

## Justice and obligation

### 1 The centrality of justice in Hobbes's project

"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; p. 4 line 94-105 in our handout.)

"... if it [the optical treatise] be found true doctrine ... I shall deserve the reputation of having been the first to lay the grounds of two sciences; this of *Optics*, the most curious, and the other of *Natural Justice*, which I have done in my book *DE CIVI*, the most profitable of all other". (*Optical Treatise* [1646] EW VII, p. 471)

## 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)

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 When is a covenant invalid?

“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)

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

“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 The traditional definition of justice: giving to each his own

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)

“[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)

#### 5 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)

“justice (that is to say, performance of covenant and giving to each man his own) is a dictate of the law of nature”. (*Leviathan* 26.8)