

## **International Law as a Form of Private Ordering**

**Relay:** from mahmoud saneipour



**Mahmoud saneipour**

Dear Sir

Thomas Hobbes has belief that “man is wolf of man” and this “sentence” is not suitable for humanity manner and we can’t manage the world by matters of “pessimistic or optimistic manner”, by such this spiritual from him, he puts it in leviathan “covenants whiteout the sword are, but words, and of no strength to secured a man at all, but the sword here is sword of state justice “such these speeches existence from Montesquieu, John Locke, Jean-Jacques Rousseau , David Hume, John Calhoun and other philosophers .

**But we know, that the world has changed by new ideas, innovations, creations, Entrepreneurships, researching continually , work and efforts , making productivities , efficiencies , value added and so on , and created wealth from S&T , and they brought us welfare and ease-living , there was no one of these big human like wolf , and no sword has been over it head , but they abided by one’s word , sword of state justice didn’t become supporter for them , in order that ,they had belief , making love for saving humanity , exaltation, defense , changing of the world , and in this present age is like that kind , and it is always be like this kind no doubt .(see to spirit of covenant and social contracts, third book from me).**

As above mentioned, we need to state that it has the law humanity manner, normality, logic based, truly activities, undertaking contracts, duties via suitable rights and every things i got record in more than 300 article yet, and state should

put to order and establish legal system and get secure of goodness men/women and deliver treacheries to courts for hard punishment and referring benevolent persons for taking reward and suitable development if necessity for exalting of nation and country and such country needs to wise and power leader who is Charismatic as a paradigm that he appear from between of the country's people , and this leadership is not inheritor at all , the most of the people find him in regarding to their natural need and for their high aims.

Best regards

Mahmoud saneipour

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Does legal order always need the enforcement power of the State? The received wisdom from Hobbes is that contracts “without the swords are but words . . . of no strength.” This is a very common assumption, but it is not true. Most contracts are fulfilled without ever having to go to court not because of any threats of force but because they are mutually advantageous. In fact, research shows that the vast majority of business transactions are executed without even entering into formal contracts of any kind. This fact gives rise to a very important question: to what extent is the State necessary to maintain legal order? The idea that such order can evolve without the State is sometimes referred to as private ordering—the coming together of non-governmental parties in voluntary, self-enforcing arrangements. Private order, as I define it here, is any self-sustaining system of legal order that arises in the absence of external coercion. This kind of legal ordering is not promulgated and handed down from above but rather is produced by the participants themselves.

This discussion radically expands the definition of private order (probably not without controversy) to include state actors themselves, for they too, perhaps even more so than individuals, are producers of private order in that they regularly establish sophisticated legal order between themselves despite the absence of a reliable third-party enforcement. The idea of private order is thus particularly relevant to the growth of public international law where there is no centralized coercive authority to speak of. Because it lacks a central coercive authority, order, therefore, cannot arise in any sweeping sense by being externally imposed. Indeed, from the perspective of states, the world exists within an arena of anarchy. Public international law is truly an archetype of private ordering—a vast system of legal order created by the participants themselves.

In many respects, the interactions between states mirror the behavior of individuals engaging in systems of private ordering. It makes little difference if the actor in question is an individual or a national government; all that is required is that they act as a single entity. When dealing with other states, national governments meet this criterion. The ingredients for private order therefore exist just as much on the State as on the individual level, and as such, the concept of private order may be applied to the emergence of public international law. Doing so may prove very useful: it can explain how self-sustaining legal order is able to arise between

nations despite the absence of any supranational authority capable of enforcing the rules on the international stage. Moreover, it may even suggest a way to possibly bolster the emergence of this order.

This discussion constructs a theory of private order (performance signaling theory) based around the unique structural properties of contract. It then applies this to the emergence of public international law to help explain the evolution of stable legal order between governments despite the absence of an external authority capable of enforcing their agreements, arguing that successful treaty-based law should be thought of as a form of contract-based private ordering, one able to emerge primarily because it assigns ongoing positive obligations between the participants (state actors in this case). It has been widely noted that long-term contractual interaction is unique in that it may be self-sustaining even in the absence of third-party coercion. Performance signaling theory posits that this private-ordering potential is implicitly related to the legal makeup of contracts— specifically, it is bound up with the particular kind of legal obligations they engender. Let me explain.

Broadly defined, legal obligations come in either one of two forms. By far, the vast majority of legal obligations are framed in the negative: one shall not infringe upon the property rights of the man who lives next to you; one shall not wantonly assault other people, and so on and so forth. These acts are what we must refrain from doing. They oblige inaction. Most do not relate to specific individuals but rather apply to all members of the public generally— they are owed to everyone. However, legal obligations also come in a second, albeit less common form. These are positive duties owed to specific individuals, positive obligations that require one to perform some overt act or another—that is, what we are obliged to do. I call the first kind of legal obligation *negative obligations* and the second *positive obligations*. This second brand of legal obligation is special because the overt performance of an act creates a clear and discrete signal of cooperation and this maximizes the potential for private ordering in that it allows parties to repeatedly signal their commitment to long-term cooperation. This is not the case with the absence of an action: ongoing negative obligations, which require only inaction, do not provide any signaling opportunity. In fact, they prevent them. In game theory this ability to signal...[read full article](#)

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The great originality of **Hobbes** was to use a contract argument to establish absolute government. He accomplished this by depicting the **state of nature** in horrific terms, as a war of all against all, in which life is "solitary, poore, nasty, brutish, and short" (Leviathan, chap. 13).

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### **Thomas Hobbes**

The pure state of nature or "the natural condition of mankind" was deduced by the 17th century English philosopher [Thomas Hobbes](#), in *Leviathan* and in his earlier work *On the Citizen*.<sup>[2]</sup> Hobbes argued that all humans are by nature equal in faculties of body and mind (i.e., no *natural* inequalities are so great as to give anyone a "claim" to an exclusive "benefit"). From this equality and other causes in human nature, everyone is naturally willing to fight one another: so that "during the time men live without a common power to keep them all in awe, they are in that condition which is called warre; and such a warre as is of every man against every man". In this state every person has a [natural right](#) or liberty to do anything one thinks necessary for preserving one's own life; and life is "solitary, poor, [nasty, brutish, and short](#)" (*Leviathan*, Chapters XIII–XIV). Hobbes described this natural condition with the Latin phrase *bellum omnium contra omnes* (meaning war of all against all), in his work *De Cive*.

Within the state of nature there is neither personal property nor injustice since there is no law, except for certain natural precepts discovered by reason ("[laws of nature](#)"): the first of which is "that every man ought to endeavour peace, as far as he has hope of obtaining it" (*Leviathan*, Ch. XIV); and the second is "that a man be willing, when others are so too, as far forth as for peace and defence of himself he shall think it necessary, to lay down this right to all things; and be contented with so much liberty against other men as he would allow other men against himself" (*loc. cit.*). From here Hobbes develops the way out of the state of nature into political society and government, by [mutual contracts](#).

According to Hobbes the state of nature exists at all times among independent countries, over whom there is no law except for those same precepts or laws of nature (*Leviathan*, Chapters XIII, XXX end). His view of the state of nature helped to serve as a basis for theories of international law and realism.<sup>[3]</sup>

Man is wolf of man

- [ENGLISH / PHILOSOPHERS](#)

Hobbes: Man is a wolf to man

BY [TIM](#) · MAY 10, 2012

Men and violence: **Hobbes** Anthropology

The *Leviathan*, by Thomas **Hobbes**, is a great book of political **philosophy**, for one simple reason: **Hobbes** theories have based our most modern political systems. *The Leviathan* chronicles the adventures of the modern politics from the primitive state of man, that **Hobbes** described as a state of “*war of all against all*“, dominated by reports of bestiality, until the establishment of the civil society. And it is from this premise, “*man is wolf to man*“, the English **philosopher** builds his theory of Leviathan:

*“Whatever the result of a war where every man is enemy to every man, also a result of a time when men live without other security than what their own strength and their own capacity to invent their give. In such a state, there is no room for a strenuous activity, because the fruit thereof is uncertain: and consequently no culture of the earth, no navigation, no use of imported goods by sea, no building suitable for any device move or lift things as require much force, no knowledge of the earth’s surface, no measurement of time, no arts, no letters, no society, and, worst of all, constant fear, and danger of violent death and life of man is solitary, poor, nasty, brutish and short”*

The *Leviathan* rests on the idea that men cannot agree because they are too suspicious. So you need a third to make them respect each other. The Leviathan is this third party, the force which binds the guardianship contractors. To establish this transcendent political force, the men must surrender their natural liberty and the Leviathan and transfer the power of coercion and force. To what benefit? In

exchange for their natural liberty, the Leviathan protects his subjects and their property.

In the background, it is interesting to note the deep pessimism of Hobbes on the human nature, which must be such that it must be countered by a transcendent political force. Leviathan is the peaceful response to the instincts of human destruction. Politics aims to civilize man. We are far from the classic review of Hobbes' Philosophy, which tells us that Hobbes advocates a pure absolutism.

## **John Locke**

[John Locke](#) considers the state of nature in his [Second Treatise on Civil Government](#) written around the time of the [Exclusion Crisis](#) in England during the 1680s. For Locke, in the state of nature all men are free "to order their actions, and dispose of their possessions and persons, as they think fit, within the bounds of the law of nature." (2nd Tr., §4). "The state of Nature has a law of Nature to govern it", and that law is reason. Locke believes that reason teaches that "no one ought to harm another in his life, liberty, and or property" (2nd Tr., §6); and that transgressions of this may be punished. This view of the state of nature is partly deduced from Christian belief (unlike Hobbes, whose philosophy is not dependent upon any prior theology).

Although it may be natural to assume that Locke was responding to Hobbes, Locke never refers to Hobbes by name, and may instead have been responding to other writers of the day, like [Robert Filmer](#).<sup>[4]</sup> In fact, Locke's First Treatise is entirely a response to Filmer's *Patriarcha*, and takes a step by step method to refuting Filmer's theory set out in *Patriarcha*. The conservative party at the time had rallied behind Filmer's *Patriarcha*, whereas the Whigs, scared of another prosecution of Anglicans and Protestants, rallied behind the theory set out by Locke in his *Two Treatises of Government* as it gave a clear theory as to why the people would be justified in overthrowing a monarchy which abuses the trust they had placed in it. <sup>[citation needed]</sup>

## **Montesquieu**

[Montesquieu](#) makes use of the concept of the state of nature in his [The Spirit of the Laws](#), first printed in 1748. Montesquieu interestingly states the thought process



behind early human beings before the formation of society. He says that human beings would have the faculty of knowing and would first think to preserve their life in the state. Human beings would also at first feel themselves to be impotent and weak. As a result, humans would not be likely to attack each other in this state. Next, humans would seek nourishment and out of fear and impulse would eventually unite to create society. Once society was created, a state of war would ensue amongst societies which would have been all created the same way. The purpose of war is the preservation of the society and the self. The formation of law within society is the reflection and application of reason for Montesquieu.<sup>[5]</sup>

### **Jean-Jacques Rousseau**

Hobbes' view was challenged in the eighteenth century by [Jean-Jacques Rousseau](#), who claimed that Hobbes was taking socialized people and simply imagining them living outside of the society in which they were raised. He affirmed instead that people were neither good nor bad, but were born as a blank slate, and later society and the environment influence which way we lean. In Rousseau's state of nature, people did not know each other enough to come into serious conflict, and they did have normal values. The modern society, and the ownership it entails, is blamed for the disruption of the state of nature which Rousseau sees as true freedom.<sup>[6]</sup>

### **David Hume**

[David Hume](#) offers in *A Treatise of Human Nature* (1739) that human beings are naturally social: "Tis utterly impossible for men to remain any considerable time in that savage condition, which precedes society; but that his very first state and situation may justly be esteem'd social. This, however, hinders not, but that philosophers may, if they please, extend their reasoning to the suppos'd state of nature; provided they allow it to be a mere philosophical fiction, which never had, and never cou'd have any reality."<sup>[7]</sup>

Hume's ideas about human nature expressed in the *Treatise* suggest that he would be happy with neither Hobbes' nor his contemporary Rousseau's thought-experiments. He explicitly derides as incredible the hypothetical humanity described in Hobbes' *Leviathan*.<sup>[8]</sup> Additionally, he argues in "Of the Origin of Justice and Property" that if mankind were universally benevolent, we would not hold Justice to be a virtue: "'tis only from the selfishness and confined generosity



of men, along with the scanty provision nature has made for his wants, and that justice derives its origin."<sup>[9]</sup>

## **John Calhoun**

[John C. Calhoun](#), in his *Disquisition on Government*, (1850) wrote that a state of nature is merely hypothetical and argues that the concept is self-contradictory and that political states naturally always existed. "It is, indeed, difficult to explain how an opinion so destitute of all sound reason, ever could have been so extensively entertained, ... I refer to the assertion, that all men are equal in the state of nature; meaning, by a state of nature, a state of individuality, supposed to have existed prior to the social and political state; and in which men lived apart and independent of each other... But such a state is purely hypothetical. It never did, nor can exist; as it is inconsistent with the preservation and perpetuation of the race. It is, therefore, a great misnomer to call it the state of nature. Instead of being the natural state of man, it is, of all conceivable states, the most opposed to his nature—most repugnant to his feelings, and most incompatible with his wants. His natural state is, the social and political—the one for which his Creator made him, and the only one in which he can preserve and perfect his race. As, then, there never was such a state as the, so called, state of nature, and never can be, it follows, that men, instead of being born in it, are born in the social and political state; and of course, instead of being born free and equal, are born subject, not only to parental authority, but to the laws and institutions of the country where born, and under whose protection they draw their first breath."<sup>[10]</sup>

## **20th century**

[John Rawls](#) used what amounted to an artificial state of nature. To develop his [theory of justice](#), Rawls places everyone in the [original position](#). The original position is a hypothetical state of nature used as a [thought experiment](#) development to Rawls' theory of justice. People in the original position have no society and are under a [veil of ignorance](#) that prevents them from knowing how they may benefit from society. They lack foreknowledge of their intelligence, wealth, or abilities. Rawls reasons that people in the original position would want a society where they had their basic liberties protected and where they had some economic guarantees as well. If society were to be constructed from scratch through a social agreement

between individuals, these principles would be the expected basis of such an agreement. Thus, these principles should form the basis of real, modern societies since everyone should consent to them if society were organized from scratch in fair agreements.

Rawls' Harvard colleague [Robert Nozick](#) countered the liberal [A Theory of Justice](#) with the libertarian [Anarchy, State, and Utopia](#), also grounded in the state of nature tradition.<sup>[11]</sup> Nozick argued that a minimalist state of property rights and basic law enforcement would develop out of a state of nature without violating anyone's rights or using force. Mutual agreements among individuals rather than social contract would lead to this minimal state.