Chapter 3:

The Hobbesian Hypothesis: How a colonial prejudice became an essential premise in the most popular justification of government

Introduction

Does it matter whether you or your fellow citizens are at least as well off as your ancestors were 12,000 years ago before the rise of sovereign governments and the modern property rights system? Does it matter whether your fellow citizens are as well off as the few indigenous peoples who still remain outside the reach of government authority and outside the global market system? Prevailing authorities have imposed a lot of rules on all of us; those have clearly benefited a lot of us; does it matter whether they have benefited all of us? Does it matter whether they have harmed some of us? Would it call into question the justification of government and other institutions if the rules we imposed to maintain those institutions caused some of the people subject to them to be worse off than they would be if those institutions had never arisen?

We all would like to think that these questions are moot because, we’d like to think, we must all be better off. Unfortunately, Chapter 6 argues that even if the average person today is better off, some of us are worse off. A substantial number of disadvantaged people today even in wealthy countries are worse off than their ancestors were 12,000 years ago and worse off than people in the few remaining stateless societies today. And it is only in the last 100 or 150 years that we could say that the average person is better off than they could reasonably expect to be if they lived in a small-scale stateless society. This is so, not simply because states have
failed to everyone, but because the political and economic institutions we have imposed on disadvantaged people actively harm them. Does it matter?

Philosophers have a hard time giving a straight answer to this question. Many of them equivocate between two extremely different positions: (1) it obviously matters, but it’s obvious that everyone is better off and (2) it does not matter. Equivocation is surprising not only because these two statements represent very different normative positions, but also because the most popular justification of government sovereignty (called “social contract theory” or “contractarianism”) and the most popular justification of private property (any version incorporating a “Lockean proviso) both rely at least in part on a normative principle of mutual advantage. Any theorist using the mutual advantage principle to justify something has little choice but to assert that that principle is in fact satisfied. What room is there to equivocate?

Ultimately very little, if the justification is going to hold up. But we are going to spend this chapter and the two that follow wading through social contract and property rights theories to demonstrate that point. This chapter shows how the following claim, which we call “the Hobbesian hypothesis,” appears in Thomas Hobbes’s justification of state authority: *Everyone is better off or at least as well off under the authority of a sovereign state than they would be outside of that authority*. Chapter 4 shows how a similar claim appears in John Locke’s justification of private property. Chapter 5 shows how these claims have been repeated, with increasing equivocation and with little or no empirical support, ever since and are today used in the most popular justifications of government sovereignty and private property. We dwell so much on this issue because many theorists have been less than clear about the extent to which they rely on empirical claims, but a close examination of their arguments shows that the need these empirical claims to support their conclusions.

Once these chapters establish how important the Hobbesian hypothesis is to contemporary political theory, chapter 6 argues that it is an unsustainable claim.
Chapter 7 discusses the implications for the theories in question. It concludes that neither private property rights nor existing governments can be justified unless contemporary states treat their disadvantaged citizens better.

The discussion reveals that clarity on this issue has not risen over time. If anything, it has decreased. Hobbes was forthright in his claim that all people in state society are better off than all people in stateless environments, including people in small-scale, stateless indigenous communities. More recent philosophers have been less clear about whether they are making a claim about the relative welfare of people in state society and people in small-scale stateless societies.

Another interesting feature of the discussion on this issue is that after more than 350 years, it has not accumulated more empirical evidence. Most academic debates with any empirical character become increasing well-informed over time as people bring empirical evidence to the literature. Nothing of the sort has happened in this discussion. Not much more empirical evidence has been offered than Hobbes offered in 1651. What accounts for the lack of clarity and of support?

Hobbes could state his claim clearly, offer little evidence to support it, and expect his readers to accept it, because it was a widely held prejudice at the time. By the 1600s, Europeans were in the midst of an enormous colonial expansion that made them want to believe that people in their societies were better off or just better than peoples they conquered. Ideas of the racial or morality superiority proliferated. Hobbes’s explanation was in some ways more respectful to indigenous peoples. The native peoples who lived in smallest-scale societies were worse off not because of any innate inferiority, but because they had inferior institutions. Whether Europeans at the time were willing to accept Hobbes’s explanation, they were willing to accept that the peoples who most lacked the institutions they considered the cornerstones of their civilization were the most backward, savage, and warlike of all.

Thus, the Hobbesian hypothesis was accepted on prejudice. It gained credibility with centuries of repetition, and it has long outlived the popularity of the
prejudices that gave rise to it. One does not have to hold Eurocentric prejudices to believe that everyone is better off in state societies. We cannot dismiss offhand that some societies might have institutions that allow their people to thrive more than other societies, but neither should we accept such a claim without evidence, especially when it is expressed in such strong terms—everyone in state society is better off than everyone in stateless societies. If this book can show that social contract theory really needs this claim, it will show that an empirical investigation is long overdue.

This chapter shows now Hobbes introduce hypothesis into his most influential justification of the state. Following sections argue that it is a strong, counterfactual, empirical claim about people in small-scale stateless societies. The concluding section argues that the hypothesis has become a myth.

1. Hobbes introduces social contract theory

The justification of the state is a centrally important question in political philosophy. Why does any person or institution have authority over individuals? Most especially, why does a government have sovereign or ultimate authority? The standard definition of the state, written by Max Weber in 1919, makes sovereignty its defining feature: “[A] state is a human community that (successfully) claims the monopoly of the legitimate use of physical force within a given territory. … the right to use physical force is ascribed to other institutions or to individuals only to the extent to which the state permits it.”¹ In common language “the state” is used synonymously with “the government,” but in political theory government tends to be a more expansive term that state: not all governments are sovereign. Any sovereign government is a state.

The question is sometimes framed as the question of whether individuals have an ethical obligation to obey the law. Obviously individuals within a territory run the risk of punishment if they do not obey the laws that are enforced in that territory, but do they also have moral reason to obey the laws? The question can also be framed
from the perspective of government authority: if humans are equal, what gives any human-created authority the right to force other humans to do anything? From this perspective the justification of the state is about what conditions a government has to meet to be ethically entitled to be the sovereign authority over its territory. The ethical question involved in this issue is what conditions must a state meet to be justified. The empirical question is whether the state has met those conditions. This book’s criticism is not with contractarian ethical arguments for those conditions but with their support for the claim the conditions are fulfilled.

Different versions of contractarianism justify the state differently, but mutual advantage is at the heart of all of them, and “The logic of mutual advantage theories is that everyone must gain from the agreement.” Mutual advantage theories are limited in that they provide no criteria about when and whether it might be acceptable to improve A’s position at the expense of B. It’s just not the sort of question they are meant to address. If the state succeeds in being mutually beneficial, it is like a contract in the sense that it imposes obligations that people would not otherwise have, but it ultimately benefits everyone subject to those obligations.

Mutual advantage is a much more difficult condition for the state to achieve than majority advantage or even majority consent. But most philosophers insist on it, largely because a majority consent leaves open the question of why the majority has the right to impose its will on the minority and because it seems implausible that even the majority could be justified in imposing something awful, such as slavery or extermination, onto a minority.

If mutual advantage is the criterion, distributional issues are extremely important to the justification of the state. Too few philosophers have adequately stressed this connection. Someone always benefits from the state. It is probably not difficult for the state to be beneficial to the majority, but for political obligations to be like a contract, the state has to extend its benefits to everyone. Two groups stand out as candidates for whom the state might not be beneficial: those who are most able to
thrive outside of state authority and those who have the least advantages under state authority. One of the advantages of contractarian approaches is that they focus attention not on average welfare but on the welfare of marginalized groups.

The effort to use a contract device to justify the government can be traced back at least as far as ancient Greece. Plato’s dialogues have Socrates personifying the laws and imagining a contractual agreement between them and each citizen. Modern social contract theory essentially begins with Thomas Hobbes’s 1651 book, *Leviathan*, which justifies state sovereignty with a more literal, if tacit, contract.

Hobbes is a strange writer to contemporary readers. He seems very modern in some ways, Medieval in some ways, and rather quirky in other ways. He argues for the basic equality of all men (and perhaps all people), for a government based on consent of the people, and for a conception of freedom that we would now call negative freedom—freedom from interference by other people. Although not hostile to religion, he avoids any religious justification of the state. However, he uses these modern, liberal-sounding ideas in a justification for something people today like to think of as a very pre-modern institution: absolute monarchy. He opposes the cornerstone of most modern conceptions of just government: the rule of law. Instead he thinks people are better off obeying the arbitrary will of a dictator—any dictator at all. The people reserve no rights either to have input in decision-making or to expect any standard of treatment by the government. In almost all circumstances, Hobbes argues, the people should obey any government that succeeds in being a sovereign government. If a king is in power, obey him. If a usurper overthrows the king and assumes absolute power, obey him.

Hobbes seems somewhat quirky (although not unique) in two ways. He tries to derive all morality from a theory of prudence, and he argues that morality consists no more or no less than the fulfillment of an enforceable contract. Hobbesian moral theory is essentially a moral theory for sociopaths. His addresses people who are not otherwise motivated either to obey the law or to behave morally, and attempts to
convince them that prudent concern for their own long-term self-interest demands observance of both. This position leads to an odd stance on issues. Most people would tell someone not to commit murder because murder is immoral. A Hobbesian, however, would have to say that although it is naturally permissible to commit murder, it is immoral for you to do it in a sovereign state, because like all other people in your state, you have tacitly contracted to obey a sovereign who has outlawed murder, and breaking that contract is imprudent, immoral, or both.

Few contemporary philosophers find Hobbes’s conception of morality or his justification for absolutism appealing, but many find value in his justification of the state via a tacit or hypothetical contract. Diverse versions of contractarian justifications of the state have proliferated over the three-and-a-half centuries since *Leviathan*. This chapter will try to introduce the contractarian justification of the state in general by looking at Hobbes’s justification of the state in particular.

2. The Hobbesian hypothesis is a necessary claim in

Hobbes’s influential justification of the state

Hobbes justifies the state by comparison to its absence—the “state of nature”. Although Hobbes’s *description* of the state of nature is complex, his *definition* of it is simple. It is used interchangeably with “anarchy,” “statelessness, or “the absence of sovereignty.” The state of nature is not itself a myth, because as Chapter 6 shows, stateless societies have existed for long periods of time in many places around the world. The myths we address here are suppositions about what must necessarily happen under anarchy, not in the existence of anarchy itself.

The term “state of nature” is largely an artifact of a discarded belief in a dichotomy between natural and civilized people. Today most human scientists believe all societies are equally artificial and equally natural. On one hand, someone might be tempted to think that the earliest societies were the most natural because they were the
closest to human origins. One the other hand, one might be tempted to think the
earlier societies were the least natural because they might have used lifeways more
appropriate to pre-human ancestors, having not yet discovered the most natural way
for a human to live. Both of these ideas are useless. One thing we can safely say about
human behavior is that people naturally come up with different ways to live together.
People in the distant past came up with ways to live together; so do people today; so
will people in the future. All of their lifeways are equally artificial in the sense that
humans created them and equally natural in the sense that creating lifeways is what
humans naturally do.

But the word “nature” in “state of nature” is not entirely an artifact. It is
relevant in at least two senses. First, contractarians portray their description of it as
the inevitable (i.e. natural) result of the absence of state sovereignty. Second, anarchy
is the natural point of comparison for versions of contractarianism that limit their
focus to the basic justification of sovereignty: state authority is justified if and when it
benefits the people living under that authority relative to how well off they would be
in the state of nature or if and when people would consent to it given the comparison
to the state of nature. Such theories are, “about the minimal conditions of political
obligation, not the principles of morality, social justice, or the ideal society.”4 The
comparison to the state of nature is meant to determine whether the state meets those
minimal conditions, not whether it meets an ideal. The state of nature has a special
position in the contractarian justification of the state. It is the natural default position.
It needs no justification, but the imposition of government authority does. Because
contractarianism is about the minimal conditions, many versions of contractarianism
do not require states to be justified relative other possible states; only relative to the
state of nature.

In Hobbes’s description, the state of nature lacks not only government
sovereignty, but also morality and society. Importantly, however, only the absence of
sovereignty is defining characteristic. In Hobbes’s theory, morality necessarily comes
into existence with the sovereign power to enforce contracts because of his definition equating morality with the fulfillment of an enforceable contract. Contracts are unenforceable in the state of nature, and so by definition, there is no morality or immorality in the state of nature. Few, if any, contemporary philosophers accept Hobbes’s definition of morality, and therefore, few accept the Hobbesian claim that the distinction between morality and immorality comes into existence with the state.

The Hobbesian connection between society and sovereignty is not definitional, but it relies on his empirical argument (explained below) that without sovereignty society degenerates into a war of all against all and that such a war makes society impossible. As Chapter 6 shows, this belief is the most easily falsifiable of all contractarian claims: society is possible in the absence of the state. If so, society and government do not come into existence together.

Government, society, and morality have something in common. They all involve individuals making sacrifices to live with one another, and therefore, a contract device can be used to model or to justify any of them—together or separately. There are versions of contract theory that model morality or society through a contract device without involving government. In a contractarian theory of morality the state of nature is the absence of morality instead of the absence of government. In a contractarian theory of society, the state of nature is the absence of society. What pertains to a state of nature defined as the absence of morality or society does not necessarily pertain to the state of nature defined as the absence of sovereign government. Although Hobbes both defined state of nature as the absence of government and described it as being absent of society and morality, his version of the state of nature—and any version of the state of nature used to justify government—should not be confused for a statement about the state of either society or morality. The potential for confusion is important because—if Hobbes is wrong that the three always go together—a statement about the state of
nature might be right if it is defined as the absence of morality but wrong if it is the absence of the state.

Some theories justify government by reference to some kind of contract but do not involve the state of nature. This book’s criticism is not related to any such theories. This book’s use of the word “contractarianism” should be read narrowly as *theories justifying government sovereignty with a contract devise involving a comparison between the state and the state of nature*. Therefore, not everything in the philosophical literature written about either the state of nature or the social contract are relevant to this research project.

The existence of these three conceptions of the state of nature is a source of confusion about the state of nature we are addressing. The state of nature defined as either the absence of morality or the absence of society is purely imaginary. No populations of humans have ever lived without a society or without a conception of morality. Humans are an obligatorily gregarious species,\(^5\) meaning that they need other people to survive through the course of a normal life. They inherited this characteristic from earlier species of hominins. There is no time before humans established society. Some form of society was in place when the first biological humans appeared, and although they made many changes to their social arrangements, there is no time in the fossil record going in which our hominin ancestors lived solitary lives.

In contrast, the state of nature defined as the absence of government sovereignty is real. There is a time before humans established the state or any significant organized authority. As Chapter 6 argues, a description of the absence of government as also entailing the absence of society and (a conception of) morality is not imaginary; it is simply wrong.

Hobbes describes the state of nature as a horrible situation. He does so to set up his argument that everyone consents to the state. This argument is plausible as long as the state of nature really is terrible for everyone, and citizens all know how terrible
the state of nature is. Hobbes supports his depiction of the state of nature with an argument about how humans behave in the absence of state authority and with two casual empirical observations. With no authority to enforce promises, no one could trust anyone. People, being sufficiently equal in strength, would attack each for three reasons: gain, fear, and reputation (“competition,” “diffidence,” and “glory”). That is, one attacks another to take what the other has, to preempt the other from attacking first, and to earn a reputation as a formidable opponent who should not be attacked. Therefore, Hobbes concludes, whenever there is no sovereign power to mediate disputes and enforce the resolution, human nature leads inevitably to a war of all against all in which no one is safe. Even the ablest person in the state of nature lives in so much fear and misery that they are glad to accept any government that succeeds in enforcing rule—that is, any government that succeeds in being sovereign. Even the least advantage people under that rule consent to it because it saves them from the fear and misery of the state of nature.

During a war of all against all none of the benefits of human cooperation are possible, but the impossibility of peace outside of state authority is both the most important source of misery and the causal factor for all the other miseries Hobbes ascribes to the state of nature. He famously elaborates what his theory says life in anarchy must be:

Out of civil states, there is always war of every one against every one. … during the time men live without a common power to keep them in awe, they are in that condition which is called war; and such a war, as is of every man against every man. … [with] no Knowledge of the face of the Earth; no account of Time; no Arts; no Letters; no Society; and which is worst of all, continuall feare, and danger of violent death; And the life of man, solitary, poore, nasty, brutish, and short.6
This is what we call the “Hobbesian hypothesis,” essentially: everyone under a sovereign government is better off (or no worse off) than any of them would be outside of that authority.

Gregory S. Kavka argues that Hobbes actually needs five assumptions to make his logical model produced a war of all against all whenever sovereignty is absent. The last two are implied if not explicitly stated by Hobbes: (1) natural equality, (2) conflicting desires, (3) forward-looking people, (4) advantage to the attacker in conflict, and (5) limited altruism. If these assumptions hold, and Hobbes’s reasoning is correct, “the state of nature is what we may call an active war of all against all.”

That is, “a state of nature is a condition in which the will of each to fight others is known, fighting is not infrequent, and each correctly perceives that his life and well-being are in constant danger.” The state of nature, if Hobbesian theory correctly predicts how humans behave in the absence of sovereign authority, is always a state of despair for all people who find themselves in it. Therefore, if everyone understands what is at stake, they all prefer any sovereign government that relieved the fear inherent in all stateless societies, and they are willing to make a permanent commitment to obeying any state that provided basic security.

If so, consent justifies state: everyone effectively contacts to obey the state because everyone is better off under the state than in the state of nature. Scholars of Hobbes disagree about the exact nature of the Hobbes’s social contract argument. We interpret it as a tacit but real agreement. Although no contact has ever been signed, Hobbes argues we all do in fact consent to state authority—silently but truthfully—because we all know how horrible the state of nature is. We might want the state to stop doing x, y, or z, but unless the sovereign is about to kill us, none of us ever really wants the state to disappear even if accepting the state means accepting x, y, and z along with it. People willingly accept all the things they do not like about the state because the freedom from x, y, or z is not worth the tradeoff of returning to the constant fear and danger that supposedly characterize the state of nature.
A Hobbesian social contract is not between the people and the sovereign, as Socrates’s imaginary contract was in Plato’s dialogues. The contract is between the citizens. They promise each other to obey the sovereign and to accept the sovereign’s enforcement of the contract, but the sovereign remains outside of the agreement. The sovereign cannot be party to the agreement because there is no higher power to enforce an agreement between the sovereign and his subjects, and according to Hobbes, unenforceable contracts are not morally binding. The enforce of an agreement between the people and the sovereign would require a higher power to enforce that agreement. If there were a higher power than the sovereign, it would be sovereign and no higher power could force it to keep to its agreements. The moral obligation to obey the sovereign comes from this enforceable agreement between citizens. The people do not betray the government when they disobey it, because they have no agreement with the government. They betray their fellow citizens with whom they have peace where they would otherwise sink into a cycle of destructive conflict.

Hobbes uses an illustrative story to make most of these points. He asks readers to imagine that people get out of the state of nature by agreeing to give full sovereign authority to one person or to an assembly. In the story, sovereignty begins with explicit consent, but Hobbes knows that this is not a history of the origin of states. He is aware that the origin of the state is victory in war. What matters for the argument is that the state—however it was founded—produces the same results as the hypothetical original state. It protects people from the chaotic state of nature that naturally exists between people outside of state authority. It thereby makes them better off. Therefore, it obtains their consent by its effects not by its origins: “one has good reason to accept a sovereign with the powers ascribed by Hobbes … whether or not that sovereign was instituted by the people in an original contract.” Even if the state came into being by violent conquest, it keeps the peace between individuals that would turn to war of all against all, providing safety where otherwise there would be
danger. The people recognize their safety and wellbeing requires them to make a morally binding commitment to obey the sovereign, and so the theory goes, they do.

We take Hobbes’s justification of the state via social contact theory to be the following, in essence:

P1\textsuperscript{11}: Everyone is better off under the authority of a sovereign state than they would be outside it (The Hobbesian hypothesis).

P2: A binding commitment to obey is necessary to maintain sovereignty

P3: The truth of P1 & P2 is obvious to everyone.

C1\textsuperscript{12}: (from P1 and P2): Everyone who lives under government sovereignty makes a binding commitment to obey the sovereign.

P4: Government sovereignty is justified if it benefits people so much that they all make a binding commitment to obey it (The Lockean proviso\textsuperscript{13}).

C2: (From C1 and P4): Government sovereignty is justified.

P1, P2, P3, and C1 are empirical claims. P4 and C2 are moral claims.

The operative moral claim—the moral criteria by which the state us justified—in this argument is P4. Building on David Gauthier’s extension of John Locke, we call this claim “the Lockean proviso.” It gets this name because Locke applied a similar proviso to his justification of private property rights (see Chapter 4). Gauthier recognized the proviso as a more basic principle by which other institutions, such as the state, could be justified. Gauthier writes, “For us the proviso plays a wider and more basic role. We treat it as a general constraint, by which we may move from a Hobbesian state of nature … to the initial position for social interaction”\textsuperscript{14}.

We are treating a Lockean proviso as a moral criteria proposed as a way to justify the imposition of an institution by saying that the institution achieves mutual
advantage (or at least that it does not harm to anyone) relative to the state of nature. General form of a Lockean proviso:

The imposition of an institution is justified if it benefits everyone or at least does not harm anyone relative to its absence.

Rarely will anyone make the Lockean proviso the sole moral criterion for justifying something. If so, your neighbor could go into your house and make any changes she wanted as long as those changes did not harm you. Other moral criteria are usually required. We don’t have to worry much about the other criteria because the only issue at question is whether this criterion is satisfied.

Strictly speaking, Hobbes’s claim is one of consent rather than benefit. The operative moral criterion in justifying the state is that people consent to it, but we have framed Hobbes’s claim to incorporate both benefit and consent. The contractarian presumption is that people consent to government because they benefit from government, and because hypothetical versions of contract theory essentially replace literal consent with mutual benefit. People can agree to things that make them worse off, but we do not believe that any contractarians wish to justify the state based on the belief that some people either mistakenly or selflessly agree to something that harms them. So, we ignore this logical possibility.

In contractarian theory the state has authority of you because it benefits you. Hobbes takes two steps to get there. The state has authority over you because you consent to it. You consent to it because you benefit from it. But the same relationship between proviso and hypothesis underlies the two-step process. Framing Hobbes’s criteria in terms of both benefit and consent allows us to think of it as a normatively strong version of the Lockean proviso. The imposed institution must not only benefit people, but it must benefit them so much that they give it their binding consent. This will help when the following chapters consider softening contractarianism by moving...
away from literal agreement toward hypothetical agreement and/or simple mutual benefit.

A simplified version of Hobbes’s contractarianism, focusing solely on the proviso and hypothesis is:

P1: Lockean proviso: the state is justified relative to the state of nature, if it benefits people so much that they all make a binding commitment to obey it.

P2: Hobbesian hypothesis: the state does in fact benefit people that much.

C The state is justified.

As we’ve defined them, the relationship between the proviso and the hypothesis is simple; a moral criteria and the empirical claim that the criteria is achieved. Section 5, below, argues that it is indeed an empirical claim. The need for the Hobbesian hypothesis is dictated by the use of the Lockean proviso. If one asserts that an institution has to do X to be justified, and one wants to justify that institution, one has little choice but to claim that that institution does in fact do X. A contractarian who does not want to justify the state as constituted could assert the same Lockean proviso has her moral principle, then say that the state is unjustified until it starts doing X. But as the following two chapters show, few contractarians do so. Most of them are ready to assert that their criterion is fulfilled and neither side is very interested in putting forward hard empirical evidence for their claim that X is or is not achieved.

If one were to demonstrate that the institution has not achieved X, then the institution would not be justified by moral criteria contractarians have asserted. Contractarians might be tempted to respond by accusing the person making the refutation of demanding an immediate return to the state of nature, but that is certainly not the only or the most plausible response to the refutation of an argument justifying the state (or any other institution) because it has supposedly achieved X.
plausible responses are: the state needs to start doing X, or the moral criterion X has to be replaced by some other moral criterion that the state actually achieves.

In Hobbesian contractarianism there are no genuine dissenters. We define a “dissenter” as someone with a rational or reasonable objection to the state, someone for whom the proviso remains unfulfilled and who, therefore, has good reason to wish not to be party to the social contract. Having justified the state on the claim that there are no dissenters, contractarians avoid entirely the issue of how they should be treated. If one dropped the contractarian claim that the state benefits everyone, in favor of say one would have a very different moral theory. Therefore we should look to the wellbeing of the least advantage to see whether they have rational or reasonable cause for dissent.

Hobbes’s normative claim that the state requires unanimous consent would be attractive if it were not so hard to believe the empirical claim that everyone could actually agree on anything. This problem is well expressed by Alan Ryan

Of all the routes to obligation, contract is at once the most and the least attractive. It is the most attractive because the most conclusive argument for claiming that someone has an obligation of some kind is to show them that they imposed it on themselves by some sort of contract-like procedure. … It is unattractive for the same reason; few of us can recall having promised to obey our rulers for the very good reason that few of us have done so.

The widely popular philosophical principle of ought-implies-can implies that if unanimous agreement is empirically unachievable, it is hard to believe it is normatively necessarily.

Hobbes, the authors of this book understand him, has a potential response to Ryan’s observation. He could say that we, the people, are dishonest to ourselves if we deny our commitment. We know in our hearts how we would behave if we were freed
from the state’s authority over us. We know our neighbors well enough to know they would behave the same. We know how that behavior would inevitably lead to violence and miseries for ourselves just as much as everyone else, and we simply cannot will it to be so. Deep down, despite what we all might stay, the state really does have unanimous support—or so a thoroughgoing Hobbesian might believe.

Whether this is the correct understanding of Hobbes or not, few theorists have found it or any other explanation for unanimous agreement to state authority plausible enough to support Hobbes’s justification of sovereignty in its original form(s). And so, as the following two chapters discuss, other contractarians have attempted to create versions of social contract theory that don’t require such a strong requirement of consent. But first, we discuss further the meaning of the Hobbesian hypothesis, how it works in contractarian argument, and whether Hobbes has an alternative justification of the state that can do without it.

3. Alternative Hobbesian justifications don’t provide a good alternative to the Hobbesian hypothesis

We believe that the interpretation of Hobbes in section 2 is consistent with the mainstream contemporary understanding of his most influential justification of the state. It differs in the extent to which it explores the nature Hobbes’s claims about the state of nature, but we do not believe it differs significantly in its understanding of how his argument works. However, there are two other ways to understand Hobbes’s justification of the state. One is an alternative interpretation of the argument outlined above. The other is a separate argument also offered by Hobbes. We address each of these in turn.

We take the alternative interpretation loosely from Ian Hampsher-Monk, Leslie Stephen, and others. In it, Hobbes is not trying to justify the state at all. He is merely giving people advice to obey the state. They should sign on to the social
contract and morally bind themselves to obedience, because it is the prudent thing to do. This version greatly simplifies Hobbes’s argument.

P1: The Hobbesian hypothesis.
C: Therefore, a binding commitment to obey the sovereign would be a prudent choice for everyone.

Morality is secondarily involved in this argument because to the extent that people are wise and bind themselves to the state, justice becomes obedience to its laws, but the argument itself is not a moral justification of the state. In the standard interpretation people do consent and they are therefore obliged to obey the state. In this interpretation, they might or might not be obliged obey the state, but if they are wise, they will oblige themselves.

The difference between these two arguments is immaterial for the argument in this book because they both rely on the Hobbesian hypothesis, and we will argue, the hypothesis is dubious. If so, both arguments are unable to support their conclusions. This argument has the benefit that it is more realistic in the sense that it does involve any claim of unanimous consent. People who dissent might be making a mistake, but we can expect some people to make that mistake. But that realism comes at the price because it raises the moral question of how dissenters should be treated. In strict Hobbesian sense, morality and immorality don’t apply to the actions of dissenters or to the treatment of dissenters authorized by the state. If one drops that view of morality, it is unclear what this argument implies about the treatment of dissenters by the state or by adherents to the social contract. Chapter 6 deals with issues relating to dissenters, but we do not return to this advice-based version of Hobbesian theory, because most contractarian theorists are interested in a moral justification of the state.

Hobbes has a second justification for state sovereignty that does not involve the state of nature. Because he believes justice is no more than the fulfillment of an
enforceable contract, he believes that morality does not apply to any two parties who have not yet made an agreement. A conquering government with de facto power over an individual but without any agreement with that individual is within its rights to kill that individual. Because everyone knows that the de facto sovereign can and will kill anyone who dissents from his rule, everyone makes a binding agreement of lifetime obedience merely to avoid instant execution or imprisonment. In this argument the agreement is between each individual and the sovereign rather than between individuals as it was in the argument outlined in section 2. No higher power is needed to ensure that the sovereign fulfills his side of the agreement, because he fulfills it instantaneously when he refrains from killing the individual at the moment at which the individual agrees to accept his rule for the rest of his life.

This justification is free from any reference to the Hobbesian hypothesis, and its empirical claims are all completely plausible. However, its empirical plausibility comes at the price of normative implausibility. Few if any philosophers, even those two consider themselves Hobbesian contractarians, believe that yielding to superior force constitutes an ethically binding commitment.

Therefore, we will only mention two criticism of this theory and then ignore it. First, the state-of-nature-based version of Hobbes’s theory does not necessarily require Hobbes’s questionable normative claim that morality is nothing more than the obedience to an enforceable contract, but this version of the justification of the state cannot do without it. Second, according to Hampsher-Monk, “Hobbes wants to distinguish slaves, who have no duty of obedience … from servants, who are obliged.”¹⁸ The alternative theory is incapable of making that distinction because the very same promise as the one extorted by a conquering sovereign from his conquered subject can be extorted by a conquering master and his conquered slave. For
additional criticism of this argument see Kavka, who concludes that this line of reasoning, “is a dismal failure. It does not solve the voluntariness problem.”

Some philosophers argue that this theory is the right interpretation of Hobbes, that it is the most important justification of government to him. This argument is definitely in Hobbes. Whether it was more important to him than his state-of-nature-based argument, which is also in Hobbes, is immaterial to us. No matter how important this theory might have been for Hobbes personally, it has little value for modern political theory, because of the wide-agreement that it is normatively implausible. For our purposes, the most important issue is not to find the “right” interpretation of any theorist but to find whether any interpretation of any contractarian provides a plausible justification of government sovereign with or without the Hobbesian hypothesis. Therefore, we return to the more valuable idea of a justification based on a social contract.

4. The Hobbesian hypothesis is a counterfactual claim

The Hobbesian hypothesis is a claim about an event that is not happening. That is, it is a counterfactual claim. Most people today do not live outside state authority. Most of them have never lived outside state authority and probably most of them never will. To make a claim about how people now living in states would live outside state authority is make a claim about a situation that does not in fact exist and that is not likely to exist.

Although counterfactuals are contrary-to-fact, they have truth-value. Consider these two statements: (1) If you go outside without heavy clothing in -44 degree weather you will be cold. (2) If you go outside without heavy clothing in -44 degree weather, your body will be so light that it will float to the moon. Statement 1 is true. Statement 2 is false. No amount of evidence that are not, that you have never, or
that probably will never go outside without heavy clothing in -44 degree weather will change the truth-value of statements 1 and 2.

Counterfactuals are important claims, without which humans could not understand causation. Arguments about the relative causes of events are arguments about the relative likelihood of various counterfactuals. 22

Counterfactual scenarios need not even be possible for a counterfactual claim to be true. Although you might never go outside without heavy clothing in -44 degree weather, it is at least possible for you to do so, and someone somewhere has probably done so. However, consider the following counterfactual claims about an impossible situation. 1. If everyone on Earth simultaneous pointed at the moon, it would not be appreciably affected. 2. If everyone on Earth simultaneous pointed at the moon, it would become so heavy that it would crash into the Earth. The coordination problem in getting everyone to point at the exact same time is so great that this scenario is impossible, but nevertheless, statement 1 is true, and statement 2 is false.

Let’s call a counterfactual claim about an impossible or nearly impossible situation a “pure counterfactual.” Let’s call a counterfactual claim about a situation that could reasonably happen a “contingent counterfactual.”

Some confusion about the Hobbesian hypothesis exists because some philosophers treat it as a pure counterfactual and others treat it as contingent counterfactual. The state of nature Hobbes describes is so terrible that people would not tolerate it for long. And so some theorists do not expect to see people ever living in a state of nature. If we got close to the state of nature, people would reestablish sovereignty. If so, claims about it cannot be verified by direct observation, but they can still be verified. No one has witnessed a global thermonuclear war, but claims about it can be address by extrapolating from other evidence. It would simply be wrong to assume that because the state of nature does not or cannot exist, no claims about it have any truth-value. This sentiment is expressed by Ian Hampshire-Monk who writes, “Just as we may never have a perfect vacuum, perhaps we can never have
a situation where there are no vestiges of the restraints that sovereignty provides, but inasmuch as sovereignty is absent, to that extent men will begin to exhibit behaviour typical of the state of nature.”

We will argue that the state of nature necessary for any plausible justification of the state is a contingent counterfactual. It is something that does not exist in our country right now, but it is something that can and does exist in the world.

People gain knowledge about the truth-value of counterfactuals by using different methods including the examination of similar circumstances, identifying regularities, and extrapolating. Knowledge of biology indicates what would happen if you were outside in -44 degree weather. Knowledge of physics indicates what would happen if we all pointed at the moon at the same time.

The Hobbesian hypothesis is a claim about causality, and therefore, it makes a counterfactual claim. The state causes you to be better off; i.e. the state makes you better off than you would be outside its authority. The problem with the Hobbesian hypothesis is not that theorists rest such important theories on a counterfactual claim—whether pure or contingent. The problem is that they do so without providing convincing evidence for the truth of that claim.

5. The Hobbesian hypothesis is an empirical claim

Section 2 asserted that the Hobbesian hypothesis is an empirical claim. To us, it is obviously so. If the statement X is better for everyone than not X is true, an empirical investigation finding people living in condition not X will find them to be worse off than people in condition X. How could it be otherwise if the statement is true? To put it another way, if one says the state must do X to be justified, and one wants to argue that the state is justified, one has little choice but to include the premise that the state as a matter of empirical fact does X. It simply is empirical.

While we believe that most philosophers who have looked at the role the state of nature plays in the justification of the state agree that some empirical claim is
required, there has been confusion about it. We believe the biggest source of confusion is that most people who have employed or built on Hobbesian theory have not clearly stated whether their proviso has empirical content, how they specify the criteria necessary to fill the proviso, and what evidence we have that the criteria has been fulfilled. They spend a great deal of normative argument justifying their criteria, and then nearly always ask the readers to take it as obvious that this criteria is achieved. Chapter 6 shows specific examples of how philosophers do this.

There is virtually no debate in the philosophical literature over whether contractarianism requires empirical claims, what they are, or how we know whether they are true. There is controversy. When we present these ideas, philosophers are usually split between those who believe that contractarianism requires the Hobbesian hypothesis or whether it can be justified on a pure a priori basis. Yet, we have been unable to find any significant debate about this issue in published literature. It is as if readers are expected to accept that some criteria exists that the state must satisfy to be justified, but that criteria does not need to be clearly specified, because it is so obviously satisfied. Chapter 6 discusses this issue more. This section argues that Hobbesian theory does in fact use the Hobbesian hypothesis and that any similar contractarian justification of the state should be expected to require empirical claims.

Subsection A shows that despite Hobbes preference for a priori methodology, he is less guilty of a lack of clarity on this issue than most subsequent Hobbesians. He treats the Lockean proviso like an empirical criterion and uses empirical reasoning to argue for the Hobbesian hypothesis. Following subjections address possible reasons for confusion and possible argument in favor of purely a priori contractarianism. The final subsection argues that any contractarian argument of a Hobbesian type cannot do without a Hobbesian hypothesis.
A. Hobbes treats his hypothesis as an empirical claim

Hobbes praised a priori methodology and denigrated historical, observation, empirical methodologies. According to Tim Sorell, Hobbes believed, “Histories were extraordinarily unsuitable sources of political wisdom, and were not even indispensable as records of instructive political experience. A much better source of experiences relevant to gaining political wisdom was introspection taken together with genuine political science.” This observation does not mean that Hobbes objected to the use of empirical evidence; only that he objected to historical accounts as an accurate source of empirical facts.

However, Kavka suggest that Hobbes had a failed aspiration to be a pure a priori theorist. He attempted to use introspection to create a scientific theory of politics, which, like geometry, would be built up from definitions by pure analytical reasoning. Kavka writes, “This aspiration is unfortunately grounded in a mass of methodological confusions. Most fundamentally, Hobbes fails to distinguish properly between logical and empirical relations. … It was only by conflating logical deduction and causal reasoning that Hobbes could have dreamed of a purely deductive politics derived solely from definition.” Hobbes’s actual method, according to Kavka was, “logical and conceptual analysis combined with empirical observation and probabilistic reasoning.”

Not everyone agrees that Hobbes was this unaware of his own method. According to Ian Hampshire-Monk, although Hobbes believed science is established by introspective reasoning, Hobbes recognized that it “requires an experiential check on the validity of the results achieved.”

Whether Hobbes was aware of what he was doing as Hampshire-Monk supposes or unaware as Klosko supposes, he did not treat his argument as pure a priori. Hobbes’s three supporting arguments for the Hobbesian hypothesis all treat it as an empirical claim. We discuss each in turn.
1. Using assumptions about human nature, he makes a logic argument how people are likely to behave in the absence of state authority. This supporting argument (described above) is a priori only in the sense that it doesn’t refer to empirical support for its claims, but it is an empirical argument in the sense that it relies on claims about human nature, and claims about how that nature plays out in different circumstances. Either his claims reflect how humans in our world behave or they do not. Either the existence of people with those natures lead to the consequences he supposes in the circumstances he describes, or it does not. Hobbes apparently believes his introspective claims and his hypothetical model are so obvious that he needs little support from observation. If so, it should be easy to confirm if we can find people in those circumstances. And Hobbes doesn’t believe it is difficult to find confirming examples.

2. He discusses the horrors of a civil war, arguing that it illustrates what happens in the absence of sovereignty. This argument, which is probably the most important throughout Hobbes’s writing, is an empirical argument about what does and does not happen in civil disorder, and it thereby seems to admit that his claims about the state of nature have empirical content.

3. Hobbes cites—what was to him—the most readily available example of people living in stateless societies: Native Americans. He writes:

   It may peradventure be thought, there was never such a time, nor condition of war as this; and I believe it was never generally so, over all the world; but there are many places where they live so now. For the savage people in many places of America, except the government of small families, the concord whereof dependeth on natural lust, have no government at all; and live at this day in that brutish manner.
This list explicitly mentions native peoples as an empirical example of the state of nature meant to bolster his empirical argument about how all humans would behave in such circumstances. Kinch Hoekstra argues, “Some elements of Hobbes’s description of the natural condition can be traced back to early anthropological accounts of the Americans. … his famous litany of what that condition lacks … is an adaptation of a hyperbolic trope, characterizing uncivilized peoples by a negative list, which became conventional in the century after Columbus landed.” His use of Native Americans as an example of the state of nature is not limited to *Leviathan*. The cover of his book *De Cive* makes reference to the presumed misery of native peoples. Hobbes clearly believed that his hypothesis is true about indigenous people, and he needs it to be true because many indigenous societies are stateless and his justification of the state was based primarily on the claim that sovereignty was always better for everyone than statelessness.

Ryan explains the empirical claim in plain language,

> Like many of his contemporaries, Hobbes thought that the Indians of North America were still living in the state of nature. More important, the inhabitants of Britain had been in that condition during the Civil War; so not only was the state of nature a historical fact but relapse into it was a standing danger.”

Hobbes can’t make these references without acknowledging that his hypothesis can be confirmed by observational evidence. If something can be confirmed by evidence, it can also refuted by observation evidence.

**B. This is not an attack on the a priori method altogether**

People often misinterpret any empirical attack on a primarily a priori theorist as an attack on the a priori method in general. Perhaps the reason for this is that there is an old debate between the theoretical and historical methods. It has been going on
for centuries, and it continues to day. One side thinks that normative philosophers should get their deepest principles by a careful study of history. The other side thinks that the deepest principles are fact-independent normative principles that cannot be verified or falsified by empirical observation. This argument has nothing to do with that debate. The arguments in this book do not apply to any pure a priori theorist. They apply to applied theorists who use dubious empirical claims. While a philosopher taking the historical side of this might argue that all philosophers should read anthropology, we offer philosophers a choice: don’t make claims about anthropology, or if you do, research them to make sure they’re true.

People are tempted to pigeonhole the argument here into that familiar debate, and think that we are criticizing Hobbes because he was an a priori philosopher. Quite the opposite, if he were truly an a priori theorist, we would have nothing to say about. Our criticism is that he is an applied philosophy, and he and many other applied philosophers, have made dubious claims about anthropology.

The need empirical claims in contractarian theory should not be surprising. Just as any normative argument requires at least one normative premise, any applied argument requires at least one empirical premise. Despite his preference for a priori reasoning, Hobbes clearly wants to apply his conclusions to the world we live in. He wants to be an applied philosopher, and therefore, he needs empirical premises. Even Hobbes’s ideal science of geometry, which builds up an enormous amount of information about—say—triangles from definitions and pure a priori reasoning, cannot say anything about the world we inhabit unless the theorist makes at least the empirical claim that there are things in the world which approximate triangles closely enough to make geometric theories of triangles applicable.

One might be able to make a very good a priori argument for their version of the Lockean proviso. They might be able to use fact-independent normative principles to argue that the state is only justified if it does X. But once they say state A has done X, they are making an applied claim that can only be verified by empirical evidence.
If X is that the least advantage people in state society are better off than everybody in stateless society, they have made a claim about anthropology that’s not a part of anyone’s everyday experience. They have made a claim that needs research.

C. “Better off” is a normatively loaded term

One might suggest that the claim that everyone is better off in state than another is not an empirical claim because the concept of being “better off” is normatively laden. One could simply define better off as being part of a state and the Hobbesian hypothesis would be true by definition, but of course, any argument based on it would be tautological and worthless. This is clearly not what Hobbes or any other contractarians are trying to do. They have usually not been entirely clear about exactly how they define better off, but they clearly appeal to the ordinary notion of overall welfare. Whatever definition of welfare they might use, and whatever normative principles go into determining it, to be a meaningful claim in the argument, it needs to be something that is not link to the definitions of state and stateless and something that can be shown to be greater in one situation than the other.

Hobbes described life in the state of nature as being horrible in just about every conceivable way. Therefore, he did not need any rigorous welfare measure to tell that even the most disadvantaged people in state society are far better off. Modern contractarians might wisely want to drop that implausibly strong claim, but then they need a more rigorous definition of welfare so that they can make a meaningful comparison.

D. The use of a counterfactual does not free one from the need for factual truth

Another source of confusion might the counterfactual issue mentioned in the previous Section 2. But, as that section showed, counterfactual claims, even pure counterfactuals, are statements with empirical truth-value. Even if the state of nature
is so horrible that no one would allow it to exist for very long, as society approaches the state of nature, things should start to approach Hobbesian horribleness, and that horribleness should be attributed to the weakness of sovereignty. In addition, a dispassionate researcher has to remain open to the possibility that the Hobbesian description of the state of nature is wrong. Life outside of sovereign authority might tolerable enough that would allow it to fully exist. Stateless societies fully fitting the contractarian definition of the state of nature might exist without conforming to the Hobbesian description of the state of nature. If so, the Hobbesian hypothesis is not to a pure counterfactual even if Hobbes or any other contractarian theorist thought it was.

E. Past empirical discussion of Hobbes has focused on the wrong claims

One source of confusion about the nature of the empirical claims in Hobbesian contract theory comes from the story Hobbes tells of the origin of the state. In the story, humanity begins in the state of nature. People find a way out when they agree to appoint an individual to act as sovereign. This story is clearly for the purpose of illustration, but it has deflected much of the empirical attention. Philosophers have been concerned with the issues of whether the state of nature preceded the first states and whether the first states began with an act of people coming together to appoint a sovereign. Neither of these claims are relevant. All that matters for the social contract justification of the state is the counterfactual claim that everyone would be worse off outside state authority than under it. That claim has nothing to do with Hobbes’s story about the origin of the state, and that claim—if no other—requires empirical support.

F. Those who have written on the issue have recognized the empirical nature of the claim

Few published works consistently defend the position that contractarian theory can successfully justify any existing or potential state without any empirical premises,
and we find a great deal of twentieth and twenty-first century literature argues that Hobbesian theories require at least some empirical premise(s).

Hampsher-Monk, argues that Hobbes’s description of the state of nature was an “inference, made from the Passions” or “a logical deduction from the situation and properties of natural man.” People are capable of making right and wrong inferences about the passions and properties of people. Hampsher-Monk recognizes that such an inference is the kind of thing that “requires an experiential check.” He makes clear when he writes, “inasmuch as sovereignty is absent, to that extent men will begin to exhibit behaviour typical of the state of nature.”

Alisdair Macintyre argues that empirical claims are involved in Hobbes’s theory, “They are thus factual statements which may be true or false; … the desires named in the antecedent clauses are the desires which all men do, as a matter of contingent fact, have.” Yet, he is skeptical that Hobbes’s claims are historical, “Hobbes does in passing refer to the American Indians, but his whole argument is based on a method that makes him independent of historical evidence. He is resolving timeless human nature into its timeless elements, not recounting an evolutionary progress.” This statement is a reference to Hobbes’s story in which government originates by contract. Macintyre is saying that it does not matter how the state began, but of course, we have already argued that Hobbes’s story about the origin of the state is immaterial. As Leslie Stephen, wrote in 1904:

The hypothesis that States were deliberately contrived and made by a bargain between the separate atoms is, of course, absurd historically, but is also irrelevant to Hobbes. The essential point is simply that settled order is so much more favourable to self-preservation than anarchy that every one has a sufficient interest in maintaining it. Peace, as he tells us, means all the arts and sciences that distinguish Europeans from Choctaws.
Tim Sorell writes, “Hobbes’s politics was supposed to be a science. It was supposed to offer sure principles of submission and sovereignty that might be applied universally.” Although Hobbes does not recount a history of how society evolved, his argument is not—therefore—indeed independent of all evidence gained from history. If he has successfully developed a *universal* and *timeless* theory, then all observed people—people near or far, people in recent times or in the distant past—will behave in the way Hobbes predicts whenever they are in the circumstances he describes. Thus, evidence from the Pleistocene, from pre-colonization North America, from contemporary failed states, and from contemporary stateless societies is equally relevant. If human need for the state to create a settled order is a timeless truth, it must be as true for the Choctaws as anyone else.

Jean Hampton uses the hypothetical-agreement version of contract theory, which frees it from empirical claims about consent, and proceeds to explain how the “agreement instituting a ruler is supposed to be hypothetical and yet justificational.” It is only the *agreement* that is hypothetical, not the counterfactual claim that life is worse for everyone outside state authority must be true for this hypothetical agreement to be justificational as Hampton makes clear, “Having established a need for the state, the contractarian uses his state-of-nature story to insist that we have an authoritative reason for meeting that need.” If at least some people do not in fact have need for the state in the sense that they have a reasonable expectation of being better off in a stateless society, even a hypothetical agreement has no justificational force to them.

C. B. Macpherson writes “Hobbes’s state of nature, as is generally recognized, is a logical not an historical hypothesis,” but what he means by this is that a state need not have been instituted by contract, “The sovereign by acquisition has the same rights … as the sovereign by institution.” To say that the state of nature is a logical hypothesis is not to say that it has no empirical truth-value, as Macpherson makes clear,
The state of nature depicts the way in which men, being what they are, would necessarily behave if there were no authority to enforce law or contract. Given the appetites and deliberative nature of man … this is the way they would necessarily behave if law-enforcement and contract-enforcement were entirely removed.\(^45\)

If the state of nature is an accurate depiction of how people being what they are would necessarily behave outside of the authority of a sovereign government, then people living without such authority will necessarily behave in this manner. All instances of people living in stateless societies must show people living a miserable existence compared to people in state society. An investigation is relevant and needed to determine whether the logical hypothesis is applicable in the world we inhabit.

J.R. Lucas appears to defend a purely a priori version of Hobbesianism when he writes, “The state of nature is, paradoxically, an artificial concept.”\(^46\) But on elaboration, it becomes apparent that Lucas here is defining “the state of nature” as the absence of society rather than as the absence of sovereignty. The next lines he writes are,

> Philosophers imagine what life would be like if certain features of civil society were absent. But since men are social animals, they cannot live completely unsociably, and we cannot picture human life with all features of human society removed. … we cannot think of human beings who are never members of any community, and therefore cannot make them the starting point of our enquiry.\(^47\)

This quote conflates Hobbes’s description of the state of nature with Hobbes’s definition of the state of nature. As argued above, the state of nature used in the justification of the state is defined merely as the absence of state authority. Whether it is also the absence of community or society depends on whether Hobbes was right
about the impossibility of maintaining society without sovereignty, and that is an empirical claim that needs to be verified by observation before one should accept it.

Lucas goes on to assert what might be interpreted as the position that a priori reasoning can show that the state of nature is inherently violent, “We then are faced with the logically exclusive alternatives of either having conflicts settled by some method, the results of which are binding, and can be enforced—and this means having coercion and the State—, or of having all become violent conflicts, settled only by resort to force.”

It’s unclear what Lucas means by “logically exclusive alternatives.” All good arguments are logical whether they are empirical or a priori, but people sometimes use the term “logical” as the equivalent of a priori. Even if his argument were completely a priori, it would not be invulnerable to an empirical check. If we find people living together peaceably, we must always find that they are subject to state authority. If we find a group of people who meet Lucas’s definition of stateless and find that not all conflicts among them become violent we have falsified his conclusion and shown that he has a bad argument. We haven’t shown exactly what is wrong with the argument, but any argument for the truth of a demonstrably false claim is necessarily bad. A sovereign state, for Lucas, is a single, coherent system to settle disputes and to enforce their resolution; under the state people do not resolve conflicts “any old how.” This condition is among those we look for in chapter 6.

But Lucas’s argument turns out to be straightforwardly empirical after all. This aspect becomes clear when he argues that a higher coercive power is not necessary to keep the peace among states even though it is supposedly necessary to keep the peace among individuals. In the case of individual conflict, he argues the advantage is so much to the attacker that people without a sovereign peacekeeper will always have such a strong incentive to make preemptive attacks to make violence inevitable. But he argues this situation is not so among nations. Attack is not always successful. When it is successful, it is often too costly to be worthwhile. And even
when it is not too costly, retaliation is more likely because nations can’t hide their location the way individuals can. These might or might not be good arguments, but both of them are based on empirical, observational premises.⁵⁰

Kinch Hoekstra finds this same kind of empirical reasoning in Hobbes’s discussion of states, “Hobbes is explicit that the aggressive stance of sovereigns toward one another is for the good of their subjects, and that ‘there does not follow from it that misery which accompanies the liberty of particular men.’”⁵¹

The reliance on empirical arguments to separate behavior of individuals in the state of nature from the behavior of sovereigns is not trivial. Contractarians expect everyone to know that sovereigns can at least sometimes live together in a state-of-nature relationship without violence becoming intolerable either for them or for their subjects. They also expect everyone to be able to tell without any observation evidence—much less direct experience—that people living in stateless societies can never live together in peace. But rather than seeking empirical confirmation, most contractarians seem to assume readers share their confidence in introspective reasoning.

Richard Tuck explains the importance of the empirical nature of the Hobbesian hypothesis in the editor’s introduction to the Cambridge edition of \textit{Leviathan}, writing, “[Hobbes] envisaged the kind of conflict which constituted the state of nature as something which could straightforwardly arise in practice, and which had frequently done so. Indeed, its heuristic power was precisely that it represented a real threat, which civil society was designed to pre-empt.”⁵²

David Gauthier, one of the most prominent contemporary Hobbesians makes the empirical nature of the hypothesis clear,

[T]he evils of civil society must be set against the evils of the state of nature. And if the state of nature is truly intolerable, then civil society must be preferred. The question is not whether civil society is unpleasant, but whether
it is less pleasant than some possible alternative. Thus the only effective objection must be to show either that the state of nature is not a state of war of all against all, or that the rights and powers of the sovereign can be limited without sacrificing the advantages of civil society. And both of these, Hobbes could claim, are ruled out by the nature of man. If there is an objection it is not to the political theory, but to the psychology.\(^\text{53}\)

Our response in Chapter 6 follows one of Gauthier’s suggestions of possibly effective objections: it shows that the state of nature as Hobbes defines it is not necessarily intolerable.

George Klosko argues that to show that the state is mutually beneficial requires that it provides benefits that people need and that can only be provided by the state. These requirements ensures that issue is empirical: “Assessment of conditions under which people are and are not able to provide indispensable benefits without state assistance raises complex empirical questions. … Empirical aspects of political obligations are not always recognized.”\(^\text{54}\)

Other contemporary theorists recognizing the importance of this empirical claim include Gregory S. Kavka, Russell Hardin, and Kinch Hoekstra,\(^\text{55}\) who writing in *The Cambridge Companion to Hobbes’s Leviathan*, recognizes that the contractarian justification of the state requires an empirical hypothesis:

Does Hobbes think that the natural condition of war of all against all ever did or could exist? His readers have long denied it; but if the scenario is unreal, it is hard to see how it is supposed to be pertinent, and more particularly how it can tell us anything about the nature of our obligations.\(^\text{56}\)
G. One should not expect pure a priori reasoning in the argument

**Hobbes gives for the state**

People who want to categorize Hobbes as a pure a priori theorist might be tempted to say that the state of nature is merely a heuristic or an ontological assumption, but one must be careful about what claims can be interpreted as such without robbing the argument of its meaning. The story of the original contract certainly can be interpreted as such, but a purely fictional characterization of all claims about the state of nature would make contractarianism or any other mutual-advantage theory incapable of justifying the state.

To see the need for an empirical claim, compare Hobbes to a mother explaining to a little boy why he shouldn’t touch a hot burner on a stove. She might say, “once upon a time, before little boys learned to take advice from their mothers, they used to touch hot stoves. They got burned and they learned, and now all wise little boys take their mother’s advice and never touch hot stoves.” Most of these claims are merely illustrative and can be discarded without affecting the mother’s theory of why the child should follow her advice. She can do without the claim that there actually was a time before little boys learned to obey their mothers. She can do without the claim that there was even a single boy who actually burned himself on a hot stove. But she cannot do without the counterfactual claim that if her boy were to touch the hot burner, he would get burned. Dropping that empirical claim leaves the little boy with no compelling reason to avoid touching the hot burner, except perhaps, “because I said so,” which might be a compelling reason for a little boy to follow his mother’s advice, but it is not a compelling reason for the human race to follow Hobbes’s advice. Hobbes doesn’t need to do social history. He doesn’t need to say that the state of nature is more natural than a sovereign government or that humanity began in a state of nature or that humanity got out via a voluntary compact. He only
needs to talk about our world and what is in it today, but has to say something factual about our world if he wants to justify states in our world against the alternatives that are possible in our world.

Certainly the following is a very bad argument:

P1: I can tell a story, in which everything is terrible without X.

P2: This story is pure fiction with no empirical analog.

C: We are justified in forcing X on everyone.

This is the kind of argument one would be left with if the Hobbesian hypothesis were interpreted as a mere heuristic or ontological assumption akin to the claim that people in the state of nature really do come together and appoint a sovereign.

To see the limits of a completely fact-free interpretation of the state of nature, consider the giant chicken justification of state sovereignty. A giant chicken, several times the size of the Earth, lives on Jupiter. It’s a big fan of sovereignty. If humans don’t organize themselves into states and obey state authority, the giant chicken will flap its wings, fly to the Earth, and swallow it whole. Don’t worry about the factual elements of this story; they are merely ontological assumptions. The giant chicken is not a metaphor for the anarchy or for any verifiable or falsifiable empirical claims about reality. Nevertheless, this theory explains why state authority is justified in reality and gives individuals in our world compelling reason to obey the sovereign.

Is the state-of-nature justification of state authority better than the giant-chicken justification of state authority? We concede that it is. But why is it better? The only reason we can see to explain the superiority of the state-of-nature counterfactual is its greater empirically plausible. The giant chicken presents a dilemma for anyone wishing to argue that social contract theory involves no necessary empirical premises. Either they need to accept that the giant-chicken justification is just as good as the state-of-nature justification, or they need to come up with some
argument for state-of-nature theory’s superiority without relying on its greater empirical plausibility. With no such argument readily apparent, we believe we have demonstrated that the Hobbesian hypothesis is and must be an empirical claim and a necessary premise in the contractarian justification of state sovereignty.

The logical need for contractarianism’s central empirical premise (the Hobbesian hypothesis) is dictated by its central normative premise (the Lockean proviso). If one asserts the proviso as essential to the justification of the state, and one wants to justify a state, one has little choice but to make the empirical claim that the proviso is fulfilled. Other empirical claims (such as the original agreement) can be dismissed as mere heuristics. Other theories not relying on a Lockean proviso might not need the Hobbesian hypothesis, but contractarian reasoning as usually stated has little left in justification without it.

The Hobbesian hypothesis does not need to be specifically about any existing or past societies, but—if social contract theory is going to succeed in justifying sovereignty—the dichotomy has to be real. There must be only two alternatives: a state of nature that is unacceptable to everyone compared to government sovereignty. To repeat Hampton’s words, “inasmuch as sovereignty is absent, to that extent men will begin to exhibit behaviour typical of the state of nature.” This claim needs to be investigated.

6. The Hobbesian hypothesis is a strong claim

The Hobbesian hypothesis is a strong claim, in the sense of far-reaching rather than in the sense of well-supported. It is strong in the way the claim “Everybody hates Chris” is a stronger claim than “some people dislike Chris.” Literally speaking, The Hobbesian hypothesis implies that the worst placed individual in state society is better off than the best-place individual in the state of nature. Perhaps it could be interpreted more loosely, but few contractarians have clearly specified what a less-than-literal interpretation of “everyone” implies for the people who aren’t part of that less-than-
literal everyone. Hobbes’s argument can make use of a literal interpretation of everyone because everyone in the state of nature and no one understate authority is under imminent fear of death. If anyone under state authority does come under imminent fear of death, Hobbesian theory releases them from their obligation to obey, and they return to the moral free-for-all of the Hobbesian state of nature. Everyone for Hobbes means everyone. That is a strong claim, but relaxing it is not easy for any mutual advantage theory, because is everyone doesn’t literally mean everyone then mutual advantage hasn’t actually been achieved.

If they were to endorse a less-than-literal interpretation of everyone, then they would have to recognize the existence of dissenters—rational, reasonable, well-informed people who have good reason to believe that the state as constituted is harmful to them. A large moral discussion on the treatment of dissenters would be required. Such a discussion is absent from contractarian literature, implying that they too use a literal interpretation of everyone. Contemporary state societies have access to so many resources and so much technology that it would seem possible to benefit literally everyone at least in an ex ante sense. And so this strong criteria is not an unreasonable standard.

By ex ante benefit, we mean the sense in which everyone benefits from the existence of speeding ambulances. Presumably, we’re all better off because speeding ambulances exist, even though once in a while a speeding ambulance will hit a pedestrian who never in her life would actually have needed an ambulance. Ex post (after the accident) that person can say the existence of ambulances made her worse off, but ex ante (before the accident) knowing she was much more likely to need an ambulance than that she would be hit by an ambulance, she had good reason to believe that she benefited from the existence of ambulances. Even so, speeding ambulances are closer to truly benefiting everyone if we compensate such people to bring them as close as possible to the point at which they are unharmed by the ambulance.
Exactly where to draw the line between ex post and ex ante is not obvious. Consider an economy with 10 percent slaves who are worse off than if they were in the state of nature but 90 percent non-slaves who are better off than if they were in the state of nature. Slaveholders could say that ex ante (before birth) slaves would have chosen to be born into the slave economy because they had a 90 percent chance of being better off than in the state of nature; therefore, they cannot complain ex post (after birth) that they are worse off than in the state of nature. Such reasoning would collapse into maximizing the welfare of the average individual regardless of the negative affects on marginalized groups, and that would eliminate the advantage that contractarian theory is supposed to have over utilitarianism.

We don’t know of a thorough contractarian discussion of the issue of exactly what they mean by benefiting everyone, and it would be inappropriate for us to specify this principle for contractarians. We will try to be open-minded about what they might mean, but still, any reasonable conception of the Lockean proviso is a strong criterion.

We take the criterion to be that a representative person of the most disadvantaged recognizable group is at least as well off as they could reasonably hope to be in any stateless environment. It also implies that people wouldn’t needlessly be exposed to risks for the benefit of others; the extraordinarily unlucky are extraordinary in their luck; they are not extraordinary in their exposure to danger by more advantaged people. The comparison of the best reasonable expectation in the state of nature to the worst reasonable possibility in state society follows from contractarian assumptions, in which the state of nature needs no justification, but the imposition of sovereignty does. It might be normatively plausible to base a justification of the state on benefits that are less-widely shared than this, but doing so moves out of the realm of mutual advantage theory and brings up normative questions that contractarians rarely address (see Chapter 7).
A strong criterion would not be a problem for a theorist who wanted to set a high bar that only a better state could pass. But most contractarians want to show that the states they live in (or a very similar state) are, in fact, justified. Hobbes, for example, wanted to show that all state societies no matter how oppressive were inherently superior to any conceivable version of the state of nature: any person or institution that succeeds in being sovereign over a territory is necessarily justified because people are always better off under any sovereign than under no sovereign.

A strong claim requires strong evidence to back that up, but strong evidence is absent from contractarian literature.

7. The Hobbesian hypothesis is a claim about prehistoric and small-scale stateless societies

A reader can tell that the Hobbesian hypothesis is a claim about prehistoric or small-scale stateless societies, not only because Hobbes mentions stateless societies several times, but also because the hypothesis—as Hobbes uses it—is a claim about all situations in which people are together with no sovereign authority over them. Hobbesian theory needs a dichotomy: either there is a state, or there is destructive chaos that makes life worse for everyone—not just the majority but everyone. He justifies the state partly on the claim that all alternatives to state society are inferior to all fully sovereign states. This claim is about all small-scale societies—whether contemporary or prehistoric—because all societies below a certain scale are stateless.⁵⁸

Verification of the Hobbesian hypothesis requires verifying it for all alternatives to the state. Falsification of if it requires only one example of a stateless society that conforms to Hobbes’s definition but conflicts with his description of the state of nature. Critics can focus on one alternative; supporters have to address all alternatives to provide a plausible justification of the state. Hobbes would require a
different and more complex argument if he were to use the claim that some alternatives to the state are inferior to some states.

At least one prominent contemporary political theorist agrees that evidence from small-scale societies has the potential to falsify the Hobbesian hypothesis. Alan Ryan writes, “There are many societies that anthropologists call acephalous. They have no stable leadership; there is nothing resembling law or politics in their daily life. Such societies persist for long periods. …. Hobbes seems to suggest that their existence is impossible to explain.”\(^{59}\) We intend not only to make a more empirically rigorous argument to this affect but also to make a farther-reaching argument. Ryan’s observation, even if fully verified, falsifies only an extremely strong version of the Hobbesian hypothesis—that levels of violence in stateless groups are so high that they make society impossible. Hobbes did say this, but it his argument works just as well with the softer claim that levels of violence (although not high enough to make society impossible without sovereignty) are sufficiently high that everyone given the choice would prefer the greater security of state society.

The Hobbesian justification of the state could also be sustained with an even softer version of the hypothesis that doesn’t stress violence as the sole causal factor. One could say that for some other reason, such as the inability to enforce contracts or to organize large-scale cooperation,\(^{60}\) the welfare level of people in stateless society is so low that no one prefers it to state society. Whatever the welfare level is in stateless societies and whatever the reason, the contractarian argument is that sovereign governments do better. The proviso establishes the welfare level of people in stateless societies as the baseline of comparison for people in state society. If some reasonable approximation of everyone makes it to that threshold (i.e. if the Hobbesian hypothesis is true), the Lockean proviso is fulfilled, and the minimal conditions necessary to justify government in contractarian terms are met. If not, the justification fails, and presumably, states will have to start treating their disadvantaged people better to meet those minimal conditions.
Ultimately then, can we say that the question that began this chapter matters? The justification of our social arrangements requires our fellow citizens are at least as well off as our ancestors were before the authority to impose those arrangements arose? Hobbes, as shown above, is willing to assert the empirical claim that they are better off, but later Hobbesians sometimes indicate a willingness to bracket the issue of people in small-scale societies. They might suppose that these societies are not the primary example he had in mind. Although Hobbes mentions Native Americans, civil war was his primary concern. Such an argument might look something like this. Even if small-scale stateless alternatives are or were a possible alternative to the state, civil war—or something closer to what people today call a “failed state”—is the only relevant alternative to contemporary states.

Our primary contention is that it does not matter what he had in mind; what matters is his definition of the state of nature and how he used that claim in his argument. He—like many other contractarians—based his argument on the claim that statelessness is inherently dangerous: “Out of civil states, there is always war of every one against every one.”61 As we have said, he would need a different argument if he dropped the claim everyone is better off in state society than everyone in stateless societies. Chapters 4 and 5 show that many other contractarians rely on similar claims. Chapter 6 focuses on small-scale stateless societies as a contrary example. It will show that they meet the contractarian definition of the state of nature but that they do not resemble the contractarian description of it. Chapter 7 discusses the implications of that falsity including the issue of whether contractarians can bracket the discussion of small-scale societies and justify the state by comparison only to the possibility of civil war. Until then, we deal with the main thrust of the contractarian justification of sovereignty and potentially the most conclusive justification of sovereignty: that the state is inherently better than any and all stateless environments.
8. The Hobbesian hypothesis is a myth

We have argued that the Hobbesian hypothesis is a necessary claim in the Hobbesian justification of the state, that it is a strong, empirical claim about all stateless environments, including small-scale indigenous communities. Strong claims require strong support. As we will see in the following two chapters, that support is absent from the conversation.

The stunning feature of social contact literature is how quickly Hobbes and centuries of Hobbesians go from normative proviso to empirical hypothesis. They dedicate extensive argument to establish the normative need for the Lockean proviso. Then, with little or often no argument, they simply ask readers to presume the proviso is fulfilled, often without specifying exactly what the claim of fulfillment means empirically, much less undergoing an empirical investigation.

The correct word for an unverified empirical claim is a *hypothesis*. Hence we are unapologetic about attributing this term to Hobbes and other theorists making similar claims although few of them use that word. The correct word for an unverified empirical claim that is accepted without scrutiny and gains credibility from centuries of repetition is a *myth*.

Hobbes is not entirely to blame for his hypothesis becoming a myth. He did not ask people to accept it as given. He provided more supporting for it than all or most contractarians who have passed it. He argued for it in theory and by casually presenting what observational evidence he had available. Perhaps he should have known that his contemporaries’ observations of indigenous peoples were heavily tainted by prejudice, but those were the only observations he had available. Perhaps he should have known that his contemporaries were so willing to accept his hypothesis only because they had such strong prejudices against peoples who lived in small-scale societies. Nevertheless, his hypothesis is a myth today only because so
many people accept it and pass it on without seeking confirming evidence even as the prejudices that spawned it have been convincingly disproven.

Myths, of course, are not always bad things. Many of them are useful morality tales. The myth of Narcissus warns people to be less self-centered or risk becoming dangerously self-obsessed. If overly self-centered behavior is self-destructive, the story tells a greater truth even though no Narcissus ever lived. But myths become destructive when they function to excuse our bad behavior. Suppose one community had the myth that God instructed man to take dominion over women, who can only thrive under the guidance of a firm male hand. If women as a matter of empirical fact actually did need that firm male hand, this story would illustrate a greater truth whether or not its ontological assumptions about the instructions coming directly from God were true or false. But, women do not need a firm male hand. Here we assert an empirical claim without providing evidence, because we expect most of our readers have sufficient direct experience to accept the claim without argument. If we are correct, the story does not illustrate any greater truth. Belief in it encourages, excuses, and comforts men who oppress women. That is a destructive myth.

Whether the Hobbesian hypothesis is true or false determines whether social contract theory is a similarly destructive myth. The Hobbesian hypothesis tells the advantaged people in society that there is this horrible state of nature out there, that everyone in society today is far better off than they would be in that horrible state of nature, and thereby it gives the advantaged people an excuse to treat the disadvantaged people in their society more poorly than they otherwise might. They pass homeless people, jobless people, and people living in squalor and fear, but they tell themselves that their society is basically just. It might not be completely fair, and it might have to help disadvantaged people as much as it possibly can, but it has benefited them; it has saved them from the real threat of life in that horrible state of nature. If this is true, advantaged people can take some consolation from contractarian
theory, which tells them if nothing else, our state shares its benefits widely enough to satisfy the minimal requirements to justify the powers it holds over them.

But if the Hobbesian hypothesis is false, the institutions we impose on the disadvantaged harm them rather than help them. Under those empirical circumstances, our constantly telling ourselves that we have saved the disadvantaged from a horrible fate can do nothing but ease our consciences and thereby facilitate mistreatment. If we accept contractarian moral theory, a false empirical belief in the Hobbesian hypothesis tells us we have treated the disadvantaged well enough to satisfy the minimal conditions of justice, when in fact, our own moral theory says we have not done enough. That is when a myth becomes destructive.

If the Hobbesian hypothesis is false, social contract theory implies the state as currently constituted is unjustified: either it should treat the people better, or it has no legitimate authority over them. To anyone who accepts this justification of the state, the truth or falsity of this hypothesis is enormously important.

The scientific way to handle a hypothesis that plays such an important role in moral theory is to specify it clearly and investigate its truth-value. Any hypothesis should be accepted, rejected, or treated as uncertain based on the best available empirical evidence. An investigator can observe people in societies where sovereignty is absent or nearly absent to see whether they exhibit behavior predicted by the Hobbesian theory of the state of nature. If the observer finds that people who have tried to live outside sovereign authority are everywhere and always frustrated and miserable, the hypothesis is confirmed. If not, the hypothesis should be rejected.

Contractarians have consistently neglected to conduct any such investigation. In our examination of 350 years of contractarian literature, we have been unable to find any rigorous effort to examine people attempting to live without sovereign authority. Instead we see contractarians assuming that hypothesis is true, implying that it does not matter after all, or not being quite clear which of those two positions they take.
Before we investigate this claim, we need to establish its relevance not only to Hobbes but also to contemporary theory. Many philosophers have tried to soften some of Hobbes’s implausibly strong claims to create a more convincing contractarian justification of the state. The following two chapters trace the history of the Hobbesian hypothesis as it makes its way from seventeenth- to twenty-first century political theory to show not only that the hypothesis is still being asserted by contemporary contractarians, but also that a very similar claim has found its way into the most prominent contemporary rights-based justification of private property.
Bibliography


6 Thomas Hobbes, Leviathan (Glasgow: Collins, 1962)., p. 100
7 Gregory S. Kavka, "Hobbes's War of All against All," Ethics 93, no. 2 (1983)., p. 292-293
8 Ibid., p. 92
9 Ibid., p. 295
11 P1, P2, etc. stand for premise 1, premise 2, etc.
12 C1, C2, etc. stand for conclusion 1, conclusion 2, etc.
13 See explanation below.
15 Hobbes does have an answer to this, but few find it plausible. Because he believes morality is nothing more than the fulfillment of a contract, if there are people who dissent from the social contract, morality does not apply to them. The state could authorize any treatment of them it wished up to and including slavery and extermination. Anyone unwilling to follow Hobbes down this path either has to claim that there are no real dissenters or come up with a theory of the moral treatment of dissenters. The latter options is a problem for contractarians because mutual advantage does not apply to dissenters and contractarian moral theory is based entirely on mutual advantage.
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26 Kavka, "Hobbes's War of All against All.", p. 4-10
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28 Ibid., p. 4
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33 Ryan, "Hobbes’s Political Philosophy.", p. 218.
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42 Ibid., p. 271.
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47 Ibid., p. 62
48 Ibid., p. 65
49 Ibid., p. 12, 55, 65
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51 Hoekstra, "Hobbes on the Natural Condition of Mankind.", p. 118

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See Chapter 6.

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Hobbes, *Leviathan.*, p. 100, emphasis added