Georg Geismann

Some Reflections on the Political Philosophy of Hobbes[1]

I. Hobbes on Right and Law.[2]

The moral philosophy of Hobbes is based on the principle of self-preservation (which, to be sure, does by no means exclude the preservation of other people). Where he deals with the "natural laws", as the embodiment of the conditions necessary for self-preservation, he takes into consideration only those with regard to making and keeping peace between mankind. This means that he confines himself to a doctrine of the juridical duties and rights (i.e. with regard to the external freedom between men). In "De Cive", there is neither a necessity nor a possibility to give a general doctrine of duties.

Whoever approaches Hobbes with questions about the foundation of moral philosophy, will easily be disappointed; not so much with regard to possible errors of Hobbes, but rather concerning his having said little on this matter. The few words with which he indicates rather than clarifies his moral-philosophical basis,[3] may serve as a starting point for making some principle remarks about his political philosophy (scientia civilis).

What Hobbes in important parts successfully presents, especially in "Dive", is a purely rational legal philosophy. In Kantian terms, we may say that in "De Cive", we find an elaborate "Doctrine of Right", both of the doctrine of private Right and of public Right. However meticulous and profound this doctrine really is, its moral-philosophical foundation is absolutely insufficient. Again in Kantian terms, in the philosophy of Hobbes, there is neither a "Groundwork" nor a "Critique of Practical Reason", not even in rudimentary form; nor, by the way, a "Doctrine of Virtue" as the counterpart to the doctrine of Right.

In the literature on Hobbes, especially of the last fifty years, scholars have spent a lot of energy and exercised a lot of acumen in order to shed light into the dark left by Hobbes. This is not the place to deal

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[1] ? The works of Hobbes quoted are referred to as follows:
De Cive: Thomas Hobbes, De Cive, The English Version, A Critical Edition by Howard Warrender, Oxford 1983
De Cive (L): Thomas Hobbes, De Cive, The Latin Version, A Critical Edition by Howard Warrender, Oxford 1983
El: Thomas Hobbes. The Elements of Law, Natural and Politic, ed. Ferdinand Toennies, London 1889, Reprint London 1969
OL: Thomas Hobbes, Opera Latina, ed. William Molesworth, London 1839-45, 5 Vols.
EW: Thomas Hobbes, The English Works, ed. William Molesworth, London 1839-45, 11 Vols.
With regard to all texts, Roman numerals refer to chapters, Arabic to paragraphs.
My numeration of the paragraphs of "Leviathan" follows the arrangement of the English resp. Latin version of the Molesworth edition. The English version is referred to as "Lev", the Latin version as "Lev (L)".
Following H.Warrender (De Cive, Latin version, p. 54), the chapters of the two parts of the "Elements of Law" are counted consecutively; accordingly, the first chapter of the second part is referred to as "El XX".

[2] ? Whenever I speak of "doctrine of Right" (instead of "doctrine of law") respecting "legal philosophy", I refer to the continental tradition according to which "jus, Recht, droit, diritto" respectively "philosophia juridica, Rechtsphilosophie, philosophie du droit, filosofia del diritto" refer, at the same time, to "right" (as a subjective title) and to "law" (as an objective corpus of rules). "Right" (with a capital R), therefore, means both "right" (in the subjective sense) and (legal) law (in the objective sense).

[3] ? See e.g. De Cive I 7; II 1; III 33.

with the various attempts in this matter. I confine myself rather to some remarks which may be useful for a deeper understanding of Hobbes's political philosophy.

1) Hobbes always begins his considerations of principle with man taken to be a sensuous-rational being.[4] With regard to the constitution of the basic political problem (dilemma) this is indeed absolutely correct: it is the sensuous-rational dual nature of man which puts mankind into a peculiar "state of nature" fundamentally different from that of all other animals. But, fatal for a doctrine of Right, although by no means also for an empirical theory of politics, at certain points Hobbes also bases his attempt to solve the problem on this very dual nature. So he says at the end of "Leviathan": "I ground the civil right of sovereigns, and both the duty and liberty of subjects, upon the known natural inclinations of mankind, and upon the articles of the law of nature."[5]

Also, and particularly, in Hobbes's foundation of "natural right" (ius naturae) and "natural law" (lex naturalis), that dual nature plays an important role from which emanates, both (1) the mixture of pure rationality and empirical experience characteristic of Hobbes's theory, and (2) the controversy in literature, unlikely to be resolved, regarding the status of his moral philosophy.

Hobbes himself makes his work even more difficult to understand by the ambivalence of his concepts of nature and of reason. "Nature" refers both to the sensuous nature[6] and to the rational nature[7] of man[8]; and "reason" means on the one hand the subjective, purely individual "natural" reason which serves man (as a living being) by compensating, as it were, for the lack of animal instinct; but on the other hand also - as "recta ratio" - an objective instance giving its own laws to man (as a rational being).[9]

2) For Hobbes, man has "by nature" a right, not because he is a (practical) rational being, but because he is a (rational) sensuous being; and this right is (at first) not a right to liberty, but a right to self-preservation; and man has it, not because otherwise it would be impossible to think of him as a practical-rational being in tempo-spatial community with his equals; but because without such a right he could not live as a sensuous being even without his equals.[10]

With Hobbes, man may will self-preservation, because he has to will it "by nature": "...the naturall right of Preservation which we all receive from the uncontroulable Dictates of Necessity."[11] What is precarious about this point is: if he really would have to will, i.e. if he really could not do otherwise, then speaking of "may" and of "right" would be pointless; if however the "have to" is not strict, i.e. if there is strictly no "have to" at all, then it also cannot found a right. In either case, from an empirical statement about a "natural necessity" one cannot infer a normative statement about a right. How little, by the way, self-preservation (as such) is qualified at all for "natural right", can easily be seen by the attempt to think it (just as a natural right) universally: for it contradicts itself and by this nullifies itself as right (a fate which it has in common with any "right" inferred directly from whatever purpose).

Presumably Hobbes is of the opinion that it would be "against reason" to deny a right to self-preservation to man as a rational being dependent on self-preservation. From this however it would only follow that self-preservation cannot possibly be absolutely unjust; but by no means could the conditions be inferred under which self-preservation, especially with regard to other people, could be a right.

One may perhaps try to defend Hobbes against the criticism of having committed a naturalistic fallacy, by arguing that the same "recta ratio", prior to attesting the natural right to self-preservation, has declared self-preservation, which is recognized as being necessary by nature, to be a dictate of reason so that natural right emanates from reason and its dictates. But this argument would only shift the problem,

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[4] ? "animal and rational"; El I 4.
[5] ? Lev Conclusion 13; cf. also Lev XIII 14.
[6] ? "animal"; "cupiditas naturalis"
[7] ? "natura rationalis"
[8] ? Cf. De Cive, Dedicatory Epistel; II 1; III 30; XV 4; El I 4.
[9] ? Cf. De Cive, II 1 note.
[10] Perhaps that is why Hobbes once attributes such a natural right even to animals. See De Cive VIII 10.
[11] De Cive Ded.Ep. (only in the English version)

since a duty also cannot be inferred from an empirical fact. And what reason recognizes as being "against nature" (not preserving oneself) is by no means eo ipso "against reason".

Regardless of what, according to the teachings of Hobbes, may have the primacy, either the right or the duty to self-preservation, in either case, the "recta ratio" is only "ratio cognoscendi". "Ratio essendi", however, is the purely empirical fact of physical "neediness". But from this, neither a right, nor a duty in the sense of an unconditional "ought", can be inferred, but only the hypothetical imperative of a conditional "must": if one wants to live, then one has to pursue self-preservation as a necessary means to this end. The question of right still remains unanswered.

3) With regard to the "natural laws", the situation does not seem to be any better. Just like the natural right, the "first and fundamental law of nature"[12] (and thereby all laws inferred from it) also has its final basis in "a certain impulsion of nature".[13] As a "dictate of right reason", it is conditioned by the (naturally) pre-established end of self-preservation;[14] its "necessity" is totally dependent on the "necessity" of self-preservation and thereby it has only hypothetical (although assertorical) validity. In so far the "natural laws" are "but conclusions, or theorems concerning what conduceth to the conservation and defence of [men]".[15]

4) If however one assumes a natural right as being already given (as is actually the case in Hobbes with the first appearance of the "fundamental law of nature"[16]), then this law (and thereby all laws inferred from it) can indeed be conceived as being under no (further) condition. Then, the "dictate of true reason" of seeking peace is valid surely not only under the condition that one wants to ensure one's natural right to self-preservation, but unconditionally because in the state of nature, i.e. without legal peace, mankind violates this its own right unavoidably in each person; and this, by the way, is totally independent of the factor of self-preservation and the underlying anthropological assumptions. If therefore man has at all "by nature" a right (of whatever kind and however based) and is thereby a natural bearer of right, then he also has (and now unconditionally) the legal duties developed by Hobbes in a purely rational way.[17]

That is, incidentally, how one could explain why Hobbes's doctrine of duties has an apodictic-categorical touch[18] even regardless of the "laws of nature" as having a divine author.[19]

In Hobbes's equation of "natural laws" and "dictates of reason"[20], the above mentioned conceptual ambivalence comes to fruition; the dictates of reason are "laws of nature" in so far as they presuppose the nature of man (and thereby his instinct for self-preservation) and relate to it. (Hobbes seems not to have known the idea of reason being the final ground of all moral legislation.) But the "laws of nature" are laws of reason in as much as they are found through a purely rational analysis.[21] (That is why in the "Liberty"-part of "De Cive" we find a doctrine of rights and legal duties being in its essential parts purely rational, but starting from empirical premises which in fact are of no use in this very doctrine, but have fatal consequences for the subsequent doctrine of the State.)

The notion of reason, discussed within the framework of Hobbes's "scientia civilis", is first the notion of "natural reason" which serves as an instrument for man in his condition as a living being. Reason, here, reflects upon the vital necessities to which man is subject, and gives him the means to the ends which necessarily arise from his sensuous nature.

As "right reason" however, reason makes itself, as it were, independent from that "natural reason". It is still an instrument, but now serving man as a sensuous-rational being, and it reflects accordingly upon the specifically rational necessities to which man is subject. The legal laws ("laws of nature") are firstly

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[12] De Cive II 1, 2; Lev XIV 3.
[13] De Cive I 7; De Cive(L) I 7: "necessitate quadam naturae".
[14] Cf. De Cive(L) III 27: "ad finem ad quem ordinantur".
[15] Lev XV 41; also De Cive III 33.
[16] De Cive II 1, 2.
[17] See De Cive II-III; Lev XIV-XV.
[18] De Cive II 13, 16, 17, 22; III 2, 3; IV 21; XIV 23; Lev XV 10.
[19] Cf. De Cive III 33; Lev XV 41; XXX 1; but also De Cive XIV 4.
[20] Cf. e.g. El XV 1; De Cive I 15; II 1; III 27; IV 1; Lev XIV 3.
[21] "ratiocinando": De Cive(L) IV 1.

laws of reason, and only then laws of nature??[22], in the sense that they are laws for the "rational nature"of man.[23] He is subject to them as a rational being. The "fundamental law of nature" which drives man out of the state of nature is, indeed, a "dictate of reason", a law of the rational nature of man and with regard to it: it drives man as a sensuous-rational being, not just as a living being out of that state. The lawful securing of self-preservation is for man possible only as legally (not naturally) lawful and, therefore, rationally lawful. It is Reason (and not the sensuous nature) of man which, in the first instance, gives, in one and the same rule, both the "first and fundamental law of nature" and the "highest principle of natural right"[24]. The idea of (objective and subjective) Right is determined by its conformity to reason: and the very natural right to self-preservation is, as right, a concept of reason although empirically conditioned.

Whether self-preservation is the basis of the whole system of natural rights and "natural law"-duties or not, and whether by this, the system as a whole has only assertoric-hypothetical validity or not, the purely rational justification of natural private Right, of the necessity of natural public Right as well as of the "natural laws" remains thereby untouched. In this whole area (including the "fundamental law of nature" of seeking peace), reason is also (in the first instance, although not ultimately) "ratio essendi". The attributing of a natural right, however the attributing may be justified, implies unavoidably in its juridical consequences[25] the "subjection" of man to a specific, non-natural lawfulness, - the lawfulness of laws of reason as laws of Right.

It is Hobbes, indeed, who initiated the project of purely rational legal thinking. However, it is the empirical moment in his concepts of natural Right and of the (original) contract (of subjection) which hinders Hobbes from taking this purely rational legal thinking to its ultimate conclusion. And it is at the same time the consequence of embarking on this project, which hinders him (unlike Locke) from developing an empirical theory of politics which takes the empirical conditions of mankind into account.

Some scholars have claimed that in Hobbes the concept of natural right is given primacy over the idea of duty; and that this primacy constitutes a decisive break with traditional political philosophy.[26] I, also, consider the work of Hobbes as the beginning of a new era in political philosophy, but with regard to his theory of the state of nature and to the purely rational proof, contained in this theory, of the (juridical) necessity of the State. Concerning the concept of natural right however, Hobbes can be seen to remain within the tradition: it is true, for him, there is no longer a "highest good" and an "ultimate purpose",[27] the pursuit of which could justify human action with regard to others; but also for him, natural right is bound to a purpose, namely self-preservation. (It is precisely this factor which causes the aporias in his doctrine of the State.)

5) As is known, Hobbes asserts not only the existence of an identity of "natural (moral) law" with "divine law" and, again, their identity with "right reason",[28] but also the dependence of those laws as laws on the authorship of God.[29]

Epistemologically, the question arises how, in fact, the divine authorship can be known.[30] As far as this is possible (only) by one's own reason, divine law and law of reason are for man practically the same. To this would correspond Hobbes's speaking of the "Reason, which is the law of Nature,...given by God to every man for the rule of his actions".[31] But as far as "revelation" is required for it,[32] such a law would lack a generally binding character: "...the laws of nature...before, being not known by men for any thing

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[22] De Cive III 30; XV 4.
[23] "vox naturae siue ratio naturalis"; De Cive (L) XIV 14; cf, El XV 1.
[24] Lev XIV 4.
[25] See particularly De Cive I-III; Lev XIV-XV.
[26] Cf. Leo Strauss...
[27] Lev XI 1: De Homine XI 15.
[28] See De Cive IV 1; XIII 2.
[29] See Decie III 33; Lev XV 41; XXX 1, 30.
[30] Cf. Lev XXXIII 22.
[31] De Cive IV 1; also De Homine XIV 5.
[32] "as they are delivered by God in holy Scriptures, ... they are most properly called by the name of Lawes"; De Cive III 33.

but their own natural reason, they were but theorems, tending to peace, and those uncertain, as being but conclusions of particular men, and therefore not properly laws."[33]

Anyhow, Hobbes seems to regard the "tacit dictates of right reason"[34] as a "natural", world-immanent expression ("lex naturalis") of the divine will ("lex divina"). Thus, he speaks of the "Kingdome unto God: Naturall, in which he reignes by the dictates of right reason, and which is universall over all who acknowledge the Divine power, by reason of that rationall nature which is common to all"[35]; that is, all those who recognize the binding character of the laws of reason which are as such the expression of the divine authority. And in "Leviathan", he says: "As far as they [the Holy Scriptures] differ not from the law of nature, there is no doubt, but they are the law of God, and carry their authority with them, legible to all men that have the use of natural reason: but this no other authority, than that of all other moral doctrine consonant to reason; the dictates whereof are laws not made, but eternal."[36]

On the level of moral philosophy, the question (which will not be discussed here) arises how the divine will, as alien to one's own will, could possibly be obligatory for this will.

Regardless of whichever way the raised questions may be answered, God definitely does not play any role within Hobbes's "scientia iustitiae".[37] The divine laws as far as they are binding for all mankind, are "natural" "with regard to God as the author of nature", and "laws" "with regard to the same God as king of kings".[38] In other words, also, and in particular, man as a rational being is conceived as a creature of God, and the laws of reason are conceived as willed by God. The lawful nexus is a natural one, in the case of the juridical "laws of nature" a "rational-natural" one; but its imperative form it obtains from God as ruler ("king of kings"[39]). The binding character of the laws of nature, hence, is due to the divine will. Their knowledge and justification, however, are attained in a purely rational way ("ratiocinando"). Whether or not, for Hobbes, the binding character of the laws of reason has its ultimate ground in the will of God, the question of whether a given law is binding is in any case determined only by the conformity of what it commands, to reason. It is the "certain Clue of Reason...by the benefit of whose Conduct, wee are led as 'twere by the hand into the clearest light"[40] of the world of justice. The fact that what is in conformity to reason, is binding may have its ground in the will of God. What however is in conformity to reason and thus binding, is stated by reason. The purely rational character of Hobbes's doctrine of Right would therefore remain untouched regardless of its possible theonomous foundation. The "final foundation" of the binding character of juridical statements belongs, by the way, not to the doctrine of Right itself, but to a (prior) general moral philosophy which - as was said above - does not exist in Hobbes.

6) Whether one finds Hobbes's derivation and definition of natural Right acceptable or not (as I would argue), and whether one ascribes to his doctrine of duties categorical or only hypothetical validity, and whether one assumes a theonomous moral philosophy in him or not; the philosophical value of the doctrine of Right (especially as found in "De Cive") is entirely independent of this. In particular, this is true with regard to Hobbes's pioneering work in the philosophy of Right, namely the juridical analysis of the natural state of mankind (including the general theory of contract)[41] and the subsequent proof of the juridical necessity of the State. And regardless of whether seeking (legal) peace is categorically commanded or only hypothetically "advised", in any event, it can be successful only under the conditions pointed out by Hobbes: mankind has to be conceived as a community of persons who are natural equal bearers of right; the natural state of mankind has to be conceived as a state which cannot be justified under any conditions; and the State has to be conceived as a state to be constituted, by contract, in order to

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[33] EW IV, p. 284-5.
[34] De Cive XV 3.
[35] De Cive XV 4.
[36] Lev XXXIII 23.
[37] See De Cive III 33. Indicative of this, is the laconic sentence with which in "De Cive" the systematic juridical considerations about liberty and state of nature end.
[38] Lev XXX 30.
[39] Cf. De Cive III 33.
[40] De Cive, Ded. Ep.
[41] See De Cive II, III; Lev XIV-XV.

secure right. Nobody has understood better than Hobbes that, in the case of legal laws (of right),[42] if necessary, their rationally founded binding character can be substituted by the authority of the State and the voluntariness of the observance of law can be substituted by State coercion. It is not the objectivity of the validity of the juridical "dictates of reason" which is affected by the lack of a "Critique of Practical Reason", but only the status of that validity as hypothetical or categorical. The "problem of establishing a state", i.e. the problem of establishing peace, "is solvable even for a people of devils (if only they have intelligence)"[43], because mere rules of expediency are sufficient here. For the solution of the problem of legitimation however, they do not suffice. Yet, whoever wants to justify the domination of man over man, can also do this only by following the (lengthy) path which Hobbes, with his razor-sharp juridical thinking, has blazed.

II. Politics and Religion in Hobbes

Since the days of the first appearance of "De Cive" up to the present, there has been an unending and yet utterly futile controversy about the "theological" position of Hobbes and about the place and the function of his "theological" remarks within his "philosophia civilis"; in particular, as to whether Hobbes was an atheist or possibly a Christian, and whether the third part of "De Cive" (on "religion") and, above all, the whole second half of "Leviathan" (on the "Christian Commonwealth" and on the "Realm of Darkness") serve only to disguise, in fact, his actually "unchristian" purposes or, on the contrary, are the "crowning" of his political thoughts or even the very basis of it.

With regard to the third part of "De Cive", Hobbes indicates its meaning frankly and precisely: it is a mere "appendage"[44], i.e. this part has no systematic necessity and no systematic connection with the two preceding parts on "Liberty" and "Dominion" as they have with each other.[45]

With regard to this appendage "concerning the Regiment of God", Hobbes says that it "hath been done with this intent, that the Dictates of God Almighty in the Law of nature, might not seem repugnant to the written Law, revealed to us in his word."[46] With this intent of the appendage, Hobbes puts himself into the medieval-Christian tradition which attempted to recognize the will of God in two ways: philosophically, via the "lumen naturale" of reason by insight into the "lex naturalis", and theologically, via belief and its "insight" into the revealed law of God.[47] What Hobbes himself now presents as well-founded knowledge is pure philosophy and its validity is totally independent of the pseudo-theological "appendages". But even the impression of a contradiction between the "laws of nature", stated by him, and what in those days was thought to be the revealed will of God, could have brought him to the stake. In connection with this, one only needs to remember the wave of indignation, caused by the truly Christian Hugo Grotius's simple and innocent conditional statement concerning his considerations regarding the law of war and peace (1625), in which he observed that these considerations would be valid even if there were no God.[48] And, in fact, "De Cive" was in 1654 put on the Index of the Roman Catholic Church, and in

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[42] as distinguished from ethical laws (of virtue).

[43] Kant, Toward Eternal Peace, in: Principles of Lawful Politics, Immanuel Kant's Philosophic Draft Toward Eternal Peace, ed. Wolfgang Schwarz, Aalen 1988, p. 99.

[44] De Cive Ded. Ep.

[45] Cf. the composition of the engraving on the title page of the first edition of "De Cive"(Paris 1642): the curtain bearing the title of the book is hanging only in front of the (one) Liberty- Dominion-panel which obviously forms a unity; above it and entirely seperated, the Religion-panel is, as it were, floating, reminding the observer of a "kingdom" which is "not of this world". Essentially, the doctrine of "the true citizen" by no means needs a "doctrine" of the Last Judgement (as pictured in the upper panel); on the other side, the possible relevance of the "philosophia civilis" for a "doctrine" of the Last Judgement is not a problem for a philosopher who deals with "the true citizen".

[46] De Cive Ded. Ep.

[47] One of the reasons for the triumph of Aristotelian philosophy in the high middle ages was its specific qualification for acting as the handmaiden of theology. Cf. Lev XLVI 13.

[48] See De iure belli ac pacis, Prol., par. 11, 12.

1683, less than four years after the death of Hobbes, this book was, by decree of Oxford University, forbidden and publicly burnt, together with "Leviathan" and other "Pernicious Books and Damnable Doctrines", allegedly being "false, seditious and impious; and most of them...also Heretical and Blasphemous, infamous to Christian Religion, and destructive of all Government in Church and State".[49] Apart from the interest in his personal security, it must of course be very important to Hobbes, in view of his new "scientia civilis", not to prejudice the readers against himself from the outset by the above mentioned impression of a contradiction. He therefore tries to show them that his doctrine of the right of the ruler to rule and of the duty of the citizen to obey, is not in conflict either with religion in general or with Christian religion in particular. Thus far, the digression, connected with the "appendage", into areas of theology only serves the exterior securing of his "scientia civilis", but by no means the inner foundation or "crowning" of it; philosophically, it is irrelevant.[50]

But there is for Hobbes still an entirely different reason to deal with theological positions (and their advocates) This reason lies in the very heart of his "philosophia civilis" itself: "the points of doctrine concerning the kingdom of God, have so great influence on the kingdom of man..."[51] Since, however, the kingdom of man is the specific subject of the "philosophia civilis", religious and church affairs are of special importance for Hobbes under the aspect of the philosophy of State Right, not of theology.

The problem, unavoidably forced on Hobbes by the circumstances of the times, is generated by the claim for a spiritual or ecclesiastical power, not only independent of secular ("civil") power, but also of equal rank or possibly even prior to secular power. This, of course, is the traditional problem of the doctrine of the two swords. While in "De Cive", the philosophically more rigorous version of his doctrine, Hobbes deals with this highly topical and explosive subject only in an "appendage" (in passing, as it were), he dedicates the whole second part of the "Leviathan", the "popular" version of his doctrine, to it.

His solution of the problem is as unambiguous as it is unconditional: the two swords held in two different hands makes peace and religion incompatible,[52] gives rise to a State within the State,[53] and, ultimately, leads to the dissolution of the State,[54] and to civil war.[55] The claim by spiritual authorities for their own sword, if realized, would mean nothing less than the usurpation of power.[56] For the maintainence of public justice and, thereby, of peace on earth, there can only be one single power holding both swords: the secular ("civil") power of the State. "...the points of doctrine concerning the kingdom of God, have so great influence on the kingdom of man, as not to be determined, but by them, that under God have the sovereign power."[57]

Hobbes has to make use of "certain texts of Holy Scripture, alleged by me to other purpose than ordinarily they use to be by others", namely (for Hobbes) in order to found the right of the ruler (State), because just these texts "are the outworks of the enemy, from whence they impugn the civil power".[58]" Again, he uses religious facts only for the purpose of an effective support for his (in itself thoroughly sufficient) purely rational discussion of the Right of the State: "And thus much shall suffice, concerning the kingdom of God, and policy ecclesiastical. Wherein I pretend not to advance any position of my own,

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[49] Quoted from Warrender, Latin Version, 19-20.
[50] N.B. Where it could perhaps have been of some importance for Hobbes, although not necessarily of philosophical significance, namely in his theory of obligation, there he contents himself with the assertion that the "laws of nature" become (binding) laws in the strict sense (in sensu stricto) only as given by God in the Holy Scriptures and known as such. See De Cive III 33; Lev XV 41; Lev(L) XV 37.
[51] Lev XXXVIII 5.
[52] El XXVI 10.
[53] De Homine XIII 7.
[54] Lev XXXVIII 1.
[55] Lev XXXIX 5.
[56] Lev XLVI 42.
[57] Lev XXXVIII 5. Cf. the engraving on the title page of the first edition of "Leviathan" (1651) with its strong "political" touch in comparison with the purely legal-philosophically inspired engraving mentioned above; cf. also the conjunction in the complete title of "Leviathan": "Leviathan: or, the Matter, Form and Power of a Commonwealth, Ecclesiastical and Civil" (my italics).
[58] Lev Dedication.

but only to show what are the consequences that seem to me deducible from the principles of Christian politics, (which are the holy Scriptures,) in confirmation of the power of civil sovereigns, and the duty of their subjets."[59] A specific justification of a Christian State by Hobbes is absolutely out of the question. The State which he deals with, is purely laically conceived and, at any rate, the opposite of a theocracy. It is not the State which is subject to spiritual powers, but these, whichsoever, are subject to the State, as far as is required by its function of maintaining peace.[60] The subject matter of a religious doctrine does not play even the slightest role with regard to the outcome of the "philosophia civilis"[61], although Hobbes does occasionally show, it must be said, some sympathy for Christianity. Accordingly then, the right of the ruler with regard to ecclesiastical doctrines, has nothing to do with their (possible) "truth", but only with their "political" relevance: "I never said that princes can make doctrines or prophecies true or false; but I say every sovereign prince has a right to prohibit the public teaching of them, whether false or true."[62] The purpose of State jurisdiction in controversial religious affairs is not truth, but peace. Slightly altering the famous dictum of Hobbes: "authoritas, non veritas, facit legem"[63], one could say here: authoritas facit pacem, non veritatem.

To speak of "political theology" with regard to the second half of "Leviathan", would be absolutely mistaken. On the contrary, this part of the book is the application of pure "philosophia civilis" to concrete claims, from the ecclesiastical side, for rulership and liberties; claims which Hobbes actually divests of their theological-religious aura and which he treats according to what they really are: a problem of (State) Right.

III. Hobbes and Kant on Sovereign Power

For Hobbes, the hope with regard to the "benefit arising from [a] doctrine of morality, truly declared"[64], must appear to be vain wherever the principle that sovereign power has to be absolute, is violated, since the civil state would no longer be resistant to a relapse into the (natural) state of civil war. The legal "absoluteness" of the State is for Hobbes an entirely necessary condition of the civil state as a state securing natural right,[65] and not just a characteristic of the monarchic form of government favoured by him. For him, the concept of "supreme power" implies that this power cannot be legally restrained by any other power in the State; legally supreme power however is unconditionally required by the State in order to guarantee legal security; an external legal restraint on State power would therefore be tantamount to an abolition of sovereignty and, in the end, to a dissolution of the State. It is self-evident that an absolute sovereign legally excludes any possibility, on the part of the citizens, of seeking private justice; therefore, according to Hobbes, under no conceivable conditions does the citizen have a right to revolution.[66]

Hobbes is of the opinion that any real separation of powers in the State would lead to the abolition of (internal) sovereignty and thereby to the dissolution of the State; - thus, not only the abolition of the legal monopoly of State power, but also the act of transferring the exercise of this monopolistic power to several independent bodies or combination of bodies.[67] But even in the modern constitutional State with its ingenious system of checks and balances, there is (necessarily) always a power which, regardless of how strong the mutual controls and restraints of the separate authorities may be, will be supreme in the sense of a legally final verdict and a corresponding legal unconditionality: whenever and wherever this

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[59] Lev XLIII 24.
[60] See De Cive XVII 10, 21; XVIII 13; Lev XXXIX 5; XLII 128.
[61] Cf. also De Cive XIII 5 and El XXVIII 2.
[62] EW IV, p. 329.
[63] Lev(L) XXVI 21.
[64] De Cive, The Authors Preface to the Reader; Latin version: "ab officiorum doctrina bene tradita Utilitas".
[65] Cf. De Cive V 5; VI 1.
[66] Cf. De Cive VI 13.
[67] See esp. De Cive VII 4; XII 5; El XX 16; Lev XVIII 16; XXIX 12

power has any right to decide about (possible) coercion (namely with regard to determining and securing public justice), then and there this right is externally absolute. The "civil state" - in its very conception - is the only state of mankind in which this very mankind can be sure of its natural right, thanks to the general coercive power of the State. And thus, also, and especially, in the modern constitutional State, there cannot possibly be a right against the power of the State which is the very ground of the possibility of effective Right: without the State, man's natural right (to self-preservation) would be entirely insecure; the function of the State is to secure this right (legal peace); hence, from this very right there cannot possibly be inferred a right against the power of the State; since the State alone guarantees security of right and therefore is necessarily supreme.

Kant is thus far in total accord with Hobbes. Nevertheless, as is well known, he objects to Hobbes's doctrine of the State which he calls "erschrecklich" (terrifying), because, according to it[68], "the head of state is bound by no contractual obligation toward the people", and, therefore, he "cannot wrong the citizens, he may dispose of them as he wishes." Kant would agree with this proposition, "if »wron[69]o duties in relation to them).

In a certain respect now, the teachings of Hobbes, even with regard to this point, are in principle not so far away from Kant's position. Where the State is not (or is no longer) able or willing to give security, that is, where the natural right is not (or is no longer) guaranteed by the State, there, also for Hobbes, the duty to obey ceases.[70] If one takes into account, with regard to the passage criticized by Kant, Hobbes's distinction between wrong in the strict and in the wide sense and, furthermore, his doctrine of the "duties of them who bear Rule"[71], then, it is, at the first glance, difficult to discover a fundamental difference with Kant. For both, a command of the State which is against natural right, itself lacks the character of right; it is under no circumstances binding.[72] And for both, the natural right of the subjects to disobey such a command, as well as the duty, imposed by natural law, of the ruler not to give such a command, have their unconditional validity only with regard to the inner court of one's own conscience (in foro interno); an outer court (forum externum) is not even conceivable in this case, since the only feasable instance coming into consideration for such a court would be, again, the State, and it is itself a party.

In an different respect however, which Kant, in fact, had in mind in his critical remark, Hobbes's doctrine of the State is, in its result, really "terrifying", - not however, because of the legal supremacy of State power, but because of this power`s complete incapability for becoming, with regard to the use made of it, legally determined and, thereby, limited. Unlike the "republican" absoluteness of the right of the State in Kant, the "despotic" absoluteness in Hobbes has no principle by which this right would be determined. In the case of the Hobbesian original contract (of subjection), men, with regard to the determination of their right, surrender unconditionally to the empirical will of the ruler, so that he is not bound at all by the contract; and as to the obligation from the "lex naturalis" to secure the natural right of his subjects, he comes off, with regard to the exercise of his power, empty-handed, faced with a natural right (to self-preservation) which, taken universally, contradicts itself. With such a handicap, he can, even with the best of wills, determine the (positive) right of his subjects, for want of a (lawful) general will, only "at pleasure", according to his (arbitrary) private will, i.e. despotically. "...the subjects did not give the sovereign that right [i.e. to punish]; but only in laying down theirs [i.e. the right to everything] strengthened him to use his own, as he should think fit[73], for the preservation of them all: so that it was not given, but left to him, and to him only; and (accepting the limits set him by natural law) as entire, as in the condition of mere nature, and of war of every one against his neighbour."[74] On the basis of such premises, the ruler is, literally, "legibus solutus". He cannot commit a wrong to his subjects because, in relation to

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[68] See De Cive VII 14.

[69?] See Kant, On the Old Saw: That May Be Right in Theory, But It Won't Work in Practice, trans. E.B.Ashton, Philadelphia 1974, p. 71.

[70] Cf. De Cive XVIII 13; Lev XXI 20; Kant, On the Old Saw, op. cit., p. 72; Kant, The Metaphysical Elements of Justice (= Doctrine of Right), trans. John Ladd, Indianapolis 1965, p. 139 line 18-9; Kant, Toward Eternal Peace, in: op.cit. 128.

[71] De Cive XIII; De Cive(L): "de officiis eorum qui summum imperium administrant"; see esp. XIII 2.

[72] Cf. e.g. De Cive VIII 1; Lev XXVI 41; XXXI 1.

[73] Lev(L): "arbitrio suo".

[74] Lev XXVIII 2; my italics.

him, they do not have any rights at all to be violated. Public justice is what he, by sovereign, lawless arbitrariness, determines it to be as such. The infamous "absolutism" in Hobbes has its ground in the paradoxical conception of a legally unlimited legitimate power.

Georg Geismann (Firenze)

Hobbes on Right and Law[75]

(revised version of chapter I above!!!)

To approach Hobbes with questions about the foundation of moral philosophy invites disappointment - not so much about possible errors, but rather about his very restricted treatment of this matter. Nevertheless, the few words with which he indicates rather than clarifies it[76] may serve at least for making some principal remarks about what he calls "civil philosophy" or, preferably, "civil science"[77].

What Hobbes successfully presents, especially in "De Cive", are important parts of a purely rational legal philosophy. In Kantian terms we may say that we find an elaborate "Doctrine of Right"[78], both of the doctrine of private Right and of public Right. However, notwithstanding the fact that this doctrine is meticulous and profound, its moral-philosophical foundation is absolutely insufficient. Again in Kantian terms, we can say that in the philosophy of Hobbes there is neither a "Groundwork" nor a "Critique of Practical Reason", not even in rudimentary form; nor is there, by the way, a "Doctrine of Virtue" as the counterpart to the doctrine of Right.[79]

In the literature on Hobbes, especially that of the last fifty years, scholars have expended a great deal of energy and exercised much acumen in order to shed light onto the dark left by Hobbes. This is not

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[75] ? The works of Hobbes quoted are referred to as follows:
De Cive: Thomas Hobbes, De Cive, The English Version, A Critical Edition by Howard Warrender, Oxford 1983
De Cive (L): Thomas Hobbes, De Cive, The Latin Version, A Critical Edition by Howard Warrender, Oxford 1983
El: Thomas Hobbes. The Elements of Law, Natural and Politic, ed. Ferdinand Toennies, London 1889, Reprint London 1969
OL: Thomas Hobbes, Opera Latina, ed. William Molesworth, London 1839-45, 5 Vols.
EW: Thomas Hobbes, The English Works, ed. William Molesworth, London 1839-45, 11 Vols.
With regard to all texts, Roman numerals refer to chapters, Arabic to paragraphs.
My numeration of the paragraphs of "Leviathan" follows the arrangement of the English resp. Latin version of the Molesworth edition. The English version is referred to as "Lev", the Latin version as "Lev (L)".
Following H.Warrender (De Cive, Latin version, p. 54), the chapters of the two parts of the "Elements of Law" are counted consecutively; accordingly, the first chapter of the second part is referred to as "El XX".

[76] ? See e.g. De Cive I 7; II 1; III 33.

[77] ? Synonymously, he also uses "science of justice", "political science", "doctrine of civil society", "civil knowledge", "elements of laws". See e.g. De Cive, The Author's Preface to the Reader, par. 2, 3, 6; I 2; III 13; Lev (L) IX 9; Lev IX Table; El I 1; De Corpore OL I, Ep. Ded.; I 7; 9; VI 7.

[78] ? When I speak of "doctrine of Right" (instead of "doctrine of law") respecting "legal philosophy", I refer to the continental tradition according to which "jus, Recht, droit, diritto" respectively "philosophia juridica, Rechtsphilosophie, philosophie du droit, filosofia del diritto" refer, at the same time, to "right" (as a subjective title) and to "law" (as an objective corpus of rules). "Right" (with a capital R), therefore, means both "right" (in the subjective sense) and (juridical) law (in the objective sense). Accordingly, the term "juridical" also refers both to the subjective and to the objective "sphere".

[79] ? Where Hobbes deals with the "natural laws" as the embodiment of the conditions necessary for self-preservation, he takes into consideration only those concerned with making and keeping peace between mankind. (See e.g. Lev XV 34) This means that he confines himself to a doctrine of the juridical duties and rights (i.e. with regard to the outer freedom between men). Thus far, it is neither necessary nor even possible for him to give a general doctrine of duties. That is why he can even identify moral philosophy ("Moralls") and philosophy "treating... of naturall right" (De Cive, Epistle Dedicatory, par. 5; cf. also Lev XV 34, 40). See also what he says about "doctrine of morality" (officiorum doctrina) in De Cive, Preface, par. 5.

the place to deal with the various attempts made in this matter. Rather, I confine myself to some reflections which may be useful for a deeper understanding of Hobbes' political philosophy.

1) Hobbes bases his considerations on the fundamental assumption of man as a sensuous-rational being.[80] This is indeed absolutely correct with regard to the constitution of the basic political problem which arises out of the possibility of domination of man over man: it is the sensuous-rational dual nature of man which puts mankind into a peculiar "state of nature" fundamentally different from that of all other animals. But, fatally for a (normative) doctrine of Right, at certain points Hobbes also bases his attempt to solve that problem, as a juridical one, on this very dual nature. Thus he says at the end of "Leviathan": "I ground the civil right of sovereigns, and both the [juridical] duty and liberty of subjects, upon the known natural inclinations of mankind, and upon the articles of the law of nature."[81]

In particular, in Hobbes' foundation of "natural right" (ius naturae) and "natural law" (lex naturalis) that dual nature plays an important role from which emanate both (1) the mixture of pure rationality and empirical experience characteristic of Hobbes' theory and (2) the controversy in the literature, unlikely to be resolved, regarding the status of his political philosophy as moral philosophy.

Hobbes himself makes it even more difficult to understand his work by the ambivalence of his concepts of nature and of reason. "Nature" refers both to the sensuous nature and to the rational nature of man.[82] "Reason" is the subjective, purely individual "natural" reason which serves man (as a living being) by compensating, as it were, for the lack of animal instinct. On the other hand, it also plays an objective role as "right reason" , giving its own laws to man (as a rational being).[83]

2) For Hobbes man has "by nature" a right,[84] not because he is a (practical) rational being, but because he is a (rational) sensuous being. This right is initially not a right to liberty, but a right to self-preservation. Man has this right because he could not live as a sensuous (dependent) being without it, even in isolation his equals, not because otherwise it would be impossible to think of him as a practical-rational (free) being in spatio-temporal community with his equals.[85] How is this to be conceived? A nature which would provide man with the need for self-preservation but not with the will to it would be (thus far) self-destructive. Accordingly, just as man's sensous nature makes the satisfaction of his needs a natural necessity, so does his rational nature make naturally necessary the purposive realization of that satisfaction. Thus, since he has to will it "by nature"[86], he also may will it "by nature"[87].

What is precarious about this point is: If he really must will, i.e. if he really could not will otherwise, then speaking of "may" and of "right" would be pointless. Alternatively, if the "must" is not strict, i.e. if there is strictly no "must" at all, then there is also no ground for a right. In either case, one cannot infer a normative statement about a right from an empirical statement about a "natural necessity".

Presumably Hobbes is of the opinion that it would be "contrary to right reason"[88] to deny a right to self-preservation to man as a being dependent on self-preservation. From this, however, it would only follow that self-preservation cannot possibly be absolutely unjust. By no means could the conditions be inferred under which self-preservation could be a right (with regard to other people). Rather, if one takes self-preservation seriously as a natural right and, accordingly, conceives it universally, then one can easily

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[80] ? "animal and rational"; El I 4; cf. El XIV 1; De Cive I 1; Lev I-VI.
[81] ? Lev Conclusion 13 (my italics); cf. also Lev XIII 14.
[82] ? De Cive, Ep. Ded., par. 10: "the concupiscible part... the rationall [part]; cf. also De Cive II 1; III 30; XV 4; El I 4.
[83] See De Cive, II 1 note.
[84] See El XIV 6; De Cive I 7; Lev XIV 1.
[85] Perhaps that is why Hobbes once attributes such a natural right even to animals. See De Cive VIII 10.
[86] "to have a care of ones selfe is not a matter so scornfully to be looked upon, as if so be there had not been a power and will left in one to have done otherwise;... and this he doth, by a certain impulsion of nature, no lesse than that whereby a Stone moves downward..."; De Cive I 7.
[87] "...the naturall right of Preservation which we all receive from the uncontroulable Dictates of Necessity." De Cive, Ep. Ded.; par. 2 (only in the English version). De Cive I 7: the "endeavour" for self-preservation as "the first foundation of naturall Right".
[88] De Cive I 7.

see that it contradicts itself and by this fact nullifies itself as a right. This is a fate which the right to self-preservation has in common with any "right" inferred directly from whatever purpose (end?).

One may perhaps try to defend Hobbes against the criticism of having committed a naturalistic fallacy by arguing that, prior to attesting the natural right to self-preservation, the same reason has declared self-preservation, which is recognized as being necessary by nature, to be a dictate of reason[89], so that natural right emanates from reason and its dictates.[90] But this argument would only shift the problem, since a duty cannot also be inferred from an empirical fact. And that which reason recognizes as being "against nature" (not preserving oneself) is by no means eo ipso "against reason".

Regardless of what, according to the teachings of Hobbes, may have the primacy, the right or the duty to self-preservation, in either case, the "right reason" is only "ratio cognoscendi". "Ratio essendi", however, is the purely empirical fact of physical "neediness". But from this one cannot infer a right nor a duty in the sense of an unconditional "ought", but only the hypothetical imperative of a conditional "must": if one wants to live, then one has to pursue self-preservation as a necessary means to this end. The question of right still remains unanswered.

3) With regard to the "natural laws" the situation does not seem to be any better. Just like the natural right, the "first and fundamental law of nature"[91] (and thereby all laws inferred from it) also has its final basis in "a certain impulsion of nature".[92] As a "dictate of right reason"[93] it is conditioned by the (naturally) pre-established end of self-preservation.[94] Its "necessity" is totally dependent on the "necessity" of self-preservation and thereby it has only hypothetical (although assertorical) validity. Thus far "natural laws" are "but conclusions, or theorems concerning what conduceth to the conservation and defence of [men]".[95]

4) If, however, one assumes a natural right as being already given (as is actually the case in Hobbes with the first appearance of the "fundamental law of nature"[96]), then this law (and thereby all laws inferred from it) can indeed be conceived as being under no (further) condition. Then, the "dictate of right reason" of seeking peace is valid surely not only under the condition that one wants to ensure one's natural right to self-preservation, but it is unconditionally valid because in the state of nature, i.e. without juridical peace, mankind violates this, its own right, unavoidably in each person.[97] This, by the way, is totally independent of the factor of self-preservation and the underlying anthropological assumptions. If, therefore, man has at all "by nature" a right (of whatever kind and however based) and is thereby a natural bearer of right, then he also has (and now unconditionally) the juridical duties developed by Hobbes in a purely rational way.[98]

Incidentally, that is how one could explain why Hobbes' doctrine of duties has an apodictic-categorical "flavour",[99] regardless of whether the "laws of nature" have a divine author.[100]

In Hobbes' equation of "natural laws" and "dictates of reason"[101], the above-mentioned conceptual ambivalence comes to fruition. Tthe dictates of reason are "laws of nature" in so far as they presuppose the

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[89] See De Cive (L), Ep. Ded., par. 10, where Hobbes speaks of the "[postulatum] rationis naturalis" (as a "certissim[um] naturae humanae postulat[um]") to avoid a violent death.
[90] Cf. Lev XIV 4.
[91] De Cive II 2; Lev XIV 4.
[92] De Cive I 7; De Cive(L) I 7: "necessitate quadam naturae".
[93] De Cive II 1.
[94] Cf. De Cive III 27: "to the end for which they [the laws of nature] were ordain'd".
[95] Lev XV 41; see also De Cive III 33.
[96] De Cive II 2; Lev XIV 4.
[97] See De Cive I 11.
[98] See De Cive II-III; Lev XIV-XV.
[99] Cf. De Cive II 13, 16, 17, 22; III 2, 3; IV 21; XIV 23; Lev XV 10.
[100] Cf. De Cive III 33; Lev XV 41; XXX 1; but also De Cive XIV 4.
[101] See e.g. El XV 1; De Cive I 15; II 1; III 27; IV 1; Lev XIV 3.

nature of man (and thereby his instinct for self-preservation) and relate to it.[102] But the "laws of nature" are laws of reason in as much as they are found through a purely rational[103] analysis.[104]

The notion of reason discussed within the framework of Hobbes' "civil science" is, first, the notion of "natural reason"[105] which serves as an instrument for man in his condition as a living being. Here reason reflects upon the vital necessities to which man is subject, and gives him the means to the ends which necessarily arise from his sensuous nature.

As "right reason"[106], however, reason makes itself, as it were, independent from that "natural reason". It is still an instrument, but now serving man as a sensuous-rational being, and it reflects accordingly upon the specifically rational necessities to which man is subject. The juridical laws ("laws of nature") are, firstly, laws of reason,[107] and only then laws of nature, in the sense that they are laws of "natural reason"[108] for the "rational nature"[109] of man. He is subject to them as a rational being. The "fundamental law of nature" which drives man out of the state of nature is, indeed, a "dictate of reason"[110]: it drives man out as a sensuous-rational being, not just as a living being. The lawful securing of self-preservation is possible for man only juridically and, therefore, rationally, and not naturally. It is man's reason (and not his sensuous nature) which, in the first instance, gives, in one and the same "general rule", both the "first, and fundamental law of nature" and the "sum of the right of nature"[111]. The idea of (objective and subjective) Right is determined by conformity to reason; and the very natural right to self-preservation is, as right, a concept of reason although empirically conditioned.

The purely rational justification of the natural rights and laws (private Right) and of the necessity of the civil state (public Right) remains untouched irrespective of the answers to the questions: Is self-preservation the basis of the whole system of natural rights and "natural law"-duties and does, accordingly, the system as a whole have only assertoric-hypothetical validity? In this whole area (including the "fundamental law of nature" of seeking peace) reason is also (in the first instance, although not ultimately) "ratio essendi". However the attributing may be justified, the attributing of a natural right implies an unavoidable juridical consequence[112]: the "subjection" of man to a specific, non-natural lawfulness, - the lawfulness of laws of reason as laws of Right.

Some scholars have claimed that in Hobbes the concept of natural right is given primacy over the idea of duty;[113] and that this primacy constitutes a decisive break with traditional political philosophy.[114] No doubt, the work of Hobbes is the beginning of a new era in political philosophy. But this it is by virtue of his theory of the state of nature and of the purely rational proof, contained in this theory, of the (juridical) necessity of the State. Concerning the concept of natural right, however, Hobbes can be seen to remain within the tradition: it is true that for him there is no longer a "highest good"(summun bonum) and a "final end" (finis ultimus),[115] the pursuit of which could justify human action with regard to others; but he also holds that natural right is bound to a purpose, namely self-preservation.

[1022]7 Hobbes seems not to have known the idea of reason as being the final ground of all moral legislation.
[103] "by reasoning", "ratiocinando"; De Cive IV 1.
[104] That is why in the "Liberty"-part of "De Cive" we find a doctrine of rights and juridical duties being in its essential parts purely rational, but starting from empirical premises which in fact are of no use in this very (particular ?) doctrine, but have fatal consequences for the subsequent doctrine of the State.
[105] "ratio naturalis"; see e.g. De Cive (L), Ep. Ded., par. 10.
[106] See De Cive II 1 note.
[107] See De Cive II 1, 2.
[108] "the voice of nature, or naturall reason"; De Cive XIV 14; cf. El XV 1.
[109] De Cive III 30; XV 4.
[110] See De Cive II 2.
[111] Lev XIV 4.
[112] See particularly De Cive I-III; Lev XIV-XV.
[113] See however Lev XIV 4; also De Cive, Preface.
[114] Cf. e.g. Leo Strauss, Natural Right and History, Chicago 1953, p. ##.
[115] Lev XI 1; De Homine XI 15.

5) As is known, Hobbes asserts not only an identity of "natural (moral) law" with "divine law" and, again, their identity with "right reason",[116] but also the dependence of those laws, as laws, on the authorship of God.[117]

Epistemologically the question arises how, in fact, the divine authorship can be known.[118] Insofar as this is possible (only) by one's own reason, divine law and law of reason are practically the same for man. To this would correspond Hobbes' speaking of the "Reason, which is the law of Nature,...given by God to every man for the rule of his actions".[119] But as far as "revelation" is required for it,[120] such a law would lack a generally binding character: "...the laws of nature...before, being not known by men for any thing but their own natural reason, they were but theorems, tending to peace, and those uncertain, as being but conclusions of particular men, and therefore not properly laws."[121]

In any case, Hobbes seems to regard the "tacit dictates of Right reason"[122] as a "natural", world-immanent expression ("natural law") of the divine will and its law ("divine law").[123] Thus, he speaks of the "Kingdome unto God: Naturall, in which he reignes by the dictates of right reason, and which is universall over all who acknowledge the Divine power, by reason of that rationall nature which is common to all"[124]; that is, all those who recognize the binding character of the laws of reason which are as such the expression of the divine authority. And in "Leviathan", he says: "As far as they [the Holy Scriptures] differ not from the law of nature, there is no doubt, but they are the law of God, and carry their authority with them, legible to all men that have the use of natural reason: but this no other authority, than that of all other moral doctrine consonant to reason; the dictates whereof are laws not made, but eternal."[125]

On the level of moral philosophy there arises the question (which will not be discussed here) as to how the divine will, as alien to one's own will, could possibly be obligatory for this will.

However these questions may be answered, God definitely does not play any role within Hobbes' "civil science".[126] The divine laws, as far as they are binding for all mankind, are "natural" "with regard to God as the author of nature" and "laws" "with regard to the same God as king of kings".[127] In other words, also man as a rational being is conceived as a creature of God and the laws of reason are conceived as willed by God. The nexus of laws is a natural one, and in the case of the juridical "laws of nature" a "rational-natural" one. But it is God as ruler ("king of kings"), who gives it its imperative form.[128] Hence, the binding character of the laws of nature is due to the divine will. The knowledge of them and their justification, however, are attained in a purely rational way ("ratiocinando"). Whether or not, for Hobbes, the binding character of the laws of reason has its ultimate ground in the will of God, the question of whether a given law is binding is in any case answered positively only when that which it commands conforms to reason. It is the "certain Clue of Reason...by the benefit of whose Conduct, wee are led as 'twere by the hand into the clearest light"[129] of the world of justice. The fact that whatever is in conformity to reason is binding may have its ground in the will of God. But, what is in conformity to reason and thus binding, is stated by reason. The purely rational character of Hobbes' doctrine of Right would therefore remain untouched regardless of its possible theonomous foundation. The "final foundation" of the binding

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[116] See El XVIII 1; De Cive IV 1; XIII 2.
[117] See El XVII 12; De Cive III 33; Lev XV 41; XXX 1, 30.
[118] Cf. Lev XXXIII 22.
[119] De Cive IV 1; see also De Homine XIV 5.
[120] "as they are delivered by God in holy Scriptures, ... they are most properly called by the name of Lawes"; De Cive III 33.
[121] EW IV, p. 284-5.
[122] De Cive XV 3.
[123] See De Cive IV 1.
[124] De Cive XV 4.
[125] Lev XXXIII 23.
[126] Indicative of this, is the laconic sentence with which in "De Cive" the systematic juridical considerations about liberty and state of nature end. See De Cive III 33.
[127] Lev XXX 30.
[128] Cf. De Cive III 33.
[129] De Cive, Ep. Ded., par. 8.

character of juridical statements belongs, by the way, not to the doctrine of Right itself, but to a (prior) general moral philosophy which - as was said above - does not exist in Hobbes.

6) Whether one finds Hobbes' derivation and definition of natural right and law (Right) acceptable or not, and whether one ascribes to his doctrine of duties categorical or only hypothetical validity, and whether one assumes a theonomous moral philosophy in him or not; the philosophical value of the doctrine of Right (especially as found in "De Cive") is entirely independent of this. In particular, this is true with regard to Hobbes' pioneering work in the philosophy of Right, namely the juridical analysis of the natural state of mankind (including the general theory of contract[130]) and the subsequent proof of the juridical necessity of the State. And regardless of whether the seeking of(juridical) peace is categorically commanded or just hypothetically "advised", it can only be successful under the conditions pointed out by Hobbes: (1) Mankind has to be conceived as a community of persons who are natural and equal bearers of right. (2) The natural state of mankind has to be conceived as a state which cannot be justified under any conditions. (3) The State has to be conceived as a state to be constituted, by contract, in order to secure Right. Nobody has understood better than Hobbes that in the case of juridical laws (of right),[131] their rationally derived binding character can, if necessary, be substituted by the authority of the State and the voluntariness of the observance of law can be substituted by State coercion. It is not the objectivity of the validity of the juridical "dictates of reason" which is affected by the lack of a "Critique of Practical Reason", but only the status of that validity as hypothetical or categorical. The "problem of establishing a state", i.e. the problem of establishing peace, "is solvable even for a people of devils (if only they have intelligence)"[132], because mere rules of expediency are sufficient here. For the solution of the problem of legitimation, however, they do not suffice. Yet, whoever seeks to justify the domination of man over man can also do this only by following the path which Hobbes, with his razor-sharp juridical thinking, has blazed, and that path is indeed a long one.

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[130] See De Cive II-III; Lev XIV-XV.

[131] as distinguished from ethical laws (of virtue). Cf. Mary J. Gregor, Laws of Freedom, Oxford 1963.

[132] Kant, Toward Eternal Peace, in: Principles of Lawful Politics, Immanuel Kant's Philosophic Draft Toward Eternal Peace, ed. Wolfgang Schwarz, Aalen 1988, p. 99.