Prehistoric Myths in Modern Political Philosophy

Karl Widerquist and Grant S. McCall

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*Online appendices for Chapters 2 and 5–8 are available at http://
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PREFACE

KARL WIDERQUIST

This is an odd book with an odd history. Grant and I began working on it in about 2007, but we didn't know who the other one was until 2010. For me, it started when I was at Tulane University shortly after I completed an article called "A Dilemma for Libertarianism," which examines the Lockean attempt to justify *private* property rights by telling a story of "original appropriation." My argument was that if you tell a slightly different appropriation story, the same principles justify a monarch or a democratic assembly owning all the property. Thus, Lockean *principles* don't say anything at all about whether property should be private or public. When I explained this argument to a prominent libertarian (or "propertarian," to use this book's term), he responded, "What a colossal counterfactual!"

I thought that was the worst possible response a propertarian could give because their appropriation story is a fanciful tale about rugged individuals who go into "the state of nature" to clear land and bring it into cultivation. Do propertarians actually think this story is true? After thinking over their arguments I realized to some extent the answer is yes. They think at least that there is truth in it, that "private" "property rights" are somehow more natural than public or communal "territorial claims." So, I set out to read a little bit of anthropology and write a short 4,000-word article disproving that utterly ridiculous claim. But over the following nine years that 4,000-word article has grown to a research project involving at least two books, two spinoff articles, an online appendix, and maybe more after that. The original subject of that original article is now one of the topics planned for the *second* book.

As I read a little more anthropology, I realized that the sources I had started with were not a broad representation of the relevant

anthropological thought. So, I read some more and began to think about other dubious anthropological claims floating around modern political philosophy. I spent most of the academic year 2007–8 and much of the next (both years at the University of Reading in the United Kingdom) reading anthropology, archaeology, and history—not quite sure what I was looking for, but able to relate most of what I was learning to political philosophy in my field. I probably should have been publishing more articles and trying to get a job, but it was fabulously interesting, telling me stuff about history and about prehistory that I've always wanted to know and that is left out of most history books.

Eventually I settled on a half dozen prominent claims that I thought could be falsified in a long article, or maybe a two-part article: the contractarian claim that everyone is better off in a state society, the propertarian claim that everyone is better off in a society with privatized land, a popular claim that inequality is natural and inevitable, the propertarian claim capitalism delivers greater negative freedom than any other system, and the claim that started me off: the widespread belief that the appropriation story somehow explains something about why some people own all the resources and other people don't.

By 2010, I was working at Georgetown University's campus in Qatar and married to Elizabeth Smith Widerquist, whom I hadn't even met when I started working on this project. She works at Xavier-Louisiana, which is a long way from Qatar. So, she arranged for me to present my "article" at her university. Two anthropologists from Tulane University sat poker-faced in the front row throughout the presentation. One of them was Grant S. McCall, and it turned out that he had also been working for several years on debunking commonly held misconceptions about prehistory. We eventually decided to combine our efforts and write a book. Our partnership gave me the hope, which you can judge whether we have realized, that this book would not be a philosopher dabbling in anthropology or an anthropologist dabbling in philosophy, but a cross-disciplinary work equally well-informed of the relevant research on both sides.

When I presented this work to philosophers, I found that it split an audience. One side essentially agreed: the evidence we present falsifies important empirical claims in the relevant theories. The other side didn't disagree that our empirical evidence falsifies the claims; they

disagreed that the theories in question actually rely on these claims or sometimes that these theories rely on any empirical claims at all.

This split made me realize that this book needs to criticize a clarity issue as much as it needs to criticize a factual issue. Not only does contractarianism rely on questionable claims, most versions of the theory are not entirely clear what those claims are or whether the theory needs them or not. This sent us much more deeply into the history of social contract theory to show that so-and-so's version requires this claim too. I spent more than half of the 2014 calendar year and part of the next reading through political theory pinning down various theorists' positions on the issues we were investigating. The result is five chapters on contractarian and propertarian theory in the following book and an additional 20,000 words or so in an online appendix. Together, we hope this writing demonstrates that despite some equivocation, contractarian theory does require claims of the kind we address.

After this expansion of the project, Grant and I realized we had enough material for two books. And so, for the first book, we concentrated on one issue that combines the contractarian and propertarian claims about the state of nature I had been working on with some of the issues of violence and warfare that Grant was working on. This effort resulted in the book that follows, and we had so much material from the history of political thought that we had to move more than 20,000 words into an online appendix.

We have three claims left to examine in our follow-up book, tentatively titled, *The Prehistory of Private Property: And What It Means for Contemporary Capitalism*. We hope these two books can contribute both to a better-informed empirical debate and to a clearer normative debate of the theories we address. It's been fun reading all these books and writing what we think about them. I hope you find it worth reading.

GRANT S. McCALL

Writing this book has been the most difficult project of my career. This is funny because, when I met Karl now the better part of a decade ago and we decided to collaborate, it seemed as if this would be a relatively simple matter of debunking the worst of the early modern period misconceptions about indigenous peoples, as well as somewhat

later misunderstandings of human prehistory. After so many years of work on this book and a second book in the works to cover the topics left out of this book (not to mention a number of journal articles on related topics), it would be an understatement to say that this project was more complex than either of us ever anticipated.

The reasons for this, however, are perhaps illustrative of some important lessons that I have learned and that I hope readers will take away from this book. As an anthropologist, a good deal of the complexity of writing this book lay in the reconciliation of two rather different ways of looking at human social diversity between the fields of political philosophy and my own discipline. As a scientist, I am interested in documenting and understanding all of the incredible variability in terms of how human societies have organized themselves over the vastness of time and space and the evolutionary processes that have brought these lifeways into being. The value of the anthropological information presented in this book is its relevance to historical efforts to justify the state and private property. Some anthropologists may complain—and some have already—that this project is, therefore, an inherently flawed exercised in comparing apples and oranges; that using anthropological perspectives on human diversity to develop political policy is somehow a doomed effort in fundamental violation of the principles of cultural relativism that have constituted the heart of the discipline for more than a century. To the reader, I assure you that we have spent many long hours thinking about these issues.

Despite our best efforts to present the consensus of the various fields of social science discussed in this book, we are happy to admit that it is not perfect. There will be those in both of our fields that will object to the ways in which we have chosen to tackle the issues examined here. However, just because an intellectual project is hard and just because one's results may not be perfect does not mean that the project is not worth doing. This is especially true when the goal of a project is as important as the one discussed in this book. Philosophical justifications of the state and private property are profoundly important and they have consequences for every person alive on earth today. Recognizing the racist and colonialist biases at the foundations of modern political institutions offers crucial insights on how to improve these institutions and the lives of the least advantaged people in our affluent societies.

Thus, while some of my fellow anthropologists may have objections to the approaches and tactics we take in this book, I hope they will appreciate the huge importance of the problem. Likewise, I hope that philosophers will (if nothing else) take away from this the inescapable fact that empirical information about human diversity is instrumental to better thinking about a wide range of knowledge. In spite of debates within my field, we can and do know things about both contemporary human variability and the lifeways of our evolutionary ancestors in the deep past. We have learned a lot in researching and writing this book, and we are certain that those who follow us down this interdisciplinary path will likewise be rewarded.

ACKNOWLEDGMENTS

And a special apology to everyone else I should have named but haven't.

GRANT S. McCALL

There are many people that need thanking for their help on this project; more than I will be able thank here, I'm afraid. Above all, my wife, Sarah McCall, has suffered my distraction in working on this book, and my other forms of foolery, with a smile (mostly). Next, my parents, George McCall and Nancy Shields, have loved and supported me in all of my work over the years. In addition, you will find both of them featured prominently in literature cited in this book. Their influence is never far from what I do and that is as true here as anywhere.

There have also been many colleagues with whom I have had important conversations about the work presented here. Among my Tulane colleagues that have helped me on this project are Marcello Canuto, Trent Holliday, Tatsuya Murakami, Jason Nesbitt, and Chris Rodning. I'm especially grateful to Mary Townsend, who joined me in organizing the *Articulating Political Philosophy and Anthropological Theory, Method, and Evidence* symposium, as well as the other participants, Drew Chastain, Osman Nemli, and Christopher Quintana. Discussion among all of the participants in this symposium helped me sharpen my thinking on subjects discussed in this book. Finally, to echo what Karl has said above, there are innumerable people with whom I've discussed this project in conversations that I can't recall now. For all such anonymous help, I'm enormously grateful and sad that I can't thank everyone by name.

Chapter 1

INTRODUCTION

Does it matter whether you're better off than your ancestors were 12,000 years ago (before the rise of sovereign states and the private property system)? Does it matter whether all of your fellow citizens are better off than the few peoples who still remain outside the authority of governments and landlords? Thousands of years ago, powerful people began imposing government and property institutions in parts of the world. The reach of these institutions has gradually expanded. Today they have authority over almost all of earth's land area and, therefore, also over almost all people. These institutions benefit many of us, maybe even most of us, but does it matter whether they benefit all of us? Does the justness of these institutions come into question, if—as currently constituted—they harm some of us? Would justice require reform of these institutions?

We all would like to think that this question is moot, because we'd like to think that everyone is better off. It might be tempting to think that everyone is *obviously* better off in contemporary capitalist states with their doubled life expectancy, their incredible productivity, their legal systems, and so on. But consider what you would have to know to verify that these achievements benefit everyone. You would need a deep understanding of how the most disadvantaged people in state society live. What is it really like to be the child of homeless people in the United States, to grow up in a shantytown in Brazil, or to work in a sweatshop in Southeast Asia? You would need a deep understanding of the life of people in small-scale stateless indigenous communities both of the modern era and of the distant past. What was it like to be a member of the Ju/'hoansi in the Kalahari in 1950 CE, the Inuit in the Arctic in 1500 CE, or the Clovis culture on the Great Plains in 12,000 BCE? This comparison cannot be obvious because it involves groups far from the everyday experience of most people who are likely to read this book.

Later chapters of this book present evidence that this seemingly obvious impression is mistaken. The least advantaged people in state society today are worse off than they could reasonably expect to be in a society with neither a state nor private resource ownership, not because life in stateless societies is great. Life in most observed stateless societies is extremely difficult. Yet, at least some people today are worse off because they bear most of the capitalist state's disadvantages and share few of its advantages.

Does it matter?

It mattered to Thomas Paine, who wrote:

> the first principle of civilization ought to have been, and ought still to be, that the condition of every person born into the world, after a state of civilization commences, ought not to be worse than if he had been born before that period. (Paine 2000: 82)

It also mattered to Robert Nozick, who—building on the work of John Locke (1960)—coined the phrase, "the Lockean proviso," and defined his "weak" version of it almost identically to Paine's first principle of civilization. Nozick wrote:

> [because] the process of civilization had deprived the members of society of certain liberties (to gather, pasture, engage in the chase) . . . compensation would be due those persons, if any, for whom the process of civilization was a net loss. (Nozick 1974: 178–9n)

By the process of "civilization," Paine and Nozick meant primarily the establishment, spread, and maintenance of these two institutions. Paine used essentially what we define below as a "contractarian" approach to the justification of the state and Nozick used what we define below as a "propertarian" approach to the justification of the private property system. These two approaches are very different, but as David Gauthier (1986: 205, 208) defines it, "the Lockean proviso" is an essential premise in both. Paine and Nozick disagreed about whether the proviso was fulfilled, but they agreed that this proviso matters and that, if it is unfulfilled, the people who benefit from these institutions owe compensation to anyone they harm.

The Lockean proviso is a mutual advantage principle, and it is undeniably important to contemporary political thought. Rex Martin writes:

> we can point to a single, common, underlying idea of economic justice . . . which can be found in Locke, in Adam Smith, in Marx and in much recent contractarian theory . . . the arrangement of economic institutions requires, if it is to be just, that all contributors benefit or, at least, that none are to be left worse off. (Martin 1998: 150)

This principle is so important and so widely used that any ambiguity about what it is or what it implies is inexcusable.

Yet, for centuries, some of the most influential political philosophers and political theorists[1] have stated or implied that this principle is fulfilled without unequivocally explaining what that means. It would seem that anyone using a mutual advantage principle to justify any existing institution has little choice but to assert that mutual advantage is achieved—as a matter of empirical fact. What room exists for equivocation?

Equivocation is possible if the theory is less than clear about what proviso it uses to determine mutual advantage. Propertarians tend to have less of a problem with equivocation. Like Nozick, most propertarians clearly assert the weak proviso or something similar. Contractarians usually define their proviso as a comparison to "the state of nature"—a time and place in which people live without the authority of a sovereign government. But contractarians are often less than clear whether their conception of the state of nature includes empirically real stateless societies. Maybe it does; maybe it only includes one possible stateless scenario, such as a civil war; or maybe it is a purely theoretical construct with no relation to observable reality.

A less-than-clear proviso allows theorists to equivocate between two very different answers to our question: (1) the Lockean proviso matters, and it's obviously fulfilled, or (2) it does not matter either way. Equivocation is sloppy philosophy, but it has rhetorical power. On one hand, by implying that the state of nature includes all empirically real stateless societies, contractarianism credits the state for fulfilling Paine's first principle and avoids the need to argue that this admittedly *weak* proviso is too strong. Theorists avoid having to make the

uncomfortable admission that their theory fully justifies a state even if it forces some to live worse than people in real stateless societies. On the other hand, by implying that the state of nature does not include empirically real stateless societies, they avoid the need to provide evidence that the state benefits everyone or to consider what remedy is required if it harms anyone. Perhaps the lack of clarity about what the empirical content of the claim is—or even whether it has empirical content—has helped it survive, passing from generation to generation with ambiguity intact.

Because of the clarity problem, this book includes a lot of textual analysis to show how this proviso appears in social contract and property rights theory. It argues that any successful use of mutual advantage in the justification of the state or private property rights must at minimum satisfy the weak version of the Lockean proviso. A stronger proviso might be in order, but the book argues that a proviso any weaker than the weak version moves out of the realm of mutual advantage. Some contractarians state this criterion explicitly, some only tacitly. But few argue against it, and no one we have been able to find puts forth a successful mutual advantage-based justification of the state or private property with a clearly extra-weak proviso.

This book shows that although the claim that the weak proviso is fulfilled has been a major feature of contractarian and propertarian literature since Thomas Hobbes (1962 [1651]: 100) published *Leviathan* in 1651, it has so far received very little attention or scrutiny. The few critics, such as Paine, have been easily ignored. It has even escaped receiving a name, and so we dub it "the Hobbesian hypothesis." Most simply, it is the claim that the Lockean proviso is fulfilled. We define the weak version of the Lockean proviso as: *an institution (such as the state or the property rights system) can justly be imposed on people providing everyone living under its authority is better off than they could reasonably expect to be in a society without such authority*. The corresponding weak version of the Hobbesian hypothesis is: *everyone is better off or at least as well-off under the authority of a sovereign state (and/or under the authority of the private property system) than they could reasonably expect to be living in a society outside of any such authority*.

The function of the Hobbesian hypothesis is clear and obvious, as Samuel Pufendorf explained in 1672: "the complaint of the masses about the burdens and drawbacks of civil states could be met in no

better way than by picturing to their eyes the drawbacks of a state of nature" (Hardin 2003: 43). The Hobbesian hypothesis is a reason to silence the complaints of disadvantaged people, whether those complaints are against the government or powerful private interests.

The philosopher's job is to question claims like this to see if they are based on clear reasoning and good evidence. Yet, the stunning feature of contractarian and propertarian literature reviewed below is how quickly most theorists have gone from normative proviso to empirical hypothesis. They dedicate extensive argumentation to establish the normative need for the Lockean proviso (by whatever name). Then, with little or often no argument, they simply ask readers to presume the Hobbesian hypothesis, often without specifying exactly what the claim of fulfillment means empirically, much less undergoing an empirical investigation. While propertarians have stated the claim more clearly than contractarians, they are no better at supporting it.

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*.

This book's most important points all relate to this claim:

- The Hobbesian hypothesis is an empirical claim.
- Despite some ambiguity or equivocation, most contractarian and propertarian theories from Hobbes and Locke to the present use it as an essential premise.
- It includes claims about the relative welfare of disadvantaged people in state society and of people in small-scale indigenous stateless societies.
- Contractarians or propertarians have provided little evidence for it.
- It is false.

This book is not a criticism of contractarian or propertarian ethical theory. It is only a criticism of the empirical application of these theories. Contractarians and propertarians who use the weak proviso almost always assert that their theory applied in the current empirical setting justifies the state and/or the property rights system: they satisfy

the criterion the two theories require of justification. Our argument is that their theory applied in the current empirical setting rejects both of these institutions: they fail to meet the criterion. We have reservations about whether the weak proviso is strong enough, but those reservations are irrelevant to the argument in this book, which accepts the proviso along with the basic moral framework of these two theories.

This book shows that the Hobbesian hypothesis became foundational in political theory when colonial prejudices convinced Western theorists that all "civilized men" were all clearly better off than all "savages." Although the claim has outlived the popularity of the colonial prejudices that generated it, even today, misinformation makes up a good part of what people think they know about small-scale stateless societies, virtually all of which are prehistoric or (more descriptively) "non-literate" in the sense that they have no records of their own. Without a recorded history, small-scale societies have become the subject of myth-making much more easily than societies with written records. Prehistory remains the setting for morality tales offered as something more than fiction.

Along with the Hobbesian hypothesis, this book addresses several closely associated false beliefs about prehistory. These include the belief that stateless societies are inherently violent, that stateless peoples live in destitution, that their days are taken up with an all-consuming food quest, that there is a dichotomy between "natural man" and "civilized man," and that human societies necessarily progress from a uniform primitive base through a series of inevitable stages of development to the highpoint of civilization with a flowering of diverse culture (Maine 1861: 114–15; Hampsher-Monk 1992: 2, 117–19; Kuper 1994: 7–8; Kelly 1995: 6–9).

Some of these beliefs are still common today; others aren't, but they are all part of an unfortunate pattern in the treatment of prehistoric and small-scale societies by philosophers and social scientists, who still routinely discuss prehistory as if it were the stuff of myth, passing on centuries-old stories that change little or not at all as empirical researchers uncover evidence. Many philosophers pass on stories set in prehistory without clarifying whether they illustrate important empirical premises or whether they are pure metaphor. They seldom clarify what those premises might be or what the metaphor might stand for.

This book is part of a wider research project aiming to show that misconceptions about prehistory are embedded in many influential theories in modern political philosophy and social science. This book's

sequel will address the claim that private rights to property can or do develop naturally while collective or government rights to property cannot or do not, the claim that capitalism better respects negative freedom than any other form of socio-political organization, and the claim that equality is either impossible altogether or incompatible with freedom. Some of these claims are universal and some are specific to prehistory, but the second book will argue that all of them can be falsified with evidence from prehistoric and small-scale societies.

Both the lack of clarity about the empirical nature of a claim *and* the failure to provide evidence to support the empirical claims are significant failings in any serious argument. Although empirical research is not the normative philosopher's occupation, philosophers are not usually lax about specifying and verifying empirical claims. For example, the debates over medical ethics and the ethics of climate change are well-informed by the latest scientific findings in those fields. But when discussing prehistory and human nature, political theorists and philosophers still feel free to make ambiguous allusions to unsupported empirical claims. This problem is especially surprising because clarity of argument *is* the philosopher's occupation. Even if our empirical findings or our argument for their moral relevance are both wrong, philosophers need to address the lack of clarity in the use of prehistoric and universal claims.

It might be useful to speculate why the large amount of evidence contradicting the Hobbesian hypothesis has failed to correct the widespread (and apparently unexamined) acceptance of it. Consider six possible reasons: first, claims gain credibility with repetition. A *commonly held belief* is easily mistaken for a *commonly known fact*. If enough people assert something, one might assume *someone* must have verified it. Second, the power of the unargued, not clearly identified premise is that it fades into the background, unnamed, unnoticed, and unquestioned because it is obvious and obvious because it is unquestioned. The discussion also shows that ambiguity in the presentation of the hypothesis has increased over time. Third, most people want to believe. With all the unfairness in society, we would all like to think that society benefits everyone, even if it doesn't share its benefit as fairly as it should. Fourth, people who assert the hypothesis might suffer from self-serving bias. Fifth, the fallacy of composition can mislead people into assuming benefits are more widely shared than they actually are. This fallacy is the belief that what is true about the whole is true for every part. Because capitalist states are so much wealthier

than stateless societies, we are tempted to assume that capitalist states make *everyone* wealthier and meet everyone's needs better. Sixth, the fallacy of unwarranted extrapolation misleads people into thinking they know much more about history and prehistory than they actually do. We recognize a trend and extrapolate to the end (1, 2, 3, . . . infinity). The increase in living standards and life expectancies over the last 150–200 years tempts one to assume that these variables have always increased even if earlier trends might have been very different. The fallacy of a false dichotomy is the mistaken belief that there are only two possible alternatives, when three or more alternatives are possible. For example, either everyone is better off in state society or everyone is better off in stateless society. Awareness of these issues will enlighten the discussion below as they come up.

This book proceeds by the following plan: Chapter 2 discusses some background about political philosophy and anthropology. Chapter 3 shows how Hobbes introduced the Hobbesian hypothesis into modern social contract theory. Chapter 4 discusses how Locke introduced basically the same hypothesis into his influential theory of natural property rights. Chapters 5, 6, and 7 show that many philosophers have asserted the Hobbesian hypothesis from 1700 to the present. Chapter 8 discusses the role of the Hobbesian hypothesis in anthropology. Although it was initially influential, it gradually received greatly increased scrutiny and was finally abandoned by anthropologists in the latter half of the twentieth century. Chapter 9 presents evidence to refute a key piece of support for the Hobbesian hypothesis we call "the strong violence hypothesis"—Hobbes's claim that intolerable violence is an inherent feature of any stateless environment. Chapter 10 examines the Hobbesian hypothesis itself, using evidence from anthropology, archaeology, and other fields to show that it is dubious at best. Chapter 11 discusses the ramifications of these findings for contractarianism and propertarianism, concluding that the state and the property rights system remain unjust in both propertarian and contractarian terms unless and until people who benefit from those institutions reduce the harm they do to disadvantaged people. The online appendix to this book contains more information about many of the historical figures it addresses and some of the empirical arguments it makes.

Note

1   This book treats political theory and political philosophy as synonyms.

Chapter 2

MODERN POLITICAL PHILOSOPHY AND PREHISTORIC ANTHROPOLOGY: SOME PRELIMINARY ISSUES

Because this book involves two very different academic disciplines, political philosophy and anthropology, some background about the relevant topics in each one is helpful. In this chapter, Section 1 introduces the relevant political theory. Section 2 discusses some of the anthropological methods and conceptual issues involved in the examination of the evidence relevant to these philosophical arguments. Section 3 discusses how the state and the state of nature are defined in relation to each other. Section 4 addresses some responses this book is likely to receive. Section 5 discusses the relationship between this book and modern indigenous peoples.

1. THE PHILOSOPHY OF THE STATE AND THE PROPERTY RIGHTS SYSTEM

Normative political philosophy (which we use synonymously with normative political theory) addresses questions such as, what principles of justice should guide political policy, and what those principles imply for the world today. This section discusses a little bit about the methodology of political philosophy in general. We also discuss two prominent schools of thought that play large roles in this discussion and show that this book presents a similar criticism of both schools of thought. Finally, this section shows how these two schools of thought make similar comparisons between contemporary society and the state of nature.

A. How Do You Do Political Philosophy?

The methodology of normative political philosophy is simple: the construction of argument, informed by past argument, with reference to empirical evidence only as needed. All arguments begin with premises—unsupported claims that the author asks readers to accept as given. Any effective argument employs premises readers have good reason to believe in the effort to convince them of a conclusion they might otherwise doubt. Doubtful premises have little or no ability to make a conclusion less doubtful (Cohen 1995: 112).

The need for unsupported assumptions is not a weakness of the discipline. All arguments in all fields on all issues begin with premises. Each philosopher cites previous work on the same issue to further it, to criticize it, and/or to avoid reiterating it. Theorists who start with obviously weak premises are attacked or ignored. Over time, premises that are recognized to be weak must eventually be supported by better evidence or they fall out of the discussion. Either way, hopefully, through this approach the philosophical debate gets stronger and more meaningful over time (Leopold and Stears 2008; McDermott 2008; Cohen 2011b).

Philosophy's reliance on each philosopher to challenge the others is a weakness. Conventional prejudices can keep individuals from recognizing and challenging weak premises. Many of the claims we address in this project are universal claims that are supposed to be true for all people in all societies. Most researchers don't usually look far afield to verify or falsify claims—even if they are meant to be universal. Thus universal claims containing claims about stateless societies can be passed on and passed over without either side of the debate seriously considering that relevance or looking in that area for evidence.

One aspect of political philosophy that makes it vulnerable to the problems discussed in this book is its reliance on illustrative examples, thought experiments, or conjectural histories. These are common and indispensable methods in normative political theory. A well-chosen example can show how a principle applies in a particular case that abstracts from the complications of the world as a whole. The example then makes it easier to see that such a shared principle applies in a class of situations. Philosophers tell stories about runaway trollies, dying violinists, lifeboats that can save some but not others from drowning, a person who can either take care of an ill relative or join

the resistance to the Nazis. All of these examples have important uses. But illustrative examples can add ambiguity if it is not clear exactly what claims about the real world they illustrate. Does a particular example illustrate only normative claims or does it illustrate empirical claims as well; what are they?

One of the central claims of this book is that contractarians have been unclear whether and what empirical claims the state of nature example is used to illustrate. Carole Pateman and Charles Mills (2007: 54) write, "Theorists of an original contract used the idea of the state of nature both as a thought experiment and as descriptive of an actual stage of historical development. They draw on each element as needed in their arguments."

This book argues that most contractarians equivocate between two versions of the contractarian justification of the state: an a priori version that is not logically coherent (the Hobbesian hypothesis doesn't matter) and an empirical argument based on a false premise (the hypothesis matters, but it's obviously true). In the first the state of nature illustrates only normative claims; in the second it illustrates an important empirical claim about the world that can be examined with empirical evidence. Most contractarians have not had a strong incentive to probe for this equivocation, perhaps because they share the belief that both the empirical and the a priori versions of the argument work. We suspect they are unaware of their equivocation between two different arguments as they focus attention on the stronger aspects of each one.

B. *Contractarianism*

"Contractarianism"—also called "social contract theory," "consent theory," or "voluntarism"—is the most widely accepted justification of state authority and political obligation. Although many political philosophers reject contractarianism, it has hegemonic influence over the discussion of this issue (Kavka 1986: 385; Baren 1987: 1; Pateman 1988: 1; Gilbert 2006: vii; D'Agostino et al. 2011). Patrick Riley (1973: 543) writes, "Political philosophy since the seventeenth century has been characterized . . . above all by voluntarism, by an emphasis on the assent of individuals as the standard of political legitimacy." Carole Pateman and Charles Mills (2007: 1) write, "The simplicity and attractiveness of the idea of a 'social contract' have made it an

immensely powerful, influential, and long-enduring political concept, with an impact far beyond political theory; even public figures sometimes refer to a social contract." This book discusses many different versions of contractarianism, because, as Bruce Haddock (1994: 149) argues, "Social contract theory is . . . a hydra-headed monster. . . . specific objections will not be equally telling against each formulation."

Contractarianism begins with the question, why does any person or institution have authority over other individuals? Particularly, why does the state have ultimate authority? Some theorists frame the question as one 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?

Most versions of contractarianism think of the state as an artificial entity created by agreement, and "The logic of mutual advantage theories is that everyone must gain from the agreement" (Moore 1994: 211). Chapter 1 defined the benefit principle as the Lockean proviso and explained that that benefit has to be measured against the absence of the state, usually called "the state of nature." When the Lockean proviso is fulfilled (that is, when the Hobbesian hypothesis is true), state society is like a contract at least in the sense that everyone gives up something (such as freedom from authority) and gets something they have reason to value more (such as greater security and higher welfare). The central criticism of this book is that most contractarians mistakenly claim that the Hobbesian hypothesis is true.

Not every theory involving a contract is vulnerable to this book's criticism. John Rawls's (1971; 1993; 2001) "justice as fairness" does not use the state of nature as a special starting point. It endorses the goal of ensuring that the least advantaged group of people are better off than they could be under any other feasible system—whether stateless or not. Rawlsian theory's lack of a starting point is not the central reason it is invulnerable to this book's criticism. If one wanted to ask whether a state was more than just a stateless society, one would still have to ask if the least advantaged person was better off under the state. The reason it is invulnerable is that Rawls doesn't ask people to assume his principle is fulfilled. While Hobbesian theory justifies

inaction by assuming that an empirical question has been answered, Rawlsian theory treats an empirical question as a problem to be investigated and acted on.

C. Propertarianism

Property rights theory takes many different forms. The exact characteristics of each form are not centrally important to this book. We are interested only in a side constraint, the Lockean proviso, which appears in many of the very different justifications of property rights. The most extensive discussion of the proviso is found in a school of thought variously called "libertarianism," "right-libertarianism," or our preferred term "propertarianism." This group holds that private property rights are justified independently of the state as a natural right that governments have a strong moral obligation to respect. This book focuses on propertarianism not because its application is limited to this school, but because propertarians discuss the proviso and its ramifications more explicitly than most other property theorists using the weak proviso. Chapter 4 introduces the roles of the Lockean proviso and the Hobbesian hypothesis in modern property theory by examining John Locke's *Two Treatises of Government*.

D. A Similar Criticism

Although contractarianism and propertarianism are very different theories, they share a few broad features that allow this book to examine them together. As we will show, they are both mutual advantage theories that attempt to justify the authority of an institution. Both of them employ their version of the Lockean proviso and its corresponding Hobbesian hypothesis.

If this book shows that both schools of thought use the Hobbesian hypothesis as a premise, then we will have demonstrated that they have taken on the burden of proof. As argued above, dubious premises provide dubious support for any conclusion. Although the evidence gives clear grounds to reject the Hobbesian hypothesis, all we need to do is to raise doubt to show that the two theories have not successfully justified the state or the property rights system in their current form. Even if we cannot disprove the claim that all humans are better off in states rather than stateless societies, as long as we present

strong reason to doubt it, we will have shown that it is useless as an empirical premise.

We need to explain three things we are *not* trying to prove. First, by saying that the Hobbesian hypothesis is false, we are *not* trying to prove its opposite. This basic principle is worth stating because even academics sometimes confuse the negation of a term with its opposite. The Hobbesian hypothesis is the claim that everyone is better off in a capitalist state than anyone is in a stateless society with a common property regime. The negation of the Hobbesian hypothesis is the claim that *not everyone* is better off. The opposite of the Hobbesian hypothesis is the claim that *no one* is better off. Confusing the opposite with the negation is one way to create a false dichotomy.

Second, we are not trying to prove that the average person is better off in a stateless society. The fulfillment of the Lockean proviso requires not simply that the *average* person is better off but that *everyone* can be shown to be better off in some meaningful way.

Third, although we argue that the Lockean proviso is currently unfulfilled, we do not argue that it is impossible to fulfill. In this case, we do argue the opposite: the proviso can easily be fulfilled with the right policies. While the empirical premise underlying the Hobbesian justification of the state and the Lockean justification of private property is currently untrue, it need not always be so. In the conclusion of this book, we will make the case that a few simple and relatively modest reforms of these institutions would go a long way toward fulfilling the Lockean proviso. In short, we will argue for policies to raise the standards of living for those worst off in capitalist states.

Although our criticism is empirical, it is different than the most common empirical criticisms of contractarianism, propertarianism, or normative philosophy in general. The most common empirical criticisms of contractarianism involve Hobbes's story about how the state developed from the state of nature by an act of expressed consent. We argue that such criticisms are irrelevant. Most versions of contractarianism require only one empirical claim: the state is better for everyone than statelessness.

The most common empirical criticisms of propertarianism address the connection between current property owners and Locke's story of the origin of property rights in the state of nature. Although this question is relevant, it is not our focus. We discuss only whether the Lockean proviso is fulfilled.

The most prominent empirical criticism of normative philosophy in general is the outright rejection of a priori methodology, which examines ethical principles and some of their ramifications in pure theory with little or no references to the facts of the world. By contrast, the empirical method examines how the world works as a way to discover what ethical principles are important. G. A. Cohen defends the a priori method partly based on Hume's contention that it is impossible to derive an "ought" from an "is." An argument with a normative conclusion must have at least one normative premise. Cohen (2003) argues, therefore, that any fact-dependent normative principle (derived from empirical reason) must reflect some deeper fact-independent normative principle that can be justified only with pure a priori reasoning.

The debate over a priori and empirical methodologies is so prominent that philosophers who read this book need to be warned against mistaking our argument for a contribution to that debate. We must emphasize that *this book does not participate in that debate*. Useful a priori reasoning can be done with no empirical reference as long as the researchers confine themselves to normative and analytical claims. We offer no criticism of the large amount of theoretical work that does so. But any argument that includes even one empirical claim is no longer a priori. It is at least partly empirical. Declaring oneself an a priori theorist does not, ipso facto, cleanse one's theory of all empirical claims. Being a *mostly* a priori theorist does not free one's theory from the responsibility of providing support for the empirical claims in it.

This book offers no criticism of the fact-independent normative principles in contractarianism or propertarianism or the arguments for them. It criticizes only their empirical application. Just as any normative argument requires at least one normative premise, any *applied* normative argument requires at least one empirical premise (Miller 2008: 30; Swift and White 2008: 49, 56).

The Lockean proviso is a normative claim: the state is justified, if it does X. The Hobbesian hypothesis (Chapter 3 argues) is an empirical claim: the state does X. Both the proviso and the hypothesis are necessary for the argument to support the conclusion that the state is justified. The theoretical chapters of this book argue that the Hobbesian hypothesis makes sense *only* as an empirical claim and that the most prominent contractarian and propertarian theories use it as such. Our

complaint is not with a priori theories in general. It is with theories that use empirical premises that don't happen to be true.

E. A Similar Comparison

Contractarianism and propertarianism both use the state of nature as a starting point. They both justify existing institutions with reference to the situation before those institutions existed and/or with reference to a real or hypothetical situation in which those institutions are absent regardless of whether that situation came first. Contractarianism justifies the state against statelessness. Propertarianism justifies the private property rights regime against a common property regime, which is closer to collective non-ownership than to either public or private ownership. In a commons, anyone can use the land but no one can take ownership of it (or at least no one has).

As the online appendix to this book argues, stateless societies with common property regimes predate the first governmental and landownership systems by tens of thousands of years, and they preceded societies with either of these institutions on almost all of the earth's surface.

Our use of the term "capitalist state" follows a familiar definition, but the way we use it might be unfamiliar. People are probably used to contrasting the "capitalist state" with the "socialist state," the "feudal state," or some other kind of state, but non-capitalist states of any kind play little or no part in the discussion. The opposite of the capitalist state for our purposes is a "stateless society with a common property regime." The contemporary states that can't be described as "capitalist" probably don't do any better at fulfilling the proviso than capitalist states, but there are so few of them that we can safely ignore them.

2. THE ANTHROPOLOGY AND ARCHAEOLOGY OF STATELESS SOCIETIES

This book's empirical evidence comes primarily from two branches of anthropology—socio-cultural anthropology and archaeology.

The main method employed by socio-cultural anthropologists is ethnography, which usually involves participant observation (often on a long-term basis), as well as other approaches involving the

interviewing of ethnographic informants. Researchers often live with the subject group for weeks, months, or years—sometimes on and off for a lifetime. The advantage of ethnography is that it enables a better understanding of the cultural lifeways of various modern peoples than any other set of approaches. Only a person immersed in a culture has the possibility of understanding it deeply (McCall and Simmons 1969).

Ethnography is not without its problems, however. For the better part of the last century, the field of anthropology has engaged in various forms of self-criticism, often in fairly radical ways, when it comes to its methods. Objections have included all of the following issues: (1) inherent biases on the part of ethnographers having to do with gender, race, and class, (2) imbalances of power between affluent researchers and indigenous subjects, (3) the essentialization of individual agencies into normative accounts of collective "cultures", and (4) the question of whether complex phenomena of the sort studied by ethnographers are even knowable through scientific research at all (Clifford and Marcus 1986). In addition, of more relevance to issues examined in this book, there are the related problems of time depth and globalization. It is unquestionably true that all people living on earth today are instrumentally involved in global economic and political systems, whether they live in Manhattan or Vanuatu. Thus, asking ethnographic questions about stateless societies is problematic when every person on earth today at least lives within the political boundaries of a state. Finally, even when ethnographers spend years at time in the field doing research, their observations constitute merely the blink of an eye relative to many of the questions for which we would seek answers through participant observation.

Archaeology, on the other hand, is the attempt to make inferences about the past based on arrangements of material objects that survive to the present. Archaeologists use deductive reasoning to build scientific frameworks to make inferences about the nature of human cultural lifeways in the past, as well as the ecological contexts in which past human societies lived. Obviously, archaeology is also not without its limitations. It is not uncommon to hear someone in the media talk about how some new discovery radically reshapes the way we think about the past. Archaeologists like to think that this is an exaggeration, and perhaps it sometimes is. It does, however, stem from the fact that our knowledge about the past is based on a tiny sample of the

material patterning left behind by past peoples, and therefore even a single new discovery can dramatically overhaul what we think we know about the past. Unfortunately, there are simply many things about our past we may never understand in detail (Johnson 1927; Rigaud and Simek 1987).

Because of the difficulties and inherent ambiguities of archaeological research, many people have been tempted to treat modern small-scale societies as if they were analogs of prehistoric societies in the distant past. This assumption might seem like common sense: small-scale societies, which rely on foraging, herding, and/or subsistence farming with simple technologies, have (at a minimum) many elements of their material culture in common with the archaeological record of past societies. Yet, as we discuss below, this belief has serious logical and evidentiary flaws. Modern small-scale societies are separated from prehistoric societies by just as many generations as the rest of us and are not remnants of past patterns or "living fossils." Small-scale societies have undergone the same dynamics of historical interaction and adaptation to shifting environmental and demographic contexts as any other modern group and, therefore, cannot be taken as somehow more closely related to the past. Unfortunately, the view of small-scale societies as primitive remnants of past human lifeways remains frustratingly prevalent, even among trained social scientists (Binford 2001).

Can modern peoples, then, provide any information at all about the past? Any answer to this question is bound to be controversial (Schrire 1984; Headland et al. 1989; Wilmsen 1989; Lee 1992), yet there are clear logical reasons why our knowledge of the past *must* be partially based on observations of modern peoples. It is perhaps a bit paradoxical that, while archaeologists wish to understand the past, the only available bodies of knowledge with which to make inferences about the past must come from the present—because we live in the present. Ethnoarchaeology is the field of anthropology designed to study modern peoples in order to learn about the past. It would be absurd to suppose *no similarities* exist between the cultural practices of modern peoples and those of the past, and even our deep evolutionary past. For example, the field of Paleolithic archaeology is concerned with hunter-gatherers who lived in the Pleistocene. However, we feel confident in saying that no Paleolithic archaeologists are themselves hunter-gatherers. For this reason, none of them have any

personal qualifications for understanding the various forms of material patterning left behind by hunter-gatherer peoples in the deep past and, without some direct knowledge of forager lifeways, any inference about the past would be bald speculation (or worse). One approach to solving this problem is for anthropologists to consult with and observe modern hunter-gatherers, who are themselves familiar with the economic problems, practices, and technologies employed by peoples in the past, and also with the forms of material patterning these solutions might leave behind.

The modern field of ethnoarchaeology also recognizes that we can learn about the past by studying how modern people confront various challenges, such as foraging and/or farming under particular set of conditions. While no modern society is an analog for our ancestors living in the past, modern peoples do face many economic situations in ways that may help us make sense of the past. If particular solutions to problems tend to work well under similar conditions, past and modern peoples confronted by similar environmental, economic, and social situations are likely to respond in similar ways (Kelly 1995; Binford 2001). Finally, rather than focusing on single modern societies as potential analogs for archaeological cases, ethnoarchaeology focuses on explaining the diversity or variability documented among modern societies as a method for contextualizing the activities of peoples in the past (Kirch and Green 2001: 42).

3. THE STATE AND STATELESSNESS IN POLITICAL THEORY AND ANTHROPOLOGY

The now-standard definition of the state in political theory makes sovereignty its essential feature:

> [A] state is a human community that (successfully) claims the monopoly of the legitimate [i.e. considered to be 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. (Weber 2004: 33)

We do not take this definition to mean that only *legitimate* governments are states. We take it to mean that the sovereign has a monopoly on power enough to *legitimize* force. It is so strong that everyone

needs to know what uses of force it deems "legitimate" or "criminal," and they do not need to know what any competing institution (such as a paramilitary organization) might deem legitimate. To monopolize this power, the state has to be able to make a decision, make it known, and enforce it. Whether the state is an absolute monarchy or a democracy with divided power, the sovereign entity—as a whole—is able to make and enforce a final decision on any issue.

Political theorists simply define the state of nature as the absence of a state. Hobbes (1962 [1651]: 100), who actually called it the "Natural Condition of Mankind," defined it as "the time men live without a common power to keep them in awe." That is, the time without sovereignty. The Hobbesian writer, J. R. Lucas (1966: 65), writes that, under the state, "conflicts [are] settled by some method, the results of which are binding, and can be enforced." Outside the state, conflicts are settled "any old how" (Lucas 1966: 62). As Chapter 8 explains, some small-scale societies do settle conflicts "any old how."

Anthropological definitions of the state tend to be very different, focusing more on the presence of discrete structural features rather than the relationship between government power and governed people. Perhaps the most famous early definition of the state, and one which continues to hold considerable currency today, is that of V. Gordon Childe (1950; 1957). Linking the origin of states with the so-called "urban revolution," Childe made the presence of true cities synonymous with the presence of a state, and argued that the state-level civilizations were characterized by the presence of ten features related to the production of an agricultural food surplus, or what Childe calls a "social surplus." These features include craft specialization, class differentiation, the presence of a ruling elite, a bureaucratic system of government control, monumental public architecture, long-distance trade in exotic "foreign" goods, and a written record-keeping system.

Critics of Childe's (1950; 1957) definition have argued that the equation of urbanism with the presence of states reflects the historical developments of Europe and the Near East, and not necessarily early states in other regions (such as Connah 2001). Yet, this definition has been remarkably persistent through the history of the field of anthropology and it has also been particularly useful in approaching questions of statehood in the archaeological record.

The enormous difference between anthropology's and political theory's definitions of the state causes fewer problems for us than

one might suspect, because the strength and centralization of political authority are highly correlated with scale. Virtually all observed societies large enough to support cities also have a sovereign government, and virtually all of the smallest-scale societies—those that can't be described as anything more than a village—do not. This leaves some in-between-scale societies that do not meet the anthropologists' definition of statehood but might (or might not) meet the political theorists' definition. As much as possible, our discussion leaves them out (see Chapter 8).

Although humans have existed since *Homo sapiens* appeared around 200,000 years ago, the first states (by the anthropological definition) probably appeared about 5,100 years ago in Mesopotamia. States have appeared with little or no influence on each other in at least six other places around the globe, including China, India, Egypt, Sub-Saharan Africa, Central America, and South America (Childe 1950; Trigger 2003). In a few thousand years—a blink of an eye compared with the vast prehistory of human societies—state-level societies have expanded from those seven bases to establish authority over almost all the earth's land and people.

4. THE NOBLE SAVAGE ALLEGATION

By questioning whether contemporary states are better for everyone than statelessness, we inevitably attract the allegation that we are "romanticizing" the "noble savage." This term was brought into the academic debate in the 1850s by John Crawfurd and several other anthropologists who did not think their profession was racist enough. They applied it primarily and (as later chapters show) inaccurately to Jean-Jacques Rousseau, but it has been used ever since both to discredit people who write even partly favorable accounts of indigenous peoples and to give everyone writing about indigenous peoples a cautionary reason to err on the side of negativity (Ellingson 2001).

The term was meant to be an oxymoron. The idea was to paint even slightly positive depictions of indigenous peoples as romanticization of people who were assumed to be truly savage. A "noble" had obtained the highest qualities of civilization. A "savage" lacked all those qualities. Any civilized writer who could think a savage as in any way noble must have clouded thinking (Ellingson 2001). The term intentionally created a false dichotomy: if you don't believe

stateless peoples are miserable and warlike, you must be romanticizing the noble savage. More than 150 years later, it is still difficult to debunk one side of this belief without people thinking you are promoting the other.

Crawfurd leveled the noble savage allegation at Jean-Jacques Rousseau even though he never used the term, and his views of indigenous peoples were nearly as negative as those of most other Europeans of his time (Ellingson 2001). Crawfurd's overtly racist school of anthropology has disappeared, but the term "noble savage" continues to work as intended. Wholly positive depictions of indigenous peoples are hard to find in Western academic literature, and researchers who say anything positive about indigenous groups often feel like they have to show how they aren't going too far (Ellingson 2001).

No similar allegation exists that is commonly leveled at people researching any other group. Imagine people discussing modern Swedes being accused of romanticizing the "polite Viking," or people discussing modern Ireland being accused of romanticizing the "sober Irishman." Any such allegation would bias the discussion toward the negative—as the noble savage allegation does so effectively. The best evidence about small-scale societies shows that they are neither nobles nor savages, just reasonable people dealing with the particulars of often-difficult environments.

The noble savage allegation needs to be dropped from serious discourse. In addition to the biases it creates in academic literature, it creates an impossible standard for indigenous peoples: if they aren't in every way "noble," then the term implies they are just "savages."

Researchers can adopt an inflated view of distant societies, but genuine examples of it are comparatively rare. Ethnocentrism—an inflated view of one's own culture—is far more common. Perhaps, the allegation should go the other way: ethnocentrists romanticize their own culture. Consider two claims: (1) *Obviously everyone in state society today is better off than everyone in any stateless society in the last 200,000 years.* (2) *Evidence indicates that some people in state societies today are so desperately poor that they are no better off than people in the difficult environments of observed stateless societies.* We suggest readers evaluate our evidence and consider whether the first statement might be more romantic than the second.

5. DOES THIS BOOK HAVE ANYTHING TO CONTRIBUTE TO THE INDIGENOUS RIGHTS MOVEMENTS?

This book is not directly about indigenous peoples. It is about a few selected mistaken beliefs embedded in Western political thought. However, the pigeonholing of indigenous peoples to fit preconceived imperialist notions is a concern of the indigenous rights movement, and therefore, it is worth considering what this book might be able to contribute to this discussion. One of the common examples of pigeon-holing is the mistaken belief that all indigenous peoples have some close connection to stateless societies. The majority of indigenous peoples lived in state societies long before the Western colonization.

Primarily this book offers indigenous readers the same thing it offers everyone else: a better understanding of the false beliefs about stateless societies that remain influential in contemporary political theory. But indigenous readers might be able to make different use of that understanding. The book shows how those erroneous beliefs grew out of the colonial process and were used to justify it. To the extent that the theories discussed in this book are still being used to justify encroachment of indigenous peoples' rights, this book might prove useful in understanding how to push back. The online appendix to Chapter 2 has more on the relationship of this book and the indigenous rights movement.

Chapter 3

THE HOBBESIAN HYPOTHESIS: HOW A COLONIAL PREJUDICE BECAME AN ESSENTIAL PREMISE IN THE MOST POPULAR JUSTIFICATION OF GOVERNMENT

The "Hobbesian hypothesis" is far older than Hobbes. The effort to justify the social arrangements by saying that they are somehow like a contract is at least as old as Plato (2013). The first Chinese Emperor asserted the hypothesis even earlier: "There is not one who did not benefit [from the emperor's rule]. Every man is safe under his own roof" (Harari 2015). We call it "the Hobbesian hypothesis" but because Hobbes (1962 [1651]) did so much to make it important to political philosophy. Few if any contemporary philosophers accept the whole of Hobbes's justification of the state. Diverse variations of contractarianism have appeared over the three and a half centuries since *Leviathan*. Because some elements of Hobbesian theory are influential over all of them, this chapter introduces the role of the Hobbesian hypothesis in contractarianism in general by discussing Hobbes's use of it in particular.

1. HOBBES'S THREE ARGUMENTS FOR THE STATE

Scholars disagree about exactly what justifications of the state Hobbes intended to present in *Leviathan*. We consider three popular interpretations based on literal consent, prudential advice, and yield to superior force. Although our best understanding is that Hobbes intended all three as parallel arguments for the state, our central goal is not to determine his exact intentions, but to look for the ideas that have been most influential over subsequent theory. Although Hobbes's idea of literal consent has been dropped, many elements from the literal-consent

version of his theory are highly influential over contemporary justifications of the state based on hypothetical consent. The most influential and lasting ideas, we argue, are the Lockean proviso and the Hobbesian hypothesis.

A. *The Literal-Consent Version*

Hobbes (1962 [1651]: 100) justified the state by comparison to its absence: the "state of nature," or as he calls it, "the natural condition of mankind." The state of nature needs no justification in contractarian theory. It is the natural default position against which all other social arrangements must be justified. Hobbes portrayed the state as an artificial human creation that can only be justified by unanimous consent of the people. Thus, he set up the basic justificatory problem for that state: it has to obtain consent, which it can do by achieving mutual advantage relative to the state of nature.

Hobbes's (1962 [1651]: 99–100) *description* of the state of nature was complex, but his *definition* of it was simple: "the natural condition of mankind" is "the time men live without a common power to keep them in awe" or any time in which people live "out of civil states." In other words, "the state of nature" is the absence of a sovereign government and can be used interchangeably with "anarchy" and "statelessness." The state of nature is not itself a myth; stateless societies have existed for long periods of time in many places around the world. The myths we address are prejudices about life in stateless societies.

The term "state of nature" is largely an artifact of that belief in a dichotomy between natural and civilized people. This belief was popular in the early modern period and remained so through much of the twentieth century. Supposedly people began in humanity's natural, animalistic state, and were uplifted to a higher existence by socialization, civilization, religion, and/or the stabilizing force of government authority. Reversion to the natural, savage state, so the idea went, was a constant danger. William Golding's (2012) novel, *Lord of the Flies*, illustrated the belief in this dichotomy well. Proper English schoolboys, with all the advantages of an upbringing at the highest levels of civilization, are separated from all authority. They quickly become sadistic, superstitious, and miserable in ways that resemble the most cartoonish depictions of naked, painted savages.

The equation of lost schoolboys with indigenous people (as per-ceived by Western colonialists) reflects the belief that humans stemmed from a natural, primitive, and uniform root to an outpouring of diverse civilizations. Not everyone assumed this root to be savage; some portrayed it as idyllic; but either side in that debate is consis-tent with the belief in a *uniform* primitive root to human nature to which indigenous peoples were supposedly the closest approximation. To study people outside state authority was believed to be a way to study "natural man," free from society and socialization. Carried to an extreme, this position essentially recognizes Western feral children, the "Wild Men of Borneo," the tribes of "Darkest Africa," a "Pack of Wild Indians," and many other real or imagined groups as all in some way representing this single category of "natural man." Colonial-era philosophers and social scientists might not have believed that indig-enous peoples lacked *all* civilizing influence, but many believed that the earliest societies were the most "natural" because they were the closest to human origins and had the fewest civilizing influences.

Hobbes, at least, did not believe that "civilized man" and "natural man" had fundamentally different characters. His justification of the state required that the violent aspects of human nature would sur-face in even the most "civilized" people if they found themselves in the state of nature (Macpherson 1962: 19–25). Hobbes did not reject the dichotomy; he simply gave most of the credit for the progress of "civilized man" relative to "savage man" to institutions rather than to breeding, socialization, or anything else.

The idea of a uniform root was badly mistaken. Small-scale societ-ies are extremely diverse. We will make generalizations about them, but we also make generalizations about state societies that include polities as diverse as ancient Sumer and modern Australia. So, clearly any generalizations we make should not give the impression that soci-eties at a given scale are uniform.

Today most social scientists believe that all societies are equally "natural," because if we can say anything about human nature, it 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. Similarly, the application of the word "primitive" to a people is pejorative, and it has little mean-ing once this idea of a uniform root to all forms of social organization is dropped. One can speak of an evolutionarily primitive life form or a primitive technology, but not a primitive socio-political organization.

The concepts "natural man" or "primitive peoples" have nearly disappeared from the social science literature. And so, for the most part, the "state of nature" becomes simply "statelessness."

However, the word "nature" in "state of nature" is relevant in at least two senses: first, even contractarians who do not subscribe to the dichotomy between "natural" and "civilized man" portray their *description* of the state of nature as the inevitable result of the absence of state sovereignty (Hobbes 1962 [1651]: 100; Gauthier 1986: 81–5). Even if no one today believes that people revert to some primitive nature without state authority, it is reasonable to believe that anarchy has inherent difficulties that make it possible for social arrangements to resemble a contract aimed at improving everyone's position relative to the state of nature.

Second, anarchy is the natural point of comparison for the versions of contractarianism we focus on in this book. The basic justifications of sovereignty usually take one of two forms: state authority is justified (1) 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 (2) if and when people would consent to it given the comparison with the state of nature. According to Gregory S. Kavka (1986: 402), the low baseline of the state of nature is useful for theories "about the minimal conditions of political obligation, not the principles of morality, social justice, or the ideal society." For contractarianism, the state of nature is the default position. It needs no justification, though the imposition of government authority does. Many versions of contractarianism do not require states to be justified relative to other possible states; only relative to the state of nature.

Hobbes (1962 [1651]: 100) *defined* the state of nature as the absence of the state, and *described* it as also lacking morality and society, but these characteristics are not part of the definition of the state of nature relevant in the context of the justification of the state. Hobbes argued that these characteristics were inherent to anarchy, but his argument could be good or bad.

His argument that morality doesn't exist in the state of nature follows by pure analytical reasoning from his definition of morality. Morality, to Hobbes (1962 [1651]: 113), is no more or less than the fulfillment of an enforceable contract. Hobbes's use of this definition allows him to demonstrate that morality necessarily comes into existence with a social contract to obey sovereignty. Contracts are unenforceable in the state of nature, and so by definition, there is no

morality or immorality in the state of nature. Morality comes into existence only when people make an enforceable agreement to obey the sovereign.

We largely ignore Hobbes's definition of morality, because his justification of the state doesn't need it, and because it is extremely unpopular. Philosophers—including contractarians—have consistently rejected it, starting as early as Locke. One reason to reject it is that it gives the fulfillment of promises a bizarre moral priority, overriding principles that strike almost everyone as more basic. Most people would tell someone not to commit murder because murder is immoral. A strict Hobbesian, however, would have to say that, although murder is naturally permissible, it is immoral for you, because like everyone else, you have tacitly contracted to obey a sovereign who happens to have arbitrarily outlawed murder, and breaking that contract is immoral.

Hobbes's (1962 [1651]: 100) description of the state of nature as the absence of society relies on a more complex argument for what we call the "violence hypothesis": the belief that without sovereignty, society inherently degenerates into a war of "everyone against everyone." This war makes society impossible. Section 2 examines the violence hypothesis.

Philosophers put the contract device to many uses, not all of which are related to the discussion here. This book uses the word "contractarianism" narrowly to mean *theories justifying government sovereignty with a contract device 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 is relevant to this research project, and we need to clear up potential confusion that might arise from two similar uses of contractual reasoning.

Government, society, and morality all involve individuals making sacrifices to live with one another, and therefore, a contract device can be used to model or justify any of them—together or separately. Some philosophers use contract theory to model morality or society without involving government. A contractarian theory of morality *defines* the state of nature as the absence of morality instead of the absence of government. A contractarian theory of society *defines* the state of nature as 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 and vice

versa. The potential for confusion is important because, if the three do not always go together, a claim can be right for a state of nature defined one way and wrong for it defined another way.

Hobbes credited the state with the establishment of society and morality. Alasdair MacIntyre (1998: 86) calls this error "the oddest of Hobbes' confusions, that he appears not to distinguish the state and society." The government cannot take credit for society. Although full states have existed for only the last 5,000 or so of the 200,000 years of the existence of the human species, no human populations have ever lived without a society or without a conception of morality. Humans are an obligatorily gregarious species, meaning that they need other people to survive through the course of a normal life (de Waal 2006: 4–5). Although the state of nature defined as the absence of morality or the absence of society is purely imaginary, the state of nature defined as the absence of government sovereignty is real. Descriptions of anarchy as necessarily entailing the absence of society or the absence of (a conception of) morality are not imaginary; they are simply wrong.

The observation that people naturally create society does not contradict the idea that societies are *artificial* creations in the most important sense used by contractarianism. Although people need other people, no one needs any particular group of other people or any specific set of rules for interaction. Unlike most species, people are capable of thinking about what kind of community they want, to negotiate and change their community, and to leave one society they don't like. Therefore, although all humans live in communities, each community is an artificial human creation. It can be useful to view those creations as the product of an agreement, if for no other reason than to provide an ideal for the community to live up to. That much at least, the contractarians got right.

Hobbes (1962 [1651]: 98–102) describes the state of nature as a horrible situation. Using both theory and observation, Hobbes (1962 [1651]: 100) argues that it is a war of all-against-all and concludes that life in the state of nature is "solitary, poore, nasty, brutish, and short." If his theory correctly predicts how humans behave in the absence of sovereign authority, statelessness is intolerable for all people who find themselves in it. Hobbes argues that only a sovereign state sustained by the commitment of its citizens can save people from this intolerable situation. Therefore, the state benefits everyone.

Based on Hobbes's description of the state of nature and his use of it in his argument, we characterize the "Hobbesian hypothesis" as follows. *Everyone under a sovereign government is better off (or no worse off) than they could reasonably expect to be outside of that authority.* Hobbes supports his hypothesis both with theory and with observational evidence. Section 2 discusses his support for the hypothesis. This section discusses his use of it.

Scholars of Hobbes disagree about the nature of his social contract. The literal-consent version interprets it as a tacit but real agreement. Everyone knows that the Hobbesian hypothesis is true and that their commitment is necessary to establish safety. They all prefer any sovereign government that relieves the fear inherent in all stateless societies, and they all make a permanent, enforceable commitment to obey virtually any government that provides basic security, which means virtually any government that successfully establishes sovereignty. The moment the state fails to provide people with that basic freedom from fear, Hobbes relieves them of their moral obligation to obey (returning them to the moral free-for-all of his state of nature).

The Hobbesian hypothesis plays a pivotal role in this argument. The ablest people in the state of nature live in so much fear and misery that they gladly consent to the state. The least advantaged people in state society live so much better than they would in the state of nature that they also gladly consent. We might object to some of the state's actions, but as long as it continues to relieve us from the imminent fear of death, none of us ever really wants the state to disappear. People willingly accept all the things they do not like about the state because any disobedience to it invites a return to the state of nature, and (supposedly) that situation is so miserable that tradeoff is not worthwhile.

This version of Hobbes's social contract is not between a citizen and the sovereign but between one citizen and another. It is a peace treaty among people who would otherwise be engaged in a war of all-against-all. They promise *each other* to obey the sovereign and to accept its enforcement of the contract, but they do not make any promises to the sovereign, and it makes no promises in return.

The sovereign logically must remain outside the agreement, because there is no higher power to enforce any contract between the sovereign and its subjects. And according to Hobbes (1962 [1651]: 132, 157), unenforceable contracts are not morally binding. All enforceable agreements require an outside force with the power to enforce the agreement. Therefore, some person or institution must

remain in the state of nature. The sovereigns of the world remain in the state of nature with relation to each other and to the citizens. They make no agreement and nothing they do can be moral or immoral. The people's moral obligation to obey the sovereign comes from the agreement with other people. They do not betray the government when they disobey it, because they have no agreement with the sovereign. They betray their fellow citizens by subverting a peace treaty between individuals who would otherwise necessarily 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 begin in the state of nature and get out 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, obtaining their consent by its effects rather than by its origins. As Dudley Knowles (2009: 101) explains, "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 everyone against everyone, providing safety where otherwise there would be danger.

We summarize this justification of the state as follows:[1]

P1: Everyone is better off under the authority of a sovereign state than they could reasonably expect to be outside it [the Hobbesian hypothesis].

P2: Everyone who (sufficiently) benefits from the state consents to it.

C1: (From P1 and P2): everyone who lives under government sovereignty consents to it.

P3: Government sovereignty is justified if everyone consents.

C2: (From C1 and P3): government sovereignty is justified.

As we understand it, this argument has two ethical claims (P3 and C2) and three empirical claims (P1, P2, and C1), but we discuss the

empirical nature of these claims later in this chapter. We could add many more details, such as the argument Hobbes uses to support P1, but it is actually more useful to simplify it even further.

P1 is the Hobbesian hypothesis. The Lockean proviso, as defined in Chapter 1, doesn't appear in this argument in so many words. Strictly speaking, Hobbes's justificatory condition is one of *consent* rather than *benefit*. But P2 essentially makes the claim of consent synonymous with the claim of benefit, and the connection of benefit with (at least hypothetical) consent has been extremely popular in subsequent contractarian literature. This allows us to simplify Hobbes's argument:

P1:   Lockean proviso: the state is justified if it benefits people so much that they all consent to it.
P2:   Hobbesian hypothesis: the state does in fact benefit people that much.
C: The state is justified.

Framing Hobbes's criterion in terms of both benefit and consent allows us to think of it as a version of the Lockean proviso. It also allows us to see two very simple ideas at the heart of contractarian or mutual advantage theory: a moral claim asserting mutual advantage as an ethical criterion (the proviso) and an empirical claim asserting that mutual advantage has been achieved (the hypothesis). The outline above is a specification of the more general form we give to mutual advantage theories:

P1:   Lockean proviso: an institution can justly be imposed providing everyone is better off under its authority than they could reasonably expect to be outside its authority.
P2:   Hobbesian hypothesis: everyone is better off under the authority of this institution than they could reasonably expect outside its authority.
C: This institution is justified.

Additional premises could be added, but some form of this syllogism plays a part in all arguments that claim to justify an institution with reference to mutual advantage. Most contractarians don't use the term "Lockean proviso" in this way, but following Gauthier (1986: 205, 208), we use it as a simple name of this important criterion. Gauthier (1986: 208) 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."

Literal, unanimous consent is simultaneously a strength and a weakness of the theory, as Alan Ryan explains:

> 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. (Ryan 1996: 228–9)

If unanimous agreement is empirically unachievable, it is hard to believe it is normatively necessary (Frankfurt 1969).

Hobbes 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 and our neighbors would behave if we were freed from state authority. We know how that behavior would inevitably lead to violence and misery for everyone. We simply cannot will it to be so. Although no contract has ever been signed, knowing that the state needs our commitment to save us from the state of nature, we all consent—silently but truthfully—to state authority. Deep down, despite what we might say or do, the state really does have unanimous support—or so a thoroughgoing literal-consent theorist might believe.

Whether or not this construction correctly interprets Hobbes, few theorists have found it or any other theory involving literal, unanimous consent plausible enough to justify sovereignty. The most popular alternative reframes the proviso in terms of hypothetical consent. Section 3 discusses that version.

B. *The Prudential-Advice Version*

Hobbes is not necessarily committed to defending the claim of literal consent against criticisms like Ryan's. As Iain Hampsher-Monk (1992: 40), Leslie Stephen (1904: 209–10), and others suggest, Hobbes might not have tried to justify state authority at all. He might have merely

given people advice to obey it. People should sign on to the social contract and morally bind themselves to obedience, because it is the prudent thing to do. This version simplifies Hobbes's argument:

P1:   If the Hobbesian hypothesis is true, consent to the sovereign is the prudent choice.
P2:   The Hobbesian hypothesis (is true).
C: Consent to the sovereign is the prudent choice.

Morality is involved in this argument. To the extent that people are wise and bind themselves to the state, justice for them becomes obedience to its laws. They obtain the same moral obligations as those in the literal-consent version. But this argument is not necessarily a justification of the state, because there will be people who do not take the advice for whom the state is not justified.

Some of Ryan's analysis can be construed as support for the prudential-advice version:

> Hobbes's science of politics is a form of blueprint making . . . The blueprint sets out what rational individuals must do if they are to form a political society; it does not predict what they will do. Far from offering a disconfirmable predication of what they will in fact do, Hobbes's politics relies for its rhetorical power on the fact that men have so often failed to do what the blueprint dictates and have thus caused themselves appalling misery. (Ryan 1996: 213–14)

We are not sure that this argument effectively supports the prudential-advice version. Although people do not always accept beneficial agreements, they also do not always fulfill the agreements they make. Hobbes might have believed his advice was so obvious that all people *do* commit at some point in their lives, making disobedience both imprudent and immoral.

The advice version used alone is more realistic in the sense that it does not involve any claim of unanimous consent. People who object make a mistake, but some people will make that mistake. That realism comes at a high price because it raises the question of how to treat these imprudent objectors. Hobbes's definition of morality as nothing more than obedience to the contract allows him to suppose the state is neither moral nor immoral to treat them as cruelly as the sovereign might

desire. Without that view of morality, it is unclear what this argument implies about the treatment of objectors. The popular response is to employ hypothetical consent, but then the prudential-advice version plays no role in the justification of the state.

The difference between the literal-consent and the prudential-advice versions of Hobbes's argument are inconsequential for this inquiry because they both rely on the same Hobbesian hypothesis. We focus on the more influential consent-based versions, but our empirical findings are equally relevant to advice-based versions.

C. The Yield-to-Superior-Force Version

Hobbes's (1962 [1651]: 145) third argument does not involve claims about stateless societies, but it relies heavily on his idiosyncratic definition of morality. A conquering government with de facto power but without any agreement has the right to kill any individual it wants. Because everyone knows it will kill anyone who does not accept its rule, everyone makes a binding agreement of lifetime obedience. This agreement takes a form that was impossible in the situation above: it is between each individual and the sovereign rather than among the individuals. It is possible in this case because the sovereign fulfills its side of the bargain instantaneously by refraining from killing the subject. The sovereign makes no promise about later behavior, and so no higher power is needed over the sovereign (Kavka 1986: 392–8).

This justification is free from any reference to the Hobbesian hypothesis, but its empirical plausibility comes at the price of normative implausibility. Few, if any, philosophers, and even those who consider themselves Hobbesians, believe that yielding to superior force constitutes an ethically binding commitment. We mention only two criticisms of it and then ignore it. First, the state-of-nature-based version of Hobbes's theory does not necessarily require Hobbes's unpopular definition of morality, but this version cannot do without it. Second, according to Hampsher-Monk (1992: 38), "Hobbes wants to distinguish slaves, who have no duty of obedience . . . from servants, who are obliged." This version is incapable of making that distinction because slaveholders can extort the same promise. For additional criticism of this argument, see Kavka (1986: 392–8), who concludes that this line of reasoning "is a dismal failure. It does not solve the voluntariness problem."

Some philosophers argue that this version is the *right* interpretation of Hobbes, that it is the most important justification of the state to him. Even so, this version is immaterial to our inquiry, because it has little influence over subsequent political theory.

2. HOBBES'S SUPPORT FOR HIS HYPOTHESIS

The primary reason Hobbes gave to support the Hobbesian hypothesis was another hypothesis supposing that the state of nature was inherently and intolerably violent. We call this claim "the violence hypothesis." It is closely connected to the long-repeated claim that human nature is naturally violent or warlike, which further connects it to the supposed dichotomy between "natural man" and "civilized man." The violence hypothesis does not necessarily require a warlike-nature hypothesis. According to Gauthier (1991: 17), it "is based, not on innate hostility, but on hostility derived from the ever-possible conflict between men's powers of self-maintenance. War is the consequence of natural insecurity." Hobbes argues that stateless situations are so insecure that people don't need a strong predilection to violence to fall into endless conflict. However, the warlike-nature hypothesis has come and gone throughout the history of political thought. It was undoubtedly influential over Hobbes and other contractarians, and so we will not ignore it in our empirical discussion.

Hobbes (1962 [1651]: 98–102) supported his violence hypothesis with a theoretical model about how humans behave in the absence of state authority. Without an authority to enforce promises, no one could trust anyone. People, being sufficiently equal in strength, would attack each other 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 everyone against everyone" in which no one is safe.

Kavka (1983: 292–3) argues that Hobbes actually needs five assumptions to make his logical model produce 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" (Kavka 1983: 92). 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" (Kavka 1983: 295).

In Hobbes's theory, the impossibility of peace outside of state authority is both the most important direct source of misery and the causal force creating many other sources of misery, because during a war of all-against-all, none of the benefits of human cooperation are possible. Based almost entirely on the violence hypothesis, Hobbes famously elaborated on what his theory implies for life under anarchy:

> 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. (Hobbes 1962 [1651]: 100)

Hobbes apparently believed he had logically proven that stateless situations always develop such a war. Therefore, he thought he had logically proven the Hobbesian hypothesis.

Hobbes offered two pieces of empirical evidence to confirm his theoretical findings. First, he discussed the horrors of a civil war as an illustration of the breakdown of sovereignty. This issue was extremely important throughout *Leviathan* and all of Hobbes's political writings. Second, Hobbes cited what was to him the most readily available example of people living in stateless societies—Native Americans:

> 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. (Hobbes 1962 [1651]: 101)

This passage explicitly presents small-scale stateless societies as an empirical example of the state of nature in an effort to confirm the Hobbesian hypothesis by observation.

Colonialist accounts of peoples in small-scale societies had a clear impact on Hobbes's thinking. Kinch Hoekstra wrote:

> Some elements of Hobbes's description of the natural condition can be traced back to early anthropological accounts of the Americas. . . . 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. (Hoekstra 2007: 113)

Therefore, Hobbes's brutish view of small-scale societies was influenced by his settler contemporaries who held highly prejudiced beliefs about native peoples at least partly as a convenient reason for wiping out or displacing the peoples in newly colonized lands. The cover of Hobbes's book *De Cive* makes reference to the presumed misery of Native Americans (Hoekstra 2007: 113). He clearly believed observations of indigenous people confirmed both the violence hypothesis and the Hobbesian hypothesis. 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. (Ryan 1996: 218)

Hobbes needs his hypothesis to be true for any stateless societies, whether indigenous or not, because otherwise they would falsify his claim that sovereignty is inherently superior to statelessness.

We define the "violence hypothesis" as the claim that stateless situations inherently have intolerable levels of violence. We also call it the "strong violence hypothesis" to distinguish it from a "weak violence hypothesis," in which stateless societies have greater but not necessarily intolerable violence. Hobbes relies heavily on the strong violence hypothesis to support the belief that he has deductively proven the Hobbesian hypothesis. If you weaken the violence hypothesis to

one about relatively higher but not intolerable levels, violence alone cannot conclusively prove the Hobbesian hypothesis. Violence levels would become just one of many factors jointly determining whether everyone is better off.

Of course, an argument for the Hobbesian hypothesis doesn't necessarily require the strong violence hypothesis or any hypothesis about violence at all. One could say that, for some other reason, such as the inability to enforce contracts or to organize large-scale cooperation (Gauthier 1986; Hampton 1988: 247, 268), the welfare level of people in stateless society is so low that everyone prefers state society. Whatever the welfare level is in stateless societies and whatever the reason, the contractarian argument is that sovereign governments do better. We summarize Hobbes's argument as follows:

P1: Without a sovereign to enforce rules, people attack each other for gain.

P2: Without a sovereign to keep the peace, people attack each other out of fear.

P3: Without a sovereign to settle disputes, people attack each other for reputation.

C1: (From P1, P2, and P3) [the violence hypothesis]: the state of nature is intolerably violent to the point at which they have imminent fear of death.

P4: When levels of violence are intolerable, other advantages of civilization are unobtainable.

P5: The state of nature as observed among "savage people in many places of America" has intolerable violence and lacks advantages of civilization.

P6: The state of nature as observed among European states during civil wars has intolerable violence and lacks many advantages of civilization.

C2: (From C1, P4, P5, and P6) [the Hobbesian hypothesis]: everyone is better off under the authority of a sovereign state than in the state of nature.

Although this outline includes subjective ideas, it seems obviously to be an empirical argument. It is not built purely from definitions or from first-best normative principles. We discuss the empirical nature of this argument further below.

3. CONTEMPORARY JUSTIFICATIONS OF THE STATE

Contemporary contractarianism is extremely diverse, but we can say that most contemporary contractarians believe Hobbes's version has one empirically implausible claim—*literally everyone consents*. But few contractarians seem to see any implausibility in the theory's other empirical claim—that *literally everyone benefits*. This section considers three versions of contemporary contractarianism. Each of them softens the claim of unanimous consent but leaves the claim of universal benefit intact. It then considers one version that does not explicitly appear in the literature but that could potentially do without the claim of universal benefit.

A. The Hypothetical-Consent Version

As Chapters 5 and 7 discuss, contemporary contractarianism gets out of the need to claim universal consent by relying on a claim of hypothetical consent inspired by Kant (Gauthier 1991: 50; Moore 1994: 211; Martin 1998: 150; Scanlon 1998: 4, 187; D'Agostino et al. 2011). This strategy replaces the claim that *literally everyone consents* with the claim that social arrangements are sufficiently desirable that everyone would agree if they were rational, reasonable, and sufficiently well-informed.

Many contemporary philosophers describe this sort of reasoning as an effort to justify rules *to* the people who are restrained by them. In Thomas Scanlon's words:

> According to the version of contractualism that I am advancing here our thinking about right and wrong is structured by . . . the aim of finding principles that others, insofar as they too have this aim, could not reasonably reject. This gives us a direct reason to be concerned with other people's points of view . . . to find principles that they, as well as we, have reason to accept. (Scanlon 1998: 191)

Some people can and will reject these principles, but if the social agreement is properly constructed, their objections are unreasonable in the sense that they do not share the aim of finding principles neither side can reject. Society does not have to bring them into agreement because that is impossible, and because, as Kavka (1986: 411) argues, literal

consent would "suggest that ignorance, even self-deceptive and self-serving ignorance, exempts one from contributing one's fair share to a mutually beneficial scheme of interaction."

This understanding of contractarianism has become so popular that *The Stanford Encyclopedia of Philosophy*'s entries on "Contemporary Approaches to the Social Contract" and "Contractarianism" drop literal agreement in favor of hypothetical agreement (D'Agostino et al. 2011; Cudd 2013). Hypothetical consent makes the proviso nearly synonymous with mutual advantage. Kavka (1986: 409–15) connects the "receipt of benefits" relative to the state-of-nature baseline not only with contractarianism but also with justifications of the state based on social utility, fair play, and gratitude. Mutual benefit also seems to underlie Nozickian "invisible hand" justifications of the state (Nozick 1974: 88–119). The mutual advantage principle at least partly underlies the literal-consent version of contract theory as well, because usually one agrees to something because one believes it is beneficial. One reason to require consent to any contract is to help ensure that arrangements are beneficial to all parties.

Some philosophers are skeptical about the ethical usefulness of hypothetical contracts. Ronald Dworkin (1973: 501), for example, argues, "A hypothetical contract is not simply a pale form of an actual contract; it is no contract at all." This objection is not necessarily fatal; it just means that whatever makes a hypothetical contract morally binding is not the principle that makes a literal contract binding. Different contractarians provide different arguments for what makes the hypothetical contract (or pure mutual advantage) ethically binding. Those differences are unimportant for this narrowly focused inquiry.

Our concern is that the various hypothetical-consent versions claim that mutual advantage relative to the state of nature has been obtained. Few deny the need for mutual advantage. Few designate any group for whom mutual advantage need not apply. Few argue for a conception of mutual advantage that rules out the need to provide benefits relative to statelessness. So, the need for such a Hobbesian hypothesis is as important to the hypothetical-consent version as it was for Hobbes's literal-consent version.

This empirical hypothesis is required, because although unreasonable objections do not count, reasonable objections do. To say that the state has achieved the goal of justifying duties *to* the people on

whom they are imposed, one does not have to show that they all acknowledged that justification, but one does have to show that their objections are unreasonable or irrational according to some impartial standard. Usually that standard is the Lockean proviso (whether weak or strong), and so the claim that there are no reasonable objections is the assertion of the relevant version of the Hobbesian hypothesis.

This strategy essentially replaces the claim of literal consent from Hobbes's theory with the claim of hypothetical consent, leaving the rest unchanged, to make an argument of the following form:

P1: Lockean proviso: the state is justified if it benefits people so much that they would consent to it if they were all rational, reasonable, and sufficiently well-informed.

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

C: The state is justified.

The arguments for moving away from literal consent are compelling, but contractarians seldom acknowledge that hypothetical consent is a two-way street and a much more complex issue. If there can be unreasonable objections, there can also be unreasonable submission. Therefore, the literal consent of disadvantaged people might not be enough to justify the state if they are poorly informed about statelessness. The distinction between reasonable and unreasonable objections creates two questions where the literal-consent version has only one. Does the person consent? Do they have a reasonable objection? Consider a two-by-two matrix of possible responses to the two questions:

	Consent	Object
No reasonable objection	Willing participant	Intransigent
Reasonable objection	Silent dissenter	Dissenter

We have given names to the groups of people represented by each cell of the matrix. A "willing participant" consents with good reason.

An "intransigent" objects without a rational and reasonable basis. They might unreasonably hold out for special privileges for themselves at the expense of everyone else. They might refuse because they lack the information necessary to know that social arrangements have been sufficiently justified. Or they might irrationally believe that a

better agreement is possible when it is not. The hypothetical-consent version of contractarianism relies on the moral judgment that intransigents should be counted as parties to the social contract. If no one else objects, the agreement is effectively unanimous. It has been impartially justified to everyone, even if some people are too unreasonable to admit it or too irrational or ill-informed to understand it.

A "dissenter" has a rational, reasonable, well-informed objection to the social system. They believe correctly that the state and its current social arrangements are harmful to them. The proviso remains unfulfilled for them, and therefore, they have good reason to wish not to be party to the social contract.

If contractarians drop the assumption that everyone who objects has a good reason, they have to drop the assumption that everyone who accepts has a good reason. A "silent dissenter" consents despite having no good reason to do so. They might be deceived into thinking they benefit from the social contract when they don't (perhaps because philosophers exaggerate the dangers of statelessness). They might keep silent despite being aware of their reasonable objections, possibly because they are unfree to voice objections, because they are incentivized to be silent, or because no one listens (perhaps because dissenters are dismissed as intransigents).

The goal of the hypothetical-consent version of social contract theory is to construct social arrangements that ensure no one falls into the bottom row. As later chapters show, the consensus view is that if the criterion is the weak proviso, all reasonable objections have been eliminated because the proviso is obviously fulfilled. In other words, hypothetical-consent versions of contractarianism have gotten rid of all empirical claims in the theory except for the Hobbesian hypothesis. This justification places great confidence in the empirical truth of the Hobbesian hypothesis. The possibilities of intransigents are well-discussed in the literature, but the possibilities of dissenters (whether silent or vocal) are largely or entirely ignored by contemporary contractarians. The absence of discussion implies confidence that reasonable objections are obviously eliminated.

B. Versions with Additional Criteria

Hobbes had only one criterion to justify the social contract. Although we call this criterion the Lockean proviso, it was Locke who began requiring additional criteria for the justification of the social contract. Usually,

the government not only has to make people better off; it also has to respect their natural rights and have some democratic institutions. The fulfillment of additional criteria is inconsequential to the discussion in this book. As long as the proviso is one of the moral criteria, one has to assert the Hobbesian hypothesis to say that the state is justified.

C. Strong-Proviso Versions

Many contemporary philosophers reject the weak Lockean proviso in favor of a stronger version, usually asserting that this proviso has not been fulfilled, and therefore, that current social arrangements are not justified. We have no criticism of this position. However, people who take this position often concede that the weak proviso is fulfilled. Thus the Hobbesian hypothesis is widely accepted even by many who reject its moral relevance.

D. Is There an Extra-Weak Version?

The most obvious way to eliminate the need to assert the Hobbesian hypothesis would be to straightforwardly deny the moral relevance of the weak proviso, either by proposing an extra-weak proviso or by asserting that the contractarianism requires no empirical claims at all. Sections 4–6 argue that contractarianism—despite the counterfactual nature of some of its reasoning—requires at least one empirical claim about the fulfillment of some version of the proviso. However, there are at least two ways to argue for an extra-weak proviso that does not rely on claims about real stateless societies. The state of nature could be a purely synthetic device, meant to illustrate the criteria needed to justify the state but not meant to say anything at all about statelessness. Or the state of nature could refer to some but not all stateless situations. Even if small-scale stateless societies are real and observable, one might "bracket" them by arguing that the only relevant alternative to the state is a failed state or a civil war. Section 7 argues that contractarianism as usually stated doesn't easily incorporate bracketing, but the possibility of an extra-weak proviso remains relevant throughout the book.

4. THE HOBBESIAN HYPOTHESIS IS A COUNTERFACTUAL CLAIM

The Hobbesian hypothesis is a counterfactual claim—a claim about an event that is not happening. Most people today 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 to make a claim about a situation that does not exist and that is not likely to exist.

Although counterfactuals are contrary to fact, they have empirical truth-value (Fearon 1991; Nolan 2013). Consider these two statements: (1) If you go outside without heavy clothing in subzero weather, you will be cold. (2) If you go outside without heavy clothing in subzero weather, you will be so light that you will float to the moon. Statement 1 is true. Statement 2 is false. No amount of evidence that you are not and might never go outside without heavy clothing in subzero weather will change the truth-value of statements 1 and 2.

Counterfactuals are important claims, without which no one could understand causation. Arguments about the relative causes of events are arguments about the relative likelihood of counterfactuals (Fearon 1991: 178). Counterfactual scenarios need not even be possible for a counterfactual claim to be true. Consider the following statements: (1) If a flea lifted a 1,000-kilogram weight, the moon would not be appreciably affected. (2) If a flea lifted a 1,000-kilogram weight, the moon would crash to earth. Although fleas can't lift a 1,000-kilogram weight, 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 philosophers treat the state of nature as a pure counterfactual and others treat it as a 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 people got close to it, they would reestablish sovereignty. Hampsher-Monk expresses this idea:

> 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. (Hampsher-Monk 1992: 27)

It would be wrong to assume simply because the state of nature does not or cannot exist, that no claims about it have any truth-value or that a theorist can make up whatever claims they want about it and

expect that they be accepted as true. If the state of nature is a pure counterfactual, claims about it cannot be verified by direct observation, but they can still be true or false, and verification is possible. The well-demonstrated theory of gravity confirms the effect that a flea lifting a 1,000-kilogram weight would have on the moon. We will argue that the state of nature in any plausible justification of the state is a contingent counterfactual. It is something that does not exist, but it is something that can and does exist in the world.

Counterfactuals have *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 will start to approach Hobbesian horribleness, and that horribleness will be attributable to the weakness of sovereignty. 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 be tolerable enough that people would allow it to exist. Stateless societies fully fitting the contractarian definition of the state of nature might or might not exist without conforming to the Hobbesian description of it. If so, the Hobbesian hypothesis is not a pure counterfactual even if Hobbes or any other contractarian theorist thought it was.

5. THE HOBBESIAN HYPOTHESIS IS AN EMPIRICAL CLAIM

The philosophical literature contains virtually no debate over whether contractarianism requires empirical claims, what those empirical claims are, or how we know whether they are true. Nevertheless, when we present ideas from this book, a controversy nearly absent from the literature appears. Philosophers are usually split on the issue of whether contractarianism requires an empirical Hobbesian hypothesis or whether it justifies the state on a purely a priori basis. If experts can be so split on such a fundamental issue, they need to discuss and resolve the question. This section and the next contribute to that discussion, arguing that whether a contractarian theory uses a strong, weak, or extra-weak proviso, it requires an empirical claim of fulfillment.

A. Isn't It Obvious?

To us, the Hobbesian hypothesis is obviously empirical. There seems to be no controversy that the statement *literally everyone consents* is both empirical and implausible. Even if there is controversy on

whether the statement *literally everyone benefits* is more plausible, we don't see why there should be any controversy that it is any less empirical. 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. If you're convinced that the Hobbesian hypothesis is obviously empirical, skip to Section 7. If not, read on.

B. *Hobbes Treated His Hypothesis as an Empirical Claim*

Hobbes praised a priori methodology and denigrated historical observation and empirical methodologies (Kavka 1986: 4–9; Schuhmann 2012). Tom Sorell (2012: xi) argues that Hobbes believed that "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 imply that Hobbes rejected all empirical claims, only that he rejected historical observation as accurate evidence of empirical truth. Despite Hobbes's preference for a priori methodology, we intend to show, he was less guilty of a lack of clarity on this issue than most subsequent contractarians. He treated the Lockean proviso as a moral requirement for an empirical criterion and offered empirical support for the Hobbesian hypothesis.

Kavka (1983: 4–10) suggests that Hobbes had a failed aspiration to be a *pure* a priori theorist. He attempted 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. (Kavka 1983: 8)

Hobbes's actual method, according to Kavka (1983: 4), was "logical and conceptual analysis combined with empirical observation and probabilistic reasoning."

Hobbes might not have been this unaware of his own method. According to Hampsher-Monk (1992: 26), although Hobbes believed that science is *established* by introspective reasoning, Hobbes recognized that it "requires an experiential check on the validity of the results achieved."

Even extremely analytical disciplines make empirical claims. Mathematicians have built incredibly rich theories based purely on definitions and on analytical reasoning. For example, geometric theory can prove that the three angles of any triangle always sum to 180 degrees without actually showing any triangles. Yet the statement is empirical in two ways. First, if one wants to apply it to objects in the world, one has to claim that they sufficiently approximate the definition of a triangle to make the theory applicable. Second, all good a priori proofs are consistent with observation. People do observe objects very similar to triangles, and the sums of their angles have been remarkably consistent at 180 degrees. If they did not, we would know that something was wrong with the proof, even if we didn't know what it was. The same is true for Hobbesian theory. If it is a good theory, and if there are situations in the world that meet his definitions of the state and of the state of nature, his theory will make accurate predictions about them. If not, either the observations or his theory must be inaccurate.

Regardless of Hobbes's level of self-awareness, his supporting arguments for the Hobbesian hypothesis (discussed above) treat it as an empirical claim. As mentioned above, he does present confirming examples. He couldn't make the references to civil wars and Native Americans without acknowledging that his hypothesis has the potential to be confirmed by observational evidence. A statement that, if true, has potential to be confirmed by observational evidence, it also must, if false, have potential to be refuted by observational evidence.

Even Hobbes's more abstract arguments treat the hypothesis as an empirical claim. His argument for the war of all-against-all is a priori only in the sense that it doesn't refer to empirical support for its claims, but it is empirical in the sense that it relies on claims about the world: claims about human nature and about how that nature plays out under different circumstances. Either his claims reflect how humans behave, or they do not. Either people in the circumstances he describes experience the consequences he describes, or they do not.

Hobbes apparently believed his introspective claims and his logical reasoning were so strong that he needed little support from observation, but he did not imply that his argument was fact-independent.

C. Difficulties of Conceptualizing and Measuring Wellbeing

Wellbeing is difficult to measure—some people say immeasurable. And it can be a normatively laden term. But an argument for the immeasurability of wellbeing is a criticism *of* contractarianism. No *defense* of contractarianism can rest on the claim that welfare is immeasurable. If there is no way to know whether any institution benefits people, we cannot justify institutions on the grounds that they benefit people. If the reader doubts that people can be determined to be better off in one situation than another, the reader has to reject any argument based on a premise that everyone is better off in one situation than another. That is, they have to reject contractarianism outright, regardless of the issues discussed here. Measurement difficulties do not allow theorists to say whatever they want about wellbeing and have it taken as a truth capable of supporting an otherwise doubtful conclusion. We give contractarianism and propertarianism the benefit of the doubt on the possibility of making a meaningful welfare comparison and consider whether there is good reason to believe their claims about it.

The possibility that some or all conceptions of wellbeing are normatively laden cannot free the contractarian argument from empirical claims. One could simply define "better off" as being part of a state and the Hobbesian hypothesis would be true by definition, but it would make the argument tautological. This is clearly not what Hobbes or any other contractarians have been trying to do.

A normatively laden definition of welfare can be used in a justification of the state, if it is sufficiently different from the definition of the state to free the argument from tautology and sufficiently measurable to make claims about it meaningful. But claims about welfare by any such definition lend themselves to empirical investigation. Does the state actually provide greater welfare so defined?

D. Most Empirical Discussion of Hobbes Focuses on Other 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.

Misdirected empirical criticism has confused the debate. Empirical criticism has often focused on irrelevant 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. Contractarians seem to believe that if they demonstrate the irrelevance of this empirical criticism, they have demonstrated the irrelevance of *all* empirical criticism, ignoring completely the need for a Hobbesian hypothesis. Although that hypothesis is empirical, it has nothing to do with Hobbes's story about the origin of the state.

Many contemporary contractarians have clarified that social contract theory has nothing to do with any claims about the historical origin of the state. C. B. Macpherson (1962: 20) might appear to make a claim that the state of nature contains no empirical claims, writing, "Hobbes's state of nature, as is generally recognized, is a logical not an historical hypothesis," but to say that the state of nature is a logical hypothesis is not to say that it lacks any empirical truth-value. He means simply, "The sovereign by acquisition has the same rights . . . as the sovereign by institution" (Macpherson 1962: 21). People still make the irrelevant criticisms implying the justification of the state depends on how it was instituted (Binmore 2005: 169), but the uselessness of such reasoning is increasingly obvious (Knowles 2009: 101–3).

Hampsher-Monk (1992: 26) 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." But statements about "the passions" and "the properties of natural man" are not fact-independent normative principles. They are empirical claims. Inferences about the passions and properties of human beings can be right or wrong. Macintyre (1998: 87) writes, "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." That is, empirical claims about historical origins do not matter but empirical claims about human nature do. As Leslie Stephen argued a hundred years ago, the comparative claim is relevant even though the historical claim is not:

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. (Stephen 1904: 209–10)

Tom Sorell (2012: 8) 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." If Hobbes successfully developed a *universal* and *timeless* theory, then all observed people—people near or far, recent or long past—in the circumstances Hobbes describes behave in the way he predicts. Thus, evidence from the Pleistocene, from precolonial North America, from contemporary failed states, and from contemporary stateless societies is equally relevant.

Macintyre (1998: 86) 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." Whether these desires lead to the outcome Hobbes supposes whenever people lack a sovereign power to keep them in awe is *not* a claim about the historical origin of the state, but it is an empirical claim that has not been sufficiently subject to investigation. If human need for the state to create a settled order is a timeless truth, it must be as true for Stephen's Choctaws as it is for anyone else.

E. Contemporary Scholars Recognize Hobbes's Use of Empirical Claim(s)

Despite the controversy, this section shows that a great deal of recent literature argues that Hobbesian theories require at least some empirical premise(s) and that few published works consistently defend the position that contractarian theory successfully justifies the state without empirical premises. Hampsher-Monk (1992: 26) makes a clear empirical statement of the hypothesis, writing, "inasmuch as sovereignty is absent, to that extent men will begin to exhibit behaviour typical of the state of nature." Macpherson writes:

> 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. (Macpherson 1962: 19)

If so, any people found living without such authority will necessar-
ily be found to behave in this manner. An empirical investigation is
relevant and needed to determine whether this logical hypothesis is
applicable in the world we inhabit.

Lucas (1966: 62) appears to defend a purely a priori version of
Hobbesianism, writing, "The state of nature is, paradoxically, an arti-
ficial concept." But on elaboration, it becomes apparent that Lucas
defends "the state of nature" as the absence of society rather than as
the absence of sovereignty. He goes on:

> 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. (Lucas 1966: 62)

This quote conflates Hobbes's description of the state of nature
with his definition of it. Whether the absence of the state implies the
absence of community depends on whether Hobbes was right about
the impossibility of maintaining society without sovereignty, and that
is an empirical claim in need of verification.

Lucas (1966: 65–6) implies that a priori reasoning can demonstrate
that statelessness is inherently violent, writing, "We then are faced
with the logically exclusive alternatives" of the "coercive machinery
of State" and "the haphazard arbitrament of force." Lucas appears
to believe that he has proven the exclusivity of the two terms by a
priori reasoning. Even if his argument were to be completely a priori,
it would not be invulnerable to an empirical check. Observation of a
polity settling disputes "any old how" (in the words of Lucas 1966:
62) without degenerating into the arbitrary force would falsify his
conclusion. The observation would not show exactly what is wrong

with the argument, but any argument for a demonstrably false conclusion is necessarily unsound.

And Lucas's (1966: 65–6) 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. The difference, supposedly, is the obviously empirical claim that among individuals, the advantage is always to the attacker, but among nations, the advantage is sometimes often to the defender. Hoekstra (2007: 118) 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.'"

The reliance on empirical arguments to separate the behavior of individuals in the state of nature from the behavior of sovereigns who have a state-of-nature relationship is not trivial. Contractarians expect everyone to know that sovereigns can at least sometimes live together in a state-of-nature relationship without levels of violence becoming intolerable. They also expect everyone to be able to tell with little observational evidence—much less direct experience—that people living in stateless societies can never live together in peace. Those premises are a lot to accept on the basis of introspective reasoning without empirical confirmation.

Richard Tuck explains the importance of the empirical nature of the Hobbesian hypothesis in the editor's introduction to the Cambridge edition of *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. (Tuck 1996: xxx)

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

> the 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. (Gauthier 1969: 164)

Chapter 9's response follows Gauthier's suggestion and shows that the state of nature as Hobbes defined it is not a war of all-against-all.

George Klosko (2004: 5, 8) also recognizes the empirical nature of the issue, writing, "Assessment of conditions under which people are and are not able to provide indispensible benefits without state assistance raises complex empirical questions. . . . Empirical aspects of political obligations are not always recognized." Other contemporary theorists recognizing the importance of this empirical claim include Kavka (1986: 4, 7–8, 24, 402–3), Hardin (2003: 42–3), and Hoekstra (2007: 113). For example, Hoekstra writes in *The Cambridge Companion to Hobbes's Leviathan*:

> 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. (Hoekstra 2007: 117)

These widely respected scholars of Hobbes agree that he uses empirical claims for a good reason. As the following section argues, he needs one.

6. CONTRACTARIANISM'S NEED FOR AN EMPIRICAL CLAIM

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 this section argues that a purely fictional characterization of all claims about the state of nature would make the comparison irrelevant

to the question of whether the state secures mutual advantage, apparently rendering the state of nature useless for any justification of the state based on mutual advantage.

To see the need for an empirical claim, compare the state of nature with the myth of Narcissus, which tells the story of a man so self-centered that he cannot look away from the beauty of his own reflection in a pond. He eventually turns into a flower commonly seen hanging over ponds. This myth warns people to be less self-centered or risk becoming dangerously self-obsessed. Most of the empirical claims in the story are merely heuristics. The story is still good if there never was a Narcissus and if humans can't really turn into plants. But if the story is to say anything about the human condition, one claim needs to be empirically true: overly self-centered behavior is self-destructive. If that claim were untrue, the story would be meaningless entertainment.

Hobbesians don't need to do social history. They don't need to say that the state of nature is more natural than the state; that it preceded the state, or that humanity got out via a voluntary compact. They only need to talk about our world and what is in it today, but they have to say something factual about it to justify existing states against existing alternatives.

Certainly the following is a very bad argument—the Giant Chicken justification of the state:

P1: I can tell a story, in which a Giant Chicken pecks everyone on earth to death whenever the state is absent.

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

C: This story explains why the state is justified in imposing authority on unwilling people even if the authority is harmful to them in reality.

This is the kind of argument one would be left with if the Hobbesian hypothesis were interpreted as being entirely without empirical content.

We concede that the state-of-nature justification of sovereignty is more plausible than the Giant Chicken justification, but we can only think of two reasons why: it contains no premise equivalent to P2 in the Giant Chicken justification, and its empirical claim is at least prima facie plausible. The Giant Chicken presents a dilemma for anyone wishing to argue that social contract theory can justify anything

without 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). Theories not relying on a Lockean proviso might not need the Hobbesian hypothesis, but contractarianism as usually stated has little left in its justification without it.

The synthetic state of nature, which merely illustrates the criteria that the state has to pass to be justified, is possible, because any proviso, any state of nature story, any justificatory criterion is about what alternatives people are allowed to imagine when considering whether social arrangements are justified to them. But even then, the question of whether the state fulfills the criteria is empirical. Does state X meet criteria Y or not? Hobbes seemed to believe he had proven that the nature of the state ensured the fulfillment of the proviso in the way that the nature of a triangle ensures that its angles sum to 180 degrees, but Hobbes's can be good or bad and its conclusion can be true or false. The only way to remove the empirical claim of fulfillment would be to argue that the state doesn't have to meet any criteria to be justified, and that would be equivalent to denying the state needs justification. Therefore, the question is not and cannot be whether contractarianism can justify the state without any empirical claims. It cannot. The question is whether it can justify the state without claims about stateless societies.

7. THE HOBBESIAN HYPOTHESIS IS A CLAIM ABOUT PREHISTORIC AND SMALL-SCALE STATELESS SOCIETIES

We have established that the Hobbesian hypothesis is an empirical claim and an essential premise in the Hobbesian justification of the state. We have admitted to the conceptual possibility of an extra-weak hypothesis, but this section establishes that the Hobbesian hypothesis as usually stated and used is a claim about prehistoric and/or modern small-scale stateless societies. This is so, not only because Hobbes

mentions stateless societies several times, but also because the hypothesis, as Hobbes and many other contractarians use it, is a claim about *all* situations in which people are together with no sovereign authority over them. Supposedly people have an *inherent* need for the state. If so, there must be a dichotomy: either there is a state, or life is so poor that everyone has good reason to desire a state even if they can expect to be in the least advantaged group of people in that state.

If the state of nature is not fact, then it is fiction, and the comparison with the fictional state of nature would say nothing about whether there is or is not an inherent need for the state. A synthetic state of nature is unable to do what contractarianism is supposed to do: justify the state against the alternatives to it. If you consider buying a car, you would probably compare it with the alterative of not buying a car. If somebody told you that you are morally obliged to buy a car because it's better than a fictional war of all-against-all, you'd probably expect a very thorough and convincing argument why the fictional story was more relevant than the comparison between real alternatives.

Yet such arguments are missing from contractarianism. If the Hobbesian state of nature is fiction, it is fiction specifically chosen to be the worst imaginable scenario. Why choose this of all possible fictions? To avoid the appearance of being no more than an excuse to justify just about any state, a fictional worst-case state of nature would require a good argument for moral relevance.

Instead, since Hobbes, contractarians have stressed the reality of the state's protective role in preventing the violence and/or poverty that necessarily prevail in its absence. Macpherson writes:

> Hobbes's point, of course, is to show that this condition would necessarily thwart every man's desire for "commodious living" and for avoidance of violent death, that therefore every reasonable man should do whatever must be done to guard against this condition. (Macpherson 1962: 19)

People do not need to guard against fictional dangers. To give up the claim that the state protects people from real dangers in favor of an illustrative interpretation gives up the justificational force in the theory as stated. George Klosko (2004: 5) argues, "to establish political obligations, the benefits in question must be indispensable in two ways. Not only must (1) the subject require them for an acceptable life, but (2) he must require them from the state." Jean Hampton goes

further, arguing that we have to have a natural need for those benefits. That is, our need for these benefits exists whether or not a state has ever existed, otherwise, "our choice is essentially 'rigged' by a political society that creates in us the very reason we use to choose it and that appears to justify its existence" (Hampton 1988: 271). One cannot say that people require the state to provide indispensable benefits without making the counterfactual claim that they would lack indispensable benefits if they lived in a stateless society. This argument must rest on the empirical truth of the Hobbesian hypothesis.

To confirm that statelessness is inherently inferior to the state requires verifying that all stateless environments are inferior to the state. Falsification of the Hobbesian hypothesis 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 to the state; supporters have to address all alternatives.

The other option to justify an extra-weak proviso is to cast civil war as the only relevant alternative to the state, bracketing any discussion of stateless societies without going to an entirely synthetic state of nature. This strategy—even if successful—drops one of the central claims of contractarians: that there is an *inherent* need for the state. The justification of the state would become contingent on whatever factors cause the civil war to become the only alternative to the state today. Chapter 11 considers the civil war alternative as a possible response to our findings, and reveals that any such argument has greater difficulties than might at first appear. But our literature review in Chapters 4–7 finds no such argument. The contractarian argument as stated and used is that a well-constructed state is inherently better than statelessness. We find no contingent justification of the state based on the particulars of the current political setting. Therefore, until Chapter 11, we examine the Hobbesian hypothesis as most commonly used: the claim that everyone is better off in state society than they could be in any stateless society.

8. THE "WEAK" HOBBESIAN HYPOTHESIS IS A STRONG CLAIM

This chapter has argued that contractarians have freed social contract theory from relying on the empirical claim that *literally everyone consents* by relying heavily on the empirical claim that *literally everyone*

benefits. But this hypothesis—even in its weak version—is a strong claim in the sense of a far-reaching claim (not in the sense of a well-supported claim). It is *weak* in the way that the claim, "everybody dislikes Chris" is weaker than the claim "everybody hates Chris," but it is strong in the way that "everybody hates Chris," is stronger than "a large majority of people hate Chris." Literally speaking, the Hobbesian hypothesis implies that the worst-placed person in state society is better off than the best-placed person in any stateless situation. It is far stronger than other claims that could conceivably be used to justify the state, such as that the majority or the average person benefits.

The weak proviso is so strong that it could not be used to compare two states. One could not say that *everyone* is better off in contemporary Norway than *everyone* was in ancient Rome. If the emperor wouldn't want to give up being worshiped as a living god for all those Norwegian luxuries, an ancient Roman proviso would be forever unfulfillable. But as Chapters 9 and 10 argue, the smallest-scale stateless societies have no particularly privileged people, and virtually no opportunities for anyone to live significantly better than the average person. Neither skills nor ruthlessness are highly rewarded. Therefore, they provide a uniformly low base for comparison, making it at least conceivable that everyone could be better off in state society. The violence hypothesis made literally universal benefit highly plausible by supposing that the state relieves everyone from the imminent fear of death. If the violence hypothesis turns out to be false, a universal benefit does not become impossible, but it does become more difficult to sustain. Therefore, it is worth considering whether contractarianism can soften it.

One might soften the claim that everyone benefits either with a less-than-literal meaning of "everyone" or with a less-than-literal meaning of "benefit." We consider each in turn.

A. *Less-than-Literal Understandings of "Everyone," the Issue of Distribution, and the Problem of Dissenters*

It might seem simple to say that the word "everyone" in the phrase, "the state benefits everyone," actually means merely *most people*. But this section argues that this approach is not promising for contractarians, not least because if "everyone" doesn't literally mean everyone, then a "mutual advantage theory" literally isn't a theory of mutual

advantage. It would become a theory of advantage for some at the expense of others. The receipt of benefit has been the whole thrust of the contractarian justification of the state extending back as far as the proto-contractarianism that Plato (2013) attributed to Socrates. Critics of contractarianism argue that actual states have incentive to leave some people out of the agreement (Pateman 1988; Pateman and Mills 2007), but contractarians usually insist the state has authority over *you* because it benefits *you*.

The goal of contract theory is supposed to justify state authority to all the people on whom it binds. Presumably, it is most important to justify that authority to the people on whom that authority is most onerous, but the non-literal reading of "everyone" singles out exactly that group as the one that can be ignored. Hypothetical agreement eliminates the problem that not everyone actually *agrees* by attributing withheld consent to the irrational or unreasonable intransigence of people who deny the benefits they do in fact receive rather than the reasonable dissent of people intentionally not considered part of "everyone."

The debate over contractarianism has not always sufficiently stressed the connection between the mutual advantage criterion and distributional issues. Someone always benefits from the state. It is probably even relatively easy for contemporary states to benefit the majority relative to statelessness. The only candidates for whom such a weak proviso might remain unsatisfied are people with significant social, political, and economic disadvantages: the poor and the disconnected. Therefore, an argument for a non-literal meaning of "everyone" would be an argument that the proviso does not have to apply to the poorest and most disadvantaged people in society. Why? Any argument against applying the proviso to this group would seem to be an argument against the proviso itself—against the principle that forms the whole contractarian justification for the state. Dropping the claim that literally everyone benefits would seem to rob the hypothetical contract of its last remaining similarity to a contract.

What reasons *consistent with contractarian theory* can one give for leaving anyone out of the circle of benefit if it is possible to include them? None: if social arrangements are mutually advantageous only to a subset of the population, *mutual advantage theory* has nothing to say to those outside that subset. Mutual advantage might be able to justify the state to a large majority of people, but not to dissenters.

Contractarians would have to accept the permanent presence of dis-senters—both vocal and silent—and they would require a theory of how to treat them.

Intransigents require no special theory, because they are assumed effectively to be signatories to the social contract. Dissenters can't be treated this way, because they are not literally part of the group that has rational reason to sign the hypothetical contract. Contractarians would need to refer to some other class of theory to determine how many dissenters can be left out to justify state authority over them, to determine how to treat them, to determine how they are allowed to behave, and to explain why the state doesn't have to extend mutual benefit to them, even if it can. Many difficult questions would arise from any such effort.

We know of no contractarian theories that seriously attempt this strategy, hopefully for the good reason that a theory of advantages for some at the expense of others is nearly the opposite of mutual advantage theory. Hypothetical consent can get contractarianism out of the literal use of "consent," but not out of the literal use of "everyone." If we can't soften the claim that "everyone benefits" by softening the meaning of "everyone," maybe we can soften the meaning of "benefits."

B. Less-than-Literal Understandings of "Benefit"

The most obvious less-than-literal use of the word "benefit" would be to rely on ex ante (before the fact) rather than ex post (after the fact) benefit. If the proviso is understood in terms of ex post benefits, it is violated for anyone who ends up worse off than they could reasonably expect to be in stateless society. If the proviso is understood in terms of ex ante benefits, a person has to consider not just their current welfare but also their life prospects from the relevant starting point. If those life prospects were better than they could have been in the state of nature, the proviso might not be violated even if they literally end up worse off.

To some extent, the benefits of the social contract have to be under-stood in an ex ante sense. Otherwise, the contract device could not justify something as obviously useful as a speeding ambulance. Once in a while a speeding ambulance hits a pedestrian who never in her life would actually have needed an ambulance, making her worse off ex post, even if accurately assessing the availability of ambulances made her better off ex ante.

It is not easy to determine the relevant starting point or what should count as an ex ante benefit, and the ramifications are enormous. The case of the ambulance running over a healthy person is still ex ante for most people, because most people have not yet either used or been hit by an ambulance. But the ex ante benefit argument is rarely employed on an ex ante basis. People who already have advantages use it against people who already are disadvantaged—asking them to endorse inequality ex post.

The simplest and most far-reaching conception of ex ante benefit is also morally implausible. Average life prospects in contemporary capitalist states are probably much better than average life prospects in stateless society. Therefore, given a choice of being born a random baby in one of the two societies, one would choose the state. Therefore, one might be tempted to say that, in this sense, everyone is ex ante better off in state society. The problem with this argument is that people are not born randomly into state society. To paraphrase Binmore (2005: 169), strategies like this amount to the advantaged telling the disadvantaged that they are bound by their imaginary choice of tails in the primordial toss of a coin now eternally frozen in the act of landing heads. The rules of society are not fixed and immutable, nor do people usually think of them that way, except perhaps when they try to get disadvantaged people to accept their place in society. Advantaged people constantly tweak the rules (often to make things better for themselves), and thereby they are constantly making decisions either to perpetuate or reduce disadvantage. If it is possible to tweak the rules so that fewer people end up below the proviso ex post, it seems unreasonable to ask the disadvantaged to think of these rules as having been fixed before they are born.

This random-baby conception of ex ante benefits seems to violate what Tom Sorell (2007: 150–1), quoting Hampton, calls "Hobbes's 'central insight about ethics', namely, that 'ethics should not be understood to require that we make ourselves prey for others'." This insight is supposed to be contractarianism's main advantage over utilitarianism, which has no special provision for the disadvantaged, except in so far as their welfare affects average welfare (Scanlon 1998: 98; Ashford and Mulgan 2012). The random-baby conception of ex post benefits would seem to incorporate this highly unappealing aspect of utilitarianism simply to soften the implications of this central insight of contractarian theory. This strategy *would* require people to make

themselves prey. Depending on the numbers, the average-life-prospect conception could endorse a slave economy. Or consider a poor black woman born in a ghetto raised in an apartment with lead pipes. It must be unreasonable to tell her that her average-life-prospects include the possibility that she might have been a white man born in Beverly Hills to a wealthy family with stock in the company that supplied those pipes.

Even with perfect equality of opportunity, if one wants to be sure to avoid the problems of slavery and exploitation, one has to set some minimum standard below which people are not allowed to fall even in an ex post sense. Contractarianism has one minimum standard. It's called the Lockean proviso.

When is it reasonable to refer to ex ante benefits? There is no easy answer. We don't know of a thorough contractarian discussion of it, but Rawls (1971; 1993; 2001)—who is not a contractarian in the sense we use here—has a possible solution. He argues essentially that no one without a specific grievance of unfairness can complain about being in the least advantage group (someone ends up least advantaged in every system) but they can complain that the treatment of the least advantaged group is unreasonably low. Any such principle would seem to give a person the right to complain if they end up worse off than they could expect to be in a stateless society, assuming it is possible to bring them up. (Rawls suggests an even higher standard.)

If the state makes a good faith effort to get as many people to the proviso level as possible, to minimize the harm to those below, and to share the risks equally, it can claim that in an ex ante sense, everyone is better off in state society. If so, the extraordinarily unlucky are extraordinary in their luck; they are not extraordinary in their exposure to dangers to create advantages for others. Even a healthy person hit by an ambulance might have a complaint if ambulances are riskier than they need to be; the benefits of ambulances are unequally shared; or people hit by them aren't given sufficient medical treatment or compensation. Therefore, the consideration of ex ante benefit puts only a small limit on the application of the Lockean proviso and it seems to give no reason to refuse to bring everyone up to the proviso level ex post, if it is possible to do so without sacrificing the benefits of state society. Any imposed risks have to be both necessary and equally applied before their benefits can be considered to apply to everyone ex ante.

9. CONCLUSION

This chapter has shown that the question that began this book matters to five versions of the contractarian justification of the state, two directly from Hobbes and three Hobbesian reformulations. Whether you call it the Lockean proviso, Paine's first principle of civilization, or something else, the only stated version of contractarianism that did not rely on this question was Hobbes's widely unpopular yield-to-superior-force version. We have conceptualized an extra-weak proviso that would not require the weak version of Hobbesian hypothesis, but the literature review below fails to show anyone consistently arguing for it. We are unsure whether the absence of a consistent argument for an extra-weak proviso results from the popularity of the weak proviso or from a lack of clarity generally. Contractarians seem to believe they don't need to specify the criteria the state must satisfy to be justified, because no matter what those criteria might be, they are obviously satisfied. Yet, the Hobbesian hypothesis is an essential premise in the five versions of the contractarian argument that are sufficiently specified to form a coherent justification of the state. We now turn to the issue of how a very similar claim appears in modern property rights theory.

Note

1 Throughout this book, P1, P2, C1, and C2 and so on stand for premise 1, premise 2, conclusion 1, conclusion 2, and so on.

Chapter 4

JOHN LOCKE AND THE HOBBESIAN HYPOTHESIS: HOW A SIMILAR COLONIAL PREJUDICE BECAME AN ESSENTIAL PREMISE IN THE MOST POPULAR JUSTIFICATION OF PRIVATE PROPERTY RIGHTS

Locke (1960: "Second Treatise," §25–§51[1]) had a more agreeable view of the state of nature than Hobbes, but Locke had his own version of the Hobbesian hypothesis. He agreed with the Hobbesian idea that even the most disadvantaged people in England in their century were better off than even the most advantaged people in societies that had neither sovereign governments nor private landownership (§37, §41). He gave most of the credit to the property rights system rather than to the state, but like Hobbes, he compared societies with both institutions against societies with neither. Unlike Hobbes, Locke separately justified government and private property, using what we call a Lockean proviso and a Hobbesian hypothesis in both, thus introducing the hypothesis to a very different area of debate (Widerquist 2010b).

Section 1 shows how Locke's state of nature differs from Hobbes's version. Section 2 explains Locke's "appropriation theory" of private property. Section 3 shows how the proviso works in this theory. Section 4 shows how Locke uses his version of the Hobbesian hypothesis in that theory. Section 5 discusses the evidence he provided for that claim. Section 6 concludes with a summary of the relevant part of the Lockean argument.

1. LOCKE'S STATE OF NATURE

Unlike Hobbes, Locke used social contract theory to justify a limited government, constrained by natural rights including property rights.

This effort to create a hybrid theory requires a separate justification of the rights that limit the contract and an explanation why people do not alienate those rights when they enter the state. Hobbes had no need for a separate justification of property or any other rights, because people alienate all rights when they accept the social contract. His absolutist sovereign can make any law it wants, including laws defining or redefining property (Hobbes 1962 [1651]: 113–17, 201).

Unlike the Hobbesian state of nature's moral free-for-all, the Lockean state of nature had specific moral rights, including the right of self-defense and the right to punish those who infringe one's rights (§6–§8). Because people are bad judges in their own cases, self-enforcement of rights leads to conflicts (§13), but not to a Hobbesian war of all-against-all. Conflict and other inconveniences of the state of nature give people sufficient reason to agree to a social contract (§13, §25–§44). Therefore, his social contract relied on a version of the Hobbesian hypothesis (life outside of sovereign authority is inferior to life under a properly constituted government). However, Locke did not support his Hobbesian hypothesis with a violence hypothesis. People rationally try to work out conflicts in the state of nature, just as they do in state society. The tolerability of Locke's less violent state of nature is an important element in his argument for a limited government. The state not only has to provide people with improved welfare; it also has to protect their natural rights better than they could themselves in the state of nature. No matter how much greater their welfare might be in state society, Locke believed people would only give up their right to protect their rights themselves if the government does it better (§87–§90, §131) (Baldwin 1982; Frye 2004; Kleinerman 2007).

This rights-respecting criterion in Locke's justification of the state is one that not all states will pass, and so Locke proposed right to rebel if the government does not protect their rights (§211–§243). Conceivably, this right also comes into effect when the proviso is unsatisfied in welfare terms. Locke's belief in a more peaceful state of nature made him believe that welfare had to be higher to fulfill the proviso than Hobbes believed it had to be. But as this chapter argues below, Locke still believed the proviso was easily fulfilled. Yet, Locke's use of the proviso in his justification of the state does not interest us as much as his use of it in private property theory.

To argue for a natural right to private property, Locke employed a more complex state of nature than the Hobbesian undifferentiated mass of chaotic war. Although Locke's state of nature has some conflict

(§13), it is a period of gradual progress for the industrious. It begins with no government, no monetary economy, abundant resources, and no private property rights (at least not in terms of land). People apparently live by hunting and gathering, but they can and do establish farms and "appropriate" property in the state of nature (§25–§34). Over time, land becomes scarce, and people institute a civil society with four conditions that differentiate it from the (initial) state of nature: a private property system, land scarcity, a monetary economy, and government sovereignty (§45–§51). See Widerquist (2010b) for further analysis.

With Locke and Hobbes making such different pronouncements about the state of nature, it is easy to forget that it is not a hypothetical example. Both of them affirm its reality, mention empirical examples to support their claims, and use their claims in theories that require the state of nature to be a real situation. Yet few philosophers seem interested in an empirical investigation to determine whether either of them was close to the truth.

2. APPROPRIATION THEORY

Like Hobbes, Locke wanted to justify the enormous economic inequality that existed in England in the seventeenth century, but he went about it in nearly the opposite way. Hobbes justified inequality by arguing that property rights are a product of the state. Like all other rights, they are doled out arbitrarily by the sovereign, and unless it asks for input, anybody who complains about it violates the social contract (Hobbes 1962 [1651]: 186; 1998: xv). No matter how poor or rich you are, the same government that created arbitrary inequality saved you from that awful state of nature, and so you accept it.

Locke rejected absolutism, but he wanted to limit potential redistribution of property by the legislature, and so he did not want to portray private property rights as a creation of the state. He proposed instead an "appropriation theory" that pushes the creation of property rights back into the state of nature.

In Locke's state of nature land and other resources initially "belong to Mankind in common" (§25–§27). Apparently, that is, the land is a "commons," which is not quite the same as joint, public, or state ownership. In those forms of ownership, some central authority capable of making decisions for the group has full ownership rights over the resource, and they can build on it, alter it, divide it up, sell it, and so forth. A commons is closer to collective non-ownership than to

public ownership. In an open commons, anyone can use the resource but no one can take (or at least no one has taken) ownership of it. In a closed commons, the members of a group treat it as a commons among themselves, but assert exclusive rights over it against outsiders. The atmosphere and the oceans remain, to a great extent, an open commons. Although a road system is usually officially owned by a government, it tends to be treated as a closed commons in the sense that everyone with the legal right to be in the government's jurisdiction can use it. Justifications of private property nearly always justify it against the starting point of common ownership rather than one of full public ownership.

Locke's framing of the question in this way made his claims about the state of nature more obviously empirical than Hobbes's claims about it. For Hobbesian theory, it does not matter whether the state of nature preceded the establishment of sovereign governments, only that it is the natural alternative. For propertarian theory, the order in which things happen is important. Locke's appropriation theory recognized the rights of property owners against non-owners based on their prior, historical claim to their land, but he was aware that the land was a commons before any private owner established historical claims. The historical nature of Locke's theory led him to the need to justify holdings against the property institutions (or lack thereof) that prevailed before private landownership. It also justified property rights against the natural alternative in the sense that a commons is what would exist if neither government nor landlords asserted any authority over the resource in question.

As Chapters 9 and 10 argue, the historical claim that some form of commons came first is more or less accurate. At some social scale and likely with some constructs of territoriality, all nomadic hunter-gatherers treated the lands as a commons. Sometimes they likely did so as an open commons, sometimes as a partly closed commons, rarely or never as a fully closed commons. Some settled hunter-gathers treat land more like private, public, or royal property, but nomadic hunter-gatherers preceded settled peoples (including settled hunter-gatherers) to almost all of the earth's land area.

In Locke's theory, and in most propertarian theory, a commons is naturally available for appropriation (§26–32, §36, §48). How appropriators establish property rights and what gives them the moral authority to do so remains controversial even among propertarians

(Nozick 1974: 174–82; Narveson 1988: ch. 7; Waldron 1988: 161–2, 168–74; Kirzner 1989: 18–19, 98–100; Epstein 1995: 60; Sreenivasan 1995: 28–9; Otsuka 2003: 21). These aspects of the theory are inconsequential for the discussion here. But it is important that once property is established, it is a natural right that owners can trade, bequeath, or give to others. In propertarian theory, property titles are not mere legal creations as they are in Hobbesian theory. They are natural rights that exist prior to the state in time and/or in moral authority. Unless current property holders have violated some tenet of the theory, their property titles put ethical limits on the government's power to tax, regulate, and redistribute property. The extent of these limits varies greatly from theorist to theorist, but for the issue at hand, it matters only that the proviso plays a part in justifying those limits—whatever they might be.

In Hobbesian contractarianism, everyone is protected by the proviso and only the proviso. The government could deny freedom of speech or any other basic right, but as long as, all things considered, you were better off without those rights in a state than with those rights in the state of nature, the government was still justified by consent. In Lockean theory, everyone is protected by both the proviso and by a somewhat vague list of basic rights. If any of those are violated, people are presumed not to consent even if, all things considered, they are better off in state society. The most clearly specified right on Locke's list is the right to property. This right is not to a specific share in the ownership of the earth's resources; it is the right of people who already own property to keep it.

In Hobbesian theory, the only thing that protects anyone's material wellbeing is the proviso. In Lockean theory the only thing that protects a propertyless person's material wellbeing is still the proviso, but property owners have both the proviso and their natural right to property to protect their wellbeing. This difference is substantial.

The propertyless are allowed to compare their position only to an equally propertyless position in a (presumably poverty-ridden) state of nature. The propertyless may not imagine entering some other social contract that secured higher wellbeing for them by granting them a greater share of the ownership of the earth's resources because they have no natural right to those resources beyond the very minimum amount secured by the proviso.

Property owners, by contrast, are allowed to make two or more comparisons to protect their wellbeing. They can consider not only life as a propertyless person in the state of nature; they can imagine

holding their property in the state of nature. And perhaps, if they think that taxation, regulation, or redistribution is excessive, they are allowed to imagine entering some other social contract that had greater respect for their natural right to the property they have acquired. This comparison follows from the view of property as a natural right. Even if the property owners' material wellbeing in state society far exceeds what they could expect to secure from their property in the state of nature, they have a natural right to exercise that property as they see fit in state society as long as the proviso is fulfilled and they are within whatever limits to property the theory affords.

In Hobbesian theory, everyone enters the contract as an equal, but the state is allowed to create arbitrary inequality. If the rich think that taxation, regulation, or redistribution is excessive, they have to imagine giving up all their property and going back to a (presumably horrible) state of nature where they are just as badly off as anyone else in the state of nature.

In Lockean theory, people do not enter the social contract as equals. At least some material differences between people are non-arbitrary, flowing from the difference in their natural rights that are thought of as existing prior to the contract. This conception of property rights creates the possibility that the state could be too generous to the disadvantaged if doing so requires excessive taxation, regulation, or redistribution.

This book does not question either theory; it only examines how the Lockean proviso and the Hobbesian hypothesis play similar roles in both theories.

3. LOCKE'S VERSION OF THE LOCKEAN PROVISO

The phrase, "the Lockean proviso," was coined to describe a side constraint in Lockean appropriation theory (Nozick 1974: 178–82), sometimes called the "sufficiency limitation" (Macpherson 1962: 211; Waldron 1988: 210). Yet, it plays a smaller role in Lockean property theory than it does in Hobbesian social contract theory. In Hobbes, the government has no natural right to sovereignty; it is sovereign only because people consent, and they consent only because the sovereign fulfills the proviso. In Locke, property holders do have a right to be owners. The proviso is relevant only because the natural right to own land and other resources is subject to side constraints assuring that the establishment of ownership does no harm.

Scholars disagree about the role the proviso played in Locke's theory. Some identify as few as zero and some as many as three provisos in it (Widerquist 2010b). Rather than discuss the ins and outs of the potential proviso(s) (Locke 1960: "First Treatise," §42, "Second Treatise," §31, §38, §46–§50; 1993: 452), which have been well-discussed in the literature (Thomson 1976; Waldron 1979: 322, 327–8; Sanders 1987: 371–3; Waldron 1988: 161, 210–11; Dunn 1991 [1968]; Winfrew 1991 [1981]: 398; Ashcraft 1994: 243; Waldron 2002: 172; Lamb and Thompson 2009), we focus on what Chapter 2 defined as the weak Lockean proviso, which—whether Locke intended it or not—has been the most influential by far. For a more detailed discussion of the debate over the possible provisos, see Widerquist (2010b).

A few extreme propertarians argue that natural property rights theory is logically stronger without any provisos, claiming that people have no positive right to resources. Therefore, they are no worse off in terms of their rights, even if others appropriate everything (Rothbard 1982: 244–5; Narveson 1988: 85, 100–1; Kirzner 1989: 98–100). This version of propertarianism eliminates the need for the empirical claim examined in this book, but it does so by building the theory on implausible normative premises. Under such a theory, no matter how many generations a people might hunt and gather on open land, they would never gain the right to be free to continue doing so or to be compensated if forced to stop. The aggressive interference of the privatizers is always justified, even if it makes the hunter-gatherers worse off, and even if it will make some of their descendants worse off for thousands of years to come. Such a theory endorses colonial aggression against any society that treats land as a commons, although the freedom from aggression, the freedom from being forced to live someone else's lifestyle, is what propertarian theory is supposed to be about. Any justification of property is weak and unpersuasive if that institution can harm the propertyless without triggering any responsibility on the part of owners to minimize or eliminate that harm. For more on ethical difficulties with these kinds of theories, see Sreenivasan (1995: 40); Wenar (1998); Otsuka (2003); Widerquist (1999; 2006; 2009; 2010b; 2010c; 2013).

Locke stated the proviso, writing that appropriation is valid, "at least where there is enough, and as good left in common for others" (§27). He elaborated this idea in the following paragraphs (§27–§36). Locke argued, "He that leaves as much as another can make use of, does as good as take nothing at all" (§33), because non-appropriators

"would still have room, for as good, and as large a Possession . . . as before it was appropriated" (§36). In terms of raw resources available for appropriation, neither enough nor as good land is left for the propertyless either to use as a foraging commons or to appropriate for private uses. A proviso that must be fulfilled in raw resources can never again be satisfied. But in most version of the theory, opportunities available in a market economy can fulfill the proviso (§37).

The weak version gives one answer to the question of how valuable these opportunities have to be to satisfy the proviso. It stipulates that non-appropriators must be at least as well-off as they would be (in overall welfare terms) if land remained a commons and people remained hunter-gatherers (Nozick 1974: 174–82). Eric Mack (2002: 248) explains the logic behind this version of Locke's proviso: "if the whole process of privatization leaves Sally with 'enough and as good' to use as she would have enjoyed (at a comparable cost) had all extra-personal resources remained in common, Sally will have no complaint." Ryan (1991 [1965]: 433) writes, "since all men have profited by entering a market society, there is no cause for complaint if some men have done better than others." If this proviso is fulfilled, the system of private property ownership hurts no one, even though it makes natural resources unavailable to people who would otherwise have direct access to them.

Imagine a hunter-gatherer living in a commons. She has great resources available, but she has to work hard to make use of them, and what she can do with them is extremely limited. She can produce only very basic food, shelter, and clothing. Now imagine that appropriators replace the commons with a property system in which she owns nothing outside her body. She can no longer forage for what she wants, but she can get a job or seek charity. If these activities provide her higher overall welfare than was possible under the common property regime, then she is better off in the capitalist economy even though she is (initially) propertyless. If propertyless people can obtain a more valuable bundle of resources by working than they could appropriate in the state of nature, in a sense capitalism *increases* their ability to appropriate resources. If the proviso were fulfilled in this way, it might not be decisive, but it would be one strong reason to favor the private property system.

The fulfillment of the proviso would give the propertyless reason to *choose* capitalism, but most propertarians do not stress the consent of

the propertyless as an element in the fulfillment of the proviso. If the economy fulfills the proviso, natural rights theory (which we have not discussed in detail) justifies the rights of landlords without regard to the preferences of the propertyless.

Not all contemporary political theorists are satisfied that the weak proviso is strong enough. Foraging is not the only thing people can do in the state of nature. They can also appropriate land and other resources. In this sense, the proviso should take into account not only the welfare level of hunter-gatherers, but also the welfare level of subsistence farmers, or perhaps even of someone who carries over appropriated land into state society. To take these possibilities into account, many property theorists have suggested stronger versions of the proviso (Tully 1980: 137–8; Waldron 1988: 214–15; Simmons 1992; Steiner 1992; Sreenivasan 1995: 40; Otsuka 2003: 24–6; Steiner 2009: 5–6; Widerquist 2010b)

Strong versions of the proviso do not make direct claims about people in stateless societies, but stronger principles cannot be fulfilled without also fulfilling the weak proviso. Following Paine (2000), we think of the weak proviso as the first principle of government, and any stronger provisos as second or third principles, while limiting our analysis to this first principle.

4. LOCKE'S ASSERTION OF THE HOBBESIAN HYPOTHESIS

Locke completed his justification of the property system prevailing in seventeenth-century England by asserting that his proviso was fulfilled:

> [The] nations of the Americans . . ., who are rich in land, and poor in all the comforts of life; whom nature having furnished as liberally as any other people, with the materials of plenty, i.e. a fruitful soil, apt to produce in abundance, what might serve for food, raiment, and delight; yet for want of improving it by labour, have not one hundredth part of the conveniencies we enjoy: and a king of a large and fruitful territory there, feeds, lodges, and is clad worse than a day-labourer in England. (§41)

Although Locke did not rely on the violence hypothesis, the version of the Hobbesian hypothesis he developed in this quote is just as sweeping. The day laborer represents the least well-off person under

a private property system and the North American king represents the best-off person under a common property regime. Locke (§49) added, "in the beginning all the world was America," emphasizing that his claim was not about only some common property regimes. The property rights system in England was better for its least advantaged people than any society with a common property regime. The proviso was fulfilled. Locke asserted the Hobbesian hypothesis to say that nothing more needed to be done for the disadvantaged to oblige them—morally speaking—to respect the enormously unequal property rights system prevailing in seventeenth-century England. If they had been worse off, they would have had a claim. But because even the most disadvantaged people were (supposedly) far better off than those savages, any demand for more would have violated the natural rights of propertied people.

Despite the enormous theoretical differences, the basic empirical claim in Locke and Hobbes was very similar: both agreed that everyone in seventeenth-century England was better off than everyone in any society resembling those of unconquered Native Americans. Locke attributed the benefits to the greater productivity of the private-property-based economy, and Hobbes attributed it to the rule-enforcing state; they drew on the same empirical comparison to affirm their hypotheses. Propertarians today routinely repeat this same empirical claim in ways that only seem to makes sense if taken literally (see Chapters 5–7).

Locke supported his observation with an empirical argument about why the private property system is capable of benefiting everyone including the propertyless:

> he who appropriates land to himself by his labour, does not lessen, but increase the common stock of mankind: for the provisions serving to the support of human life, produced by one acre of inclosed and cultivated land, are . . . ten times more than those which are yielded by an acre of land of an equal richness lying waste in common. And therefore he that incloses land, and has a greater plenty of the conveniencies of life from ten acres, than he could have from an hundred left to nature, may truly be said to give ninety acres to mankind: for his labour now supplies him with provisions out of ten acres, which were but the product of an hundred lying in common. I have here rated the

improved land very low, in making its product but as ten to one, when it is much nearer an hundred to one. (§37)

Locke elaborates this idea further in §40–§43. This passage argues only for the possibility of fulfilling the proviso, but it adds support for his observation that the proviso is fulfilled. If a low-end worker's productive capacity is a hundred times higher than the proviso level, it might be surprising to find anyone for whom the proviso was unfulfilled. Of course, it would be the fallacy of composition to assume everyone did reach the proviso level just because it was possible. But it would be very affordable to bring everyone up to the proviso level if anyone was found below it.

Under those circumstances, Lockean or propertarian ethical theory as stated seems to give no reason to leave anyone out. Snyder writes:

> Locke argues diligently that labored-on land is much more valuable to everyone than it would be otherwise. . . . he assumes that the increased wealth will be distributed to the benefit of all. . . . Thus, although more land than leaves enough and as good for others may be appropriated, the greater productivity of the appropriated land more than makes up for the lack of land available to others. . . . Since all men benefit from greater productivity of appropriated land, the law of nature is more completely fulfilled if all land is appropriated. (Snyder 1991 [1986]: 374)

No fact-independent interpretation seems reasonable. The propertarian claim that the weak proviso is fulfilled is an empirical assertion of the Hobbesian hypothesis.

5. LOCKE, LIKE HOBBES, RELIES ON A COMMON PREJUDICE

Neither Hobbes nor Locke can be faulted for a failure to understand the available empirical information. Locke read many accounts of travelers and contemporary histories of the peoples in Europe, North America, and other places (Shepperd et al. 2008). The problem was not a lack of interest in evidence but that the information he had was heavily tainted with colonial prejudice and the belief in an enormous gulf between "civilized man" and "savage man." Whether Locke

can be faulted for not recognizing prejudice is unimportant. What is important is that the supporting evidence Locke and his successors have presented up to the present day amounts to no more than an appeal to that prejudice.

As mentioned above, Locke presents two pieces of evidence to support the hypothesis. One piece of evidence—the claim that farming and commerce can produce more for everyone—is certainly true today. It might not have been true for all private property regimes, but it is undeniable that contemporary capitalist economies produce far more goods per labor-hour out of the same resources than foraging economies. However, capitalism's ability to produce more does not guarantee that it shares its benefits widely enough to make everyone better off.

That leaves Locke's other piece of evidence—his day-laborer comparison—as the support he provides for his claim that those benefits *are* sufficiently shared to make everyone better off. But he doesn't say much about the day laborer or the North American king (§41). He presents neither data nor detailed description of exactly what conveniences seventeenth-century day laborers and unconquered Native Americans enjoy or what hardships they suffer to obtain those conveniences. But he expects this mere mention to convince his readers that the day laborer is better off. And as the following chapters show, most philosophers writing on this issue have agreed with his comparative claim. Even opponents of Locke's overall theory tend to accept it without evidence.

The truth-value of the Hobbesian hypothesis is not obvious. Although relevant research is available, it is not well-known, and few people writing on this issue have shown interest in the evidence. What could possibly motivate such lack of interest in verifying the claim that is central to the most influential justifications of both government and property rights? It must be a shared prejudice: people are confident that their belief on this issue is correct because so many other people believe it too.

The difference between common experience and common prejudice is apparent in the difference between Locke's appeal for readers to accept the Hobbesian hypothesis and his appeal for readers to accept another empirical assertion. Locke writes, "I doubt not but it will be objected that it is unreasonable for men to be judges in their own cases, that self-love will make men partial to themselves" (§13).

He presents an empirical claim without presenting any evidence, but to verify it, he asks readers to draw on shared experience that they actually have. Modern scholarship backs him up with a great deal of research on what is now called "self-serving bias" (Shepperd et al. 2008), but even if those sources had been available, Locke would not have needed to get bogged down citing them, because all people have experience with other people. Locke can rely on that shared experience to give them a good reason to accept his point.

But when Locke asks his upper-class, seventeenth-century readers to accept his claim that the proviso is fulfilled, few if any of them would have direct experience that would allow them to compare the lives of English day laborers with those of unconquered Native Americans. If they think they know it despite that lack of experience, they must be drawing on a shared prejudice. The need for an investigation is clear.

6. SUMMARIZING THE ARGUMENT

The propertarian justification of private property and the contractarian justification of the state are two very different arguments, built from very different philosophical perspectives, but hopefully, the discussion in this and the previous chapter reveals their important commonalities. Lockean property theory is one of the family of theories identified in Section 3B of Chapter 3 employing a Lockean proviso, a Hobbesian hypothesis, and additional premises. Without specifying the additional premises that aren't at issue, we summarize it as follows:

P1:   Lockean proviso: resource ownership can be justified if it benefits everyone (or does not harm anyone).
P2:   Hobbesian hypothesis: contemporary resource ownership does in fact benefit everyone (or does not harm anyone).
P3   Additional premises.
C: Contemporary resource ownership is justified.

Although contractarianism and propertarianism require two different Hobbesian hypotheses, the empirical comparison underlying them is the same. The contractarian version is that state sovereignty benefits everyone. The propertarian version is that land and resource

ownership benefit everyone. But most state societies that have one of these institutions also have the other, so that the following claim provides evidence for or against either use of the weak Hobbesian hypothesis: *Even the most disadvantaged people in contemporary capitalist states are better off than they could reasonably expect to be in a stateless society with common property rights regimes.* Those few propertarians and contractarians who cite any evidence at all tend to cite evidence for this comparison. The following three chapters show that a large number of influential contractarians and propertarians assert and employ this hypothesis, most presenting less evidence than Hobbes or Locke did in the seventeenth century.

Note

1   Unless otherwise specified, "§" refers hereafter to paragraph numbers in Locke (1960: "Second Treatise").

Chapter 5

THE HOBBESIAN HYPOTHESIS IN EIGHTEENTH-CENTURY POLITICAL THEORY

Contractarianism gradually gained prominence in the century or so after *Leviathan*. As Jeffrie G. Murphy (1978: 65) writes, it became the "dominant intellectual model which provided the structure of social and political thought in the 18th Century." It had important effects on practical politics, even receiving mention in the U.S. Declaration of Independence. Lockean property theory (not yet necessarily "propertarianism") also increased in popularity. According to Gauthier (1979: 36), "the emergence of possessive individualists from their wanderings in the wilderness of the state of nature into the promised land of civil society is the great theme of moral and political thinkers in the developmental era of our capitalist society."

The Hobbesian hypothesis rose in prominence as well. Adam Smith was clearly influenced by Locke's day-laborer comparison, writing:

> the accommodation of an European prince does not always so much exceed that of an industrious and frugal peasant, as the accommodation of the latter exceeds that of many an African king, the absolute masters of the lives and liberties of ten thousand naked savages. (Smith 1976: 17)

See the online appendix for more on Adam Smith.

The Hobbesian hypothesis was probably more popular than either contractarianism or propertarianism. Edmund Burke (2014), for example, objected to contractarianism because it implies that individuals should have a *choice* whether to join their state, but his grounds for rejecting choice relied essentially on the same Hobbesian hypothesis. He argued, "without . . . civil society man could not by any possibility arrive at the perfection of which his nature is capable."

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Likewise, David Hume famously made several empirical criticisms of contractarianism. After he rejected actual consent as the justification for government on the empirical grounds that it didn't exist, he wrote, "If the reason be asked of that obedience, which we are bound to pay to government, I readily answer, *Because society could not otherwise subsist*" (Hume 2011: 435; original emphasis). But that *is* the Hobbesian hypothesis—if presumably life without society would be bad for everyone. Hume skips the need for consent by going directly from the Hobbesian hypothesis to the justification of government sovereignty by reason of necessity.

These examples illustrate a wide acceptance of some form of the Hobbesian hypothesis despite considerable disagreement about the nature and reality of the social contract in the justification of the state. One of the main reasons for the consensus is the fact that mutual advantage theorists, which most certainly include Hume, rely on a comparison between life under and life outside the authority of the state or other institutions. The Hobbesian hypothesis is, therefore, a necessary component in any use of this line of thinking to justify some aspect of the status quo. In addition, as we discuss further below, Hume was a mutual advantage theorist with few substantive differences from the currently popular Kantian version of contractarian theory—despite his criticism of the more literal interpretation (Murphy 1978; Gauthier 1979; Castiglione 1994: 108). See the online appendix for a more detailed discussion.

The climate of the time explains why so many political philosophers felt free to assert both the Hobbesian hypothesis and the violence hypothesis without the need to provide evidence. During the colonial period, travelers tried to outdo each other with accounts of the world's most wretched peoples in the belief that the most extreme savage was the truest to type—"natural man," miserable and "deviant from all imaginable norms" (Ellingson 2001: 127). An encyclopedia published in 1765 defined "savages" as "barbaric peoples who live without laws, without government, without religion, & who have no fixed habitation," and asserted, "A great part of America is populated with savages, the majority of them ferocious, & who nourish themselves with human flesh" (Ellingson 2001: 161). With Native Americans as a prominent example, William Falconer cataloged the supposed deleterious effects of savage life on character, morals, intellectual development, customs, and government (Ellingson 2001: 164).

Much of the early criticism of state-of-nature theory was misdirected. Bishop John Bramhall argued in 1655 that the war of all-against-all never existed, but he argued that it did not exist *because* governments have always existed (Schochet 1967: 427–8). According to Gordon J. Schochet (1967: 428–9), Bramhall apparently made "the presumption that the Hobbesian state of nature was intended as an actual historical account of man's prepolitical condition." Bramhall didn't seem interested in contradicting the counterfactual claim that statelessness would be terrible if it did happen.

Hobbesian empirical claims had a few critics during the seventeenth and eighteenth centuries. Lord Shaftesbury (1900: 83) and the Baron de Montesquieu (2001: 20–1, 24n2) both voiced skepticism at least about the violence hypothesis (Gill 2011). But the skeptics were easily ignored. See the online appendix for more detailed discussions of Shaftesbury and Montesquieu.

Strangely, the literature over the Hobbesian hypothesis reveals virtually no debate. A large group asserts it. A smaller group denies it. Neither side seems interested in settling the dispute by examining empirical evidence. A third group is interested in the evidence without being interested in how the Hobbesian hypothesis is used in political philosophy.

This chapter focuses on three philosophers. Section 1 shows how Immanuel Kant replaced Hobbes's literal consent with rational consent but relied heavily on the violence hypothesis. Section 2 shows that Jean-Jacques Rousseau—an opponent of Hobbes in many ways—was neither a supporter nor an opponent of the Hobbesian hypothesis. Section 3 shows that Thomas Paine made a strong argument against the hypothesis.

1. IMMANUEL KANT

Immanuel Kant (1996) is usually credited with originating the now-dominant version of contractarianism, which uses hypothetical rather than actual consent as its basis. This modification removed much of the empirical baggage that troubled Hume about Hobbesian contractarianism. Some writers, such as Howard Williams (1994: 135), have hoped that "Kant provides us with a social contract theory shorn of all its empirical trimmings," but this section shows that Kant freed contractarianism from some but not all empirical claims.

Kant was clearer than Hobbes or Locke that the social contract is not a historical document, and he went farther, dropping actual consent from the theory (Riley 2006: 347; D'Agostino et al. 2011); and arguing that the existence of the contract cannot be verified by observation (Williams 1994: 134–5; Rauscher 2012). Patrick Riley (2006: 347; emphasis added) writes, "Hobbes, Locke, and Rousseau said that people *do* consent to the state. Kant said laws must be such that rational men *could* consent to them." And, "Kant, in short, makes contractarianism hypothetical: actual consent is not involved" (Riley 1973: 558). Gauthier (1979: 50) argues that recognition of the need for hypothetical consent reflects the Kantian idea of the intrinsic value of each individual. Thus, hypothetical consent replaces actual consent in the role of protecting disadvantaged individuals from subservience and exploitation to powerful self-interested people (Hampton 1988: 95; Sorell 2007: 150–1).

As Chapter 3 argued, hypothetical-consent theory needs to provide something other than agreement to oblige people to obey the contract. In that role, Kant offered his "categorical imperative" (the responsibility to behave consistently with universalizable moral rules). The hypothetical contract device shows people what it is moral to do; the categorical imperative obliges them to do what is moral. While the laws are obliged to take a form that people *could* consent to, the reasons they are obliged to act as if they consented have nothing to do with willful agreement (Rauscher 2012).

The purely hypothetical agreement allowed Kant to imagine negotiators motivated by a moral ethos to create public standards of ethics that are good for everyone (Cudd 2013). In Murphy's words:

> According to Kant, the only coercive social rules that are morally . . . justified are those which a group of ideal rational beings could agree to adopt in the hypothetical position of having to pick social rules and practices to govern their relations with each other. (Murphy 1978: 73)

People are imagined to be equally placed with a veto over proposals before them (Gauthier 1991: 50), but they only exercise their veto if their objection is consistent with ethical rules that apply equally to everyone. Parasitic or arbitrarily self-interested objections are not imagined. In our terminology, intransigents can be coerced into joining (Rauscher 2012).

Many contemporary scholars describe this kind of contractarianism as the effort to find principles that can be justified to all reasonable people with a similar ethical motivation (Riley 1973; Scanlon 1998: 4–5, 187; Cudd 2013). As D'Agostino et al. (2011) put it, "posing the problem of justification in terms of a deliberative or a bargaining problem is a heuristic: the real issue is 'the problem of justification'—what principles can be justified to all reasonable citizens or persons."

Kant differs from most of the later hypothetical contract theorists in that he used a different—and perhaps extra-weak—proviso. However, he bypassed the weak version of the Hobbesian hypothesis only by relying on another empirical claim that is so implausible that most contemporary philosophers reject it, even if they otherwise support Kantian contractarianism. Kant claimed that only a sovereign government is capable of establishing a moral society (Riley 1973: 558; Williams 1994: 133). Governments are not always moral, but without them to settle disputes there is no hope to create the moral system necessary for a moral society. The government is justified by its potential rather than by its current treatment of individuals. Therefore, in a sense, Kant requires neither "reference to history nor to any actual conditions where a contract might be taken to be effective" (Williams 1994: 135). Any empirical comparison between the welfare of people in state society and people in the state of nature is irrelevant. Even if you are worse off under the state, your only hope of entering a moral society is to obey the state and hope things improve. Therefore, you are morally obliged to obey even if you do not consent (Williams 1994: 137–40), and even if it makes you worse off (Rauscher 2012). The state is obliged by the categorical imperative to improve, but even if it doesn't, the people are still obliged to obey, because supposedly, their only hope of improvement is through the state.

Kant's reliance on moral potential doesn't get rid of the need for any empirical comparison; it merely changes the nature of the comparison from one about current treatment to one about moral potential. Essentially his version of the argument is:

P1:   Lockean proviso: people are obliged to obey state authority, if only states have the potential to build a moral society.
P2:   Hobbesian hypothesis: only states have this potential.
C: People are obliged to obey state authority.

Yet, Kant presented little or no evidence that moral potential is absent in stateless societies. According to Williams (1994: 133), "Kant is less inclined to present the individual state of nature as an observed reality but . . . From the moral viewpoint the state of nature (wherever it occurs) is an inferior condition and has to be surpassed." This "inclination" is the kind of equivocation we have complained about throughout. The state of nature either *is* or *is not* observable reality. An argument based on a real state of nature is different from an argument based on a fictional state of nature. If Kant were to go beyond inclination to an outright denial that the state of nature has any observable reality, he would need an argument to explain why the comparison with a nonexistent alternative is more reasonable than the comparison with real statelessness. If he were simply to define moral potential as something that only exists in state society, he would sink into tautology, as discussed in Chapter 3. We do not think Kant intended either of these two erroneous strategies.

Instead Kant presented very Hobbesian claims about the state of nature, implying that it is a part of observable reality. Without a sovereign to settle disputes, the state of nature is a war of all-against-all (Baynes 1989: 446; Rauscher 2012), in which people cannot establish rights or moral rules (Williams 1994: 133), and cannot realize their freedom (Rauscher 2012). This argument relies heavily on the violence hypothesis and makes strong empirical predictions about people in stateless societies. If Kant's version of the Hobbesian hypothesis is true, observations of people in stateless societies will show a war that makes it impossible for them to secure rights, freedom, or recognized moral rules. While Hobbes's and Locke's justifications of the state can be adequately sustained by the observation that people in state societies have higher welfare, Kant's version seems to rest more heavily on the violence hypothesis, making his version more easily falsifiable than either of theirs. Perhaps there could be some other reason why stateless societies have no moral potential, but it would be a tricky business for a Kantian to prove the absence of moral potential without some clear impediment like the war of all-against-all. One would have to show not only that all stateless societies are inconsistent with any application of the categorical imperative but also that they can never apply the categorical imperative. Kant apparently had racist views that made him ready to believe that many indigenous peoples were incapable of morality (Rauscher 2012), but it will not take much observation of

stateless peoples to falsify this belief. Although Kant's hypothetical version of contract theory is incredibly valuable, his attempt to revise the Hobbesian hypothesis is not worthy of further attention.

2. JEAN-JACQUES ROUSSEAU

Jean-Jacques Rousseau is often portrayed as the most extreme critic of the Hobbesian state of nature, but he was neither a supporter nor a critic of the Hobbesian hypothesis as we define it. Rousseau's and Hobbes's definitions of the state of nature are so different that they are hardly comparable. The two did not identify the same situation and disagree about its characteristics. They identified different situations and gave them the same name.

Although government, morality, and society are absent in both versions of the state of nature, Hobbes (1962 [1651]: 98) defined it as the absence of government and argued that the other two characteristics follow. He did so to examine whether people inherently need government. Society doesn't exist in his state of nature only because war makes it impossible for people to maintain a stable society. Hobbes's belief that "natural man" stripped of the gentility of "civilized man" appeared in the state of nature was incidental. It had no bearing on his argument at all.

Rousseau (1984: 67–71, 78, 81–3, 99–100) defined the state of nature as the absence of society and argued that the other two characteristics followed. He did so to examine what he believed was a truly *natural* state—the absence not only of government but also of society, socialization, and social interaction—to bring out what he believed to be a true picture of "natural man." He challenged Enlightenment-era beliefs about natural man by arguing that people living off the land without any social interaction would have little to fight over and little motivation to fight. According to Hoekstra (2007: 119), "Montesquieu and Rousseau mount the influential related criticism that the portrait Hobbes purports to provide of natural man instead represents socialized man, and that the miseries he describes are those of human society rather than of the natural condition." Hobbes portrayed people as naturally in conflict and argued that social institutions were civilizing. Rousseau portrayed human nature as peaceful and argued that social institutions—at least the ones we have—are corrupting (Rousseau 1984: 101–2; MacIntyre 1998: 117).

Rousseau's disagreement with Hobbes over human nature has limited relevance to Hobbes's argument for the state. The primary cause of conflict in the Hobbesian state of nature is not the violent nature of people, but the danger of unmediated conflict. Both Macpherson (1962: 22) and Ryan (1996: 218) agree that Hobbes's state of nature does not need to set aside the socially acquired aspects of human nature.

Rousseau (1994: 59–60) gives no special position to anarchy in his justification of the state. All societies—with or without government—have to be justified against the complete absence of society. He does so by arguing that a properly constituted society can replace the "natural freedom" people experience in his state of nature with the "civil freedom" available in a properly constituted state. No state yet delivers his conception of civil freedom, and so no states are yet justified in his terms. These arguments don't concern us very much.

Despite Rousseau's belief that human nature is peaceful in a *nonsocial* situation, he could and apparently did concede Hobbes's violence hypothesis as it pertains to stateless *societies*:

> As soon as men learned to value one another . . . revenge became terrible, and men grew bloodthirsty and cruel. *This is precisely the stage reached by most of the savage peoples known to us*; and it is for lack of having sufficiently distinguished between different ideas and seen how far those peoples already are from the first state of nature that so many authors have hastened to conclude that man is naturally cruel and needs civil institutions to make him peaceable. (Rousseau 1994: 114–15; emphasis added)

This passage concedes that situations that are both stateless and social can be intolerably violent. Rousseau might have been unaware that even if these groups didn't fit his definition of the state of nature, they fit Hobbes's definition of the state of nature. But in any case, Rousseau could make this concession because his disagreement with Hobbes hinged not on the attributes of stateless societies but on the moral value of civil freedom. Because his criticism is not aimed directly at the Hobbesian hypothesis, we list him neither as a supporter nor as a critic of it. He and Hobbes had a strong disagreement about human nature, but not about the characteristics of stateless societies.

Rousseau also concurred with Hobbes's belief in the vast social and cultural superiority of state society. Rousseau (1994: 59) wrote that "man" in civil society has "his faculties exercised and improved, his ideas amplified, his feelings ennobled, and his entire soul raised . . . which made him, not a limited and stupid animal, but an intelligent being and a man." He, like many early state-of-nature theorists (and some still today), gave government and/or landowners credit for creating society, and he seems to go farther, crediting them with separating humans from animals.

With all of Rousseau's negative beliefs about indigenous people, it's worthwhile to consider why he became the target of Crawfurd's noble savage allegation. Ter Ellingson (2001: 94–6) argues that the complexity of Rousseau's understanding of native peoples and his unwillingness to go along with the one-dimensional treatment so popular during the colonial period made him the target of racist social scientists. This claim might be true, but at least five aspects of Rousseau's work made him vulnerable. First, his writing could have been clearer. Second, he used Hobbes's term "state of nature," which contractarians *had* applied to indigenous peoples. Third, although Rousseau might have been aware that the complete absence of society could not exist, he wrote about the state of nature as if it were our real past (MacIntyre 1998: 118; Ellingson 2001: 93). Fourth, although at times he made it clear that native peoples around the world do not live in his idyllic state of nature, he used them as examples of people *close* to it (Rousseau 1984: 82–3, 85, 87, 103, 125–6). Fifth, although his theory *could* concede the Hobbesian hypothesis without losing any of its logical strength, and the statement above does so for some peoples, he (perhaps rightly) did not clearly concede the hypothesis for all stateless peoples (Rousseau 1994: 114–15). And so, Crawfurd's accusation stuck—and it continues to stick after 150 years.

3. THOMAS PAINE

We have only been able to find one Enlightenment-era philosopher who both accepted the contractarian approach and rejected the Hobbesian hypothesis. This person was Thomas Paine (2000), whose "first principle of civilization," quoted in Chapter 1, puts the weak Lockean proviso in broad terms that fit both propertarianism and contractarianism. It applies equally well to government, property rights, or other

social institutions one might want to justify with a mutual advantage principle. Paine doesn't bother asking whether every rational, reasonable person consents or what their history is. He asks only whether social institutions are mutually advantageous. If they make everyone better off, they pass the first test toward justification. If they don't, they must be reformed to become justifiable.

Unlike most contractarians before and since, Paine did not use the weak Lockean proviso as a rubber stamp. He did not praise his society for the supposedly obvious fulfillment of the proviso. He had no doubt that society *could* fulfill it, but he did not think that accomplishment was easy. The proviso was an important principle that could only be fulfilled with effort. If society takes this principle seriously, it must examine the ways that it might fall short and remedy them.

Paine (2000) used the proviso as a basis for social criticism, making specific allegations about how society came up short, writing, "The life of an Indian is a continual holiday, compared with the poor of Europe; and, on the other hand it appears to be abject when compared to the rich." He argued that poverty is a product of "that which is called civilized life," and that poverty does not exist among people who live outside of so-called civilization. That is, at least some state citizens work harder and have less to show for it than people in stateless societies.

Thus, Paine denied the Hobbesian hypothesis that all people in capitalist states are better off than they would be in a society without government and/or private landownership. Stating his criticism in this way, he voiced no objection to the purely normative principles in contractarian or propertarian theory; he only objected to empirical assertions about the makeup of the world in which those principles apply. If he was right, he had a serious allegation.

Paine didn't present any more rigorous evidence than Hobbes or Locke. He referred only to casual observations about Native Americans and the poor in Europe. Living in a frontier society might have given him better information, but even if it did, he didn't find it necessary to cite specific information about them. He portrayed his assertions as obvious—an odd choice considering he contradicted 150 years of nearly unanimous opinion among leading philosophers. Whatever the truth-value of the Hobbesian hypothesis is, it is not obvious. We have to look at evidence.

4. CONCLUSION

The eighteenth-century non-debate over the Hobbesian hypothesis set the stage for future debates up to the present day. Hypothetical consent replaced actual consent, making contractarianism far more empirically plausible, without relieving it from reliance on the Hobbesian hypothesis. Many philosophers—even some who rejected contractarianism—continued to repeat the hypothesis without providing empirical support. The most discussed empirical criticisms of contractarianism were irrelevant questions, such as, what is the nature of man? And did the state originate by contract? Those few critics who did address the Hobbesian hypothesis were largely ignored.

Note

The online appendix includes more detailed discussions of the Hobbesian hypothesis in ancient political thought, Shaftesbury, Montesquieu, Smith, and Hume.

Chapter 6

THE HOBBESIAN HYPOTHESIS IN NINETEENTH-CENTURY POLITICAL THEORY

Contractarianism and propertarianism declined in prominence in the nineteenth and early twentieth centuries as utilitarianism became the dominant political theory, but assertions of the Hobbesian hypothesis did not go away. Skeptical empirical writers appeared now and then, especially toward the end of the nineteenth century. But neither the skeptics nor the new evidence had much apparent effect on philosophers asserting the Hobbesian hypothesis.

Utilitarianism (and the broader concept, consequentialism) has many different forms but at the risk of oversimplification, we summarize it as the belief that the morality of an act or a rule depends entirely on whether it increases or decreases overall welfare, by measuring the sum total of all of its positive and negative effects on wellbeing (Kymlicka 2002: 10; Sinnott-Armstrong 2015). To summarize even further, the goal of utilitarianism is to maximize average wellbeing. Utilitarianism, propertarianism, and contractarianism are not necessarily mutually exclusive, but utilitarianism can stand alone. If so, a justified state maximizes average wellbeing, instituting whatever property rights system accomplishes that goal and altering it as necessary to improve average welfare.

Two features free utilitarianism from a need for a Hobbesian hypothesis. First, it has no natural starting point. The monistic goal of maximizing average wellbeing gives no special prominence to stateless societies. All social arrangements, including statelessness, have to be justified against all other conceivable social arrangements by beating them at the goal of maximizing average utility.

Second, utilitarianism has no proviso. It endorses unrestricted average utility maximization without concern for any minimum standard for particularly disadvantaged people (Kymlicka 2002: 10–52;

Sinnott-Armstrong 2015). Unlike contractarianism and most versions of propertarianism—both of which theoretically prohibit harming anyone—utilitarianism has no prohibition against harming some to further the goal of maximizing the average. Related theories, such as sufficientarianism and prioritarianism, do have special concern for the disadvantaged, but we do not think it is accurate to consider them as forms of utilitarianism (Widerquist 2010a).

Critics correctly recognize that utilitarianism has an enormous informational problem (Kymlicka 2002: 46). Even assuming wellbeing can be measured and compared interpersonally, how could one gather the evidence necessary to ensure the average person in arrangement X is better off than the average person in all other conceivable arrangements?

As common as it is to mention the informational difficulty in utilitarianism, hardly anyone mentions that any theory involving a proviso has one too. How can we ever be sure that the least advantaged person is better off in arrangement X than they could be in any stateless society? Utilitarianism's informational difficulty is the greater of the two, but at least utilitarians do not assume they've answered it. They call attention to it. They ask people to adopt the goal of maximizing average utility. Presumably anyone who accepted that goal would begin researching how to move toward its achievement. Contractarians and propertarians devote great effort to establishing the moral importance of the proviso, and then the vast majority of them effectively ask people to assume it away: the goal is already achieved; no one should demand evidence that it is achieved; no one should consider the informational difficulties involved in achieving it. Utilitarianism is not clearly at the disadvantage in this informational issue.

Many critics argue that the great moral shortcoming of utilitarianism is that it ignores "the separateness of persons"; without a proviso, it lacks any moral limit to the sacrifices it might force onto some for the benefit of the average (Rawls 1971: 178; Nozick 1974: 39–42; Cohen 2003: 239–43). Contractarianism supposedly reflects the principle that "morality should never demand of us that we make ourselves 'prey' to others or risk the satisfaction of our desires for their good" (Hampton 1988: 4). And the protection against being prey is the proviso—at least it would be, if we took it seriously. But in the period up to 1800, we found only one philosopher, Thomas Paine, who took it as more than a rubber stamp.

A rubber-stamp proviso—always and everywhere assumed ful-filled, never in need of significant evidence—can't protect anyone from anything. Utilitarians have no moral prohibition against prey-ing on people if it improves average wellbeing, but at least they call for an investigation of evidence to determine the effects of policy on *everyone* to determine what maximizes average wellbeing. Most pro-viso-based theorists ostensibly have an overriding prohibition against preying on people, reject utilitarianism for lacking that prohibition, and deny any need to investigate the wellbeing of disadvantaged indi-viduals to determine whether social arrangements do in fact prey on people in the relevant sense. Again, utilitarianism is not clearly at the disadvantage.

We do not endorse utilitarianism. Although it is relatively invul-nerable to the subject of this narrowly focused book, other criti-cisms of utilitarianism raise serious doubts about it as an overall theory of justice. However, we don't need to discuss them here. The only issue for us is what utilitarianism says about statelessness. A utilitarian justification of state society relative to statelessness would be a much easier requirement than the fulfillment of the proviso. The utilitarian would only have to compare the *average* person in state society with the *average* person in a stateless society. At the time of Hobbes, Locke, and Kant, states might even have failed this test (see Chapter 10), but it is probably fulfilled for all or most contemporary state societies. Utilitarianism's dominance in the nineteenth century did not stop people from asserting the Hobbesian hypothesis. See the appendix for a more detailed discus-sion of utilitarianism.

Although G. W. F. Hegel was neither a contractarian nor a prop-ertarian, he asserted the Hobbesian hypothesis both in terms of the state and of the property rights system. For example, in the Hobbes-ian sense, he wrote, "The characteristic of man as rational is to live in a state; if there is no state, reason claims that one should be founded. . . . it is absolutely necessary for every one to be in a state" (Hegel 2001: 78, §75). See the online appendix for more on Hegel.

Frédéric Bastiat (1996: xxxii, 4, 61, 201, 206, 212–16) was a French propertarian who repeatedly asserted the Hobbesian hypoth-esis in the most explicit empirical terms as a comparison of the lives of the least advantaged people in a capitalist state with those of people in a stateless society. For example, Bastiat wrote:

> Workers, I promise to prove that you do enjoy the fruits of the
> land that you do not own, and with less pain and effort on your
> part than you could cultivate them by your own labor on land
> given you in its original state. (Bastiat 1996: xxxiii)

Unlike most people who have asserted the hypothesis, Bastiat dedicated
several pages of empirical argument to support it. Building on Locke's
day-laborer example, he attempted to show that everyone could obtain
more food, clothing, and transportation in nineteenth-century France
than anyone could at the "dawn of civilization." For example, using
wage and price statistics, Bastiat argued:

> humanity, as represented by its most backward element, the
> day laborer, obtains . . . three hundred liters of wheat . . . the
> value of his subsistence with forty-five to sixty days out of
> his year's labor. . . . to determine whether or not progress has
> been achieved and, if so, measure it, we must ask ourselves
> what this same ratio was on the day that men first made their
> appearance. . . . [Imagining the laborer dropped into a virgin
> wood, Bastiat supposes] he would not raise one hundred liters
> of wheat every two years. (Bastiat 1996: 212–13)

Bastiat (1996: 212) might strike the reader as unfair for representing
"the dawn of society" with a nineteenth-century city dweller thrust
into the woods with no prior knowledge of hunting, gathering, or
subsistence farming and without a band to work with. Bastiat made
no effort at all to research the lifestyles of people who live without the
property institutions he seeks to support. But he is valuable because
he avoids the ambiguity that affects most propertarians and contrac-
tarians. His plain-language philosophy makes clear: the Hobbesian
hypothesis is an empirical claim about the relative welfare of the least
advantaged people in capitalist states and people in stateless societies,
and it is subject to verification or falsification by empirical investi-
gation. He removes the suggestion that the Hobbesian hypothesis is
either obviously true or somehow beyond empirical investigation.

Henry David Thoreau's (1971) book, *Walden*, was not aimed at
contractarianism or propertarianism, but it certainly contradicted the
Hobbesian hypothesis. It attempted to show by direct demonstration
that people could live more simply and easily outside of contemporary

capitalism. Herbert Spencer (1960: 176) referred directly to Hobbes as he criticized the violence hypothesis: "there are some small uncivilized societies in which, without any 'common power to keep them all in awe,' men maintain peace and harmony better than it is maintained in societies where such a power exists." Spencer included a citation to verify his quote of Hobbes, but none to support his claims about uncivilized societies. Thus, Spencer provides another example of the lack of attention to evidence displayed by both sides on this issue. See the online appendix for more detailed discussions of Spencer.

Henry George's (1879: §06) position was similar to Paine's and Spencer's with the added insight that the loss of independence was the main disadvantage for a worker in a capitalist state relative to someone in "a savage tribe." Living in the post-Crawfurd world, George felt compelled to explain that he was not "romanticizing" the noble savage by writing, "I am no sentimental admirer of the savage state," before he wrote:

> there are in the heart of our civilization large classes with whom the veriest savage could not afford to exchange. . . . if, standing on the threshold of being, one were given the choice of entering life as a Tierra del Fuegan, a black fellow of Australia, an Esquimau in the Arctic Circle, or among the lowest classes in such a highly civilized country as Great Britain, he would make infinitely the better choice in selecting the lot of the savage. For those classes who in the midst of wealth are condemned to want, suffer all the privations of the savage, without his sense of personal freedom; they are condemned to more than his narrowness and littleness, without opportunity for the growth of his rude virtues; if their horizon is wider, it is but to reveal blessings that they cannot enjoy. (George 1879: §08)

George presented detailed information about the lives of people in state societies and little about the lives of people on the other side of his comparison. But at least he did not portray his findings as obvious, writing, "I challenge the production from any authentic accounts of savage life of such descriptions of degradation as are to be found in official documents of highly civilized countries" (George 1879: §09). See the online appendix for more detailed discussions of George.

Karl Marx and Friedrich Engels were far more engaged with anthropology and other empirical sciences than most philosophers. Although their portrayal of stateless societies was unflattering, their portrayal of life for many people in capitalist states was bleak (Marx 1887 [1867]; Marx 1993; Marx and Engels 1994 [1848]; Engels 2005). They presented empirical evidence that poor people in capitalist states were often miserable (Marx and Engels 1994 [1848]; Engels 2005) and Marx's (1959) theory of alienation added a theory of psychological misery to their observations of material poverty. They also cited anthropological evidence that stateless peoples are not as miserable as usually assumed (Engels 2004 [1884]), but they never connected that information to an attack on the theoretical conclusions of contractarianism or propertarianism.

Putting these claims together, one can draw the inference that nineteenth-century capitalist society was mixed at best and perhaps substantially worse for some individuals relative to stateless societies. But Marx and Engels did not put the pieces together in this way. They were more interested in building up their own applied theories than in entering an existing abstract philosophical debate on its own terms, and apparently so were most of their successors. If any later Marxian philosopher criticized the Hobbesian hypothesis, it had little impact on the contractarian and propertarian literature reviewed below. See the online appendix for a more detailed discussion of Marx and Engels.

In the late nineteenth century, many non-Marxist political theorists also began moving away from abstract to empirical theory, eventually leading to the split between "political philosophy" and "political science." John Robert Seeley (1896: 1, 4), Henry Sidgwick (1966: 240), and Henry Sumner Maine (1861: 90–1, 114–19) all contradicted Hobbes and Locke at least partly on empirical grounds, but distanced themselves from abstract normative philosophy. Seeley (1896: 28) dismissed Hobbes and Locke as "political speculators," but he did not address their specific claims about the state of nature.

Sidgwick's (1966: xii, 348–72, especially 353–5, 365, 372) discussion of Hobbes's and Locke's states of nature was more concerned with the irrelevant question of how the state originated than with the relevant claim we call the Hobbesian hypothesis. He described Hobbes's view of the miserable state of nature as a "half truth," but he did not present evidence against it. Like Seeley, his concern with

Hobbes and Locke was primarily with their abstract methodology rather than with the truth or falsity of their claims.

Of the three, Maine most clearly called out Hobbes and Locke for empirical errors. Referring to them, he wrote:

> Their originators carefully observed the institutions of their own age . . ., but, when they turned their attention to archaic states of society which exhibited much superficial difference from their own, they uniformly ceased to observe and began guessing. . . . One does not certainly see why such a scientific solecism should be more defensible in jurisprudence than in any other region of thought. (Maine 1861: 119)

Maine called for an investigation, but he did not conduct one himself. Ultimately, all three of them attacked Hobbes and Locke for their abstract methodology rather than for their foray into empiricism with the Hobbesian hypothesis. In Maine's (1861: 86–7) words, which Sidgwick (1903: 380) later quoted to endorse, their methodology was "that Historical Method before which the Law of Nature has never maintained its footing for an instant." See the online appendix for a more detailed discussion of Seeley, Sidgwick, and Maine.

Peter Kropotkin was the one nineteenth-century philosopher who conducted a relevant empirical investigation and at least partly applied it to the debate in question. According to Alan Barnard (2004b: 5), "The first thing Kropotkin does is to dispel the Hobbesian notion that primitive life was one of 'war of each against all.'" Of course, Kropotkin (2011: 204–5) made the obligatory post-Crawfurdian disclaimer: "In the last century the 'savage' and his 'life in the state of nature' were idealized. But now men of science . . . began to charge the savage with all imaginable 'bestial' features. . . . this exaggeration is even more unscientific than Rousseau's idealization."

Drawing on a wide variety of sources from anthropology, history, and archaeology on contemporary stateless societies, historically observed stateless societies, and Paleolithic societies, Kropotkin remarked on how wrong Western characterizations of violent savages are:

> When first meeting with primitive races, the Europeans usually make a caricature of their life; but when an intelligent man has stayed among them for a longer time, he generally describes

them as the "kindest" or "the gentlest" race on the earth. These very same words have been applied to the Ostyaks, the Samoyedes, the Eskimos, the Dayaks, the Aleoutes, the Papuas, and so on, by the highest authorities. I also remember having read them applied to the Tunguses, the Tchuktchis, the Sioux, and several others. The very frequency of that high commendation already speaks volumes in itself. (Kropotkin 2011: 175)

Kropotkin added similar observations about the "Bushmen," the "Hottentots," and the natives of Australia. He did not connect his observations as closely with the Hobbesian hypothesis as he did with the violence hypothesis. He showed that many stateless societies succeeded in establishing cooperative society, maintaining peace, and providing mutual aid, but he made no welfare comparison between people in state and stateless societies. See the online appendix for a more detailed discussion of Kropotkin.

These nineteenth-century philosophers raised doubts about the Hobbesian hypothesis and the violence hypothesis. Although most of them did not apply their empirical findings to the contractarian and propertarian arguments that rely on these claims, one might have expected some response. Yet, our search of the literature found none. The relevance of their findings is simply ignored in debates over these theories.

The increasing specialization of the academic disciplines probably helps explain why. The empirical arguments of these theorists were taken up by the more empirical disciplines, such as anthropology, sociology, economics, and political science, none of which involved debates over the Lockean proviso. As disciplines became increasingly specialized, and there was less overlap between normative and positive theorists, it became easier for normative theorists to pass on the Hobbesian hypothesis even as empirical research uncovered more substantial evidence against it.

Note

The online appendix has more detailed discussions of utilitarianism, Hegel, Friedrich Nietzsche, Thoreau, Spencer, George, Marx, Engels, Emile Durkheim, Maine, Seeley, Sidgwick, and Kropotkin.

Chapter 7

THE HOBBESIAN HYPOTHESIS IN CONTEMPORARY POLITICAL THEORY

Contractarianism and propertarianism didn't completely go away during the years that utilitarianism dominated political theory, and certainly the Hobbesian hypothesis and the violence hypothesis remained widely believed. But these topics gained renewed attention as utilitarianism declined in prominence starting in the mid-twentieth century. For simplicity, we use the word "contemporary" to refer to the period after about 1950.

Contemporary political philosophy addresses a wide range of issues, but various versions of contractarianism and related theories dominate the discussion of political obligations, and arguments for and against propertarianism dominate discussions of property. Therefore, theories relying on a Lockean proviso and an accompanying version of the Hobbesian hypothesis play a large role in contemporary political philosophy.

This chapter shows that contemporary political theory has a wide but unexamined consensus in favor of the Hobbesian hypothesis. Theorists tend to divide into two camps. One side believes that the weak version of the Lockean proviso is high enough to justify the institution in question and that it is fulfilled. The other side believes that the proviso is not high enough; a stronger standard is ethically required; and that standard (whatever it is) has not been fulfilled. Therefore the disagreement over the proviso occurs almost entirely in the area of pure normative theory (how high should the standard be?) and against the presumed empirical background that the weak proviso has been fulfilled, while strong versions have not. Few on either side call attention to that tacit presumption or to the lack of evidence presented to affirm that it reflects reality.

This chapter reveals that some of those affirming the hypothesis clearly assert that their claims about the state of nature include possibilities of people living by their own efforts as—say—a hunter-gatherer or a subsistence farmer. None clearly rules out that interpretation of their state of nature. None argues against that interpretation or the relevance of that comparison in favor of an extra-weak proviso or for a purely a priori justification of the state without any empirical claims.

The aura of an unspoken consensus around the weak Hobbesian hypothesis has allowed people asserting it to be less clear about its exact meaning and to present less supporting evidence than Bastiat, Locke, or Hobbes did centuries ago. We have found no empirical refutations of Paine, George, Kropotkin, or the other skeptics mentioned in this book. As critics are ignored, the Hobbesian hypothesis might gain credibility merely from how often and how long it has been repeated. As the available evidence on this issue has increased, philosophical interest in that evidence has decreased.

Section 1 discusses the role of the Hobbesian hypothesis in contemporary contractarian and related theories of political obligation. Section 2 discusses its role in propertarian theory. Section 3 discusses the few contemporary critics who address the empirical aspects of the weak Hobbesian hypothesis. Section 4 concludes by relating these several chapters of literature review to the need for an empirical investigation.

1. CONTEMPORARY CONTRACTARIANISM AND ITS OFFSHOOTS

The consensus view, in which the weak proviso is fulfilled but stronger versions remain unfulfilled, appears even in *The Stanford Encyclopedia of Philosophy*'s entry on "Contemporary Approaches to the Social Contract." The authors, Fred D'Agostino, Gerald Gaus, and John Thrasher (2011), drawing on Russell Hardin, write, "If the parties are simply considering whether government is better than anarchy, they will opt for just about any government, because 'life under government' is, from the perspective of everyone, better than 'life under anarchy.'" That is, the weak proviso is fulfilled, but why should it be enough? Why not demand the best out of all possible governments rather than just any government that beats anarchy? Hardin (2003: 43) criticizes Hobbes's answer, writing, "Hobbes supposes that the transition from an extant

government to a new form of government would be too costly to justify any improvement it might bring. . . . Here, an unduly confident social-scientific claim secures commitment to an actual government." Thus, although they reject the social-scientific claim that it is too costly to move from one government to another, these four philosophers do not question the social-scientific claim that government really is better than anarchy—"from the perspective of everyone." That is the pattern we see over and over again: some say the weak proviso is enough; some demand a stronger proviso; but few question the claim that the weak proviso is fulfilled.

James Buchanan (1975: 8) draws on Crawfurd's language in a clearly empirical assertion of the Hobbesian hypothesis, writing, "it is essential to examine carefully the properties of anarchy as an organizational system in the absence of the idealized individual behavior that is characteristic in the utopias of anarchy's romantic advocates." But his analysis of the stability of anarchic equilibrium is purely a priori. He makes no effort to show that his model reflects the reality of statelessness any better than those of "anarchy's romantic advocates" (1975: 5–9).

John Zvesper (1984; 1993), who is strictly neither a Hobbesian nor a Lockean, accepts the fulfillment of the Lockean proviso as obvious, writing:

> The most promising way to refute Locke's account of the constraints on consent is not to argue that it is implausible because it results in material injustice (unless one is prepared to argue that the poorest workers in developed economies are not materially wealthier than the richest primitives). (Zvesper 1984: 60)

This quote takes for granted that the poorest workers *are* materially wealthier than the richest "primitives" and assumes no one would be prepared to argue against that hypothesis, but Zvesper presents no supporting evidence, apparently assuming even his opponents share this prejudice.

David Gauthier (1991: 25, 208) uses contract theory primarily to justify morality, but he also uses it to justify both state sovereignty and property rights. He is not interested in whether people actually agree to the social contract or even if they would under idealized circumstances, but his theory is contractarian in the sense that the state, the moral system, and/or the property rights regime must benefit individuals enough that they *could* agree. Thus, the agreement to Gauthier's

contract is *hypothetical*, but the conditions that motivate the agreement are *empirical*, and the condition that motivates agreement is the supposed fulfillment of the Lockean proviso.

Gauthier affirms the Hobbesian hypothesis, writing:

> Rousseau . . . ignores the positive and progressive benefits that even an unequal society can effect. Thus he represents the situation of the poor as being actually worsened as a consequence of the new power relationships that society institutes. But . . . Each person may reasonably expect to do better as a consequence of the benefits of the market and co-operative interaction, even if these benefits are not fairly or equitably distributed. (Gauthier 1986: 320)

In the first part of this passage Gauthier indicates that claims about the state of nature can be empirically right or wrong and that Rousseau was empirically wrong to suppose any people in his state were worse off. The second part states that people are better off even in societies that unfairly or inequitably distribute their benefits. The passage seems to be a straightforward empirical affirmation of the Hobbesian hypothesis as a claim about people in real stateless societies. Societies do institute "new power relationships" and "the market." There was a time before the relevant power relationships came into being. If it were a claim about a fictional statelessness and/or marketlessness, how could Rousseau be wrong about it? Certainly Rousseau has the same license to write fiction as anyone else?

Gauthier's (1969: 164) confidence in this statement is closely related to his statement about how bad the state of nature must be: "The question is not whether civil society is unpleasant, but whether it is less pleasant than some possible alternative." For Gauthier, that alternative is a society without property rights or sovereign government. He provides no evidence of what life in such societies is actually like. He assumes readers will accept his premise without demanding any such evidence. That is, he assumes they share the prejudice that allowed Hobbes to assert the hypothesis 350 years ago.

Jean Hampton (1988: 4, 256) attempts to show how social contract theory can justify the state without any literal contract, using an agreement that is "hypothetical and yet justificational." As in Gauthier, the *agreement* is hypothetical, but the conditions that make it justificational are real, and one of those conditions is the Hobbesian hypothesis, which Hampton affirms for very Hobbesian reasons:

> Primarily because too many of them reason badly, human beings
> are unable to cooperate in a state of nature, making it a state
> of virtual total war but they are not so contentious that if they
> were in a commonwealth they would be unable to agree on how
> well any ruler who might be governing them was doing . . . A
> ruler with great power is necessary to end the warfare in the
> state of nature. (Hampton 1988: 247)

She adds, "one of the most important sources of chaos and violence
in the state of nature is the failure of people in that state to keep con-
tractual promises" (Hampton 1988: 268).

Hampton (1988: 271–2) does not—as far as we are aware—
explicitly say that the state of nature she has in mind is or includes
actual stateless societies, but she is logically committed to it. She
makes a universal claim about a dichotomy: there is either a "ruler
with great power" or "warfare in the state of nature." Clearly she
means this claim to be taken as a statement of empirical reality, or
it could not support her conclusion that rational people have "a
certain compelling reason" that "is (or should be) *our* reason either
for creating government if one does not exist or for maintaining
it in power if it does." She offers only theoretical, not empirical,
support for this statement, but it is a statement about the world
that is capable of being true or false. If it is true, then all stateless
situations will have unacceptable violence. Therefore, we conclude
that Hampton is committed to the Hobbesian hypothesis as a literal,
empirical claim about all stateless societies.

Gregory S. Kavka (1986: 24) endorses both the Hobbesian and
Lockean versions of the proviso, and makes clear that they are empiri-
cal claims, writing, "the absence of reliable interpersonal cooperation
is as important a negative feature of anarchy, for Hobbes and in fact,
as is the presence of violent conflict." He admits that he uses a hypo-
thetical state of nature to reveal empirical truth, because he believes
relevant observational evidence is difficult if not impossible to obtain.
Therefore, although he uses an a priori *method*, Kavka (1986: 84)
makes it clear that he has not used purely fact-independent reason-
ing, writing, "if the individuals of the theory resemble real persons in
enough important respects, their interaction patterns in the state of
nature might provide considerable insight concerning how real people
would be likely to behave in similar circumstances."

With this awareness of the empirical implications of his reason, Kavka makes extensive theoretical arguments that violence must exist in the state of nature to support his conclusion that the state of nature forces people to agree to the social contract:

> it could be suggested that the parties are compelled to reach agreement, since return to the state of nature is their alternative. And this is, in a sense, true. But . . . The parties are not unfree with respect to one another; none can coerce others to accept unfair or unreasonable terms of agreement. All are forced to compromise and accept less than they might wish because of the necessity to reach agreement. But this sort of pressure, when it applies equally (or approximately equally) to each, does not call the fairness or morality of the outcome into question; it simply reflects a Hobbesian fact about the human condition—that the State and (a high risk of) insecurity and poverty are exhaustive alternatives. (Kavka 1986: 402–3)

Kavka (1986: 24, 193) uses a "fair play" justification to argue for a higher standard of treatment than that implied by the weak Lockean proviso, but the above quote is an explicitly fact-based argument that the weak proviso is fulfilled. See the online appendix for a more detailed discussion of Kavka.

George Klosko (2004: 4–5) sets out to ground political obligation on H. L. A. Hart's principle of fairness, in which people are obliged to contribute to the state if they share its benefits, and if they specifically require a state to provide those benefits. Klosko affirms the empirical nature of the Hobbesian hypothesis (see Chapter 3), and just as clearly asserts its truth:

> If someone finds life in a Hobbesian state of nature acceptable, she will not choose to enter civil society and might not have political obligations. . . . One of my governing assumptions throughout this study is that the overwhelming majority of inhabitants of modern societies do not prefer to live in the woods or some remote outpost. (Klosko 2004: 8, 19)

This is about as clear a statement as one could make of the Hobbesian hypothesis as an empirical claim comparing the welfare of people

in state societies with the welfare of people who live outside state authority by hunting, gathering, or some other means. It also it provides an empirical test of state legitimacy. If disadvantaged people are so much better off than they would be living in the woods in some remote outpost that none of them would choose to do so, the political obligations imposed by government are justified—subject to the other principles of the theory, such as fair distribution. If not, the government remains unjustified. Klosko's test has problems, but we discuss it further in Chapter 10. See the online appendix for more on Klosko.

Dudley Knowles argues that unanimous consent might not be possible, even though he assumes that the Hobbesian hypothesis is true:

> There will be the citizens who will reject the arguments from fairness on the grounds that they do not seek any benefits from the state however many benefits are foisted upon them. . . . If this avowal is sincere, I do not see that they should feel grateful for what they describe as a moral burden notwithstanding the truth of the claim that it derives from a material benefit. (Knowles 2009: 144)

Knowles (2009: 144) recognizes that the lack of gratitude on the part of these individuals empirically limits political obligation, as he writes, "how far they extend is a matter of fact." But he does not mention the possibility that people might not actually receive benefits from the state. This claim must be empirical as well. We don't see a way that a claim about the "truth" of "material benefit" can be anything other than an empirical claim. His seems to have such a strong presumption in favor of the Hobbesian hypothesis that he feels no need to consider whether the state might fail to foist benefits on people. See the online appendix for more on Knowles.

Christopher Heath Wellman (2001), writing in the journal *Ethics*, literally repeats the prejudices of Hobbes and Locke. Wellman rejects consent theory for what he calls "*samaritanism*," but it too relies on the Hobbesian hypothesis, which he states in Hobbesian terms: "The advantages of political society are so great because life in the state of nature is so horrible." In support, Wellman (2001: 742) writes, "Hobbes, Locke, and Kant offered conflicting accounts of human nature, but all agreed that a stateless environment is a perilous environment devoid of security." In making this statement, Wellman provides more support for the

Hobbesian hypothesis than any of the contemporary philosophers discussed earlier in this chapter, but of course, all he does is admit to passing on a 350-year-old claim made by speculative anthropologists. This can't be enough. Hobbes, Locke, and Kant did not have the information available to be taken as experts on the welfare of either disadvantaged people or people in non-state societies. If we take their word for it, we pass on their prejudices. We need evidence. See the online appendix for more on Wellman.

2. CONTEMPORARY PROPERTARIANISM

The Lockean hypothesis appears regularly and often very explicitly in propertarian literature, usually without any empirical support. Eric Mack (1995: 213) writes, "the development of liberal market order presents people with at least 'as much' (in transfigured form) for their 'use' as does the pre-property state of nature." David Schmidtz's (1990; 1991: 17–24) justification of property relies heavily on the assertion that societies without it inevitably suffer from a tragedy of the commons. Richard Epstein cites no empirical support when he writes:

> the first-possession rule imposes costs on those who are excluded. But . . . it provides compensating benefits . . . that justify its place in the social order. . . . the overall size of the gain is so large that we need not trouble ourselves over its distribution. (Epstein 1995: 62)

Tibor Machan writes:

> It is true enough that if the world were such that the respect and protection of individual rights engendered general unhappiness, including poverty, then libertarianism would be kaput [Lockean proviso]. It is also true enough that if pigs had wings, perhaps they could fly [Hobbesian hypothesis]. (Machan 2006: 296)

Machan uses metaphor to state his Hobbesian hypothesis, and his use is effective because the analog of his metaphor is clear. None of these propertarians attempt to verify their claims with observational evidence of people in stateless societies. See the online appendix for more on Schmidtz and Machan.

The first chapter of this book quoted Nozick as someone who states clearly that Paine's first principle of civilization matters. Nozick (1974: 182) just as clearly endorses the Hobbesian hypothesis, writing, "I believe that the free operation of a market system will not actually run afoul of the Lockean proviso." For empirical support he mentions the presence of job opportunities under capitalism. He makes no reference to any studies of foragers' lifestyles and makes no effort to compare hunter-gatherers' welfare with that of disadvantaged people in capitalist states. Yet, Nozick goes so far as to say:

> Indeed, were it not for the effects of previous illegitimate state action, people would not think the possibility of the proviso's being violated as of more interest than any other logical possibility. (Here I make an empirical historical claim; as does someone who disagrees with this.) (Nozick 1974: 182)

No one could ask for a clearer admission of the empirical nature of the Hobbesian hypothesis, but yet, Nozick admits no responsibility to provide evidence for it, apparently expecting everyone to share his prejudice. See the online appendix for more on Nozick.

Loren Lomasky endorses the Lockean proviso in plain language:

> Nothing should be acknowledged as a basic right unless it is the case that the vast majority of community members is rendered better off if they and all others respect that right than if no one were obliged to respect it. (Lomasky 1987: 83)

Lomasky (1987: 125) actually admits that the proviso might go unfulfilled, but he explains now often: "In a word, rarely." So, he endorses the hypothesis only in tentative language: "It is not unreasonable to suggest, then, that persons within a liberal order would generally find themselves able to secure what they urgently need, even if not all that they would like to have" (Lomasky 1987: 126). Like Nozick, Lomasky's evidence is a non-comparative assertion that capitalism would provide more and better jobs with less government regulation. See the online appendix for more on Lomasky.

Jan Narveson (1988: 85–7) uses a form of propertarianism without any proviso, but nevertheless with no supporting evidence he asserts that this supposedly unnecessary standard is easily, obviously, and generously fulfilled: "A beggar in Manhattan is enormously better off

than a primitive person in any state-of-nature situation short of the Garden of Eden" (Narveson 1988: 92). See the online appendix for a more detailed discussion of Narveson.

Murray Rothbard similarly denies any ethical need for a proviso, but can't completely divorce himself from the Hobbesian hypothesis:

> adopting Locke's unfortunate "proviso," . . . Nozick declares that no one may appropriate unused land if the remaining population who desire access to land are "worse off." But again, how do we know if they are worse off or not? In fact, Locke's proviso may lead to the outlawry of all private ownership of land, since one can always say that the reduction of available land leaves everyone else, who could have appropriated the land, worse off. In fact, there is no way of measuring or knowing when they are worse off or not. And even if they are, I submit that this, too, is their proper assumption of risk. . . . There is no longer a vast frontier in the United States, and there is no point in crying over the fact. In fact, we can generally achieve as much "access" as we want to these resources by paying a market price for them; but even if the owners refused to sell or rent, that should be their right in a free society. (Rothbard 1982: 244–5)

This passage makes two admissions that few other propertarians and contractarians are willing to discuss: the proviso has enormous informational difficulties, and it might not be fulfilled. Murray here suggests only that the *strong* version might not be fulfilled without mentioning the weak version, but when he suggests that people can access all the resources they want by paying the market price, he suggests that this immeasurable, unnecessary proviso might just be fulfilled after all. See the online appendix for a more detailed discussion of Rothbard.

3. CRITICS

Many contemporary political philosophers use a stronger version of the Lockean proviso without stating whether the weak proviso is fulfilled or not. Tentatively, in this group, we can place Ronald Dworkin (2000), Michael Otsuka (2003), John Rawls (1971), T. M. Scanlon (1998), Hillel Steiner (1994), Philippe Van Parijs (1995), and many others. We don't need to discuss their theories. They have no responsibility to address whether a standard they reject is fulfilled or not.

However, a false appearance of consensus exists partly because of the large number of the people who reject theories relying on the Hobbesian hypothesis without criticizing the hypothesis itself. See the online appendix for Rawls, Rawlsianism, Otsuka, and Steiner.

A few contemporary political philosophers do criticize the Hobbesian hypothesis. Alasdair MacIntyre mentions in passing that the Hobbesian hypothesis might not always be fulfilled:

> There *are* of course situations where the disappearance of the state's power of repression may lead to the rise of anarchic violence. But there are and have been plenty of situations where an orderly social life continues without such a power being present. Indeed if one contrasts eighteenth-, nineteenth-, and twentieth-century urban life, where the state's repressive power is close at hand, with the moral life of those other periods where it is often absent or far away, one might draw the conclusion that the state's presence is a demoralizing factor. This would be . . . as ill-founded, because as one-sided, a conclusion as Hobbes'. But it underlines Hobbes' error. (MacIntyre 1998: 86)

MacIntyre goes on to say that the state of nature could be read as an extended metaphor. (Exactly what this metaphor represents is not clear to us.) But he argues, "it can only function, even as a metaphor, if it is an intelligible story, if it satisfies certain elementary requirements of logical coherence. This it fails to do" (MacIntyre 1998: 87). See the online appendix for a more detailed discussion of MacIntyre.

Alan Ryan also briefly criticizes the hypothesis:

> 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. They have no apparent tendency to self-destruction, although they are easily wrecked by contact with more advanced societies. Hobbes seems to suggest that their existence is impossible to explain. (Ryan 1996: 218)

Technically, this passage only argues against the violence hypothesis. It does not address whether people in stateless societies might be worse off for other reasons.

One contemporary political philosopher, Thomas Pogge (2002; 2008), has made strong empirical arguments that the basic institutions of contemporary society—such as the nation-state system and the property rights system—violate the basic principles of the theories meant to justify them. Pogge's ultimate point (that the existing moral theories demand that people stop harming the disadvantaged people of the world) is very much the same as ours. But his argument is very different. He uses an "ecumenical strategy," arguing that the empirical reality of poverty and destitution in the world today is so severe that it violates almost any reasonable conception of justice. This strategy frees his theoretical argument from the need to pin down the exact comparative claims in state-of-nature theory, and it allows his empirical argument to focus on disadvantaged people in capitalist states without much attention to what we see as the other side of the comparison: the wellbeing of people in stateless societies.

Pogge (2005: 40) writes, "However one may want to imagine a state of nature among human beings on this planet, one could not realistically conceive it producing an enduring poverty death toll of 18 million annually." Building on Pogge, Peter Lindsay (2015: 948–9) writes, "there are in the world millions—possibly billions—of individuals who occupy social positions (created through systems of ownership) that no rational person would agree to occupy."

Several modern critics of contractarianism use a priori reasoning against the Hobbesian hypothesis. Carole Pateman, Charles Mills, and Patricia Williams argue that one should not expect mutually beneficial sovereign states to appear in practice, because people with the power to construct social arrangements lack the incentive to construct them as if they were a contract including all citizens (Pateman 1988; Mills 1997; Pateman and Mills 2007; Cudd 2013). In our terminology, the power structure has incentive to leave a group of dissenters outside of the proviso's protection.

The logic of the exclusive contract is simple and compelling. It is possible to craft a contract that includes everyone. But it is also possible to craft a contract that excludes a few people. If it is cheaper to subjugate than to accommodate the excluded group, an exclusive contract might be even more attractive to those who sign it than an inclusive contract. The prevailing power structure is then set up for the benefit of the in-group, and it is indifferent to the welfare of the out-group. The people left out could be differentiated by gender, ethnicity,

race, religion, class, or any one of many other characteristics. We think of them more broadly as the disadvantaged, and in our terminology they are "dissenters" whether silent or vocal. The investigation in the following chapter can be thought of as an empirical confirmation of Pateman, Mills, Pogge, and Williams. It finds empirical evidence of the dissenters predicted by their theories. See the online appendix for a more detailed discussion of Pateman, Mills, and Williams.

4. CONCLUSION

Consider how the Hobbesian hypothesis can be used in response to critics like Pogge and Pateman. One might argue the in-group/out-group problem identifies a theoretical reason why the proviso might go unfulfilled, but the supposed empirical truth of the Hobbesian hypothesis shows that this problem obviously does not exist in practice. Therefore, in-group/out-group problems might create unfairness issues in the distribution of the capitalist states' benefits, but luckily such problems cannot call into question the overall justification of capitalism or the state, because supposedly we all know that everyone does in fact benefit.

In response to Pogge's evidence about the reality of deprivation in the world, the Hobbesian can respond by imagining that deprivation is even worse in the state of nature. Gauthier (1969: 164) writes, "The question is not whether civil society is unpleasant, but whether it is less pleasant than some possible alternative." Hopefully, the discussion above reveals that it is not enough to imagine that the alternative is worse; the alternative actually has to be worse as a matter of empirical fact. The literature review over the last five chapters shows dozens of political philosophers asserting just that. Other philosophers have implied the empirical interpretation without being completely clear, but no philosopher we have studied consistently defends the following position: *in reality the state harms people* (in the way suggested by Paine, George, Pogge, Pateman, and others), but *in my purely fictional mode the state protects people* from the state of nature or the Giant Chicken or whatever, and the benefit the state does in imagination somehow carries more ethical significance than the harm the state does in reality. Contractarianism and propertarianism would need to defend a position like this if they were to rely on a proviso that was not subject to empirical verification.

In the absence of any such argument, we say that both theories require the empirical claim we call the Hobbesian hypothesis (if they

are to justify real institutions). They can use Wellman's (2001: 742) words, but they have to take them as an empirical statement about the world we live in: "The advantages of political society are so great because life in the state of nature is so horrible." This claim demands investigation.

Considering the Hobbesian hypothesis as a myth suggests how it can provide a psychological response to the situations that the work of Pateman, Pogge, and others reveals. It might be psychologically easier to effectively leave people out of the contract, if we tell ourselves that they are actually in. The myth helps us ignore suffering people, while we enjoy the advantages that social arrangements provide to us and deny to them. We think it is unfortunate and even unfair that they don't benefit as much as us, but we comfort ourselves because we have convinced ourselves that somehow they *do* benefit. We comfort ourselves by believing the myth that the institutions that produced our advantages also saved them from a state of nature so horrible that even their meager existence is a major improvement. And so the myth helps maintain those institutions.

Most of us don't even like to think of this claim as a *hypothesis*. It's not the sort of thing that most people even question. It's an unstated background assumption, beyond doubt, or somehow logically incapable of being false. Everybody says it's true. Our greatest philosophers have been assuring us of its truth for centuries. Is that because it's obviously true or because it's a shared prejudice? No one can determine what social arrangements are possible by a priori reasoning alone. Our best reasoning about how people might live in certain circumstances is merely a hypothesis. Only a careful look at the evidence can determine whether the state or the property rights system meet the criteria put forward to justify them. We begin with a discussion of how the violence hypothesis and the Hobbesian hypothesis appeared in the history of anthropological thought.

Note

See the online appendix for detailed discussions of Will Durant, J. R. Lucas, Theodor W. Adorno, Jürgen Habermas, Kavka, Klosko, Knowles, Schmidtz, Machan, Nozick, Lomasky, Narveson, Rothbard, Rawls (and Rawlsianism), Steiner, Otsuka, Elias Canetti, MacIntyre, Pateman, Mills, and Williams.

Chapter 8

THE HOBBESIAN HYPOTHESIS IN ANTHROPOLOGY

Anthropology coalesced as a distinct academic discipline in the nineteenth century when ethnocentric ideas were dominant in Western Europe. Most educated Westerners believed in the superiority of Western society, the dichotomy between natural man and civilized man, the inevitability of progress, and the inevitability of everyone sharing the benefits of that progress. Before anthropology became its own discipline, it was a branch of philosophy. Hobbesian ideas were not merely influential in anthropology; they were foundational. The history of anthropology is largely a history of how these ideas were overcome, but Hobbesian viewpoints of some kind have never entirely gone away. There is an on-going anthropological debate about violence levels and wellbeing in small-scale stateless societies, and there has been recently a flourish of "neo-Hobbesian" writing.

To characterize any contemporary anthropological research as Hobbesian is perhaps an exaggeration because philosophers and anthropologist ask different questions. Philosophers ask (or more accurately, claim to know) whether violence is intolerably high in stateless societies. Anthropologists have tended to focus on much simpler questions, such as, what levels of violence can be observed in stateless societies? And how do they compare with the levels of violence observed in state societies? In our terms, anthropologists tend to examine the weak violence hypothesis. No empirical scientist we know of has thought the strong violence hypothesis worthy of rigorous investigation.

The same issue affects the Hobbesian hypothesis. Philosophers claim to know that everyone in state society is better off than everyone in stateless society. Few anthropologists have thought of that claim as worthy of investigation at all, but they have investigated issues that

are relevant to it, such as what the life expectancy is of people in state-less society; how healthy they are; how much leisure time they have; and so on. So for the most part, Chapters 9 and 10 will attempt to translate literature investigating questions that interest anthropologists into answers that are relevant to very different questions posed by philosophers. To say that any anthropologist has a generally Hobbesian view today is to say that they have negative opinions about the welfare and violence levels in stateless societies. It would be hard to find one who thought stateless peoples were under "continuall feare, and danger of violent death" (Hobbes 1962 [1651]: 100) or that they were worse off than everyone in state society.

This chapter explores how Hobbesian ideas affected the development of the discipline and how the two hypotheses in questions have appeared in the history of anthropological thought and in popular anthropology. To some extent, this discussion reveals how these ideas were overcome as understanding of small-scale societies improved. Finally, we discuss some anthropological terminology we use throughout the rest of the book.

1. HOBBESIAN IDEAS IN THE DEVELOPMENT OF ANTHROPOLOGY

Two competing ideas that are now associated (fairly) with Hobbes and (less fairly) with Rousseau, have dominated Western thinking about the deep human past since ancient Greece. One is a view of progress, in which contemporary civilization has given humanity the possibility to use intellect to overcome an inherently violent nature, which was much more prevalent in the past. The other is a view of degeneration, in which contemporary civilization is the result of the erosion of virtue since an earlier golden age (Keeley 1996: 4–5). The golden age view declined in popularity in the early modern period. It has now nearly disappeared from Western historical thinking. Hobbes was among the most influential thinkers on the subject of violence, progress, and human nature in the era when the progressive became the more prevalent of the two.

Hobbes (1962 [1651]: 100) was serious when he described state-lessness as the "Natural Condition of Mankind." It connected with the progressive view of history and the belief in a dichotomy between "natural man" and "civilized man." Many philosophers had long

believed that the higher creation of "civilization" developed out of the "natural," "primitive," and "savage" root of statelessness. The progressive view of history was not simply that progress *can* happen or *has* happened, but that it *inevitably must* happen. Hobbes's ideas about sovereignty and Locke's about property put this progressive view into a theoretical framework with causal explanations for progress. Their ideas not only influenced subsequent philosophy; they had a major influence over the development of anthropology and other social sciences. In the period before sociology and anthropology separated from philosophy as their own academic disciplines, philosophers such as Hobbes, Locke, Montesquieu, Rousseau, and Kant were extremely influential over these nascent fields. Some of the theoretical frameworks we will use to debunk the Hobbesian hypothesis are the products of a long chain of intellectual thought that includes Hobbes as one of its founding figures.

With scientific theories proposed to explain the mechanisms driving progress, philosophers began looking for a more detailed understanding of the path by which it occurs. Various prominent Western scholars propagated the idea of "socio-cultural evolution," which supposed that all societies followed a single path of development and could be classified as being at some stage in that evolution (Spencer 1851; Tylor 1871). Adam Smith and some of his eighteenth-century colleagues proposed a four-stage theory of development: hunting and gathering, herding, agriculture, and commerce (Hont 2005: 101). Smith's theory has a strong similarity with Marx's (1887 [1867]; 1972; 1994 [1848]) later and better-known theory of "historical materialism" in that changes in the technology of production drive changes in the political system.

Perhaps the most famous typology was the three-stage theory of savagery, barbarism, and civilization. Lewis Henry Morgan (1877) created a nine-stage theory by dividing savagery and barbarism into lower, middle, and upper stages, and by dividing civilization into ancient, medieval, and modern. Each of the stages was distinguished by specific inventions or discoveries, and (with the possible exception of medieval civilization) each new stage improved the human condition (Kelly 1995: 8). In the eighteenth and nineteenth centuries, the prevailing theories of socio-cultural evolution were unilinear, with only one path of progress. Kuper (1994: 63–5) quotes Morgan stating the idea in unequivocal terms: "The history of the human race is one in course, one in experience, and in progress . . . the lines of social

development are predetermined and inevitable." This theory made it possible to label societies as being ahead, behind, or at the same stage of cultural evolution.

Morgan was an enormous influence over Marx and Engels. They broke with previous socio-cultural evolutionists on one important issue: they did not see each new stage as necessarily good for each individual. But their model was still one of progress from a primitive (if not necessarily Hobbesian) root to a final stage of Kantian perpetual peace (Marx 1887 [1867]; Marx 1972; Marx and Engels 1994 [1848]; Engels 2004 [1884]). Morgan's anthropological influence is perhaps most obvious in Engels (2004 [1884]), who approached the issues of private property and the origin of the state from the perspective of unilinear cultural evolution.

Views of inevitable stages of progress are clearly detectable in the writings of early social scientists, and they continue to hold a great deal of currency in many fields today. During the nineteenth century, cultural evolutionism became wedded with the sociological concept of functionalism, which was based on an analogy between societies and biological organisms. This view put a scientific take on an idea that had been popular in theology in the Middle Ages (Shapin and Barnes 1976: 232–5, 246; Huxley 1998; Béteille 2003: 79–80). In it, the various social structures present within organized societies function like organs to maintain the viability and health of that society as a whole. In the incipient fields of social science, the ubiquity of this functionalist view of society owes much to Comte (1868), who later became influential in the foundation of the functionalist schools of anthropological and sociological thought, influencing writers such as Emile Durkheim (1915), Bronislaw Malinowski (1972 [1922]), Alfred Radcliffe-Brown (1940), and Talcott Parsons (1951). Functionalism in the social sciences fundamentally depended on the Hobbesian hypothesis in the sense that Hobbes saw the various social structures of the state as functioning in order to mitigate the unacceptable qualities of social life in stateless societies.

Many anthropologists over the last fifty years have criticized evolutionary approaches based on the fallacy of functionalism, favoring instead critical approaches with their roots in Marx (Trigger 1989; Marcus and Fischer 1999). However, even Marxian political theory was founded upon the unilinear cultural evolutionism of its day and the emerging school of functionalist thought in the early field of sociology was never far in the background. Therefore, we might consider

the Hobbesian viewpoint on the role of social structures within states, which lies at the heart of both cultural evolutionism and functionalism, to be the "original sin" of social science.

The effort to create these theories was not necessarily unscientific. The scientific method involves coming up with hypotheses and going into the field to test them by application. Archaeologists, anthropologists, historians, and others went into their respective fields expecting to be able to group societies by their stage in development as the theory predicted. Doing so is a scientific effort that both tests and applies the theory, but social science is difficult. Researchers' interpretation of data can be clouded by what they expect to see. Whether this was the reason or not, it took centuries of anomalous findings before the idea of inevitable stages of development was abandoned. For example, Native Americans of the Pacific Northwest had a hunting and gathering economy that would have put them in the lower stages of Smith's or Morgan's typologies, but they had complex, centralized political institutions and higher populations (Kelly 1995: 293–4; Johnson and Earle 2000: 204–15), which would have put them at the higher stages closer to statehood. Eventually anthropologists found far greater variation than the theory could support, and it was abandoned.

But unilinear socio-cultural evolution was replaced in the mid-twentieth century by a "neo-evolutionary" theory, which no longer assumed a single path of inevitable progress, but did see trends over time as societies change in scale and technology. Elman Service (1962), who still used the concept of stages, proposed the typology of band, tribe, chiefdom, and state. Robert L. Carneiro (1967; 1970) refined it to band, autonomous village, chiefdom, and state, and dropped the concept of stages in favor of forms of socio-political organization, which don't necessarily have to come in the same order. If the prevailing understanding of the anthropological record is correct, each form made its first appearance on earth (but not its first appearance in every area) in order from smallest to largest. The theory behind this typology is that some forms of socio-political organization are more adaptive to certain circumstances than others, so that societies at a similar scale with similar technologies tend to have similar political institutions. Adaptive does not mean better for everyone. Some circumstances might favor society's egalitarians while other circumstances favor society's authoritarians.

The effort to classify and make generalizations about societies by their scale, economic activity, or other characteristics is still alive in anthropology today, but it remains controversial and the idea of an inevitable

unilinear evolutionary path has long been abandoned. If it is to be useful, it has to be separated from the pejorative and erroneous view of our surviving small-scale brethren as living fossils, stuck in the primitive and most natural first stage of human existence. Kelly explains:

> there is no reason to suppose that human nature will be drawn more clearly in modern foraging societies than among modern industrial societies. . . . Foragers, past and present, live under specific environmental and social conditions and within particular historical trajectories, as do all peoples. (Kelly 1995: 338)

After two centuries of research on variability in terms of political systems, there is no evidence for linearity or inevitability in the origins and development of political complexity. Different societies are on their own path with no predetermined sequence or destination. Wengrow and Graeber (2015: 17) argue societies can and do jump from band-level to state-level on a seasonal basis if need be, and suggest, therefore, "our early ancestors were not just our cognitive equals, but our intellectual and philosophical peers too. Likely as not, our Palaeolithic forebears were aware, at least in a very broad sense, of many later social possibilities."

In addition, it is also worth complaining that evolutionary cultural typologies, such as the famous one offered by Service (1962), are based on the primitivist view that there was, in the deep past, a single hunter-gatherer cultural type that characterized all humanity; that more complex societies evolved from these hunter-gatherer roots; that the hunter-gatherers still alive in the world today are societies that remained, for whatever reason, unchanged from this original cultural type of the deep past; and that hunter-gatherer societies that do vary from this cultural type do so because of contact with neighboring complex societies. Of course, as we have discussed in detail elsewhere (McCall and Widerquist 2015), it should now be obvious that the features of modern hunter-gatherers are not simply inherited from our earliest ancestors but are rather the result of historical processes, especially those within the last few thousand years, and that variability in modern hunter-gatherer lifeways is the result of adaptations to widely disparate environmental and historical contexts (see also Kelly 1995; Binford 2001). An African foraging society 100,000 years ago, which would have been comprised of humans every bit as modern as anyone today, would be unrecognizably different from the Ju/'hoansi or any other modern society.

Given these problems, some researchers entirely drop the idea of categorizing stateless societies or generalizing about them by scale, but we feel that this goes too far. For one thing, like the spectrum of light, human societies over space and time have formed an incredibly diverse continuum of social possibilities and they have done so across many different axes of variation. While any effort to categorize such a wide array of social forms (or colors of the spectrum or anything else, for that matter) may be doomed to some degree of imperfection and ambiguity, any effort at systematic comparison needs such categories; if for no other reason, we need agreed-upon terms even to be able to talk to one another about the spectra of social diversity. In addition, as Binford (2001) has demonstrated for hunter-gatherers, there are organizational relationships between different classes of social and economic phenomena which covary in systematic and understandable ways. In a much broader view, a great many political, social, and economic factors are correlated with scale, and we need to make some generalizations about stateless societies to investigate the truth-value of the Hobbesian hypothesis.

In this effort, we use Carneiro's refined version of Service's typology, which uses a combination of factors to define band, autonomous village, chiefdom, and state. However, we do so with a great deal of caution and disclaiming. Once again, any categorization of a continuous spectrum can be problematic and this is particularly true of a classification scheme that combines so many troublesome histories of evolutionism and ethnocentrism. As Conrad Phillip Kottak (2008: 180) suggests, "The four labels in Service's typology are much too simple to account for the full range of political diversity and complexity known to archeology and ethnography. . . . Nevertheless Service's (1962) typology does highlight some significant contrasts in political organization." With these disclaimers and despite its historical baggage, we use these names because they are the most common names to identify ranges on the continuum from smaller societies with less authority to large ones with more.

2. CONTEMPORARY CLASSIFICATIONS OF SMALL-SCALE STATELESS SOCIETIES

As mentioned above, we need some terminology to identify the societies that most closely fit the contractarian definition of the state of nature. This section explains what terms we use and why, and it

argues that the smallest-scale stateless societies, as anthropologists understand them, fit the definition of the state of nature used in the debate over contractarianism.

The philosophical debate over the social contract usually assumes, for simplicity, a dichotomy between the state and statelessness, between full sovereign authority and no authority at all, but political power exists on a continuum from no authority to full sovereignty. Contractarians usually describe the state of nature as the complete absence of authority, and contractarian logic would seem to require all authority, not just fully sovereign authority, to be justified by consent. Therefore, our investigation needs to address the societies that most lack authority. As Iain Hampsher-Monk writes:

> The state of nature is simply the condition of men without a sovereign power to compel order. 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. (Hampsher-Monk 1992: 27)

Most important to our project in this book is the comparison of state societies with those at the opposite end of the spectrum of political complexity: hunter-gatherer bands that have no form of political authority and where political decision-making tends to be done through group consensus instead of by the authority of an individual, a group of individuals, or even through some other mechanism of political control. Here, the differences in the political systems of states and acephalous hunter-gatherer bands is clear, even though there is enormous variability in the political systems of both states and hunter-gatherer bands.

The smallest and loosest observed form of socio-political organization is the "hunter-gatherer band," a nomadic group of about fifteen to fifty people (including children and elderly) who obtain all of their food from foraging (Kelly 1995: 258; Lee and Daly 1999: 3; Boehm 2001; Ames 2007: 490–1). Archaeologists have found evidence of nomadic foraging groups living at this scale tens or perhaps hundreds of thousands of years ago. Ethnographers have documented nomadic foraging groups at this scale all over the world from the tropics to the Arctic, in all types of climate and terrain. Although any generalizations about

bands should be taken cautiously as tendencies drawn from limited data, ethnographers have recognized many similarities in the political and social practices of observed bands.

The statelessness of band society is uncontroversial. Observed bands have no fixed membership, little or no corporate identity, no recognized leaders, no ranks, no institutional or power structures, and no specialization in production except minor differences along the lines of age and gender. All of their political actions are ad hoc. Although we use the term "band members," it should be understood as nothing more than the people who happen to camp together at a particular time. Members commit neither to obey any authority within the band nor to remain with the band for any longer than they might wish to (Fried 1967; Redfield 1967: 21; Lee and DeVore 1968b; Turnbull 1968; Woodburn 1968b: 103; Woodburn 1982: 434; Bird-David 1994: 591, 597; Leacock 1998: 143; Lee and Daly 1999: 4; Johnson and Earle 2000: 32–3; Boehm 2001: 72–3; Renfrew 2007: 148).

To use Lucas's (1966: 62) words, bands settle disputes "any old how." If not everyone can agree, the group often splits up (temporarily or permanently) to avoid conflict, creating two autonomous polities out of one in minutes. Even the scale of a society is not necessarily fixed. Some bands assemble into larger groups, but usually not for more than a few weeks or months at a time. Some bands break up into groups as small as single nuclear families for part of the year. All observed bands treat land as a commons, sometimes as a fully open, sometimes as a partly closed commons (Turnbull 1968; Woodburn 1968b: 103; Bird-David 1994; Leacock 1998: 142–3; Johnson and Earle 2000: 32–3; Boehm 2001: 72–3, 86–7; Wengrow and Graeber 2015). As the online appendix explains in greater detail, the power structures of both sovereignty and landownership are absent in band society.

We have said that groups at this scale have existed since the appearance of humans, and if "band" is defined as a nomadic foraging group of fewer than 100 people, we can say that bands have existed for 200,000 years, but we cannot say with certainty that earlier bands share the political and social features described for historically observed bands. The farther back one goes, the less certain any such generalizations are.

Also relevant to this discussion are what have sometimes been called "middle-range" societies (see Jérôme Rousseau 2006 for review). These include what Service (1962) and Carneiro (1970) respectively called "tribes" and "autonomous villages," and what both called

"chiefdoms." While the characteristics of the opposing ends of the political spectrum are clearly distinct from one another, variability among middle-range societies remains much more controversial. However, for the purposes of this book and from the perspective of political philosophy, the distinction between autonomous villages and more complex chiefdoms holds considerable importance.

Larger-than-band-level societies of about 100–600 people, or what we call autonomous villages following Carneiro (1970), appear in the archaeological record within the last 20,000 years and only become common with the last 5,000–10,000 years. Such societies at this scale are extremely diverse, which is one of the sources of controversy in describing them. If we can make any generalizations about them, we can say that such societies often have some form of ranking but ranking usually comes with little or no authority. Autonomous villages have little if any centralized power. They can split to settle disputes but not as quickly or easily as band societies. They usually have economies based on swidden ("slash-and-burn") agriculture, but they can be herders or hunter-gatherers if the environment is particularly favorable. Hunter-gathering and agricultural groups at this scale tend to be sedentary, moving only occasionally. Autonomous villages typically treat land as a commons. For example, individuals might have the right to farm somewhere in the village but not to do so in any particular spot (Fried 1967: 113, 129–30; Carneiro 1970: 734–8; Wilson 1988: 3; Lee 1990: 236; Johnson and Earle 2000: 179–80, 191–2; Boehm 2001: 3–4, 93; Roscoe 2002; Bandy 2004; Renfrew 2007: 142; McCall 2009: 161).

Although the nature of the contractarian debate requires a focus on band societies, there are three reasons not to leave autonomous villages out of the discussion: first, they have been much better documented by ethnographers. Second, anthropological studies do not always draw a strong distinction between bands and villages (nor do they need to). Third, under any reasonable definition of sovereignty, they are stateless; they represent one of the alternatives to the state. However the field of anthropology chooses to talk about societies at this level of political integration, it is clear that there are many societies with low-level individual authority and small-scale differences in status, power, and wealth.

Within the last 12,000 years, "chiefs" began establishing power over several villages at once, forming political units of populations ranging

between thousands and hundreds of thousands of people (or more), usually called "chiefdoms." Many chiefdoms would actually qualify as sovereign according to the political philosophical definition of the state (but not according to the anthropological definition). Although the power of chiefs can be substantial in this sense, it is not always sovereign power, often fluctuating within a group of chiefs (Bellwood 1987: 31–3; Earle 1997; Thomas 1999: 229; Earle 2000; Earle 2002; Renfrew 2007: 152, 164, 173–6). Thus, chiefdoms range enormously in size and scale, and hence the utility of this term has been intensely challenged within the field of anthropology (Pauketat 2007). We are quick to recognize the validity of these critiques and the fact that the term "chiefdom" has become a vacuous category into which a wide range of dissimilar cases end up being discarded. Therefore, and because chiefdoms have some (but not always all) of the characteristics of state-level society, we mostly leave them out of our discussion.

The online appendix includes a more detailed argument for readers who remain skeptical that most small-scale nomadic foragers have neither statehood nor landownership.

3. ETHNOGRAPHY AND THE VIOLENCE HYPOTHESIS

Although the three-stage evolutionary framework of savagery–barbarism–civilization popular with early anthropologists was clearly built on the notion of the inevitability of human progress and the superiority of Western society, its adherents did not universally believe that the lowest level was the most violent stage. Many of them actually considered hunter-gatherers, which they called "savages," to be less violent than barbarians and sometimes less than contemporary Westerners. For example, Morgan (1877) observed that cultures at the stage of "barbarism" (that is, subsistence agriculture) are rather more prone to violence and warfare than those at the stage of "savagery," making no pretense about any trend towards decreasing violence over time or with increasing cultural complexity. Morgan elaborated that more complex societies have more at stake and also possess superior technology and tactics for making war on one another. Other early evolutionists echoed these sentiments. Augustus Pitt-Rivers (1867; 1906), for example, in his discussion of "primitive warfare," made it clear that more effective and sophisticated warfare, *not pacifism*, is actually the hallmark of civilization.

For example, the veneration of effective warfare as a distinctive feature of civilization could be seen as successful European and American powers patting themselves on the back for their military successes and colonial conquests. In other words, they thought, their superiority to peoples living in small-scale societies stemmed from their intelligence, discipline, moral fortitude, and sophisticated technologies, all of which related directly to their military prowess. Thus, one's capability and willingness to wipe out one's adversaries was a mark of high civilization and the outcome of the process of cultural evolution itself. In this area, the Hobbesian idea that civilization was good for everyone was perhaps more popular than his violence hypothesis or even his quite reasonable idea that less violence is good for people.

Some of the earliest ethnographers, who went into the field to observe small-scale stateless societies, did not find them to be prone to unacceptably high violence. In our review of early ethnographic descriptions of hunter-gatherers from the New World, Africa, and Australia, we were unable to find any clear-cut instances of extreme interpersonal violence. In fact, most early accounts of hunter-gatherer societies emphasize the opposite tendency toward peacefulness and social harmony (Kropotkin 2011: 175). For example, Baldwin Spencer and Francis James Gillen, in their highly influential description of the hunter-gatherers of the Central Desert of Australia, offer the following account:

> As a general rule the natives are kindly disposed to one another, that is of course within the limits of their own tribe, and, where two tribes come into contact with one another on the border land of their respective territories, there the same amicable feelings are maintained between the members of the two. There is no such thing as one tribe being in a constant state of enmity with another so far as these Central tribes are concerned. (Spencer and Gillen 1899: 32)

Although Spencer and Gillen's ethnography is rather infamous for its unflattering portrayals of Australian aborigines, they obviously did not consider their subjects to be particularly violent; and certainly not unacceptably violent, as required by the Hobbesian perspective. Furthermore, this view of hunter-gatherer societies appears to have been shared fairly broadly by evolutionary anthropologists at the turn

of the twentieth century. For other examples from Australia, Southern Africa, and around the world, see respectively Parker (1905) and Stow (1905), and Kropotkin (2011).

The first major goal of American anthropology in the early twentieth century was to overcome this inherent tendency towards ethnocentrism in conducting ethnographic research. To this end, Franz Boas, often considered the "father of American anthropology," advocated the principle of *cultural relativism*, or the belief that all forms of cultural diversity are equally valid and none is "better" than any other (Powell and Boas 1887). One of anthropology's great contributions is the demonstration that all peoples are equal in terms of intelligence and other capabilities. Therefore, evident differences between human groups in terms of cultural behavior and social organization may be understood in external terms, such as historical patterns of interaction, ecological adaptation, and so on. Cultural relativism, while obviously difficult to put into practice during the conduct of social scientific research, has formed the basis for modern anthropology and allied fields ever since.

Taken together, early ethnographic investigations contributed to a common view of hunter-gatherers as being relatively free from violence in both its interpersonal and intergroup forms. For example, Elizabeth Marshall Thomas (1959), translated the Ju/'hoansi people's name as "the Harmless People," and allowed the interpretation that they lived in social harmony without interpersonal violence or intergroup warfare. This description echoed through the popular culture of the later twentieth century. When combined with other aspects of egalitarian social systems, this fed a trend of golden-age-style depictions of the Ju/'hoansi as a utopian hunter-gatherer society replete with boundless personal dignity and rich social lives now lost to the alienation of modern society (Sahlins 1974). Thus, as Carol R. Ember (1978) observed in her well-known essay on myths about foraging societies, research of this type coalesced into a somewhat fanciful view of hunter-gatherer societies as being virtually free from violence.

In playing culture critic, Keeley (1996) argues that studies such as Thomas's (1959) formed an element of a pacifist tradition within the field of anthropology which grew up during the 1960s in response to the Vietnam War—a sentiment strongly echoed more recently by Steven Pinker (2012). Indeed, beginning in the 1970s, skepticism about the nonviolent nature of hunter-gatherer societies began to

accumulate, in part forming the basis for the subsequent development of current neo-Hobbesian social theory. One real problem recognized at this time concerning investigations such as those of Thomas (1959) was that they were largely anecdotal. Up until the 1960s anthropology lacked any real data about the levels of violence in stateless societies, making it impossible to form comparisons with large-scale state societies. Finally, a generation of researchers sought to quantify just how violent hunter-gatherer societies actually are. When real data at last started to become available, levels of hunter-gatherer violence seemed surprisingly high to many (see Chapter 9 for discussion).

Some ethnographers went to the opposite extreme. For example, Napoleon Chagnon (1968) observed extraordinary levels of intergroup violence among the Yanomamö and labeled them the "fierce people," in what would seem to be a self-conscious inversion of the descriptions of the Ju/'hoansi by Thomas (1959). Chagnon's studies of the Yanomamö have achieved a degree of infamy for arguing that participation in intergroup aggression provided both functional benefits for whole Yanomamö groups and evolutionary fitness benefits for individuals. While we would strongly repudiate the evolutionary claims made by Chagnon, discussions of the Yanomamö have exposed the rather Hobbesian logic underlying the causes of "primitive warfare" within non-state societies. For example, in an early comment on Chagnon's work, C. R. Hallpike observes:

> The Yanomamo . . . and other acephalous societies, engage in warfare because among other reasons they cannot stop, not because they necessarily as a culture derive any benefit from fighting. In the absence of any central authority they are condemned to fight for ever [sic], other conditions remaining the same, since for any one group to cease defending itself would be suicidal. (Hallpike 1973: 6)

Obviously, Hobbes would be sympathetic.

Hallpike is not alone in the return to the Hobbesian belief in an inherently violent human nature and the Kantian ideal of progress in Western society through humane rationality. A wide range of modern scholarship on violence and warfare across the diversity of social science fields shares this general philosophical orientation

(Goldstein 2011; Kegley and Raymond 2011; Tertrais 2012; Gat 2013; Pagden 2013). This line of thinking has generally served as a justification of a wide range of modern social institutions, as well as the overall structure of the modern world and the historical processes that brought it about.

This line of thought is allied with the "sociobiological perspective," which attempts to apply Darwinian ideas of natural selection to social behaviors. Many evolutionists have employed an increasingly sophisticated theory of the dynamics of biological evolution to suggest that the evolutionary processes responsible for the origins of humanity favor violence as a behavioral trait in humans or at least human males. Through Raymond Dart (1953: 209; 1957), Louis Leakey and Robert Ardrey (1971), and other researchers, this view of human nature entered the increasingly scientific evolutionary theory of its day (such as Washburn 1959), which held that the biological and cultural evolutionary processes responsible for the origins of humanity were driven by the hunting of large animals and, therefore, this innately violent predatory "killer instinct" (Sussman 1999). One influential outgrowth of an increasingly sophisticated view of the evolutionary process was E. O. Wilson's (2000 [1975]) *Sociobiology: A New Synthesis*, which argued for the evolutionary basis of spousal infidelity, the division of human societies into classes, and the adoption of religion. Wilson (2000 [1975]: 573) also made a clear case for the evolutionary advantages of innate violence at the levels of both the individual and group. Margo Wilson and Martin Daly (1985) outlined what they refer to as the "young male syndrome," in which patterns of risk-taking, violence, and other forms of aggressive behavior exist among males today because they conferred evolutionary benefits on males in our deep early hominin past. Such perspectives within the field of evolutionary psychology have infiltrated what might be considered popular science in works such as *Demonic Males*, by Richard Wrangham and Dale Peterson (1996), which builds on this model of the evolutionary basis of male violence with a heavy emphasis on the role of male competition for mates. See the online appendix for a more detailed discussion of sociobiology.

It is also clear that such scholarly work straddles the line between social science and the history of political philosophy that inspired it. Its roots trace back directly to Hobbes. Therefore, we have chosen to assign to this line of scholarship the label of neo-Hobbesianism. By this, we mean that this body of literature shares the belief in a

fundamentally violent human nature, as well as the notion that sovereign states function to mitigate this inherent tendency, but that label should not be taken to imply that these philosophers necessarily endorse the two hypotheses in question.

4. POP ANTHROPOLOGY AND THE VIOLENCE HYPOTHESIS

Some recent popular science publications share this neo-Hobbesian orientation, giving social systems the role of moderating what researchers present as an inherently violent evolutionary past and an inherently violent human nature. Two recent publications by Jared Diamond (2012) and Steve Pinker (2012) exemplify this trend. Diamond argues (among other things) that the institutions and cultural values of modern Western society have effectively curbed the violence inherent to small-scale societies in both recent precolonial history and our deeper evolutionary past. While Diamond's primary empirical basis for this argument is his personal experience conducting ecological research in New Guinea, he also synthesizes a range of comparative statistical data intended to show that violence in small-scale societies has tended to be perhaps an order of magnitude more prevalent than in modern Western societies.

In short, Diamond (2012) argues, we are all far less likely to die violent deaths thanks to the social benefits imparted by modern social systems and cultural values. Diamond shares most of the neo-Hobbesian viewpoint discussed in the previous section. For example, Diamond argues that rates of violent death in New Guinea were extremely high, especially prior to colonial "pacification," precisely because of the absence of any state authority with a monopoly on the legitimate use of violence capable of curbing the ubiquitous cycles of feuding and revenge killing that pervade the relationships between villages.

Pinker (2012) offers a more rigorous treatment of this subject, while making use of the same kinds of data as Diamond and making many of the same general points. Pinker more explicitly considers its philosophical bases and makes a number of cogent sociological points in explaining modern variability in violent death rates. He recognizes his influences in both Hobbes and Kant, and he dismisses modern criticism of the Hobbesian view of human nature as essentially pacifist wishful thinking. In addition, Pinker identifies the humanism of the Enlightenment as the key factor in reducing the ubiquity of brutality in Western

civilization. In particular, he follows Kant in arguing that the shifting ideals and laws that grew out of the humanism of the Enlightenment ultimately changed the nature of human attitudes towards violence and led to modern societies in which violence is extremely rare. Pinker's empirical argumentation rests mostly on a synthesis of statistical data on violent death rates in modern and earlier state societies, but he also makes some use of archaeological, historical, and ethnographic evidence about stateless societies. Pinker observes in a more sociological fashion that murder rates in modern societies correlate directly with the strength and perceived justness of state governments capable of controlling violent behavior and punishing criminals, thus removing the burden of retribution from individual actors.

At the same time, while Pinker (2012) makes the case that we are all better off within the social systems of the modern Western world, he spends much more time arguing that the modern world could be improved further through attention to the humanist social processes that have dramatically reduced violence up to this point. In contrast, Pinker spends relatively little time arguing that stateless society is necessarily inferior to state society, or that human nature is necessarily violent. As with a great deal of the literature on this controversial set of topics, these points seem to be more like axiomatic assumptions than like points argued for directly.

Importantly, for our argument, the trend of declining violence described by Pinker only began about 500 years ago—long after state societies had expanded to dominate the human social world. For example, Pinker writes:

> in the 14th and 15th Centuries, an astonishing 26% of male aristocrats died from violence—about the same rate . . . as the average for preliterate tribes. The rate fell into the single digits by the turn of the 18th Century, and of course, today it is essentially zero. (Pinker 2012: 81–2)

In other words, Pinker does not present evidence that state societies are inherently less violent than stateless societies. His primary empirical argument is that most contemporary states are less violent than all past societies, whether states or not.

Although Pinker (2012) clearly thinks of himself as a Hobbesian, his theoretical argument is sometimes quite different. Hobbes argues

that authority is necessary to overcome the violence inherent to statelessness. Pinker argues that in a society of violence and insecurity, people learn to be aggressive and violent, and that in a society of peace and security, people learn to abhor aggression and violence. Pinker makes a good case that insecurity and violence beget violence, that peace and security beget peace. He shows that over the last 500 years state societies have become increasingly better at providing peace and security, which have in turn made people less likely to resort to violence to resolve conflicts. We take no issue with any of these arguments or with his argument that state societies could be improved further through attention to the humanist social processes that have dramatically reduced violence up to this point. In his work, we take issue only with the beliefs that all states are necessarily better at providing that peaceful society than all stateless societies. Given the similarity in violence he finds in early states and stateless societies, he does not argue this point. He seems to make an unwarranted extrapolation of the trend he so well documents over the last 500 years. His extrapolation is explicitly influenced by Hobbesian theory.

5. THE HOBBESIAN HYPOTHESIS IN ANTHROPOLOGY

The overall Hobbesian hypothesis, or something close to it remained popular in anthropology through the mid-twentieth century as much for its presumed poverty as for its violence. For centuries most anthropologists, like most Westerners, believed hunter-gatherers lived a precarious existence, constantly on the verge of starvation with little time for anything but the continual quest to meet their basic needs. From that imagined starting point, human societies would follow a set path of development. Farming would always have been better for everyone, but only after hundreds of thousands of years in which modern humans lived on this planet did a genius invent farming, which supposedly freed humanity from this precarious existence and made possible leisure, education, culture, and progress. This invention was the most important step on the path through an inevitable series of stages toward the flourishing of diverse human potential in contemporary state society, especially the presumably highest Western societies (Harris 1977: 9; Hawkes et al. 1985: 3–4; Kuper 1994: 5–8, 65–7; Kelly 1995: 6–16). According to Kelly:

the hunter-gatherer lifeway had been viewed as one of continual fear and starvation, a perpetual and barely adequate search for food . . . the moral development of people . . . was evidenced by the increasing subjugation of nature by people. . . . Allegedly unable to think rationally, members of less advanced societies were controlled by nature; thinking rationally, members of advanced societies controlled nature. (Kelly 1995: 6–7)

The last straightforward endorsement of Hobbes's view of stateless peoples we found in the anthropological literature was by J. H. Hutton in his presidential address to the Royal Anthropological Institute of Great Britain and Ireland 1944:

the entire elevation of man from an animal status must have been started in some form of concrete progress of a definitely material nature. It is generally admitted that the life of man is still "nasty, brutish and short" . . . It is after all in the material culture of a people that we can find the only effective tests of the degree of civilization which that people possesses. And while the standard of material culture must be taken as indicating mental potentialities, so too the ability to take over and use the material culture of others must be taken as indicating the possibility of progress. (Hutton 1944: 3)

Here Hutton makes a direct positive reference to the Hobbesian hypothesis, and by connecting it with material culture, he connects it with ideas of Locke as well. This view was already under attack at the time he spoke (Fortes and Evans-Pritchard 1940: 4–5; Salzman 2004: 47), and it is absent from the anthropological literature today.

This was never a scientific view because it was based on speculation and prejudice rather than careful observation, but it was the starting point of the profession. Most early ethnographers went into the field expecting to find either inferior people or people living in highly inferior circumstances, and they took much of what they found as confirmation. Nomadic hunter-gatherers' failure to adopt farming, their lack of interest in Western conceptions of property, and their unconcern for the presumably imminent danger of starvation were all taken as signs of arrested intellectual development rather than as signs of confidence in their lifestyle. It took decades of ethnographers and

archaeologists not finding what they expected before they began to revise this interpretation.

Evidence against the Hobbesian view had begun to accumulate in Europe at least since the early colonial period, but it took until the mid-twentieth century for enough evidence to accumulate to make the Hobbesian view untenable among serious anthropologists (Lee and DeVore 1968a). Once anthropologists began to rethink the idea, some researchers, such as Marshall Sahlins (1968; 1974), argued for nearly the opposite extreme (see Chapter 9), but this idea never dominated anthropological thought.

The pessimistic view that prevailed through the mid-twentieth century has never returned. As Elizabeth Cashdan (1989: 26) explained, we can "demolish with confidence the old stereotype that hunter-gatherers had to work all the time simply to get enough food to eat." It is difficult or impossible to find any anthropologist today who describes life in stateless societies as a perpetual and arduous food quest, leaving little or no time to enjoy leisure, society, or culture.

6. CONCLUSION

This chapter has shown that anthropology—with the influence of philosophers such as Hobbes and Locke—began with great overconfidence about the inherent superiority of people in state societies. These ideas were eventually overturned, and anthropologists are now routinely skeptical of characterization of any unfamiliar human lifeway as inherently inferior. There is still great disagreement within the field between those who take optimistic and pessimistic views about the wellbeing of people in stateless societies, but as Chapters 9 and 10 argue, this disagreement happens with a broad consensus on a large number of ideas that are inconsistent with either the strong violence hypothesis or the weak Hobbesian hypothesis.

Chapter 9

NASTY AND BRUTISH?
AN EMPIRICAL ASSESSMENT OF
THE VIOLENCE HYPOTHESIS

This chapter applies anthropological evidence of violence in small-scale stateless societies, arguing that the strong violence hypothesis is clearly falsified and that the verdict on the weak version is more complicated. These points require a complex discussion.

One issue complicating it is that the anthropologists researching the relevant evidence have been interested in a slightly different set of claims. Anthropological studies simply ask what the levels of violence in states and stateless societies are with less concern for comparative claims and no discussion of the tolerability issue that is central to the contractarian debate. Therefore, we have to draw from research primarily aimed at one set of questions to a discussion of slightly different questions. Another complication is the difficulty of determining levels of violence in both prehistoric and modern stateless societies, neither of which has generally kept birth and death records. As we discuss below, the ethnographic and archaeological efforts to fill in that missing data are difficult and tentative.

With an eye to our goal, the first three sections of this chapter examine the anthropological research on this issue more or less as anthropologists do. Section 1 uses anthropological and historical evidence to examine violence in prehistoric stateless societies, early states, and contemporary states. Section 2 reviews evidence from modern stateless societies. Section 3 collects what we take to be anthropologists' consensus view of violence in stateless societies. The last three sections apply this information to the philosophical questions under discussion. Section 4 evaluates the strong and weak hypotheses in light of this information, arguing that societies in which sovereignty is most absent maintain the ability to keep violence at tolerable levels. Because

this finding rejects 350 years of accumulated theory of sovereignty, Section 5 briefly addresses that theory, discussing how bands are able to maintain peace without the institutions of state. Section 6 concludes and makes way for the broader discussion of the overall Hobbesian hypothesis in Chapter 10.

1. ARCHAEOLOGICAL AND HISTORICAL EVIDENCE OF VIOLENCE IN HUMAN PREHISTORY AND IN STATE SOCIETY

State-level civilizations are a new and unusual development in humans' tenure on earth. Therefore, the question of how pervasive violence was in prehistoric stateless societies is, in reality, a much more general question concerning the frequency of violence outside of the exceptional conditions under which most people live today. Information about violence in prehistoric stateless societies is particularly useful in evaluating the violence hypothesis, because all or most ethnographically observed modern stateless societies have been influenced by state societies (by loss of territory, environmental change, and so on).

But of course, archaeological evidence about violence in human prehistory has even greater ambiguity. The most direct way of recognizing lethal violence in prehistory is the observation of skeletal trauma that resulted from it. Thus, recognizing violence largely boils down to finding human skeletons in the archaeological record, in addition to the documentation of the presence of skeletal trauma resulting from violence. Vast periods of human prehistory are represented (at best) by a handful of skeletons, and violent behavior is represented only by skeletal trauma when obviously not all violence necessarily manifests itself in terms of permanent recognizable damage to bones.

With that caveat declared, some large-scale patterns are apparent in terms of prehistoric violence. To begin, it is worth considering our deep evolutionary past. For example, Grant S. McCall and Nancy Shields (2008) present a review focused on skeletal trauma in Neanderthals rather than humans. The study did so not because Neanderthals are necessarily the best stand-in for our evolutionary ancestors, who arose under rather different circumstances and exhibited different behavior patterns. Instead, the study focused on Neanderthals because they seem to be the only extinct species of hominin for which a large enough sample is available to say anything systematic about patterns of skeletal

trauma. By comparing patterns of Neanderthal injuries with the locations of injuries resulting from violence in modern populations, the study concluded that Neanderthals did indeed have fairly high frequencies of interpersonal violence, which resulted in craniofacial trauma and what are referred to as "parry fractures" in their upper arms. Other studies have found instances of Neanderthal skeletons with evidence for violent deaths involving the use of weapons, such as Neanderthal skeletons from Saint-Césaire, France, and Shanidar, Iraq (Zollikofer et al. 2002; Churchill et al. 2009). Furthermore, more detailed studies of the abundant but fragmentary Neanderthal remains from Krapina, Croatia, have come to similar results as our initial review study (Estabrook and Frayer 2013). Thus, we feel fairly confident that Neanderthals, and perhaps other Pleistocene hominin species, lived within social systems that fostered fairly high frequencies of interpersonal violence.

However, this evidence might not be easily transferable to human societies living in the same period. Some evidence indicates that Neanderthal and other archaic hominin species lived in harem mating structures, in which males physically compete for dominance and for the privilege of mating with a large number of females (Kelly 1995; Cieri et al. 2014). This mating structure, which often leads to lethal violence, is typical of our nearest ape relatives, but it has not been witnessed in biologically modern human societies. And so the high levels of violence in Neanderthals might have resulted from a social structure that is not mirrored in human societies.

A fairly different pattern becomes evident with the emergence of human hunter-gatherer populations in the Upper Pleistocene (about 200,000–10,000 years ago). While we are hindered by a small sample size, there are few clear examples of skeletal trauma plausibly resulting from violence to be found among our Upper Pleistocene modern human ancestors. In a recent review, Estabrook (2014) finds only five cases of major trauma associated with Upper Paleolithic modern humans in Europe, two of which come from the rather peculiar contexts of Dolní Věstonice in the Czech Republic. Two come from Italian archaeological sites excavated more than a century ago, and are actually post-Paleolithic in age. In addition, Estabrook finds another eleven instances of more minor trauma, of which four cases also come from Dolní Věstonice, including three from one single bizarre triple burial. These represent a small fraction of perhaps thousands of known Mesolithic and Upper Paleolithic skeletons.

Based on this available information, it would seem that violent trauma was comparatively rare among early modern humans, or at least those known from the Upper Paleolithic of Europe. With so few skeletons available, it is not possible to calculate anything like a homicide rate with any hope of accuracy. But although appropriate evidence is in extremely short supply, violence among Upper Paleolithic modern humans seems to have been on par with that known among the less violent modern human hunter-gatherer groups discussed below. Mark Nathan Cohen writes:

> comparisons do not yet yield any clear trend in the frequency of trauma and violence. . . . In general, the skeletal evidence provides little support for the Hobbesian notion that hunter-gatherer life is particularly violent or for the assumption that hunting is particularly dangerous. But there is also no support for the proposition recently debated in anthropology that hunter-gatherers are particularly nonviolent people. (Cohen 1989: 116)

Archaeologists regularly unearth Paleolithic skeletons, and so, hope exists that the available evidence will improve. Even if Paleolithic human foragers were more violent than what we have inferred from the scant skeletal evidence, another comparison is clearer: subsequent human societies were much more violent. This conclusion is implied by what is absent from the Paleolithic human skeletal record: evidence of warfare—group violence on a larger scale. This evidence begins to appear at just about the same time that the first agricultural societies emerged, as the Paleolithic and Pleistocene eras end and the Neolithic and Holocene eras begin.

One terminal Paleolithic site seems to have been a kind of turning point in the history of human violence: Jebel Sahaba in Sudan (Wendorf 1968). Dating to approximately 13,000 years ago, Jebel Sahaba is a mass grave containing fifty-nine skeletons, a high portion of which have projectile points embedded in their bones. Given that such injuries show no sign of healing and also given the likelihood that many of the other skeletons are from people who died from soft tissue injuries that left no marks on their bones, a picture emerges of a terminal Paleolithic village that was decimated by a violent attack, likely from some outside village. This pattern is consistent with intergroup warfare. In the words of Beatrice Heuser (2008: 4), before this

period, "all archeological evidence of violent death . . . is limited to finds of single bodies." She notes that, although inconclusive, such evidence, "does not point to warfare which by definition is a group activity." Therefore, the pattern found at Jebel Sahaba is the earliest conclusive evidence yet found of human warfare—a behavior that sadly becomes common later.

Similarly, Estabrook (2014) notes a significant surge in lethal violence following the end of the Upper Paleolithic in Europe. For example, the approximately 10,000-year-old Mesolithic site of Vasilyevka in the Ukraine contains the remains of seven individuals with unhealed lethal wounds and a high frequency of projectile points embedded in their bones (Lillie 2004); the Mesolithic site of Ofnet in Germany, dating to around 7,500 years ago, contains the remains of sixteen skeletons with lethal blunt force trauma, again apparently killed in a single violent episode (Frayer 1997). It seems that later hunter-gatherer populations in places like the Nile Valley and the rich temperate ecosystems of Europe were susceptible to varieties of group violence that their Paleolithic ancestors were not. One of these new forms of violence was "the mass-killing of *unarmed* people of all ages and sexes" (Heuser 2008: 3).

While the prevalence of violence and warfare may be debated for the Paleolithic period, there is wide agreement that the origins of farming saw an enormous surge in killing during the Holocene. While not universally true of all times and places, the small-scale farming societies of the Neolithic in the Old World experienced some striking massacres. For example, a recent volume (Schulting and Fibiger 2012) reviews in detail the evidence for violence during the Neolithic period of Europe. Among the most striking sites reviewed in this volume is that of Talheim, Germany, in which the skeletons of thirty-four individuals covering all categories of age and sex were interred in a mass grave (Wahl and Trautmann 2012). This would then appear to have been the majority of a village wiped out in some episode of extreme violence, and the injuries present are even located on the backs of the murdered individuals, suggesting an unsuccessful attempt to flee. Once again, this sort of mass violence grew to be uncomfortably common among early small-scale farming societies.

This description, drawn on evidence from Eurasia and Africa, is equally true of the New World. For example, the small-scale farming societies located along the arid Pacific coast of South America show evidence of high rates of violence. This is true both in terms of skeletal

evidence, which shows extremely high rates of trauma in certain contexts, and also in terms of settlement systems and fortifications built in response to warfare. For example, a study by Torres-Rouff and Costa Junqueira (2006) at the site of San Pedro de Atacama, Chile, shows high rates of skeletal trauma among local farming populations over the course of the last two millennia. Furthermore, this sequence was apparently punctuated by a few episodes of extremely high rates of violence, which Torres-Rouff and Costa Junqueira correlated with major droughts and other environmental crises. Similarly, patterns of prehistoric change along the Pacific coast of South America are dominated by shifting settlement patterns focused on increasingly defensible upland positions and by the construction of elaborate fortifications (Arkush and Stanish 2005). Evidently, the fear of violence and warfare was very much on the minds of the peoples in this region as they made decisions about where and how to live. Finally, this discussion also ignores the sometimes shocking instances of torture and sacrifice that also occurred with increasing frequency as South American farming societies grew in size and complexity (Verano 2001).

To some extent a trend is recognizable: "the prevalence of warfare among foragers correlates strongly with sedentism, the storage of food, high population densities, perimeter defense territorial systems, social inequality, and relatively rich foraging environments" (McCall 2009: 161). The increasingly packed populations common during the transition from the Pleistocene to the Holocene were concentrated into the world's first sedentary villages and therefore uniquely prone to food shortages and periods of starvation. This kind of situation appears to have been a recipe for violence in subsequent generations.

The same trend continues among non-state agricultural societies: as population density increases, violence and warfare tend to increase. The most violent stateless societies tend to be tightly packed communities with populations not quite dense enough to make a state likely to form. Johnson and Earle (2000: 34, 170) consider some explanations for this trend: once people can no longer avoid conflicts by moving elsewhere, they more often are forced to settle conflicts by violence. Aggressive men become a valuable asset rather than dangerous people to be around. Once chiefdoms or states form, an entirely new motivation for violence appears: territorial expansion. If this analysis is correct, the trend of decreasing violence Pinker documents is the reversal of an earlier trend of increasing violence that began long before the formation of the first states. Although the declining-violence trend has

by now probably led to the least violent period in human history, the trend did not immediately appear as soon as the first states were established, nor does it extend into the period surrounding the establishment of states as Pinker implies. Once states are firmly established, they can and sometimes do reduce violence to very low levels. This statement is certainly true of most contemporary states but not of earlier states.

The most violently disruptive episodes in history tend to be associated with the formation of states and the expansion of state-level forms of political organization into formerly stateless regions. Most other major violently disruptive episodes are associated with conflicts between, the breakup of, and turmoil within states. Early states and empires are perhaps the most violent and warlike contexts in which humans have ever lived. The pervasiveness of violence among early states may, in fact, render any kind of meaningful review here futile. Archaeological evidence including mass graves, high frequencies of skeletal trauma, the construction of defensive architecture, the destruction and burning of settlements, and the presence of specialized weapons of war is well-known for the primary states of ancient Egypt, Mesopotamia, the early civilizations of the Indus valley, and ancient China. This archaeological evidence is also supported by early historical accounts from subsequent ancient states, including roots of the Western tradition in Greece and Rome. Not only is the Trojan War the earliest story in Western literature, Troy is known archaeologically to have been the location of intense conflict that recurred periodically over the course of centuries (Wood 1985); conflict which included total conflagration and mass murder. Cohen writes:

> There is no evidence either from ethnographic accounts or archaeological excavations to suggest that rates of accidental trauma or interpersonal violence declined substantially with the adoption of more civilized forms of political organization. In fact, some evidence from archaeological sites and from historical sources suggests the opposite. (Cohen 1989: 132)

This situation is no different in the New World, where the archaeology of early civilizations like the Maya city-states of Mesoamerica and the Wari empire of Peru clearly shows evidence for periods of extreme warfare (Webster 2000; Tung 2007). The extremely brutal violence of the Aztec empire is known from a wide range of sources including colonial historical documents, Aztec codices, architectural iconography, and

various aspects of the archaeological record. In the space of decades, it expanded through warfare, the conquest of neighboring territories, and the extraction of tribute. It sacrificed perhaps hundreds of thousands of human victims, many of whom were captured in the conquest of neighboring territories, at least some of which had previously been stateless (Carrasco 2000). Although Hobbes might not have recognized the Aztec or Wari empires as civilized peoples, they fit the definition he and most subsequent political theorists have used for sovereign states.

Historical and archaeological records of more recent states are also filled with some extreme instances of violence and warfare. Even the English Civil War, which Hobbes considered to be an instance of unacceptable violence by virtue of the absence of a state authority, was not unprecedented in its barbarity relative to earlier periods of European history representing the normal operation of the state.

In certain instances, murder rates can be calculated for such historical contexts based on written crime records. Eisner (2001) estimates regional murder rates for Western European countries during the thirteenth to fifteenth centuries ranging between 23/100,000 and 73/100,000 person-years. (Rates such as this are usually reported per 100,000 person-years because they are typical only a small fraction of a percent. Hereafter we present rates in the following form: 23/100,000.) This rate is much higher than any of the national murder rates for countries included in this region at present, though it is fairly similar to the murder rates for the most violent modern cities in the world today. It also parallels many of the relatively violent countries in the developing world.

In addition to these statistics concerning what we might call "ordinary" crime, medieval Europe was frequently struck by gruesome and brutal warfare. For example, Fiorato et al. (2007) describe archaeological excavations of a mass grave in the town of Towton in England. Their excavations revealed the bodies of forty-three individuals with skeletal trauma resulting from lethal injuries incurred during a particularly bloody battle in the War of the Roses in which as many as 28,000 people may have died. The study also showed vivid examples of the mutilations of corpses and other forms of brutality sadly familiar to more recent periods of genocidal war. The violence of the War of the Roses was not exceptional for its day. It was closer to the rule for pre-industrial Europe, which was pervaded by similar instances of wholesale conflict. Furthermore, again for the sake of expediency, we will ignore many other similar examples too expansive

to review adequately here. To be brief, for the most part, Europe over the last two millennia, which has been dominated by sovereign states, has been a very dangerous place indeed.

Even as Pinker's trend in declining violence finally began within Europe 500 or so years ago, many European nations began exporting violence through imperialism. The expansion of state-level forms of socio-political organization into formerly stateless environments is often associated with a demographic collapse of the indigenous peoples. The indigenous population of the Americas declined by at least 90 percent and perhaps as much as 98 percent following European conquest, and many entire communities disappeared (Stannard 1993: 125). Cortez was no more a benefit to the people living under Aztec rule than the Aztec rulers had been to the peoples they conquered. In colonial Africa hundreds of millions of people lost their lives to forced labor (Hochschild 1999). Hobbes, Locke, Kant, and Bastiat—and other writers affirming the Hobbesian hypothesis during European expansion—might have lived in states that were *more* violent overall than the stateless societies they were in the process of pacifying. We doubt that conclusive evidence exists but the relative violence of the colonial powers is well-established (Stannard 1993).

None of the evidence we present refutes the claim that states have the ability to create a zone of peace with very low levels of violence. Many contemporary states now establish peace very effectively. According to data from a recent study of global mortality by Rafael Lozano et al. (2012: 2109), the worldwide rate of death by interpersonal violence was 6.6/100,000. That is, the average community of 100,000 people will have 6.6 homicides in one year. The global suicide (self-harm) rate was 13.1/100,000, making for a rate of 19.7/100,000 for total violent deaths worldwide. Lozano (2012: 2109) also showed that interpersonal violence declined by 1 percent and overall violence declined by 6.9 percent between 1990 and 2010. According to the United Nations Office on Drugs and Crime (UNODC 2013), in the United States, the murder rate currently stands at around 4.5/100,000; in the other developed nations without easy access to firearms, this figure is considerably lower (for example, the murder rate for Japan in 2011 was 0.3/100,000). The 500-year-old trend that Pinker recognizes (see Chapter 8) is real and continuing. But it is not the whole story.

Although states can, and lately most of them do, create zones of peace, they also create new dangers. One of the authors of this book elsewhere argues that the prevalence of interpersonal violence in so

many different kinds of societies from the deep past to the present indicates that there is an evolutionary psychological basis for aggressive behavior. However, the manifestations of this innate tendency have radically transformed over time (McCall and Shields 2008; McCall 2009: 162). As societies transition from bands to villages to chiefdoms to states, patterns of violence that are not a part of the human evolutionary record come into existence. A tendency that had manifested as small-scale and relatively dispersed interpersonal violence, now sometimes becomes manifested as warfare, the targeting of unarmed people of both sexes and all ages, genocide, democide, terrorism, aerial bombardment, drone strikes, and so on (Rummel 1994).

And these new dangers have created zones of extreme violence within state society. Estimates indicate that more than 4 percent of the population of France died as the result of military engagements during the four years of the First World War (Huber 1931). This works out to be a violent death rate of around 900/100,000. Furthermore, if only fighting-age men were considered (who constituted virtually all of the military deaths), the violent death rate would go up to a rate far exceeding any value known for even the most violent hunter-gatherer societies. And this says nothing of European states such as Serbia, where violent death rates during the First World War were probably many times greater than those known for France (Hersch 1927).

The First World War is a mild example compared with the genocides that have become common in the last several centuries. The Holocaust, for example, resulted in the death of nearly two-thirds of the Jewish population of Europe; a violent death rate of easily more than 10,000/100,000 (Rummel 1994). Likewise, in a matter of months, the Rwandan genocide of 1994 resulted in the death of perhaps 20 percent of the total Rwandan population (20,000/100,000), and 70 percent of the Tutsi population (70,000/100,000) (Kuperman 2000). There are many more we could name. The Bengal famine at the end of the British colonial period was well-documented by Amartya Sen (1981: 53), but we could also add Cambodia under Pol Pot, China under Mao, the Soviet Union under Stalin, the Belgian Congo under Leopold II, England under Henry VIII, and so on.

In summary, a clear trend is difficult to prove. The preponderance of evidence indicates that violence levels gradually increased toward the end of the Pleistocene through the formation of the first states as populations grew and polities increased their scale. They remained high for millennia and have greatly decreased in the last few centuries, probably

to levels lower than in the Pleistocene, but that peace is punctuated with particularly violent episodes.

However, even if we cannot establish a clear trend over time in the pervasiveness of violence, at a minimum, it is clear that there are contexts within both states and stateless societies that are extremely violent, and there are contexts within both states and stateless societies in which violence is much rarer.

2. ETHNOGRAPHIC EVIDENCE OF VIOLENCE IN MODERN SMALL-SCALE, STATELESS SOCIETIES

About the time of the *Man the Hunter* conference in 1966, ethnographers finally started the difficult effort to systematically collect demographic information about hunter-gatherer societies. Ethnographers had to live with band societies for fairly long periods of time, and take account of the number of births and deaths. Some ethnographers extended the reach of their demographic accounts by asking the current members of the band about past members of the band, and from the answers, trying to piece together an account of when people were born, how long they lived, and how they died. For some bands, researchers using this method have collected very detailed data covering nearly a century (Hill and Hurtado 1996). For most bands, researchers have only been able to collect much more limited data. In some cases, statistics are based on as little as a few years of observation.

This era has not been an easy time to collect such data. By the 1960s, the vast majority of band societies that had ever existed had long been incorporated into nation-states and had ceased to practice their traditional lifestyle or to function autonomously. Most of the remaining groups were under considerable demographic pressure and were disappearing rapidly. The result is that only a few spotty records are available, and most of those records are of peoples in their last generation(s) as stateless societies or already in a gradual process of incorporation into state societies. Records of the last generation of a band might not be representative of a typical generation in that band or of a typical band society. But we don't exactly know how they might differ. They might be experiencing the benefits of state institutions or the harm of state territorial encroachment. They might have changed over time in ways that have nothing to do with their proximity to states but that nevertheless make them significantly different from earlier generations of nomadic foragers.

Yet, these few spotty, potentially unrepresentative records are the only demographic records we have—and possibly the only demographic records that we will ever have. Very few stateless societies are left. Some of those that remain uncontacted are probably intentionally avoiding contact. Modern hunter-gatherers often maintain their economic status by virtue of their exclusion from more mainstream means of production (Wilmsen 1989). By the end of the twentieth century many anthropologists had begun to look at the ethnographic investigation of newly contacted tribes as a potentially harmful step toward colonization. Little ethnography of band societies is still being conducted, and so there is little hope for a major improvement of our ethnographic records of this lifeway. Therefore, not only are the conclusions we draw from the evidence presented below tentative, we can expect that conclusions about life in band societies might always be tentative.

One of the earliest and most famous of the post-*Man the Hunter* investigations was conducted by Richard Lee (1979). He found that the Ju'hoansi, who had been labeled "the harmless people" by Thomas (1959), actually had a violent death rate of around 29.3/100,000 (see Chapter 8). Later, the East African Hadza, a group that Woodburn (1979) had found to be peaceful, were found by Blurton Jones et al. (2002: 196) to have a violent death rate of around 40/100,000. Findings such as these surprised many hunter-gatherer researchers, because these two groups were often held up as exemplars of peaceful foraging communities. Two groups thought to be *less* violent than most contemporary Western states turned out to be substantially *more* violent. Not only were the Ju'hoansi not "harmless people," their homicide rate was nearly three times the rate for the United States as a whole at that time (10.7/100,000) and about the same as one of its most violent cities (Detroit with 58.2/100,000) (Knauft 1987: 464).

Contrary observations notwithstanding, Lee's (1979) study now seems to have been the tip of the iceberg for findings of violence in small-scale stateless societies. Many modern hunter-gatherer and horticultural societies have been observed to have much higher levels of violence than the Ju'Hoansi. Some small-scale societies have shockingly high rates of violence. Such observations forever undermined the "harmless people" myth (Thomas 1959), which might actually have its roots in Enlightenment-era views about savagery and barbarism.

Kim Hill et al. (2007) estimate that the violent death rate for the Hiwi of Venezuela is around 1,018/100,000—more than thirty times higher than the violent death rate documented among the Ju'hoansi

and far more violent than even the most violent cities in the world today. Furthermore, other similar studies among the Ache of Paraguay, the Yanomamö of Brazil, the Agta of the Philippines, and a number of highland horticultural groups of New Guinea have all yielded results comparable to those found for the Hiwi and many orders of magnitude greater than those of most modern states (Headland 1989; Hill and Hurtado 1996; Keeley 1996; Early and Headland 1998; Blurton Jones et al. 2002; Hill et al. 2007). Thus, some very violent stateless societies—both at the band level and at the autonomous village level of organization—have been observed through ethnographic research during the twentieth and twenty-first centuries.

On top of this, there are also a number of hunter-gatherers and other small-scale societies that have high levels of what has sometimes been called "primitive warfare" (Pitt-Rivers 1867; Pitt-Rivers 1906; Turney-High 1949; Hallpike 1973; Keeley 1996; Gat 1999; Ferguson 2000). This term, which basically refers to violence carried out between distinct social groups at more of a regional spatial scale, has frequently been invoked as the evolutionary ancestor of the forms of warfare known between nation-states in the modern world (Keeley 1996; Gat 1999; Ferguson 2000; Bowles 2009; Pinker 2012). In an early consideration of this issue, Ember (1978) found that, while some societies like the Ju/'hoansi basically lack intergroup aggression altogether, the majority of observed hunter-gatherer societies experience warfare events with considerable frequency (i.e. more than once every two years). Thus, this study and its subsequent counterparts demonstrated another significant source of violent death among modern hunter-gatherers.

However, ethnographers have also observed band societies with low levels of violence. Although the quality of the evidence varies, band societies with little or no recorded violence and little or no evidence of violence have been observed in diverse climates and terrains all over the world. These include several neighboring and/or related groups in the Malay Peninsula, the Batek, the Chewong, the Semai, and the Semang; the Buid of the Philippines; the Paliyan of India; the G/wi of southwest Africa; the Mbuti of central Africa; the Polar Inuit of northern Greenland; the Shoshone and the Paiute of the western United States; the Bakairi of Brazil; and the Mardudjara of Australia (Silberbauer 1981: 174–5; Keeley 1996: 30–1; Bonta 1997: 317–20; Gardner 2000: 93–9; Gurven and Kaplan 2007: 241; Endicott and Endicott 2008: 50; Kelly 2013: 202). The Chewong, for example, have no mythology of violence and no words for quarreling, fighting, aggression, or warfare

(Howell 1984: 34–7; Bonta 1997: 318). Their neighbors, the Batek, have similar norms. Kirk Endicott and Karen Endicott (2008: 50) described hearing from a Batek man how his ancestors had fled from rather than confronted slave-raiders in their territory years earlier. Kirk Endicott asked why their ancestors had not shot the attackers with poisoned blowpipe darts. Endicott wrote, "The man looked shocked at the question, 'Because it would kill them!'"

With caution we reproduce data from two tables summarizing violence estimates for small-scale stateless societies. Table 9.1 uses data from Robert L. Kelly's (1995: 203) synthesis of hunter-gatherer cultural variability. It compiles homicide rates from the findings of several different ethnographic studies of violence in hunter-gatherer societies. Kelly reports very different figures for the Hadza and the Ju/'Hoansi than we mention above. He explains the difference in each case. His figure for the Ju/'Hoansi (42/100,000) is higher than Lee's figure for that group (29.3/100,000), because Lee (1979) counts the period both before and after murders virtually ceased because of the

Table 9.1 Hunter-gatherer homicide rates per 100,000 person-years

Group	Homicide rate
Batek	1
Hadza	6.6
Andamanese	20
Ju/'Hoansi	42
San Ildefonso Agta	129
Gidjingali	148
Tiwi	160
Yahgan	169
Yurok	240
Casiguran Agta	326
Murngin	330
Modoc	450
Ache	500
Piegan	1000
Hiwi	1018

Source: Adapted from Table 7-8: Hunter-gatherer homicide rates (Kelly 1995: 203)

influence of an outside police force, while Kelly reports figures only before that change. Kelly's figure for the Hadza (6.6/100,000) is far lower than Blurton Jones's figure (40/100,000) because Kelly chose to *exclude* while Blurton Jones (2002) chose to *include* three murders of Hadza committed by outsiders—the Datoga people, who were a relatively larger-scale society with closer ties to the state. Only four Hadza homicides were reported during the study period, but because of the small population size, the decision to include or exclude three murders committed by outsiders accounts for the enormous jump from 6.6 to 40 when extrapolated to a rate per 100,000 person-years (Lee 1979; Kelly 1995: 203; Blurton Jones et al. 2002: 196).

Kelly does not make a similar adjustment for the Hiwi or the Ache, even though these figures include suicide, infanticide, and murders by Venezuelans (Hiwi) or by Paraguayans (Ache). Of course, Venezuelans and Paraguayans are people from *state* societies. According to Hill and Hurtado (1996: 159), who conducted the study of the Ache, only 40 percent of Ache violence was attributed to internal violence and that included infanticide; 60 percent was attributable to external conflict with Paraguayans or non-Ache indigenous people. Excluding outsider conflicts would, therefore, drop the Ache figure from 500/100,000 to 200/100,000. Of course, one cannot say what would have happened to the Ache without the encroachment of Paraguayans. Perhaps the conflicts with Paraguayans would have been replaced by equally violent conflicts with other stateless peoples; or perhaps those conflicts would have disappeared. Perhaps their conflicts with other indigenous people would have increased with the indirect influence of state power, or perhaps they would have reduced without the pressure of state encroachment.

Territorial encroachment is not the only state influence that might increase violence. For example, consider alcohol, which is absent in almost all hunter-gatherer societies without significant ties to a state society. According to Kelly (1995: 203), alcohol was a significant contributing factor in five of the eleven murders among the San Ildefonso Agta. If we could imagine that these murders simply would not have happened without the alcohol, their homicide rate of 129/100,000 would drop to roughly 70/100,000. If we further subtracted two murders by outsiders, the rate would drop again to roughly 55/100,000. But, of course, we cannot know what would have happened in the absence of the alcohol introduced by outsiders

or the murders committed by outsiders. Ethnography has accumulated only limited information about life in societies outside of direct state authority, and since all ethnographers are from state societies, ethnography is inherently incapable of observing societies beyond all state influence.

Michael Gurven and Hillard Kaplan (2007: 341) use a different sort of statistic to compare violence rates in Table 9.2. They report homicides as a percentage of all deaths rather than in relation to person-years. Their study uses a different sample of stateless societies, some of which are horticulturalists living at a slightly larger scale than the hunter-gatherer bands in Kelly's table, but all (except the settled Ache added for reference) lived essentially in stateless conditions. Despite these differences, a similar pattern is evident in both tables. There is a wide range of violence from very low to very high levels. In Table 9.2, the percentage of deaths from violence ranges from 0 to more than 50 percent. The typical group in Gurven and Kaplan's study compares unfavorably with typical state societies today. A contemporary study of the causes of death in state societies found that there were 456,300 deaths from interpersonal violence out of 52,769,700 total deaths worldwide in the year 2010. Simple division gives 0.8 percent of deaths from interpersonal violence for the world as a whole in 2010. Adding the 1,340,000 deaths from self-harm (i.e. suicide) to the number of deaths from interpersonal violence gives 2.54 percent of all deaths from violence. Suicide tends to be very low or even negligible in stateless societies, and as mentioned above, it is often included in violence statistics of hunter-gatherer societies. Even including suicide as violence for state societies, the levels of violence in all but one of these stateless societies is higher than the global average of state societies (Lozano 2012: 2105–9).

Table 9.2 suffers from the same difficulty with the Hiwi and Ache data as Kelly's table (Table 9.1). The figures include suicide, infanticide, and murders by outsiders. Although violence of one form or another accounts for 30.2 percent of all Hiwi deaths, murders by the Hiwi themselves account for only 7 percent of all deaths (Kelly 2013: 204).

Gurven and Kaplan's (2007: 341) table reports an average of 12.5 percent of deaths from violence, nearly five times as high as the global average including suicides for state societies in 2010. Readers should be cautious about interpreting the table's average. As Gurven and Kaplan point out, it is only the "percent of all deaths in study." The

Table 9.2 Percentage of deaths from violence

Group	Percent of deaths from violence
Bakairi	0
Agta	3
Hadza	3.2
Machiguenga	3.4
Ache (settled)	4.2
Northern Territory Aborigines	5.7
Tsimane	7.5
Percent of all deaths in study	12.5
Yanomamo	12.6
Hiwi	30.2
Ache (forest)	55.5
Number of violent deaths in study	354

Source: Adapted from Table 5: Causes of death among study populations (in percent) (Gurven and Kaplan 2007: 341)

study does not contain a statistically representative group of all stateless society, and so the average is highly influenced by the groups that happen to be in the study.

Kelly does not even report an average for his table, probably because it would be so highly influenced by the particular societies that happen to be included. As we have said, the observed stateless societies are likely to differ from typical stateless societies in ways we do not understand. Notice that both studies include one society with very low levels of violence, but each study includes a different low-violence society. Kelly (1995) includes the Batek from Malaysia; Gurven and Kaplan (2007) include the Bakairi of Brazil. Had both of these studies included both of these groups, they would have given an impression that stateless societies with extremely low levels of violence were twice as common. As mentioned above, several other observed stateless societies also have extremely low levels of violence. Had some of these been included in either study, it would have given an impression of much lower "typical" rates of violence. But, there are also other violent societies that might have been included.

This issue also affects the interpretation of a study by Wrangham et al. (2006: 19), who calculate the "median annual mortality from

intergroup aggression [for thirteen foraging societies] at 164 deaths per 100,000." This study includes only two stateless societies with little or no intergroup aggression. According to Kelly (2013: 206), there are at least thirteen documented societies with little or no intergroup aggression. Adding eleven societies without warfare from Kelly's study into Wrangham et al.'s study would cause the median to drop from 164/100,000 to 20/100,000. Thus, selective sampling can clearly influence the outcome of this sort of study. Likewise, Bruce Knauft (1987: 464) lists several (mostly horticulturalist) stateless societies that have high rates of violence and that do not appear in the aforementioned studies. Including some of these would have driven the median at least partly back up. We *do not* mean to imply that 20/100,000 is the "right" figure. There are not enough good demographic studies of representative groups to draw many firm conclusions about rates of violence.

Two simplifications that we have made so far might well exaggerate the relative violence of stateless societies. We have used homicides as our only measure of violence, and we have lumped all homicides together. We have done so partly because homicides are fairly easy to count in stateless societies, but we should consider some of the problems of this focus.

Bands' homicide levels tend to be higher than their levels of most other crimes and other forms of violence. They have virtually no property crime, and nonlethal violence tends to be low. Some researchers argue that rape and other forms of violence targeting women are relatively low in band societies (Leacock 1998; Boehm 2001). Lee (1982) argues that women in band society have high political equality and personal autonomy, which might account for low rates of violence. Among the Ju/'hoansi, for example, a woman being targeted by a man (including a spouse) can ask the group for protection, and women and men will join equally in the discussion of what to do (Draper 1975; Lee 1979; Lee 1982; Howell 2010). Many state societies have not given this level of resource to women, even today. Larger and more complex societies tend to have proportionately greater gender inequality, apparently in proportion to their level of hierarchy (Barnard and Woodburn 1988: 19; Kelly 1995: 298–300; Leacock 1998: 139, 141, 147; Woodburn 1998: 61; Lee and Daly 1999: 5; Boehm 2001: 93; Endicott and Endicott 2008: 50, 59, 63). One possible reason is that violent males become a valued asset in the context of intergroup conflict, which is more common among complex agricultural societies.

Lumping all homicides together ignores the moral distinctions that most state societies make between many different categories of homicide such as murder, manslaughter, justifiable homicide, negligent homicide, non-negligent homicide, wrongful death, accidental death, suicide, death in war, and executions. Band societies have not historically operated within legal systems that make these distinctions. Ethnographers are understandably cautious about making the moral judgments needed to disaggregate existing information on homicides in stateless societies into all these categories to make for fully comparable figures.

One aspect of the homicide issue makes them harder to count in state societies. Although in bands, it is often very easy to tell whether a death (even an accidental death) is a homicide, it is not as easy in state society. Poisonings that pass for illness and murders that pass as accidents are obvious examples. But perhaps the largest example is the policy-related death by seemingly natural causes. Deaths from famine, starvation, and severe malnutrition are rare among hunter-gatherer societies. Within states, such deaths are usually attributable to policy decisions, often those that make food *unaffordable* to some rather than *unavailable* to all (Sen 1981). In modern states, famines often stem from disregard of policy effects (more akin to negligent homicide than murder), but they have also been used intentionally as large-scale weapons of war (Snyder 2012). The inherent preventability of many poverty-related deaths in state society is a good reason to consider them to be akin to violence.

Similarly, cancer and other diseases are often caused by toxins that only appear as the byproducts of state societies, but statistics seldom, if ever, classify cancer deaths as "homicides"—or even "accidental homicides." If they did, the homicide rate in state societies would be much higher than what is common reported. By comparison, in band societies, most deaths from negligence are easily recognizable. All of these issues make statistics very hard to compare between band and state societies.

Many homicides in stateless societies are essentially executions. Band societies have few punishment options available and few ways to protect themselves from a truly dangerous individual. They cannot imprison criminals. The main punishments available to bands are: ridicule, criticism, abandonment, and execution (Boehm 2001: 84). One might expect corporal punishment, but it seems to be absent from

ethnographic reports. We suspect the reason is explained by something Hobbes (1962 [1651]: 98) got right. He argued that people are sufficiently equal in strength that even the weakest are capable of killing the strongest either by conspiracy or by waiting until the stronger person is sleeping or otherwise vulnerable. In a small-scale society, corporal punishment might foster lingering resentments and the cycles of retaliation that Hobbes so feared.

Criticism and ridicule obviously have limits against a truly dangerous person. Abandonment works in some circumstances, but if the group suspects that a dangerous person will follow them if they attempt to abandon that person, the only remaining way they have to protect themselves is execution. Some bands, such as the Batek and the Chewong, claim never to have executed anyone, and ethnographers have reported no evidence of homicides among them (Howell 1984: 37; Endicott 1988; Bonta 1997: 317–18; Endicott and Endicott 2008: 50). But most observed bands, despite their ethic of nonviolence, will kill a person they judge to be truly dangerous. We should expect a higher execution rate among nomadic foragers because they lack alternatives.

Another difficult ethical issue appears because much of the violence in small-scale stateless societies is infanticide (Lee 1990; Hill and Hurtado 1996: 159–66, 467–8; Lee and Daly 1999: 1, 5). The issue of infanticide has been controversial since the time of *Man the Hunter* and it remains a difficult one today. While once considered virtually universal among hunter-gatherer societies, we now know that infanticide is not uniformly high, and it is rare in a number of key cases (Gurven and Kaplan 2007: 342). Yet, it is a large contributing factor to the high homicide rates reported above. Obviously, there are many explanations that might account for this variability in infanticide rates, spanning a broad range of controversial potential demographic and cultural causes. What we can say is that infanticide does influence the murder rates of some of the key ethnographic cases at the extreme end of the violence spectrum and that infanticide is not a form of violence that relates very directly with the violence hypothesis as an element of the Hobbesian hypothesis. The motivation for signing the social contract for both Hobbes and Kant relies on a climate of fear that develops when people who are equally able to kill each other (i.e. adults) are continually at war with each other (Hobbes 1962 [1651]: 98). Infanticide simply doesn't fit that model of violence. It seems

capable of contributing only to the weak violence hypothesis but not the strong violence hypothesis.

We know of no anthropologists who have formally tried to disaggregate the data, but Hill and Hurtado (1996) have looked at the issue informally. Their study of the Ache showed revealed a very high overall homicide rate (see above), but Hill and Hurtado (1996: 163) write, "Only four cases of 'adult' homicide (unsanctioned by the social group) took place in the past century." That is, taking out deaths in warfare (much of which was with people from state society), child homicide, infanticide, and the band's equivalent of execution, only four intra-group adult homicides remain in a 100-year period. Ache life might be violent, but it is far from the war of all-against-all predicted by Hobbesian theory.

3. THE CONSENSUS VIEW OF VIOLENCE IN STATELESS SOCIETIES

Although disagreements on some issues remain, we believe that in recent decades anthropologists have settled into a broad consensus about the level of violence in stateless society, and we believe that recognition of how little we know is central to it. A claim of consensus is somewhat forward, but we make it with six simple statements:

1 Levels of violence in observed small-scale stateless societies vary considerably, with recorded homicide rates ranging from less than 1/100,000 to more than 1,000/100,000.
2 Although some observed small-scale stateless societies have had lower incidences of violence than contemporary state societies, most observed small-scale stateless societies have had substantially higher rates of violence than contemporary states but not necessarily higher than all or most past state societies.
3 Ethnographic observations are insufficient to say that we know what the typical level of violence in small-scale stateless societies is in general, because (a) few good observations exist, and because (b) observed small-scale stateless societies are not a representative sample of all stateless societies that have existed since the appearance of modern humans 200,000 years ago or even of those that have existed since the beginning of the Holocene 12,000 years ago.

4 Archaeological and historical evidence is insufficient either alone or in combination with ethnographic evidence to say that we know what the typical level of violence in small-scale stateless societies is in general.

5 Available evidence is sufficient to reject the claim that small-scale stateless societies are always or almost always essentially peaceful.

6 Available evidence is sufficient to reject the claim that small-scale stateless societies are always or almost always excessively violent.

The first of these statements is probably the most controversial, as some researchers might suggest that the very low homicide rates in certain societies would have been higher had they been observed for longer periods or had modern state policing not been present. In contrast, we doubt that any contemporary anthropologist would reject this or any of the other five statements outright, and while there is controversy about the specific details of each of these points, there is a broader consensus about their generalities.

Of course, this is primarily a consensus about how little, rather than how much, we know. It is a consensus over some very tentative statements, but that is what the evidence allows, and we find that all or most contemporary anthropologists are willing to live within the limits of the available evidence. It seems that only philosophers, political theorists, and political practitioners—who do not study stateless societies—cling to the belief that several strong, broad claims about statelessness are obvious.

One issue is an illusion of disagreement created by anthropologists' efforts to debunk the extreme views such as either Thomas's (1959) "harmless people" or Chagnon's (1968) "fierce people." Social scientists, such as Hill (1996), Knauft (1987), and Keeley (1996: 29–31) have set out to debunk the idea that all or most foragers live in a peaceful utopia. Others, such as Woodburn (1982), Endicott (2008: 66–7), and McCall and Shields (McCall and Shields 2008; McCall 2009), have set out to debunk the idea that all or most foragers live in extreme violence. But all of them have done so by arguing that the truth is in the middle. No social scientist we are aware of would continue to argue for either of the extreme views we reject in statements 5 and 6. Hill and Hurtado (1996: 151), for example, identify two

views: "The pessimists have viewed primitive life as essentially 'nasty, brutish, and short' (as Hobbes wrote in 1651), while the romantics have suggested that primitive peoples can often be characterized as living in an 'original affluent society.'" Although they recognize the original affluent society as the idea most in need of debunking, they state plainly, "Neither view is accurate."

Even Marshall Sahlins (1968; 1974) was primarily interested in debunking the idea that life in foraging societies was intolerably bad. He coined the phrase, "the original affluent society," which gave many people the impression that anthropologists viewed foraging life as a utopia or workers' paradise (largely in terms of leisure but also in terms of peacefulness). But according to Kelly:

> Sahlins' primary purpose . . . was to counter the prevailing argument in anthropology that hunter-gatherers did not have "elaborate culture" because they did not have the time to develop it. . . . To overturn this deeply held misconception, Sahlins felt it necessary to use the "most shocking terms possible"—thus the overstatement of the original affluent society. (Kelly 1995: 17)

Kelly's interpretation of Sahlins might be generous, but if the utopian view ever became standard in anthropology, it was extremely short-lived. It had already begun to unravel with Lee's (1979) monograph on the Ju/'hoansi, which was in many ways a modification of his earlier utopian views of Kalahari forager societies. By the 1990s, anthropologists had settled into the cautious and conservative consensus that we believe prevails today, even if they are yet to agree which of the extreme views still held by laypersons needs more debunking.

For example, the book you're reading now and Keeley's (1996) book, *War Before Civilization*, might seem like polar opposites, like Thomas's (1959) and Chagnon's (1968) respective "harmless" and "fierce" peoples, but our work and Keeley's have more in common with each other than with either of those. Although we have some substantive disagreements with Keeley, the primary difference between our book and his is in which extreme view they debunk. While Keeley (1996: 31) argues that war—or some scale-analogous form of intergroup violence—can exist in small-scale societies, his ultimate point is, "there is nothing inherently peaceful about hunting-gathering or band society." We agree. Although we have tended to emphasize that band societies are not *as* violent as contractarians claim them to be, we just

as strongly oppose the idea that they are inherently or innately peace-ful. We have no need or desire to claim that they are. Although Keeley (1996: 29–31) emphasizes that band societies are more violent than what was once believed in a utopian view, he seems to have no need or desire to say that they are excessively violent. In fact, he admits to the existence of at least six mostly or entirely nonviolent foraging societ-ies. His position appears to be fully consistent with the six consensus issues we mention above.

The second problem that clouds this consensus is that social sci-entists do disagree substantially about issues for which the evidence is less conclusive. One such area of disagreement is worth discussing. We have argued that there is strong reason to believe that prehistoric band societies had levels of violence comparable to those at the lower end of the range in Table 9.1: if not as low as the Chewong and the Bakairi, perhaps as low as the Ju/'hoansi or the Hadza. Other hunter-gatherer researchers tend to think that typical levels of violence must have been higher.

Keeley (1996: 29–31), for example, claims that these few peaceful groups identified around the world are exceptional. Likewise, Hill and Hurtado (1996: xiv, 165–6, 476–8) are inclined to believe that higher homicide rates have tended to be the norm in pre-contact forager soci-eties, effectively discounting the role that state encroachment and other state influences might have in increasing violence. Both viewpoints, in part, rest on the observation that the prevalence of observed violence in small-scale societies *before* incorporation into a state was usually greater than that observed among small-scale societies *after* inclusion into a state. Diamond (2012) makes a similar argument based on the differences between small-scale societies in New Guinea before and after colonial "pacification," and he also extends this argument into a broader neo-Hobbesian justification of modern states as peacemakers.

We see several flaws with this argument for the prevalence of vio-lence among forager societies prior to contact and inclusion in colonial states. For one thing, we are actually inclined to believe that homicide rates, in fact, tend to *spike* in the decades just before indigenous societ-ies come under state authority, both because of violence directly from people in state societies and because of an increase of inter-ethnic vio-lence brought on by territorial pressure and related problems. Rather than being inhibited by the presence of the police, murder rates among peoples have at times been amplified by dynamics of colonialism and the various vagaries of the postcolonial world.

Next, inclusion in modern states has likely increased violence in other less direct ways. For example, the majority of violent incidents in George McCall and Patricia Resick's (2003) study of the Ju/'hoansi occurred under the influence of alcohol and happened among populations that had been resettled in government housing in an urbanized setting largely without access to traditional means of economic production. From Greenland to Australia, hunter-gatherer societies have struggled with these kinds of problems as larger-scale societies introduced alcohol into their social context. Drug abuse, poverty, and other similar factors have obviously caused enormous social problems and we see no reason to think that this situation did anything but increase the prevalence of interpersonal violence. Finally, it would be both absurd and insulting to suggest that the forcible colonial incorporation of small-scale indigenous societies into modern states was somehow doing them a favor by reducing violence.

No one can go back and do ethnographic studies of stateless societies prior to any territorial pressure from state societies to settle these issues definitively. We believe that all sides in this debate accept the limits of existing knowledge. This disagreement is small relative to the more major issues of agreement, especially as they pertain to the violence hypothesis in question here.

4. APPLYING THE ANTHROPOLOGICAL DISCUSSION TO THE PHILOSOPHICAL QUESTION

We have so far addressed the violence issue, as social scientists do, by asking, what are the levels violence in stateless societies? How do they compare with the levels of violence in state societies? We now apply the findings above directly to the questions at hand, addressing the weak hypothesis in 4A, the strong hypothesis in 4B, and another way of reframing the strong hypothesis with reference to the precautionary principle in 4C.

A. *The Weak Violence Hypothesis*

The complexity of the data reveals how simplified our definition of the weak violence hypothesis is: violence is lower under the state than in stateless society. Consider five examples of what this might mean. First, the average of the violence rates of all state societies is lower

than the average of all stateless societies. Second, the average of all *contemporary* state societies is lower than the average of all state-less societies. Third, the average violence rate in the one state being justified is lower than the average of all stateless societies. Fourth, the violence rates for every recognizable population within the state being justified are lower than the average of all state societies. Fifth, the violence rates for every recognizable population within the state being justified are lower than the lowest violence rate recorded for any stateless society.

We suspect that contractarians would initially gravitate to the second or third formulation, and in this formulation the weak violence hypothesis is likely to be true. But a fairer comparison, more consistent with contractarian logic, would seem to be the first, fourth, or perhaps even the fifth formulation. The fourth formulation might be true for most states, but the first and fifth formulations are much less likely to be true. In light of the evidence presented above showing a trend of increasing violence along with increasing scale from the Pleistocene to the formation of states and showing how long violence remained high after the formulation of states, the average state cannot claim lower violence than the average stateless society. The fifth formulation is probably the most consistent with the idea of justifying the state to every rational, reasonable individual, but this is one that perhaps no states can pass, not even Japan (see above).

We have seen that current murder rates in the United States and other Western nations are very low by historical standards and that some observed hunter-gatherer societies have extremely high violent death rates. Even when all of the catastrophic wars and genocides of the twentieth and twenty-first centuries are considered and included in the calculation of violent death rates, the average person in a modern nation-state is probably considerably less likely to die a violent death than the average person in a small-scale stateless society. Although not conclusively proven, this statement is supported by the preponderance of the archaeological, historical, and ethnographic evidence reviewed above. This is an important advantage of contemporary states on average, but to ignore that it doesn't apply to all stateless societies or all states is to employ the fallacy of composition. And even taken at face value, this claim can't play the decisive role that Hobbesian claims about violence usually do in the justification of the state.

B. The Strong Violence Hypothesis

It's important to remember that the strong violence is *the* violence hypothesis, certainly in Hobbes and Kant and also in many contemporary contractarian theories (see Chapters 3–7), and it's important to remember how strong that hypothesis is. In Hobbes's (1962 [1651]: 100) version, it has to be strong enough to give "continual fear [of] the danger of violent death." In Wellman's (2001: 742) version (350 years later), "a stateless environment is a perilous environment devoid of security." It is so high that other benefits of social cooperation are impossible and the relief from that fear is enough to justify the state even to someone who is otherwise very disadvantaged. The strong version requires not only that violence in stateless societies is higher or even a lot higher, but also that it is beyond some threshold of intolerability. We can rephrase this hypothesis in terms of the state: only a sovereign government can prevent conflicts from escalating to intolerable violence.

This claim is so strong that despite the limitation of the data, the strong violence hypothesis is clearly disproven. One might be tempted to say that in most observed stateless societies violence is not only higher, but substantially higher, but even if this is true, a simple difference—even a substantial difference—in homicide rates is insufficient to ensure stateless societies have the intolerable violence the hypothesis supposes. Consider the following comparison. In 2011, the murder rate in the United States (4.7/100,000) (Federal Bureau of Investigation 2013) was more than fifteen times as high as the murder rate for Japan (0.3/100,000) (UNODC 2013). That's an enormous and inscrutably documented disparity. In relative terms, it is greater than the difference between the United States and the Ju/'hoansi. However, this disparity is certainly not enough to say that *everyone* in Japan, no matter how poor or underprivileged, is better off than *everyone* in the United States, no matter how wealthy or privileged. It is certainly not enough to say that every rational or reasonable person prefers life in any position in Japanese society to life in any position in U.S. society. Over 300 million people live in the United States. Very few, if any, Americans would be willing to give up everything that they have in the United States to become—say—a day laborer in Japan just to escape the relative danger of America. Even a fifteen-fold difference in homicide rates is just one factor among many. It would be an enormous bait-and-switch to put forward a Hobbesian argument in which

the choice is inherently between the state and a war of all-against-all, and then accept a simple difference in homicide rates as confirmation.

Our objection is not the existence of a threshold of intolerability, but we argue that the difference in violence—even taking observed levels at face value—is nowhere near the intolerable levels needed to sustain the claim that stateless societies are beyond it.

The first problem is that if most stateless societies are beyond the threshold of intolerable violence, so are many subpopulations in prosperous states today. It would be extremely difficult to argue that all contemporary states and all recognizable subgroups within contemporary states are above it and that all or most observed small-scale stateless societies are below it. Few states have low violence for every conceivable population so that they could pass this test. For example, in 2013, the murder rate for East St. Louis was around 86/100,000 (Federal Bureau of Investigation 2013). Therefore, residents of East St. Louis, citizens of one of the most affluent state societies in human history, actually have a much greater probability of violent death than the Ju/'hoansi, the Hadza, and several other observed hunter-gatherer societies. No serious political theorists argue that every resident of East St. Louis is necessarily worse off than every resident of some lower-crime community in the greater St. Louis metropolitan area, or that all remaining people in St. Louis are irrational for not fleeing to one of those communities.

There are also many modern states with national murder rates that exceed those known among the lesser violent non-state societies. For example, in 2012, the national murder rate for Honduras exceeded 90/100,000 (UNODC 2013). San Pedro Sula, Honduras's second-largest city, has the ignominious distinction of having the world's highest murder rate of around 169/100,000 (UNODC 2013), a rate higher than six of the fourteen stateless societies in Table 9.1 above. Raw murder rates for whole nations like Honduras, or even for specific cities like East St. Louis and San Pedro Sula, obscure particularly violent contexts within those areas. In other words, we suspect that the specific violent death rates for the residents of the worst slums of San Pedro Sula may indeed approach those of even the most violent modern hunter-gatherer societies.

According to Knauft (1987), the homicide rate among the Yanomamö was 165.9/100,000 in the period 1970–4. The overall U.S. rate in 1970 was 7.9/100,000. With a violent death rate more

than twenty times the U.S. average, Chagnon's (1968) "fierce people" were held up as an example of Hobbesian state of nature. A contractarian might argue that there was some threshold between the U.S. and Yanomamö levels of violence such that whatever other problems the United States had, its greater safety justified the state even to its least advantaged individuals. Knauft (1987: 464), however, included a statistic that devastates any such argument: the homicide rate among black males in Cleveland during the same approximate period (1969–74) was 142.1/100,000, just a little less than the Yanomamö. The Yanomamö could not be sent to jail or to Vietnam (as many black males in Cleveland were during this period), and they would be much less likely to commit suicide. If the Yanomamö were over the threshold, black males in Cleveland were too. In fact, given the risks other than homicide, the black male might find Cleveland *more* dangerous than the Yanomamö—to say nothing of the more peaceful Batek, the Paliyan, the Ju/'hoansi, or the Hadza.

The second problem with the strong violence hypothesis is that people in stateless societies don't act the way one would expect people to behave in conditions of intolerable violence. Hobbes argued that people facing such violence would be unable to develop knowledge of the earth, arts, or even "society." As Chapter 10 will show, people in stateless societies—even those with the highest rates of violence—have a deep understanding of the land they live on and rich social lives with deep cultures involving art, storytelling, music, dance, and so on. According to Hill and Hurtado (1996: xii), even among the relatively violent Ache, "Joking and happy-go-lucky demeanor were universal." Either they were all irrational, or the level of violence in their society was well within tolerable limits. In the racist climate that existed in the colonial era, Hobbes, Kant, and other political theorists might have been ready to believe that whole races of people were irrational, but no reasonable researcher would today.

A similar piece of evidence comes from the behavior of ethnographers. If violence rates in stateless societies were truly intolerable, ethnography would be impossible. Ethnographers do not work in death camps or inside cities under siege. When violence reaches intolerable levels, they flee if they can. They would be *irrational* to do otherwise. The large amount of ethnographic studies of stateless societies attests that rational people with experience of state society can and do choose to live in stateless societies.

The Agta, the Ju/'Hoansi, the Hadza, the hunter-gatherer groups of the Malay Peninsula, the Bakairi, G/wi, the Polar Inuit, and several other societies mentioned above have done what 350 years of a priori political theory says is impossible: they have kept violence within tolerable limits without a sovereign authority to mediate disputes and enforce rules. Therefore, there is a fundamental flaw in Hobbesian reasoning. There is no *inherent* need for a sovereign government to keep the peace. A sovereign is not necessary to keep the peace at all times and in all places, as Hobbes's behavioral model was supposed to show. The strong violence hypothesis is simply false. The following section considers saving it by revising it to include a precautionary principle.

C. *The Violence Hypotheses and the Precautionary Principle*

One might try to soften the strong hypothesis without resorting to the weak hypothesis by changing only the following claim from "a stateless environment *is* a perilous environment devoid of security" to "a stateless environment *can be* a perilous environment devoid of security." One could point to the *most* violent stateless societies, such as the Piegan and the Hiwi (with homicide rates of 1,000/100,000), and argue that a precautionary principle prohibits risking the possibility of ending up like them by accepting life in any stateless society. In other words, life is unacceptable in stateless society not because violence *always* spirals out of control, but because without a sovereign, there is always the chance it might.

This use of these societies is difficult on the face of it, because as mentioned above, the stateless societies with the highest homicide rates tend to be in close proximity to states; many of their homicides occur in the context of attacks by people from the state; and they don't act as if their environments are intolerable. But even accepting them as a horrific worst-case scenario among band-level stateless societies and ignoring any normative problems with this condescending application of the precautionary principle, the comparison does not hold up when weighed against the dangers of state society.

As Section 1 mentioned, state societies present dangers, such as large-scale warfare and genocide, which do not exist in small-scale stateless societies. A contractarian might point out that, although violent catastrophes are associated with states, they are often associated with

the formation and breakup of states. The essential idea of Hobbesian theory was the advice to avoid civil wars by obeying the sovereign. There are two problems with this argument. First, there are many cases in which massive disobedience to the sovereign does not lead to a spike in violence. Many actual instances of civil unrest ultimately lead to positive change without a concomitant descent into a war of all-against-all.

Second, many of the worst wars, genocides, and famines began not with any significant disobedience on the part of subjects but with the actions of fully sovereign governments. Consider the three examples of high state death rates from Section 1. In France during the First World War, the death rate for the nation as a whole was comparable to that of the most violent observed stateless societies, the Piegan or the Hiwi, and for fighting-age males it must have been many times higher. The death rate for Jews during the holocaust was roughly *ten times* that for the Hiwi. The death rate among the Rwandan population as a whole was *twenty times* the Hiwi death rate, and the death rate among the Tutsi population was *seventy times* the Hiwi death rate (see above). Many genocides happened at a time when the sovereign government was at war or under a perceived threat, but in these three cases, as in many cases, the sovereign was firmly in control over the victim population. Hobbes's advice to obey the sovereign brought the opposite of the peace and safety he claimed it would bring.

Again these new dangers do not reverse the trend toward decreasing *average* violence, but they have created a new risk that never existed before. Most likely no individual in the Pleistocene had to live through years of sustained fear and violence, as did someone who lived in Aleppo during the Syrian Civil War. Perhaps the precautionary principle favors stateless society. States with their monopoly on the sanctioned use of force are themselves capable of killing at an otherwise unimaginable scale. If you want to create a climate of the continual fear of violent death, as Hobbes imagined, you might need the power of the state to do it.

5. HOW DO THEY DO IT?

This chapter has presented evidence directly contradicting the prevailing theory of sovereignty and statelessness. Contractarian theory incorrectly predicts that stateless societies are inherently incapable of maintaining peace. Although we have not specifically addressed the behavioral

assumptions contractarians use to support that conclusion, any argument that supports a false conclusion is unsound. However, it's probably worthwhile asking, what's wrong with the arguments for a perilous state of nature? Why don't stateless societies all erupt into unacceptable violence? How do real stateless societies maintain peace when 350 years of the best available a priori theory of statelessness predicts the impossibility of suppressing violence with the strategies available to them?

These are immense questions that relate closely to issues that have been at the heart of the field of anthropology since the nineteenth century, but the anthropological and philosophical discussions have been increasingly isolated from each other since about that time. We think it is useful to apply ethnographic observations to the contractarian theoretical structure, but we can only offer here some brief thoughts relative to the enormity of the anthropological literature on this issue.

Recall from Chapter 3 that Hobbes conjectured the advantage in conflict tends to be to the attacker and people are equal enough that anyone is able to kill anyone else if they get a significant advantage. He considered three motives for attack: (1) gain, (2) fear, and (3) reputation. Later contractarians have added (4) the inability to enforce contracts. These motives are plausible, but they don't seem to be the source of many conflicts in the smallest-scale societies.

To understand why, recall some of the features of bands mentioned in Chapter 8. Bands are small-scale nomadic societies with no leaders or power structure. All of their consumption comes from foraging, which they tend to do individually or in small groups, bringing back most of it to camp. They do not store food. They habitually underutilize their environments. Under these conditions, the durable goods a person can accumulate are limited to what they can carry from camp to camp, and anyone who camps with the band is pressured to share their durable goods if they are not using them. Nomadic foragers insure against hunger by sharing their food with the other foragers in camp, so that, hopefully, on the days when one person is unsuccessful others will be (McCall and Widerquist 2015).

In this context, contractual promises (A delivers now; B holds up their end of the bargain later) do not exist. If you explained the idea of an enforceable contract to a nomadic hunter-gatherer, we suspect they would have a hard time understanding why anyone would do such a thing. The inability to enforce contracts is neutralized by a society that just does not make forward-looking contracts.

Gain provides very little motive for attack in band society. The potential victim doesn't have much to steal. The entire group can't be expected to have any more food than they can eat before they go to bed. Their durable goods (i.e. tools) aren't terribly valuable and everyone in the context knows how to make the tools out of readily available materials. Attacking and killing a nearby group of people to get tools that you could easily make yourself is absurd, especially given that the tools you'll need to kill them are the same multipurpose hunting tools you would presumably be trying to steal. You can only carry so many durable goods. And no one is going to want to camp with you unless you share the goods you have. The most plausible gain one might be able to make from attacking a hunter-gatherer band is land, but with *habitually underutilized land* available, land theft isn't likely to motivate violence between bands. In fact, mobile hunter-gatherers often maintain territorial systems that are based on complex principles of reciprocity and that guarantee mutual access to patches of land, especially during times of economic stress (Kelly 1995). Bands do fight, but ethnographic and historical records reveal few if any instances in which they fight over food, durable goods, or land.

Is this a conscious strategy? Do bands intentionally try to neutralize the gain motive by not having anything worth stealing? Some anthropologists view just about everything stateless societies do as a conscious strategy to avoid attack from, incorporation by, or developing into large-scale, more hierarchical societies (Scott 2009). We don't know whether their behavior is intentionally motivated to produce this effect, but it does produce this effect, discouraging attacks from other bands and from larger-scale groups. Although states have gradually encroached on stateless territory for thousands of years, many small-scale societies were able to thrive in peripheral, unappealing lands until the last few centuries when state societies decided to conquer the last remaining bits.

How did Hobbes (1962 [1651]) and so many contractarians get the role of gain so wrong? Hobbes lived in a context in which the accumulation of wealth was a major cultural motivator. He did not mention this context as an explicit assumption of his theory, probably because he thought it was universal. Of course, he could not have made his cultural context an explicit assumption of his model without either rigging the test in Hampton's (1988: 271) sense or relying on the false dichotomy between "natural man" and "civilized man."

He simply might have failed to envision that there are, or could be, whole societies in which people make no attempt to accumulate wealth. The biggest problem in Hobbes's theory of the state of nature is not in any of his stated assumptions but in the context he took for granted. He assumed motivations for attack that are simply not operable among egalitarian hunter-gatherers, and many other forms of small-scale society for that matter.

By neutralizing gain, bands are also largely free of what Rousseau (1984; 1994), Marx (1972), and Engels (2004 [1884]) thought was the source of most conflicts in state society: the corrupting influence of inegalitarian institutions (see the online appendix). It is impossible to say whether the egalitarian institutions of band society are any less corrupting than the inegalitarian institutions of most state society, but these institutions certainly have not made conflict disappear in band society as some enthusiasts of the nonviolent view of human nature have implied (Boehm 2001: 256–7).

Reputation plays very much the opposite role in band society as Hobbes supposed. For reasons we discuss in greater detail below, band societies tend to cultivate an ethos of nonviolence. They don't always live up to it, but anyone clearly seen to be an aggressor faces a significant loss of acceptance and approval from the group and usually from nearby groups as well. The ethos does not merely neutralize the reputational motive; it *reverses* the role of reputation. Contrary to hundreds of years of widely shared prejudice against "savages," people in the smallest-scale nomadic, foraging societies *do not* seek a reputation for toughness, aggression, or ruthlessness—all common concerns in historical Western societies. They much more often seek a reputation for peacefulness and agreeableness. They do not cultivate this reputation because it is any more natural; they do it because their society effectively incentivizes it.

Fear is significantly reduced as a motivation for attack in this context. Neutralizing the gain motive and effectively reversing the reputational motive gives individuals less reason to fear attack. Violence does exist, and as long as violence exists, fear exists. But, even if one does fear attack from another band member, in the context we have described above, that fear is much less likely to motivate a preemptive strike, because the advantage is not as clearly to the attacker as Hobbesian theory assumes. The attacker will lose reputation, and they will invite counter-attack from the victim's band and from the

victim's family and friends who might be spread out between many nearby bands. If they are clearly seen to initiate violence, their band, family, and friends will be less likely to support them against the victim (more on this below). Without that advantage, even someone who fears attack is much less likely to initiate violence. With the motivation for a preemptive strike effectively defused, the reason that conflict was supposed to escalate into a war of all-against-all disappears.

Band societies have considered and largely neutralized gain, fear, reputation, and the advantage to the attacker—everything that motivates attack in Hobbesian theory. One might ask, why is there any conflict at all? One might suspect that we have naively exaggerated how well band societies have neutralized "the" causes of conflict. But one should consider that Hobbesian psychological theory is weak in ways that importantly affect his recommended strategy. The things he recognized as sources of conflict are surprisingly easy to counteract, and he missed the things that are more difficult to counteract. These include but are not limited to jealousy (especially sexual jealousy), fits of rage, mental instability, and perhaps most importantly, the common human desire to dominate others. All observed hunter-gatherer bands have a well-developed (but obviously unwritten) political theory to deal with these problems, which in their context, seems to be much more relevant than the motivators of conflict recognized by Hobbes. And of course, any Rousseauian or Marxian hope that egalitarianism would eventually eliminate these motives has been brought into serious doubt by thousands of years of experience in band society. Apparently these problems are ever-present. Bands' efforts to keep conflicts down in the presence of these motivators are imperfect, but we have seen that they do keep violence from escalating to intolerable levels. How do their strategies compare with large-scale societies' strategies?

Although the dominance motive is conspicuously absent from Hobbes's list of motivations for conflict, the absolutist monarchical system he advocated has a built-in strategy to break the link between the dominance motive and conflict by prescribing succession through fixed rules, leaving nothing to fight over. However, this strategy has had limited success as thousands of years of wars of succession attest. Capitalist democracies attempt to break the link between dominance and violence by channeling potential dominators into nonviolent competitions for money in the market, for votes in politics, or for other forms of honor.

Rather than trying to break the link between dominance and violence, bands try not to let anyone dominate anyone else. They take strong action to prevent any hierarchical structure from developing. Boehm (2001) describes the strategy as a "reverse dominance hierarchy," in which the would-be subordinate individuals join together to prevent any would-be dominant individuals from establishing themselves. The band lifestyle seems designed to make any form of dominance impossible. Considering the characteristics of bands explained above, put yourself in the place of a physically exceptional person who wanted to dominate a band. How would you do it? One morning, you could physically intimidate everyone in camp, but that afternoon you would need them to split up to hunt, gather, and bring back whatever they found to share with you. Considering your casual everyday experience of human psychology, what do you think they'd do? They would probably leave camp and never come back unless it was to gang up and attack you.

Band members aspiring to dominance could try to chase down their would-be band mates, but because they can only be in one place at a time, they would not likely find all of them. Dominators would run into a problem that Hobbes (1962 [1651]: 98) correctly recognized: "The weakest has strength enough to kill the strongest, either by secret machination, or by confederacy with others." This kind of violence happens, but very often before it gets to that point, "People in band societies tend to 'vote with their feet,' moving away rather than submitting to the will of an unpopular leader" (Lee and Daly 1999: 4).

Rousseau also correctly recognized this issue, writing:

> it is impossible to enslave a man without first putting him in a situation where he cannot do without another man, and since such a situation does not exist in the state of nature, each man there is free of this yoke, and the law of the strongest is rendered vain. (Rousseau 1994: 106)

Imagine how free from domination the poor and underprivileged could be today if they were free to live by their own rules with any small like-minded group as people in band society are.

The ability of bands to split up, almost at a moment's notice, is an extremely important social mechanism for avoiding all conflicts, not just conflicts motivated by dominance. Turnbull (1968: 137) writes,

"the major function of flux is not ecological adaptation but what could be called political adaptation." There is always somewhere else to go if one does not like camping and foraging with the band and leaving is not a drastic move. People routinely split from the camp for any number of mundane reasons. Someone might want to camp with other friends or another part of their extended family for a while. A nuclear family might want to camp alone for a while. Or people might simply disagree about where to camp next. Bird-David describes the constant flux of band societies:

> the person in a hunter-gatherer band . . . is like a drop of oil floating on the surface of a pool of water. When these drops come together, they coalesce into a larger drop. But drops can also split up into small ones that may then coalesce with others. Likewise persons, "throughout their lives perpetually coalesce with and depart from, each other." (Bird-David 1994: 597)

Whatever its other uses, flux is extremely useful to avoid conflict. If two people can't get along for any reason, one of them can simply go camp with another band a few miles away. If two groups within the band can't get along, they can break into two bands.

Although individuals attempting to dominate an entire band in the way described above may be rare, bands regularly have to deal with one-on-one bullying. They have a host of other strategies to employ before desertion becomes necessary. All or most observed bands cultivate an ethos of nonviolence, humility, equality, freedom, and autonomy. According to Boehm (2001: 74), "A cardinal act of political deviance is to attempt to set oneself above another person in a way that is belittling, or, worse, to try to give direct orders to one's peers." There is a wide debate about how and why foragers maintain such individualistic norms (Gardner 1991), but it seems that when one cannot stop people from walking away, one must build a community that respects individuality and disparages would-be dominators.

Anyone who violates a band's ethos will be subject to criticism, ridicule, and disobedience hopefully long before the problem reaches the point of desertion or violence (Boehm 2001: 84, 112–22). Although bands have no single individual authority figure to arbitrate disputes, anyone and everyone in the group might give their opinion. For example, the Batek typically demand that disputing parties talk it over, and the whole group can get involved. This might end with a compromise

or with public opinion siding against one person, who might acquiesce to social pressure, resist and endure the criticism, or camp elsewhere (Endicott and Endicott 2008: 66–7).

Contemporary political theory seems to have developed little understanding of the social strategies underlying flux derived from both mobility and flexible group membership. Indeed, the very idea of flux is quite foreign to most of us living in the states of the modern world, where group membership and residency are tightly controlled. It is therefore not surprising that, as far as we can tell, *none* of the state-of-nature theorists described above so much as considers the possibility that people might attempt to use flux or any of the other strategies mentioned to mitigate the danger of the war of all-against-all. Yet, flux represents a very different strategy from the social *contract*. Under the contract, the polity declares that the individual has made a *commitment* to a nearly permanent political obligation. Emigration is costly and difficult. People are generally expected to enter the social contract by birth and exit by death. By assumption, they have agreed to be subject to whatever force the sovereign deems necessary to keep the peace. There is no backing out from that commitment. Band society's respect for individual autonomy is incompatible with any notion of commitment to anything but the most ephemeral political obligations. Rather than keeping the peace by stressing commitment and obligation, they maintain peace by respecting each other's freedom from political obligation.

The final strategy we discuss for preventing violence in band societies has to do with an important aspect of their egalitarian social structure: their elaborate networks of social ties between individuals. A Ju/'hoansi person, for example, is likely to have friends and relatives across all or most of the nearby camps, and friends of friends and relatives of relatives even farther. These networks are egalitarian and informal. They have no head and no structure. But they have clear functions far beyond the prevention of violence. Social networks are instrumental in hedging against economic risk and uncertainty about the future (McCall and Widerquist 2015). The possibility of droughts, blights, and other forms of environmental crisis is ever-present; so also is the possibility of breaking a leg or suffering some other malady that might prevent an individual from foraging effectively. These social networks can be life-savers during periods of crisis, such as a drought or an injury, as has actually been well-observed over the long history of ethnographic research in the Kalahari (Wiessner 1977; Lee 1979; McCall 2000; Wiessner 2002; McCall and Widerquist 2015).

A political theorist might instantly connect these social networks with the possibility of a revenge cycle. For example, Diamond (2012) includes lengthy discussion of cycles of revenge among the indigenous people of New Guinea. Although revenge is not necessarily a very important role for social networks in egalitarian societies, it is worth imagining what effects it might have. The revenge motive can increase violence by creating a cycle of attack and counter-attack, turning a single homicide into a series of homicides. Cycles of revenge killings are well-known in many stateless societies and many areas where states are weak. Such a cycle can explain why some stateless groups have constant tension with neighbors, but such cycles fall far short of the war of all-against-all, and they do not occur in all stateless societies. Many bands have no observed intergroup violence at all. These groups seem to be free from revenge cycles.

Even among the groups that have revenge cycles, they do not usually escalate as theory predicts in the absence of a definitive, enforced resolution by a sovereign authority. Practice shows that even a costly cycle of revenge killings is not a war of all-against-all, nor is it likely to spark such a war. A cycle of conflict often settles down into a standoff, which can become an effective peace. The possibility of a standoff rather than a sovereign or active conflict is under-theorized in conventional state-of-nature theory. It is known to exist among international states, but it is usually deemed impossible at a smaller scale because of the presumed advantage to the attacker (Lucas 1966: 65–6).

In some ways the revenge motive deters violence, especially in the context of a complex social network. The existence of these networks might remove the presumed advantage to the attacker that was so important to Hobbes's argument for violence in the state of nature. The network is acephalous. No one can decapitate it. The network is geographically dispersed. No one can sneak up behind its back. With the advantage of surprise, one could conceivably wipe out every person in a camp. Neither ethnographers nor archaeologists have found evidence of it happening among small-scale nomadic foragers, but it is conceivable. However, one could not wipe out an entire social network. This attack would then invite response from all of the many camps in the area with ties to the victims—a significant *disadvantage* to the attacker. It is difficult to know how valuable this deterrent effect is and whether the deterrence effect of the fear of revenge reduces violence more than the revenge cycle increases violence. But it does have some mitigating effect.

But the threat of revenge is *not* the most important way that social networks help to maintain peace. The way they reinforce the social ethos of equality, sympathy, and nonviolence is far more important. In such contexts, violent behavior risks the alienation of these all-important social connections, which (as explained above) provide a form of economic security in the face of uncertainty. To be excluded from this social system would be a terrible fate—or perhaps a terrible punishment—indeed.

A study by George McCall and Patricia Resick (2003) speaks to this point further. They examined individual manifestations of post-traumatic stress disorder (PTSD) experienced by Ju'hoansi individuals following instances of violent physical conflict. Here, victims of violence felt profoundly the symptoms of PTSD in the same way as soldiers or victims of terrorist attacks. However, their levels of stress seemed disproportionate to the level of violence. The majority of these attacks lacked weapons and were normally not even potentially lethal. They were often little more than fistfights or wrestling matches. Later, Grant McCall (coauthor of this book) interviewed some of the same victims experiencing PTSD and it became clear to him what exactly was so frightening. The stress was not directly a result of the violence but of the possibility of being alienated or ostracized from his network of social connections. This threat has such profound emotional consequences that they are experienced in terms of physical pain and ultimately manifested as PTSD.

In other words, the social network multiplies the power of reputational strategies discussed above. The social ethos is not merely something people say; it is backed by a powerful mechanism with real force even though it has no sovereign at the head. This theory of the social network implies not only that bands are able to reverse the reputational motive, but also that they have given it great power. Someone who initiates violence risks their reputation, which is an extremely valuable asset.

We must warn readers against any unwarranted extrapolation of the trends we just explained. The strategies we have just discussed have proven successful for groups at this scale in very different environments around the globe (Boehm 2001; 2012). Archaeological evidence shows that most people in the Pleistocene lived in similar-scale nomadic groups with apparently similar foraging strategies. It is tempting to extrapolate the generalizations we have made about modern bands around the world to bands living 10,000 or 200,000 years ago. Although there is some reason to believe that these mechanisms

worked similarly, the circumstances of Pleistocene foragers were very different. For one thing, they had more plentiful foraging environments that might have made them less dependent on social networks. Probably these circumstances favored the reverse-dominance hierarchy, but we cannot be sure of the extent to which they did. One might look at the scale and foraging strategies of hominins and imagine these violence-mitigating strategies and other aspects of observed band lifeways extending back two million years. Although some well-trained anthropologists have succumbed to this kind of temptation, it is unwarranted. These were different *species*; we must be cautious about drawing conclusions about their behavior that cannot be observed.

Looking at where these strategies tend to fail can help understand how they work. Recall from previous sections that levels of violence significantly increase as stateless societies become sedentary and increase in scale and population density. Looking at these trends discussed in Section 1 in light of the theoretical discussion in this section can help us understand them.

Gain emerges as a motive in any society that stores food, accumulates significant durable goods, or attempts to maintain exclusive control over a valuable resource. That valuable resource might be something like a salmon run, and it could simply be arable land in an area too densely populated to allow the luxury of the underutilization of resources. Any society that chooses any such subsistence strategy will have to deal with neighbors who have a greater motive to attack.

The first permanently sedentary populations were late hunter-gatherers who had experienced significant population increase and shrinking territory sizes, and who had settled into villages in order to focus their economies on labor-intensive annually replenishing food resources. Similarly, these populations began to deal with economic risk through storage instead of through the sharing strategies of groups like the Ju/'hoansi. Storage, it appears, was a recipe for economic crisis and resulting violent confrontation. As mentioned above, the earliest known manifestation of this kind of conflict is the mass grave at Jebel Sahaba. They were terminal Paleolithic hunter-gatherers, who had settled into a permanent village on the flanks of the Nile. They were probably in the grips of a drought when attacked (Wendorf 1968). The people of Ofnet, also mentioned above, were among the late hunter-gatherers of Europe and had begun to occupy increasingly sedentary villages in the alluvial drainages of the Danube after the end of the Pleistocene (Frayer 1997). Similar increases in violence have

also been documented among early sedentary hunter-gatherer populations around the world (McCall 2009).

In these circumstances, people begin to seek the kind of reputation Hobbes supposed. According to Johnson and Earle (2000: 170), once communities reach a certain population density, "They can no longer avoid resource competition simply by moving elsewhere, and brave, aggressive men are now treated as valuable allies rather than as dangerous outcasts." Many modern, small-scale horticultural communities live in tightly circumscribed areas. The Yanomamö, for example, live at only a slightly larger residential scale than hunter-gatherers, in villages of about 100–200 people. They are still prone to fission, but they cannot get far from adversaries. The Yanomamö remain acephalous like band societies, but they value aggressive men. Perhaps consequently, they lack the gender equality common to many band societies. Men often dominate and abuse their wives without any loss of reputation (Boehm 2001: 93).

The highlands of central New Guinea have extremely tightly packed autonomous villages that are more or less dependent on horticulture and have predictably high levels of violence. Johnson and Earle (2000: 179–80, 191–2) describe one such people, the Tsembaga, who for defense live in groups of several hundred occupying an area of land only a mile or so across, surrounded by enemies, all of whom jealously defend their territories. Pinker (2012) and Diamond (2012) take the Yanomamö and the New Guinea highlands as the *norm* among stateless societies, when in fact they live in conditions far more conducive to violence than most hunter-gatherer peoples.

One might be tempted to suppose that stateless societies are on an inevitable trend toward higher populations that will eventually bring conflict and make the state a necessity. But, those few late-Pleistocene examples notwithstanding, it is usually agriculturalists rather than hunter-gatherers who are prone to population explosions. Before state societies decided to use their numbers to conquer the world, a very large portion of the earth's land area was populated by hunter-gatherers living at population densities probably not much different than those that prevailed during the late Pleistocene. They had a well-developed political theory for how to maintain stable, stateless societies over the very long term. They did not need state societies to rescue them from some distant, hypothetical population explosion.

In seems that Hobbes's theory of statelessness isn't very sophisticated. He discusses only a few possible causes for conflict in the state

of nature, some of which basically don't exist in the societies that are most completely devoid of state institutions. He ignores other causes of conflict that are much more important to people actually living under the conditions he attempted to examine. He discusses only one possible solution—the establishment of full sovereignty whether in a person or in an assembly—and he makes no attempt to compare that strategy against other possible strategies. He and his recent successors have no discussion of social networks, building a social ethos, criticism, ridicule, flux, desertion, or execution. Although Hobbes is most often criticized for attempting *pure* a priori theory, his state of nature could perhaps better be criticized for being a poor a priori theory of statelessness. With a few paragraphs of apparently off-the-cuff reasoning, he convinced centuries of uncritical philosophers that only one outcome is possible in a stateless situation. Only a few of his successors have deepened his analysis and only in minor ways. Most of those reviewed above have just retold the old story of the three motivations and the advantage of attack. They then affirm the inevitable connection between these factors and the war of all-against-all. That's not a priori theory; that's mythmaking.

The a priori portions of Pinker's (2012) book seem to be more sophisticated. He argues that people become brutalized in violent environments. Murder rates are high where social protections against violence are weak. Individuals feel that they must protect themselves unilaterally and that disputes must be settled by violence rather than legal intervention. He argues that this tends to happen in state societies where segments of the population are under-served by their governments in protecting them from crime and in punishing criminal acts. This idea is reasonable, and we agree with most of the empirical evidence he presents to support it. East St. Louis certainly seems to be a context in the modern United States where government institutions are at their weakest and where a large community of people have insufficient protection or recourse to the law. Pinker correctly points out (1) states where protection is strong, (2) states where it is weak, and (3) stateless societies where it is weak, but he does not search for examples of the fourth possibility to complete the matrix: (4) stateless societies where social protections are strong. Of course, standard political theory (which he cites) tells him such a situation can never exist.

This section has explained how that fourth possibility can work in stateless societies. The Batek, the Chewang, the Semang, the Buid, the Bakairi and other groups with extremely low violence—whether or

not they represent the norm among stateless societies—demonstrate that stateless societies can provide strong enough social protections against violence to avoid the brutalization that Pinker recognizes in other situations. Our discussion also suggests that groups with moderate levels of violence sufficiently avoid much of the brutalization that worries Pinker. If a Ju/'hoansi person can show signs of PTSD from a fist fight that had no threat of becoming lethal, he seems to be very far from the brutalized individual Pinker's theory warns against.

6. CONCLUSION

The strong violence hypothesis is false. Violence in stateless societies does not degenerate into a war of all-against-all or anything like it. The idea that statelessness always leads to unacceptable levels of violence is unfounded. Many stateless societies effectively constrain violence. They create environments in which people can comfortably and rationally feel at peace. We have good reason to believe that our ancestors were able to create somewhat similar environments for perhaps the last 200,000 years. The weak violence hypothesis may well be true, but the refutation of the violence hypothesis is an extremely damaging argument against Hobbesian versions of contractarianism. Hobbes and Kant both argue that intolerable violence is the *causal* factor behind just about every other difficulty of the state of nature, and it is the constant fear of the danger of violent death that makes them so confident that everyone is better off in state society than in any stateless situation. Anyone who wants to make the case that people are better off in state society is forced to use a Lockean strategy in which the possibility of higher violence is only one of many factors determining overall welfare. Chapter 10 examines that issue.

The refutation of the strong violence hypothesis has profound implications for contractarian theory beyond weakening support for the overall Hobbesian hypothesis. The long-revered claim that people inherently need a sovereign state to prevent unacceptable levels of violence that must otherwise prevail is unfounded. The automatic human need for a state to keep people from each other's throats is a self-serving myth to justify ill-treatment of the disadvantaged. Twenty-first-century political theorists can still assert this claim in leading journals and expect to be believed without evidence (Wellman 2001: 742), but it is weak in theory and refuted by observation.

Chapter 10

ARE YOU BETTER OFF NOW THAN YOU WERE 12,000 YEARS AGO? AN EMPIRICAL ASSESSMENT OF THE HOBBESIAN HYPOTHESIS

With the violence hypothesis strongly refuted by Chapter 9, an argument for the Hobbesian hypothesis needs to discuss overall welfare, as Locke did in the seventeenth century. But assessing overall welfare is much more difficult than assessing whether people are under the constant fear of violent death. Contractarians and propertarians need to show that everyone in one situation is better off than they could reasonably expect to be in another situation. Yet, none of the contractarian and propertarian literature reviewed in Chapters 3–7 provides significant evidence for it or even suggests any rigorous methodology to examine the question. Most of this literature is satisfied to imply that the Hobbesian hypothesis is somehow obvious. We are unable to provide a rigorous methodology for contractarians, and so we use an ad hoc comparison of whether people seem to be better off in several important ways that they have good reason to care about.

Hobbes's (1962 [1651]: 100) famous phrase, "the life of man, solitary, poore, nasty, brutish, and short," helpfully identifies four broad categories of wellbeing. Nasty and brutish are synonymous for violence, which was addressed by Chapter 9. That leaves three other categories: solitary (social and cultural satisfaction), poor (material wellbeing), and short (health and longevity). The first part of this chapter addresses these three categories in turn, and the following sections address two others. The end of this chapter discusses the issue of freedom, which is particularly important to propertarianism. We also offer a discussion of observed choice, which is the most direct evidence of consent, the ultimate category for contractarianism.

This chapter concludes with an overall assessment, and the results are tragic. In all or most of the five categories, it is reasonable to say

that the average person is better off in most contemporary state societies (although not in most past state societies). But contemporary states allow so much inequality—with a bottom so low in absolute terms—that significant numbers of people are worse off in capitalist state societies than they would be even in a small-scale stateless society.

1. SOCIAL AND CULTURAL SATISFACTION

The claim that stateless peoples are nonsocial is perhaps the most outlandish of any prehistoric myth. Although humans existed for a long period before they first came together to form states or claimed land as "property," there is no period in human existence before they came together to form communities, groups, or societies. Some animal species are nonsocial, but good evidence in the archaeological record indicates that humans and our hominin ancestors have been social animals throughout the six to eight million years that separate us from our nearest primate relatives. Frans de Waal (2006: 4–5) describes humans as "obligatorily gregarious," meaning that they need other people either to survive physically or to thrive emotionally. The credit for our sociality, de Waal explains, goes to our nature, not to the institutional structures that philosophers want to justify.

Far from solitary, overwhelming ethnographic evidence shows that life in band societies is very communal; their members even appear far more socially content than most people in contemporary capitalist states. Band societies often engage in group activities. They make group decisions collectively (Leacock 1998: 144). They can count on each other to share food even if they are unable to produce food to share in return (Bird-David 1990; Bird-David 1992; Hawkes et al. 2001). Many ethnographers have remarked on the excessively social nature of band societies. People camp close together and give each other very little privacy. Camps don't have walls. People in bands pay attention to each other's business in much greater detail than people from capitalist states are used to (Hill and Hurtado 1996: xii). The concept of what is and is not one person's business varies considerably across culture and especially between large- and small-scale societies. If a person from an industrialized capitalist state tried to adjust to band society, their neighbors' nosiness might be a difficult social adjustment. But they would not lack human interaction.

The observation that people don't need the state to create society does not contradict the contractarian understanding of social institutions as *artificial* creations in the sense required (see Chapters 2 and 3), but it does contradict the belief that a sovereign government can take credit for making society possible. Without the violence hypothesis, the belief that society is impossible outside of state authority is untenable, but one could argue that state authority (and/or a private property rights system) makes a better society possible. One could argue that, perhaps because of cultural opportunities, all people in state societies have deeper, richer, more satisfying, or meaningful social environments. This claim sounds difficult to measure and perhaps like ethnocentric arrogance, but we will try to evaluate it.

On Hobbes's (1962 [1651]: 100) long list of things people in the state of nature supposedly lack, the items of cultural and social significance include knowledge of geography, architecture, arts, letters, and society. Hobbes was right that most small-scale societies lack many of these things. Today few people are ethnocentric enough to assume that people in those societies are necessarily worse off for not having them, but they have to count. Contemporary capitalist states arguably provide more varied cultural opportunities.

People in small-scale nomadic societies could not have expressed themselves as symphonic composers or novelists, nor could they have enjoyed the products of those who do (without aid from a larger-scale society), but they can express themselves in other ways. Ethnographic and historical accounts report that all indigenous communities have rich cultural lives with art, music, dance, storytelling, and so on. People in band societies have many opportunities for social interaction in a community that often makes them feel like an integral part (Bird-David 1994; Marshall III 2002; Marshall III 2005). State society offers people many opportunities that band society cannot, but band societies tend to offer something that state society has difficulty matching—an inclusive and apparently satisfying cultural environment.

Perhaps the biggest problem with cultural and social opportunities in state society is that states often do not share them with everyone. Some people in state societies can see others enjoying opportunities that they cannot access. Perhaps partly for this reason, along with some satisfied people, contemporary state society produces a substantial group of discontents, people who feel either left out or unsatisfied by their social environment. Marx (1959), of course, identified this

problem as one of alienation (see Chapter 6). Many people spend their lives serving the goals of others to get money merely to consume, but they lack time and autonomy to build a meaningful social and cultural life. Many of the opportunities offered to them are ultimately unsatisfying prospects for material consumption.

One cannot measure alienation or social satisfaction, but some indication is given by vocalizations of discontent and by mental health issues. Ethnographers report a distinct lack of a discontented minority in band societies. Suicide rates are low (see below). The commonplace misery of discontented people in state society seems to have no equivalent in band society. A very large volume of historical and ethnographic accounts of nomadic foragers attests to their being surprisingly content. Such accounts stretch back at least as far as the first century CE when Publius Cornelius Tacitus wrote about a Germanic hunter-gatherer society:

> Such a condition they judge more happy than the painful occupation of cultivating the ground, than the labour of rearing horses, than the agitations of hope and fear attending the defence of their own property or the seizing that of others. Secure against the designs of men, secure against the malignity of the Gods, they have accomplished a thing of infinite difficulty; that to them nothing remains even to be wished. (Tacitus 1996)

Contemporary ethnographic accounts—of the smallest-scale societies—almost universally confirm positive attitudes among group members. Hill and Hurtado (1996: xii) write, "Among the Ache, there were no revolutionaries, no visionaries, and no rebels. Joking and happy-go-lucky demeanor were universal."

The evidence in this section indicates that people can and do live happy, contented lives in foraging bands. None of this should tempt anyone to believe band society is some kind of utopia. They have conflicts, anger, and violence like everyone else, but they are not miserable as so many political theorists claim. Despite their limited opportunities, they seem to be able to provide a more satisfying social and cultural environment for the least socially and culturally adept individuals within their groups. This ability is a remarkable achievement when compared against the great discontent of so many socially isolated people in capitalist states today. Hopefully, there is a way to

have the culturally varied opportunities of industrial states without also creating a disconnected minority, but apparently, our states have yet to find it.

2. MATERIAL WELLBEING

The apparent obviousness of the superior material wellbeing of people in capitalist states is easy to understand. Our economies produce so many more goods and use labor so much more efficiently that we must all work far less and consume far more than everyone who lives without access to our technology. The problem with this view stems both from the over-identification of material income with material wellbeing (Kenny 2006) and from the fallacy of composition. The enormous productivity of contemporary state societies makes it *possible* for everyone to consume far more and work far less, but it does not ensure that everyone *actually does* consume more and work less. Nor does it ensure that the mix of goods available to them is sufficient to secure higher material wellbeing even if it includes items that band societies can't possibly produce.

This section considers three issues of material wellbeing: the provision of luxuries, the availability of leisure time, and the meeting of basic needs. To make the comparison, we have to take a realistic look at abilities of state and stateless societies to turn their material resources into material wellbeing, and at the extent to which the material benefits of contemporary states are shared by their least advantaged group of individuals.

A. Luxuries

The capitalist state's ability to turn labor and resources into massive amounts of luxuries counts in its favor, but it alone cannot automatically ensure that all people in state society have greater material wellbeing, as so many philosophers have implied for so many centuries. J. H. Hutton's (1944: 4) speech quoted in Chapter 8 equating material culture with "the degree of civilization" provides an example of the over-identification of material income with material wellbeing—and indeed with overall wellbeing. Most anthropologists today would dismiss this position out of hand, but it is still an influential attitude about contemporary material culture. The term "the degree of civilization" is vague, but we take Hutton to mean that

societies with a more complex material culture, with more tangible cultural output, provide richer, deeper, and more enlightened cultural and social lives for their people.

Capitalist states clearly have far more complex material culture. Hunter-gatherer bands don't produce the things modern people recognize as tangible cultural output: novels, written histories, symphonies, computer games, reality TV, and so on. Early anthropologists often explained the absence of what they recognized to be cultural output in small-scale societies by the inherent difficulty of their lifestyle typified by an all-consuming food quest. Therefore, they took the absence of extensive material culture as evidence for low wellbeing.

However, an all-consuming food quest is not the only explanation why equally intelligent people might not produce as much of the things we recognize as cultural output. The same observation can be explained by the scale and mobility of band societies. Most hunter-gatherer bands do not have enough members to fill out a symphony orchestra, much less to sit in the audience. It would not pay nomads to develop writing without the ability to carry a library with them from camp to camp. Even if band life is "a continual holiday" compared with the life of industrial workers as Paine (2000) supposed, we should not expect band societies to produce symphonies and novels. If band societies have a satisfying material culture, we should expect them to have a rich culture in things that are portable, such as storytelling, music, and dance. As the previous section argued, ethnographers do see rich and varied cultures among all small-scale societies. Therefore, we cannot take the lack of what we might recognize as tangible cultural products to be evidence that their lives were poor, difficult, arduous, uncultured, or lacking in achievement.

A public library in the United States gives people access to reading Leo Tolstoy or Stephen King, to watching a Shakespeare play or reality TV. People consuming these luxuries make use of many more human and natural resources than does a whole group of foragers sitting around a fire, singing, dancing, and exchanging stories. Do they have a better time? How much better? For the contractarian argument to work, the experiences of the person in the capitalist state must be so much richer that it would be irrational or unreasonable to prefer the forager's entertainment. This claim seems difficult to sustain without falling into ethnocentric arrogance. No matter how great the capitalist state's output of luxuries is, it is difficult to connect it with what the proviso requires: the benefit of state society must be so great that no

rational or reasonable person would refuse. Luxuries are by their very nature something that people can refuse.

A supporter of the Hobbesian hypothesis might be tempted to avoid ethnocentrism by entirely dropping the global economy's ability to produce luxuries from the argument. But dropping luxuries from the argument has an enormous drawback: the production of luxuries is the one advantage of the capitalist state that actually *is* obvious. No reasonable person could deny that capitalist states produce far more and a much wider variety of luxuries than any stateless society that has existed in the last 200,000 years. Capitalist states produce goods embodying the labor of millions of people and accumulated ideas from hundreds of generations. They produce an incredible variety of items for subcultures from high to low, from folk to postmodern. Some groups might have meticulously researched some indigenous people's traditions of art, music, dance, or storytelling and attempt to keep the practices alive at a local community center. Certainly, the capitalist state's ability to produce consumer goods is a primary motivation for the belief in the Hobbesian hypothesis. It would be difficult to give up its potential value in the justification of contemporary states, but it is difficult to connect this inherently declinable thing with the conclusion that no rational or reasonable person could refuse.

One might think luxuries are relevant on the supposition that because so many luxury goods are so widely available, basic necessities must be abundant for everyone. This conclusion, of course, does not follow. It seems to be related to the fallacy of composition. Not only is it false to assume that everyone has access to luxuries just because a state produces many of them; it is equally false to assume that an individual has access to all the necessities they require just because they have access to some significant luxuries. For example, consider a homeless person in the United States. At a public library or a homeless shelter they probably have access to luxuries, such as books, computers, and media. Even people in shantytowns in lesser-developed countries often have televisions and cell phones, as well as a range of other luxury goods. But these same people might lack a private place to sleep, an adequate diet, safe drinking water, and so on. One tragedy of the contemporary economy is that—for whatever reason—it distributes some luxuries more widely than many necessities. A person in deep poverty cannot save enough money to meet

their needs by swearing off all luxuries. Specifics of the distribution system have made many once-unimaginable luxuries cheap while making some necessities more expensive and harder to obtain by far than they were in the Pleistocene (see Section 2C below).

One way to make luxuries relevant would be to argue that a larger set of (positive) options is always preferable to a smaller set. A greater availability of options certainly counts in favor of state society, but it has limited value for contractarian theory because all contracts involve sacrifice. A person might not have a strong desire for the additional options, and they might have a strong preference against the sacrifices required to get them.

The claim that the larger set is preferable to a smaller one is necessarily true only if the larger set dominates the smaller set (containing all the options in the smaller set and more). Strictly speaking, societies are so diverse that one society will always have *something* another doesn't, and one might value the few options lost more than the many options gained. But this claim might be approximately true. If the difference is large enough, and if options in the larger set are similar enough to those available in the smaller set, no reasonable person is likely to prefer the smaller set. Does this statement describe the comparison of the luxuries available to disadvantaged people in hunter-gatherer bands and capitalist states?

People have good reason to value many of the luxuries produced by capitalist states. But these luxuries are not shared well, and band societies do have significant luxuries that state societies do not. As Marvin Harris writes:

> As for amenities such as good food, entertainment, and aesthetic pleasures, early hunters and plant collectors enjoyed luxuries that only the richest of today's Americans can afford. For two days' worth of trees, lakes, and clear air, the modern-day executive works five. Nowadays, whole families toil and save for thirty years to gain the privilege of seeing a few square feet of grass outside their windows. And they are the privileged few. Americans say, "Meat makes the meal," . . . but two-thirds of the people alive today are involuntary vegetarians. In the Stone Age, everyone maintained a high-protein, low-starch diet. And the meat wasn't frozen or pumped full of antibiotics and artificial colors. (Harris 1977: x)

Although the set of luxuries available in band society is small, its advantages are significant, especially when we consider what people tend to value luxuries for: to facilitate social interaction and satisfaction. For some people the social system in state societies makes the luxuries available more isolating than facilitating. The cultural effects of the inequality of luxuries in state society can be a source of the alienation discussed above. People are often humiliated, stigmatized, and isolated for failing to display the right quantity or quality of luxuries. There is no time when one group of band members does something that another group cannot afford. A band member is never humiliated, stigmatized, or isolated for lacking luxuries. Because the relevant comparison is with the least advantaged group of people, it is questionable whether the tremendous availability of luxuries is a net advantage toward fulfilling the Lockean proviso.

Still, the sheer size and variety of luxuries available in capitalist states is an advantage. This advantage is probably very significant for people toward the middle and upper end of the income distribution. But even if it is a net advantage for everyone, it is not a terribly important advantage to people who are socially alienated or lacking in their basic needs. To make their advantage in this area potentially decisive, state societies would have to do a better job of providing basic needs and reducing alienation and discontent.

B. *Leisure and Work Effort*

Hunter-gatherers live neither a constantly harried existence nor an affluent life of leisure. This section will show that leisure is one area in which even the average person today has no particular advantage over people in band societies, and the least advantaged group of people in capitalist states today have significantly less leisure than their ancestors did more than 12,000 years ago.

By the 1960s, anthropologists had dismissed the misconception that hunter-gatherers lived a constantly harried existence (see Chapter 8). Since then, the debate over hunter-gatherer leisure seems to have divided into groups we can call "optimists," who believe hunter-gatherers have more leisure than people in capitalist states, and "pessimists" who believe hunter-gatherers have about the same or less. These views sometimes go along with pessimistic or optimistic views of overall hunter-gatherer welfare.

One of the more optimistic hunter-gatherer ethnographers is Lee (1979). His study of the Ju'/'hoansi finds:

> The number of days of work per adult per week varied from a low of 1.2 to a high of 3.2, a range of figures that represents only 24 to 64 percent of the 5-day weekly work load of an industrial worker. (Lee 1979: 256)

Including housework (but not child care), Lee finds men and women work an average of 42.3 hours per week—far less than most people in capitalist states. Lee's time-allocation study found a much shorter hunter-gatherer workweek than most subsequent studies. Critics have argued that studies like his have not paid sufficient attention to the time hunter-gatherers take on domestic chores, such as preparing goods for use or to the benefit his subjects received from industrial tools they have managed to acquire (Colchester 1984; Hawkes et al. 1985; Altman 1987: 94; Bettinger 1991: 99–100). One theoretical reason to believe that the food quest should be difficult is the observation that food availability was the primary limit on all hunter-gatherer populations as it is typically for animals in the wild (Washburn and Lancaster 1968: 303). Animal populations tend to expand until they reach the limits of available food sources. The expansion of hunter-gatherers onto all six habitable continents implies that humans are no exception to this rule. Presumably they were driven more by the need to find new food sources than the desire to explore. If humans expand until they approach the limits of available food sources, we should expect the food quest to be difficult for most hunter-gatherers and food stress to be a significant check on population.

Using a much broader definition of work (including, for example, food preparation, childcare, and walking), Hill et al. (1985) find that male members of the Ache band work an average of 7 hours per day or 49 hours per week. The widest summary of studies we have found is that of Clark (2007: 64), who presents a table summarizing the work time estimates of thirteen hunter-gatherer bands and agricultural villages, ranging from 2.8 (19.6 hours per week) to 7.6 hours per day (53.2 hours per week) with a median of 5.9 hours per day (41.4 hours per week). While this median hunter-gatherer workweek value is strikingly similar to the modern 40-hour workweek, there are reasons for questioning the implication that foragers are somehow overworked.

For one thing, there are reasons to doubt that this median workweek value for forager societies is a good modal representation of all forager groups over space and time. For another, our modern conception of the workweek includes only the time when individuals are physically present at their workplace and not all of the domestic labor they do away from the workplace. Yet, the equivalent of domestic labor is included in the more expansive considerations of hunter-gatherer time allocation.

Consider one of the more pessimistic figures: Hill et al.'s (1985) study finding a 49-hour workweek. That amount is 9 hours more than the U.S. standard 40-hour workweek, but remember that Hill et al.'s broad definition of work includes many things people in state society do in their leisure hours (including walking). If we wanted to make their figures comparable to work time for the typical American, we would have to increase the 40-hour workweek by the time people spend commuting, shopping, cooking, caring for children, maintaining a household, and so on. In 2003, according to a study in the *Quarterly Journal of Economics*, the sum of the time the average American spent in market work, nonmarket work, and childcare was 54.94 hours per week—nearly six hours more than the Ache. This figure was down from 60.91 hours per week in 1965—nearly 12 hours more than the Ache (Aguiar and Hurst 2007: 976). Therefore, even the more pessimistic figures imply that governments and property rights have failed to deliver as much more leisure to the average American than the Ache band delivered to its members. And of course, the Ache are one of the harder-working bands. Comparing the U.S. figure with the median in Clark's study shows that Americans work 13 hours per week more than the median of observed hunter-gatherers.

All the above figures compare "work" in an expansive sense of putting forth effort to achieve a goal, such as obtaining dinner or having a well-cared-for child. This, of course, is not how Americans usually define work. Unless you own your own business, typically, work is a job. Work means following the orders of a boss or a client 40 hours per week. In this sense, people in band society *do not work at all*. People in band society spend no time at all following other people's orders. Although bands typically share what they obtain, they work for themselves, under their own direction, at their own pace. No single individual commands foraging expeditions in band society. Individuals hunt, gather, and fish where and when they please. In this sense, Paine's

(2000) "continual holiday" account of Native American life seems to us not to be much exaggerated and there is nothing trivial about this observation. "Being your own" boss is a widely pursued ambition that few in state society achieve, and even most business owners have clients to please. The freedom from having to satisfy a boss or a client probably must make foraging "work" seem much more leisurely than the "work" of someone with a job in an industrial state. Subordination hurts and the feelings that workers in capitalist societies hold about their relationship to their own labor get at the heart of the concept of alienation. Foragers' work must not only seem more leisurely; it must also feel significantly freer (see Section 4 below).

There is nothing irrational or unreasonable about someone who would rather go fishing than punch a time clock, if they are free to make their living this way, as our foraging ancestors were and we are not. There is nothing wrong with working for others if one chooses to, and we are sure that employers could offer employees positions that they would prefer to working independently. However, as long as we leave people with no other choice but to take the jobs on offer, we will never be sure that they really prefer those jobs.

C. Basic Needs

Perhaps the most tragic fact of contemporary capitalist states is that, despite their enormous productivity, they are probably less capable of satisfying the basic needs of disadvantaged members than were our Pleistocene ancestors. This section argues that point.

Although anthropologists disagree about how well-off people in band societies are, they widely agree that nomadic hunter-gatherers maintain a reasonable minimum for all members more effectively than modern states do. The movement from band to modern society eliminated both a ceiling to the accumulation of wealth and also a significant floor (Lee 1990: 244–5). As long as food was available in camp, no one in the camp would go hungry (Lee 1988: 267). While all hunter-gatherers ate a varied and healthy diet full of many foods that would be considered luxuries in a modern market, many people in contemporary states struggle with various forms of malnutrition, and as mentioned above, the majority of people today are involuntary vegetarians (Harris 1977: x). Since the first development of large-scale agriculture, perhaps 5,000 years ago, the dependence of people on a

few staple crops has made them far more vulnerable to famines than are hunter-gatherers, and with far less nutritional variety.

According to the United Nations *Human Development Report 2010*:

> About 1.75 billion people in the 104 countries covered by the MPI [Multidimensional Poverty Index]—a third of their population—live in multidimensional poverty—that is, with at least 30 percent of the indicators reflecting acute deprivation in health, education and standard of living. (Klugman 2010: 8)

And those figures might be overly optimistic. According to Jason Hickel (2016: 754), 680 million people in India alone lack the means to meet their essential needs. That figure is more than double what the World Bank's numbers suggest for India.

If we think of poverty as low income or low wealth, it is a concept that does not exist in a common property regime. An impoverished person lives in a community with abundant resources, but they are not entitled to use enough of those resources to thrive. Government-enforced rules of access (called "property rights") forbid it. In a common property regime, no rules of access come between individuals and the environment. People in state societies regularly die because they lack entitlement; that is, from poverty and the complications of poverty, such as malnutrition, exposure, and poverty-related diseases. Famines tend to be caused not by a lack of food availability, but by a collapse of entitlement (Sen 1981). By creating poverty and famines, state societies create forms of economic risk that simply don't exist in societies with a common property regime.

The poorest workers in the world today are not simply impoverished; they are in economic distress, as Mohammed Sharif (2003) confirms with evidence from the lowest-wage workers in the Indian subcontinent. He writes, "workers are found to engage in unusually long hours—an average of 72 hours a week—in physically exerting jobs." This amount of work is more than 30 hours per week greater than the average of all observed hunter-gatherer bands, and more than 20 hours per week greater than the band with the highest measured level of work effort. The incredibly high levels of work effort in Sharif's study are accompanied by fewer hours of rest and reduced food consumption. When workers with such jobs get a pay increase, they usually work fewer hours so that they can catch up on rest.

Their economic distress is clear. Their wages are so low that they must push themselves to the point of exhaustion to get by; often they also need to press their very young children into the labor market as well (Sharif 2003). There is little or no reason to think that any nomadic hunter-gatherers experienced such demanding work. Perhaps it happened during a brief crisis, but even that is unlikely for the vast majority of hunter-gatherers.

In developing countries today, 250 million children between five and fourteen years old toil in economic activity (not including domestic labor). Nearly half of them work full-time (Ashagrie 1998), sacrificing their education—and possibly their growth and future health—to obtain short-term bare subsistence. According to Lee (1968: 39), "The Bushmen do not have to press their youngsters into the service of the food quest, nor do they have to dispose of the oldsters after they have ceased to be productive." Furthermore, child labor in other hunter-gatherer societies tends to be isolated to group economic activities or in the context of learning.

Today, according to the Food and Agriculture Organization of the United Nations (2008), 963 million people across the world are hungry, and their data might again be overly optimistic. Hickel (2016: 761) writes, "In reality between 1.5 and 2.5 billion people do not have access to adequate food, and between 3.5 and 4.3 billion remain in poverty." Almost 16,000 children die from hunger-related causes every day (Black et al. 2003). Yet, according to Woodburn (1968a: 51), "For a Hadza to die of hunger, or even to fail to satisfy his hunger for more than a day or two, is almost inconceivable." Sahlins (1974: 36–8) argues that poverty makes people in modern societies more susceptible to starvation and death from complications of deprivation than hunter-gatherers in the Arctic in winter.

Safe drinking water is inaccessible to about 1.1 billion people in the world. About 3.5 million children under five die from drinking unsafe water every year (Gadgil 1998). This situation is entirely caused by human activity in the forms of pollution and faulty infrastructure. It is safe to say that no human being (including those in arid regions) regularly lacked access to potable water before the rise of state societies, privatized resources, and the pollution of almost every river system in the world. Small-scale stateless societies do not produce pollutants in large enough numbers to have a significant negative impact on the watershed. If the water is bad in one area, they simply move to another. Over a billion people in the world today are unfree to move

to an area with safe water, and water pollution is so widespread that many of the world's rivers and lakes are no longer potable.

Extreme poverty is not limited to lesser-developed nations. It appears in smaller, but significant, numbers in very wealthy countries. In the United States, 3.55 million children live in households with extreme poverty (defined as an income of less than $2 per day). This level of poverty extends to 4.3 percent of all nonelderly households with children (Shaefer and Edin 2013). Food insecurity affects 14.5 percent of American families, and 5.4 percent have insufficient food intake for some family members because of poverty. Similar numbers are affected by housing insecurity and inadequate childcare, which are unheard of in band societies. On any given night about 640,000 Americans are homeless (Iceland 2013: 44–5). Homeless people face many difficulties that do not exist in band societies. These include being reduced to eating other people's garbage and having no legal place to eat, sleep, or urinate (Waldron 1993)—not to mention a place to hunt, gather, fish, or farm. Levels of stress among the poor and the precarious are high to the point at which they have serious negative effects on mental health.

Hunter-gatherers seem to have no fear of deprivation at all. Many European explorers and ethnographers (going back as far as Tacitus, mentioned above) observed hunter-gatherers had an optimistic, devil-may-care attitude toward the future (Kelly 1995: 16). Sahlins summarizes these accounts:

> Harassment is not implied in the descriptions of their nonchalant movements from camp to camp, nor indeed is the familiar condemnations of their laziness. A certain issue is posed by exasperated comments on the prodigality of hunters, their inclination to make a feast of everything on hand; as if, one Jesuit said of the Montagnais, "the game they were to hunt was shut up in a stable. . . . Not the slightest thought of, or care for, what the morrow may bring forth". . . . Two interpretations of this supposed lack of foresight are possible: either they are fools, or they are not worried—that is, as far as they are concerned, the morrow will bring more of the same. (Sahlins 1974: 89)

Sahlins, as mentioned above, is controversial. His claims about "the original affluence society" were exaggerated, but Nurit Bird-David (1992) argues that anthropologists never dismissed him entirely,

because on this issue he "had a point." She finds that hunter-gatherers are confident that nature is abundant and that it will share its fruits with them in normal circumstances, even though they know they will face occasional hard times. This confidence is deep and reflected in a widely held view among foragers of the earth as a "giving environment" which seems to always allow the certainty of at least a sufficient amount of food, if not for maximum health, then at least for survival (Turnbull 1968: 136; Bird-David 1992; Lee and Daly 1999: 4). Few people in the slums around the world today working 70-hour workweeks or foraging in the garbage of others view their environment as giving. Neither do the poor, the homeless, or the people with precarious jobs in some of the wealthiest states—despite a great deal of propaganda from property owners and governments encouraging them to view the market that way.

Expressions of contentment and confidence are found throughout ethnographic accounts of band societies. Even Hill and Hurtado (1996: 78–9), who have worked so hard to debunk the perception of foraging life as "affluent," make similar observations on this issue, writing "Although the Ache are one of the poorest groups of people in the Americas they are generally content as long as their children are healthy and they maintain good relations with their neighbors." Richard Lee (1979: 204) asked one Ju/'hoansi man why they don't plant crops, and quoted him as replying, "why should we plant when there are so many mongongos in the world?"

We have no doubt that capitalist states could allow every citizen to share the confidence the hunter-gatherers have in their environment. Instead, most of them choose to instill in workers the very real fear of being unable to meet their basic needs.

3. HEALTH AND LONGEVITY

Perhaps the central achievement of capitalist state society has been the doubling of life expectancy that has occurred in most states since 1800. Overall health measures indicate people in industrial state societies are significantly healthier on average than people in band societies. Modern medicine has cured many of the diseases that killed hunter-gatherers for thousands of years. Many of the dangers faced by hunter-gatherers (infectious diseases, animal attacks, exposure, and so on) have been or can be eliminated by modern society. There is little doubt that, on average, hunter-gatherers are less healthy and live

shorter lives than people in modern industrial societies. Do these facts indicate that, at least in the area of life and health, the Hobbesian hypothesis is confirmed? Whatever other mixed results government and private property have delivered, is it fair to say that these institutions have delivered a longer, healthier life to everyone? We strongly doubt it.

Although the *average* person in modern, industrialized society does in fact live a longer, healthier life than the *average* person in a hunter-gatherer band society, as in the categories discussed above, increases for the average have not been shared by everyone. Some people live shorter, less healthy lives. Once again, the problem is not simply a matter of failing to help everyone. Contemporary state societies have done avoidable things that cause significant numbers of people to be less healthy than their foraging cousins.

This section uses two arguments to show that the Hobbesian hypothesis is unfulfilled in terms of life and health. First, although modern societies have made the average person better off in terms of life and health by eliminating many of the diseases and other risks faced by people in small-scale societies, they have also introduced new diseases and risks that have made significant numbers of people worse off in these same terms. Second, many societies throughout history—including the societies in which Hobbes and Locke lived—failed to deliver significantly better life and health on *average* than hunting and gathering societies do. Most state societies from 3,000 BCE through 1800 CE at least, and perhaps through 1900, probably had worse life and health on average than their stateless predecessors. To make these arguments, we need to take a closer look at some of the data.

Reliable knowledge of the lifespans of typical hunter-gatherers does not exist. Only about five hunter-gatherer bands (the Ju/'hoansi, Ache, Agta, Hadza, and Hiwi) have been studied closely enough even to estimate the complex statistic, *life expectancy at birth* (Pennington 2001; Gurven and Kaplan 2007). We cannot assume the information about life expectancies in these bands is representative of all hunter-gatherers even of recent times (much less of the distant past). These bands all lived in difficult, out-of-the-way environments that colonialists had largely ignored, and all of them were being affected by encroachment of modern societies at the time they were studied; all were in the early stages of integration into the nation-state system. If one sees first contact and the appearance of ethnographers as steps

in the process of integration, hunter-gatherers can be observed *only* while going through transition. It is possible that the marginal environments of modern hunter-gatherers, loss of territory, introduction of diseases, and other factors could cause ethnographically observed hunter-gatherers to have poorer health than unobserved hunter-gatherers, but it is also possible that the beginning of state protection, the loss of competitors, trade with agricultural peoples, and other factors gave observed groups a higher life expectancy than unobserved hunter-gatherers. We cannot be sure which effects are greater. Yet, studies of these groups provide some of the best evidence available, and some generalization is possible by comparing these results with evidence from other fields, such as archaeology.

Life expectancy has increased greatly around the world in the last century or two. By the early 2000s, life expectancy in modern nation-states averaged sixty-six years, ranging from thirty-nine years in Zambia to eighty-two years in Japan (Pennington 2001; Gurven and Kaplan 2007). According to Michael Gurven and Hillard Kaplan (2007), life expectancy among the five hunter-gatherer bands mentioned above ranged from twenty-one years among the Agta to thirty-seven years among the Ache. A simple average of those five is thirty-one years. According to another study of the same data by Renee Pennington (2001), life expectancy among these groups ranged from twenty-four years among the Agta to thirty-seven years among the Ache. The Agta were an outlier in both studies. The quality of the data for the Agta was not as good as for the others, and the Agta lived in extremely difficult circumstances, facing loss of territory, declining population, and attacks by outsiders. In fact, *after* assimilating into peasant life in the Philippines, Agta life expectancy remained twenty-one years in the Gurven and Kaplan study and *declined* from twenty-four to twenty-two years in the Pennington study. As low as their life expectancy was on their own, integration into the global market has yet to deliver an improvement. But even leaving the Agta out entirely would increase the range only to twenty-seven to thirty-seven years and the average only to 33.5 years. Any way you interpret this data, the life expectancy of hunter-gatherer bands compares very poorly with that of the nation-states of the world today.

However, Western perceptions of differences in lifespan are exaggerated. People often interpret life expectancy of thirty or thirty-five years to mean that people are expected to grow old and die at that age. It is easy to forget that life expectancy at birth is an average of all the

times at which a person could die from all different causes. Imagine a society in which half the people died in infancy and half the people died at about seventy years. Average life expectancy in that society would be about thirty-five years, but someone who was thirty-five years old would not think of herself as an old woman or expect to be near death. She would expect to have thirty-five more years to live. A similar effect is evident in hunter-gatherer bands. High infant and child mortality greatly brings down average life expectancy in band societies, but once that period is past, people's expectations for how long they can live, barring unforeseen events, are only slightly shorter than in modern state societies.

According to Gurven and Kaplan (2007: 339), "Infant mortality is over 30 times greater among hunter-gatherers, and early child mortality is over 100 times greater than encountered in the United States." Two-thirds of people who reach age fifteen in a hunter-gatherer society live to be grandparents, and they live as grandparents for an average of twenty years (Gurven and Kaplan 2007: 348). According to Hill and Hurtado (1996: 194), an Ache woman "who survived to age twenty could expect on average to live until age sixty." Evidence from several hunter-gatherer peoples "does not support the widely-held belief that few people lived beyond 45–50 years in distant past human societies or more recent aboriginal societies . . . No living human population has ever been observed with such high adult mortality rates" (Hill and Hurtado 1996: 193).

Some researchers examine how long adults can expect to live by looking at the age of senescence (the onset of physical decline associated with aging) and the modal age at death (the age at which the largest number of people die). Gurven and Kaplan's sample shows an average modal age at death of about seventy-two years, with a range of sixty-eight to seventy-eight years. Senescence and modal age at death are only slightly higher in contemporary state society. For example, modal age at death in the United States today is eighty-five years. However, modal age at death is much higher for hunter-gatherers than for other primates. Modal age at death is fifteen years for wild chimpanzees and forty-two years for captive chimpanzees. Something must have happened deep in the hominin evolutionary past to cause our ancestors to obtain a potential healthy lifespan reaching into their seventies and stretching twenty to thirty years beyond normal human reproductive age (Caspari et al. 2004; Gurven and Kaplan

2007). Therefore, a significant portion of the earliest human foragers, living perhaps 200,000 years ago, must have reached the age of sixty or seventy. There must have been many of them, and they must have had a significant positive effect on the reproductive success of their children and grandchildren, or these unusual genes would not have become common.

The doubling of life expectancy has come primarily by increasing the percentage of people who live to the age of senescence. Contemporary states have had much less success mitigating the effects or increasing the age of senescence, which is only 10–15 percent higher than it was in 1800 or most likely in the Pleistocene. Given the right circumstances, a hunter-gatherer who reached age fifteen could expect to live into her seventies, to meet her grandchildren and possibly her great-grandchildren, but she could also expect tragedy in her life, with the early death of some of her children, relatives, and friends.

In addition, while hunter-gatherers may lack the benefits of modern medicine in extending life expectancy through the curing and prevention of infectious diseases and injuries, they may actually be healthier than the residents of states in some surprising ways. A study by S. Boyd Eaton and Stanley B. Eaton III (1999: 455) finds that hunter-gatherers "are largely immune to the chronic degenerative diseases which produce the greater part of all mortality in affluent nations." Obesity is rare. Many of the diseases associated with high-stress sedentary urban living are absent. Diabetes, heart disease, and stroke are almost unknown. "Blood pressure does not increase with age among hunter-gatherers. . . . Cholesterol level of hunter-gatherers . . . is much below that of urban industrial people" (Eaton and Eaton 1999: 451–2). It seems that most of what hunter-gatherers die of we have cured or prevented, but most of what we die of did not afflict them at all. Along with the cure to many diseases, modern society has delivered new life-threatening diseases.

One might suspect that these findings are simply the result of people dying before these diseases tend to appear. But Eaton and Eaton's studies take age into account, and as the discussion above indicates, there is a reasonably large population of older people in hunter-gatherer societies to observe. Hunter-gatherers' low exposure to toxins and their diet (low starch, low fat, no processed foods, no additives, high fiber, high protein, and high in fruits and vegetables) account for their extremely low cancer rates; "One forager woman in 800 develops

breast cancer, while in the United States it is more like one in eight"
(Eaton and Eaton 1999: 454). A person who suffers from one of these
diseases, especially at a young age, is quite possibly less healthy and
shorter-lived than she would have been as a hunter-gatherer.

While modern states have failed to completely fulfill the promise of
the Hobbesian hypothesis despite their enormous progress in improv-
ing average life and health, most states in human history failed even
to improve *average* life and health. Unwarranted extrapolation prob-
ably tempts people to assume that our most distant ancestors must
have had the shortest lifespans. We see a solid trend of lifespans get-
ting shorter as we look back to 1800, and we tend to think they were
even shorter in 1700 and far shorter in 10,000 BCE. But that is a very
bad assumption. The trend toward rising lifespans and living stan-
dards began only after 1800 (Clark 2007: 1). Evidence indicates that
life expectancy declined slightly with the invention of agriculture and
again with the formation of the first states, and fluctuated thereafter,
sometimes higher and sometimes lower, until the trend toward rising
living standards began in the 1800s (Angel 1975: 179).

From the origin of the first states 5,000 years ago until that trend
began in the 1800s, the introduction of government and landowner-
ship appears to have *reduced* health and life expectancy. Studies of
skeletal remains show that adults who died 30,000 years ago were
taller and died with fewer missing teeth than modern humans living
in the United States (Angel 1975: 179; Harris 1977: 14). Tahitians
who were living a hunting and gathering existence were taller than the
British who first came upon them in the 1760s (Kenny 2006; Clark
2007: 60). Gurven and Kaplan (2007) present data for Sweden in
the 1750s in their article about hunter-gatherer life expectancy. Their
comparison reveals that the average life expectancy and mortality
rates of eighteenth-century Swedes was right in the middle of the rates
experienced by observed band societies. By 1800, life expectancy in
advanced nations was no higher than that of hunter-gatherers—about
thirty to thirty-five years—and after that it began to increase only very
slowly (Eaton and Eaton 1999: 452; Kenny 2006: 14; Clark 2007: 1,
ch. 5). Life expectancy in France in the second half of the eighteenth
century was only 27.9 years, well below that of the simple average
of band societies mentioned above (Livi-Bacci 2007: 106). Hobbes
(1962 [1651]: 100) lived to be ninety-one, but he lived in a society
in which the lower class almost certainly had a life expectancy below

that of the Native Americans he accused of having lives that were "nasty, brutish, and short." Hobbes simply did not know enough about stateless peoples or his less-advantaged compatriots to make any meaningful comparison of their health or longevity, nor do many of the philosophers who continued to take his word for it.

One might wonder, if societies with government and private land-ownership didn't initially deliver longer, healthier lives, why did almost everyone gradually switch? States seem to have simply out-competed hunter-gatherer bands in the competition for territory, only because they could sustain a much *larger* population on the same area of land—not because they sustained a longer, healthier, or happier life for members of the population.

The trend toward rising life expectancy has reached the poorer nations of the world only in the last few decades, and it has yet to reach the poorest populations within the poorest countries. As late as 1900, life expectancy for non-white males in the United States was 32.5 years (Harris 1977: 14). Consider that: placed on what was then the pinnacle of thousands of years of technological progress, in a largely unregulated capitalist state, parents of the *average* non-white male in the United States would have improved his chances of living to see his grandchildren if they somehow could have had him adopted at birth by the Ache, who maintained a life expectancy of only thirty-seven years in a foraging economy in the highlands of Paraguay on poor land that nobody else wanted.

All of this evidence shows that rising life expectancy is a very recent development attributable to improvements in medicine and nutrition, not to the development of states or property rights. It is inappropri-ate to justify states and private landownership based on a trend that began several millennia after those institutions were first created (and 150 years after Hobbes claimed increased life expectancy was already accomplished). It is even less appropriate to claim the fulfillment of a proviso designed to protect the least-advantaged group of people based on a trend that has yet to reach the least-advantaged group of people.

4. FREEDOM

This section considers whether people are freer in contemporary state societies than in band societies. Using "freedom" and "liberty" inter-changeably, we assume (but do not argue) that freedom benefits people.

We do not assume that freedom necessarily is (or is not) an overriding concern that trumps all other values. We consider the relative freedom of people in state and stateless societies in terms of five different conceptions of freedom: (A) political freedom, (B) positive freedom, (C) negative freedom, (D) status freedom, and (E) sexual freedom and freedom from gender- and group-based oppression. These are only a few of the many conceptions of freedom in the political and philosophical literature. We do not argue that these are the most important conceptions of freedom. We distinguish them using a simplified version of MacCallum's (1967: 314) formula: the freedom of agent x, from constraint y, to do action z. In each case, we use individual freedom for x, distinguishing the five concepts by identifying the constraint and the action.

Although freedom is a much different issue than the presence of luxuries, the same measurement problem applies. When comparing two sets of things a person is free to do, the *value* of those liberties is far more important than the *number* of them.[1] But of course, the relative values of different liberties is subjective, and any effort to come up with a rank order of the importance of specific liberties is bound to be controversial. We deal with this problem on an ad hoc basis. Our general solution is that we can only be sure that one person is freer in one circumstance than another if the set of liberties in situation A dominates the set of the liberties available in situation B. That is, B is a subset of A.

A. Political Freedom

We use the term "political freedom" for the freedom from all constraints for individuals who live under the law to participate equally in the making of it. As discussed above, bands have very few laws, they make political decisions collectively, and anyone who doesn't want to live by the rules is free to camp on their own or start a new group. This would seem to be the maximum possible political freedom. We do not see how political decision-making could have wider participation. Some people might be more persuasive than others, but that would happen in any society. Political freedom decreases steadily as scale increases. Slightly larger-scale societies, or what were once called "big man" societies (Sahlins 1963) have recognized leaders who usually hold relatively little actually power. Chiefdoms, which may include tens of thousands of people, are characterized by the presence of leaders who sometimes have fairly limited authority, but may in some cases hold fairly extreme political power—even sometimes

including the power of life and death over subjects (Earle 1991). And finally, even the earliest states in places like Mesopotamia, Egypt, and China were characterized by extremely powerful kings, who sat at the heads of both extensive bureaucratic governments and religious establishments (Trigger 2003).

The recent trend toward political democratization could be conceived of as a revival of some of the political freedom that band societies have had, perhaps, for a very long time. But even the most democratic nations cannot claim to share influence over the political process as widely or evenly as band societies. The influence of privileged people, corporations, and lobbyists is undeniable. And even apart from systemic unfairness, the size of most states inherently creates a gap between citizens and leaders. Hopefully, democracies will continue to improve, but they will have a hard time matching the political freedom of band societies.

B. Positive Freedom

Like freedom itself, "positive freedom" has many conceptions. We focus on one that equates it with opportunity: the freedom of an individual from all constraints to do more of the things they might want to do. In this sense, the more (potentially worthwhile) opportunities a person has, the freer they are. We do not deal with another conception of positive freedom: the freedom of the will from constraints within one's own mind (Berlin 1969).

Freedom as opportunity is the conception of freedom for which the capitalist state has the best chance of beating band society, but the problem here is revealed by the pattern displayed above in the sections on luxuries, leisure, and basic needs. The wealthy in state societies have long had enormous opportunities that are unavailable in stateless societies; in the last century or two most countries have gotten to the point where the average person has great opportunities, but the most disadvantaged people have opportunities that leave them worse off than people in hunter-gatherer bands. Capitalist states would have to find a way to share their many opportunities more widely to have hope of fulfilling this proviso in these terms.

One might be tempted to argue that opportunities are available to everyone in capitalist states; some people simply fail to take advantage of them. In a complex economy it is difficult to tell exactly what opportunities are genuinely available to any particular individual.

But the claim that opportunities are always universally available is rather strange. It would mean that disadvantaged people in state society have the opportunity to consume more and work less than people in stateless society. But they choose to consume less and work more. Why would they do that? The obvious answer is that disadvantaged people in state society don't actually have the opportunity to work less and consume more.

Great educational opportunities are available to most people in state societies, but they also create the situation in which people need more education to function in their society, and they sometimes fail to educate people up to that level. Thus, they create the negative opportunity of under-education. Everyone in band society grows up with the opportunity to learn all the skills they need to survive and thrive in their community. Not everyone in state society does.

People in stateless societies have very few work opportunities. Generally speaking, they have opportunities to hunt, gather, fish, farm, or scavenge—all at very little better than a subsistence level. Those are extremely poor work opportunities. But they have one attractive aspect that capitalist states only offer to the wealthy few: the opportunity to be one's own boss.

C. Negative Freedom

We use a broad definition of "negative freedom": the freedom of an individual from constraints caused by other people, to do whatever. Negative freedom also has many conceptions, depending mostly on further specifying what one is free to do—the "whatever" in our broad definition. The condition that makes all of them "negative" is the focus on constraints caused by other people. Negative freedom is the freedom from coercion, aggression, interference, or involuntarily imposed obligations. Negative freedom has nothing necessarily to do with the presence of opportunity. For example, a person trapped in a crevasse has very low opportunity. If she was pushed into the crevasse, she also has low negative freedom, but if she fell into the crevasse, she has very high negative freedom, because other people are not constraining her at all. Negative freedom is particularly important to propertarians, who often argue that its moral value is overriding, such that society should not sacrifice the negative freedom of one person either for their own good (in terms of opportunities) or for someone else's (even someone with few opportunities). Propertarians often argue that capitalism

(with or without a "state") has greater negative liberty than any other system (Nozick 1974: ix, 149–50, 160–4, 163, 169, 235, and 273–4; Rothbard 1982: 41–3, 52, 162; Boaz 1997: 59: 291; Murray 1997; Mack 2002: 254–5; Mack 2006: 110–12). Even many non-propertarians concede that negative freedom is important and that it has a strong connection with capitalism (Berlin 1969: 124–5; Nagel 1983; Arneson 2003: 139; Peter 2004: 7).

The problem with this belief is that it usually pits the capitalist state against the socialist state, the communist state, the feudal state, or some theoretical alternative. People making such claims rarely if ever ask whether capitalism delivers more negative freedom than a stateless society with a common property regime. This section argues that people in band society have greater negative freedom than disadvantaged people in contemporary capitalist state society. Although freedom is difficult to measure, freedom in band society dominates the freedom of disadvantaged people in state society. The negative liberties extended to propertyless people in state society are a subset of the negative liberties extended to people in band society, so that our conclusion is firm despite the difficulty in measurement.

The extensive negative freedom of nomadic hunter-gatherers is well-documented and uncontroversial (Redfield 1967: 21; Lee and DeVore 1968b; Turnbull 1968; Woodburn 1968a: 52; Woodburn 1968b: 103; Woodburn 1982: 434; Bird-David 1994: 591, 597; Lee and Daly 1999: 4; Boehm 2001: 72–3; Renfrew 2007: 148). For example, Eleanor Leacock (1998: 143) writes, "What is hard to grasp about the structure of the egalitarian band is that leadership as we conceive it is not merely 'weak' or 'incipient,' as is commonly stated, but irrelevant." Morton Fried has the most vivid description:

> It is difficult, in ethnographies of simple egalitarian societies, to find cases in which one individual tells one or more others, "Do this!" or some command equivalent. The literature is replete with examples of individuals, saying the equivalent of "If this is done, it will be good," possibly or possibly not followed by somebody else doing it. More usually the person who initiates the idea also performs the activity. (Fried 1967: 8)

To the extent that people within the band have obligations to the group or each other, virtually all of them—aside from the obligation to respect other people's negative freedom—can be understood

as voluntarily accepted because they all have the option to camp a kilometer or two away and be free of any obligation to the group. But even the obligations within the band tend not to be enforced by coercion. We have said that people in the band are "obliged" to share what they have, but the enforcement mechanism is almost entirely criticism and ridicule, not coercion or interference.

The extensive freedom of people in hunter-gatherer band societies is uncontroversial not only among anthropologists, but also among propertarians. In an article entitled "Hunter-Gatherers: The Original Libertarians," Thomas Mayor (2012: 491) writes, bands had "a level of individual autonomy in decision making that far exceeded anything experienced since the introduction of extensive agriculture." Importantly, Mayor (2012: 498) correctly recognizes one reason band members are so free: "Hunter-gatherer societies were free primarily because each individual possessed effective economic mobility. In the face of attempted political or economic exploitation, the hunter-gatherer always had the opportunity to pick up and move without paying a significant price for doing so."

This economic mobility is apparent in ethnographic descriptions. Woodburn (Woodburn 1968a: 52) writes, "Hunting is not a coordinated activity. Men hunt individually and decide for themselves where and when they will go hunting." According to Harris (1977: 69), band members, "decided for themselves how long they would work on a particular day, what they would work at—or if they would work at all. . . . Neither rent, taxes, nor tribute kept people from doing what they wanted to do." This ability to work for oneself, and bands' use of flux or fission (discussed in Chapter 9), affords them the "effective economic mobility" that Mayor wrote about.

The comparative lack of effective economic mobility in most state societies today is incredible. As mentioned above, propertyless people cannot work for themselves. If they attempt to hunt, gather, fish, farm, scavenge, or build a shelter, someone will interfere with them and force them to stop. The propertyless earn the right to their necessities by accepting a subordinate position for a property owner. Jeremy Waldron (1993) discussed the unfreedom of the homeless to do some of the most basic human functions, such as to sleep unmolested, to have sex in a private place, and to have a legal place to eat or to urinate. Waldron (1993) argues that the homeless are not *unable* to do these things (which would imply a lack of positive freedom); they are unfree to do them in the most negative sense of the word.

One might argue that the homeless can get all of these things if they accept a job opportunity. Maybe so, but opportunity is not negative freedom; opportunity is positive freedom. As Waldron (1988: 41, 132, 172, 411) argues, "an opportunity to become free is not freedom. . . . So long as the opportunity remains unconsummated, the person who possesses it and who is even actively pursuing it, remains in a negative sense unfree." Daniel Attas (2005: 7), G. A. Cohen (1988; 1995: 57; 1998; 2011a), Jeffery Friedman (1997: 428), Allan Gibbard (2000), Alan Haworth (1994: 45–6), and Michael Otsuka (2003: 19) make similar arguments about the loss of negative freedom a property rights system imposes on propertyless people.

The important difference is that bands have common property regimes, meaning that everyone can use the land and consume its products, but no one can establish ownership of the land. In state society, virtually all of the land is owned (either privately or publicly). Very few state societies still have a commons where people are free to work for themselves or to pitch a tent and live as they please. A property right is the legal right to coerce. If land is owned, the government uses coercion to establish and enforce the owner's legal right to interfere with anyone else who might want to use that land without the owner's approval. In a negative sense, a person who owns land is free to do some things a person who lives on a commons does not, and vice versa. So, one cannot say that a private property regime necessarily reduces freedom, but one only gains the new freedoms associated with property if one *owns* property. If everyone owned property, then all would have some of these new freedoms, but state society today has propertyless people. If common resources are privatized to others but not you, you get no new liberties, only new forms of coercion.

Most propertarians do recognize that the move from a common property regime to a private property regime causes people to lose liberty. As Chapter 4 discussed, the term "the Lockean proviso" was coined to ensure that this loss of freedom would not be harmful to anyone (Nozick 1974: 178–82). But propertarians using the proviso almost universally resort to *positive* freedom arguments (Mack 2002: 246–8). For example, Nozick (1974: 175) writes, "the things I do with the grain of sand I appropriate might improve the position of others, counterbalancing their loss of the liberty to use that grain." The opportunity to find a job and buy Nozick's improved grain of sand might well be valuable, but it is not a negative liberty. Therefore, propertyless people in capitalist states today are unequivocally less

free than people in band society. If propertarians are serious about the absolute priority of negative freedom, they either have to become advocates of the nomadic hunter-gatherer economy or they have to find a way to relieve some of the coercion imposed on propertyless people under capitalism.

D. Status Freedom

One of us has elsewhere argued that the negative freedom issues discussed above put propertyless people in a position that threatens their status as free individuals. Widerquist (2009; 2010c; 2013) defines status freedom as "effective control self-ownership," or the freedom of an individual from constraints (directly or indirectly) created by other people to exercise the effective power to accept or refuse active cooperation with other willing people. This definition is negative because it is limited to constraints caused by other people. The "effective economic mobility" (Mayor 2012: 498) of people in a common property regime protects their status freedom. But states coercively enforce a property rights system in which owners or the police will interfere with any propertyless people who try to work only for themselves. Directly, coercion is applied only to people's use of external assets (resources and the things people make out of them). But indirectly this coercion makes people unfree to live unless they work for someone else, because people are animals who die without certain resources. They have a choice of employers, but they are still forced to work for someone who owns property.

   Freely chosen employment does not threaten status freedom, but forced work does, even if the force is indirect and the group for which one is forced to work contains many employment options (Widerquist 2009; 2010c; 2013). A nomadic hunter-gatherer is free to live and work on their own as long as they feel comfortable. A propertyless person in state society is unfree to do so at all. Fewer than ten hunter-gatherers can start a viable band. A group of one million propertyless people in state society are legally unfree to form a group and work only for each other in any way that will keep them alive. This loss of freedom is significant. Many people today have little freedom to do anything but follow orders 40 hours a week all of their adult lives, and as argued above, following those orders often leaves them and their children in deeper poverty than their foraging ancestors experienced 12,000 years ago.

E. Sexual Freedom and Freedom from Gender- and
Group-Based Oppression

Grouping these forms of freedom together makes them difficult to define in terms of MacCallum's formula, but in the interest of space, we accept the risk of vagueness in our attempt. The freedom from gender-, sexual-, and group-based oppression is the freedom of an individual from constraints created by other people to live as an equal, control their private interactions, and exercise their identity in a group. These freedoms are negative because it is difficult to oppress someone without interfering with them in some way. Most forms of group-based oppression are rare in band society. Their small-scale and flexible membership forces them to accept people with different back-grounds. As Chapter 9 discussed, observed band societies tend to have at least relative gender equality; a level that was probably unmatched by any state society until the twentieth century and that is still lacking in many state societies today. In most observed bands, women take full part in decision-making and have the same freedom from author-ity and effective economic mobility as any man. But significant gender oppression has been observed in some small-scale stateless societies, such as the Yanomamö, who live in communities only about two to four times the size of bands.

In a society in which no person is thought to have the right to tell another what to do, sexual freedom tends to be high. For example, many Native American societies recognized "two-spirit people" who were essentially transgendered. Two-spirit people could marry any one-spirit person, achieving a form of same-sex marriage (Flannery and Marcus 2012: 70–1). This system was not full marriage equality, but it was closer than most states have today, and it came without social stigma or any loss of status.

5. CONSENT

All of the previous sections addressed quality-of-life measures, but the contractarian argument ultimately rests on *preferences*. Contrac-tarian theorizing about the state of nature is only a substitute for the unavailable option to choose statelessness. But that option has not always been unavailable. States and stateless societies existed side by side or one after the other for most of the last 5,000 years. Historical accounts of those situations provide two kinds of relevant evidence:

expressed preference and observed choice. Chapter 7 calls the effort to actually give people the choice, "Klosko's test," because Klosko (2004: 19) claims to know what the test results would be, writing, "One of my governing assumptions . . . is that the overwhelming majority of inhabitants of modern societies do not prefer to live in the woods or some remote outpost." Evidence of expressed preferences and observed choices can test that assumption. Section 5A discusses methodological issues with this test. Section 5B discusses expressed preference. Section 5C discusses observed choice.

A. Problems with Klosko's Test

This test has four problems, most of which are likely to bias the test in favor of justifying the state. First, the most fundamental problem with this test is that it assumes the political obligation it attempts to justify. The idea of contractarian theory is that sovereign authority over any particular territory comes from the consent of *all* the people in that territory. If all the people who don't consent are obliged to leave the territory, then the state has sovereignty over that territory *despite* a lack of agreement—not because of agreement. Therefore, this authority would have to come from something other than the unanimous agreement that contractarian theory requires. Despite this issue, the test can tell us something about consent. If peripheral stateless areas exist, and no one wants to go there, we could take their behavior as an indication of consent.

Second, even just as an indicator, this test is a biased indicator, because it exaggerates the cost of dissenting from the agreement. It interprets the costs of *moving* out of state authority as costs of *being* outside state authority. Because individuals develop personal attachments to people and place, the moving-away test exaggerates the costs of actually living outside state authority. Additionally, the test misidentifies some benefits of location as benefits of the state. If the person in question is a native of Los Angeles (where subsistence by fishing was once very easy) and Klosko's remote woods is in northern Alaska (where subsistence is much more difficult), the exaggeration could be enormous.

Third, Klosko's test has a potential problem recognized by Hampton (1988: 271), in which "choice is essentially 'rigged' by a political society that creates in us the very reason we use to choose it and that

appears to justify its existence." Klosko (2004: 5; emphasis added) recognizes the same issue, arguing that if the benefits of state society are to justify political objections, "the subject . . . must require them *from the state*." People are afraid to go live in Klosko's woods partly because they have never done so, because they have never been taught the skills necessary to do so, and possibly because the state has grabbed so much territory and altered the natural environment so much that life in the woods is much more difficult today than it was in Thoreau's times or in prehistoric times. The use of historical data involving people with experience both with state and stateless society can at least help with this bias.

Fourth, to reduce the above biases the state would have to make the periphery extremely accessible and take whatever action is necessary to reduce people's dependence on the state. It might be hard to figure out how to do that, and it would then create the problem that unreasonable, irrational, or ill-informed people would choose statelessness, possibly to use it as a base to do unreasonable things to others. This fourth problem is less likely the less accessible stateless regions are, and stateless regions have long been remote, so we can expect the test to be greatly biased in favor of undercounting dissent, but it can provide some indication of people's preferences.

B. Expressed Preference

The above discussion shows that many ethnographers and others have observed strong expressions of contentment by people in band society (Turnbull 1968: 136; Bird-David 1992; Kelly 1995: 16; Hill and Hurtado 1996: 78–9; Tacitus 1996 ; Lee and Daly 1999: 4). Unwillingness to be incorporated into larger-scale societies is a running theme among stateless peoples (Marshall III 2002; Marshall III 2005; Brown 2007; Scott 2009).

At least one aspect of the behavior of people in band and other stateless societies might signal discontentment. Ethnographers, missionaries, and others who have recorded contact with people in small-scale societies have often noticed (or complained) that members of small-scale societies constantly protest about not having enough to eat and harass visitors with request for gifts of food or tools or anything else they have that might be useful (Lee 1979: 458–60; Peterson 1993; Kelly 1995: 22; Hill and Hurtado 1996: 319–20; McCall 2000).

Even Charles Darwin complained about natives begging in Tierra del Fuego in 1839:

> Young and old, men and children, never ceased repeating the word yammer-schooner, which means "give me." After pointing to almost every object, one after the other, even to the buttons on our coats, and saying their favorite word in as many intonations as possible, they would then use it in a neuter sense, and vacantly repeat "yammer-schooner." After yammerschoonering for any article very eagerly, they would by a simple artifice point to their young women or little children, as much as to say, "If you will not give it me, surely you will to such as these." (Darwin 1909: 234)

Although Darwin's description is pejorative and judgmental, the situation he describes is typical of something ethnographers have reported around the world. Such observations might make people think that nomadic hunter-gatherers are discontented with their own lots and envious of people from larger-scale societies. Early explorers readily attributed the apparent contradiction between this behavior and natives' unwillingness to work for Europeans to their being lazy, greedy, or dumb, but modern ethnography indicates that any such interpretations come from a lack of understanding of the role that sharing plays in many small-scale societies.

Many ethnographers have observed that hunter-gatherer bands (and some slightly larger-scale societies) throughout the world use a social mechanism anthropologists call "demand sharing" (Lee 1979: 458–60; Bird-David 1990: 195; Peterson 1993; Kelly 1995: 22; McCall 2000; Barnard 2004a: 12). The norm in band societies from the Arctic to the tropics appears to be: if you camp with us, you share what you have—at least when asked. If you have two spears when someone who has none asks for one, you must give it. If you have only one spear but you are not using it when someone asks, you must give it. And whether it is to be given back later is often unclear. This norm causes friction between individuals, but it also allows band societies to maintain social and economic equality. No one flaunts their wealth, and if there is food in camp, no one goes hungry (Leacock and Lee 1982: 8). The encounter between Darwin and the Fuegians was between two groups of people who didn't understand each other's

very different norms of material culture. The Fuegians were telling Darwin that he was violating norms that didn't exist in his society, and Darwin was judging the Fuegians for violating norms that didn't exist in their society.

If this understanding of demand sharing is correct, hunter-gatherers' requests for gifts of all kinds are not a sign of discontentment, but merely efforts to enforce a norm of equality. It doesn't necessarily imply that they view a capitalist state as inherently more desirable or that they are willing to make the sacrifices a capitalist state would demand of them to get those goods as anything other than gifts. It certainly does not imply that they would welcome the destruction of their foraging territory in favor of opportunities to work in the capitalist economy's fast-food sector. Although stateless peoples have hardships that give them good reason to complain (Hill and Hurtado 1996), the well-observed expressions of contentment have to be taken seriously.

C. Observed Choice

The one piece of evidence that most clearly contradicts consent theory is observed choice. There is an enormous amount of evidence supporting the conclusion that states do not have unanimous consent. Although philosophers confidently assert that everyone given the choice would choose the state, anthropologists and archaeologists have found that states and chiefdoms tend to form only when it becomes difficult for people to escape state authority for stateless regions (Carneiro 1970). In other words, so many people choose to leave state authority that state society becomes nonviable when people are genuinely free to choose. This section reveals a pattern of observations that strongly contradict the Hobbesian hypothesis: stateless people usually resist territorial incorporation into states; people in stateless regions often choose to remain when they could move into states; people from states often choose to move to stateless societies (Scott 2009).

The first place to look for such evidence is in theory of state formation, which explains why states form when and where they do, and why they have not formed in other times and places. Any evidence from this field has to be used cautiously, because, as Chapter 3 argues, contractarian theory is not about the formation of the state. Contractarian stories about state formation are useful only to illustrate claims about the difference between life under state authority and life outside

it. The theory of state formation is useful to contractarianism only to the extent that it provides evidence about the choices people make who are in the position to compare those situations.

A classic explanation for why states form when and where they do is that of Robert Carneiro's (1970) circumscription theory, which supposes that states form only when the population density reaches a point at which individuals cannot escape to form stateless communities. Circumscription could happen when a fertile plain becomes crowded with villages, when arable land becomes suddenly scarce owing to climate change, or when a large-scale irrigation project makes a small area capable of supporting more people than the surrounding lands.

Archaeological evidence appears to indicate that circumscription can partly but not fully explain state formation, which can happen for a variety of reasons (Lee 1990: 241; Trigger 2003: 283–4). Charles Keith Maisels (1990: 214–16, 302) argues that early city-states in the Middle East attracted people as much as they hemmed them in, implying that they are not completely circumscribed but not that they are free from dissent. However, Maisels does mention that states require a threshold of population density. Population density makes fissioning more difficult, increasing the cost of moving. And so it seems that increasing the difficulty of moving, if not making it impossible, is a necessary condition for state formation. If the formation of the state *requires* making it difficult to get away from state authority, people must have a strong tendency to try to get away from state authority, and that is a strong indicator of preference.

Maisels (1990: 215) also remarks, "Even after millennia of city-states in Mesopotamia there were always significant numbers 'voting with their feet' as they alternate between and around cities and fluxed from agrarian villages to nomadic niches and back again." This evidence shows that some people might voluntarily accept the authority of a government or a landowner at least for a time, but not everyone is willing to commit to it permanently. This evidence indicates too much consent to support pure circumscription theory but not enough consent to support the contractarian unanimous agreement.

Further evidence against consent comes from the many anthropologists, archaeologists, and historians who have observed that the emergence of the state appears always to involve conquest of territory (Renfrew 2007: 176). According to Carneiro (1970: 734),

"Force, and not enlightened self-interest, is the mechanism by which political evolution has led, step by step, from autonomous villages to the state." David Hume (1960) made very much the same observation in his eighteenth-century criticism of social contract theory. A violent origin to the state does not necessarily contradict contractarian theory, which predicts violent chaos before the formation of the state. Presumably the first state would be established by a warlord who finally solidified control over a population that had been perpetually at war. Rather than the existence of war in the process of state formation, it is the pattern of resistance that contradicts the Hobbesian hypothesis. Warlords are not the only ones who resist the conquest of states. People in very small-scale egalitarian societies, even acephalous societies, have a long history of resisting state expansion (Marshall III 2002; Marshall III 2005; Brown 2007; Scott 2009). Some of the smallest-scale societies do not fight each other (Kelly 2013: 206), but do resist state encroachment—just the opposite of what the theory predicts. Good evidence indicates that most stateless societies in the last few thousand years (and perhaps longer) were well aware that states, chiefs, and landlords existed but were consciously trying to avoid coming under their authority (Scott 2009; Wengrow and Graeber 2015: 12). This fact is extremely hard to reconcile with the Hobbesian hypothesis.

This pattern of significant numbers of people choosing to avoid incorporation into states has continued for the last 5,000 years, as James C. Scott (2009: especially 132–3 and 208–11) documents. He focuses on a large highland Asian region that has lately come to be called Zomia. Until very recently, states rarely managed to extend their power into that region. Individuals from states such as India, China, and Vietnam fled to Zomia where they created or integrated into stateless societies. He also documents similar cases in places as diverse as the Philippines, Indonesia, the Middle East, central and eastern Europe, Brazil, Colombia, Florida, North Carolina, Virginia, the Great Lakes region of North America, and many more.

The existence of people who fled societies with governments and landownership for societies with neither of those institutions is a worldwide historical pattern. We can't say people only moved one way (they moved both into and out of states), but we can say that enough people chose stateless societies to keep them going as long as land was available. The demise of such societies also exhibits a

worldwide pattern: they tend to integrate into states when forced—either directly through conquest or indirectly through degradation of territory (Scott 2009).

Prosperous countries, such as the United States, are no exception to this pattern. Stateless societies covered most of the land area of the Americas at the outset of the European conquest, and for at least 400 years states and stateless areas existed side by side. The history of the period does not show large numbers of indigenous stateless peoples seeking to join states but repeated, violent annexation of indigenous bands, villages, and chiefdoms against strong popular resistance (Marshall III 2002; Marshall III 2005; Brown 2007; Scott 2009).

U.S. history, in fact, shows significant numbers of people moving in the opposite direction, from state society into areas beyond state control. Some people who moved into stateless regions in the United States intended to be the vanguard of state expansion, but others did so to evade state authority. For example, for decades a mix of native and non-native people lived in the "Great Dismal Swamp" on the Virginia–North Carolina border because they did not want to submit to state authority. Settlement of the swamp ended not when swamp life got too dismal, but when the state drained the swamp to get the people out. When that opportunity to escape from state authority was cut off, other pockets developed in the west, ending for good only when the United States government solidified control of its remote regions, giving people nowhere else to flee (Scott 2009: 169–72).

This pattern of observation tells us two important things about consent. First, the people of stateless regions do not generally consent to join states en masse. Individuals do, but force is apparently necessary to fully incorporate any stateless region. Second, people from state societies do not all eventually choose to remain in the state; the flow of people to stateless regions typically ends when the stateless region is incorporated rather than when people stop seeking the stateless periphery. The existence of people who choose life in swamps and high mountain slopes indicates that at least some people are willing to endure significant hardships to be free from the forced subordination to states and landowners. If so, there are likely many more people who dissent from their society's institutions but are unable to flee for other reasons.

This evidence is devastating for consent theory, which requires the amazingly strong claim that people would not flee even if moving was costless. If after millennia of experience with state authority, there were still people who preferred to leave for areas without states, it is hard to claim that stateless society is unacceptable by comparison. A significant number of people choose stateless societies, far too many people to support the claim that *everyone* prefers life in societies with landownership and/or government. That is, the Hobbesian hypothesis fails a test that is heavily biased in its favor.

We consider three replies. First, one might use the observation that almost no one flees today to support the claim that they don't want to. This argument is easily refuted. Almost no one flees to stateless areas today because the periphery is now closed to almost everyone in the world. Very few places like old Zomia remain. Vast nearly empty regions exist, but people are not free to flee to them. Try leaving your ghetto or your shantytown to start your own band in most empty places from the central Australian desert to the boreal forest, and you are likely to be arrested on trespassing or some other charge. The pattern observed throughout history strongly indicates that a persistent minority of people would leave state authority if they could. Dissenters are real.

Second, one might be tempted to say that people fled to the periphery of state society in the past because states in the past were terrible and therefore unjustified, but we have *now* reached a point where no one would flee even if they could. At least no one would flee from whatever state one wants to justify. This argument relies on a large and convenient coincidence. The opportunity to flee has only been closed off in the last century or so after having been available for 5,000 years in some areas, but one would have to believe that in that short amount of time, states finally became so beneficial to their disadvantaged individuals that no one would flee even if they could. There is little or no evidence to support this theory. It would seem to be merely an excuse to ignore 5,000 years of evidence. Sections 1–4 would seem to indicate that the poorest people today are no less rational to flee than people throughout history. Until human deprivation becomes much less severe, it is far more reasonable to believe that at least some people would flee if they could.

Third, one might be tempted to respond that all people who fled the state or resisted incorporation into it throughout history were

unreasonable, irrational, or insufficiently informed. They would have preferred life in societies with governments and landlords if they fully understood the tradeoffs involved and weren't unreasonably seeking selfish benefits at others' expense. It is certainly possible that some people who fled fit into this category. But consider three arguments that it is unreasonable to say *everyone* on the periphery fits into this category.

First, if one admits that someone could hold a strong but mistaken opinion about the truth-value of the Hobbesian hypothesis, one should consider whether philosophers might be more vulnerable to this problem than the people involved, who have direct experience. This argument dismisses the considered actions of a large number of people over an incredibly long period of time. Some people originally from states moved permanently to stateless regions; others moved back and forth; and some people originally from stateless regions resisted the advancement of states. Some of these communities must have had high collective knowledge of both sides of the comparison. Early chapters have shown that the hypothesis was created by people with deep prejudices against—and little direct experience with—either stateless people or disadvantaged people in state societies. And we have shown that contemporary philosophers have simply passed on the Hobbesian hypothesis without asking for evidence. The academic literature in support of the Hobbesian hypothesis is almost entirely free of supporting empirical evidence. If anybody's mistaken here, it seems much more likely to be the philosophers.

Second, although stateless peoples are not always guiltless and bandits do occasionally escape to the hills to do unreasonable things again, larger-scale societies have overwhelmingly dominated the unreasonable behavior. From the first state in Mesopotamia to the final closing of the periphery, states have aggressively expanded their territory. They seldom conquered stateless areas because it was essential to their defense. They did not do it out of an unselfish regard for the welfare of indigenous peoples. Stateless communities were not on some inevitable path toward statehood. In the vast majority of cases, states conquered stateless regions because they wanted more territory or more people.

Third, to say that it was irrational to resist such an unreasonable entity is a dangerous road. It implies that the theorist or the politician knows better than the people themselves do about what they should

and should not consent to. Whether intended or not, it fits in with a long line of philosophical and social scientific thought that has served to justify the colonial process. The claim that the Lockean proviso is fulfilled is designed as a reason to tell the disadvantaged people and the victims of colonialism to shut up. The disadvantaged in state society are irrational to complain because they are so much better off than those savages. And those savages are irrational to resist because they will be so much better off with any position in state society than they are when living as they choose. If they only knew what was good for them, they would be happy even to be a seventeenth-century English day laborer, to use Locke's example (see Chapter 4). Your betters know your needs better than you. Such reasoning, even if correct today, would be cold comfort to the millions who died during the European colonization of the Americas, Africa, Asia, and Australia or during the subsequent decades of postcolonial wars.

6. THE VERDICT

After these last two chapters, our overall evaluation of the Hobbesian hypothesis should be obvious. Is *everyone* better off in a contemporary capitalist state than in a stateless society?

No.

In fact, if one phrase from all of political philosophy has penetrated the field of anthropology, it is Hobbes's famous phrase, "nasty, brutish, and short,"[2] and it has done so because so many anthropologists have tried to debunk it. Dozens of leading anthropologists—cutting across the spectrum of contemporary opinion about life in small-scale societies—have made reference to Hobbes's description of life outside of the state only to debunk it in whole or in part. This list includes Robert G. Aykroyd, David Lucy, A. Mark Pollard, and Charlotte A. Roberts (1999: 55), Mark Nathan Cohen (1989), Frans de Waal (2006: 52), Edward E. Evans-Pritchard (2013), Morton Fried (1967: 51, 70–1), Ernest Gellner (1995: 178), Michael Gurven and Hillard Kaplan (2007: 349), Kim Hill and A. Magdalena Hurtado (1996: 151, 194), Mark R. Jenike (2001), Lawrence Keeley (1996: 4–5), Robert L. Kelly (1995: 337–8; 2013: 1, 114), Adam Kuper (1994: 209–10), Richard Lee (1968: 43; 1979: 437–8), Richard Lee and Richard Daly (1999: 1), Martha Binford Morris (1977: 188), Catherine Panter-Brick, Robert H. Layton, and Peter Rowley-Conwy (2001: 4–5), Philip Carl Salzman (2004: 47),

James C. Scott (2009: 7), Leften Stavros Stavrianos (1987), and probably many more we are not aware of. Ernest Gellner best sums up the anthropological consensus:

> Thomas Hobbes [is] wrong: the life of pre-state man is not solitary, poor, nasty, brutish and short. Rather, it is gregarious and cohesive, relatively well-off, human and participatory, and with about as good a chance of longevity as that of his [Hobbes's] centrally governed contemporary. (Gellner 1995: 209)

Many of these scholars also debunk the misconception that small-scale, stateless communities are some kind of utopia, but the two are not exhaustive of all the possibilities. Most anthropologists now view life in small-scale societies neither cynically nor romantically, and the emphasis is on the diversity of lifestyles and circumstances. As Kelly (1995: 202) puts it, "life in foraging societies is not all sweetness and light but neither is it a Hobbesian hell."

To deny that everyone is better off in state society is *not* to say that *everyone* is better off in stateless society, nor is it to say that the *average* person is better off in stateless society. In fact, to deny the Hobbesian hypothesis is not to say that life in stateless society is very good at all. It is only to say that as difficult as stateless life is, states today make life worse for a significant number of people.

Of all the a priori speculators discussed in Chapters 3–7, the closest to the mark appears to have been Paine (2000), who thought Native American life was abject poverty compared with the rich and a continual holiday compared with the poor. More than two centuries later, his generalization has largely been confirmed by a range of anthropological research on small-scale societies. As Clark (2007: 3) puts it, "the average person in the world of 1800 was no better off than the average person of 100,000 BC. Indeed in 1800 the bulk of the world's population was poorer than their remote ancestors." While the modern capitalist state has provided almost unimaginable luxury to great numbers of people living today, it is simply untrue that all people who have lived in stateless society have enjoyed a poorer quality of life than all people living in nation-states today.

Neither Hobbes's nor Locke's version of the proviso fares well after several centuries of empirical evidence has accumulated. While societies with government and/or landownership have attained enormous

affluence for a large number of people, those institutions have come at a cost to others. If what we have argued is correct, the Hobbesian hypothesis was most widely believed when there was the least amount of truth in it—during the hubris of the early colonial expansion, when the ordinary people of Europe were no better off, and quite possibly worse off, than many of the hunting and gathering peoples being colonized by European states at the time (Clark 2007: 1). Furthermore, the reasons so many seventeenth- and eighteenth-century philosophers thought the Hobbesian hypothesis was obvious are beliefs that few if any people hold today. Hobbes, Locke, Kant, and others believed the Hobbesian hypothesis because they believed indigenous peoples were savage, violent, uncultured, and engaged in an all-consuming food quest that left them no time to develop into truly mature and moral adults. The Hobbesian hypothesis was never more than a colonial prejudice.

Civilization—as we call it—is a mixed bag. Even Kim Hill, whose ethnographic work stresses the hardships of foraging life, agrees:

> I don't think you can say that everyone today is better off than everyone was in the hunter-gatherer period. . . . People in modern societies have better health on average and longer lifespans, but there is more to life than longevity. Hunter-gatherers often have more satisfying social environments in my opinion (I have lived more than 30 years with different groups of hunter-gatherers). Modern societies are plagued by emotional, physical and mental problems that probably weren't very common in the past. . . . hunter-gatherers seem to have less depression, anxiety, bipolar disorder, suicide, feelings of alienation, etc. There are no "campus massacres" in the hunter-gatherer ethnographic literature for example. All these observations and many more suggest that the advances of modern societies have also come with costs. . . . there were no homeless, or unemployed hunter-gatherers, and probably fewer that endured forms of blatant exploitation and slavery than we see in modern contexts. (Kim Hill, personal correspondence)

This passage is written by a person who when living in a band society "heard children crying from hunger and saw the deaths of some good friends—events that reminded us again not to romanticize this way of life that we had learned to respect" (Hill and Hurtado 1996: xiv).

The Hobbesian hypothesis is false not because life in small-scale societies is great; it is untrue despite the extreme difficulty of that life.

The failure of contemporary society to fulfill the Lockean proviso is tragic not only because capitalist states are so wealthy, but also because the proviso is an incredibly unambitious goal. Establishing hunter-gatherer quality of life as the baseline for comparison sets an extremely low bar. The tragedy of state societies today is that for all their wealth and achievement, they have so consistently failed to surpass that bar. The hypothesis is false because the quality of life for disadvantaged people in industrial capitalist states is so low. It is low not from technical difficulties, but mostly out of lack of concern.

Almost every comparison considered above displays a similar pattern: the wealthy and the average are so much better off that it seems easy to make everyone better off, but our societies have consistently failed to do so. The promise of the Lockean proviso remains unfulfilled for the poor, the discontented, political dissenters, the homeless of developed countries, the shantytown residents of lesser developed countries, people who die young of cancer and other modern diseases, families who need support from child labor, the victims and perpetrators of campus massacres, and the urban foragers who must find food in other people's garbage. The hypothesis is false. The proviso is unfulfilled. Mutual advantage is not in effect. The first principle of civilization is violated. Our societies horribly mistreat their most disadvantaged members, and our myth that everything was even worse in prehistory makes it easier for us to do it.

Notes

1 Most people would prefer a finite number of things they can do outside of prison to an infinite variety of paintings to choose from to hang on the wall of their cell.
2 Sometimes with, sometimes without the opening items, "the life of man solitary, poore,. . . ."

Chapter 11

IMPLICATIONS

The Hobbesian hypothesis has survived for more than 350 years without even acquiring a name. It has existed in the background, present but unspoken, free from scrutiny because it is obvious, or obvious because it is free from scrutiny. Or perhaps, it is free from scrutiny because it is, in some inexplicable sense, not even an empirical claim at all. And few contractarians see the need to clarify any of these issues. This, perhaps, is the power of an unargued premise.

This book has argued that the Hobbesian hypothesis is an empirical claim, that it is a claim involving small-scale stateless societies, and that it is not only dubious but probably false. The Lockean proviso—even in Nozick's "weak" version—remains unfulfilled. Mutual advantage is not in effect in all or most state societies today. World governments and the property rights system violate Paine's (2000) "first principle of civilization." In our terms, capitalist states have dissenters. In contractarian terms, capitalist states have rational, reasonable, well-informed people who have good reason not to consent to state authority, because states make them worse off than they could reasonably expect to be in a stateless society. Under contractarian and propertarian theories, as we have understood and explained them, the state and the property rights system are unjust as long as these institutions continue to harm dissenters.

This chapter considers the implications of these findings for contractarianism and propertarianism. It does not discuss the option of abandoning these theories. This book is solely an internal critique of these theories. It does not reject the Lockean proviso as a moral principle; it argues only that the proviso remains unfulfilled in the existing empirical setting. Therefore, this chapter only considers implications broadly within the moral frameworks of contractarianism and propertarianism.

   A contractarian or propertarian response to this work requires two choices: (1) accept or reject our empirical findings, and (2) accept or reject our argument for their relevance. We discuss several possible responses based on these two choices, but we believe contractarians and propertarians should make one response regardless of either choice: they need to clarify their arguments. Remove the sloppy allusions to what might or might not be empirical claims. Section 1 discusses this issue.

   Section 2 welcomes empirical arguments to refute our empirical findings. Section 3 discusses a response open only to propertarians: concede our empirical findings, but blame the government. Section 4 considers the strategy to deny the moral relevance of our empirical findings by arguing that we have entirely misidentified the state of nature. It could be a purely metaphorical device in a fact-independent justification of the state or a synthetic device that illustrates the empirical standards the state must meet to be justified.

   Section 5 considers the ought-implies-can principle and the "bracketing strategy," which admits that observed stateless societies find the definition of the state of nature, but argues that they are not the relevant forms of statelessness today (the most likely reason being that civil war is the only existing alternative to the state).

   After Sections 1–5 argue that all of the above responses involve dubious empirical claims, uncomfortable admissions, or implausible moral arguments, Section 6 discusses the implications for contractarian and propertarian theory of accepting both our empirical findings and our argument for their relevance. Several responses are possible, but it argues that the best response is to fulfill the Lockean proviso by taking action to improve the lives of disadvantaged people.

1. CLARIFY THE ARGUMENT

Even if contractarians and propertarians ultimately reject the two central claims of this book (our empirical findings and their relevance), we hope that this book can help clarify the discussion of these theories. The clarity issue mostly affects contractarianism, because (although propertarianism has other clarity issues we intend to address in a later work) most propertarians clearly state the empirical role that the Lockean proviso plays in their theories. This section discusses several important issues that need to be clarified.

A. Does It Matter?

The most important issue contractarians need to clarify is the question that began this book: 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? Is Paine's first principle of civilization—the weak Lockean proviso—necessary for the contractarian justification of the state? If not, is it completely irrelevant or is it merely overridden in present circumstances by other factors?

Most contractarians imply that the state can take credit for fulfilling Paine's first principle of government. Few seriously consider the possibility that people in state societies might not automatically have much higher welfare than stateless peoples. They tend to retreat from these suppositions only when asked to provide empirical evidence. Contractarians seem to want the state to be inherently better than statelessness but only in the way Wellman (2001: 742) described: "The advantages of political society are so great because life in the state of nature is so horrible." If anyone suggests that statelessness is not horrible enough to justify the horrible conditions of disadvantaged people in state society today, then the Hobbesian hypothesis isn't about real statelessness, or it somehow isn't an empirical claim after all.

And so they equivocate between two incompatible implications: one denying the relevance of the weak proviso, the other affirming its relevance while asserting its supposedly obvious fulfillment. Equivocation conceals arguments that need to be made. If the arguer implies their theory does not require fulfillment of the weak proviso, they avoid the need to provide evidence that they have fulfilled it. If at the same time, they also imply that it does entail the weak proviso, they avoid the need to argue that the weak proviso is too strong. The difficulty of these arguments might make equivocation tempting, but one or the other of them needs to be made.

The need to provide additional arguments is not the only motivation for equivocation. The simple assertion that the weak proviso is too strong involves several bullet-biting admissions. Gradually over the last 5,000 years, state societies have interfered with, established authority over, and demanded labor from the disadvantaged people against their will. These actions by the state have caused the following situation to come about: disadvantaged people are worse off than their stateless ancestors; advantaged people are far better off; it is possible to change

social arrangements so that everyone in state society actually is better off than their stateless ancestors. Suppose a group of disadvantaged people use these facts and the weak Lockean proviso to argue that the state and the property rights system are unjust until they make the changes necessary to ensure everyone is better off than their stateless ancestors.

A contractarian who believes the weak proviso is irrelevant must concede all of those empirical observations but deny that their truth calls into question the justness of current social arrangements. State authority is justified no matter how many people are worse off by this comparison, no matter how much worse off they are (assuming the extra-weak proviso is fulfilled), and no matter how low the cost might be of bringing them up to that standard. The state doesn't even have to look into the evidence. It's irrelevant. One can believe that the weak proviso is too strong, but one needs to say so in clear, unequivocal language and examine the entailments of that position. Equivocation, whether direct or only implied, does not belong in philosophical debate.

B. If It Doesn't Matter, Why Not?

Any contractarian theory with an extra-weak proviso requires an argument that the weak proviso is too strong. And it has to be an extremely good argument, because contractarianism claims to have justified the state's power over *you* on the grounds that it benefits *you* (not because it benefits a great many other people at your expense), and it claims that this justification will be accepted by all rational, reasonable, and well-informed people. This argument must explain why, even though the state makes disadvantaged people worse off than people in observed stateless societies, they are unreasonable to think of the state as anything other than a fully justified, mutually beneficial association. This argument has to convince any rational person that the disadvantaged group's position is unreasonable. Few if any contractarians have attempted to make such an argument.

If the relevant state of nature is some *but not all* stateless situations (such as a civil war but not a band society), contractarians need to explain convincingly why only *some* stateless situations are relevant. If the state of nature is pure fiction, contractarians need to explain why a Lockean proviso based on a fictional state of nature is *more* relevant than a reality-based proviso. They need to explain why the fictional state of nature is unlike the Giant Chicken scenario laid out

in Chapter 3. If contractarians want to show that the weak proviso is too strong, they can't ignore these issues. We discuss possible arguments against the weak proviso further below.

C. Is There a Protective Argument for the State?

Hobbesian and Lockean arguments justify the state and/or the property rights system on the grounds that they *protect* people from the violence and poverty that are supposedly inherent to the absence of these institutions. It is difficult to say that the protective argument is relevant, while dismissing as irrelevant the question of whether capitalist states actually succeed in protecting the less advantaged people in their society from violence and poverty as well as stateless people protect themselves. In what way could a protective argument justify the government *causing* people to face worse poverty than real people in actual stateless societies? Contractarians should clarify whether they use these kinds of protective arguments, which facts are relevant to their arguments, and if they dismiss the relevance of the factual nature of the state's protective role. And if so, they should explain what non-factual protection is and why it matters.

D. Is There an Inherent Need for the State?

Contractarians usually argue for the *inherent* need for the state: a just state is better than all forms of statelessness. All people in statelessness "naturally" have reason to desire a state like the one being justified (Hampton 1988: 271). It seems impossible to say that people naturally need a thing that makes them worse off than real people who live without it. Therefore, giving up the Hobbesian hypothesis gives up the argument that people have an inherent need for the state.

Contractarians could make a *contingent* argument for the state: a just state is better than all currently available forms of statelessness. This might seem like a small concession, and it might allow contractarians to bracket findings about small-scale stateless societies. But we seldom if ever find contractarians arguing it explicitly, and it contradicts the explicit contentions of 350 years of contractarianism. Only one response to our findings preserves intact the contractarian argument based on humans' inherent need for the state. That response is to reject our empirical findings.

The contingent argument does not free contractarianism from the need for an empirical argument. It requires a new empirical argument to establish the truth of the claim that stateless societies of the type that have existed continuously for 200,000 years and that are still observed in a few pockets today are no longer viable. In addition, the contingent justification would require a normative argument connecting the present unavailability of small-scale stateless societies with a lack of responsibility on the part of advantaged people to allow disadvantaged people to live as well as their ancestors did for all of those years. These arguments are largely or entirely absent from contractarian literature.

E. If It Does Matter, What Happens When the Proviso Is Unfulfilled?

Contractarians devote pages and pages of normative argument to support the apparently strong criteria that the state is only justified if it makes everyone better off than they would be in its absence. Yet, with little or no argument, they usually conclude that that criterion is fulfilled, and they seldom even address the question of what to do when the criterion is unfulfilled. This lack of attention implies that they do not offer the Lockean proviso as a serious political principle at all. It's as if the Lockean proviso is no more than an excuse to say the state is justified and to pick a bar so low that the state cannot possibly fail to surpass it. Yet, still it fails.

If contractarians admit that the weak Lockean proviso matters, it is appropriate to consider evidence for and against it, and to discuss what happens when it is unfulfilled. What responsibilities come into play (on the part of the state or the more advantaged people or whoever) when the treatment of disadvantage people is so poor that it violates the basic principle proposed to justify the state?

2. CHALLENGE OUR EMPIRICAL FINDINGS

As Section 1 argues, a challenge to our empirical findings is the only response capable of preserving the contractarian notion that states today satisfy an inherent human need. We welcome this response. It would amount to an agreement with our most important points: the Hobbesian hypothesis is an essential premise in most contractarian

justifications of sovereignty, and its truth-value can only be established by empirical investigation. Contractarians and propertarians have placed such enormous importance on this hypothesis that it demands thorough empirical attention.

Anyone who wants to affirm the empirical truth of the Hobbesian hypothesis has to confront how bad the reasons given by Hobbes, Locke, and Kant were. They thought it was obvious because they thought all indigenous peoples were violent savages whose days were consumed by an arduous food quest that left them no time to develop meaningful culture or even to become fully mature, ethical adults. Only racial supremacists and other holdovers from the colonial era would believe these things today. But many people cling to the idea that the hypothesis is obvious in spite of its racist origins. If you believe that it is obvious after rejecting all the reasons given by the people who popularized the idea, why do you believe it is obvious? The answer is particularly important because the discrediting of nearly all the reasons Hobbes, Locke, and Kant offered to support the hypothesis has not inspired any philosophical reassessment of the supposed obviousness of the Hobbesian hypothesis. The ubiquitous, unnamed hypothesis exists as an unnoticed part of the landscape of contemporary theory.

Anyone choosing this response should avoid appealing to common prejudice. They should conduct a study at least as thorough as ours. We are happy to share our notes with critics. This book's job is to raise doubt about the Hobbesian hypothesis. The person who uses the Hobbesian hypothesis to justify putting everyone under a duty of obedience has the job of proving it. To do so, one has to give up any notion that this claim is obvious. A proof would show that the least well-off group of people in capitalist states actually are better off than they could reasonably expect to be in any stateless society. This comparison requires deep knowledge of the most disadvantaged people in state society and of the people most remote from state society.

3. CONCEDE OUR EMPIRICAL FINDINGS AND BLAME THE GOVERNMENT

One strategy is available only to propertarians: they can concede that the Lockean proviso is unfulfilled, but blame the government (Lomasky 1987: 125–6; Pollock 1996: 109; Machan 2006: 170, 196).

As Chapter 7 mentioned, Nozick makes this argument explicitly empirical, writing:

> were it not for the effects of previous illegitimate state action, people would not think the possibility of the proviso's being violated as of more interest than any other logical possibility. (Here I make an empirical historical claim; as does someone who disagrees with this.) (Nozick 1974: 182)

Contractarians can't make a reciprocal allegation blaming property rights, because sovereign government has ultimate power over the property rights regime and is, therefore, responsible for it.

This argument replaces the falsified claim (that the proviso is fulfilled) with another claim that is harder to investigate empirically (that it would be fulfilled if everyone else did everything according to some idealized economic plan that has never been realized). This position sounds like one taken by Tolstoy's (2007: 642–3) character, General Pfuel, who blamed every battlefield failure on the failure to fully implement his enormously complex plan to defeat Napoleon. Thus, failure only reinforced his belief in his idealized plan. One cannot falsify claims that some idealized version of capitalism would have no poverty without implementing all proposed idealized systems under all conditions. Until all have been tried, propertarian Pfuels can attribute failure to something other than the failure of their ideal.

Casual evidence gives good reason to doubt that moving toward that ideal (as compared with moving toward social democracy) reduces poverty, but testability problems aside, such an argument fails to do what propertarians most want it to do: justify all or most property rights in the here and now. Even if the claim about idealized capitalism is correct, it justifies property rights only once that ideal is reached. In the meantime, the proviso remains unfulfilled, and therefore, the conditions do not yet exist for an individual to justly take ownership of resources under the theory. All landownership remains unjustified by theories employing the weak Lockean proviso until those with property and privilege under the existing system pay for interfering with the propertyless without fulfilling the proviso. The disadvantaged don't have to wait for propertarian experimentation. The debt to them is past due and growing.

4. IF THE STATE OF NATURE IS NOT REAL
STATELESSNESS, WHAT IS IT?

Contractarians can concede our empirical findings but argue that the state of nature actually has nothing to do with statelessness. Here, we consider whether the state of nature can be used as a pure fiction or a metaphor in a fact-independent argument that can justify the state with no empirical claims whatsoever. We also examine whether the state of nature can be used as a pure counterfactual—a synthetic device illustrating the criteria by which a state is justified but having nothing to do with real statelessness.

A. *The State of Nature as Pure Fiction or a Metaphor*

We have found no purely fact-independent justification of the state in the literature we reviewed, and Chapter 3 endorsed Kavka's (1983; 1986: 8) argument that the quest for one is hopeless. But anyone who believes Kavka is wrong should put forward an argument that does not leave itself open to an empirical interpretation. They should also consider whether it is actually useful to have a story about the state of nature in such a theory. All metaphors have to stand for something. Anyone using the state of nature as a metaphor should clearly state what it stands for, and why it is relevant. A metaphorical state of nature with a clearly explained and relevant analog might be helpful; a sloppily presented, unclear state-of-nature story that might or might not be a metaphor is unhelpful. And of course a purely metaphorical state of nature needs to be explained in a way that is more relevant than the Giant Chicken scenario described in Chapter 3. We have not seen any such argument in contractarian literature, perhaps for the good reason that it isn't very promising.

B. *The State of Nature as Synthetic Device*

The state of nature can be used a synthetic device meant to illustrate the criteria by which a state is justified but having nothing to do with what actually happens in statelessness. Rawls's (1971) closest equivalent of a state of nature, which is people sitting around a table behind a veil of ignorance negotiating what kind of state they want to live in—clearly fits into this category. It's less likely that Hobbesian and Lockean theorists intend their state of nature this way. If so, why

include any arguments at all to explain the presence of conflict and poverty in the state of nature? Since these would become just assumptions of a synthetic device with no relationship to empirical reality, there is no reason to argue that they are plausible only to explain why they are assumed.

Setting this problem aside and assuming a synthetic state of nature is intended, such an argument is free from empirical claims about the state of nature but not from empirical claims about the state. Either the state meets the criteria or it does not. Anyone proposing the synthetic state of nature has to explain exactly *what* conditions it establishes, *whether* these conditions are met, and *why* these conditions are the relevant standard. The justificatory conditions and the evidence that they are met need to be much clearer than they usually are in contractarian literature, but probably the most difficult question with the synthetic state of nature is the normative argument for the relevance of the baseline.

If the synthetic standard is higher than the reality-based standard, as it arguably is in Rawls (1971), no problem exists here, but usually the hypothetical standard is not only lower than the reality-based standard, but a worst-case scenario: continual fear of the danger of violent death. As Chapter 3 argued, a person buying a car usually compares it with not buying a car. Buying a car is better than a fictional story of a war of all-against-all, but if that story is pure fiction, what does it tell me about buying a car, obeying the state, or anything else for that matter? Any proviso lower than the reality-based weak proviso sounds like a cooked-up excuse for the state to claim justification no matter how badly it treats people. A contractarian needs an argument to overcome this obvious impression, and doing so runs into all the difficult questions discussed in Section 1.

5. BRACKETING: "OUGHT IMPLIES CAN" AND THE WORLDWIDE CIVIL WAR

The "bracketing" strategy concedes that stateless societies meet the definition of the state of nature, but argues that they are not the most relevant example of it. As with a synthetic state of nature strategy, the bracketing strategy requires an explanation of *why* one stateless situation is more relevant than another, exactly *what* conditions that state of nature establishes, and *whether* these conditions are met.

The most promising bracketing arguments rely on the ought-implies-can principle, also called the principle of alternative possibilities, which means that no one can be held responsible for failing to do the impossible (Frankfurt 1969). This principle explains why a train engineer's failure to swerve to avoid hitting someone is not blameworthy, even if an automobile driver's failure to swerve is blameworthy in an otherwise identical situation. This section discusses two ways that the ought-implies-can principle might be used to bracket our findings. It argues that the "ought implies can" might provide reasons for partial limits on the fulfillment of the weak proviso in some circumstances, but it is extremely difficult for any bracketing strategy to demonstrate that only the extra-weak version of the proviso is relevant in any circumstances.

A. The Impossibility of Fulfilling the Proviso

One could argue that it is impossible to get everyone up to the standard implied by the weak version of the Lockean proviso, and therefore, the state cannot be held responsible for failing to do so. Although this argument is reasonable, it has only limited use in reducing the significance of the proviso.

Most importantly, if the *only* reason the state does not have to benefit everyone is that it cannot benefit everyone, it would have to benefit as many people as possible and minimize the harm to those it doesn't benefit. That is, if the ought-implies-can principle is the only reason to leave the proviso unfulfilled, the proviso remains relevant; the evidence we presented about it remains relevant; and it still motivates much more help for the disadvantaged than states currently provide.

The effort to override the proviso with the ought-implies-can principle demands more, not less empirical argumentation. It requires evidence that (1) the state can't possibly get everyone to the standard, (2) it has gotten as many people as possible to the standard, and (3) it has gotten everyone below the standard as close to it as possible.

A literal reading of contractarian theory has a problem with the ought-implies-can principle because it gives the state only two possible justified courses of action: either it benefits everyone, or it disappears. It might be impossible for the state to benefit everyone, but it is not impossible for the state to disappear. The concept of ex ante benefits (discussed in Chapter 3) provides a reasonable solution to

this problem. If everyone below the proviso level is like the healthy person hit by an ambulance in the morally relevant sense, they do benefit from the state in a significant sense. As Chapter 3 argues, this argument on its own cannot successfully be used to argue that the state is allowed to bring fewer people than it can to the proviso level or that the state has no need to ensure the risks equally affect different groups in society. But it can explain why the state creates some risks of harm, as long as they are equally shared and truly necessary to create the advantages of state society.

B. The Failed State as the Only Alternative to the Contemporary State

The ought-implies-can principle can be used to argue not that the weak version of the Lockean proviso is unfulfillable but that an even weaker proviso is appropriate. One could argue that the population of the earth today is so large that the small-scale stateless societies considered throughout this book are no longer viable. The billions of people alive today cannot all simultaneously live in hunter-gatherer bands. Given the current population, the disappearance of the state(s) would inevitably create a failed state or a worldwide Hobbesian civil war. If the state protects everyone from the present danger of worldwide civil war, it benefits everyone in a significant sense. One could argue that that understanding of benefit is the only morally relevant one in the world today; the prevention of civil war justifies the state regardless of its failure to benefit everyone relative to other stateless situations that are possible under some empirical conditions.

This version specifies the (presumably) extra-weak version of the Lockean proviso as a "civil-war proviso" with a correspondingly extra-weak Hobbesian hypothesis. We have been dealing with the weak hypothesis that everyone in a capitalist state is better off than they could reasonably expect to be in an observed, small-scale stateless society. Hobbes thought he had no need to distinguish between a stateless-society proviso and a civil-war proviso, because he believed he had proven that statelessness in all circumstances necessarily degenerated into a war of all-against-all. For Hobbes, it was not the size of the population but human nature that made stateless life intolerable. Chapter 9 demonstrated this claim is false. Therefore, a proviso based solely on the civil war alternative is much lower and easier to fulfill

than the weak proviso. That feature seems to be exactly why people bring it up.

The civil-war proviso sounds initially appealing. It satisfies the desire for a proviso that is automatically fulfilled—no need to show that disadvantaged people reach a certain welfare level and no need to take action if their welfare is "too low." It revives the protective argument for the state on a contingent basis. It is probably a central motivation for belief in the obviousness of the Hobbesian hypothesis and for the irrelevance of actual stateless societies. But we doubt that one can construct a plausible argument based on the appeal to current population size sufficient to make the weak proviso normatively irrelevant. It does not free contractarianism from the need for an empirical argument. It only changes the nature of the empirical question. If one takes the contingent nature of the extra-weak proviso seriously, one has to make several difficult arguments to show that it is empirically and normatively relevant. We don't know of any contractarian who has done so, and we will discuss several difficulties with this strategy.

1. The empirical truth and normative relevance of civil-war hypothesis require support

The civil-war proviso might free the contractarian argument from any claims about the welfare level of disadvantaged people, but it cannot free the argument from empirical claims. It requires an empirical argument demonstrating that statelessness in present circumstances always leads to civil war (presumably because of the population size). It also requires a new normative argument that this issue overrides all concern with whether the state project is mutually beneficial relative to the social arrangements that were in place for 200,000 years prior to its existence.

This strategy resembles Lodovico delle Colombe's response to Galileo's observation that the moon was not a perfect sphere as prevailing Aristotelian theory held. Colombe asserted that the craters and valleys of the moon were covered with a perfect sphere of invisible crystal (Bamford 1999: 377). In so doing, he replaced a falsified hypothesis with a more difficult to investigate hypothesis. The civil-war proviso does not create a fact-independent argument built from definitions and first-best moral principles. Like Colombe's response, the extra-weak Hobbesian hypothesis replaces the falsified

Hobbesian hypothesis with a new empirical premise that is harder to falsify. Good philosophers support their conclusions with well-demonstrated premises. They do not shop for the most difficult to investigate premises to put in their arguments.

The allegation of "premise shopping" would be greatly reduced if the civil-war hypothesis could be proven. It is plausible, given the prevalence of failed states in the world. But it is by no means certain, and we offer four reasons to doubt that it is true in the way contractarian theory would require for it to supersede the weak proviso.

First, a large amount of anarchist literature argues that peaceful anarchy is possible on a large scale (Goldman 1969; Bakunin 1972; Ward 2004; White 2006; Chartier 2013). If they are correct, then the extra-weak proviso isn't very weak at all. It could even be stronger than the weak proviso. We are not optimistic about creating a large-scale stable society that is truly stateless, but it's the contractarian's job to demonstrate that these ideas are unworkable.

Second, contractarians don't just need a worldwide civil war; they need it to be worse for everyone everywhere like the mythical war of all-against-all. But civil wars don't actually become wars of all-against-all, nor do they usually have fighting in all areas and at all times. The civil war might be better for stateless people living in remote areas, freeing them from territorial encroachment. A civil war might open up opportunities for people in ghettos and shantytowns around the world to flee to the periphery as disadvantaged people have whenever that possibility has been open. One might argue that it would be unreasonable for such people to seek that advantage of statelessness while so many other people suffer. But that approach rejects the basic contractarian principle that the state has to be better for everyone than the alternative.

Third, civil wars are temporary. A highly disadvantaged person who believes the state is unjust, because of its failure to fulfill the weak proviso, is not necessarily demanding the immediate dissolution of the state. They are demanding better treatment from the state. They are not necessarily irrational to risk a temporary civil war to get that treatment. Contractarianism, therefore, requires a normative argument that such behavior is morally unreasonable. Sections 5B2 and 5B3 discuss different aspects of this issue.

Fourth, civil war is not the only temporary alternative to the state. Sometimes nonviolent action against the state leads to better treatment from the state or to a new and better state. This fact makes it even

more likely that acts of rebellion are rational. Hobbes thought he had a good response, which was that any act of disobedience to any state invited the war of all-against-all. If we all feel free to disobey the state when we feel mistreated, he thought, we'd have nothing but civil wars (see Chapter 3). Hardin (2003: 43) calls this "an unduly confident social-scientific claim." Many nonviolent movements of the last hundred years support Hardin's criticism. Therefore, the argument for the civil-war proviso will have to show that the state's protection of people from a temporary, not always real threat justifies the state's existence and obviates any other concern about how well the state treats people, even though those concerns are relevant in other empirical circumstances less conducive to the temporary civil war. We have not seen such an argument.

Even if the immediate dissolution of the nation-state system would cause a worldwide civil war, it is not true that the state can only be dissolved immediately or that state authority has to be dissolved everywhere at once. Consider the two following alternatives:

First, the state can introduce birth control policies and dissolve itself after a period of intentional population decline sufficient to make small-scale stateless societies viable again. The disadvantaged can, therefore, rationally argue that the state must either fulfill the weak proviso or begin that process. So, contractarians need a normative argument showing that this request is unreasonable even if made by people who are in such deep poverty that they would be better off under small-scale statelessness and all they are asking is for the state to share enough of its advantages so that this request is no longer rational. We know of no contractarians who have attempted such an argument, but Section 5B2 considers the possibility.

Second, although small-scale stateless societies are nonviable for the whole of the world's population at once, it is undeniable that, for any small group of people, these forms of political organization are as viable now as they have been at any time in human existence. Much of the history of the nineteenth through twenty-first centuries has been the systematic closing of environmental peripheries used by peoples in small-scale societies outside of the political control of states. On the one hand, this history has been horrendous for indigenous peoples forcibly brought into state societies. On the other hand, it has also foreclosed on the possibility of dissenters within states escaping to the peripheries beyond state control. Life outside of state control on that periphery is no longer *allowed*, but it is still *possible*. The desire to live

outside of a nation-state is not always irrational; once again, contractarians need to show that it is normatively unreasonable. We consider the possibility in Section 5B3.

2. *The moral relevance of the population size*

The disadvantaged group has a strong case against the moral relevance of the civil-war proviso, even if they concede that civil war is the only currently available alternative to the state. The disadvantaged can begin with a series of thought experiments in which inequality is impossible. No matter whether state or stateless society is in place, everyone experiences the same level of welfare. Suppose everyone was worse off in state society than they were before state society came into existence. We would think of the 5,000-year trend that circumscribed the earth with state societies as a mistake. Even if there were no way to get back to small-scale stateless societies, and states were permanently necessary to prevent civil war, we would regret the commitment to state society because it was not advantageous. The disadvantaged can say that if a society in which no one is better off by comparison with statelessness is not *advantageous*, then a society in which some are better off and others are worse off by that comparison is not *mutually advantageous*. Therefore, the state fails the basic test of contractarian reasoning. If this regret-based understanding of mutual benefit is sound, Paine's first principle is always part of the discussion. It can be overridden in some circumstances but not rendered irrelevant.

The disadvantaged extend their thought experiment about a society in which inequality is impossible. They suppose a welfare policy becomes available to increase everyone's welfare so that they are all better off than they were in stateless societies. Society would do it, not *because* it made them better off relative to stateless societies, but just because higher welfare is always better than lower welfare. But this policy would remove the collective regret at having established the state system. For the first time, people would view the state system as *advantageous*. Therefore, the disadvantaged could say, we should view an unequal state as *mutually advantageous* only if it does for all what a state without inequality would have to do for all to qualify as *advantageous*.

Next, the disadvantaged could suppose that the welfare policy above is permanently unavailable but birth control policies are available to restore small-scale society eventually. Most philosophers find

"repugnant" the idea that a higher population with lower welfare could be considered morally superior to a lower population with higher welfare (Parfit 1984; Arrhenius et al. 2006).[1] Most laypeople would prefer fewer but happier descendants to more but miserable descendants. Maintaining the higher population is clearly not *advantageous* if it makes everyone worse off. Therefore, the disadvantaged can argue, maintaining the current population size is not *mutually advantageous* if it makes some people worse off. Therefore, they can claim that dissolving the state after a period of negative population growth is a reasonable alternative that must be considered in establishing mutual advantage. That is, the weak Lockean proviso is relevant.

In a final thought experiment about a state in which inequality is impossible, the disadvantaged suppose that both welfare and birth control policies are possible. If both will improve everyone's welfare, which will society choose? They will choose whichever policy is most advantageous. They will either introduce the welfare policy, maintain the state, and maintain the current population size, or they will restore statelessness after negative population growth. But one thing they will not do is to maintain the state and the population size without introducing the policies necessary to make everyone better off. That course of action would not be *advantageous* for anyone. Therefore, the disadvantaged argue, it would not be *mutually advantageous* to maintain the current state and population size while refusing to introduce policies that could ensure that everyone shared in the benefit of the population size.

Beyond the thought experiment, the disadvantaged group can argue that the appeal to current population size is "rigged" in Hampton's (1988: 271) sense. The population size is fixed at any given point in time, but over time, the state has enormous influence—perhaps to the point of control—over the population size. Current population size has been affected by past policies, and future population size will be affected by today's policies. One of the policies causing today's high population is the aggression of states in conquering most of the world's stateless societies. Societies living at the smallest scale—hunter-gatherer bands—in some areas lived at population densities that had increased very little over the last 10,000 years, right up until the time they were forcibly incorporated into state society. Neither they nor the world's least advantaged and least powerful people can be held responsible for the population explosion that happened under large-scale agricultural societies.

The civil-war proviso is rigged in Hampton's (1988: 271) sense: people are *dependent* on the state to protect them from the possibility of war that the state has itself created. Powerful people simultaneously pursue population policies that maintain the threat of civil war into the future and use the threat of civil war as an excuse to benefit the advantaged at the expense of the disadvantaged in the present. There might be other good reasons to maintain a high population, but if so, it seems reasonable for people whose current living standards are too low to fulfill the weak proviso to ask for compensation so that they too can share in the benefits of higher population.

The appeal to current population size leads to two implausible normative conclusions:

First, the larger the population, the lower the country's responsibility is to its disadvantaged, regardless of the wealth of the society. It might imply that advantaged people have a greater responsibility to share with the disadvantaged people in Mongolia (which has a very low population density, making statelessness more viable) than advantaged people do in Denmark (which has a high population density). Consider the first state that ever came into existence (presumably in Mesopotamia about 5,000 years ago). It was very poor, but it was surrounded by stateless regions. Its fall would not have caused a worldwide civil war. Therefore, the argument under consideration required Mesopotamia to fulfill the weak proviso, but it requires the United States only to fulfill the civil-war proviso. Ancient Mesopotamia had to deliver a higher absolute level of wellbeing to its people to fulfill its relevant proviso than the United States does today to meet its relevant proviso. The enormously greater wealth available in the United States is irrelevant because of non-viability of small-scale stateless societies today.

Second, these moral rules create a substantial conflict of interest about basic principles. The disadvantaged have a strong interest in birth control policies that would allow them a greater right to share in society's benefits once population is low enough to make the higher proviso relevant again. But the advantaged have an interest in keeping the population high to increase both the share and the absolute size of the social advantages they are allowed to take while still being able to claim that social arrangements are, in some sense, "mutually beneficial." No social contract can resolve all conflicts of interest, but it is not supposed to have a conflict on an issue as basic as the calculation of mutual benefit. It was proposed to resolve that issue. If mutual advantage is meaningfully achieved, either everyone

or no one would have an interest in dissolving the state either immediately or after a period of negative population growth. And either everyone or no one regrets that the state is now necessary given current population size.

Contractarians wishing to stick with the civil-war proviso need to refute all of these arguments. As always, it's not enough for them to present an equally reasonable argument; they need one so strong that any rational observer will find the disadvantaged group's argument for the weak proviso to be unreasonable. At the very least it requires an explicit defense. Yet, we find in contractarian literature neither an argument defending the civil-war proviso against the weak proviso, nor an explanation clearly differentiating between the two. The unpromising nature of arguments for the extra-weak proviso against the weak proviso could be one reason. The overall argument appears stronger if no one notices that the civil-war proviso is weaker than the weak proviso and no one calls attention to the need to defend its extra-weakness.

3. *The moral relevance of state societies' circumscription of the earth*

The claim connecting the sudden disappearance of all states with a civil war is plausible, but the presumed moral relevance of that comparison relies not only on taking the current population as given, but also on taking as given the circumscription of the earth by 200 or so sovereign states, and supposing those governments have the right to demand an all-or-nothing comparison throughout a large (and effectively worldwide) territory. Where does this right come from? How does the hypothetical worldwide civil war give states the right to close off the periphery without making their disadvantaged people better off than they would be if they lived in a peripheral area that had never been incorporated into a state? Contractarians committed to the extra-weak proviso need an argument that any small group's request to live on the periphery is either irrational or unreasonable given the current demographic reality. Clearly, at least a few people could live a stateless lifestyle. A few still do. The population of the earth would have to be tremendously large before statelessness would become nonviable in every conceivable region. What argument—using contractarian methodology—gives the state the right to refuse any one person who would be better off if they were allowed to live as people have in stateless areas before forced incorporation?

We will consider several possible contractarian responses to that request, but first, we need to make clear that we *do not argue for the moral necessity* of restoring the periphery. We argue only that the state must fulfill the proviso to give disadvantaged people reason not to demand the restoration of the periphery. We address the periphery not as a likely policy response to the problems we have presented in this book but because we believe that any effort to establish the civil-war proviso as more relevant than the weak proviso relies on several difficult arguments about the empirical viability and normative relevance of establishing stateless societies in peripheral regions. The civil-war proviso, in the calculation of mutual advantage, allows the disadvantaged to consider the alternative of being in a civil war. The weak proviso, in the calculation of mutual advantage, allows them to imagine fleeing to the periphery and living like the Batek, the Ju/'hoansi, or one of many other observed stateless groups. To look at this, we consider a small group of disadvantaged people demanding either that the weak proviso be fulfilled or that they be allowed to live that lifestyle outside of state authority. A proponent of the civil-war proviso wants to say that the state doesn't have to do either. To do so consistently, they have to show that the request to reopen the periphery is either normatively unreasonable or empirically irrational. Therefore, we examine the possibility of the periphery not because we advocate it, but because the argument for the civil-war proviso requires claims about it.

The most obvious response to the disadvantaged person's request is misdirected. One might say the state cannot carve out territory for any person or group who might have some conceivable advantage from making other arrangements. There would be overlapping potential mini-states and no way to give everyone the territory they want without starting wars over all the disputed overlapping regions. This response is misdirected because it drops hypothetical-consent contractarianism's concern only with people who have rational and reasonable objections under the relevant proviso. Hypothetical-agreement contractarianism does not allow anyone to live under other arrangements—only those for whom the proviso is unfulfilled. The idea is not about billionaires taking the resource rights the state enforces for them and buying a kingdom, or about any intransigent subgroup carving out their own state. It's only about people who actually are worse off than the peoples who used to live on the periphery. What do they owe to the state that simultaneously keeps the periphery closed and chooses to make them worse off than they would be if it were open?

Another misdirected response is to argue that the disadvantaged group's request is unfair because they would require a disproportionate share of land to form small-scale stateless communities. This response abandons contractarianism for some justification of the state on its ability to enforce preexisting principles of fair shares of resources. It also abandons the propertarian argument that landownership is justified only when everyone is better off than they could be living on a commons. The contractarian justification for the state and for the norms it enforces is supposed to be that that institution and those norms benefit everyone.

The advantaged could argue that the disadvantaged group's request is unsustainable because not enough land is available for everyone who would want to live in a stateless society, even if emigration is limited to people for whom the weak proviso is unfulfilled. This response is at least potentially consistent with contractarian theory. Statelessness is viable in one sense: people can live in stateless societies if their numbers are kept low enough. But it is nonviable in another sense: states produce miserable people in such large numbers that the opportunity to live as their ancestors did 12,000 years ago would be so attractive that every conceivable stateless area would be overrun. With that many people clamoring for the periphery, one could argue, everyone has a rational interest in state circumscription of the earth to prevent a Hobbesian civil war. There are three problems with this response:

First, it's an amazing empirical reversal for contractarianism. In the argument as stated, stateless life is so bad that no one will choose it. However, in the argument as intended, stateless life is so good (if you can get it) that too many people will choose it to make it sustainable for all of them. This approach seems to admit that state society is a failed project, as discussed in Section 5B2. That's very nearly the opposite of contractarianism's 350-year-old claims of universal consent and the inherent need for sovereignty. This approach doesn't simply soften those claims, it abandons them for nearly the opposite position—giving off the appearance of Colombe-style "premise shopping."

Second, the appearance of "premise shopping" is not necessarily a problem if the premise is true, but the person wishing to support the civil-war proviso on the strength of this claim needs to provide evidence for it. There are a lot of empty areas in northern regions, deserts, mountains, rainforests, and so on. Even China, with over a billion people, has vast nearly empty regions in the western half of the country. How do we know that enough of the world's poor would flee

to make stateless society untenable? It didn't happen in Zomia during periods when many millions of people were being treated very badly in nearby countries (Scott 2009). A person who actually wanted to support the civil-war proviso would have to research the areas that could be available and the misery of the poor to show that enough of them are miserable enough and able enough to flee to make stateless areas nonviable. In the absence of such evidence, people in the disadvantaged group can rationally say, let us try, or give us reason not to want to try.

Third, if there are so many poor and miserable people that they would overrun all the world's potentially stateless regions, it is not solely because of the population size, but also because of the treatment of disadvantaged people. Remember, the only reason for a civil-war proviso is to justify that the state does not have to fulfill the weak proviso *even if it can*. By treating people worse than the weak proviso demands, the state *causes* the potential chaos on the periphery. If there were fewer people at that level of disadvantage, the periphery would be viable, then the weak proviso would come into effect, and the state would have to treat *everyone* better. But state institutions make so many people disadvantaged that overcrowding makes the stateless periphery nonviable, and therefore, the extra-weak proviso comes into effect. This argument seems to be circular: the bad treatment of the disadvantaged justifies the bad treatment of the disadvantaged.

This issue not only creates a conflict of interest; it falsifies the claim that the periphery is simply nonviable. Any disadvantaged person who wants to flee can say that it is possible to flee by a *combination* of policies, one allowing him to flee and another treating other people well enough that they don't want to flee. The argument that stateless life is unsustainable is simply not true.

Another response to the disadvantaged person's request is to argue that, even if people could rationally want to be outside the state's economic system and much of its authority, they cannot rationally want to be fully free from its protection, because regardless of who has the *right* to flee to the periphery, dissenters won't be the only ones who do. Intransigents, opportunists, and sadists will as well. People trying to revive band or autonomous village lifeways will be unable to defend themselves from such people. If their areas are fully outside state authority, the sheer size of today's population will attract enough unreasonable people to turn those regions into Hobbesian chaos, at least until people in that region establish a new state capable of defending itself. Therefore, one might argue, no one can rationally

desire to be free from state authority, even if it only fulfills the civil-war proviso.

Even if this empirical claim is true, it has two fatal problems:

First, you could say the same thing about Canadians or people in any small state next to a big state. Canadians cannot rationally want to be *entirely* outside the protection of the United States, because that would expose them to cross-border raids from opportunists and sadists who would be free from reprisals as soon as they crossed back over the border if the United States used none of its authority to protect Canadian territory. Assume, for the sake of argument, that the cost of Canadian self-protection without U.S. cooperation is prohibitively expensive. As the argument under discussion goes, people who accept the need for United States government protection must accept U.S. sovereignty.

Contractarians seldom argue that everyone has to accept the same sovereign. Canadians are legally entitled to accept some protection from the United States without accepting United States sovereignty, because the two states recognize each other and their boundaries. Why can't states also recognize the boundaries of stateless regions? If your answer is that only sovereign states are entitled to mutual recognition, your argument has become circular: people consent to the state because the state won't recognize their right not to consent unless they first consent to a state. States can and do recognize stateless peoples. It is just as rational for a stateless group to want the United States to recognize their boundaries as it is for Canadians. As Chapter 9 argues, stateless peoples have used flux to maintain peace probably for hundreds of thousands of years. To deny they have the right to do so would be to uphold that states have an automatic right to stop them before any social contract can be considered. Not only does that contradict social contract reasoning; it also implies that the primary mechanism people used to keep the peace for the last 200,000 years was something they had no right to do.

Second, this reasonable-sounding argument is a sanitized version of what has been talked about as "the white man's burden," one of many reasons given for the racist justification of colonialism. Indigenous peoples with all forms of socio-political organization were deemed to be incapable of defending themselves, and therefore, states claimed to be entitled to force them to accept the status of a protectorate or even full incorporation. It was all for their own good, supposedly. But it seldom worked out that way. This claim is as likely to be a self-serving excuse for forcible incorporation now as it was then. Any

stateless people being forcibly incorporated into a state that promises no better treatment than warranted by the civil-war proviso should not expect it is really for their own good.

6. FULFILL THE PROVISO

The remaining option for contractarians and propertarians is to accept our findings and their full moral relevance. To do so is to accept that the government and the property rights system have failed to fulfill the Lockean proviso, and therefore, contractarian and propertarian moral theories imply that neither of these institutions is ethically justified as currently constituted. States today don't simply neglect some of their number; they take from them in harmful ways. The legal system forces disadvantaged people to obey rules and to contribute their labor to the maintenance of institutions that benefit others enormously but that provide no net benefit to them relative to how well they could reasonably expect to be if they were allowed to live outside state authority.

The proper phrase for a society that is not based on mutual advantage is a *parasitic society*. To us, our findings have an obvious implication: stop being parasitic. Follow Paine's recommendation and take mutual advantage seriously. Fulfill the promise of the Lockean proviso. Use redistributive and any other necessary policies to earn the allegiance of every rational, reasonable individual rather than just assuming reasonable consent where there is no reason to believe it exists.

We discuss the theoretical possibility that the state could restore the periphery and allow dissenters to move into stateless regions, although we think that it would be an inadequate response, and few people today take them seriously as policy alternatives. Restoring the periphery is not as crazy as it might sound. The periphery is gone only because states have invaded it. Many of those invasions are recent; some are still ongoing. Our societies still haven't paid the indigenous peoples for what they've taken, and our economies have used conquered land wastefully.

Imagine an environment so healthy and accessible that anyone who didn't like their position in society could go hunt, gather, fish, or farm as long as they wanted to. Imagine a society that taught people the skills they would need to live off the land. Perhaps more importantly, imagine a society that felt it had failed if more than a few people ever chose that option. That society would be forced to give the disadvantaged a much better deal than most states today. But capitalist states are so hungry

for resources and so good at turning them into consumptive goods that redistributive policies are likely to be cheaper and more effective.

Restoring the periphery would be inadequate, for reasons discussed in Chapter 10, but as a thought experiment, it suggests how high a bar the weak proviso is. If these options were easily accessible right outside of town, how well-off would the disadvantaged have to be to ensure that *not one rational person* would choose one of them? We suspect the disadvantaged would have to be a lot better off than people in poverty today.

To us, one response to our findings is obvious: states or property rights systems that fail to fulfill Paine's first principle of civilization need to take whatever steps necessary to raise the welfare level of the poor and disadvantaged at least up to the proviso level. We are sure there are good reasons to raise it more, but the strong proviso is not the subject of this book. This book is about the 350-year-old unfulfilled promise of the weak Lockean proviso. Fulfill the promise, so that the state and the property rights systems will become mutually advantageous for the first time in history. Fulfill the promise, so that these institutions will have *some* claim to meet the minimum ethical standard proposed by the prevailing theories used to justify them.

How? That's not the subject of this book either, but we close with a few words about it. Our societies need safer food, water, air, and soil to free people from the new diseases that have come as side effects of the modern world. People need education appropriate for their socio-economic environment. As Pinker (2012) suggests for other reasons, most states need to extend greater freedom from violence to people who live in disadvantaged communities. Perhaps the most difficult thing for our societies to figure out is how to provide a socio-economic environment more favorable to good mental health and less conducive to feelings of fear and alienation.

Probably the easiest thing that states need to do is to redistribute property and promote opportunity to raise the material wellbeing of the most disadvantaged group of people. The prospects are encouraging. Few if any states are putting as much effort as they reasonably could into improving the living standards of the disadvantaged. People need access to enough food to meet their physical needs, clothing and shelter appropriate for their physical environment, and resources to build a life that they find meaningful (Widerquist 2010c).

There are many ways to raise the material wellbeing of the least advantaged. The solution could be as simple as the guaranteed minimum

living standard suggested by some contractarians, such as Rawls (1971), Kavka (1986: 197–8), or Van Parijs (1995). Policymakers would actually have to show evidence that their policies fulfilled the proviso. Perhaps the method most consistent with the high level of negative freedom experienced by our few remaining stateless cousins is the unconditional basic income, ensuring everyone a regular cash income, high enough to meet their basic needs, without holding them to any conditions such as a work requirement (Van Parijs 1995; Widerquist and Lewis 2006; Sheahen 2012; Widerquist 2013). Before authority was imposed over the land, every individual was free to work with resources as they pleased, and virtually everyone chose not to have bosses and not to have hierarchies, either political or economic. Legal authorities have taken away that freedom, and unless the law recognizes you as the owner of a sufficient amount of resources, it provides you only with the opportunity to work in a hierarchical system, serving someone else's goals. The political environment has made this kind of work so common that most of us have forgotten that for most of history, people were free to work without bosses, chiefs, or landlords. Paid work in a hierarchy is fine if people choose it. But if people are going to be as negatively free as our stateless ancestors, governments and landlords need to restore people's freedom to choose *not* to work in a hierarchical system.

This much we get just from taking the weak proviso seriously. Political philosophers have asserted this minimum condition to justify the state for more than 350 years, but they have never seriously examined their ramifications. Maybe Pateman (1989: 71) is right: "The history of . . . consent theory of the last three centuries largely consists of attempts by theorists to suppress the radical and subversive implications of their own arguments."

Maybe Graeber (2011: 387) is right as well: "Perhaps the world really does owe you a living." States and landowners have asserted authority over nearly all the resources of the earth—resources that you need to survive and that every single human was free to use for the first 200,000 years humans have lived on this planet. States and resource owners promised they only asserted that authority because ultimately it was good for everyone. They were wrong. They owe it to you to make good on that promise.

Note

1   There is controversy about how to make this claim consistent with other moral principles, but not usually about its repugnance.

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