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STATES, STATES OF NATURE AND THE MORAL LAW: A COMPARISON BETWEEN IMMANUEL KANT'S AND THOMAS HOBBS' POLITICAL AND LEGAL THEORY

Fernando Campos¹

Universidade Federal do Rio Grande do Sul (UFRGS)

 <https://orcid.org/0009-0003-2398-3839>

E-mail: fernando.campos@hotmail.co.uk

ABSTRACT:

This article delves into the philosophical theses on law and ethics as presented by Thomas Hobbes and Immanuel Kant, with a focus on the notion of resistance in a legal context. It contrasts Hobbes' advocacy for nearly unrestricted state authority and a morality closely tied to the state, against Kant's emphasis on moral law and natural rights as the underpinnings of legality. A pivotal discussion point is Kant's perceived contradiction in supporting a fundamental right to freedom while limiting the right to resist laws that infringe upon this freedom. By comparing these philosophical authors, the article posits that Kant's theory of resistance requires integration with his broader ethical views, suggesting that human rights should constrain positive law.

KEYWORDS: State; Law; Right of Resistance; Kant, Hobbes.

¹ Doutorando(a) em Filosofia na Universidade Federal do Rio Grande do Sul (UFRGS), Porto Alegre – RS, Brasil. Pesquisador(a) visitante da Ludwig Maximilian Universitat, Munique – Alemanha.



Introduction

The philosophical justification for state power and state authority has been, especially in the philosophical time-period we call modern-philosophy, often connected to explanations of how a state pre-political where the state is not yet established would function and the reasons that could lead individuals in that state to leave it in order to form a political society (Collins, 2011). Jean-Jacques Rousseau (Rousseau, 1987) and Thomas Hobbes (Hobbes, 1651) are renowned for their opposing views on the state of nature, offering distinct characterizations of stateless social contexts. Additionally, John Locke (Locke, 1946) and Immanuel Kant (Kant, 1797), among other philosophers, have provided valuable insights on this subject, making a comparison between the authors a fruitful endeavor.

Rousseau and Hobbes present contrasting views on the state of nature. Rousseau envisions a stateless condition as one of peace and general satisfaction, while Hobbes depicts it as a situation of war and widespread scarcity. For Hobbes, the natural state is further defined by a condition where everyone has the right to anything they need for survival, even if it requires violence. This implies a total lack of security for any possessions and rights, since everyone else possesses an equally legitimate claim to what one considers their own.

Accordingly, Rousseau sees the rise of the state, along with the introduction of private property and measures for its protection, primarily as a negative development, albeit not without some advantages, diverging from a naturally peaceful state. Meanwhile, Hobbes views the establishment of a state as the solution to the inherent state of war and as the essential means for securing life and property rights.

Immanuel Kant's depiction of the state of nature is different from the views of both Hobbes and Rousseau. He does not envision a pre-political society as either a realm of perfect peace, as Rousseau suggests, or as a void of obligations and rights, as Hobbes describes. However, Kant concurs with Hobbes on the notion that the inception of the state introduces a level of security previously absent and is then capable of securing positive rights to its citizens. For both Hobbes and Kant there is a right, but also a duty, that leads every rational person to the creation of a state capable of securing the peace and the natural rights of their citizens.

However, the similarities between the two authors end at this point. Hobbes presents an anthropological and predominantly empirical philosophical argument² about the functioning of a state of nature and why all of humanity should strive to avoid it. He uses historical examples and recognizable scenarios from his time to illustrate how sedition and rhetorical political agitation can threaten the stability of a civil state, potentially plunging its citizens back into a state of war. Through this approach, Hobbes underscores the fragility of peace and the importance of a strong state to maintain order and prevent chaos.

Contrastingly, Kant anchors his moral and legal theories in strictly non-empirical arguments. For Kant, integrating any empirical detail into a theory of what should be done compromises its integrity. He argues that a proper moral theory must be developed entirely independently of empirical considerations. Given that morality fundamentally dictates what one ought to do, it is understandable that Kant envisions the basis of law—another system prescribing actions—in a similar vein. He posits that the ultimate foundation of law, its metaphysical basis, should be identified without resorting to empirical facts. This stance

² Empirical observations and their interpretation play a crucial role in Thomas Hobbes' theory of law and state. However, as will be demonstrated, Hobbes does not solely depend on empirical research as the foundation of his philosophy. Equally significant for Hobbes is the concept of human nature, which, according to him, is not derived through empirical methods but is universally accessible and recognizable through what he terms the "book of nature." This metaphorical book is open to everyone through self-reflection.

underscores Kant's belief in the primacy of *a priori* theses in defining both moral and legal obligations.

The methodological distinctions between the authors—Hobbes' partial reliance on empirical evidence and Kant's strict exclusion of it—significantly influence their perspectives on the necessity of a state and its intended objectives. Although both employ the concept of the state of nature and underscore the essential need for a state that ensures peace and rights, their approaches diverge in key ways. This discussion aims to elucidate these differences. From my viewpoint, Hobbes' theory, with its emphasis on granting significant power and influence to the state in the lives of its citizens, offers a philosophically rich point of comparison for a more in-depth understanding of the challenges confronting Immanuel Kant's philosophy of law and state.

I will begin by outlining Hobbes' theory of law and state, where empirical insights partly shape his argument for a strong sovereign. Following that, I will examine Kant's standpoint, which is firmly rooted in non-empirical, rational principles regarding law and the categorical imperative's role in justifying a system of law. The final part of this discussion will juxtapose the two, highlighting the unique challenges Kant's theory encounters by its use of the state of nature argument. This comparative analysis seeks to articulate the contrasts clearly in their philosophical approaches to the rationale and objectives behind the formation of a state.

Hobbes's Leviathan

For Hobbes, the benefits of establishing a state are quite straightforward. He believes that natural rights allow everyone in a natural state to claim everything, but moving from the state of nature to a political community make the introduction of different kind of rights possible—positive rights. Entering into society is then the sole method for someone to legitimately possess something to the exclusion of all others. (Hobbes, 1651, pp. 26-27)

The interpreter Georg Geismann offers a compelling interpretation of Hobbes state of nature:

Humans are born as beings in need and capable of intentional action. Their neediness fundamentally consists of the physical necessity to care for self-preservation. A nature that made the care for self-preservation necessary while fundamentally denying the right to it would be contradictory in itself and cannot be conceived as such. Therefore, conversely, with the natural necessity of self-preservation, a natural right to self-preservation must also be considered. In the state of nature, everyone has a right to self-preservation. It is a natural right because it necessarily belongs to humans insofar as they are, by nature, rational animals. (Geismann, 1982, pp. 164.)

Hobbes suggests that natural rights, prevalent before the establishment of a political community, do not significantly influence the formation of positive rights within the state. Essentially, since the natural state allows for universal claims to everything, it also provides broad leeway in defining the specific property rights that the State can establish. For Hobbes, every right that guarantees the possession or ownership of something is a positive right created and guaranteed by the state. Therefore, there are no natural right criteria through which this positive right could be compared or criticized, the only alternative to positive rights is the anarchy and uncertainty of the natural state where everyone has right to everything.³

The analytical connection with the natural right to self-preservation, or to the sovereign decision about whether one is authorized to a specific action by natural law, that is, the

³ This argumentation is developed throughout the Leviathan, but special from chapter XII to chapter XXX.

right to one's own legally binding legal decision - meaning that in the state of nature, everyone is their own judge - implies that at any time, any legal judgment of one person can contradict any legal judgment of any other person in any way, without there being any possibility of a legally binding judgment for all involved parties in the state of nature. The essence of the state of nature is not a permanent actual legal dispute, but rather the fundamental impossibility of solving situations where the right is contested. This means: where law could and should fulfill its function; thus, a fundamental and permanent absence of secured legal peace (Geismann, 1982, pp. 166).

Hobbes is commonly recognized as one of the earliest legal positivists. (Geismann, 1982, pp. 166) He shares a perspective with later philosophers such as Jeremy Bentham (Bentham, 1780) and H.L.A. Hart (Hart, 1977), asserting that legal rights within a state are exclusively based on the state's positive laws and social practices. According to this view, legal rights do not require, nor are they constrained by or dependent on, any non-positive (natural or moral) criteria for their validity. This characterization indeed applies to Hobbes. Despite acknowledging the existence of natural rights, he argues that these rights mostly do not dictate the content of positive law within a society.

While Hobbes views most areas of positive law—such as property rights, constitutional law, and civil law more broadly—as fairly conventional and positivist, allowing for a wide range of content without moral or natural constraints, he identifies one exception. The sole limit to positive law throughout Hobbes's work is tied to the natural right of survival. This is the only natural right that appears to follow every individual into society, standing as a unique exception in an otherwise positivist legal framework (Curley, 1994, pp. 79 – 100).

Hobbes views the limitation imposed by the natural right of survival in a rather narrow manner, asserting that it essentially renders any law that demands suicide or the unresisting sacrifice of one's life as impossible and invalid. There's no moral or natural obligation on the state's part to enact laws and govern in a way that guarantees every individual the means for their own survival. Instead, there's merely a natural boundary against the imposition of death penalties without resistance and laws requiring self-sacrifice.

This mean that not all laws concerning the death penalty would be considered void by Hobbes; only those demanding an individual to submit to death without resistance fall into this category.⁴ Hobbes can also be recognized as a partial moral conventionalist. The natural right to the obtaining of the means of its survival in the natural state is clearly a moral right, since a legal right does not yet exist in this context. Entering the system of law, the natural human objective of survival remains, but what is morally right or wrong to do – apart in situations of self-sacrifice and life punishment without resistance – is also largely defined trough and by the state.

This is so because, given that the other option to the civil state is anarchy and misery, it is always in each citizen best interest – and morally correct – to follow the state's directives and to contribute to its survival and thriving. Of course, there will necessarily be a great open space between what is obligatory and what is prohibited by the civil government, these acts would fall outside what could be considered morally right or morally innocuous, as long as it is something that cannot endanger the social pact. The obligations and prohibitions created by the State, on the other hand, do have a moral reason for compliance, since the state depends on a minimal effectivity in its laws in order to be existent and capable of securing the peace. To follow the law is then following on its own universal self-interest of leaving the misery of a stateless life, and also morally correct.

Because there is no limit to what the state can establish as prohibit or obligatory, except in the limited cases of the sacrifice of the own citizens' life, there is also almost no limit to what

⁴ These are argument exposed especially from chapter XXVII to XXIX of the leviathan. Ibid P.190-210.

the state can establish as morally obligatory or permitted to be done. In that sense is Hobbes a conventionalist because it leaves to the state to define the content of what one needs to do to follow the natural obligation of obedience to the state, an obedience that also guarantees the existence of the existence and the avoidance of general war.

The ultimate basis of this conventional morality is not conventional, however, but an objective self-interest of every human on the maintenance of the state and the avoidance of the all-out war of a natural state or a deceased state plagued by civil war. The method of identification of this universal moral self-interest is philosophical, Hobbes call it the book of human nature in the introduction to the Leviathan.⁵ For him, everyone has possible access to this and to every other argument that forms the political theory of the Leviathan.

To understand this the person needs to have to engage in the philosophical search of himself with an open mind, without the prejudices of the other philosophical views that Hobbes often criticizes, like the scholastic ones, but provided that this is done Hobbes seems to believe this fact could be easily understood by everyone. This is an argument concerning human nature that offers at the same time the possibility of a general empirical proof to be conduct individually.

Kant's Theory Morality

Kant's view on rights and obligations diverges markedly from Hobbes' conventionalist approach. Kant's moral philosophy is distinct in that it does not rest on anthropology, the specific traits of human nature, or any empirical observations. Despite this, Kant does not overlook the fact that certain characteristics inherent to human action—necessarily influenced by natural and anthropological realities—must be considered when evaluating the obstacles people face in their efforts to act morally. He frequently draws a comparison between theoretically pure rational beings and actual humans, who may aspire to moral actions but frequently fall short, straying away from their moral objectives.

These considerations proper to the specificities of human action are however mainly related to the effectiveness and manner of following the moral law. The core content of morality and the details of the categorical imperative, as outlined by Kant, remain unaffected by human anthropology and apply equally to purely rational beings and humans alike. The principles dictating what one ought to do are grounded in an *a priori* law, independent of any empirical context, and are universally relevant to any rational being, regardless of other aspects of its nature.

For, that there must be such a philosophy is clear of itself from the common idea of duty and of moral laws. Everyone must grant that a law, if it is to hold morally, that is, as a ground of an obligation, must carry with it absolute necessity; that, for example, the command "thou shalt not lie" does not hold only for human beings, as if other rational beings did not have to heed it, and so with all other moral laws properly so called; that, therefore, the ground of obligation here must not be sought in the nature of the human being or in the circumstances of the world in which he is placed, but *a priori* simply in concepts of pure reason; and that any other precept, which is based on principles of mere experience – even if it is universal in a certain respect – insofar as it rests in the least part on empirical grounds, perhaps only in terms of a motive/ can indeed be called a practical rule but never a moral law. (Kant, 1785, pp.3)

⁵ Curley, E. (Ed.). (1994). *Leviathan: With Selected Variants From the Latin Edition of 1668*. Hackett Publishing Company. Pp.3-5.

The significance of the categorical imperative in Kant's philosophy of law highlights the need for its detailed discussion. Kant conceptualizes the categorical imperative as a universal moral law that is absolute, applying without any exceptions, and can be identified by every rational being without depending on empirical data or contemplating even the consequences of intended actions. Its applicability to all rational beings renders it a universal law. Its independence from material outcomes and empirical facts establishes its *a priori* character. Moreover, its mandate on what must be done, unequivocally and without deviation, underscores its categorical nature.

The distance between Hobbes' and Kant's theory is already great at this point. While Hobbes shapes his views on human nature from the experience of human wants and desires, experiences that are universal but can be pinpointed through personal reflection on everyone's innate desires. Kant, as outlined, distinctly distances his moral philosophy from any experience foundation, including the empirical aspects of human nature.

Kant's approach to moral rights and obligations is rooted in the notion of moral autonomy. Each individual, according to Kant, possesses an intrinsic value and the capacity for moral reasoning, which obligates them to act in ways that could be universally applied. This is not just a theoretical construct for Kant; it serves as a practical guide for human action, emphasizing the role of intention and the moral worth of actions irrespective of their consequences.

Kant's moral philosophy proposes answers that are meant to be *a priori*, applicable to all rational beings, without relying on empirical self-reflection to justify its universal laws. For Kant's theory to hold up, he must provide a framework that stands independently of the anthropological evidence Hobbes finds compelling. Additionally, Kant needs to explain how a moral theory, even when applied to humans, can be developed without drawing on human experience as its foundation.

Kant maintains, both in the "Groundwork of the Metaphysics of Morals" (Kant, 1998) and in his "Metaphysics of Morals" (Kant, 1996), that empirical experience should not serve as a foundation for moral inquiry due to its inherently unstable and ever-changing nature. The core of his argument is that what appears good and appropriate, based on our experiences and desires, shifts with our inclinations and personal needs at any given moment, precluding the identification of a universal and perpetual good through such means.

The concept of empirical good varies from person to person and even for the same individual over time, rendering it an unreliable basis for establishing a universal moral framework. Hobbes would counter that despite the changing nature of specific desires, there exist universal needs inherent to human nature—such as security, peace, and sustenance—that are applicable to everyone, regardless of the varying objects that fulfill these desires. However, for Kant, these anthropological facts do not possess the universality required to ground morality.

Hobbes argues that the variability of the objects of desire influences the essence of the desire itself. Consequently, empirical desires are deemed morally irrelevant by Kant because they lack the consistent and enduring quality essential to morality. Kant argues that there are but ways of finding a basis for morality that is complete independent of experience, and this is the categorical imperative. It is through the imperative moral law that Kant believes lies a good will, that is, a will that has moral merit. The author argues:

Thus, among practical cognitions, not only do moral laws, along with their principles, differ essentially from all the rest/ in which there is something empirical, but all moral philosophy is based entirely on its pure part; and when it is applied to the human being it does not borrow the least thing from acquaintance with him (from anthropology) but gives to him, as a rational being, laws *a priori*, which no doubt still require a judgment

sharpened by experience, partly to distinguish in what cases they are applicable and partly to provide them with access to the will of the human being and efficacy for his fulfillment of them; for the human being is affected by so many inclinations that, though capable of the idea of a practical pure reason, he is not so easily able to make it effective in concreto in the conduct of his life.

A metaphysics of morals is therefore indispensably necessary, not merely because of a motive to speculation - for investigating the source of the practical basic principles* that lie *a priori* in our reason - but also because morals themselves remain subject to all sorts of corruption as long as we are without that clue' and supreme norm by which to appraise them correctly. For, in the case of what is to be morally good it is not enough that it conforms with the moral law but it must also be done for the sake of the law. (Kant, 1996)

The assertion that moral value is exclusively found in a good will, and that the good will is guided by the categorical imperative, highlights the imperative's universal application without exception, its autonomy from empirical circumstances, and its indifference to the consequences of actions. This concept implies that even in extreme conditions, such as a civil war or the chaotic environment of a pre-political state, the moral law continues to be pertinent and categorical. Thus, the directives of the categorical imperative maintain their status as obligatory moral principles, irrespective of the context or its potential outcomes.⁶

While acting on this moral law in such tumultuous conditions may seem nearly impossible, it does not deny the duty to try. The existence and recognition of the moral norm persist, and each person is called to act upon it, even if the outcomes of these actions do not materialize as intended. To suggest otherwise would imply that moral norms depend on the context or empirical conditions, which is precisely what Kant strives to avoid in his work. Kant argues:

A good will is not good because of what it effects or accomplishes, because of its fitness to attain some proposed end, but only because of its volition, that is, it is good in itself and, regarded for itself, is to be valued incomparably higher than all that could merely be brought about by it in favor of some inclination and indeed, if you will, of the sum of all inclinations. Even if, by a special disfavor of fortune or by the niggardly provision of a stepmotherly nature, this will should wholly lack the capacity to carry out its purpose - if with its greatest efforts it should yet achieve nothing and only the good will were left (not, of course, as a mere wish but as the summoning of all means insofar as they are in our control) - then, like a jewel, it would still shine by itself, as something that has its full worth in itself. Usefulness or fruitlessness can neither add anything to this worth nor take anything away from it. Its usefulness would be, as it were, only the setting to enable us to handle it more conveniently in ordinary commerce or to attract to it the attention of those who are not yet expert enough, but not to recommend it to experts or to determine its worth (Kant, 1996).

Another important point of Kant's ethics is the principle that adherence to the categorical imperative must be motivated by respect for the law itself to be truly morally good. This means that actions have moral value only when they are performed out of duty to the moral law or imperative. Actions that follow morality, that seem moral in their content – like charity- but that are taken for other reasons—such as personal gain, a desire for praise, or the pursuit of

⁶ Sometimes it is hard to understand how strict Kant's concept of the categorical imperative is, every reconstruction of it runs the risk of not emphasizing this necessity enough in my opinion: Also ist der Imperativ eine Regel, deren Vorstellung die subjektiv-zufällige Handlung notwendig macht, mithin das Subjekt, als ein solches, was zur Übereinstimmung mit dieser Regel genötigt (nezessitiert) werden muß, vorstellt. – Der kategorische (unbedingte) Imperativ ist derjenige, welcher nicht etwa mittelbar, durch die Vorstellung eines Zwecks, der durch die Handlung erreicht werden könne, sondern der sie durch die bloße Vorstellung dieser Handlung selbst (ihrer Form), also unmittelbar als objektiv-notwendig denkt und notwendig macht; Kant (2009). *Metaphysik der Sitten. Metaphysische Anfangsgründe der Rechtslehre*. Pp. 328.

happiness—do not qualify as morally good actions in Kant's view. Acting morally, therefore, requires that one's motivations align with the moral law itself, rather than with empirical or self-servicing inclinations.

This requirement aligns closely with what contemporary philosophy of action terms the "basing relation"—the concept that for a reason, law, or maxim to serve as a foundation for an action, the action must be performed because of that reason; it must be based on it. The reason an action is based upon becomes both the motive for the action and the explanation for why the action was carried out. Kant is particularly rigorous about this connection, insisting that the moral law must be the sole basis for an action to be considered moral. Any influence from external considerations must be utterly excluded.

There is some discussion about how far this strictness goes in Kant's theory, however. From the way I read Kant, all of this does not mean that the other reason must not exist. That is, it does not mean that one should ever feel joy from helping others in order for the help to be moral, rather only that the joy must not be included in the reasoning process that leads to the helping action. It seems that if the sentiment does help even minimally to guide one to the moral action, the action is not actually moral. Kant gives reason for this in saying that to act even partially for an empirical inclination is not something that can be counted on in every circumstance, and this constant is needed in morality. The person who acts morally even partially because of the joy of helping would maybe not do so in situations where the joy would be absent, and this uncertainty is incompatible with moral action.

These ideas on morality significantly impact how one perceives the relationship between ethics, the state and its foundation. Firstly, it prompts the question of why a state is necessary if it neither changes nor dictate what one ought to do morally. Secondly, if moral righteousness is defined independently of empirical influences, and considering the state as an empirical entity that enforces positive laws, a possible dilemma arises when state demands conflict with the independent, *a priori* demands of morality. Lastly, it's worth exploring the relationship between the state and objective, autonomous morality to understand how Kant's concept of the categorical imperative could influence the legitimate aims and objectives of state power.

To thoroughly explore these inquiries, it's essential to delve into Kant's doctrine of law, or the *Rechtslehre*. His insights on legal philosophy are chiefly articulated in the "Metaphysics of Morals," where he elaborates on the foundational principles underpinning legal and ethical norms.

Law

Kant's ethical theory and methodology have a direct effect on his views concerning law and the state. This influence is evident not only because Kant acknowledges the existence of natural rights independent of the state—a singular, yet broad enough right from which other natural rights derive—but also because he sees the foundation of the state's power to impose and enforce obligations as rooted in morality.

Kant further asserts that the method for identifying the general concept of law and its essential features should originate from metaphysics, specifically, the metaphysics of law. This approach means that the philosophical underpinnings of law must be explored through method also proper to the metaphysics of morals, which is to say, independently of empirical experience and grounded solely in *a priori* principles that are universally applicable to all rational beings.

Despite sharing in this investigative methodology, there are crucial differences between moral and legal obligations that distinguish them, even though, as I will argue, the ultimate

foundation of legal obligation for Kant is rooted in morality.⁷ A distinct feature of legal obligation is its potential to originate from external sources, typically the state, and it often possesses this external aspect. Unlike moral obligations, which invariably arise from internal reasoning in accordance with the moral law, legal obligations, apart from the pre-coercive natural right to freedom and autonomy, usually originate from a source outside oneself.

Another fundamental difference lies in the scope of legal obligation applicability. While moral law requires genuine internal adherence—meaning that the moral action must be fundamentally based in the categorical imperative, as previously outlined—legal law⁸ focuses exclusively on outward compliance. This means that what the law demands of its subjects is behavior that aligns with its stipulations, irrespective of the motivation behind such actions. Unlike in moral considerations, where the internal reason for action holds all-significant weight, legal conformity does not hinge on whether the action is performed out of a respect for the law itself or driven by empirical motives and inclinations, such as self-interest or the satisfaction derived from adhering to the law.

This difference of scope has a direct effect on the content of the *a priori* maxim that fundamentals the action in accordance to law. Kant argues that the “universal principle of law” is:

“Any action is right if it can coexist with everyone’s freedom in accordance with a universal law, or if on its maxim the freedom of choice of each can coexist with everyone’s freedom in accordance with a universal law”. If then my action or my condition generally can coexist with the freedom of everyone in accordance with a universal law, whoever hinder me in it does me wrong; for this hindrance (resistance) cannot coexist with the freedom in accordance with a universal law. It also follows from this that it cannot be required that this principle of all maxims be itself in turn by my maxim, that is, it cannot be required that I make it the maxim of my action; for anyone can be free as long as I do not impair his freedom by me external action [...]. That I make it my maxim to act rightly is a demand that ethics makes of me.

Thus the universal law of Right [Rechtsgesetz], the free use of your choice can coexist with the freedom of everyone in accordance with a universal law, indeed a law [Gesetz], which lays an obligation on me, but it does not at all expect, far less demand, that I myself should limit my freedom to those conditions just for the sake of this obligation; instead, reason says only that freedom is limited to those conditions in conformity with the Idea of it and it may also be actively [tätlich] limited by others; and it says this as a postulate that is incapable of further proof. When one’s aim is not to teach virtue but only to set forth what is right, one may not and should not represent that law of Right as itself the incentive to action (Kant, 1996, pp.231).

The articulation of this overarching principle of law and rights elucidates Kant’s understanding of the domain within which the law operates—specifically, external actions—and outlines the essential role that law plays according to his perspective. In Kant’s view, there is an intrinsic link between authority and coercion, with such coercion being justifiably employed against actions that seek to restrict the freedom of others. This framework highlights the function of law as a mechanism to protect and preserve individual liberty by ensuring that one person’s actions do not infringe upon the freedom of another.

To act in accordance with legal rights means to behave externally in a way that does not violate the freedom of others, as defined by a universal law. Essentially, this involves acting in a manner that, if adopted universally by everyone, would not encroach upon anyone else’s freedom.

⁷ This is far from an exclusive view of mine and Otfried Hoffe, Georg Geismann and Kalfriedrich Herb follow in this interpretation.

⁸ To introduce the vocabulary of legal law in opposition to the imperative moral law may sound strange, but it is a distinction that makes sense in Kant’s vocabulary and theory.

If my actions, were they to become a universal law governing external behavior, remain compatible with the overall freedom of action for all citizens, then they align with the general principle of law.

This is again different from the categorical imperative inasmuch as only the external action of not infringing on the liberty of others is required and not – as in ethics—that the internal purity of the action be guaranteed though the acting exclusively for the ethical reason. The obligation is external because only the subject's autonomy can set the internal guidance of action, to obligate someone to act for the exact reasons of the law would be both impossible as unverifiable.

This impossibility of obligating action for the reason of the law manifests in various scenarios. For instance, if an individual acts in accordance with the law solely due to coercion prohibiting non-internally guided law-conform action, then they are not motivated by the law's internal imperative. Conversely, if one acts based on the internal imperative of the law, coercion becomes irrelevant. Consequently, any legal obligation that demands internal action in compliance with the law proves ineffective for those not already inclined to follow it, and redundant for those who are.

External actions that comply with the law can be made obligatory, however. By halting actions that go against the general principle of freedom, the law, and the state safeguard the citizens' freedom to act in ways that are compatible with everyone else's freedom. Therefore, the state has the role—and obligation—to protect the freedom of action for all its citizens and to enforce this respect for freedom among them when necessary.

Following on this general principle of law, Kant identifies what he calls the only natural right:

Freedom (independence from being constrained by another, insofar as it can coexist with the freedom of every other in accordance with a universal law, is the only original right belonging to every man by virtue of his humanity. This principle of innate freedom already involves the following authorizations, which are not really distinct from it (as if they were members of the division of some higher concept of a right): innate equality, that is, independence from being bound by others to more than one can in turn bind them; hence a man's quality of being his own master (*sui iuris*), as well as being a man beyond reproach (*iusti*), since before he performs any act affecting rights he has done no wrong to anyone; and finally, his being authorized to do to others anything that does not in itself diminish what is theirs, so long as they do not want to accept it —such things as merely communicating his thoughts to them, telling or promising them something, whether what he says is true and sincere or untrue and insincere (*veriloquium aufalsiloquium*)-, for it is entirely up to them whether they want to believe him or not (Kant, 1996, Pp. 238).

Freedom from constraints on its own freedom is the natural right every human has because of their humanity in the Kant's theoretical framework. This natural right pair to the general principle of law just discussed, because every human has a right to freedom in the limits of everybody else's freedom, that the state has the authority and obligation to guarantee the security of this freedom through legitimate coercion.

As we will explore shortly, Kant envisions this general principle of law and the corresponding natural right as foundational for the state and any subsequent positive law. However, this does not mean that the natural right dictates the specific content of these positive laws; there is considerable flexibility in the rights that a legal system can establish. For example, this includes whether the law deems the presence of witnesses necessary for the creation of a will, the required number of witnesses, even the validity of wills as a means for property succession, or whether the law should determine rightful heirs unequivocally.

In Kant's conception of law there exists the creation of positive rights. Comparing the rights of citizens from different legal systems may reveal certain rights existing in one society but not in another. Kant's argument for the existence of a natural right and a principle of legitimate action as the foundational elements of law, coupled with his assertion of their metaphysical necessity—meaning their universal recognizability through reason via a priori reflection, and without the need for empirical evidence—introduces several questions, however.

These questions relate to the cases where positive law violates this principle of law and natural right. Before delving in this thematic, it will be profitable to finally present Kant's conception of a state of nature and how the author justifies the creation of the state based on this conception of a natural state. These passages are so important that they merit a long citation.

It is not experience from which we learn of men's and of their malevolent tendency to attack one another before external legislation endowed with power appears. It is therefore not some fact that makes coercion through public law necessary. On the contrary however well-disposed and law-abiding men might be, it still lies a priori in the rational idea of such condition (one that is not rightful) that before a public lawful condition is established, individual men, peoples, and states can never be secure against violence from one another, since each has its own right to do what seems right and good to it and not to be dependent upon another's opinion about this. So, unless it wants to renounce any concepts of Right, the first thing it has to resolve upon is the principle that it must leave the state of nature, in which each follows its own judgement, unite itself with all others (with which it cannot avoid interacting), subject itself to a public lawful external coercion, and so enter in a condition in which what is to be recognized as belonging to it is determined by law and is allotted to it by adequate power (not its own but an external power; that is to say, it ought above all else enter a civil condition.)

It is true that the state of nature need not be, just because it is natural, be a state of injustice (*iniustus*), of dealing with one another only in terms of the degree of force each has. But it would still be a state devoid of justice (*status iustitia vacuus*), in which, when rights are in dispute (*ius controversum*), there would be no judge competent to render a verdict having rightful force. Hence each may impel the other by force to leave this state and enter into a rightful condition; for although each can acquire something external by taking control of it or by contract in accordance with its concepts of Right, this acquisition is still only provisional as long as it does not yet have the sanction of public law, since it is not determined by public (distributive) justice and secured by an authority putting this right into effect.

If no acquisition were recognized as rightful even in a provisional way prior to entering the civil condition, the civil condition itself would be impossible. For in terms of their form, laws concerning what is mine or yours in the state of nature contain the same thing that they prescribe in the civil condition, insofar as the civil condition is thought of by pure rational concepts alone. The difference is only that the civil condition provides the conditions under which these laws are put into effect (in keeping with distributive justice). So, if external objects were not even provisionally mine or yours in the state of nature, there would also be no duties of Right with regard to them and therefore no command to leave the state of nature (Kant, 1996, pp.312).

Despite some problems with the translation of these paragraphs in the English version, problems which I won't have the opportunity to delve into here, the key concepts presented by Kant appear to be discernible from the translated passages. Furthermore, the main similarities and differences with Hobbes' portrayal of the state of nature, as discussed in the first section of this article, are evident.

Similar to Hobbes, Kant recognizes an obligation to transition from the state of nature to a civil state governed by law. However, their views diverge significantly beyond this point. Unlike Hobbes, who perceives no inherent right or wrong in the state of nature beyond the imperative to leave it, and certainly no legitimate property rights, Kant posits that the moral law

exists independently of the state, even in the natural condition. According to Kant, there can also be rightful—though not effective—acquisition of property in this state. While Hobbes views the civil state's primary role as preventing the natural state of war, Kant envisions the civil power as not only securing property rights but also protecting freedoms that existed prior to the establishment of the civil state.

Kant views the primary function of the civil state as the enforcement the a priori legal principle, specifically ensuring actions are in harmony with the natural right of freedom and that those are safeguarded against actions that contradict them. This viewpoint does not suggest that rights were missing in the state of nature or that a group forming naturally couldn't independently respect what is just, such as rightfully obtained property and contracts made in this setting. However, it does assert that without a strong public authority to uphold these natural rights, the level of security required for these rights to be reliably protected would inevitably be lacking.

Kant makes a point of reinforcing that there are rightful propriety rights in the natural state, and consequently, natural rights in accordance to the a priori identified principle of right. Further, the author argues that if there were not at least a provisional rightful propriety before the introduction the civil power, there would not be anything left for this civil power to protect, and that the framework of the rights of acquisition would be essentially the civil in both cases, with the security to what is owned as the distinct characteristic of the civil context.

Otfried Höffe argues:

By naming the conditions without which a coexistence of freedom of action is not possible [the natural state], Kant's moral determinations of law gain, in addition to the already mentioned tasks, a sixth, law-constituting significance. They implicitly call for shaping human coexistence in legal forms. At the same time, the importance of legal ethics is increased. Far more than a partial social ethics, it has the significance of a fundamental discipline of society: Establishing legal relationships among people is not merely morally legitimate. To shape human coexistence in a moral way and at the same time enable freedom of action for every individual, the establishment of a legal order is even morally imperative.

The three subjects of the introduction to the doctrine of law (RL, VI 229ff.), the moral concept of law, the (moral) principle of law, and the (moral) law of rights, are characterized by strict universality and a *a priori* nature because they, as moral subjects, belong to pure practical reason. As principles of "all" positive legislation, they are removed from all experience and its variability, and thus are also "immutable" (Höffe, 2012, pp. 229).

This strong connection between natural law and the positive civil state raises some important questions. One of the critical questions raised concerns the status of positive law when it fails to uphold the natural right to freedom or contradicts the established principle of law. Envisioning such a scenario is not challenging, especially considering the context of Kant's era, which saw the codification of laws that sanctioned slavery in Africa, Haiti, and across the American continent. Additionally, there were various laws that restricted certain citizens' access to rights and participation in community life based on so-called race (white, non-white), legal status (free, non-free), and gender.

That such laws, and actions based on them, would infringe upon the principle of right and the natural rights of those affected is self-evident in our contemporary understanding. The possibility of objecting to these discriminatory laws was also within the realm of awareness for someone living in Europe during Kant's historical era. For example, the abolition of serfdom, a subject of discussion in Prussia throughout Kant's life, officially occurred in 1807, just a few years

after the philosopher's death, indicating that critiques of such unjust practices were known and debated during his time.

The French revolutionaries, among other things, were staunchly opposed to slavery, leading to the first abolition in the French colonies in 1794. This occurred after most of Kant's philosophical works were written, but it likely indicates that he was aware of the ongoing debates challenging slavery and serfdom. Advocates during this period opposed slavery and serfdom, affirming the innate human right to liberty, and they called for its complete abolition, potentially on a global scale.

More importantly, that laws establishing slavery at birth, or limiting rights based on race or gender, can and must be considered violating the basic right of freedom if we are to follow in the framework of law exposed by Kant so far. To limit the acquiring of propriety based on a specific race is not something that can be universal, rather it is a system that can only work if it is not all-applicable and secures the denied right for the oppressors. To universalize such a law would be to abolish propriety and therefore the law is not in accordance to the principle of law.

To reach that conclusion do not answer much about the consequences of considering a law in opposition to the basic human right of freedom. From this conclusion the question comes if that purposed positive law is altogether law, and if the principle of right is the basis for every further positive obligation in a legal system, if a law that violates it could be able to create obligations at all.

If, as I have been affirming, the natural law and the principle of law is the basis of all positive obligation, a law that breaks with this right and criteria do not create obligations and therefore cannot be followed in a manner according to "real" or "legitimate" law. Affirming this does not yet answer the question of the relationship between an invalid and illegitimate positive law and the system of law as a whole. It would probably not be reasonable to affirm that an entire system of law is in-existent because of the way a minority of its subject are treated by illegitimate law - and it does not seem that Kant would follow in that statement.

On the other hand, if a positive law is unsuccessful in creating obligations, it would necessarily seem that any act enforcing these laws, or applying sanction the breach of said laws would also not be according to the principle of law. This might not authorize the citizenship to actively engage in insurrection against the system of law, but it would be strange to affirm that there is a responsibility to support the application of the illegitimate law or to accept the enforcement of sanctions based on an illegality.

Curiously, Kant did not choose to follow in the reasoning from natural law and the principle of right to the conclusion that resistance to innocuous laws, or to innocuous systems of law, or to the enforcement of innocuous laws is at all possible. Kant argues, beginning in the section 49 of the metaphysics of morals, that active individual violent resistance to regimes or laws that are considered by someone as contrary to natural law, natural rights, or morality, is never morally or legally permissible. The philosopher also argues that any state is in its right to punish – even by death – those who try to engage in sedition on these terms.

Now from this principle [the one impossibility resistance] follows the proposition: The head of a state has only rights against his subjects and no duties (that he can be coerced to fulfill). Moreover, even if the organ of the head of a state, the ruler, proceeds contrary to law, for example, if he goes against the law of equality in assigning the burdens of the state in matters of taxation, recruiting and so forth, subjects may indeed oppose this injustice by complaints (*gravamina*) but not by resistance.

Indeed, even the constitution cannot contain any article that would make it possible for there to be some authority in a state to resist the supreme commander [*obersten Befehlshaber*] in case he should violate the law of the constitution, and so to limit him. For someone who is to limit the authority in a state must have even more power [*Macht*]

than he whom he limits, or at least as much power as he has; and, as a legitimate commander [Gebietter] who directs the subjects to resist, he must also be able to protect them and to render a judgment having rightful force in any case that comes up; consequently, he has to be able to command resistance publicly. In that case, however, the supreme commander in a state is not the supreme commander; instead, it is the one who can resist him, and this is self-contradictory (Kant, 1996, pp.130).

Kant argues further that the only form of resistance possible is through legislative representation. That is, if the systems have legislative officials – elected or not – that are able in parliament to oppose the govern or the constitution of the current system of law. Even this representative resistance is quite limited in the theory of the metaphysics of morals however, and it does not seem to include the accountability for the monarch – or possible the president or chancellor – through the penal law or a judgment of impeachment so common in contemporary legislation.

Therefore, a people cannot offer any resistance to the legislative head of a state that would be consistent with right, since a rightful condition is possible only by submission to its general legislative will. There is, therefore, no right to sedition (seditio), still less to rebellion (rebellio), and least of all is there a right against the head of a state as an individual person (the monarch), to attack his person or even his life (:monarchomachismus sub specie tyrannicidii) on the pretext that he has abused his authority (tyrannis). Any attempt whatsoever at this is high treason (proditio eminens), and whoever commits such treason must be punished by nothing less than death for attempting to destroy his fatherland (parricida). The reason a people has a duty to put up with even what is held to be an unbearable abuse of supreme authority is that its resistance to the highest legislation can never be regarded as other than contrary to law, and indeed as abolishing the entire legal constitution. (Kant, 1996, pp.131)

Following the author's exact words places Kant's theory of law in a unique spot within the history of philosophy. This perspective views morality, encompassing moral law and natural rights, as the cornerstone of legality. Nonetheless, it simultaneously asserts that these moral principles have minimal influence on the application of positive law or on individuals' relationships with the law in a legal system. This perspective might seem contradictory at first and has led to a broad discussion among scholars about how to interpret Kant's work and doctrine of resistance.

For some authors, Kant's stance on resistance, as outlined here, is considered a contradiction to his views on ethics and natural law. Essentially, they argue it is inconsistent to claim that there exists a pre-political human right to a certain level of freedom, which fundamentals all legal obligations, while simultaneously asserting that there is no right to resist laws infringing upon this fundamental human right. If the principle of right identified by Kant serves as the foundation of legal systems in civil society, then it follows that any monarch, constitution, or ruler who violates this principle lacks any legitimate legal authority for their commands, warranting resistance or at the very least, legal and justified noncompliance. Lewis W. Beck appears to endorse this interpretation of Kant's argument.

Other scholars, such as Dietmar von der Pfordten (Pfordten, 2009), interpret Kant's writings in another light. According to Pfordten, Kant's rejection of resistance makes sense only within legal systems that adhere to the principle of right, as well Kant's other details about the characteristics of an ideal government. This includes elements like some form of representation, a measure of freedom, and legislation that aligns with the collective will of the governed. This

viewpoint accompanies Kant's arguments in the metaphysics of morals that laws in a state should aim to safeguard interpersonal freedom in a manner that could be universally endorsed by the populace and enforced uniformly. From Pfordten's perspective, rebelling and resisting against governments that fall short of this state ideal could be considered both possible and justified within Kant's philosophical framework.

While Pfordten's interpretation offers an interesting perspective, it seems to diverge from what Kant explicitly writes, particularly when considering the previously quoted passage that clearly prohibits the judgment and resistance against despotic monarchs that exceed their authority. This happens for different reasons. Kant's depiction of a scenario in which a monarch or even an elected official in a legal system has the power to overextend their authority and succeeds in doing so cannot not align with his vision of an ideal legal framework. That is because in Kant's ideal scenario, any attempt to act unlawfully or beyond one's authority would be checked by courts or parliament. However, Kant does present this scenario of a decidedly non-ideal state and yet asserts that rightful resistance to it is impossible. Thus, even within the context of a non-ideal system, Kant upholds that the right to resistance does not exist, advocating for unwavering adherence to law, irrespective of the realities of the legal system or its violation of the identified human right.

Conclusion

The discussions we have embarked on so far are merely preliminary. There is substantial depth to be explored within the themes of law, state, morality, and their philosophical interrelations in the works of Thomas Hobbes and Immanuel Kant. In the context of this comparison, it is noteworthy that Hobbes' restriction on the right of resistance, along with his rationale for the relationship between moral law and state power, seems to align more coherently with his philosophical framework than Kant's attempt to constrain the right of resistance while simultaneously asserting a natural right to freedom as the foundation of law.

These observations do not necessarily mean that we should prefer Hobbes' theory of law, which argues for an almost unlimited power of the state, a morality that is heavily state-oriented, and a nearly unrestricted freedom for positive law to determine its own content. The comparison with Hobbes underscores the necessity to refine Kant's stance on resistance, ensuring it aligns more coherently with his broader ethical framework. There is substantial justification, both within Kant's own theory and independently, to view human rights as constraints on the permissible scope of positive law. Such a limitation implies not that a positive law infringing upon human rights is logically impossible or incapable of being enforced, but rather that any law doing so falls short of being law in the fullest sense—lacking in legitimate authority and the capacity to create genuine legal obligations.

Although Kant may not explicitly arrive at this conclusion in his work—and it is unhelpful to claim he suggests this in light of his explicit denials—the point still stands. Kant's view on resistance does not need to detract us from the argument that human rights, serving as a foundation for the legal system and as a boundary for positive law, reflect the direction toward which Kant's ethical theory appears to lead us.

References

- KANT, I. *Groundwork of the Metaphysics of Morals* (M. Gregor, Trans.). Cambridge: Cambridge University Press, 1998. (Original work published 1785)
- KANT, I. *The Metaphysics of Morals* (M. Gregor, Trans.). Cambridge: Cambridge University Press, 1996. (Original work published 1797)
- HÖFFE, Otfried. *Kants Kritik der praktischen Vernunft: eine Philosophie der Freiheit*. München: Verlag, C.H. Beck, 1996.
- KANT, I. *Grundlegung zur Metaphysik der Sitten*. Riga: Johann Friedrich Hartknoch, 1785.
- KANT, I. *Die Metaphysik der Sitten*. Königsberg: Friedrich Nicolovius, 1797.
- HÖFFE, Otfried. *Kants Kritik der praktischen Vernunft: eine Philosophie der Freiheit*. München: Verlag C.H. Beck, 2012. Pp. 229.
- CURLEZ, E. (Ed.). *Leviathan: With Selected Variants From the Latin Edition of 1668*. Hackett Publishing Company, 1994.
- ROUSSEAU, J.-J. *On the Social Contract*. Indianapolis: Hackett Publishing Company, 1987. (Edited by Donald A. Cress) (Original work published 1762)
- HOBBS, Thomas. *Leviathan*. Harmondsworth,: Penguin Books. Edited by C. B. Macpherson, 1651.
- BENTHAM, J. *An introduction to the principles of morals and legislation* (J. H. Burns & H. L. A. Hart, Eds.). Dover Publications, 1780.
- HART, H. L. A. *The concept of law* (2nd ed., P. A. Bulloch & J. Raz, Eds.). Oxford University Press, 1977.
- COLLINS, J. *The Early Modern Foundations of Classic Liberalism*. In G. Klosko (Ed.), *The Oxford Handbook of the History of Political Philosophy* (pp. 258-268). Oxford University Press, 2011.
- VON DER PFORDTEN, D. *Zum Recht auf Widerstand bei Kant*. In *Menschenwürde, Recht und Staat bei Kant*. Brill | mentis, 2009.

Autor(a) para correspondência / Corresponding author: Fernando Campos. fernando.campos@hotmail.co.uk