

Natural Law Modernized: Hobbes's Theory of the Law of Nature

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Introduction

In recent two papers I have dealt with Hobbes's intellectual development and proved two things. One concerns his break with the traditional natural right theory, and the other his break with aristocratic values. It will help to recapitulate the points I have made in the two papers.

First, in *Elements* and *De Cive*, though Hobbes had started to construct a modern natural right theory, he was still under the influence of the traditional natural right theory. In *Leviathan*, having finally got rid of that influence, he brought his modern natural right theory to completion. This break with the traditional theory consists in a change in his understanding of nature. While in the earlier two works he still retained a notion that had played a central role in the traditional theory, the normative notion of nature, he has got rid of it in *Leviathan*.¹

Second, during the so-called humanist period, that is, the time before 1640, Hobbes had espoused aristocratic values. Though, in the writings after 1640, he still retained some sympathy with those values, as time passed, he distanced himself more and more from them. In this sense too, he pushed forward his position as a modern political theorist.²

Having these two points in mind, in this paper, I shall deal with Hobbes's account of natural law. I shall see that natural law, as Hobbes presents it in *Leviathan*, is also modernized in terms of the two points presented above.

1. The Condition of Nature and the First Two Laws of Nature

The subject matters I shall mainly concern in this paper are ones treated in Chapters 13, 14 and 15 of *Leviathan*, and the corresponding chapters of *De Cive* and *Elements*. For the sake of reference, I shall call the three chapters of *Leviathan* (and the corresponding ones of *De Cive* and *Elements*) the war, the contract, and the law chapter, respectively.

<i>Leviathan</i>	<i>De Cive</i>	<i>Elements</i>	
Chap. 13	Cap. 1	Chap. 14	the war chapter
Chap. 14	Cap. 2	Chap. 15	the contract chapter
Chap. 15	Cap. 3	Chaps. 16 and 17	the law chapter

To put it rough, in the war chapter, Hobbes proves that the condition of nature is a condition of war (the condition-of-war thesis, hereafter) and suggests the way out of such a condition. In the contract, and the law chapter, he lists the laws of nature, some twenty in number, which show the way to peace. In the contract chapter, he deals with the first two laws of nature, which play

the central role in the turn from war to peace. In connection with these two laws, he introduces contract and related concepts. In the law chapter, he deals with the rest of the laws of nature, which is an attempt to reconstruct the traditional theory of virtue in terms of laws.

In so far as this rough description is concerned, the war, the contract, and the law chapter of the three works are fundamentally the same. On closer examination, however, it becomes clear that there are considerable differences between *Elements* and *De Cive*, on the one hand, and *Leviathan*, on the other. For example, the description of the state of nature in the earlier two works, and the description of the condition of nature in *Leviathan* are quite different.

1.1 The absence of justice and injustice in the condition of nature

In *Elements* and *De Cive*, where Hobbes retains the normative notion of nature, he describes the state of nature positively as a situation in which people enjoy the right of nature. It is a situation where such normative notions as right and wrong have some place. For the right of nature, which is grounded in the normative notion of nature, is also a notion that has normative implications. It signifies what is right according to nature. In fact, he admits that justice and injustice have some place in the state of nature.

Briefly, in the state of nature, Just [*Iustum*] and Unjust [*Injustum*] should be estimated not from actions but from the intention and conscience of the agents. What is done out of necessity, out of striving for peace, or for the sake of self-preservation is done rightly. Apart from this, every damage done to a man is a violation of natural Law and an injury to God. (Cive: 3, 27 note, 118)

By contrast, in *Leviathan*, where Hobbes has got rid of the normative notion of nature, he holds quite an opposite view. Describing the condition of nature, which is a condition of war, negatively as a situation in which people live without common power, he makes a remarkable comment that has no counterpart in the earlier two works.

To this warre of every man against every man, this also is consequent; that nothing can be Unjust. The notions of Right and Wrong, Justice and Injustice have there no place. Where there is no common Power, there is no Law: where no Law, no Injustice. (Lev: 13, 13, 188)

As I shall see later on in this paper, Hobbes describes the condition of war as a situation in which people enjoy the right of nature. Nevertheless, he says that the notion of right has there no place. This is clear evidence to show that he no longer regards the right of nature as a notion that has normative implications, namely as a notion that signifies what is right according to nature.

There is another passage equally worth mentioning, where Hobbes makes, concerning the notion of sin, the same point as he has made in the passage cited above. The passage is an answer to a possible objection to his view of human nature. He derives the condition-of-war thesis from the premise of men's natural offensiveness: the passions in human nature are of such a kind as to lead

men to invade and destroy one another. However, according to Hobbes, the attribution of such offensiveness to human nature does not imply the accusation of human nature. He sets out the reason in these terms.

The Desires, and other Passions of man, are in themselves no Sin. No more are the Actions, that proceed from those Passions, till they know a Law that forbids them: which till Lawes be made they cannot know: nor can any Law be made, till they have agreed upon the Person that shall make it. (Lev: 13, 10, 187)

We find, in *De Cive*, an earlier and substantially different version of the answer to the same objection. Reporting that some have objected that his view of human nature implies that all men are evil by nature, Hobbes answers the objection. Consonant with *Leviathan*, he says that “the passions of the mind, which arise from animal nature, are not themselves evil” (*Cive: ad lec.*, 12, 81). However, his answer continues in a different tone like this.

Unless you give infants everything they want, they cry, get angry, and even beat their parents, and that they do so by nature [*a natura*]. But they are not to blame and are not evil, first because they cannot do any harm, and because, being without the use of reason, they are exempt from all duties. If, having grown into adulthood and having acquired the strength to do harm, they continue to do the same things, then they begin to be evil and to be so called. ... Therefore, unless we say that men are made evil by nature on the grounds that they do not have discipline and the use of reason by nature, it must be admitted that men can have greed, fear, anger and other animal passions by nature, without implying that they are made evil by nature. (*Cive: ad lec.*, 13, 81)

It is apparent that Hobbes answers the same objection differently in different books. In *Leviathan*, he points to law and hence its author as a prerequisite for the introduction of the notion of sin. By contrast, in *De Cive*, he takes the term “by nature” to mean “from birth,” and points to the distinction between different stages of human development, that is, infants and adults.

Incidentally, the two passages cited above from *De Cive* are ones that first appeared in its second edition. This suggests that, even in the second edition of *De Cive*, published in 1647, five years after the first edition and four years before *Leviathan*, he had not come to a full recognition of the position he would come to declare in *Leviathan*.

1.2 An outline of the contract chapter

In the war chapter of *Leviathan*, describing the condition of nature as a condition of war, Hobbes says that such normative notions as justice and injustice have there no place. It is in the law chapter that he introduces justice and injustice. Before taking a look at that introduction, let us examine the contract chapter, where he deals with concepts that are prerequisites for the definition of justice and injustice.

The contract chapter begins with the definition of several basic concepts: the right of nature, liberty, and the law of nature. Following an important comment concerning the difference between right and law, he attributes the right of nature to people in the condition of war. To put it another way, he describes the condition of war as a situation in which people enjoy the right of nature, which is a right to everything. It is also a situation in which their preservation is endangered. For, as he puts it, “as long as this naturall Right of every man to every thing endureth, there can be no security to any man, (how strong or wise soever he be,) of living out the time, which Nature ordinarily alloweth men to live” (Lev: 14, 4, 190).

In accordance with this description of the condition of war, Hobbes introduces the first two laws of nature. To put it rough, the first law prescribes seeking peace, and the second prescribes, as a first step toward peace, laying down the right of nature.³

Given this view of the laying down of the natural right as the key to peace, it is natural that Hobbes moves on to the explanation of what laying down a right is. His explanation goes like this. Suppose people are in the condition of war, where everyone has the right of nature, which is a right to everything. One is said to lay down his right to any given thing, when he forsakes the liberty to hinder another from enjoying his right to the same thing. There are two different ways of laying down a right: simply renouncing it and transferring it to another. One is said to *renounce* his right, when he does not care to whom the benefit of his doing so accrues; and said to *transfer* his right, when he intends that the benefit of his doing so accrues to a particular person or persons.

In the condition of war, everyone enjoys the right to everything, that is, the unlimited liberty of doing whatever he thinks is necessary for his preservation. However, as I have just seen, once he lays down, that is, renounces or transfers, his right, he restricts his original, unlimited liberty. It is with this restriction of liberty that *obligation* begins. As Hobbes puts it, “when a man hath in either manner abandoned, or granted away his Right; then is he said to be OBLIGED, or BOUND, not to hinder those, to whom such Right is granted, or abandoned, from the benefit of it” (Lev: 14, 7, 191).

One assumes an obligation, it is true, by laying down his right. Hobbes admits, however, that not all rights can be laid down. Generally speaking, when one acts voluntarily, he aims at some good or other to himself. This is in particular the case when one lays down, that is, renounces or transfers, his right. Therefore, one cannot lay down his right to resist the assault of those who intend to take his life. For he cannot be taken to aim by doing so at any good to himself. The same is true of the right to resist wounds, chains, and imprisonment.

Hobbes has distinguished two different ways of laying down a right: renouncing and transferring it. He further distinguishes the latter into two types: mutual transferring of rights, which he calls a *contract*, and unilateral transferring of a right, which he calls a *free-gift*. Now, making a contract is one thing, and its performance is another. In some cases, it is true, both parties to a contract perform their parts instantly. There are cases, however, where one party performs his part some time after a contract is made and in the meantime is trusted by the other party, or cases where both parties perform their parts later and in the meantime trust each other. Hobbes specially calls a contract in the latter cases, a contract followed by delayed performance, a *covenant*.

A contract is made when both parties transfer their rights to each other. A free-gift is made when one party transfers his right unilaterally to the other party. However, as we have just seen about a covenant, a contract and hence transferring a right may be followed by delayed performance. That is, the one who has transferred a right may perform his part some time after the transfer. The same is true of a free-gift. This is why Hobbes deals with a *sign* of contract and free-gift, that is, the sign by which one may be taken to have transferred a right. He discusses what words and actions serve or do not serve, and under what circumstances do they serve or not serve, as such signs.

Having explained contract, covenant and free-gift, he is in a position to introduce the notion of *merit*, which is complementary to the notion of *obligation*. Obligation is a notion that applies to those who lay down, that is, renounce or transfer their right. By contrast, merit is a notion that applies to those who accept the right transferred. As he puts it, “He that performeth first in the case of a Contract, is said to MERIT that which he is to receive by the performance of the other; and he hath it as *Due*”; and “when a gift is given indefinitely, as a prize to be contended for, he that winneth Meriteth, and may claime the Prize as Due” (Lev: 14, 17, 195-6).

Making a covenant is a typical way of laying down a right and hence assuming an obligation. In fact, Hobbes devotes the rest of the contract chapter to giving more details about covenant and obligation. However, for my purposes in the present paper, it is not necessary to go into every detail of his discussion. I shall only take up two subjects, both of which concern the performance of covenants and the passion of fear.

According to Hobbes, a covenant of mutual trust, where both parties perform later and in the meantime trust each other, is not always valid. In the condition of nature, where there is no common power to compel people to perform their covenants, a covenant of mutual trust becomes invalid when either party has a just suspicion about the performance of the other party. “For he that performeth first, has no assurance the other will performe after; because the bonds of words are too weak to bridle mens ambition, avarice, anger, and other Passions, without the feare of some coerceive Power; which in the condition of meer Nature, where all men are equall, and judges of the justnesse of their own fears cannot possibly be supposed” (Lev: 14, 18, 196).

Hobbes closes the contract chapter with the discussion of *swearing*. He says that “The force of Words [is] ... too weak to hold people to the performance of their Covenants” (Lev: 14, 31, 200). He proposes two possible complements to the force of words: “a Feare of the consequence of breaking their word; or a Glory, or Pride in appearing not to need to break it” (Ibid.). Rejecting the latter as too rare to be relied upon, he turns to the former. As he puts it, “The passion to be reckoned upon, is fear” (Ibid.). However, in the condition of nature, where there is no established human power to compel people to perform their covenants, the only fear that can serve the required purpose is the fear of that invisible power which they worship as God. That is, the only means that can be used to strengthen a covenant is swearing by God.

1.3 The right and law of nature

Having given an outline of the contract chapter of *Leviathan*, I can say that the concept of right

plays a central role in it. As I have seen, almost all the subject matters treated in the chapter concern the concept of right. When I turn to the contract chapter of *Elements* and *De Cive*, I find Hobbes treating there much the same subject matters in much the same way. However, there is one important exception to this. It is his treatment of the concept of right itself. In *Elements* and *De Cive* on the one hand, and in *Leviathan* on the other, he treats the right of nature quite differently.

In *Leviathan*, Hobbes introduces the right of nature at the beginning of the contract chapter, whereas, in *Elements* and *De Cive*, he introduces it in the war chapter. This is a reflection of his having changed his stance on the notion of nature. In the earlier two works, where he still retains the normative notion of nature, he can rely on that notion to introduce the right of nature as a right people in the state of nature enjoy. He combines this premise of men's natural right with the premise of men's natural offensiveness to prove the condition-of-war thesis. This is what he does in the war chapter of the two works. By contrast, in *Leviathan*, where he has got rid of the normative notion of nature, he is required to turn to something else to introduce the right of nature. It is the supposition of the condition of war that he turns to. This is why he introduces the right of nature, after the proof of the condition-of-war thesis, at the beginning of the contract chapter as a right people in the condition of war enjoy. To cite his own words,

And because the condition of Man, (as hath been declared in the precedent Chapter) is a condition of Warre of every one against every one; in which case every one is governed by his own Reason; and there is nothing he can make use of, that may not be a help unto him, in preserving his life against his enemyes; It followeth, that in such a condition, every man has a Right to every thing; even to one another's body. (Lev: 14, 4, 189-90)

This way of introducing the right of nature is based on the *Leviathan* description of the condition of war, which says that the life of man in that condition is "solitary." It is a situation where one cannot help but live according to *his own* judgment and reason. It is a situation where decision about what is necessary for one's preservation is left entirely to *his own* judgment and reason. This is nothing but to say that everyone in the condition of war enjoys the right of nature. For the right of nature, as he defines it, is "the Liberty each man hath, to use his own power, as he will himselfe, for the preservation of his own Nature; that is to say, of his own Life; and consequently, of doing any thing, which in his own Judgment, and Reason, hee shall conceive to be the aptest means thereunto" (Lev: 14, 1, 189).

Thus, it is the individual character of a natural right that the *Leviathan* account of it makes clear. In *Elements* and *De Cive*, it is true, Hobbes describes each individual as a holder of a natural right. However, he grounds the right of nature ultimately in nature, something that transcends individuals. By contrast, in *Leviathan*, where he has got rid of such nature, he grounds the right of nature in the individual. And it is through the supposition of the condition of war that he accomplishes such grounding and hence establishes the fully individualist understanding of a natural right.

This new understanding of a natural right leads to a new understanding of the relationship between the right and law of nature. The normative notion of nature, which serves in *Elements* and *De Cive* as the foundation for the right of nature, is also the foundation for the law of nature. The right and law of nature thus sharing the foundation, the distinction between them naturally gets blurred. By contrast, in *Leviathan*, where such nature no longer has any place, the distinction between them becomes clear.

In fact, Hobbes is explicit about this. Just after the definition of the right and law of nature, he says like this.

For though they that speak of this subject, use to confound *Jus*, and *Lex*, *Right* and *Law*; yet they ought to be distinguished; because RIGHT, consisteth in liberty to do, or to forbear; Whereas LAW, determineth, and bindeth to one of them: so that Law, and Right, differ as much, as Obligation, and Liberty; which in one and the same matter are inconsistent. (Lev: 14, 3, 189)

In *Elements* and *De Cive*, too, it is true, Hobbes refers to the same distinction, the one between right and law. However, he does so only in the chapter that is far distant from those where he deals with the right and law of nature.⁴

The establishment in *Leviathan* of the fully individualist understanding of a natural right has an effect on the formulation and derivation of the first two laws of nature. Their formulations and derivations given in *Elements* and *De Cive* being fundamentally the same, in what follows, I shall base our argument mainly on the comparison between the *De Cive* and the *Leviathan* account.

Let us begin with the first law of nature. Both in *De Cive* and *Leviathan*, Hobbes refers to “the first and fundamental law of nature.” Interestingly enough, however, by the same expression he means one thing in *De Cive* and another in *Leviathan*. In *De Cive*, he presents “the first and fundamental law of nature” in these terms.

C_f: The first and fundamental *law of nature* is this, *that peace ought to be sought when it can be obtained; and when it cannot, helps of war ought to be sought.* (Cive: 2, 2, 100)

In *Leviathan*, Hobbes gives a similar statement of the two-branch structure.

L_{f+r}: It is a precept, or generall rule of Reason, *That every man, ought to endeavour Peace, as farre as he has hope of obtaining it; and when he cannot obtain it, that he may seek, and use, all helps, and advantages of Warre.* (Lev: 14, 4, 190)

Given his definition of the law of nature as “a Precept, or generall Rule, found out by Reason” (Lev: 14, 3, 189), one might expect that he should call L_{f+r}, as well as C_f, the first and fundamental law of nature. However, this is not actually the case. He calls not the whole but only the first branch of L_{f+r}, “the first, and Fundamentall Law of Nature,” calling the second

branch “the summe of the Right of Nature.” Accordingly, while he gives both the first and the second branch of C_f a form of prescription, for L_{f+r} , he gives its first branch a form of prescription, and its second branch a form of licence respectively.

From the first and fundamental law of nature Hobbes derives a law, which he calls the first derivative law in *De Cive*, and the second law in *Leviathan*.⁵

C_1 : *That the right of all men to all things ought not to be retained, but certain rights ought to be transferred or relinquished.* (Cive: 2, 3, 100)

L_2 : *That a man be willing, when others are so too, as farre-forth, as for Peace, and defence of himselfe he shall think it necessary, to lay down this right to all things; and be contented with so much liberty against other men, as he would allow other men against himselfe.* (Lev: 14, 5, 190)

There is one obvious difference between C_1 and L_2 . L_2 prescribes laying down a natural right with the condition that others do the same, and thereby makes it clear that there are cases where the right in question may be retained. By contrast, C_1 prescribes the same without condition.

The difference between C_f and L_{f+r} , and the one between C_1 and L_2 as well, consists in their different treatments of the right of nature. Unlike C_f and C_1 , L_{f+r} and L_2 give the right a status of its own independent of the law. This is a reflection of the fact that Hobbes has come to espouse in *Leviathan* the fully individualist understanding of a natural right. Let us remember here that he has established that understanding on the supposition of the condition of war, where every individual enjoys the right of nature, that is, every individual governs himself by his own reason to seek his preservation. Now, he derives the first two laws of nature on the same supposition. To put it another way, he introduces seeking peace and laying down a natural right as a conclusion an individual reaches as a result of his exercising his own reason to choose a necessary means for his preservation, that is, as a result of his exercising the natural right.

There are two points to note about implications of this way of introduction. First, it is left as an available option for an individual not to lay down a natural right. He is allowed to continue to enjoy the natural right whenever he judges that doing so is necessary for his preservation. Second, even if an individual lays down a natural right, it is itself a result of his exercising the natural right. In short, in *Leviathan*, where Hobbes relies on the natural right in the fully individualist sense of the term to derive the natural law, the law has its ultimate basis in the individual. Though the law prescribes the restriction of the individual right, it presents itself as something an individual willingly imposes on himself. When I turn to *Elements* and *De Cive*, where the fully individualist understanding of a natural right is not established, things are different. The law has its ultimate basis in nature, something that transcends the individual, and as such prescribes the restriction of the individual right. The law presents itself not as something an individual willingly imposes on himself but as something imposed upon an individual from without. In fact, in *De Cive*, talking about those who do not lay down the right, Hobbes describes them simply as “acting ... contrary to *the law of nature*” (Cive: 2, 3, 100).

1.4 The introduction of justice and injustice

In *Leviathan*, Hobbes lists nineteen laws of nature in all. Having introduced the first two laws in the contract chapter, in the law chapter, he deals with the rest of the seventeen laws. Before working on the examination of these laws, let us pay attention to the opening paragraphs of the law chapter. For, he introduces there the notions of justice and injustice, which he has said have no place in the condition of war.

At the beginning of the law chapter, Hobbes presents the third law, which says “*That men performe their Covenants made*” (Lev: 15, 1, 201). Following this, he makes a remarkable comment on justice and injustice.

And in this law of Nature, consisteth the Fountain and Originall of JUSTICE. For where no Covenant hath preceded, there hath no Right been transferred, and every man has right to every thing; and consequently, no action can be Unjust. But when a Covenant is made, then to break it is *Unjust*: and the definition of INJUSTICE, is no other than *the not Performance of Covenant*. And whatsoever is not Unjust, is *Just*.

But because Covenants of mutuall trust, where there is a feare of not performance on either part, (as hath been said in the former Chapter,) are invalid; though the Originall of Justice be the making of Covenants; yet Injustice actually there can be none, till the cause of such feare be taken away; which while men are in the naturall condition of Warre, cannot be done. Therefore before the names of Just, and Unjust can have place, there must be some coercive Power, to compell men equally to the performance of their Covenants, by the terrour of some punishment, greater than the benefit they expect by the breach of their Covenant; ... and such power there is none before the erection of a Common-wealth. (Lev: 15, 2-3, 202)

Hobbes introduces the notions of justice and injustice by defining them in terms of covenant, a notion he has introduced in the contract chapter. However this is not all he does in the passages cited above. Remarkably enough, he enlarges on the point he has made in the war chapter, namely the point that the notions of justice and injustice have no place in the condition of war. The reasons he gives are twofold. First, in the condition of war, there is no original of justice and injustice. Unless a covenant is made, justice and injustice have no place. For injustice consists in the non-performance of a covenant, and justice is whatever is not injustice. In this sense, the making of a covenant is the original of justice and injustice. Now, in so far as people stay in the condition of war and retain the right to everything, there is no right transferred and hence no covenant made. That is, there is no original of justice and injustice. In such a condition, therefore, justice and injustice have no place. Second, in the condition of war, the original of justice and injustice is not by itself sufficient for their having some place. Unless some common power is established, by which both parties to a covenant are compelled to perform it, a covenant of mutual trust, even if it is made, is not valid, and hence there is no injustice. For injustice consists in the non-performance of a *valid* covenant. Where there is no injustice, there is no justice either. Now, in the condition of war, there is no such common power and hence justice and

injustice have no place.

To put it conversely, this is a presentation of the conditions for the notions of justice and injustice to have some place. First, a covenant, that is, an act of transferring a right, must be made. Second, such circumstances as make sure the performance of a covenant made must obtain. In other words, some common power must be established.

When I turn to the law chapter of *Elements* and *De Cive*, I find that Hobbes introduces that law of justice which prescribes the performance of a covenant, and defines injustice as the non-performance of a covenant. Furthermore, in the contract chapter of the two works, he talks about the invalidity of a covenant of mutual trust made in the state of nature. Given these parallels with *Leviathan*, it is reasonable to suppose that, in the earlier two works, he should also claim that the notions of justice and injustice have there no place. Nevertheless, far from claiming this, he admits that justice and injustice have some place in the state of nature. This is because he retains the normative notion of nature, in which right and justice are grounded.

2. The Rest of the Laws of Nature

In the rest of the paper, I shall treat the seventeen laws of nature Hobbes presents in the law chapter of *Leviathan*. I shall see in their presentation a reflection not only of his rights theory, which dispenses with the normative notion of nature, but also of his break with aristocratic values.

2.1 An outline of the seventeen laws of nature

Let us start with having an overview of the seventeen laws. Toward the end of the law chapter of *Leviathan*, recapitulating his discussion in the chapter, Hobbes gives a list of virtues and vices.

Injustice, Ingratitude, Arrogance, Pride, Iniquity, Acception of persons, and the rest, can never be made lawfull. (Lev: 15, 38, 215)

Justice, Gratitude, Modesty, Equity, Mercy, & the rest of the Laws of Nature, are good; that is to say, Morall Vertues; and their contrarie Vices, Evill" (Lev: 15, 40, 216).

Likewise, elsewhere in *Leviathan*, talking about the dictates of natural reason that concern "the Naturall Duties of one man to another," Hobbes says that they are "the same Lawes of Nature, of which I have spoken already in the 14. and 15. Chapters of this Treatise; namely, Equity, Justice, Mercy, Humility, and the rest of the Morall Vertues" (Lev: 31, 7, 399). This shows that he identifies the laws of nature and their violations with moral virtues and vices respectively. When I take his reference to virtues and vices in his treatment of particular laws also into account, I can make a table that shows the correspondence between laws, virtues and vices. (It is not the case that Hobbes relates every particular law and its violation to a particular virtue and vice. "--" indicates the absence of any reference to corresponding virtues or vices.)

the law of nature	virtue	vice
L ₃	justice	injustice
L ₄	gratitude	ingratitude
L ₅	complaisance, sociability	stubbornness, insociability, etc.
L ₆	pardon, mercy ⁶	— —
L ₇	— —	cruelty
L ₈	— —	contumely
L ₉	— —	pride
L ₁₀	modesty, humility ⁶	arrogance
L ₁₁	equity	inequity, acception of persons
L ₁₂ - L ₁₉	— —	— —

Hobbes admits that he lists the same virtues and vices as the writers of moral philosophy. This does not mean, however, that he accepts the traditional theory of the virtues advanced by them. He criticizes the traditional virtue theorists on the ground that they “place them [the virtues] in a mediocrity of passions” (Lev: 15, 40, 216), and thereby fail to see where the goodness of the virtues consists. According to Hobbes, the virtues are good because they are means to peace. In fact, in his treatment of particular laws, he describes each of them as a consequence derived from the first and fundamental law of nature, which prescribes seeking peace.

Before moving on to the examination of each of the seventeen laws, it will help to divide them into several groups. Hobbes devotes nearly half of the law chapter to the discussion concerning justice. Given this special importance he attaches to justice, the third law of justice may be treated as forming a group by itself. Toward the end of the discussion of justice, he critically examines the traditional distinction between distributive and commutative justice. Describing them in his own way as the justice of a contractor and the justice of an arbitrator respectively, he specially calls the latter equity. Equity or impartial arbitration between contending parties is a subject matter covered by the laws from the eleventh on. So the last nine laws form a group. As for the laws other than those concerning justice and equity, the sixth to eighth laws dealing with revenge form a group, and the ninth and tenth laws dealing with the natural equality of men form a group. Treating the rest of the laws, the fourth and fifth, as a group, the seventeen laws fall into five groups.

2.2 Justice: the third law

The third law prescribes the performance of covenants.

L₃: *That men performe their Covenants made.* (Lev: 15, 1, 201)

As I have just mentioned, following the presentation of the third law, Hobbes develops a long discussion concerning justice. He makes two important distinctions about justice. One is the distinction between the justice of actions and of men, and the other is the distinction between the

justice of a contractor and of an arbitrator. Let us take up these two in turn.

The justice of actions is a matter of whether or not a particular action is in accordance with the third law of nature, which enjoins the performance of covenants. By contrast, the justice of men, which is also termed as the justice of manners, is a matter of whether or not a man is disposed to care for the justice of his actions. As Hobbes puts it, “A Just man therefore, is he that taketh all the care he can, that his Actions may be all Just: and an Unjust man, is he that neglecteth it” (Lev: 15, 10, 206). Consequently, a just man may happen to do unjust actions under the influence of sudden passions, or by mistake, but he does not thereby cease to be a just man. Likewise, an unjust man may happen to refrain from doing unjust actions from interested consideration, for example, for fear of punishment, but he does not thereby cease to be an unjust man.

In connection with the justice of men or manners, Hobbes makes a remarkable comment.

That which gives to humane Actions the relish of Justice, is a certain Noblenesse or Gallantnesse of courage, (rarely found,) by which a man scorns to be beholding for the contentment of his life, to fraud, or breach of promise. This Justice of the Manners, is that which is meant, where Justice is called a Vertue; and Injustice a Vice. (Lev: 15, 10, 207)

What is remarkable about this passage is that he explains the justice of manners in terms of such aristocratic character traits as nobleness and gallantness of courage, and identifies it with justice conceived of as a virtue. It is true, therefore, that he shows some sympathy with aristocratic values and the virtue of justice. However, as is suggested by the expression “rarely found,” he is sceptical about the possibility that such a virtue prevails among people at that time in England.

Hobbes reveals the same sceptical attitude when he deals with swearing at the end of the contract chapter.⁷

The force of Words, being ... too weak to hold men to the performance of their Covenants; there are in mans nature, but two imaginable helps to strengthen it. And those are either a Feare of the consequence of breaking their word; or a Glory, or Pride in appearing not to need to break it. This latter is a Generosity too rarely found to be presumed on, especially in the pursuers of Wealth, Command, or sensuall Pleasure; which are the greatest part of Mankind. The Passion to be reckoned upon, is Fear ... (Lev: 14, 31, 200)

Given the weakness of the force of words, Hobbes looks for a reliable motivational basis that leads people to keep their covenants, that is, to do just actions, and deters them from breaking their covenants, that is, from doing unjust actions. He proposes and examines two such possible bases. One is the passion of glory, pride and generosity, which may be termed aristocratic. The other is the passion of fear, which is a passion contrary to a typical aristocratic passion, namely courage. Taking the general character of people at that time in England into account, he rejects the aristocratic passions as “too rarely found to be presumed on,” and turns to fear for the emotional basis of just actions.

Thus, in spite of his retaining some sympathy with aristocratic values, Hobbes finally turns away from them. This is also a turn away from the traditional view of justice as a virtue. For, according to his understanding, the virtue of justice has its basis in aristocratic character traits. For him justice is a matter of action, which consists in the performance of covenants.

Let us move on to the second distinction Hobbes makes about justice. It is the distinction between the justice of a contractor and of an arbitrator. He introduces this distinction in connection with the traditional distinction between commutative and distributive justice. Drawing on his position that justice is defined in terms of the performance of covenants, he regards the traditional distinction as improper, and proposes a new distinction of his own, which is the distinction between the justice of a contractor and of an arbitrator.

Commutative justice is commonly said to consist in the equality in value of the things exchanged in such acts of contract as selling, buying and so on. It presupposes an independent standard of a thing's value, which serves to determine the equality in value of the things exchanged. However, there exists no such standard. If both parties to a contract agree to exchange things, the very fact of agreement being made constitutes their equality in value. Therefore, contrary to the implication commutative justice, as it is commonly understood, would have, even if someone sells something at a price higher than he buys it, it is not unjust. Commutative justice, if it is understood properly, is the justice of a contractor, which consists in "a Performance of Covenant, in Buying, and Selling; Hiring, and Letting to Hire; Lending, and Borrowing; Exchanging, Bartering, and other acts of Contract" (Lev: 15, 14, 208).

On the other hand, distributive justice is commonly said to consist in the distribution of benefit to people according to their merit, that is, the distribution of equal benefit to people of equal merit, and hence more or less benefit to people of more or less merit. It presupposes an independent standard of a person's merit. However, such merit, if there is any, does not serve as a standard of justice. For, whether or not distribution according to merit is realized is a matter of grace and not of justice. Therefore, contrary to the implication distributive justice, as it is commonly understood, would have, even if someone gives more to a person than he merits, it is not unjust. Moreover, if the notion of merit is to have any role to play in connection with justice, it is a notion that falls under commutative justice or the justice of a contractor, and hence a notion that is defined in terms of the performance of covenants. To repeat the definition given in the contract chapter: "He that performeth first in the case of a Contract, is said to MERIT that which he is to receive by the performance of the other" (Lev: 14, 17, 195).

Thus, having explained both commutative and distributive justice in terms of the performance of covenants, Hobbes rejects the traditional distinction between them as improper. So he seems to reduce justice to commutative justice in the proper sense of the term, or what he calls the justice of a contractor. Nevertheless, it is not the case that he leaves no room for what has traditionally been called distributive justice. He holds that distributive justice, if it is understood properly, is the justice of an arbitrator. He specially terms it equity, and treats it later on in his presentation of the eleventh law.

Before moving on to the examination of the next laws, let us here pause to say a few words

about the comparison between *Leviathan* and the earlier two works, *Elements* and *De Cive*. In these two works too, it is true, Hobbes refers to the distinction between the justice of actions and of men. However, there is one significant difference between the *Leviathan* and the *Elements* and *De Cive* treatment of the distinction. As I have seen above, in *Leviathan*, he makes a sceptical remark on the possibility of the virtue of justice, which has its basis in aristocratic character traits. By contrast, in *Elements* and *De Cive*, he just mentions the distinction without saying anything about the assessment of aristocratic values. This difference may be taken to be a sign that in *Leviathan* he has come to distance himself further from aristocratic values.

2.3 Gratitude and complaisance: the fourth and fifth laws

The fourth and fifth laws prescribe gratitude and complaisance respectively.

L₄: *That a man which receiveth Benefit from another of meer Grace, Endeavour that he which giveth it, have no reasonable cause to repent him of his good will.* (Lev: 15, 16, 209)

L₅: *That every man strive to accommodate himselfe to the rest.* (Lev: 15, 17, 209)

Let us here make some comments only on the fourth law. Hobbes draws a parallel between the third and fourth laws. As he puts it, “As Justice dependeth on Antecedent Covenant; so does GRATITUDE depend on Antecedent Grace; that is to say, Antecedent Free-gift: and is the fourth Law of Nature; ... The breach of this Law, is called *Ingratitude*; and hath the same relation to Grace, that Injustice hath to Obligation by Covenant” (Lev: 15, 16, 209). This parallelism is understandable, given his identification of grace with free-gift, a way of transferring rights. As I have seen in section 1.2, the transferring of rights is either mutual or unilateral. When it is mutual, it is called a *contract*. When it is unilateral, it is called a *free-gift*. Furthermore, a contract, when one (or both) of the parties to it performs his part (or perform their parts) some time after the contract is made, is specially called a *covenant*. Now, the third law of justice, which prescribes the performance of covenants, deals with the case where the transferring of rights is mutual. By contrast, the fourth law of gratitude, which prescribes gratitude as an appropriate return for grace or free-gift, deals with the case where the transferring of rights is unilateral. Thus, the third and fourth laws both concern the transferring of rights. This is why Hobbes draws a parallel between them.

Hobbes’s treatment of the fourth law shows his intention to incorporate the traditional notions of grace and gratitude into the framework of his rights theory, which dispenses with the normative notion of nature. Incidentally, his intention to do so becomes apparent only in *Leviathan*. For the identification of grace with free-gift, the key to such an incorporation, is present only in *Leviathan*. In *Elements* and *De Cive*, Hobbes does not mention grace or related notions when he defines free-gift. Conversely, he does not mention free-gift when he treats the law of gratitude. By contrast, in *Leviathan*, both in his definition of free-gift and in his treatment of the law of gratitude, he explicitly states the identity of grace and free-gift.

2.4 Against revenge: the sixth to eighth laws

The sixth to eighth laws run as follows respectively.

- L₆: *That upon caution of the Future time, a man ought to pardon the offences past of them that repenting, desire it.* (Lev: 15, 18, 210)
- L₇: *That in Revenges, (that is, retribution of Evil for Evil,) Men look not at the greatnesse of the evill past, but the greatnesse of the good to follow.* (Lev: 15, 19, 210)
- L₈: *That no man by deed, word, countenance, or gesture, declare Hatred, or Contempt of another.* (Lev: 15, 20, 211)

All of these three laws concern, directly or indirectly, revenge. So let us first see what revenge is. In Chapter 6 of *Leviathan*, where Hobbes presents an account of the passions, he defines the passion of revengefulness in these terms: “*Desire*, by doing hurt to another, to make him condemn some fact of his own, REVENGEFULNESSE” (Lev: 6, 34, 124). Unfortunately, this is too brief to let us know much about revenge. The situation improves when I turn elsewhere in *Leviathan* and to his earlier works. Toward the end of *Leviathan*, he says that “*Courage*, (by which I mean the Contempt of Wounds, and violent Death) enclineth men to private Revenges” (Lev: concl., 2, 717). Thus, he associates revenge with an aristocratic passion of courage, and thereby suggests that it is aristocratic in origin. He suggests the same fact when he describes revenge in Chapter 9 of *Elements*, the *Elements* counterpart of Chapter 6 of *Leviathan*. Contrasting revenge with killing, he says like this. “Revenge aimth not at the death, but at the captivity and subjection of an enemy; ... To kill is the aim of them that hate, to rid themselves of *fear*; revenge aimeth at *triumph*, which over the dead is not” (El: 9, 6, 52, emphasis added). Still more remarkable is a composition of his humanist period, *The Art of Rhetoric*, which is a summary translation of Aristotle’s *Rhetoric*. In this work he counts revenge among honourable things (Rhet: 1, 9, 438), that is, refers to it as an object of positive evaluation.

Hobbes had originally taken revenge to be something characteristic of nobility and to be an object of positive evaluation. However, I find him putting forward quite an opposite view of revenge in *Leviathan*. Talking about the relationship between the laws of nature and our natural passions, he writes like this.

For the Lawes of Nature ... of themselves, without the terrour of some Power, to cause them to be observed, are contrary to our naturall Passions, that carry us to Partiality, Pride, Revenge, and the like. (Lev: 17, 2, 223)

Far from describing revenge as something characteristic of nobility, Hobbes presents it as something natural and hence prevalent among human beings. In addition, he refers to it as an object of regulation by the laws of nature and hence as an object of negative evaluation. Relevant in this connection are the sixth to eighth laws of *Leviathan*. In fact, in the course of their presentation, he describes revenge negatively as vainglory. Incidentally, the corresponding laws of

Elements and *De Cive* treat revenge in fundamentally the same fashion. So, let us concentrate on the *Leviathan* presentation of the laws in question to see how they treat revenge.

Given the natural passions of men, it is natural for them, when someone has inflicted some harm on them, to take revenge on the offender. However, as far as the establishment and maintenance of peace are concerned, is revenge an appropriate response? It is to this question that the sixth law answers negatively. It prescribes pardon, instead of revenge, as an appropriate response, not unconditionally of course but on condition that the offender gives a security of his peaceful conduct in the future. Thus, the sixth law, which is formulated in terms of such Christian notions as pardon and repentance, prescribes the control of men's natural revengefulness.

As its conditional form shows, the sixth law does not deny that there are cases where one needs to have recourse to revenges. It is the seventh law that deals with such cases. It says that in revenges one should take the future good, and not the past evil, into consideration. To put it another way, revenge should be a prospective and not a retrospective action. By the way, according to the definition of revengefulness, revenge is directed at offences in the past and in this sense a retrospective action. Therefore, the seventh law appears to require that one should change the nature of revenge and make it something different from what it actually is. However, this is not the only possible reading. On another reading, the seventh law concerns the nature not so much of revenge as of punishment. In fact, the presentation of the law is followed by the remark that "Whereby we are forbidden to inflict punishment with any other designe, than for correction of the offender, or direction of others" (Lev: 15, 19, 210). This is nothing but a utilitarian, as opposed to a retributive, theory of punishment, which justifies punishment by its desirable effects, correction and deterrence. On this reading of the seventh law, it prescribes the removal of an element of revenge from punishment. A remark Hobbes makes elsewhere in *Leviathan* confirms this reading. He says that "the end of punishing is not revenge, and discharge of choler; but correction, either of the offender, or of others by his example" (Lev: 30, 23, 389).

The seventh, as well as the sixth, law concerns the control of men's natural revengefulness. However, revengefulness is so deep-rooted in human nature that its perfect control is hardly possible. As Hobbes puts it, "all signes of hatred, or contempt, provoke to fight; insomuch as most men choose rather to hazard their life, than not to be revenged" (Lev: 15, 20, 210-1). So it is necessary to take some measures to prevent the outbreak of revengefulness. It is the eighth law that prescribes such preventive measures.

2.5 Equality: the ninth and tenth laws

The ninth and tenth laws, which concern the acknowledgement of men's natural equality, run as follows respectively.

L₉: *That every man acknowledge other for his Equall by Nature.* (Lev: 15, 21, 211)

L₁₀: *That at the entrance into conditions of Peace, no man require to reserve to himselfe any Right, which he is not content should be reserved to every one of the rest.* (Lev: 15, 22, 211)

The natural equality of men is a foundational contention Hobbes has made in his account of the condition of nature. He repeats it here in his presentation of the ninth law. As he puts it, "The question who is the better man, has no place in the condition of meer Nature; where, (as has been shewn before,) all men are equal" (Lev: 15, 21, 211). This is by implication a contention that the aristocratic hierarchy of human beings has no natural foundation. In fact, he criticizes Aristotle's view that the distinction between master and servant has a natural foundation.

Still more remarkable in terms of Hobbes stance on aristocratic values is his treatment of pride and modesty (or humility). Let us remember here the passage cited above, which deals with the relationship between the laws of nature and our natural passions. On the one hand, he describes pride, along with revenge and partiality, as something prevalent among human beings; and on the other, he refers to it as an object of regulation by the laws of nature and hence as an object of negative evaluation. Relevant in this connection are the ninth law, the violation of which he describes as pride, and the tenth law, the observance of which he describes as modesty (or humility). However, this is not all he talks about pride. As I have seen in section 2.2, in his discussion of the third law of justice, he mentions pride conceived of as an aristocratic passion. He introduces it as one of the two possible motivational bases for just actions, the other being the passion of fear. Faced with these two alternatives, he rejects pride in favour of fear on the ground that pride of the required kind is rarely found among people. That is, though he is negative about the possibility of relying on pride, he is not critical of pride as such. It might even be said that he reveals nostalgia, so to speak, for an aristocratic passion of pride. Thus, his attitude toward pride varies, depending on his understanding of the nature of pride. In his discussion of the ninth and tenth laws, he describes pride not as something aristocratic and rare but as something prevalent among human beings. Accordingly, he treats it as a vice, contrasting it with a Christian virtue of modesty (or humility).

As for *Elements* and *De Cive*, in his discussion of the corresponding laws, Hobbes makes fundamentally the same points. That is, asserting the natural equality of men, he criticizes Aristotle; and he refers to pride as an object of negative evaluation.

2.6 Equity: the eleventh to nineteenth laws

Throughout his critical treatment of the traditional distinction between commutative and distributive justice, Hobbes is consistent in explaining justice in terms of the performance of covenants, and concentrates his attention on what he calls the justice of a contractor. However, he is quite aware that all that matters concerning justice is not confined to whether or not someone performs covenants, that is, does just actions. For there can, and do often, arise such questions as these. What exactly counts as the performance of covenants? What exactly does justice require contractors to do? These questions naturally lead to disputes between the contracting parties. So an arbitrator, someone who decides what is just and sees to it that just distribution is realized and everyone has his own, is needed. This is how he introduces the justice of an arbitrator, as distinguished from that of a contractor.

Hobbes specially calls the justice of an arbitrator equity. The eleventh law, which prescribes

equity, runs like this.

L₁₁: Also if a man be trusted to judge between man and man, it is a precept of the Law of Nature, that he deale Equally between them. (Lev: 15, 23, 212)

This is a precept of the law of nature. For if there is no hope of impartial arbitration, the contending parties will not submit an issue to an arbitrator, with the result that the contention can only be settled by war. The observance of this law, which consists in “the equall distribution to each man, of that which in reason belongeth to him” (Lev: 15, 24, 212), is equity, and its violation is acception of persons.

The laws from the twelfth on all deal with arbitration. For my purposes in the present paper, it will suffice to take a brief look at them.

The twelfth to fourteenth laws specify the method for equal distribution of goods that cannot be divided. They deal with topics such as common use and lots.

The fifteenth and sixteenth laws concern the status of an arbitrator. An arbitrator must be assured of the safety in his conduct. The contending parties who have agreed on an arbitrator must submit to his judgment.

The seventeenth and eighteenth laws specify the qualifications for being an arbitrator. No one can be an arbitrator in a case that is related to his own interests.

The nineteenth law concerns how to treat witnesses in arbitration. An arbitrator must give no more credit to one than to the other party, and must have recourse to a third party if necessary.

Now, I say a few words about the distinction between equality and equity by way of comparison between *Leviathan* and the earlier two works, *Elements* and *De Cive*. According to the *Leviathan* presentation of the particular laws, I have distinguished the laws concerning equality (L₉ and L₁₀) and the ones concerning equity (L₁₁ to L₁₉). Let us pay attention to how the laws corresponding to L₁₀ and L₁₁ are treated in *Elements* and *De Cive*. In *Elements*, there appears no law corresponding to L₁₁. Furthermore, though there is a law corresponding to L₁₀, namely a law concerning equality,⁸ Hobbes mixes equality with equity in its treatment. Associating the law in question with the phrase *aequalia aequalibus*, and *proportionalia proportionalibus*, he says that “this is it men mean by distributive justice, and is properly termed EQUITY” (El: 17, 2, 94). In *De Cive*, it is true, Hobbes presents separate laws corresponding to L₁₀ and L₁₁. They are C₉ and C₁₀ respectively. Nevertheless, some mixture of equality and equity still remains. For, in his treatment of C₉, a law concerning equality, he refers to the phrase *aequalia aequalibus*, and *proportionalia proportionalibus*. By contrast, no such mixture appears in *Leviathan*.

This is a reflection of the fact that Hobbes has come to be clear about the status of equity as the justice of an arbitrator. He has introduced the justice of an arbitrator, along with that of a contractor, as a result of his critical treatment of the traditional distinction between commutative and distributive justice. In *Elements* and *De Cive* too, it is true, he criticizes the traditional distinction. However, it is only in *Leviathan* that he proposes a new distinction between the justice of a contractor and that of an arbitrator, describing the latter as equity. Now, the view of equity

as the justice of an arbitrator implies that the laws concerning equity, including L₁₁, are ones that specially apply to those who are in charge of arbitration. However, L₁₀, which applies to people in general, is no such law. So he excludes an element of equity from it and classifies it as a law concerning equality.

Having examined the laws of nature presented by Hobbes, I am in a position to say that they are modernized not only in that they do not depend on the normative notion of nature, but also in that they mark a break with aristocratic values.

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I have used the abbreviated titles presented below.

Cive = *De Cive*

El = *The Elements of Law, Natural and Politic*

Lev = *Leviathan*

Rhet = *The Art of Rhetoric*

In referring to the works of Hobbes, I have used abbreviated title, normally followed by chapter, section/paragraph, and page number.

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NOTES

1. See Akimoto 2003.
2. See Akimoto 2002.
3. For the precise formulation of the first two laws, see section 1.3 of this paper.
4. Hobbes gives the definition of natural right and law in Chapters 14 and 15 of *Elements*, and in Chapters 1 and 2 of *De Cive* respectively. However, it is in Chapter 29 of *Elements*, which is the final chapter of the book, and in Chapter 14 of *De Cive*, which is the final chapter of Part 2 of the book, that he refers to the distinction between right and law.
5. Hobbes numbers the laws of nature differently in the two works. Unlike in *Leviathan*, in *De Cive*, dividing the laws into the first and fundamental law on the one hand, and the others derived from it on the other, he numbers the latter independently of the former. So the second law of *Leviathan* corresponds to the first derivative law of *De Cive*, the third law of *Leviathan* corresponds to the second derivative law of *De Cive*, and so on.
6. Though Hobbes does not refer to mercy and humility in his treatment of particular laws, it is reasonable to suppose that they are virtues corresponding to L₆ and L₁₀ respectively.
7. For swearing, see section 1.2 of this paper.
8. In *Elements*, Hobbes does not number the particular laws.