

4. *Proposed solution.* To stop this continual war, Hobbes said it is necessary to think of a "state of nature," a free association of equal individuals that would propose two "Natural Laws":

- Men who are engaged in a continual war, in order to gain the benefits of an enforced peace, will seek it by all means available to them.
- The only true means available to them is for all men to surrender their rights to a central authority who will establish peace by force and decree.

What does all this mean for the analytical method of legal requirements and a convincing solution of moral problems? At the simplest level, the proposal from Hobbes comes across as the rule that everyone should always obey the law because it is in everyone's self-interest to have a stable and orderly society even though they have to give up their rights to obtain that stability and order. This, essentially, is very similar to the analytical method of economic outcomes in which the proposal from Milton Friedman is that everyone should always act to maximize returns because it is in everyone's self-interest to have a productive and efficient society.

In the economic argument by Friedman, you may not like the products that are produced or the resources that are consumed, but to get productivity and efficiency, you have to accept them. In the legal instance by Hobbes, you may not like the laws that are generated, particularly when those laws are established by autocratic dictum on the part of a central authority rather than by a democratic vote through the full society, but to avoid the continual war of all against all, you have to accept them. At this level, both the economic outcomes and legal requirements for a society are based upon the enlightened self-interests of members of that society.

At a more complex level, however, the proposal from Hobbes comes forth as the legal requirement that all laws should reflect what people living in a state of nature would accept as the governing rules of society. This is not enlightened self-interest. This is impartial self-interest. This is the idea of the "Social Contract": When people don't know what position they will hold in the eventual society that is to be formed, they don't know their self-interests. This Social Contract lack of knowledge about self-interests is a very important and very basic concept in moral analysis and needs to be further explained.

If you were to take 100 people, somehow separated from all prior economic, political, and social institutions, and put them on an island, would that society be idyllic or chaotic? Let us assume that it would be idyllic as long as there was enough food, fuel, clothing, and shelter for everyone. But suppose there was a shortage; then what would happen? You might well have the war of "every man against every man" that Hobbes predicted.

A "contractarian"—that is, a person who believes in the analytical worth of the concept of the Social Contract—would argue that whatever agreement those 100 people would make to stop the conflict and end the shortage would be the most rigorous definition you could find as to what was considered to be equitable—that is, what was translated to all and just for everyone—for that society at that time. This could then be translated into legal requirements that every member of that society should follow to ensure the maintenance of their society, guide the production and distribution of their goods, and improve the conditions of their lives.

The contractarian would say that the people on the island, being free and equal but facing chaos and loss, would first discuss the distribution of benefits, the allocation of harms, the acceptance of some rights, and the denial of others. The agreement that they then reached—which would have to be unanimous to be effective; one person holding out would make the agreement non-binding in any Natural Law sense—would be totally without the material self-interests of individuals because no one at the time would be concerned with those self-interests (their positions and possessions versus those of others); they would be concerned only with their social interests (an end to the conflict and a resupply of goods). This Social Contract would be the way in which members of that society theoretically should distribute their benefits, allocate their harms, and ensure or deny their rights, from that time forward. Why? Because *this would be the way that had been determined by all to be best for all when all were absolutely equal in position and property.*

Obviously, you cannot put 100 people who are ignorant of their position and property on an island, and record their decision on the distribution of the benefits and harms and the acceptance and denial of rights. But, you and others can *imagine* what would happen if you put everyone involved in a moral problem—those benefited and those harmed, those with rights recognized and those with rights denied—in a room under the condition that they should think about the solution to that problem as if they did not know what position or property they would hold when they left that room.

Or, and doubtless this is a more realistic approach, it would be possible to put executives, employees, customers, suppliers, distributors, creditors, owners, local residents, national citizens, and global inhabitants in a room and assign roles. That is, some executives would be asked to think and act as if they were customers, others as suppliers. A few customers and suppliers would be asked to address the issues as if they were executives, while others would think of themselves as owners. The advantage of the Social Contract, or—as it has become better known in more recent years—the "Veil of Ignorance," is that it forces people to think about issues from different perspectives, and those different perspectives often lead to equitable solutions that are more in the social interests of the full community rather than in the material interests of the individual persons, groups, or organizations.

The primacy of community interests is the reason that the concept of legal requirements—always obey all provisions of the law—can be used as a method of moral analysis. The idea is that there is a set of rules, established by the full society, that recognize those community interests. Why not, then, fall back upon those rules when faced with a conflict between the financial performance of an organization and the social performance of that organization? Why not let the law decide, particularly in a democratic society where the argument can easily be made that the rules within the law represent the collective moral judgments made by members of the full society? Why not follow these collective moral judgments, instead of trying to establish our individual moral opinions?

There are numerous examples of laws that do reflect collective moral judgments. Almost everybody within the United States would agree that unprovoked assaults are wrong; we have laws against assault. Almost everybody would agree that toxic chemical discharges are wrong; we have laws against pollution. Almost all of us would agree that charitable giving is right; we have no laws against charitable giving. Instead, we have laws—provisions within the tax code—that encourage gifts of money, food, and