

Hobbes on justice

1 The Problem

1. There is no such thing as justice or injustice in the state of nature.

“To this war of every man against every man, this also is consequent; that nothing can be unjust. The notions of right and wrong, justice and injustice have there no place. Where there is no common power, there is no law: where no law, no injustice. Force, and fraud, are in war the two cardinal virtues. Justice, and injustice are none of the faculties neither of the body, nor mind. If they were, they might be in a man that were alone in the world, as well as his senses, and passions. They are qualities, that relate to men in society, not in solitude. It is consequent also to the same condition, that there be no propriety, no dominion, no *mine* and *thine* distinct; but only that to be every man's, that he can get; and for so long, as he can keep it.” (*Leviathan* 13.13; see also 15.3.)

2. Injustice is, by definition, breaking a valid covenant.

“the definition of INJUSTICE, is no other than *the not performance of covenant*. And whatsoever is not unjust, is just.” (*Leviathan* 15.2.)

“when a man hath in either manner abandoned or granted away his right, then is he said to be OBLIGED or BOUND not to hinder those to whom such right is granted or abandoned from the benefit of it; and [it is said] that he *ought*, and it is his DUTY, not to make void that voluntary act of his own, and that such hindrance is INJUSTICE, and INJURY, as being *sine jure* [without right], the right being before renounced or transferred.” (*Leviathan*, 14.7.)

3. There are valid, obligatory covenants in the state of nature.

“Covenants entered into by fear, in the condition of mere nature, are obligatory.” (*Leviathan* 14.27; see also 15.5.)

2 Hobbes on justice

“I was presently advertised from the very word *justice*, (which signifies a steady will of giving every one his own), that my first enquiry was to be, from whence it proceeded that any man should call anything rather his *own*, than *another man’s*. And when I found that this proceeded not from nature, but consent; (for what nature at first laid forth in common, men did afterwards distribute into several *impropriations*); I was conducted from thence to another inquiry; namely, to what end and upon what impulsives, when all was equally every man’s in common, men did rather think it fitting that every man should have his inclosure”. (*De Cive* [1641] EW II, p. vi.)

2.1 Justice is giving to each his own

Polemarchus: “it is just to give to each what is owed to him.” (Plato *The Republic* Book I 331e2.)

Roman Law: “Justice is a steady and enduring will to render unto everyone his right”. (*Justinian’s Digests* Book 1, §1. (529–34 AD).)

Hobbes: “the ordinary definition of justice in the Schools [is] ... that *justice is the constant will of giving to every man his own*. And therefore where there

is no *own*, that is, no propriety, there is no injustice; and where there is no commonwealth, there nothing is unjust". (*Leviathan* 15.3.)

2.2 Propriety

"[o]f things held in propriety, those that are dearest to a man are his own life, and limbs; and in the next degree (in most men,) those that concern conjugal affection; and after them riches and means of living". (*Leviathan* 30.12.

2.3 Medieval Christian ethics

there are four kinds of "community of goods," corresponding to four different sources of right. The first kind of community is derived from the right of *natural necessity*: anything capable of sustaining natural existence, though it be somebody's private property, may belong to someone who is in the most urgent need of it. This kind of community of goods *cannot be renounced*. It derives from the right that naturally belongs to man as God's image and noblest creature, on whose behalf all other things on earth were made. (St. Bonaventure, "A Defense of the Mendicants" (ca. 1269).)¹

If ... there is so urgent and blatant a necessity that the immediate needs must be met out of whatever is available, as when a person is in imminent danger and he cannot be helped in any other way, then a person may legitimately supply his own needs out of another's property, whether he does so secretly

¹ in *From Irenaeus to Grotius: a sourcebook in Christian political thought, 100-1625*. Edited by Oliver O'Donovan and Joan O'Donovan, (Grand Rapids, MI: William Eerdmans, 1999), p. 317

or flagrantly. And in such a case there is strictly speaking no theft or robbery. (St. Thomas Aquinas, "On Justice" (1265-74).)²

3 When is a covenant invalid?

1. "If a covenant be made, wherein neither of the parties perform presently, but trust one another; in the condition of mere nature, (which is a condition of war of every man against every man,) upon any reasonable suspicion, it is void: but if there be a common power set over them both, with right and force sufficient to compel performance, it is not void. For he that performeth first, has no assurance the other will perform after; because the bonds of words are too weak to bridle men's ambition, avarice, anger, and other passions, without the fear of some coercive power; which in the condition of mere nature, where all men are equal, and judges of the justness of their own fears, cannot possibly be supposed. And therefore he which performeth first, does but betray himself to his enemy; contrary to the right (he can never abandon) of defending his life, and means of living." (*Leviathan* 14.18.)
2. "Covenants entered into by fear, in the condition of mere nature, are obligatory. For example, if I covenant to pay a ransom, or service for my life, to an enemy; I am bound by it. For it is a contract, wherein one receiveth the benefit of life; the other is to receive money, or service for it; and consequently, where no other law (as in the condition, of mere nature) forbiddeth the performance, the covenant is valid. Therefore prisoners of war, if trusted with the payment of their ransom, are obliged to pay it: and if a weaker prince, make a disadvantageous peace with a stronger, for fear; he is bound to keep it; unless (as hath been said before) there ariseth some new, and just cause of fear, to renew the war. And even in commonwealths, if I be forced to redeem myself from a thief by promising him money, I am bound to pay it, till the civil law discharge me. For whatsoever I may lawfully do without

² *Summa Theologiae* 2a2ae.57-122, in *From Irenaeus to Grotius*, p. 359.

obligation, the same I may lawfully covenant to do through fear: and what I lawfully covenant, I cannot lawfully break." (*Leviathan* 14.27.)

3. "covenants, without the sword, are but words, and of no strength to secure a man at all. Therefore notwithstanding the laws of nature, (which every one hath then kept, when he has the will to keep them, when he can do it safely,) if there be no power erected, or not great enough for our security; every man will, and may lawfully rely on his own strength and art, for caution against all other men." (*Leviathan* 17.2.)

4 A difficult passage

"But because covenants of mutual trust, where there is a fear of not performance on either part, (as hath been said in the former chapter,) are invalid; though the original of justice be the making of covenants; yet injustice actually there can be none, till the cause of such fear be taken away; which while men are in the natural condition of war, cannot be done. Therefore before the names of just, and unjust can have place, there must be some coercive power, to compel men equally to the performance of their covenants, by the terror of some punishment, greater than the benefit they expect by the breach of their covenant; and to make good that propriety, which by mutual contract men acquire, in recompense of the universal right they abandon: and such power there is none before the erection of a commonwealth. And this is also to be gathered out of the ordinary definition of justice in the Schools: for they say, that *justice is the constant will of giving to every man his own*. And therefore where there is no *own*, that is, no propriety, there is no injustice; and where there is no commonwealth, there nothing is unjust. So that the nature of justice consisteth in keeping of valid covenants; but the validity of covenants begins not but with the constitution of a civil power sufficient to compel men to keep them; and then it is also that propriety begins". (*Leviathan* 15.3.)

For the question is not of promises mutual, where there is no security of performance on either side; as when there is no civil power erected over the

parties promising; for such promises are no covenants: but either where one of the parties has performed already; or where there is a power to make him perform; there is the question whether it be against reason, that is, against the benefit of the other to perform, or not. And I say it is not against reason. (*Leviathan* 15.5.)

5 So what?

5.1 Three interpretive options

1. There's no such thing as moral rights and obligations at all. There is only power.
2. What we call moral rights and obligations simply a product of the state's power. Being obliged and being forced are the same thing.
3. Moral rights and obligations logically precede the state, though they are rarely relevant without it. Without power it isn't safe to respect them.

5.2 Application to politics

1. Political power is *mere* power or force.
2. There is a distinction between political power and mere power. A legitimate state has the *right* to rule, as well as the power to do so.

Contrast: helotry.

Here is how the *krypteia* worked. From time to time the young men's commanders would send those who gave them the impression of being the most intelligent out into the countryside—to different districts at

different times—with nothing more than a dagger each and a bare minimum of supplies. By day the young men spread out and found remote spots where they could hide and rest, but at night they came down to the roads and murdered any helots they caught. They also often used to walk through the fields and kill the helots who were in the best shape and condition. ... There is also the point Aristotle makes, that the first thing the ephors did on taking office was declare war on the helots, so that killing them would not pollute the killer.³

³ Plutarch, Life of Lycurgus, in *Greek Lives: A Selection of Nine Greek Lives*. Edited by Robin Waterfield and Philip A. Stadter. (Oxford: Oxford University Press, 1998).

