

# Calculative Faculty By Reasoning: Hobesian Rationalism And The Contemporary Legal Approach

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## **Abstract:**

**Background:** This article examines Thomas Hobbes' rationalist philosophy and its influence on contemporary legal frameworks, particularly the evolution from positivism to the conception of fundamental rights. Hobbes' theory of "calculative reasoning" is central to understanding the role of reason in law, marking a shift from religious and traditional rationalism to a logic-based approach that applies scientific methods to social organization and individual rights.

**Materials and Methods:** This study employs a bibliographic approach, using a literature review to trace Hobbes' philosophical roots and their evolution in legal thought. Comparisons are made with thinkers like Aristotle, Montesquieu, and Locke, analyzing how classical theories informed Hobbes' concept of reason as calculation. A deductive method is used to assess Hobbes' impact on legal positivism and modern legal rationality.

**Results and Conclusions:** Hobbes' concept of calculative reasoning significantly influenced the legal system by establishing reason as a tool for logical and precise decision-making within jurisprudence. This theoretical evolution supports the structure of modern states and democratic systems, with rationality as a guiding principle for laws protecting individual rights, including property and freedom. Hobbes' rationalism contributed to transforming legal philosophy by grounding it in logical assessment, moving away from metaphysical and theological interpretations, thereby shaping contemporary legal doctrines regarding the social contract and fundamental rights.

**Keyword:** Classical Theories of the State. Understanding of rights. Evolution. Fundamental rights. Democratic State of Law.

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## I. Introduction

Theories of the State have had a long and conflicting historical process, in which State functions have been successively reformulated.

The so-called classical Political Theory brings the bases of an idealized State through the Social Contract, and this evolves from the point of view of theoretical construction, in a remarkable way, in the transition from the absolutist conceptions of Hobbesian contractualism, to contemporary theories, such as positivism and legal and political liberalism.

The construction of the collective coexistence of individuals, the apprehension and recognition of their rights were in line with the condition of political and economic thought, typical of the time in which they interacted, particularly in the European scenario in the midst of its conflicts.

The article deals with studying and analyzing reason in the Hobbesian version, that is, a calculation, that is, an "addition and subtraction of the consequences of general names established to mark and signify our thoughts" (HOBBS, 1979, p.27).

Thomas Hobbes is widely recognized for his contributions to Social Contract Theory, but he also formulated the foundations of Calculative Reasoning, which shifted classical and medieval religious and philosophical thought to foundations related to the exact sciences, which can be applied in the analysis of many contemporary legal problems. This way of thinking distanced itself from rationality traditionally understood as the ability to investigate the essence of things.

His theory is extremely useful for understanding how human beings make decisions, establish rights, and reason about problems, inserting calculus as a tool to reach exact definitions, through the deductive method (HOBBS, 1979, p. 27).

It addresses how rationalist philosophy is applied in the understanding of the contemporary legal approach, especially related to the evolution of positivism until reaching the conception of fundamental rights.

The bibliographic research is carried out through a literature review that rescues the origins from the classical theories of the State, through the Hobbesian rationalist philosophy and its reflections in the legal sphere.

Authors such as Aristotle, Montesquieu and Locke are used to compare and analyze the paradigms and the evolution of political thought. Next, the construction of the idea of reason as a calculating faculty, exclusive to Thomas Hobbes, is analyzed. The question is: To what extent did Thomas Hobbes help the evolution of legal order and positivism? The reasoning is deductive, and the techniques of the referent, operational concepts and categorization will be activated (PASOLD, 2011, p. 10).

We sought the analysis of Hobbes' rationalist thought, his approaches over time and the transitions of this theoretical construction to modern times. What is sought, in this aspect, with the caveats of a generalization that is not intended to be excessive, is to characterize Hobbesian rationalism specifically the calculating faculty, its evolution in the historical context and influences on the contemporary legal approach.

It is necessary to establish a premise before the beginning of the digression: all our study is based on the cultures and the system of rights considered essential to man, however, the man of Western culture has his peculiarities determined by the spatial location and, therefore, the article is related to the "thought of the West" (DACANAL, 2013, p. 17) that guides the present study.

In the first place, the defense of property in Thomas Hobbes is discussed. Next, it describes how thinking about how the State should be conducted, as a result of the social contract, abandoned ideas linked to faith to adopt ideas such as Hobbesian rationalism. Finally, the evolution and influence of Hobbes' rationalist thought in the contemporary legal approach is discussed.

## **II. Thomas Hobbes Entre E A Proteção Da Propriedade Privada Como Direito**

The starting point of this item is to verify how Thomas Hobbes, among the great authors of Classical Political Theory, helped to establish the bases on which one can think today, both the conduct of the Social Contract that created the State and how it stabilized society in order to be able to recognize and ensure rights over time, according to the calculation and deductive reasoning used in these processes.

The concepts of polis, politics, state of nature, social contract, property, freedom and Fundamental Rights, are at the central axis of this debate. It is Thomas Hobbes' reading of the State, as he understands it, as the meaning and consequence of a rational calculation about the need to protect private property.

There is a certain consensus that the State began to form from the sixteenth century onwards in Europe (SGARBOSSA, IENSUE, 2018, p. 36). State and property began to have a mutual dependence and from the seventeenth century onwards.

Specifically in the Brazilian legal system, fundamental rights are closely related to the protection of private property and freedom. These rights are only part of the great comprehensive universe of others, important to constitutionalism, arising among other sources, from the evolution of positivist thought, for which Hobbesian rationalism was indispensable.

Hobbes theorized about the possibility that everything can be subjected to a calculation: reasoning will produce exact definitions and force irrefutable conclusions. He establishes calculations as addition and subtraction for all scientific operations, whatever their elements (HOBBS, 1979, p. 26-27).

Fundamental rights and duties concern individual and collective rights and duties. In this context, according to Hobbes, acting with reason presupposes a calculation of the means by which I can use to reach the desired result.

In relation to the protection of private property, it means calculating the risks of promoting its defense to the detriment of the one who invades it and the consequences of repulsion to the invader.

For example, if I want to exercise my passive political rights, I must be sympathetic to the voters, create an action plan, promise improvements, promote events, among other actions.

Thus, whenever man reasons, there is a rational exercise where the end is reached after reaching the total sum, either by means of the sum of parts, or by a "remainder" obtained from the subtraction of one addition by another (HOBBS, 1979, p. 27).

Thomas Hobbes is among the main founders of Theories of the State, of historical Political Theory and precursor of Western thought on the relations between individuals and the State. In this way, it is possible to understand how, from the faculty of calculation by reasoning, theorized by him, the fundamental rights that began with the concepts of freedom and private property were developed, incorporated and ensured.

## **III. The Abandonment Of Ideas Linked To Faith And Traditional Rationalism For Hobbesian Rationalist Ideas**

The so-called natural law has always influenced the civilizations of Greeks, Sophists and Romans – it prescribes actions whose value does not depend on the subject's judgment about them, but exist regardless of the fact that they seem good to some and bad to others (BOBBIO, 1995, p.17). For these currents, human rights are imperatives of natural law, prior to and superior to the will of the State. Natural law serves as a justification for both contractualist and non-contractualist theorists.

It is then related to Aristotle, who believed that it was evident that the entire City belongs to nature and that man is naturally made to live in a political society, as he is a political animal although with more social characteristics than bees and other animals that live in communities (ARISTOTLE, 1981, p. 44-47). Thus, under the terms of the Non-Contractualist Theory, man, since the beginning of time, even before the existence of Law, already had a certain social organization, which was improved and evolved according to human development, until we reached our current state models.

The contribution of the contractualists for whom the transition from the State of Nature to the State of Society occurred through the celebration of the so-called Social Contract, which required individuals to abdicate natural freedom and the natural dominion of goods, transmitting to a single individual (sovereign) the power to create laws, norms and moral and ethical rules capable of limiting human conduct. Thus, natural law provides the elements of validation of the social contract or the political pact: If the contracting parties possess the same natural rights and are free, possess the right and power to transfer freedom to a third party, and if they voluntarily and freely consent to it, then they give the sovereign something that they possess, legitimizing the power of sovereignty. Thus, by natural right, individuals form the free will of society, voluntarily make a pact or contract and transfer to the sovereign the power to direct them (CHAUÍ, 2000).

The theories of the State were very much linked to the theological discourse at the time, as Natural Rights were granted by God. Niccolò Machiavelli emphasized in his political thought the harsh reality of the constitution and maintenance of power, with an analysis of Roman experiences of political freedom. He appears as the first modern political thinker, who was not interested in tying his political discourse to religious faith.

The Prince is the one who will do what has to be done, including what may eventually be negative. The political game has its own logic, including discussing power. Machiavelli's idea of virtue is far removed from the one idealized by Aristotle. Whoever has power and wants to keep it has to act like this. In Machiavelli, virtue consists in knowing how to dominate fortune, that is, luck or human chance, and is not restricted to each particular man, but in the sovereign's ruse to preserve the State and exercise power.

In the context of the right to freedom, the author's concern with the importance that conquered subjects gave to this right is clear. Thus, he did not forget to advise that the feeling of freedom serves to legitimize the government and that if the sovereign does not want the destruction of a "newly conquered republic", there are other ways to legitimize the government: with the prudence of personal housing, which allows him to win the esteem of the people, conquering the inhabitants more easily in order to ensure their loyalty; or by keeping the power in the hands of a few friends of the government, with the collection of taxes, because "By means of its own citizens, the government of a city accustomed to liberty will be more easily preserved than in any other way." It is also necessary to protect the recent territorial conquest from the feelings of revenge against the idea of lost freedom (MACHIARELLI, 1515, p. 6).

A century after Machiavelli, political thought won in Hobbes, speculations about how to deal with a man in a constant tendency to individualism, and in terms of what his precursor had taught, Hobbes understood that general chaos and civil war (return to the pre-social contract state of nature) could only be avoided by a strong and central government. Among his famous phrases are those comparisons in which he says that man is a wolf of himself, and that if two men desire only one thing, then enmity arises.

Strauss (2009, p. 147) states that, contrary to what previous theories suggested, for Hobbes, man is not a naturally political and social animal.

Hobbes recognizes, however, that man is a being capable of calculating privilege accompanied by another, "the privilege of the absurd, to which no living being is subject, except man" (HOBBS, 1979, p. 29).

Therefore, Hobbes conceived the idea of a strong state – the Leviathan, because if we didn't have it, we would live in anarchy. He sought data from reality to elaborate his theory and studied human nature. The question he addressed referred to a social and political order that presented the restlessness about how human beings can live together in peace, and not succumb to civil conflict (HOBBS, MISSNER, 2016, p. xxi).

For Hobbes, all human beings should have rights, moral claims that protect their basic interests. But what or who determines what these rights are? Who will be responsible for applying them and exercising the most important political powers, when the basic assumption is that we have equal rights?

He presents extreme alternatives: we must give our obedience to a sovereign capable of ensuring the general security of the people. In the failure of the latter, there is only reason to give rise to a popular reaction.

Locke questioned, based on the analyses proposed by Hobbes, how human beings could live together, with the weakening of religious discourse and the failure of arguments of authority that had been effective until then, which lost strength every day in the context of the turmoil of the English scenario (LOCKE, 2005). How to think about a politically justified authority? Would the solution reveal the absolutist molds proposed by Hobbes? How to ensure that the political system is not distorted or usurps the rights of its subjects?

It was necessary for the bourgeoisie to find a theoretical basis that would legitimize it, in which it was as great or greater than the royal blood: "In fact, although capitalism was in the process of consolidation and the economic power of the bourgeoisie was uncontested, the political regime remained monarchical and the political

power and social prestige of the nobility also remained. To face them on equal terms, the bourgeoisie needed a theory that would give it a legitimacy as great or greater than blood and heredity gave to achievement and nobility. This theory will be that of private property as a natural right and its first coherent formulation will be made by Locke, at the end of the seventeenth century and the beginning of the eighteenth century. Locke starts from the definition of natural law as the right to life, liberty and the goods necessary for the preservation of both. These goods are achieved by work" (CHAUÍ, 2000).

To answer the questions set out above, the State, which exists from the social contract, must fulfill the functions that Hobbes had attributed to it, but with a difference in relation to Locke's conception: the main purpose of the social contract is to guarantee the natural right of property. This legitimizes the bourgeoisie in the eyes of royalty, who believe they are "owners thanks to their own work, while kings and nobles are parasites on society" (CHAUÍ, 2000).

For Hobbes, individuals survived by living with each other and in the midst of nature in a harmonious way, in a state of nature, where there were no fights. But it seems certain that, when an individual wished to settle with his family in a certain place, conflict would inevitably arise, since he would be establishing bases in a place that could be required by another individual. A justification was needed that would legitimize such appropriation.

The public institution is the result of this social pact and guarantees human freedom from the point of view of the collectivity because this collective agreement that gave rise to this freedom and the right to own one's land was the result of the consensus of individuals to guarantee the general will (FORSYTH, 1981, p. 191). This, in turn, represents a decision-making process where private or selfish wills are disregarded in favor of the common interest, that is, the general will is a sum of private wills of people who debate an agenda or agenda, in an environment of balanced forces.

Rationality requires the consideration that society is formed by the idea of a voluntary and historical collectivity of individuals who possess natural rights, and constantly group together, to optimize the achievement of their common interests. Such an arrangement gives rise to the State itself. Society will start to respect rules of coexistence, later laws and a legal-political order.

Thomas Hobbes has a work particularly relevant to the study of law, as many of the legal principles are based on his calculative rationality.

Hobbes' theory of calculative reasoning is useful for the study of law because it helps to understand how people make legal decisions. His theory is based on the principle that people reason logically and use logic to reach their conclusions.

Silva points to the calculative instrument proposed by Hobbes: [...] calculate the names of objects and facts, in order to construct a coherent discourse capable of providing man with a way out of the state of simple nature, which is a war of all against all, through the pact that establishes a sovereign power capable of promoting peace, security and stability (SILVA, 2009, p. 26)

It is thanks to the ability to calculate that man can abandon his state of nature and live in a social environment.

Hobbes believed that people were able to reach their conclusions through reasoning, and that this was the only valid method to arrive at the truth.

His theory of calculative reasoning is useful for the study of law because in the legal system actions must be calculated rationally, that is, addition and subtraction operations are carried out and the means to achieve the desired objectives are verified.

Thomas Hobbes is considered one of the main philosophers of empiricism. His calculating faculty by reasoning is based on the idea that knowledge is acquired through experience.

Hobbes states that the human mind is capable of processing experiences and thus arriving at an understanding of the world. The calculating faculty by reasoning is therefore a logical process that enables the human mind to arrive at an understanding of the world.

#### **IV. Evolution And Influence Of Hobbes' Rationalist Thought On The Contemporary Legal Approach**

Thomas Hobbes is considered one of the greatest rational philosophers of the seventeenth century. Hobbes proposed a theory of the state based on the principle of reason and the necessity of a social contract.

He argued that the state should be governed by an absolute monarch, because only then would it be possible to avoid anarchy and chaos. Hobbes also proposed a theory of knowledge based on the principle of evidence, according to which knowledge is acquired through sensible experience. This theory is considered one of the most important contributions of rationalist thought in the Hobbesian conception.

Hobbes defends the idea that all men are equal and that we should use reason to make the best possible decisions. He believed that reason was the best tool men possessed to make decisions.

He argued that we should use reason to analyze all situations and choose the best option. Rational calculation is an important idea for us to understand how Thomas Hobbes thought, who teaches us to use reason to make the best decisions, abandoning the metaphysical, theological idea and the search for the essence of things.

Rationality is the process by which the individual analyzes and understands the reality around him, according to Thomas Hobbes. According to the philosopher, rationality is what differentiates us from other living beings and is what allows us to arrive at universal truths. For Hobbes, rationality is the only valid criterion for knowledge and deductive reasoning leads to irrefutable conclusions.

Whether spontaneously, as a natural human evolution or through a contract in which natural rights are transferred to the sovereign "and thereby authorize him to transform it into civil law or positive law, guaranteeing the life, liberty and private property of the governed", we have a formal legal order in force in such a society (CHAUI, 2000).

The sovereign will be responsible for all social regulation and the monopoly of coercion, the use of force, and it will be up to him to establish Institutions that guarantee social peace, not only from a civil point of view, but including the exclusive use of force and the repression of crimes.

Fundamental rights and duties concern individual and collective rights and duties, which, according to Hobbes' thought, in the subsumption proposed by this article, must be submitted to a calculation.

If man desires the protection of the right to life, liberty, equality, security and property; nationality; guarantees of collective, social and political rights. In this sense, acting rationally is imbricated with the calculation of the means by which one can use to achieve these objectives.

Hobbes's rationality is based on logic and experience. He states that logic is what allows us to arrive at universal truths, while experience is what allows us to comprehend the reality around us.

He believed that rationality is the only path to true knowledge and that any other form of knowledge is irrelevant or erroneous.

Hobbes's rationality is one of the most important contributions to philosophy and science. It teaches us to use logic and experience to understand reality and arrive at universal truths.

Political theory has been understood in two different ways, firstly as normative political theory and as historical political theory. In this article, we will focus on the bias that comprises historical political theory where the central political concepts in a given time or society are studied, that is, considering the historical panorama. Political theory is an intellectual enterprise that runs through the trajectory of all Western societies and is "inseparable from the historical construction of these societies as properly political communities" (ABCP, 2014).

The theoretical constructions of fundamental rights are important because the State, when it is organized, with its established attributions, becomes responsible for those who are subordinate to it. In this way, he must seek the common good, that is, in the final analysis he assumes a goal which, as we will see, must be the promotion of the social good of man, in all its dimensions. In this sense, legal science itself comes as a structure of state power and social phenomenon, created to guarantee such social well-being.

Hobbes, although he is considered the father of modern natural law (HERVADA, 1996, p. 249) is also placed by several theorists as a precursor of positivism, insofar as he often used an expression very close to what would be an essay on Positive Law: civil law (Cf. BOBBIO, 1995).

In the nineteenth century, positivist thought, with its German pillars, differentiated the origin of Law, and dichotomized it: Natural Law believed that norms originated from the rational nature of man, Positive Law defended that they were set by the sovereign State, the only entity with authority and political power to impose legal norms.

Rodrigues, when dealing with positivism, differentiating it from natural law, establishes them as follows: "The theory of Juspositivism, by disagreeing head-on with Jusnaturalism, separating Law from moral valuation, that is, removing from its content the ideology of justice, recognizes only as valid and fair the Positive Law in force in each society, making it a supernorm, which is the superior expression of reason, having the State as the only source of power and law, in short, considering the legal system complete and self-sufficient. Such a position transforms the law enforcer into a cold and technicist artificer, repeater of an insensitive (*dura lex, sed lex*) and often arrogant behavior. On the other hand, Natural Law argues that Positive Law is only the object of an evaluation, inspired by a superior system of fundamental principles or precepts that has nature itself as its source and whose understanding is achieved by the conjugation of human experience and reason, corresponding to a greater justice, prior to and superior to the State and that emanates from the balanced order of nature or of God" (RODRIGUES, 2007).

For positivists, Law was considered self-sufficient and materialized only through laws and codes, which is why this period became known as legalistic. The submission of the judge to the legal norm was preached, not being allowed to "legislate" or fill any gaps. "Montesquieu said that this type of judge was an

inanimate being. Inanimate because it had no soul. I had no soul because I could not even interpret the legal text" (GOMES; MAZUOLLI, 2010, p. 102).

With the evolution of the construction of knowledge and the emergence of new theories, Hobbesian rationality was incorporated, modified, and merged with new forms of empirical and scientific thought:

The ideals of the construction of total knowledge, as they appeared in theories coming from the eighteenth and nineteenth centuries, were increasingly dissociated from the concrete practice of both research and the general elaboration of knowledge. The knowledge possible today was monographic knowledge, and the twentieth century was the "century of specialists [...]" (LUMATTI, VELLOZO, 2013, p. 41).

The legal system is much more complex than imagined, because its formation depends on the interaction between the various modalities of sources of Law, having been conceived *pari passu* with the concept and institution of the State. In general, it can be seen in the economically globalized scenario (GARCÍA, 1998, p. 15), that with the passage of time the Law has been observed, in order to acquire means (sources) capable of: a) ensuring the greatest and best application of Justice; b) the creation of cogent and general norms, including to limit the exercise of political power, as well as c) the effective protection and respect of the human condition and human rights.

In this evolution, the rationalist thought of authors such as Thomas Hobbes was important to separate man from the State of nature; to recognize the man capable of undertaking calculative reason to enable the construction of a coherent discourse; To abandon the status of war of all against all and adopt a social pact that establishes a sovereign power that promotes security, peace and social stability.

## V. Final Thoughts

The Modern State became a constant as the degree of population coverage and the complexity of organizations grew. The Contemporary State has taken various forms according to the conditions of each time and place. Important exponents, some liberalists, others contractualists, such as Montesquieu, Hobbes, Locke and Rousseau, forged the thought about the fundamental freedoms of man and contributed to the formation of legal orders that recognize fundamental rights based on legal rationality. The theories of the State had a long and conflicting historical process, but in fact they influenced the historical movements that resulted in the normative diplomas of recognition and guarantee of rights, including fundamental rights.

What remains present is the rationality and rational calculation that people make about rights and their social relations, the result of Hobbesian thought treated in this article.

State functions were successively reformulated with collaboration – from the so-called classical political theories that bring the foundations of a State, to more modern ones – the first being idealized through the social contract.

The Contractualist Theory argued that the formation and creation of the State occurred due to man's need to meet the desires and conveniences of social groups, defining and limiting the rights and duties of each individual, in order to ensure social order and peace. For this current, property is a greater good, which must be preserved and guaranteed by the State. There are non-contractualist authors who were not the center of the approach. The fact is that the State, if it has not always been present in human organization, although it has similarities with ancient political institutions, is the result of a process of consolidation that begins at the end of the Middle Ages, after the collapse of the feudal State.

The evolution of theories and the emergence of new forms of knowledge production and the emergence of new theories caused the incorporation and adaptation of Hobbes' rationality with new forms of scientific thought.

In this process, theorists such as Hobbes favored the beginning of the maturation and expansion of the conceptual dimension of fundamental rights that were consolidated over time, providing the understanding and protection of these rights in greater scope, considering their complexity.

Hobbes' rationality was very important in this process because it displaced thinking about the Social Contract, State, rights and decision-making from the traditional religious, metaphysical, rationalist bases and grounded them on new rational bases.

His theory is based on logic and experience. He states that logic is what allows us to arrive at universal truths, while experience is what allows us to comprehend the reality around us. Hobbes believed that rationality is the only path to true knowledge and that any other form of knowledge is irrelevant or erroneous.

Hobbes' rationality teaches us to use logic and experience to understand reality and arrive at universal truths. Hobbes believed that rationality is the only path to true knowledge and that any other form of knowledge is irrelevant or erroneous.

This theoretical construction is important because when a State is organized, with its attributions established, it becomes responsible for those who are subordinate to it. Thus, it must seek the common good, that is, in the final analysis it assumes a goal that must be the promotion of the social good of man, in all its dimensions, as well as maintaining rights that since the beginning of the formation of the contract have been

outlined as the rights to freedom and property, which in turn, can be defended by sufficient means to ward off risks.

Consequently, nowadays a legal paradigm has been established through actions of force that remind us of the Hobbesian arguments for the commutation of the condition of nature by the social state, where people calculate their possibilities and make decisions, which occurs in an environment of peace and order. It is in this direction that the importance of Hobbes and his calculating faculty lies.

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