

No peace without injustice: Hobbes and Locke on the ethics of peacemaking

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Is the demand for justice likelier to cause or to prevent war? Hobbes expresses sympathy for the former view and Locke for the latter. However, they both reason their way toward an intermediate position, symbolized by the impartial judge in Locke's theory and the arbitrator in Hobbes's theory. Peace is possible when we create a process that resolves disputes according to widely intuitive principles of equality and reciprocity. This requires, however, that we refrain from imposing our particular interpretations of justice, and that we tolerate the possibility of unjust outcomes. Hobbes and Locke's reasoning shows us why international institutions are needed to serve as an impartial judge for the resolution of civil and international conflicts. They rebut persistent skepticism about the fitness of international institutions to promote peace and justice. Recent scholarship on ethno-political conflict confirms the wisdom of their analysis.

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Introduction

This article looks at a central paradox of political life. In theory, justice ought to be the guarantee of peace. If no party demanded more than its just share, there would be no war. Yet experience shows that many wars are fueled by a sense of justice.¹

In many violent conflicts we see the following pattern.² The parties cannot agree on what constitutes a just solution to their dispute. Each side knows that its vision of a just solution is rejected by the other side; each side demands what it perceives to be a just settlement, knowing that its

¹ For a recent discussion, with arguments often sympathetic to those advanced here, see the essays in Allan and Keller 2008. For further exploration, see Margalit 2010.

² See Peck 1996, chap. 3; Kelman 2007. For discussion of the Israeli–Palestinian case, see Kelman 2007, 175–76.

demand will provoke violent resistance from the other side; each side authorizes or permits violent measures to prevent the other side from achieving its vision of a just settlement.

This pattern characterizes not only ideological conflicts but also many conflicts that are territorial or ethno-political in character. Two groups lay claim to the same land, or a minority group attempts secession, or ethnic groups fight over the distribution of rights and powers within the same state. Such conflicts can fester for generations, and have the potential to ignite cataclysmic violence.³ Typically, each side can appeal to justice, since each has some historical fact or legal norm on which to stake its claim, and new grievances are produced once the fight is joined. The motive of justice embitters and prolongs violent conflict. It engages the passions of large numbers of people and makes the contest into something more than a power game between ambitious leaders (which is why clever leaders know how to appeal to justice).⁴

What should be done? Two powerful views constitute opposite poles of thought. On one view, injustice is the problem, and defeat of injustice the solution. Injustice means war, because it means laying claim to another's entitlement.⁵ For the sake of peace, injustice must be taught a lesson. It must be defeated and punished, so that others are deterred from acting unjustly, and so that in the future the just are not obliged to take up arms in their own defense.⁶ Let us call this the idealist view.

The contrary view is pessimistic about our ability to distinguish justice from injustice. Since we frequently mistake justice's demands, even people of good faith will find themselves supporting unjust causes. The problem, therefore, is the very belief that justice authorizes violent resistance. There may be reasons to fight, but justice is not one of them.⁷ Let us call this the anti-idealist view.

³ Israel–Palestine, Alsace-Lorraine, Kashmir, and Bosnia are some well-known examples.

⁴ Welch's magisterial study (1993) shows that grievances over perceived injustices contributed significantly, whether as conditioning factors or triggering motives, to the Crimean War, the two World Wars, and the Falkland/Malvinas War.

⁵ The Greek term *pleonexia*, grasping more than one's share, captures the connection between injustice and war. The term helps Socrates develop the argument in Plato's *Republic* that justice is equivalent to both social and psychic peace.

⁶ Reagan's (1986) declaration, 'There is no security, no safety, in the appeasement of evil,' is one form of the sentiment. Evil is the limit of injustice, but the two are not always easy to distinguish.

⁷ See Kissinger 1957, 206: 'The most fundamental problem of politics ... is not the control of wickedness but the limitation of righteousness.' And Aron 1973, 307: Idealism 'divides states into good and evil, into peace-loving and bellicose. It envisions a permanent peace by the punishment of the latter and the triumph of the former. The idealist, believing he has broken with power politics, exaggerates its crimes.'

If we want peace, should we maintain or relinquish the demand for justice? For help in answering this riddle, I turn to the work of Hobbes and Locke. Both are preeminent theorists of peace. They both ask how parties finding themselves in ‘a state of nature’ – that is, ‘without a common superior on Earth’ (2nd Tr. 19) or ‘common power to keep them in awe’ (Lev. 17, 12) – may avoid the calamity of war. The state of nature describes not only the relation between domestic groups failing to recognize a common authority but also the relation between independent states.⁸ Hobbes and Locke’s discussion of peacemaking in the state of nature provides general lessons about the prevention of war.

Their instincts appear opposite: Locke displays idealist sympathies, and Hobbes anti-idealist ones. But close examination reveals that they each develop a richer, more dialectical, and ultimately wiser position. To make a long story short, they converge on the recognition that precepts of justice are conducive to peace but that for the sake of peace justice must sometimes surrender to injustice. The importance of studying Hobbes and Locke is twofold: they contribute powerful and original insights to our understanding of the problem, and they reach a conclusion different from what we expect. Despite the vivid expressions of anti-idealist and idealist sentiment in their respective writings, they emerge as formidable critics of both views. That they overcome their own tendencies in order to do so magnifies the importance of their arguments.

The intermediate position reached by these two otherwise dissimilar thinkers is symbolized by the impartial judge of the *Second Treatise* and the impartial arbitrator in chapter 15 of *Leviathan*. Hobbes and Locke give us reasons to develop and strengthen institutions for the impartial adjudication of conflicts at both the domestic and international levels. Of the many lessons for international relations, let me briefly single out three, to which I shall return later in the article. One lesson is exegetical: I aim to unsettle the dominant interpretation of Hobbes, according to which justice and durable peace are impossible without a sovereign, and therefore impossible in international relations. I do not deny that Hobbes makes these claims (he clearly does) but instead argue that he also gives us reasons to reject them. We have been too inclined to read Hobbes through the prism of his desired conclusions. Yet his genius is such that he cannot always control the force of his own arguments, and we should see where

⁸ Hobbes, *Lev.* 13, 12; *Lev.* 17, 2; *Lev.* 30, 30; Locke, 2nd Tr. 14, 145. Hobbes has become a ubiquitous and proverbial figure in international relations theory. International theorists who draw on Locke’s state of nature include Cox 1960; Bull 1977, 48; Doyle 1997, 213–26; Pangle and Ahrens Dorf 1999, 153–57; Tuck 1999, 167–81; Wendt 1999, 279–97; and Ward 2006.

they lead of their own accord. I propose that ‘Hobbesian’ realism is undercut by Hobbes himself.⁹

A second lesson is theoretical and concerns the power and value of international institutions. Without realizing it, since nothing of the kind existed in their time, Hobbes and Locke provide an argument for international institutions as a means of preventing and resolving conflicts between independent states, and between domestic groups when the state’s authority is in dispute. They help us overcome two sources of skepticism regarding international institutions: the view that the motive of justice is too weak or too fraught with disagreement to function as an international standard, and the view that groups truly acting on behalf of justice should not be subject to international constraint.

A third lesson is practical and relates to the resolution of real-world conflicts. Hobbes and Locke anticipate contemporary wisdom about the best means to prevent and solve ethno-political conflicts, a category of war that is as old as history but has proliferated in the last 50 years. Successful peacemaking strategies have emphasized the simultaneous need to apply norms of justice and to moderate the parties’ demands for justice, and have enlisted international institutions to identify and promote the conditions of a just (but not perfectly just) settlement.

The discussion proceeds as follows. I emphasize Hobbes’s theory of pride as the key to his view that appeals to justice in the ordinary sense (an objective standard against which even the actions of sovereigns may be evaluated) may give dangerous encouragement to violence. Pride involves more than the conscious struggle for honor.¹⁰ It is a powerful disposition to misunderstand ourselves and the world around us. To live in peace, we must first humble our pride, and with it some of our personal convictions about justice. Nonetheless, when searching for a solution to violent conflict, Hobbes postulates a set of natural laws that resemble a system of justice (in the ordinary sense). These precepts, I argue, are more effective than Hobbes and most commentators have acknowledged. One of their features is that they internalize Hobbes’s warnings about pride. Justice itself teaches us to restrain our demand for justice.

Unlike Hobbes, Locke is disposed to blame violent conflict on injustice rather than the misguided quest for justice. Well-known passages in the *Second Treatise* defend the use of remedial violence by those honestly

⁹ For other challenges to the realist interpretation of Hobbes, though advanced on different grounds, see Malcolm 2002; Covell 2004; Williams 2005; and Abizadeh 2011.

¹⁰ This is the aspect of pride emphasized in most commentaries. Discussions of pride in Hobbes’s thought include Strauss 1952; Oakeshott 1962; Baier 1987; Baumgold 1988; Hampton 1989; Kateb 1989; Lloyd 1992; Slomp 2000; Cooper 2010; and Abizadeh 2011.

convinced that justice is on their side. But this view is tempered by Locke's awareness, memorably expressed in his epistemological and psychological writings, that all human judgments are fallible. His impartial judge minimizes, but cannot eliminate, error about justice. Our fallibility obliges us to accept the verdicts of an impartial judge, even at the risk of accepting unjust outcomes – because the impartial judge, though less fallible than ourselves, is still not infallible.

The insights that lead Hobbes and Locke to endorse an impartial arbitrator or judge furnish an argument for the necessity and possibility of international institutions. I illustrate this point by discussing the contributions of international institutions such as the European High Commissioner on National Minorities to the prevention of ethno-political conflict. Hobbes and Locke help us defeat the idealist and anti-idealist resistance still mounted against international institutions.¹¹

Hobbes on pride and the perils of justice

Many people think that injustice should be resisted, that justice ought to prevail, sometimes with the aid of violence, if lasting peace is to be achieved. 'No peace without justice,' as the slogan has it. Hobbes, by contrast, fears political appeals to justice. They inspire unnecessary conflicts and mobilize dangerous passions. War is their frequent result.¹² To defuse the problem, Hobbes gives the term 'justice' a new definition that counteracts and effaces its ordinary meaning.

The new definition appears early in *Leviathan*. 'Just,' Hobbes tells us, means 'he that in his actions observeth the laws of his country' (*Lev.* 4, 8). This formulation blocks the otherwise possible thought that the laws may be unjust. Hobbes later explains that justice means performing our covenants, or honoring our agreements (*Lev.* 15, 2). But fear of mutual non-compliance renders all covenants void, unless we live under an absolute sovereign with the power to enforce agreements (*Lev.* 15, 3). Since all effective covenants depend on an initial covenant to establish such a sovereign, justice means obedience to his will.

This definition has (from Hobbes's perspective) several welcome implications. All the sovereign's commands are just; none are unjust (*Lev.* 18, 6). Justice is never a legitimate cause of rebellion (*Lev.* 21, 7). (Only self-defense, in rare circumstances, permits rebellion [*Lev.* 21, 12–17].)

¹¹ I do not address the question of 'transitional justice': whether societies emerging from violent conflict or abusive rule should seek justice for past violations of human rights. This question is partly related to, but also partly removed from, the subject of my article.

¹² *De Cive*, Epistle dedicatory, paras. 6–7. See also *De Cive* 12, 13; *Lev.* 17, 10–11; *Lev.* 29, 6.

Nothing can be called just or unjust in the state of nature (*Lev.* 13, 13). By extension, justice has no meaning in international affairs.¹³ An appeal to justice can serve no political purpose other than the reinforcement of domestic order. Any attempt to disturb the peace in the name of justice is rendered definitionally impossible.

Hobbes's definition is not intended to reflect but instead to change ordinary usage. He knows that we commonly appeal to justice as an objective standard of what is due to each person, a standard that is independent of, and can be used to evaluate, existing political arrangements.¹⁴ We think of justice as a common standard by which to resolve our differences, but it regularly emerges as a set of warring standards, each tailored to our own particular interests. The persistent belief that justice *ought* to mean only one standard – namely our own – kindles our anger toward those who (from our perspective) raise the standard falsely. Justice does not cure but rather exacerbates conflict.¹⁵

The indeterminacy of justice is deeply rooted in our psyches. For one thing, our judgments are shaped by our desires. Unlike geometry, whose teachings threaten nobody's interests and are therefore undisputed, justice determines the distribution of harms and benefits. Consequently, men choose criteria of justice 'as it serves their turn, receding from custom when their interest requires it, and setting themselves against reason as oft as reason is against them; which is the cause that the doctrine of right and wrong is perpetually disputed, both by the pen and the sword' (*Lev.* 11, 21).

This is the problem of bias: tailoring our beliefs to suit our interests. Notice that the process must remain unconscious, for if we perceived our beliefs as biased, we would have to correct them. Justice is a word of 'inconstant signification' because its use varies with 'the nature, disposition, and interest of the speaker'; metaphors and tropes function the same way, but 'are less dangerous, because they profess their inconstancy, which the other [i.e., words like justice] do not' (*Lev.* 4, 24). The confusion is 'dangerous' because it inclines us to attribute other people's dissenting views about justice to their moral or intellectual inferiority.

Self-interested bias is only the beginning of the story. If self-interest tells us what to believe about justice, pride makes us cling to those beliefs with

¹³ This is the clear upshot of *Lev.* 13, 12–13, and *Lev.* 15, 3, reinforced by *Lev.* 30, 30, and *Lev.* 28, 23. In *Lev.* 22, 29, Hobbes notes the possibility of 'leagues between commonwealths,' which 'are not only lawful, but also profitable for the time they last,' but these agreements appear no more binding than pacts between individuals in the state of nature, and Hobbes does not say that breaking them would be unjust.

¹⁴ See *Lev.* 11, 21; *De Cive*, Epistle dedicatory, para. 7. Lawyers and philosophers are blamed for encouraging popular belief in an objective standard of justice.

¹⁵ On the problem of morally driven conflict in Hobbes's thought, see Williams 2000.

stubborn determination. Pride prevents us from correcting false beliefs about justice, invests them with strong passions, and emboldens the use of violence on their behalf.

Pride is the central theme of *Leviathan*. The title conveys its importance: God created Leviathan, Hobbes reminds us, to be ‘king of all the children of pride’ (*Lev.* 28, 27; quoting *Job* 41:34). The premise of *Leviathan* is that people do not understand why they fight each other. If they did, they would learn how to stop (*De Cive*, Epistle dedicatory, para. 6). People misunderstand the causes of war because they misunderstand themselves, and they misunderstand themselves because of pride.¹⁶ Any hope for peace therefore depends on the patient dissection of the workings of pride, a task that occupies Hobbes’s full attention.

Pride comes from our desire for power. Power is a person’s ‘present means to obtain some future apparent good’ (*Lev.* 10, 1). Its pursuit is life’s central drive (*Lev.* 11, 2). Power begets power (*Lev.* 10, 2) because of the social dynamic it sets in motion. If I have power, I can use it to aid others as well as myself. Others, perceiving this, seek my help by offering their services, services I can use to further expand my power. This is enormously significant, because nothing matches the power of people acting in combination (*Lev.* 10, 3).

This dynamic has important implications. First, power is a competitive good: our desire is not just to have power, but more power than others (*Lev.* 11, 3). The reason is that people, when choosing a powerful person to please, will naturally prefer that one whose power is greatest. Second, perceptions are all-important. When my power elicits help from other people, it is not my power that does the work, but rather other people’s *belief* in my power. A natural short cut for obtaining other people’s services is therefore to cultivate the appearance rather than the reality of power. In this way, the contest for power is submerged in a contest for reputation (in which even the genuinely powerful must participate). We find ourselves engaged in shadow play, posturing and pretending as proves convenient; victory is awarded to the most convincing performance. Yet it is no idle game, because the victor gets to convert his winnings into more tangible forms of power.

Thus far our behavior is instrumentally rational: we make other people believe in our power to obtain their services. But the drive for power acquires its own momentum. Not needing our conscious participation, it

¹⁶ The argument is foreshadowed in *Lev.* Introduction, paras. 3 and 4. Those who boast knowledge of human nature by passing censure on each other should instead discover the similitude of human passions by studying themselves, a task harder than ‘any language or science.’

commandeers our beliefs and desires to its purposes. It carries on without us, as it were, for self-awareness would only get in the way. First, there is the need for self-deception. We are most successful at persuading others of our power when we believe in it ourselves. Hence the universal inclination to overestimate our own abilities. And, second, this tendency is reinforced by the fact that the imagination of our own power, real or not, is a potent source of pleasure. It produces a 'joy' and 'exultation of the mind' to which Hobbes gives the name of 'glorying' (*Lev.* 6, 39). '[A]ll the heart's joy and pleasure,' Hobbes writes, 'lies in being able to compare oneself favourably with others and form a high opinion of oneself' (*De Cive* 1, 5). Loath to relinquish this pleasure, we resist honest self-evaluation.¹⁷

Pride ratchets up the contest for reputation.¹⁸ Battles are waged over inches of territory, the smallest slight magnified in importance and never forgotten. We fight 'for trifles, as a word, a smile, a different opinion, and any other sign of undervalue' (*Lev.* 13, 7).¹⁹ Of the three motives of war listed in Chapter 13, the other two being security and material gain, reputation is the most intractable, because it is the most inherently competitive.²⁰ Other people's security enhances my own; and while humankind will always face a scarcity of material goods, there are large gains to be reaped from cooperation. Reputation, however, can be achieved only by winning; it is brutally zero-sum. That is why

¹⁷ Here we encounter an interesting (some might say vexing) feature of Hobbes's psychology. Our beliefs and desires are organized in such a way as to maximize our power. We are not the authors of this process, but rather its result. What is puzzling is the purposefulness of the arrangement. At work is an intelligence that is not our intelligence. Whose intelligence is it? Hobbes does not answer this question. God is not a plausible answer, because the moral ambiguity of the end (power) and the sordidness of the means (deception, glorying) are not to His credit. Another answer, unavailable in Hobbes's time, is that proposed by evolutionary psychology. Natural selection, according to this theory, shapes our psychology by a design that is not of our making and whose workings remain largely opaque to us. If evolutionary psychology is untrue, then the mystery Hobbes raises remains unanswered. Or perhaps his attribution of a latent design to human psychology is simply mistaken.

¹⁸ See *Lev.* 18, 15. Does Hobbes think everyone succumbs to pride? I believe his view is that everyone is naturally inclined toward pride, but that some master the inclination. Compare paragraphs 3 and 4 in *Elements*, chap. 14. Self-esteem is not always vainglorious. The truly honorable rest theirs on a well-founded sense of their own merit (*Elements* 9, 1). But human deviousness is so finely developed that it is no easy matter always to distinguish the honorable from the vainglorious.

¹⁹ Writing in *De Cive* (1, 5) of intellectual conflicts that call into question the rightness of our opinions, thereby threatening our pride, Hobbes states: 'There is nothing more offensive than this, nothing that triggers a stronger impulse to hurt someone.'

²⁰ See *De Cive* 1, 2: 'Glorying, like honour, is nothing if everybody has it, since it consists in comparison and preeminence.'

pride remains dangerous even after the establishment of a commonwealth (*Lev.* 18, 15). Its danger cannot be defused, as in the case of fear and economic acquisitiveness. At most it can be managed, through a mixture of careful cooptation and open repression (*De Cive* 13, 12).

Man is ‘that rational and most excellent work of nature’ (*Lev.* Introduction, para. 1), but in endowing man with pride, nature may have outsmarted itself. Pride, which keeps us bent on the necessary pursuit of power, is a device that works too well. It is a clever refinement that threatens to send everything off the rails. Hobbes tells us that excessive pride is madness (*Lev.* 8, 18–19), then hints that madness inheres in pride itself (*Lev.* 8, 20). Pride that induces belief in one’s own inspiration (*Lev.* 8, 19), for example, is a kind of madness that can possess a multitude (*Lev.* 8, 21). Though madness is defined by ‘strange and unusual behaviour’ (*Lev.* 8, 20), the behavior Hobbes fears is all too usual. The natural artifice we call man is too ingenious for its own good: the cleverness of the construction renders it permanently vulnerable to breakdown, that is, insanity. Or we might say, more darkly still, that insanity is built into the design and that the line between madness and normality cannot be drawn. Irrationality is the logical result of rationality.

Pride warps our thinking about justice for the following reason. Of the many forms of power (catalogued in Chapter 10 of *Leviathan*), some are more easily simulated than others. Though I cannot fake an armed battalion or a billion-dollar portfolio, I have a much better shot at faking the power that takes the form of wisdom.²¹ Cultivating an appearance of divine inspiration, or political prudence, or moral insight, is the best overall low-cost route to the reputation of power. Knowledge of justice, by decreeing what everyone should do and have, is especially powerful. We are therefore unwilling to admit, even to ourselves, that we lack such knowledge.²² We strongly resent any accusation of bias, but find the slightest grounds to attribute it to others.

Justice rouses strong passions. Self-interest and pride, prohibited from appearing, release their energy as anger. This dynamic can be used to mobilize a crowd – Hobbes’s roaring multitude (*Lev.* 8, 21) – yet another source of justice’s power. Even cynical appeals to justice may ignite a

²¹ ‘Such is the nature of men that howsoever they may acknowledge many others to be more witty, or more eloquent, or more learned, yet they will hardly believe there be many so wise as themselves’ (*Lev.* 13, 2).

²² In his history of the English Civil War, Hobbes says that wrongheaded Parliamentarians ‘did believe that the same things which they imposed upon the generality, were just and reasonable’ (Hobbes [1682] 1990, 158).

crowd. The classic case is the civil war in Corcyra, which clearly haunted Hobbes. Thucydides attributed its savagery to

desire of rule, out of *avarice* and *ambition*; and the zeal of contention from those two proceeding. For such as were of authority in the cities [Corcyra and other cities experiencing similar conflicts], both of the one and the other faction, preferring under decent titles, one *the political equality of the multitude*, the other *the moderate aristocracy*; though in words they seemed to be servants of the public, they made it in effect but the prize of their contention.²³

Since views about justice are entangled with pride and therefore fated to remain in conflict, it is folly to think that justice leads to peace. Hobbes proposes that we replace the notion of objective justice with a new definition equating justice with the will of the sovereign. He hopes we will be won over to this reformulation when we see that it is necessary for peace, and when we recall that peace is necessary for any stable idea of who owns what, hence any stable notion of justice. The familiar slogan has it backwards. We should say instead: ‘No justice without peace.’

Hobbes on peacemaking

War can be ended or prevented only when one or both sides to a conflict agree to less than their original demands. If one side accepts the bulk of the other’s demands, we call it surrender. If both sides retreat, we speak of concessions. Even mutual concessions contain an element of surrender, however, inasmuch as both sides accept what they initially resisted.

Pride abhors surrender, the ultimate proof of weakness. It therefore poses a formidable obstacle to peace. When pride summons the spirit of justice to its side, surrender becomes even more difficult, because we mourn both the defeat of justice and our failure to rally sufficient support to justice’s cause. If we couldn’t persuade enough powerful people to support the cause, perhaps our understanding of justice or at least our eloquence was deficient – a further humiliation.

This problem is a major preoccupation of *Leviathan*. Because peacemaking requires surrender, it would appear to run strongly against human nature. The challenge is to make people more well-disposed to the idea of surrender. The exemplary figure is Job, who after lengthily protesting his

²³ Thucydides 1975, Book III, section 82, as translated by Hobbes. In *De Cive* (1, 5) Hobbes notes that, because of the pride at stake in intellectual dissension, ‘the bitterest wars are those between different sects of the same religion and different factions in the same country, when they clash over doctrines of public policy.’

horrendous suffering to God, is brought to his senses by a display of God's overwhelming power. When God concludes his show with the terrifying description of Leviathan – the 'king over all the children of pride' – Job drops his complaint, and says: 'Who is he that hideth counsel without knowledge? therefore have I uttered that I understood not; things too wonderful for me, which I knew not Wherefore I abhor myself, and repent in dust and ashes' (*Job* 42: 3,6). Job swallows his pride and surrenders.

Hobbes uses several devices to promote surrender. First, he emphasizes the benefits of peace that surrender makes available. Second, he seeks to weaken the resistance by attacking pride. Third, he seeks to represent the act of surrender in a more dignified light.

Hobbes's praise of peace is well known. Suffice it to say that in Chapter 13 of *Leviathan* and elsewhere he emphasizes its considerable blessings. Belligerents need to shake themselves loose of their mutual hatred long enough to recall what they have lost through war. Because it restores peace, surrender may be thought of as a kind of victory. We spare ourselves from death and injury; we establish the conditions for people to pursue long-term projects; we create for ourselves the possibility of eventually vindicating, not by war but through peaceful means, our vision of justice.

If pride opposes the rational act of surrender, then one must wage war against pride. There is hardly a passage in *Leviathan* not devoted to this task; it sets the tone for the entire work. Hobbes works by humbling pride, which is to say, he brings down pride by means of pride. He attacks pride by exposing it: the text is filled with attributions, many counter-intuitive, of specific traits to pride or vainglory. Pride unmasked is mortifying to one's pride. Hobbes hopes that if he can keep up the assault long enough, if he can make us weary of our pride, then we will make a fundamental change of course. We will be less disposed to heap censure on each other, and more inclined to distrust ourselves (*Lev.* Introduction, para. 3). As a corollary of this, we will regard our own views about justice with a certain detachment and skepticism. We will become less unhappy about surrendering to injustice, since what appears to be unjust may not be so.

Advancing simultaneously on another front, Hobbes does what he can to ennoble the act of surrender. Surrender is not a passive yielding to force, but a creative act that ushers in peace. The party that surrenders to a conqueror is obliged not because he is vanquished, but through 'his own covenant[,] ... because he cometh in, and submitteth to the victor' (*Lev.* 20, 11). The vanquished steps forward. It is he who turns matters around, and in that sense his initiative displays more courage – more imagination and vision – than anything the victor has done.

If peace requires surrender, who shall be the one to surrender? All parties are welcome to do so, and any that does deserves our praise. But what if each party delays in hopes that the other will step up to the plate? We might say it is the job of the unjust to surrender to the just, but this raises the problems discussed above. Another formula holds some attraction for Hobbes: the weaker party should surrender to the stronger.²⁴ The distinction between weak and strong is clearer than that between just and unjust, and the weak are the natural candidates to surrender, since they are likely to lose anyway.

In Chapters 14 and 15 of *Leviathan*, which contain the bulk of the laws of nature, Hobbes presents a more nuanced view. The laws of nature are rules for the creation and maintenance of peace. Some, addressed to the presumptive victor of a conflict, are instructions for softening the defeat of the other party. These include the sixth law, requiring pardon of past offenses in return for sufficient guarantee that they will not be repeated; the seventh law, requiring moderation in punishment; and the eighth law, prohibiting humiliation (*Lev.* 15, 18–20). We should add Hobbes's admonition, in the Review and Conclusion (para. 8), that a successful conqueror must not oblige the loser to affirm the justice of the conquest itself.

Measures to ease the pain of surrender shade into principles for deriving the terms of a successful peace agreement. Because no one likes to be treated as an inferior, the ninth law, 'against pride,' requires that all persons be recognized as equals. What people claim as a right for themselves they must also acknowledge as a right belonging to others (tenth law). Hobbes's list is a preliminary catalogue of basic human rights: '[the] right to govern their own bodies, right to enjoy air, water, motion, ways to go from place to place, and all things else without which a man cannot live, or not live well' (*Lev.* 15, 22). According to the eleventh law, which Hobbes calls 'equity,' anyone asked to judge a dispute must decide impartially, upholding 'the equal distribution to each man of that which in reason belongeth to him' (*Lev.* 15, 24). Notice that his language ('that which in reason belongeth to him') qualifies (or contradicts?) the more famous assertion in Chapter 13 that there is 'no *mine* and *thine* distinct' in the state of nature (*Lev.* 13, 13). When goods cannot be divided, they must be enjoyed in common; and when this is impossible, allocated by lot (laws 12–14). We are all enjoined to practice moderation, restraining our demands to make room for the legitimate claims of others (fifth law).

When we are unable to resolve conflicts ourselves, we have a duty to appoint an impartial arbitrator (laws 16–18). We may or may not like his judgment, but we at least are assured that he attempted to come by it

²⁴ This is Hobbes's standard scenario. For example, *Lev.* 14, 27: 'If a weaker prince make a disadvantageous peace with a stronger, for fear, he is bound to keep it.'

fairly, through a neutral examination of the evidence (nineteenth law) and a careful application of the natural laws previously enumerated.²⁵

Something curious has happened. In order to encourage peace, Hobbes has devised what might best be described as a standard of justice.²⁶ He studiously avoids using this term – so that he can still claim that even the gravest moral transgressions of the sovereign are never unjust – but his distinction between justice and natural law is notoriously strained.²⁷ Hobbes has articulated principles of equal standing, equal respect, reciprocity, and impartiality that, in many people's view, constitute the very foundation of justice. He himself notes that his precepts can be summed up as the Golden Rule (*Lev.* 15, 35; see also *Lev.* 14, 5).

One must conclude that Hobbes's attack on justice is not unqualified. From anti-idealist beginnings, he moves toward the idealist position. In the end, he believes that justice in the objective sense *can* promote peace. Yet his position remains distinct from idealism, because his conception of natural law internalizes warnings against justice's propensity to fuel violence.

Recall that the laws of nature are 'articles of peace.' Hence the repeated emphasis on moderation, self-restraint, holding back. The law that imposes the greatest restraint is the third, requiring us to honor our promises. It is not surprising that this law, to which Hobbes gives the name 'justice,' should be his favorite. All the laws, in one way or another, ask that we yield something to others. But our forbearance must be reciprocated, lest we lose our taste for accommodation. When we can't agree, we must seek arbitration. This is another concession – the arbitrator may not give us what we believe is rightfully ours – but a concession which, *ex ante*, satisfies the principle of reciprocity.

Because our opinions about justice (in the ordinary non-Hobbesian sense) are entangled with desire, I assume that the enjoined restraint applies not only to our desires, but also to our opinions about justice. The obligation of reciprocity built into several of the individual laws (and the Golden Rule itself) demands that we see justice from other people's point of view. We must distance ourselves from our *current* views of justice in hopes of forming better ones. And in the last analysis the duty to submit to arbitration means that we must put even our most considered views of

²⁵ I assume that the arbitrator is not a mere synonym for the absolute sovereign. In Chapter 15 Hobbes invites us to imagine an arbitrator to whom we can submit our disputes in the state of nature (prior to the establishment of the sovereign). Whether such an arbitrator can function in the state of the nature is the all-important question. I shall argue in the affirmative.

²⁶ See Kavka 1986, 344: 'The causes of quarrel that compliance with the laws of nature is designed to prevent are nearly all *injustices* in a broad sense of that term which contrasts with Hobbes's narrow usage.'

²⁷ See, for example, Taylor [1938] 1965, 43.

justice at risk, as the arbitrator may not adhere to them. We must risk justice for the sake of peace. Justice demands it.

It may be objected that I have exaggerated the significance Hobbes assigns to natural law. Many have read Hobbes to say that natural law is not binding on our actions in the state of nature. We need to look at this closely. What Hobbes says is that we have a duty to comply with natural law when it is safe to do so.²⁸ When it is not safe, because compliance would leave us excessively exposed to other people's aggression, we are obliged to mentally prefer natural law and desire its observance, but not actually to comply with it (*Lev.* 15, 36; *De Cive* 3, 27).

The question, then, is whether the state of nature affords sufficient safety for actual compliance with natural law. It is exceedingly difficult to make out Hobbes's answer to this question.²⁹ Sometimes he says that owing to the general insecurity of the state of nature man therein has 'a right to everything' (*Lev.* 14, 4). Elsewhere he says some natural laws are safely followed, therefore binding, even in war (*De Cive* 3, 27, note). He also states that some covenants entered 'in the condition of mere nature' are obligatory (*Lev.* 14, 27). The truth is that Hobbes gives us divergent accounts of the state of nature.³⁰ The nightmarish vision presented in Chapter 13 is the most well-known story, but not the only one. Significantly, many of the injunctions of natural law can be observed with little risk, even in conditions of general insecurity. There is no risk worth mentioning, and on the contrary much added security, in expressing gratitude (fourth law), refraining from insults (eighth law), acknowledging others to be one's equals (ninth law), and granting safe passage to mediators (fifteenth law). These rules pose least danger to the strong, who therefore have least excuse to violate them.³¹ It should also be noted, that because Hobbes's wording makes safety of performance an internal condition of at least two natural laws, appropriate pardoning and forward-looking punishment (*Lev.* 15, 18–19), these laws are always obligatory *ipso facto*.³²

²⁸ This view is vehemently expressed: '[H]e that having sufficient security that others shall observe the same laws [of nature] towards him, observes them not himself, seeketh not peace, but war, and consequently the destruction of his nature by violence' (*Lev.* 15, 36).

²⁹ For differing interpretations see Warrender 1957, chap. 4; Baier 1987; and Boonin-Vail 1994, 139–45.

³⁰ The duality of Hobbes's state of nature is noted by Kavka 1986, 349–53, though I do not accept all the details of Kavka's account. (See the criticisms in Boonin-Vail 1994, 142–44.)

³¹ Consider the 1919 Versailles Peace Treaty whose humiliating terms became a propaganda tool for the Nazis. I find it hard to believe that Hobbes would exempt the Allies from the multiple natural laws that they violated in drawing up the Treaty.

³² Moreover, as Baier (1987, 161) reminds us, Hobbes's first and fundamental law of nature ('every man ought to endeavor peace, as far as he has hope of obtaining it,' *Lev.* 14, 4) asks us

When we observe the low-risk rules, we elicit good will and cultivate trust; this moves other rules into the low-risk category, and the process is repeated. Compliance fosters trust, which facilitates compliance – a virtuous circle that leads to peace. The laws of nature are intelligent trust-building measures. Hobbes knows that they weaken the case for absolute sovereignty, which is why (if one may be permitted an uncharitable gloss) he is sometimes led to deprecate their effectiveness. I suggest that his objections to the effectiveness of natural law are largely refuted by his theory of natural law itself. As Hobbes's contemporary, the Earl of Clarendon, reasonably complained:

How should it else come to pass, that Mr. Hobbes, whil'st he is demolishing the whole frame of Nature for want of order to support it, and makes it unavoidably necessary for every man to cut his neighbors throat... I say, how comes it to pass, that... he would in the same, and the next Chapter, set down such a Body of Laws, prescribed by Nature itself, as are *immutable and eternal*? that there appears, by his own shewing, a full remedy against all that confusion, for avoiding whereof he hath devis'd all that unnatural and impossible contract and Covenant?³³

Too many commentators fail to notice (because, I think, Hobbes doesn't want them to notice) that the laws of nature threaten to make the absolute sovereign *unnecessary*.³⁴ Commentators, as a rule, allow Hobbes to posit a stark choice between only two alternatives: the unbridled rule of private judgment and complete deference to the sovereign's will. Yet Hobbes's own laws of nature suggest a middle path: a policy of mutual forbearance that circumscribes but does not eliminate the authority of individual conscience and that improves the accuracy of its verdicts.³⁵

to seek peace even when success is not guaranteed. In Baier's gloss, 'we are to act on hope, (uncertain opinion) not to wait for complete assurance (knowledge).'

³³ Edward, Earl of Clarendon, *A Brief View and Survey of the Dangerous and Pernicious Errors to Church and State in Mr. Hobbes's Book, Entitled Leviathan* (Printed at the Theater, 1676), 37, quoted in Hampton 1986, 63.

³⁴ For another argument that Hobbes's text undermines the ostensible defense of absolute sovereignty, see Martel 2007.

³⁵ I therefore disagree with S. A. Lloyd's argument (2001) that Hobbes's natural law theory is self-effacing. True, the sixteenth law of nature obliges us to submit disputes regarding natural law to an impartial arbitrator. But this does not mean we cease to consult natural law; we need natural law to help identify a trustworthy arbitrator in the first place, and the arbitrator's authority is limited and temporary anyway. Natural law does not command us to relinquish our quest for the best interpretation of natural law and to heed only the will of the sovereign. It might do so if the only alternative to absolute sovereignty were war. But, as I have argued, Hobbes's natural law theory itself shows that war is not the only alternative. Hobbes's natural law theory does not efface itself; Hobbes effaces it.

To conclude, Hobbes gives us both a pessimistic and an optimistic account of the state of nature, and the result is an unresolved tension in his theory. If natural law is as ineffective in the state of nature as Chapter 13 implies, all one can say is that peace will not arrive until someone makes the decision to surrender, and the most natural option (the default, as it were) is for the weak to surrender to the strong. But if natural law has the power suggested in Chapters 14 and 15, each and every party can take intelligent steps toward the establishment of peace. To take these steps, we must subdue our pride and restrain our passion for justice. But the steps are laid out according to a plan that justice has helped design.

Locke on the fallibility of conscience

Locke begins very differently from Hobbes. ‘The state of nature has a law of nature to govern it,’ he announces without equivocation. ‘Reason, which is that law, teaches all mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions’ (2nd Tr. 6). When all parties follow natural law, as they are morally obliged to do, there will be no conflict, since no one will try to take what belongs to another. Here we see a clear statement of the idealist position. Justice guarantees peace; war arises only when people depart from justice.

Locke’s state of nature is more peaceful than Hobbes’s because the prohibition on violence is stricter. Both thinkers posit a right of self-defense, but they construe it very differently. According to Hobbes, I may attack another person if I have a reasonable fear that otherwise he will attack me first, and the possibility that he will do so may be enough to justify such fear (*Lev.* 13, 4). According to Locke, I may not attack another person unless he has in fact attacked me, or formed the intent of doing so, and unless his conduct violates natural law. Fear justifies the use of violence only against those acting with criminal intent (2nd Tr. 16–19). There are rules of justice known to all, and we can rely on people’s intention to obey them, until their actions clearly prove otherwise.

Thus war is attributable to injustice. Natural law distinguishes between the just and unjust use of force, and it is only the latter that constitutes war (2nd Tr. 16, 181). Standing alone, this reasoning would seem to support the view that the just party in a war should fight on till victory. After all, the just do not bear moral responsibility for the war, and lasting peace depends on the defeat of injustice. Locke sometimes speaks this way. In the state of nature, ‘the state of war once begun, continues, with a right to the innocent party to destroy the other whenever he can, until the aggressor offers peace, and desires reconciliation on such terms as may repair any wrongs he has already done, and secure the innocent for the future’ (2nd Tr. 20). And when

others accuse us of raising the banner of justice falsely, we have the right to follow our conscience: ‘Who shall judge, whether another hath put himself in a state of war with me, and whether I may, as Jephtha did, appeal to heaven in it? of that I myself can only be judge in my own conscience, as I will answer it, at the great day, to the supreme judge of all men’ (2nd Tr. 21). Jephtha, following his conscience into battle against the Ammonites, is an altogether different model from Job.³⁶

Such a view would be grounds for alarm. It seems a license for righteous violence, perpetuating wars between groups equally convinced of the justice of their cause. Making matters worse is Locke’s ‘strange doctrine’ that in the state of nature we are permitted to use violence not only to repel but also to punish the aggressor. Now the conflicting parties, who are unlikely to agree who deserves punishment, have an additional grievance.³⁷

For these reasons, it is important to note that the strong idealist view suggested by a quick reading of Locke is *not* his ultimate position. He does not believe that the just should always fight on till victory. Strong idealism, unless it is resigned to endless war, must presume that the belief of the unjust in the justice of their cause is morally culpable: either their invocation of justice is insincere, or they ought simply to have known better, and the threat of violent resistance is the rebuke they need to think more clearly and honestly. Such a view is not one Locke could adopt.³⁸ In the *Essay Concerning Human Understanding* and the *Conduct of the Understanding*, he went to inordinate lengths to expose the deep sources of human error. We succumb to wishful thinking (*Essay* IV, 20, 12; *Conduct* 15 and 42). We adhere to received opinion (*Essay* IV, 20, 11) and views of authority figures (*Essay* IV, 20, 17), a tendency reinforced by our fear of social censure, more dreaded by us even than civil or divine punishment (*Essay* II, 28, 10–12). We are in the grip of arbitrary associations of ideas so deeply engrained by ‘education, custom, and the constant din of [our] party’ as to escape rational examination (*Essay* II, 33, 18). Locke calls the confusion resulting from false mental associations a form of ‘madness,’ one that infects ‘the greatest part of mankind’ (*Essay* II, 33, 4), and that cannot be blamed as intellectual dishonesty: ‘Some at least must be allowed to do

³⁶ He regularly appears at the climaxes of Locke’s argument. 2nd Tr. 21, 176, 241. The original story is in *Judges* 11.

³⁷ Pangle and Ahrens Dorf (1999, 154) note the dangers posed to international peace and the resulting need for Locke to spell out limits on the legitimate use of international force in the chapter ‘On Conquest.’ Yet the danger of war between two groups equally convinced of the justice of their cause remains.

³⁸ As Kirstie McClure (1996, 215) remarks, ‘The concern with reason and judgment in the face of uncertainty is a recurrent theme across all of Locke’s writings.’

what all pretend to, i.e., to pursue truth sincerely; and therefore there must be something that blinds their understandings, and makes them not see the falsehood of what they embrace for real truth' (*Essay* II, 33, 18). Pride or self-love is another source of error: no one likes to admit being wrong (*Essay* IV, 3, 20). A theme of the *Second Treatise* is the tendency of absolute monarchs to attract flatterers who shield them from the necessity of self-examination.

Error flourishes in groups, where the forces of shared interest, common education, and conformist instinct are allowed their full effect. Save for a few independent thinkers, 'all the world are born to orthodoxy: they imbibe at first the allowed opinions of their country and party, and so, never questioning their truth, not one of a hundred ever examines' (*Conduct* 34). Errors that seem obvious from outside the group are harder to see from inside, while outsiders remain blind to the errors of their own group. In the worst case, absence of internal criticism causes conscience to wither and inhibitions to disappear: 'View but an army at the sacking of a town, and see what observation, or sense of moral principles, or what touch of conscience, for all the outrages they do. *Robberies, murders, rapes*, are the sports of men set at liberty from punishment and censure' (*Essay* I, 3, 9). Massacre is the moral abyss into which the non-self-examining group can ultimately descend, but well short of this point it becomes blind to its own crimes while falsely attributing crimes to others.

Locke does not counsel resignation to error, but more energetic struggle against it (see Wood 1983, chap. 5). We each have a duty to overcome error, and the *Essay* and the *Conduct* show us the way. Yet he does not conceal the difficulty of the enterprise. It requires the reform, against resistance from nature and habit, of fundamental modes of thinking and feeling. The rule laid down in the *Conduct* (12) – to regard all views (our own and other people's) with perfect impartiality and to examine them disinterestedly – is hard to follow. Locke knows that few people will undertake the effort spontaneously, and he knows that the advice is more easily preached than practiced. He is not naïve about the power of interest and pride. His political theory can be read as an attempt to institutionalize his demanding ethic of responsible judgment in the public sphere, by entrusting decisions to impartial officials, and empowering the people to dismiss officials who abuse their trust. In other words, a legitimate form of government is that which, through a wise allocation of powers and incentives, elicits maximally impartial decisions from public officials.³⁹

³⁹ For an excellent discussion of the duty of impartiality and its political implications in Locke's theory, see Grant 1987, esp. 180–92. As Grant shows, the impartial judge is the central

But not even those who endeavor to think impartially are immunized from error. Because no one is guaranteed possession of the truth, humility is a necessary virtue. Progress is impossible until we redirect our gaze from other people's errors to our own. Wisdom means pardoning the errors of others in the knowledge that we will never be free from error ourselves:

We should do well to commiserate our mutual ignorance, and endeavour to remove it in all the gentle and fair ways of information; and not instantly treat others ill, as obstinate and perverse, because they will not renounce their own, and receive our opinions, or at least those we would force upon them, when 'tis more than probable, that we are no less obstinate in not embracing some of theirs.... The necessity of believing, without knowledge, nay, often upon very slight grounds, in this fleeting state of action and blindness we are in, should make us more busy and careful to inform our selves, than constrain others.⁴⁰

That we must endeavor to form correct judgments in order to act rightly should not make us forget the fallibility of our judgments.

These lessons are put to work in the *Second Treatise*.⁴¹ Locke is acutely aware that self-interested bias causes distorted interpretations of justice (2nd Tr. 13, 91 [note], 124, 125, 136). Conscience has a way of adjusting itself to self-interest, despite our efforts to keep it pure. To let conscience decide which wars are just is to bestow justice's blessing on a certain number of unjust wars. The problem of bias is a principal reason for leaving the state of nature (2nd Tr. 124, 125). We enter civil society by appointing an impartial judge (unbiased by interest) to resolve our disputes. In doing so we surrender the right to use violence according to our private judgments about justice (2nd Tr. 87). We replace the rule of conscience with the rule of the impartial judge.

This step marks Locke's departure from an idealism that insists on unwavering fidelity to justice. The important point is that the impartial judge is not the same as an infallible judge. Some of his rulings will contradict our private judgments of justice *and* they will be unjust. You may dissent from his ruling, and you may be right. A consistent idealist would allow you to withdraw your obedience in that eventuality. Locke does not. Only when the authorities subvert the institutions of impartial

figure of Locke's theory of government. The judge does not stand for a person but a particular set of institutions.

⁴⁰ *Essay* IV, 16, 4. See also *Essay* II, 33, 1; and *Conduct* 10, containing a riff on the parable of the mote and the beam.

⁴¹ See also Grant 1987, 180–92.

government or violate our rights by veering well outside plausible interpretations of natural law may we have moral permission to disobey. (Even then, resistance is not recommended if circumstances render it futile [2nd Tr. 208].) Locke is willing to compromise with injustice for the sake of peace.

What makes these concessions easier is that for Locke, like Hobbes, justice itself has a foundation in peace. ‘The fundamental law of nature,’ Locke tells us more than once, is the ‘preservation of mankind’ (2nd Tr. 135, see also 183); and he allows this criterion to soften the demands of justice, in a manner reminiscent of Hobbes’s laws of nature. Punishment must be placed within strict limits (2nd Tr. 8), it must not seek revenge (2nd Tr. 8), and the magistrate has authority to waive punishment (though not reparations) for the sake of the public good (2nd Tr. 11). In the end it is not so surprising that two theorists who place the right to life at the center of their political thought should seek to instill in us a less inflammatory conception of justice.

Contemporary lessons

Locke’s impartial judge resembles Hobbes’s impartial arbitrator of the sixteenth law of nature. Moving from opposite directions, the two thinkers arrive at a similar destination. Peace is to be secured by procedures that resolve disputes according to justice’s dictates. But peace also requires that all parties refrain from imposing their particular interpretations of justice, and that they tolerate the possibility of unjust outcomes. The parties’ willingness to defer to an impartial judge signals their reasonableness to each other, thus initiating a virtuous circle of trust and trustworthiness that leads to peace.

By Hobbes’s impartial arbitrator I do not mean the absolute sovereign. Remember that princes are bound by the law of nature in their relations to each other (*Lev.* 30, 30), which implies that, in the absence of a ‘common power to keep them in awe,’ they should still submit their disputes to a neutral third party. I have argued that Hobbes’s laws of nature challenge the need for an absolute sovereign even in the domestic setting. With Locke’s help, we can recover a neglected Hobbes from Chapters 14 and 15 of *Leviathan* that Hobbes’s more familiar argument for absolute sovereignty has worked to obscure.

Locke famously skewered Hobbes’s efforts to show that an absolute monarch would not be disposed to mistreat his subjects. Individuals are not well-equipped to be judges in their own case, much less when, ‘corrupted with flattery, and armed with power’ (2nd Tr. 91), they can more freely indulge the natural human inclination to disbelieve criticism and soak up praise. But notice that a similar problem arises with respect

to nation-states and ethno-national movements. If one group finds itself in conflict with another, members of the group form their views in consultation with fellow-members; they are little inclined to test those views against the objections from the other group. Under such circumstances, there is dangerously little check on the forces of bias and self-praise. 'Not one of a hundred ever examines' the 'allowed opinions of their country and party' (*Conduct* 34). The problem is most pronounced when the group's self-image is threatened by the open hostility of another group.⁴² Then the group can become an echo chamber for collective pride, its self-serving and self-reaffirming opinions rising in crescendo to approach the roaring of Hobbes's mad multitude.⁴³ The madness of pride is most dangerous at the level of the armed group. To prevent and terminate unjust wars fought in the name of justice, we need an impartial judge.

The impartial judge is the basis of Locke's domestic political order. It is his solution to the problem of civil war, the predominant form of violent conflict since World War II.⁴⁴ What about inter-state conflict? The lesson of Hobbes and Locke's arguments would seem to be that states ought to submit their conflicts to an impartial arbitrator or judge. This is the straightforward implication of Hobbes's sixteenth law of nature. What obscures this implication in the *Second Treatise* is that Locke never discusses the impartial judge except as a feature of government. We can correct this oversight with the logic of the *Second Treatise* itself: many of the same reasons that Locke gives for the creation of government are reasons to devise practices of impartial adjudication in the absence of government. It might be objected that impartial adjudication in the absence of government is impossible. This claim is nowhere defended in the *Second Treatise*, and is implausible on its face.⁴⁵ If Locke's denizens of the state of nature have enough reason to constrain their behavior by natural law, they have enough reason to submit their disputes to impartial adjudication. In fact, reason obliges them to do so. The trust that develops when the parties observe one another's law-abiding disposition gives further encouragement to practices of impartial adjudication.⁴⁶

⁴² See Kelman 2007.

⁴³ The reference is to *Lev.* 8, 21, discussed above.

⁴⁴ Since 1945, almost 90% of wars have been internal (Bercovitch and Jackson 2009, 3).

⁴⁵ As Simmons observes (1993, 19), nowhere does Locke *prohibit* us from submitting disputes to impartial arbitration while remaining in the state of nature. According to Doyle (1997, 225), Locke's discussion of the problem of bias suggests the need for 'a multilateral, institutionalized court and arbitration regime, such as the International Court of Justice, which allows for the intersubjectivity of a panel of judges to decide cases.'

⁴⁶ By contrast, Cox (1960, 189–90) thinks that Locke permits little hope for international institution building.

Hobbes and Locke show that international institutions are both necessary and possible – necessary, because the motive of justice has the potential to inflame rather than cure inter-group conflict; possible, because we have enough reason to perceive the resulting need for an impartial judge. Though this inference naturally emerges from their arguments, Hobbes and Locke do not make it explicit – principally, I think, because international institutions did not exist in their time. Their own experience hindered them from seeing (or at least reporting) what their arguments clearly show.

We have no such excuse today, when multilateral institutions involve themselves in every aspect of international politics. The power of multilateral institutions to foster elaborate and demanding forms of cooperation has been traced by contemporary scholars to enlightened self-interest (Keohane 1989), principled motivation (Ruggie 1998, chap. 4), socialization effects (Chayes and Chayes 1995), and generalized trust (Rathbun 2011). Multilateral institutions function as an impartial judge in both a loose and a strict sense. On the one hand, they accustom states to handling their business through common rules and procedures rather than the threatened or actual use of force.⁴⁷ On the other hand, they establish third-party dispute resolution mechanisms to prevent conflicts from escalating towards violence or destruction. Under contemporary international law, states are obligated, whenever their disputes are likely to endanger international peace and security, to ‘seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.’⁴⁸ The sequence recalls the progression of Hobbes’s laws of nature from basic decency to mutual accommodation to equal respect to third-party mediation to external arbitration.

The contribution of contemporary multilateral institutions to the peaceful settlement of disputes generally takes some form of mediation (‘a mode of negotiation in which a third party helps the parties find a solution which they cannot find by themselves’ [Zartman and Touval 1996, 446]) or adjudication or arbitration (in which a third party is entrusted with the power to issue a binding decision).⁴⁹ Multilateral

⁴⁷ See especially Chayes and Chayes 1995.

⁴⁸ United Nations Charter, art. 33. For a study of these mechanisms and their significant growth over the last century, see Merrills 2005. Covell (2004, 63–98) argues that Hobbes’s laws of nature provide a framework for international law.

⁴⁹ Among the more well-known international tribunals that arbitrate inter-state disputes or monitor states’ compliance with international agreements are the International Court of Justice; the dispute settlement procedures of the World Trade Organization (WTO); the European Court of Justice; the European, Inter-American, and African human rights courts; and the

institutions seek increasingly to resolve civil conflicts, not just inter-state ones. The reason is that in most civil conflicts the domestic government, being a party to the conflict, is no longer accepted as an impartial judge by a significant part of the population. Multilateral institutions are an impartial judge of last resort.

Contemporary reality confirms the implication of Hobbes's and Locke's reasoning: that adjudication need not require a common government or sovereign. Hedley Bull's claim (1977, 48) that modern international society resembles a Lockean state of nature in which each state remains 'a judge in his own cause' overlooks the powerful and increasing *judicial* role of multilateral institutions in contemporary international politics. The significance of international institutions is sometimes obscured, I think, by the sovereignty/anarchy binary still prevalent in discussions of international politics.

Of course, states (and non-state groups) do not always submit to the rules, procedures, and judgments of international institutions, but often they do. It might be argued that states remain judges in their own cause because they preserve the capacity at any moment to terminate compliance with international institutions. This argument is less significant than it appears, given that such compliance is often legally required (under both domestic and international law), often habitual, often reinforced by large penalties for withdrawal, and often rooted in a strong awareness of the danger of letting states (and other groups) act as judges in their own cause. (The mere *possibility* that states may terminate compliance does not establish much, since the same is true of groups and individuals in the nation-state.)

It might be claimed that, because Hobbes and Locke recommend a unified executive to enforce the peace, they furnish us with an argument not only for international adjudication but also for world government. Whether an argument for world government may be derived from their writings is a difficult question that lies beyond the bounds of this article.⁵⁰ Given persistent doubts about the desirability and possibility of world

International Criminal Court (whose jurisdiction extends to leaders of states and other armed groups). The powers granted to the UN Security Council give it many attributes of a court, though it is rarely described as such.

⁵⁰ The question is whether they furnish not only *possible* but also *good* reasons for world government, and this question cannot be briefly addressed. The claim that world government would improve compliance with just international institutions would have to be weighed against (Hobbesian) fears that it would introduce global civil war and (Lockean) fears that it would introduce global despotism. There would be the added task of articulating a Hobbesian case for world *government* unencumbered with Hobbes's notorious association of government with absolute sovereignty.

government,⁵¹ it is important to show, with the aid of Hobbes and Locke, that peace and justice can be promoted by international institutions that do not take the form of world government. This conclusion remains significant even if we think that world government is desirable, for it suggests that world government could arise through a gradual process of voluntary integration, in which multilateral adjudicatory institutions play a transitional role.⁵² We need not imagine a single leap from unregulated nation-states to world government (a seemingly risky and improbable scenario).

There is persistent skepticism about the fitness of international institutions to promote peace and justice.⁵³ Some rely on 'Hobbesian' arguments about the difficulty of cooperation without a sovereign. Thus Mearsheimer (1994/95) argues that international institutions 'are not an important cause of peace' (7), because in an anarchic world system states cannot trust each other to practice restraint, while Nagel (2005), citing Hobbes by name, argues that international institutions cannot promote justice because of the lack of centralized enforcement. Some think that rightly minded states or groups should be free to pursue justice as they see fit, without international constraint. US neoconservatism exemplifies this attitude: consider Frum and Perle's claim (2003, 279) that the dream of a just and peaceful world has been betrayed by the United Nations and can only be achieved by 'American armed might.' Some question the ability of international institutions to be genuinely impartial. While this doubt is recurrent theme in US conservative and neo-conservative thought (Frum and Perle 2003; Rabkin 2005; Posner 2009, chap. 7), it is often shared by groups embroiled in ethno-political conflict.

Some doubt that justice can function as an international standard because of disagreement about its content. Rabkin (2005, 163) and Rubinfeld (2004) invoke moral disagreement to challenge the legitimacy of international human rights institutions. Roth (2011), though distinguishing himself sharply from Rabkin-style unilateralism, argues that, owing to profound transnational disagreements about justice that have the potential to inflame conflict, we should rein in the ambitions of international law. In his words, '[w]orking relations in the international arena largely depend on maintaining an "agreement to disagree" ... about matters of fundamental justice' (229).

⁵¹ Kant ([1793] 1983) provides a classic argument against world government. For a review of recent arguments supporting world government, see Craig 2008.

⁵² For an account of how the process could unfold, see Wendt 2003. In contrast, Nagel (2005, 146) thinks that the likeliest path to world government lies through the imposition of 'patently unjust and illegitimate global structures of power' by the strong on the weak.

⁵³ Needless to say, such skepticism is not confined to scholars, but finds support in the broader public.

Hobbes and Locke show why the skepticism (in its various forms) is misplaced. They illuminate the danger of letting groups act as judges in their own cause. They also teach us not to exaggerate the fragility or indeterminacy of justice. Ironically, it is Hobbes who teaches this lesson most powerfully. His laws of nature rest on a foundation of self-interest and common sense. They reconcile morality and prudence, justice and peace. They are intuitive, easy to understand, and not reliant on parochial traditions. They hew closely to the logic of the Golden Rule, a principle sufficiently self-evident that historic civilizations have derived it independently of each other (Wattles 1996). They tell us that when we cannot agree on what justice requires we should take the obvious step of appointing an impartial judge. Hobbes shows why the transnational pursuit of justice need not crash on the rocks of disagreement and distrust.

Of course international institutions, like states, are not always impartial.⁵⁴ But sometimes they are, and sometimes it is the party accusing them of bias that is biased. The test of whether an international institution is impartial cannot be whether it endorses our conception of a just settlement. An international institution functions as an impartial judge if it applies sound principles of justice, dispassionately weighs the evidence, hears arguments from both sides, reasons carefully from the relevant facts and norms, appoints neutral adjudicators, and employs accountability mechanisms for safeguarding its integrity.⁵⁵ Locke's remarks on political legitimacy are relevant here. An institution does not forfeit the title of impartial judge because it makes a mistake, much less because it deviates from our opinion of what justice requires, but only if it shows a clear intention to abandon impartial procedures or veers well outside plausible interpretations of justice. (This of course does not bar us from strongly criticizing official conduct that we believe to be mistaken.) When judging institutions, we ourselves must exercise impartial judgment; Locke reserved some of his harshest language for those who sought to overthrow political institutions without adequate justification (see 2nd *Tr.* 176). His hope was that individuals exercising impartial judgment would know how to establish and maintain impartial institutions, which in turn would teach and reward the virtue of impartial judgment.

⁵⁴ The main problem remains the disproportionate influence of rich and powerful states, most obviously in organizations like the UN Security Council and the International Monetary Fund.

⁵⁵ On the accountability mechanisms that international institutions can employ, see Grant and Keohane 2005.

The analysis offered in this article is supported by emerging wisdom on the sources of, and cure for, ethno-political conflict. There is growing recognition that perceived injustices fuel communal conflict.⁵⁶ Social-psychological patterns that entrench mutual grievances can be combated by mediation that makes each side aware of the other's perspective, challenges enemy images, and develops 'a language of mutual reassurance and a new discourse based on the norms of responsiveness and reciprocity' (Kelman 2007, 80). The general view is that justice is an essential component of durable peace, but equally that the parties may have to moderate their demands for justice. An 'interest-based approach,' which seeks to address the needs of all parties, is favored over both a 'power-based approach,' in which weaker parties defer to superior force, and a 'rights-based approach,' in which 'the parties try to determine who is right' (Peck 1996, 10–11). Kelman (2007, 67–68) describes the balance as follows:

Although the parties' differing view of rights and wrongs must be discussed because they contribute significantly to the dynamics of the conflict, the assumption is that the parties cannot find a solution by adjudicating these differing views. Rather, they must move toward a solution by jointly discovering mutually satisfactory ways of dealing with the issues that divide them. Insofar as they arrive at a solution that addresses the fundamental needs of both parties, justice is being done – not perfect justice, but enough to ensure the prospects for a durable peace.⁵⁷

'Needs' must be evaluated, however, and this presupposes a moral standard. Explicit principles that uphold and define human rights, democracy, anti-discrimination, and civic multiculturalism provide parties with a common language to understand and resolve their conflicts. As a 'blueprint for good governance' (Peck 1998, 18), they also discourage conflict in the first place. The concerted effort of the High Commissioner on National Minorities (HCNM) of the Organization for Security and Cooperation in Europe (OSCE) to promote, publicize, and implement these principles helps explain that office's remarkable success in defusing conflicts throughout the continent.⁵⁸ Since the late 1980s, a similar peace-building

⁵⁶ Peck 1996, chap. 3; Gurr 2007, 151; Kelman 2007. This is not to deny the importance of other causal factors, such as economic conditions and motives. As Doyle and Sambanis (2006, 34) note, "greed" and "grievance" are in practice complementary or overlapping explanations of rebellion.⁷

⁵⁷ Notice that the warning against adjudication by the parties does not extend to third-party adjudication.

⁵⁸ See the outstanding account by Cronin 2002. For a record of the HCNM's successes and discussion of its strategies, see also Peck 1998, 123–26; Kelley 2004.

strategy has been adopted by the Organization of American States (Cronin 2002, 162–63).

Third-party arbitration helps, too, not least by encouraging the kind of reflection and responsiveness discussed by Kelman above. Groups must anticipate the judgment of a neutral arbitrator, who can ask embarrassing questions and weigh claims by the other side. As Merrills (2005, 123) writes, ‘The value of arrangements for dispute settlement is not to be judged solely by the cases decided under these arrangements: a provision for compulsory arbitration, by its very existence, can discourage unreasonable behavior, and so may be useful even if it is never invoked.’ The HCNM has played the role of both mediator and arbitrator. It not only facilitates communication between the parties, but also issues recommendations based on Council of Europe (COE) and OSCE human rights standards and pressures states into accepting them, using incentives such as potential membership in the COE, European Union (EU), or NATO. Cronin (2002, 158) notes that

while the implementation of European norms was not part of the high commissioner’s original mandate, norm compliance in fact lies at the heart of his approach. As a result, since 1995 the commissioner has increasingly begun to rely on the advice of legal (as opposed to technical) experts. These experts assess the compatibility of domestic policy and law with specific European and international standards and report their conclusions to all interested parties.

Operating in the background are EU and COE adjudicatory bodies such as the powerful European Court of Human Rights that strengthen the authority and clout of the HCNM.

These strategies have made a difference. Commenting on the dramatic global decline in ethno-political conflict since the early 1990s, Ted Robert Gurr, founder of the Minorities at Risk Project, argues that credit belongs not to any ‘invisible hand,’ but rather to the ‘evolution of a new doctrine of international good practice for managing communal conflict.’ The key elements are recognition of cultural and political rights for members of ethnic minorities, a practice of mutual accommodation in which discontented minorities give up secessionist goals in exchange for substate autonomy and enhanced rights protections, a strengthening of democratic institutions, and the vigorous promotion of these objectives by international organizations (Gurr 2007, 151–54).⁵⁹ Gurr describes the change as ‘a global shift from ethnic warfare to the politics of accommodation’ (Gurr 2000, 275).

⁵⁹ Besides the OSCE, he credits the United Nations, EU, and African Union.

Conclusion

Our beliefs about justice, however sincere, are distorted by self-interest and pride. Yet principles of justice can inculcate patterns of self-restraint favorable to peace. Hobbes emphasizes the first lesson, Locke the second, but each understands both. The insights combined demonstrate the need for impartial institutions that apply objective principles of justice to resolve inter-group disputes. When the disputing groups are states, or are powerful enough to challenge states, international institutions are needed to serve as an impartial judge. They cannot play this role unless the conflicting parties are willing to accept some inevitable measure of injustice. The parties' willingness to do so is the paradoxical first step towards achieving justice.

The creation of an impartial judge is not a simple matter of delegating authority to an external referee. It requires the supportive participation of the parties through practices of generosity, forbearance, empathy, listening, deliberation, intellectual honesty, self-examination, and humility. Groups must not allow their interpretation of justice always to have the final say, even when they are convinced of its truth. Our instincts may strain against this conclusion, but we can tame these instincts if we learn to control our pride. This is the difficult lesson contained in the story of Job, re-taught by Hobbes, and carried forward by Locke.

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