature has the right to life, bodily integrity, personal freedom, and fairly acquired property. What must one do if someone else wants to infringe one's rights? Then one has the right to protect oneself, to punish the transgressor of natural law, and claim, as well as enforce, compensation for the harm suffered. If one did not have these rights, the other natural rights would not mean much. One only has the right to something if one does not have to accept it when someone else takes it away from one.

However, if everyone had the rights to self-protection, punishment and damages, various things threaten to go wrong in the state of nature:

- A difference in opinion can easily arise concerning the interpretation of natural law. My cows broke loose and caused damage to your grass: how much compensation do I owe you? According to Locke, there is always a clear answer to such questions, but people do not always see it, and tend to calculate in their own favour.
- For the same reasons, a difference of opinion will arise concerning the proper punishment. If you are the victim, you would tend to find a punishment too severe to be reasonable; if you are the perpetrator, one that is too light. And the imposition of an unreasonably severe punishment, of course, equally amounts to an infringement of rights, which itself would call for punishment. Hence feuds are set in motion.
- Lastly, it would indeed not be easy to execute a punishment, irrespective of how fair it is, in the case of criminal law which is left to the parties concerned.

These are, thus, the *inconveniences of the state of nature*. What could we (continuing the thought experiment) do about this? According to Locke, people will decide to transfer the rights that cause problems to the 'political community': a cooperative association of everyone who within a specific area regularly deals with each other. One does not transfer all one's rights. Indeed, the purpose of the transfer is precisely to enable one to enjoy one's fundamental rights in a more stable way; the task of the political community is, therefore, to guarantee the fundamental rights. The rights which are transferred are those of self-defence, punishment, and the enforcement of compensation. The political community acquires three tasks which correspond to the three 'inconveniences of the state of nature':

- The community must interpret natural law, thus explicitly and in detail determine the rights of everyone. (The community, therefore, does not *grant* rights.) This happens in the form of positive legal rules.

- The community must determine a reasonable penalty.
- And it must take responsibility for the execution of the penalty so determined.

In this analysis a distinction can clearly be recognised between legislative, judicial and executive powers. Montesquieu's famous thesis concerning the separation of powers (Section 5.2) was inspired by Locke. The judicial power is, however, mostly not sharply distinguished by Locke from the legislative: both involve the interpretation of natural law.

The political community as a whole must take a decision concerning these matters. However, it is in practice not workable that everyone should have to go to all meetings. For this reason the members of the political community will decide to assign the exercise of their powers to a special organ: the government. Actually there is only one decision that the community as such (by a majority of votes) must take; thereafter everyone can go home, and the government governs. It, however, continues doing so in the name of the political community, and not by virtue of an inherent power. All governmental authority is based on delegation.

4.2.4 Limits of Power

Locke derives his doctrine of resistance from the idea that governmental authority is based on delegation. There are three types of limits to governmental authority:

- (1) The first limit is constituted by the basic rights to life, bodily integrity and freedom. If the government violates these, it loses its authority. The government cannot deny these rights, because they are inalienable (as we saw, Grotius contended that citizens transferred these rights to the state). No one can give away what he does not have himself, and no one has the power to alienate his basic rights.
- (2) The right to property is, of course, not an inalienable right. But in this respect Locke invokes the following precept (derived from Grotius): when people transfer their rights, they do this to improve their position. But people do not have any reason to transfer the total package of their property rights to the government; on the contrary, they instituted the government precisely to have their property rights, among other things, better protected. We may, therefore, not assume that these rights have been alienated, unless it has been done expressly. A government, thus, similarly loses its authority should it take away the property of its citizens.
- (3) If the political community institutes a government by way of delegation, then it can, and usually would, do so subject to certain conditions. These conditions do not follow, like points (1) and (2), directly from natural law, but will be based on insights which the political community acquired the hard way in the course of history. One cannot trust rulers completely, as little in fact as one can trust other people: certain guarantees are, therefore, necessary for the proper

functioning of government, especially against the abuse of its powers. Important ‘constitutional’ requirements for Locke are the following:

- *The rule of law.* The executive power may do nothing for which the legislative power has not expressly granted the power. Wherever law ends, tyranny begins’ (Locke 2003, p. 189).
- The closely related principle of the separation of powers (derived from Locke by Montesquieu and by the leaders of the American Revolution): whoever possesses the executive power may not at the same time hold the legislative power (because then the principle of the rule of law would easily become a dead letter).

Authority is granted to the government subject to certain conditions. If the government thus exceeds these limits, it loses its authority. According to Locke, one cannot, when citizens resist abuse of state power, say that they ‘revolt’, because actually it is the government which revolts. Where authority disappears, no government exists any longer, only private persons who attempt to suppress other private persons. The latter can then simply exercise their natural right to self-defence.

Such a situation nonetheless does not entail a return to the state of nature. The government has certainly disappeared, but not the political community. A general assembly can then again meet to delegate governmental authority to new persons or institutions. This is incidentally the proper moment to change a constitution, or even more correctly: it is the only moment when this can happen. Citizens have learnt a lesson from what went wrong previously, and to prevent this in future, construct new guarantees. Governmental authority is then granted under new conditions. This was, according to Locke, the situation in 1688–1689. And it was precisely because of the implications of further constitutional reforms that William III and his Ministers rejected this interpretation.

In Locke’s political thinking the conception of the neutral state emerges for the first time. The state must guarantee to its citizens the undisturbed enjoyment of their rights; what they, for example, do with their property is not the state’s concern at all, as long as they do not infringe the rights of others. This idea (in the *Second Treatise*) is, similarly, central in the *Letter concerning Toleration* which Locke wrote during the time of his exile in the Netherlands (addressed to the protestant professor Philippus van Limborch of Amsterdam). The letter was published in 1689, again anonymously.

Locke summarises the theory of the *Second Treatise* as follows: ‘The commonwealth seems to me to be a society of men constituted only for the procuring, preserving, and advancing their own civil interests. Civil interest I call life, liberty, health, and indolency of body; and the possession of outward things, such as money, lands, houses, furniture, and the like’ (Locke 2003, p. 218). The task of the civil magistrate is only to serve the fair possession of these goods: by enacting laws which apply equally to all, and by punishing the violation of the rights of another. The welfare of the soul cannot, however, belong to his legal authority.

This is, in the first place, because no one can deny responsibility for the care of his own eternal soul. Whatever one's creed, and whatever the form of external worship one performs, only the conviction of the heart counts before God. However, nobody can have faith based on the instruction of another, even if he wants to. The magistrate has means of coercion at his disposal, but these cannot bring about any faith. For this reason nobody's soul can be saved by external force. In the end everyone has to be left to himself and to his own conscience.

In the second place, however, even supposing that it was possible to convert souls by means of the sword, it would still not be desirable. To which church should the state lend its power of prosecution? To the orthodox church of course; but every church regards itself as orthodox, and there is no judge on earth who can resolve this dispute with the required authority; certainly not the civil magistrate, 'either at Constantinople or elsewhere upon earth'.

Given all the differences in opinion amongst rulers regarding religion, the narrow road leading to heaven would be accessible to only a few people, and, for the people of most countries, not at all: the accident of one's birth would then determine one's eternal salvation. There is only one true religion; when a person does not follow his own intellect and conscience, how great is then the chance that he will find it? Suppose he is sick and there is only one remedy, but no one agrees about what it is. Is it then the task of the magistrate to prescribe the remedy; is it safe for the sick person to follow such a prescription? Can a magistrate ever give a guarantee for the kingdom of heaven? What every person should himself evaluate seriously cannot be regarded as the unique possession of specific kinds of people. Kings have more power than others, but not for this reason more knowledge, and certainly not concerning religious matters.

Locke argues here, in fact, for a separation between a public domain where the state has certain responsibilities, and a private domain, where every person must find his own way towards eternal or temporary happiness. With the above arguments, he seeks to substantiate why religion must belong to the private domain. The same arguments apply to scientific views, as well as to views regarding the good life. That Locke wishes to point in this direction appears clearly from his affirmative description of what belongs to the public domain.

The argument in favour of tolerance is not based on scepticism. It is not because no truth exists in the domain of religion, that everyone should be allowed to go his own way. If no truth existed, then it would not be so problematic to follow the command of the king. Precisely because it is so important to find the one right medicine, one cannot be prepared to follow the instructions of another whose judgment one cannot absolutely trust.

The most important insight of Locke is that state organs have a delegated power, and, therefore, only have a claim to obedience for as long as they properly fulfil their functions. Positive law which claims to have authority must comply with certain moral demands. (Positive law is 'only' an interpretation of natural law.)

That law has to comply with moral demands in order to claim authority, was already acknowledged in classical natural law (Aristotle, Aquinas). The formulation of the demands is, however, completely different in modern natural law. Classical

natural law regards it as the task of the state to design the ideal community. Politics must contribute to realising the good life for everyone in society. If the state neglects this task, its law loses its legal nature; then it becomes a form of sheer power. According to the modern ‘Lockean’ natural law, the state must only create the conditions under which individuals can autonomously give form to their own lives.¹ The most important condition is that others respect their private domain, and this is precisely what the state attempts to guarantee. If the state neglects this task, for example, by imposing on individuals a certain conception of the ideal community, then its law loses its legal character: then it is no longer law, but coercion.

The design of the state institution must be aimed at keeping the government within the limits of its task. We saw above the proposals which Locke submits in this regard. Parliamentary democracy does not here stand at the forefront; it is far more essential that all governmental action must be covered by laws which were established lawfully, are generally formulated, and promulgated publicly. Locke is the philosopher of freedom rights and the rule of law, not of democracy. As such, he has had a greater influence than any other modern philosopher, perhaps with the exception of Marx. Of this, incidentally, little could be noticed during his lifetime. Even in the first half of the 18th century, modern natural law was restricted to being the ideology of a small group of radicals. In the second half of that century this, however, changed. In a number of movements which struggled for radical change, a similar development can be detected: first, people argued for a ‘return’ to the ‘ancient constitution’, generally interpreted in a rather unhistorical way. (We saw this theme appear with the Huguenots, the French Calvinists.) After some time the discourse of natural rights and the social contract entered the scene. The *founding fathers* of the American Revolution wrote their declarations and constitutional drafts in terms directly derived from Locke, and the same goes for the ideological leaders of the Dutch Patriotic movement. During the French revolution, too, the traces of Locke are no less clear than those of Rousseau ([Section 5.5](#)).

4.2.5 *Grounds and Limits of Reliable Knowledge*

As we pointed out, Locke’s doctrine of tolerance is not based on scepticism. In certain areas, according to him, the truth is, in principle, attainable. This is so in principle only, because in fact people mostly allow themselves to be influenced by the fashion of the day, and believe what they want to believe. In doing this they overestimate the human faculty of cognition, and think they can know things which people cannot know.

¹Because Locke bases his argument on theological premises, it still shows some relation to the natural law of the Middle Ages, but one can also understand his theory without this. We, therefore, did not classify him in [Chapter 1](#) under classical natural law, but under ‘naturalistic’ natural law; human beings develop best in a society based on freedom and equality.

The search for truth within the limits of human possibility is a task which God imposed on human beings, and the fulfilment of this task can be the object of moral evaluation. Locke undertakes his enquiry ‘into the origin, certainty, and extent of human knowledge, together with the grounds and degrees of belief, opinion and assent’, not out of curiosity, but as foundation for an *ethics for the attainment of knowledge*. This approach is characteristic of the developing Enlightenment thinking. In the final instance, each individual is *responsible* for the excellence of his views: for this reason we have to determine the extent to which this excellence can be improved. In his main philosophical work – *An Essay concerning human understanding* (published in 1690, but not anonymously) – Locke aims at showing the way in which the attainment of secure knowledge is possible, and why it is that most people so seldom tread this path. What specifically interests him is, on the one hand, moral and religious knowledge, and, on the other hand, scientific knowledge. This is because it is in the case of these kinds of knowledge that people are often blind with regard to the shortcomings of their way of thinking: the religious fanatics who are 100% sure of their conflicting interpretations of obscure Biblical texts; the clergy who refused to look through Galileo’s telescope because they already knew from Aristotle what the universe looked like.

Locke, like Galileo, Descartes and Hobbes before him, starts from the distinction between the external and internal worlds. What is given to us initially is simply the content of our own consciousness. Such content of consciousness Locke refers to as *ideas*. These are partially of objects in the external world, and partially a result of the operation of the mind itself.

Descartes was of the view that the human spirit disposes of certain inborn ideas, but Locke contests this. With small children one after all finds no abstract concepts; whoever is colour blind since birth never forms the concept of ‘colour’; and the notion of God, which Descartes found in his own spirit, is in many nations completely unknown. From such data Locke concludes that the human spirit is at birth still an unwritten page. Content arrives in two ways in the mind. The ideas of objects in the external world come into being because our senses are stimulated by these objects: by means of them we acquire ideas, such as ‘yellow’, ‘hot’, ‘bitter’, ‘hard’. (The hardness of a stone is what one experiences when one attempts to push through it; not how a physicist interprets the experience.) The ideas due to the operation of the mind come into being by way of introspection; because of this we establish that we observe, think, doubt, reason, and want. These two sources of *ideas* Locke calls *sensation* and *reflection*, but both are forms of observation. All knowledge, thus, starts with observation. The products of such observation are ‘singular ideas’. One cannot be in doubt that one finds these contents in one’s consciousness; they are simply given. Locke thus subscribes to Descartes’s adage: what I know for sure is ‘*that I think*’ and ‘*what I think*’.

But subsequently the mind starts working with the material by forming by means of comparison and combination, ‘combined ideas’. This happens, as a start, with the idea of a concrete thing, which exists separately from all other things through the course of time (has an own ‘identity’), and which combines more than one characteristic in itself. Next, general concepts are formed through generalisation and

abstraction from sensory experiences. After we have, for example, had a series of perceptions of blue, we note the similarity between the singular ideas, leading to the formation of the general concept, 'blue'.² Finally, the mind constructs theories with the assistance of these general concepts which explain the different observations. These theories require from us that we distinguish between the contents of consciousness which do, and which do not, portray reality: objective and subjective characteristics. (Locke speaks of 'primary' and 'secondary' qualities.) The objective world is that of physics: bodies in movement.

All these operations of the mind are subject to error, precisely because the mind is active and not purely receptive. In many instances, in the case of scientific theories, for example, no certain, but only probable knowledge can be attained: then the ethics of the attainment of knowledge requires that one must attribute to one's convictions no higher degree of probability than they possess in fact. (This is the claim which is sinned against most often.) Both concept and theory formation must link up with sensory observation. The senses and the mind are arranged consistent with practical purposes: survival and orientation in the world. Our faculty of cognition is able to provide us with the information we need for these purposes: the insight into causes and consequences, which makes it possible to obtain power over our own environment, and in this way improve our destiny. Man nonetheless, due to pride, strives to penetrate into the hidden causes and the essential nature of things. Such perfect and all-embracing knowledge is, however, unattainable. (Using the terminology of Plato: we are sentenced to life in the cave.) Therefore, (according to Locke) we will, for example, never know whether a rectangle can exist with the surface area equal to that of a circle, nor whether purely material objects have consciousness. Attempts to nonetheless attain such knowledge can lead only to disappointment, and usually result in people going to the opposite extreme. When we stay within our possibilities, we undoubtedly stand stronger against scepticism: it is enough for a seaman when he knows that his plumb line is long enough to indicate dangerous areas, even if it is too short to gauge all the depths of the ocean.

That we cannot be completely sure of many of our views is a reason for humility and tolerance. According to Locke, we can certainly be sure of the existence of God and the validity of natural law. He, however, never systematically set out his arguments in support of this thesis, despite the frequent insistences of friend and foe, probably because he himself was (rightfully) never completely satisfied with them. When he makes the acceptance of this thesis into a precondition for the followers of aberrant convictions to be tolerated, this is incidentally not because the thesis would be possible to prove. One must accept natural law because it is the foundation of a harmonious society. And for the same reason one must accept the existence of God: atheists cannot take their oath of fidelity seriously, because they do not believe in the

²With this empiricist theory of knowledge Locke stands in direct opposition to the rationalism of Plato, according to whom general concepts, such as 'blue', precede particular perceptions of separate blue things, and enable us to recognise the things *as* blue.

sanctions which accompany such an oath. In this respect Locke suddenly appears to, after all, think in a very ‘Hobbesian’ way: the final reason for the required trust in others is their self-interest. One can, in other words, trust and live in a community with only those who fear eternal damnation, and who, therefore, refrain from certain conduct in their own interest, which is somewhat similar to what we find in Hobbes.

4.3 Spinoza

4.3.1 *Life*

Baruch (Benedict) de Spinoza was one of the greatest Dutch philosophers. He was a contemporary of Locke; both were born in 1632. His father was a Portuguese-Jewish merchant who, after some roaming around, settled in Amsterdam, where Baruch was born. His father had an important role in the Portuguese-Jewish community. After his death in 1654, Baruch continued the business with his brother. Already in his youth, Spinoza distanced himself from traditional Judaism; he spent much time with non-Jews and, moreover, learnt Latin, the language of most of his publications. Because of his unorthodox views he was excommunicated in 1656. He successively went to live in Ouderkerk, Rijnsburg, Voorburg and The Hague. He earned money by grinding lenses. In 1673 he received an invitation to become professor in Heidelberg, but, not wanting to lose his freedom, he declined the position. During his life he only published a few books, including his *Tractatus Theologico-Politicus* (Theological-Political Treatise), which was published anonymously in 1670 by a fictitious publisher in Hamburg. As was the case with his other works, his main work, *Ethica*, was published posthumously. Spinoza died in 1677.

Spinoza gives a headstrong answer to the central question of political liberalism: how should the government deal with the plurality of worldviews? The societal diagnosis he gives, and the solution he posits, are instructive and deviate in interesting respects from those of Locke. We will focus here on Spinoza’s *Tractatus Theologico-Politicus*.

4.3.2 *Pluralism and Tolerance*

Spinoza was surprised by the fact that followers of Christianity, who preach love, joy, peace and moderation, oppose their fellow-Christians, as well as the followers of other religions, with vindictive hate. Their faith is seemingly overrun by fear about the uncertainty of their destiny, so that they search for a semi-certainty in some or other superstition, with the related pomp and circumstance. That such superstition flows from fear and uncertainty they seek to hide from themselves by constructing a dogmatic system around it, which they protect with fire and sword. The matter becomes worse when despots take advantage of these fears, and when they seek to bring their subjects under their control by making all of them march under the

banner of such superstition. Then not only political freedom is destroyed, but also piety; because piety can, according to Spinoza, only thrive when people are allowed to establish for themselves what the truth is. In resisting this state of affairs, Spinoza sets himself the task of showing that the granting of freedom not only does not harm public peace, but that freedom is essential for the thriving of piety and for securing public peace. Spinoza's manuscript for this reason is called 'Theological-Political': it shows that in both domains freedom is not only not harmful, but even advantageous, and that political freedom is, moreover, beneficial to religion, and religious freedom is conducive to politics. Spinoza's political liberalism is his answer to ideological pluralism.

How can the fear about the uncertainty of destiny be conquered? Some people can do so by way of philosophical insight, according to which everything that happens necessarily happens in this specific way, and must be understood as a manifestation of the will of the only God, who is equated with the rationality of Nature.³ Most people are not capable of this insight; a personal God has, nevertheless, been revealed to them, who is merciful and just and who calls on people to be obedient and show neighbourly love. When they follow this call, their inclination to superstitious fear disappears, and they will furthermore obey the laws of the state which serve to guarantee peace, not out of fear of punishment, but because of an inner urging – which promotes public peace. Spinoza in this way draws a distinction between the core of revealed faith, which can, and must, be adhered to by all (described by him as the acknowledgement that God is merciful and just, and that he calls people to obedience and neighbourly love), and those aspects concerning which everyone can, and is, allowed to develop their own ideas. The core does not consist simply of a moral message; it supposes a doctrinal content, albeit of modest scope. When believers practise neighbourly love out of obedience to the merciful and just God, whom they want to serve and love, then it presupposes minimally that they accept that God exists, that he provides everything, that he is omnipotent, that it is his will that the good enjoy prosperity and the bad are lost for all eternity, as well as that our salvation depends exclusively on his grace. To the aspects of faith concerning which everyone can, and may, develop his own ideas, the biggest part belongs to the doctrinal content of faith, concerning which theologians lock horns with each other, and because of which adherents of the different religions oppose each other; the discord loses its highly explosive character when all acknowledge that these matters do not touch the core of faith, and can thus be left to the opinion of every person.

4.3.3 *Commentary*

Spinoza's theological-political recommendations did not have many adherents. Believers regarded Spinoza as a heretic. The Jews of his community reproached him for rejecting the idea that the Jews are God's elected people (according to Spinoza,

³One can see here that Spinoza's thinking shows some relation to that of the Stoics, [Section 2.6](#).

this did not belong to the doctrinal core of revealed religion). Jews *and* Christians frequently suspected him of being an atheist, because of his denial of the divine origin of the Bible and of divine providence. The Christian rulers of the Dutch Republic found him to be a suspect figure because of his uncertain religious identity (he drew as easily from the Jewish as from the Christian tradition, and, moreover, perceived in many other religions a core of truth). Spinoza's pleas for political freedom also increased the mistrust of political rulers.

Spinoza indeed anticipated all these reactions by publishing his book anonymously. Perhaps he did not actually want to address his book to believers and politicians. He did not without reason write the book in Latin, and he mentions in his preface that he addresses himself to philosophical readers, and, in addition, asks the rest of humanity to leave the book unread. What could be the reason for these statements? Spinoza does not only articulate the viewpoint of believers, but also gives an explanation of belief, and this explanation can be termed 'functionalist': revealed religion is aimed at bringing people to obedience, and doctrinal belief-contents are legitimised because of the useful role they play in relation to this goal. This functionalist explanation, from the external viewpoint of an observer, stands in tension with the internal perspective of a believer. Perhaps Spinoza realised that his explanation of belief, therefore, at the same time leads to its unmasking, which for non-philosophical readers would have an effect contrary to that which he had wanted to achieve: whoever realises that faith is only true faith when it leads to moral repentance, undermines all epistemic pretensions of faith; a faith freed in this way from its foundations not only makes no contribution to the stability of the political order, but even undermines it.

At any rate, Spinoza's plea for a pluralism of worldviews cannot engender enthusiasm on the part of the adherents of diverse worldviews, because they are asked to reduce the full richness of their worldview to a pitiable remainder which is declared to be its core. It is not surprising that Spinoza was accused of heresy and of atheism. He attempted to overcome the pluralism in worldviews by showing that at their core all worldviews boil down to the same: a monism lies at the basis of this pluralism. The contention that a kind of highest common factor is shared by all worldviews, cannot but lead to resistance on the part of genuine adherents of these worldviews. They are not taken seriously. We can even say that Spinoza does not take pluralism quite seriously. This has the consequence that his plea for tolerance is somewhat ambivalent.

4.4 Conclusion: Hobbes and Locke

With the theories of Hobbes and Locke modern legal philosophy developed two different versions of the social-contract model as legitimization of state and law. They both put the individual at the centre of their political theory. The social contract serves here as metaphor for the view that an individual is bound to a central authority only if he could have voluntarily agreed to it. In the case of both, this leads to a narrow account of morality and law. The difference between Hobbes and Locke lies primarily in the fact that Hobbes bases his argument on a completely amoral point

of view: the self-interest of the individual man in light of his instinct for survival. Locke, on the other hand, takes a moral perspective: the *right* to freedom of an individual. These different points of departure lead to dissimilar views of the role of the state. Locke arrives at a liberal state which has to protect in a neutral manner the freedom and property rights of everyone. Hobbes propagates an absolutist state, aimed at the maintenance of order to make it possible to live together in peace. Later kindred spirits added to this that obligatory legal rules, such as those in relation to property, are not only to the benefit of all because they prevent the ‘war of all against all’, but also because they increase the prosperity of everyone by making possible cooperation and the division of labour.

An immanent objection against the theory of Hobbes goes as follows: sheer rational self-interest provides an insufficient basis for a general duty of obedience to law, and must, therefore, be supplemented by moral presuppositions. A moral objection: Hobbes’s absolutist state conflicts with the ideal of human emancipation. The first objection is created by the problem of the parasite. Hobbes and his followers mistakenly assume that social order and cooperative undertakings for mutual benefit are threatened only by short-sightedness. They are actually threatened also by the rational ‘parasite’ or ‘sponger’ who profits from the efforts of others through egotistical calculation. The problem arises, in particular, from the fact that there are instances in which it is impossible to exclude people who do not contribute to the fruits of cooperation, from enjoying them. This is specifically the case with so-called ‘public goods’, such as a canal, public security, and a clean environment. In this sense a system of property rules is a public good, too: everyone has an interest in others adhering to these rules, but not in themselves doing so. If this is the case, then, in addition to self-interest (Hobbes’s point of departure), moral grounds such as trustworthiness and *fairness* (not to want to profit from others), are necessary, in addition, not only to stabilise ‘conventions’, but also to develop them. This point can be further illustrated with the following example. Two farmers each cultivate crops which ripen at different times, and which neither of them can harvest entirely in time without assistance. Both thus have an interest in helping each other. Suppose that farmer A volunteers of his own accord to give farmer B his assistance: then B will afterwards not abandon A either, because he knows that A would otherwise not be back the next year. In this way the convention of mutual assistance arises by virtue of the anticipation of fitting reciprocation. The convention to make good one’s promises arises in exactly the same way. Suppose that A offers to help B, if B promises to subsequently help him too. Then B still has an extra reason to turn up: because otherwise A would never trust him again when he (B) promises something. Thus, the binding force of promises can be explained on the basis of a convention rooted in self-interest. But suppose that A and B know that B is going on pension the next year, and thus would no longer need A’s assistance. If the convention is based on self-interest (as Hobbes implies), A will know that B will no longer help him, and thus A will, to start off with, not help B. (And because both know this, they would abandon each other the year before that, and so on.) Situations, therefore, exist where self-interest is sufficient to make one adhere to a convention (for example, to drive on the right or left side of the road) as well as situations in which

this is *not* so (for example, in the case of the production of public goods). In the second case (where B is about to go on pension) conventions only develop when parties, already to begin with, can mutually ascribe motives to each other, other than self-interest, specifically moral considerations, such as loyalty.⁴

It appears that Locke is able to overcome both the immanent and moral objections against Hobbes. In the first place, he does not start from rational self-interest, but from the mutual respect for each other's freedom rights. Nevertheless, his line of reasoning does not fail if rational self-interest in fact leads to disobedience of the law. The egoist, who violates another person's freedom and property rights, simply acts improperly. In the second place, Locke overcomes the moral objection against Hobbes because his freedom ideal guarantees human emancipation.

But Hobbes could respond to this by saying that an illegitimate dogma lies at the basis of this solution. Locke bases his principle of freedom on a divine creation plan, but the theological argument applies solely to believers. To be convincing to everyone, Locke would have to supplement his theory with an argument, such as that contained in [Chapter 1](#). This argument would proceed as follows: a political theory which is based solely on the human instinct for survival, and which places all the emphasis on social order, offers a miserable view of human life; man can only develop himself in a free society. Locke could add to this that a revised version of Hobbes's doctrine would similarly leave room for liberalism: if one can assume that, even without state coercion, spontaneous cooperation on the basis of a sense of loyalty is possible, the state does not have to assume such an absolutist character, and within the state association there is latitude for free individual development. However, in [Chapter 1](#) it was indicated that concerning specific ideals of human perfection, much less unanimity exists than concerning the necessity of peacefully living together. The liberal ideal of autonomy is also strongly contested. This comes to the fore in the philosophy of the 18th-century French Enlightenment. Here the ideal of equal freedom was worked out in more detail, while Rousseau in the same period formulated serious objections against liberal individualism.

⁴A hypothetical alternative would be that the obedience of everyone is enforced in a totalitarian police state. But in reality it is impossible to guard everyone continually, including the guardians themselves.