

Hobbes on Justice

1 Necessity

“... 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.”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 or flagrantly. And in such a case there is strictly speaking no theft or robbery.”²

¹ St. Bonaventure, “A Defense of the Mendicants” (ca. 1269) 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

² St. Thomas Aquinas, “On Justice” (1265-74) *Summa Theologiae* 2a2ae.57-122, in *From Irenaeus to Grotius*, p. 359.

2 The problem with justice

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 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.)

[From the reply to the Fool] “For the question is not of promises mutual, where there is no security of performance on either side ... 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.)

3 The traditional definition of justice: 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.)

“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.)

“[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.)

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.)