

THOMAS HOBBS

# Leviathan

with selected variants  
from the Latin edition of 1668

Edited,  
with Introduction and Notes by  
Edwin Curley

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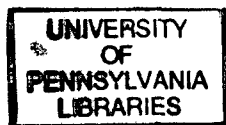
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refuse, or by war subdueth his enemies to his will, giving them their lives on that condition. The other is when men agree amongst themselves to submit to some man, or assembly of men, voluntarily, on confidence to be protected by him against all others. This latter may be called a political commonwealth, or commonwealth by institution, and the former, a commonwealth by acquisition. And first, I shall speak of a commonwealth by institution.

## CHAPTER XVIII

*Of the RIGHTS of Sovereigns by Institution*

[1] \*A commonwealth is said to be instituted, when a multitude of men do agree and covenant, every one with every one, that to whatsoever man or assembly of men shall be given by the major part the right to present the person of them all (that is to say, to be their representative) every one, as well he that voted for it as he that voted against it, shall authorize all the actions and judgments of that man or assembly of men, in the same manner as if they were his own, to the end, to live peaceably amongst themselves and be protected against other men.<sup>1</sup>

The Consequences to  
such Institution are

I. The Subjects cannot  
change the form of  
government.

[2] \*From this institution of a commonwealth are derived all the rights and faculties of him, or them, on whom the sovereign power is conferred by the consent of the people assembled.<sup>2</sup>

[3] First, because they covenant, it is to be understood they are not obliged by former covenant to anything repugnant hereunto. And consequently they that have already instituted a commonwealth, being thereby bound by covenant to own the actions and judgments of one, cannot lawfully make a new covenant amongst themselves to be obedient to any other, in any thing whatsoever,

1. OL: "A commonwealth is instituted when men, coming together voluntarily, agree, every one with every one, that they will all obey whatever man or assembly the greater part, by their votes, shall give the right of bearing the person of them all. Each of them, then, is obliged to obey him whom the greater part elected, and is to be considered the author of all his actions, whether he voted for him or not. For unless the votes of all are understood to be included in the majority of votes, they have come together in vain, and contrary to the end each one proposed for himself, viz., the peace and protection of all."

2. OL: "From the form of the institution are derived all the power [potestas] and all the rights of the one having supreme power [summam potestatem], as well as the duties of all the citizens."

*no revolutions, baby*

without his permission. And therefore, they that are subjects to a monarch cannot without his leave cast off monarchy and return to the confusion of a disunited multitude, nor transfer their person from him that beareth it to another man, or other assembly of men; for they are bound, every man to every man, to own, and be reputed author of, all that he that already is their sovereign shall do and judge fit to be done; so that, any one man dissenting, all the rest should break their covenant made to that man, which is injustice. And they have also every man given the sovereignty to him that beareth their person; and therefore if they depose him, they take from him that which is his own, and so again it is injustice. Besides, if he that attempteth to depose his sovereign be killed, or punished by him for such attempt, he is author of his own punishment, as being, by the institution, author of all his sovereign shall do; and because it is injustice for a man to do anything for which he may be punished by his own authority, he is also, upon that title, unjust.

And whereas some men have pretended for their disobedience to their sovereign a new covenant, made (not with men, but) with God, this also is unjust; for there is no covenant with God but by mediation of somebody that representeth God's person, which none doth but God's lieutenant, who hath the sovereignty under God.<sup>3</sup> But this pretence of covenant with God is so evident a lie, even in the pretenders' own consciences, that it is not only an act of an unjust, but also of a vile and unmanly disposition.

[4] Secondly, because the right of bearing the person of them all is given to him they make sovereign by covenant only of one to another, and not of him to any of them, there can happen no breach of covenant on the part of the sovereign; and consequently none of his subjects, by any pretence of forfeiture, can be freed from his subjection.

That he which is made sovereign maketh no covenant with his subjects beforehand is manifest, because either he must make it with the whole multitude, as one party to the covenant, or he must make a several\* covenant with every man. With the whole, as one party, it is impossible, because as yet they are not one person; and if he make so many several covenants as there be men, those covenants after he hath the sovereignty are void, because what act soever can be pretended by any one of them for breach thereof is the act both of himself and of all the rest, because done in the person and by the right of every one of them in particular.

Besides, if any one (or more) of them pretend a breach of the covenant made by the sovereign at his institution, and others (or one other) of his subjects (or himself alone) pretend there was no such breach, there is in this case no judge to decide the controversy; it returns therefore to the

3. Cf. xiv, 23, and the note thereto.

sword again; and every man recovereth the right of protecting himself by his own strength, contrary to the design they had in the institution. It is therefore in vain to grant sovereignty by way of precedent covenant.

The opinion that any monarch receiveth his power by covenant, that is to say, on condition, proceedeth from want of understanding this easy truth, that covenants, being but words and breath, have no force to oblige, contain, constrain, or protect any man, but what it has from the public sword, that is, from the untied hands of that man or assembly of men that hath the sovereignty, and whose actions are avouched by them all, and performed by the strength of them all, in him united. But when an assembly of men is made sovereign, then no man imagineth any such covenant to have passed in the institution; for no man is so dull as to say, for example, the people of Rome made a covenant with the Romans, to hold the sovereignty on such or such conditions, which not performed, the Romans might lawfully depose the Roman people. That men see not the reason to be alike in a monarchy and in a popular government proceedeth from the ambition of some that are kinder to the government of an assembly, whereof they may hope to participate, than of monarchy, which they despair to enjoy.

III. No man can without injustice protest against the Institution of the Sovereign declared by the major part.

[5] Thirdly, because the major part hath by consenting voices declared a sovereign, he that dissented must now consent with the rest, that is, be contented to avow all the actions he shall do, or else justly be destroyed by the rest. For if he voluntarily entered into the congregation of them that were assembled, he sufficiently declared thereby his will (and therefore tacitly covenanted) to stand to what the major part should ordain; and therefore, if he refuse to stand thereto, or make protestation against any of their decrees, he does contrary to his covenant, and therefore unjustly. And whether he be of the congregation or not, and whether his consent be asked or not, he must either submit to their decrees or be left in the condition of war he was in before, wherein he might without injustice be destroyed by any man whatsoever.

IV. The Sovereign's Actions cannot be justly accused by the Subject.

[6] Fourthly, because every subject is by this institution author of all the actions and judgments of the sovereign instituted, it follows that, whatsoever he doth, it can be no injury to any of his subjects, nor ought he to be by any of them accused of injustice. For he that doth anything by authority from another doth therein no injury to him by whose authority he acteth; but by this institution of a commonwealth every particular man is author of all the sovereign doth; and consequently he that complaineth of injury from his sovereign complaineth of that whereof he himself is author, and therefore ought not to accuse any man but himself; no nor himself of injury, because to do injury to one's self

is impossible. \*It is true that they that have sovereign power may commit iniquity, but not injustice, or injury in the proper signification.<sup>4</sup>

[7] Fifthly, and consequently to that which was said last, no man that hath sovereign power can justly be put to death, or otherwise in any manner by his subjects punished. For seeing every subject is author of the actions of his sovereign, he punisheth another for the actions committed by himself.

V. Whatsoever the Sovereign doth is unpunishable by the Subject.

[8] And because the end of this institution is the peace and defence of them all, and whosoever has right to the end has right to the means, it belongeth of right to whatsoever man or assembly that hath the sovereignty, to be judge both of the means of peace and defence, and also of the hindrances and disturbances of the same, and to do whatsoever he shall think necessary to be done, both beforehand (for the preserving of peace and security, by prevention of discord at home and hostility from abroad) and, when peace and security are lost, for the recovery of the same. And therefore,

VI. The Sovereign is judge of what is necessary for the Peace and Defence of his Subjects.

[9] Sixthly,<sup>5</sup> it is annexed to the sovereignty to be judge of what opinions and doctrines are averse, and what conducing, to peace; and consequently, on what occasions, how far, and what men are to be trusted withal, in speaking to multitudes of people, and who shall examine the doctrines of all books before they be published. For the actions of men proceed from their opinions, and in the well-governing of opinions consisteth the well-governing of men's actions, in order to their peace and concord. And though in matter of doctrine nothing ought to be regarded but the truth, yet this is not repugnant to regulating of the same by peace. For doctrine repugnant to peace can no more be true than peace and concord can be against the law of nature. It is true that in a commonwealth where (by the negligence or unskilfulness of governors and teachers) false doctrines are by time generally received, the contrary truths may be generally offensive. Yet the most sudden and rough bustling in of a new truth that can be does never break the peace, but only sometimes awake the war. For those men that are so remissly governed that they dare take up arms to defend or introduce an opinion are still in war, and their condition not peace, but only a cessation of arms for fear of one another; and they live, as it were, in the precincts of battle continually. It belongeth therefore to him that hath the sovereign power to be judge (or constitute\* all judges)

And Judge of what Doctrines are fit to be taught them

4. OL: "That he who has the supreme power can act inequitably, I have not denied. For what is done contrary to the law of nature is called inequitable; what is done contrary to the civil law, unjust. For just and unjust were nothing before the state was constituted."

5. The marginal summaries suggest that we might better regard ¶8 as stating the sixth right of the sovereign (with ¶9 making explicit one of its implications).

of opinions and doctrines, as a thing necessary to peace, thereby to prevent discord and civil war.

[10] Seventhly, is annexed to the sovereignty the whole power of prescribing the rules whereby every man may know what goods he may enjoy, and what actions he may do, without being molested\* by any of his fellow-subjects; and this is it men call propriety. For before constitution of sovereign power (as hath already been shown) all men had right to all things, which necessarily causeth war;<sup>6</sup> and therefore, this propriety, being necessary to peace, and depending on sovereign power, is the act of that power, in order to the public peace. These rules of propriety (or *meum* and *tuum*) and of *good, evil, lawful, and unlawful* in the actions of subjects are the civil laws; that is to say, the laws of each commonwealth in particular (though the name of civil law be now restrained\* to the ancient civil laws of the city of *Rome*, which being the head of a great part of the world, her laws at that time were in these parts the civil law).

[11] Eighthly, is annexed to the sovereignty the right of judicature, that is to say, of hearing and deciding all controversies which may arise concerning law (either civil or natural) or concerning fact. For without the decision of controversies there is no protection of one subject against the injuries of another, the laws concerning *meum* and *tuum* are in vain, and to every man remaineth, from the natural and necessary appetite of his own conservation, the right of protecting himself by his private strength, which is the condition of war, and contrary to the end for which every commonwealth is instituted.

[12] Ninthly, is annexed to the sovereignty the right of making war and peace with other nations and commonwealths, that is to say, of judging when it is for the public good, and how great forces are to be assembled, armed, and paid for that end, and to levy money upon the subjects to defray the expenses thereof. For the power by which the people are to be defended consisteth in their armies; and the strength of an army, in the union of their strength under one command; which command the sovereign instituted therefore hath, because the command of the *militia*, without other institution, maketh him that hath it sovereign. And therefore, whosoever is made general of an army, he that hath the sovereign power is always generalissimo.\*

[13] Tenthly, is annexed to the sovereignty the choosing of all counsellors, ministers, magistrates, and officers, both in peace and war. For seeing the sovereign is charged with the

VII. The Right of making Rules, whereby the Subjects may every man know what is so his own, as no other Subject can without injustice take it from him.

VIII. To him also belongeth the Right of all Judicature and decision of Controversies.

X. And of making War, and Peace, as he shall think best.

X. And of choosing all Counsellors and Ministers, both of Peace and War.

6. Note that here Hobbes presents the right of all to all as a cause, rather than a consequence, of the war of all against all. Cf. xiii, 13.

end, which is the common peace and defence, he is understood to have power to use such means as he shall think most fit for his discharge.

[14] Eleventhly, to the sovereign is committed the power of rewarding with riches or honour, and of punishing with corporal or pecuniary punishment or with ignominy,\* every subject according to the law he hath formerly made (or if there be no law made, according as he shall judge most to conduce to the encouraging of men to serve the commonwealth, or deterring of them from doing disservice to the same).

[15] Lastly, considering what values men are naturally apt to set upon themselves, what respect they look for from others, and how little they value other men, from whence continually arise amongst them emulation, quarrels, factions, and at last war, to the destroying of one another, and diminution of their strength against a common enemy, it is necessary that there be laws of honour and a public rate\* of the worth of such men as have deserved (or are able to deserve) well of the commonwealth, and that there be force in the hands of some or other to put those laws in execution. But it hath already been shown that not only the whole *militia*, or forces of the commonwealth, but also the judicature of all controversies is annexed to the sovereignty. To the sovereign therefore it belongeth also to give titles of honour, and to appoint what order of place and dignity each man shall hold, and what signs of respect, in public or private meetings, they shall give to one another.

[16] \*These are the rights which make the essence of sovereignty, and which are the marks whereby a man may discern in what man, or assembly of men, the sovereign power is placed and resideth. For these are incommunicable\* and inseparable. The power to coin money, to dispose of the estate and persons of infant heirs, to have preemption\* in markets, and all other statute prerogatives may be transferred by the sovereign, and yet the power to protect his subjects be retained. But if he transfer the *militia*, he retains the judicature in vain, for want of execution of the laws; or if he grant away the power of raising money, the *militia* is in vain; or if he give away the government of doctrines, men will be frightened into rebellion with the fear of spirits. And so if we consider any one of the said rights, we shall presently see, that the holding of all the rest will produce no effect, in the conservation of peace and justice, the end for which all commonwealths are instituted. And this division is it, whereof it is said *a kingdom divided in itself cannot stand*;<sup>7</sup> for unless this division precede, division into opposite armies can never happen. If there had not first been an opinion received of the greatest part of *England*, that these powers were

XI. And of Rewarding, Punishing, and that (where no former Law hath determined the measure of it) arbitrary.

XII. And of Honour and Order.

These Rights are indivisible.

7. Cf. Matthew 12:25, Mark 3:24, Luke 11:17.

divided between the King, and the Lords, and the House of Commons, the people had never been divided and fallen into this civil war, first between those that disagreed in politics, and after between the dissenters about the liberty of religion,<sup>8</sup> which have so instructed men in this point of sovereign right that there be few now (in *England*) that do not see that these rights are inseparable, and will be so generally acknowledged at the next return of peace; and so continue, till their miseries are forgotten, and no longer, except the vulgar be better taught than they have hitherto been.<sup>9</sup>

*And can by no Grant  
pass away without  
direct renouncing of the  
Sovereign Power.*

[17] And because they are essential and inseparable rights, it follows necessarily that in whatsoever words any of them seem to be granted away, yet if the sovereign power itself be not in direct terms renounced, and the name of sovereign no more given by the grantees to him that grants them, the grant is void; for when he has granted all he can, if we grant back the sovereignty, all is restored, as inseparably annexed thereunto.

*The Power and Honour  
of Subjects vanisheth in  
the presence of the  
Power Sovereign.*

[18] This great authority being indivisible, and inseparably annexed to the sovereignty, there is little ground for the opinion of them that say of sovereign kings, though they be *singulis majores*, of greater power than every one of their subjects, yet they be *universis minores*, of less power than them all together. For if by *all together* they mean not the collective body as one person, then *all together*, and *every one*, signify the same; and the speech is absurd. But if by *all together* they understand them as one person (which person the sovereign bears), then the power of all together is the same with the sovereign's power; and so again the speech is absurd; which absurdity they see well enough when the sovereignty is in an assembly of the people; but in a

8. From "those that disagreed in politics . . ." the scribal ms. reads: "the temporal factions of parliamentarians and royalists, by the name of Roundheads and Cavaliers, and since between the doctrinal factions of presbyterians and independents."

9. OL: "And these are the principal rights of the sovereign, as has been fully demonstrated here, and as can be more briefly demonstrated in this one argument. For no one will deny that all these are rights of the commonwealth. But the commonwealth can neither act nor speak except through its person, i.e., him who has the supreme power. All these rights, then, belong to him who in the commonwealth has the supreme power, whether he is a man or an assembly of men. There are other lesser rights belonging to the sovereign, which differ in different commonwealths and can be lost without the power of protecting the citizens being lost. Such rights can be transferred to private citizens. But those greater rights which we have enumerated cannot be transferred. For if the right of the militia is lost, the right of judging will be in vain, because of the lack of power. If the right of raising money is lost, there will be no soldiers. If the right of regulating doctrines is lost,

monarch they see it not; and yet the power of sovereignty is the same in whomsoever it be placed.

[19] And as the power, so also the honour of the sovereign ought to be greater than that of any or all the subjects. For in the sovereignty is the fountain of honour. The dignities of lord, earl, duke, and prince are his creatures. As in the presence of the master, the servants are equal, and without any honour at all, so are the subjects in the presence of the sovereign. And though they shine, some more, some less, when they are out of his sight, yet in his presence they shine no more than the stars in [the] presence of the sun.

[20] But a man may here object that the condition of subjects is very miserable, as being obnoxious to the lusts and other irregular passions of him or them that have so unlimited a power in their hands. And commonly, they that live under a monarch think it the fault of monarchy, and they that live under the government of democracy or other sovereign assembly attribute all the inconvenience to that form of commonwealth (whereas the power in all forms, if they be perfect\* enough to protect them, is the same), not considering that the estate of man can never be without some incommmodity\* or other, and that the greatest that in any form of government can possibly happen to the people in general is scarce sensible, in respect\* of the miseries and horrible calamities that accompany a civil war (or that dissolute condition of masterless men, without subjection to laws and a coercive power to tie their hands from rapine\* and revenge), nor considering that the greatest pressure\* of sovereign governors proceedeth not from any delight or profit they can expect in the damage or weakening

*Sovereign Power not so  
hurtful as the want of  
it, and the hurt proceeds  
for the greatest part  
from not submitting  
readily to a less.*

superstitious citizens will be stirred to rebellion by their own fancies. In sum, if any one of these rights is lacking, all the others will cease, and there will be that division of which Christ himself said, *a kingdom divided against itself cannot stand*. For without an antecedent division of these rights, there will be no division of the people into opposed armies. The opinion of those who taught that the rights of the kingdom of England were divided between the King, the Lords, and the House of Commons, was the cause of the civil war which followed, as also the controversies on political and religious questions, by which, however, the people has now been so instructed concerning the royal right, that there are few now in England, I think, who do not see that the aforesaid rights are inseparable, and they will be publicly recognized as soon as peace has returned, and as long as the memory of past calamities remains, but no longer, unless the people are better instructed." Tricaud notes that OL's version of this passage seems more appropriate to the political circumstances of the late 40s and early 50s than to the time of its publication in 1668, when peace had been restored.

of their subjects (in whose vigour consisteth their own strength and glory), but in the restiveness of themselves that, unwillingly contributing to their own defence, make it necessary for their governors to draw from them what they can in time of peace, that they may have means on any emergent occasion, or sudden need, to resist or take advantage on their enemies. For all men are by nature provided of notable multiplying\* glasses (that is their passions and self-love), through which every little payment appeareth a great grievance, but are destitute of those prospective glasses (namely moral and civil science), to see afar off the miseries that hang over them, and cannot without such payments be avoided.

## CHAPTER XIX

*Of the Several Kinds of COMMONWEALTH by  
Institution and of Succession to the Sovereign  
Power*

*The different Forms  
of Commonwealths  
but three.*

[1] The difference of commonwealths consisteth in the difference of the sovereign, or the person representative of all and every one of the multitude. And because the sovereignty is either in one man or in an assembly of more than one, and into that assembly either every

man hath right to enter or not every one (but certain men distinguished from the rest), it is manifest there can be but three kinds of commonwealth. For the representative must needs be one man or more; and if more, then it is the assembly of all or but of a part. When the representative is one man, then is the commonwealth a MONARCHY; when an assembly of all that will come together, then it is a DEMOCRACY, or popular commonwealth; when an assembly of a part only, then it is called an ARISTOCRACY. Other kind of commonwealth there can be none: for either one or more or all must have the sovereign power (which I have shown to be indivisible) entire.

*Tyranny and  
Oligarchy, but different  
names of Monarchy,  
and Aristocracy.*

[2] There be other names of government in the histories and books of policy\* (as *tyranny and oligarchy*).<sup>1</sup> But they are not the names of other forms of government, but of the same forms misliked. For they that are discontented under *monar-*

1. Among the writers Hobbes is criticizing here would be Aristotle (*Politics* III, vii) and Polybius (*Histories* VI, iii-ix).

*chy* call it *tyranny*; and they that are displeased with *aristocracy* call it *oligarchy*; so also, they which find themselves grieved under a *democracy* call it *anarchy* (which signifies want of government); and yet I think no man believes that want of government is any new kind of government; nor by the same reason ought they to believe that the government is of one kind when they like it, and another when they dislike it or are oppressed by the governors.

[3] It is manifest that men who are in absolute liberty may, if they please, give authority to one man to represent them every one, as well as give such authority to any assembly of men whatsoever; and consequently may subject themselves, if they think good, to a monarch as absolutely as to any other representative. Therefore, where there is already erected a sovereign power, there can be no other representative of the same people, but only to certain particular ends, by the sovereign limited. For that were to erect two sovereigns, and every man to have his person represented by two actors that by opposing one another must needs divide that power which (if men will live in peace) is indivisible, and thereby reduce the multitude into the condition of war, contrary to the end for which all sovereignty is instituted. And therefore, as it is absurd to think that a sovereign assembly, inviting the people of their dominion to send up their deputies with power to make known their advice or desires, should therefore hold such deputies (rather than themselves) for the absolute representative of the people, so it is absurd also to think the same in a monarchy. And I know not how this, so manifest a truth, should of late be so little observed that in a monarchy, he that had the sovereignty from a descent of 600 years, was alone called sovereign, had the title of Majesty from every one of his subjects, and was unquestionably taken by them for their king, was notwithstanding never considered as their representative, that name without contradiction passing for the title of those men which at his command were sent up by the people to carry their petitions, and give him (if he permitted it) their advice.<sup>2</sup> Which may serve as an admonition for those that are the true and absolute representative of a people, to instruct men in the nature of that office, and to take heed how they admit of any other

*Subordinate  
Representatives  
dangerous.*

2. Tricaud points out that the claim of a six hundred years' succession is an exaggeration if Hobbes is reckoning from the Norman Conquest of 1066 even to the end of Charles I's reign in 1649. But if (as Tricaud suggests) Hobbes is dating the beginning of the monarchy from the reign of Edward the Confessor (1042-1066), then (as Sommerville points out in correspondence) (a) it is difficult to see why he does not go back further than Edward, and (b) it is awkward that he later says that William acquired his throne by conquest (e.g., in xxiv, 6). A similar passage in *Behemoth* (p. 1 in Holmes) raises similar questions.

## CHAPTER XXI

### Of the LIBERTY of Subjects

[1] LIBERTY, or FREEDOM, signifieth (properly) the absence of opposition (by opposition, I mean external impediments of motion) and may be applied no less to irrational and inanimate creatures than to rational.<sup>1</sup> For whatsoever is so tied or environed as it cannot move but within a certain space, which space is determined by the opposition of some external body, we say it hath not liberty to go further. And so of all living creatures, whilst they are imprisoned or restrained with walls or chains, and of the water, whilst it is kept in by banks or vessels, that otherwise would spread itself into a larger space, we use to say, they are not at liberty to move in such manner as without those external impediments they would. But when the impediment of motion is in the constitution of the thing itself, we use not to say it wants the liberty, but the power to move (as when a stone lieth still or a man is fastened to his bed by sickness).

Liberty what.

[2] And according to this proper and generally received meaning of the word, a FREE-MAN\* is he that in those things which by his strength and wit he is able to do is not hindered to do what he has a will to. But when the words *free* and *liberty* are applied to anything but *bodies*, they are abused; for that which is not subject to motion is not subject to impediment; and therefore, when it is said (for example) the way is free, no liberty of the way is signified, but of those that walk in it without stop. And when we say a gift is free, there is not meant any liberty of the gift, but of the giver, \*that was not bound by any law, or covenant to give it.<sup>2</sup> So when we *speake freely*, it is not the liberty of voice or pronunciation, but of the man, whom no law hath obliged to speak otherwise than he did. Lastly, from the use of the word *free-will* no liberty can be inferred of the will, desire, or inclination, but the liberty of the man, which consisteth in this: that he finds no stop in doing what he has the will, desire, or inclination to do.

What it is to be Free.

[3] Fear and liberty are consistent, as when a man throweth his goods into the sea for fear the ship should sink, he doth it nevertheless very willingly, and may refuse to do it if he will; it is therefore

1. In defining liberty so that it will be consistent with necessity (cf. ¶4) Hobbes knows he is taking a stand on a controversial issue, which he explores most fully in his dispute with Bramhall (EW IV, 229–78, and EW V). On this topic, see Quentin Skinner, "Thomas Hobbes on the Proper Signification of Liberty," *Transactions of the Royal Historical Society* 40 (1990): 121–51.

2. Not in OL.

the action of one that was *free*;<sup>3</sup> so a man sometimes pays his debt only for fear of imprisonment, which (because nobody hindered him from detaining\*) was the action of a man at liberty. And generally all actions which men do in commonwealths for fear of the law \*are actions which the doers had liberty to omit.<sup>4</sup>

[4] Liberty and necessity are consistent: as in the water, that hath not only liberty, but a necessity of descending by the channel, \*so likewise in the actions which men voluntarily do, which, because they proceed from their will, proceed from liberty, and yet, because every act of man's will and every desire and inclination proceedeth from some cause, and that from another cause in a continual chain (whose first link is in the hand of God the first of all causes), they proceed from necessity. So that to him that could see the connexion of those causes, the necessity of all men's voluntary actions would appear manifest.<sup>5</sup> And therefore God, that seeth and disposeth all things, seeth also \*that the liberty of man in doing what he will is accompanied with the necessity of doing that which God will, and no more nor less.<sup>6</sup> For though men may do many things \*which God does not command, nor is therefore author of them, yet they can have no passion nor appetite to anything of which appetite God's will is not the cause.<sup>7</sup> \*And did not his will assure the necessity of man's will, and consequently of all that on man's will dependeth, the liberty of men would be a contradiction and impediment to the omnipotence and liberty of God.<sup>8</sup> And this shall suffice (as to the matter in hand) of that natural liberty, which only is properly called liberty.

Liberty and Necessity consistent.

3. The same example occurs in Aristotle's discussion of voluntary action, *Nicomachean Ethics*, III, i. Aristotle holds that the person who throws his goods into the sea to avoid shipwreck acts voluntarily, or at least that his action is more properly regarded as voluntary than as involuntary.

4. OL: "were free if they could have not done them."

5. OL: "Similarly, all voluntary actions, which by their nature are free, are nevertheless necessary, because they have causes, and those causes other causes, and so continually until the first cause of all causes, viz. the divine will. So that to those who saw the connection of all causes, the necessity of all actions would be manifest, even though the actions are voluntary."

6. OL: "the necessity of all actions proceeding from his own will."

7. OL: "contrary to the divine laws, i.e., many things of which God is not the author, nevertheless they have no passion, will or appetite whose first and full cause is not from God's will." Cf. xxxi, 5–6, and xlv, 26.

8. OL: "For if God's will did not impose a necessity on the human will, and consequently on all actions depending on it, the freedom of the human will would take away the omnipotence and omniscience and liberty of God."



civil laws

Artificial Bonds,  
or Covenants

[5] But as men (for the attaining of peace and conservation of themselves thereby) have made an artificial man, which we call a commonwealth, so also have they made artificial chains, called *civil laws*, which they themselves by mutual covenants have fastened at one end to the lips of that man or assembly to whom they have given the sovereign power, and at the other end to their own ears. These bonds, in their own nature but weak, may nevertheless be made to hold by the danger (though not by the difficulty) of breaking them.

Liberty of Subjects  
consisteth in Liberty  
from covenants.

[6] In relation to these bonds only it is that I am to speak now of the *liberty of subjects*. For seeing there is no commonwealth in the world wherein there be rules enough set down for the regulating of all the actions and words of men (as being a thing impossible), it followeth necessarily that in all kinds of actions by the laws praetermitted\* men have the liberty of doing what their own reasons shall suggest for the most profitable to themselves. \*For if we take liberty in the proper sense, for corporal liberty (that is to say, freedom from chains and prison), it were very absurd for men to clamour as they do for the liberty they so manifestly enjoy.<sup>9</sup> Again, if we take liberty for an exemption from laws, it is no less absurd for men to demand as they do that liberty by which all other men may be masters of their lives. And yet, as absurd as it is, this is it they demand, not knowing that the laws are of no power to protect them without a sword in the hands of a man, or men, to cause those laws to be put in execution. The liberty of a subject lieth, therefore, only in those things which, in regulating their actions, the sovereign hath praetermitted (such as is the liberty to buy, and sell, and otherwise contract with one another; to choose their own abode, their own diet, their own trade of life, and institute\* their children as they themselves think fit; and the like).

Liberty of the Subject  
consistent with the  
unlimited power of the  
Sovereign.

[7] Nevertheless we are not to understand that by such liberty the sovereign power of life and death is either abolished or limited. For it has been already shown [xviii, 6] that \*nothing the sovereign representative can do to a subject, on what pretence soever, can properly be called injustice, or injury, because every subject is author of every act the sovereign doth, so that he never wanteth right to anything (otherwise than as he himself is the subject of God, and bound thereby to observe the laws of nature).<sup>10</sup>

9. OL: "But if civil liberty were understood to concern the liberty of the body from prison and chains, it would be most absurd for our rebels today to complain and demand liberty, when they showed most plainly by their rebellion that they already enjoyed it."

10. OL: "he who has the supreme power, i.e., the commonwealth, can do no injury to his citizens, even though, by iniquity, he can be injurious to God."

And therefore it may (and doth often) happen in commonwealths that a subject may be put to death by the command of the sovereign power, and yet neither do the other wrong, as when *Jephtha* caused his daughter to be sacrificed (in which, and the like cases, he that so dieth had liberty to do the action for which he is nevertheless without injury put to death).<sup>11</sup> \*And the same holdeth also in a sovereign prince that putteth to death an innocent subject. For though the action be against the law of nature, as being contrary to equity (as was the killing of *Uriah* by *David*), yet it was not an injury to *Uriah*, but to *God*. Not to *Uriah*, because the right to do what he pleased was given him by *Uriah* himself; and yet to *God*, because *David* was *God's* subject, and prohibited all iniquity by the law of nature. Which distinction *David* himself, when he repented the fact, evidently confirmed, saying, "To thee only have I sinned."<sup>12</sup>

\*In the same manner, the people of Athens, when they banished the most potent of their commonwealth for ten years, thought they committed no injustice; and yet they never questioned what crime he had done, but what hurt he would do; nay they commanded the banishment of they knew not whom, and every citizen bringing his oystershell into the market place, written with the name of him he desired should be banished, without actual accusing him, sometimes banished an *Aristides*, for his reputation of justice, and sometimes a scurrilous jester, as *Hyperbolus*, to make a jest of it. And yet a man cannot say the sovereign people of Athens wanted right to banish them, or an *Athenian* the liberty to jest or to be just.<sup>13</sup>

[8] The liberty whereof there is so frequent and honourable mention in the histories and philosophy of the ancient Greeks and Romans, and in the writings and discourse of those that from them have received all their learning in the politics,<sup>14</sup> is

The Liberty which  
writers praise, is the  
Liberty of Sovereigns;  
not of Private men.

11. What *Jephtha's* daughter innocently did was to come to greet him after his victory over the Ammonites, he having made a vow to sacrifice the first person (or perhaps, animal) to come to meet him, if he was granted victory (Judges 11:29-40).

12. The reference is to Ps. 51:4. For the story of *David* and *Uriah* see 2 Samuel 11.

13. OL: "Similarly, when the Athenian people sent a citizen into exile by ostracism, it did not accuse him of a crime, but exiled whomever the majority of citizens wished, not because he was a violator of the laws, but because he seemed able to violate them with impunity, such was his power. Therefore, they banished from the commonwealth *Aristides*, to whom they had previously given the name, the Just. They likewise banished *Hyperbolus*, a scurrilous jester whom no one feared, because they wanted to; perhaps they did this in jest, but not unjustly, since they did it by the right of the commonwealth." See *Plutarch, Life of Aristides* VII, and *Thucydides*, VIII, 73.

14. Though *Hobbes* may have important similarities to *Machiavelli*, the argument of this paragraph is directed against the republican tradition he represents. Cf. *The Discourses* I, iv-v, xvi-xviii, xl.

not the liberty of particular men, but the liberty of the commonwealth, which is the same with that which every man then should have if there were no civil laws, nor commonwealth at all. And the effects of it also be the same. For as amongst masterless men, there is perpetual war of every man against his neighbour, no inheritance to transmit to the son nor to expect from the father, no propriety of goods or lands, no security, but a full and absolute liberty in every particular man, so in states and commonwealths not dependent on one another every commonwealth (not every man) has an absolute liberty to do what it shall judge (that is to say, what that man or assembly that representeth it shall judge) most conducing to their benefit. But withal, they live in the condition of a perpetual war and upon the confines of battle, with their frontiers armed and cannons planted against their neighbours round about. The *Athenians* and *Romans* were free, that is, free commonwealths, not that any particular men had the liberty to resist their own representative, but that their representative had the liberty to resist or invade other people. There is written on the turrets of the city of Lucca in great characters at this day the word LIBERTAS; yet no man can thence infer that a particular man has more liberty, or immunity from the service of the commonwealth, there than in *Constantinople*. Whether a commonwealth be monarchical or popular, the freedom is still the same.

[9] But it is an easy thing for men to be deceived by the specious\* name of liberty and (for want of judgment to distinguish) mistake that for their private inheritance and birth right, which is the right of the public only. And when the same error is confirmed by the authority of men in reputation for their writings in this subject, it is no wonder if it produce sedition and change of government. In these western parts of the world, we are made to receive our opinions concerning the institution and rights of commonwealths from *Aristotle*, *Cicero*, and other men, Greeks and Romans, that, living\* under popular states,<sup>15</sup> derived those rights, not from the principles of nature, but transcribed them into their books out of the practice of their own commonwealths, which were popular, as the grammarians describe the rules of language out of the practice of the time, or the rules of poetry out of the poems of *Homer* and *Virgil*. And because the Athenians were taught (to keep them from desire of changing their government) that\* they were freemen,<sup>16</sup> and all that lived under monarchy were slaves, therefore Aristotle puts it down in his *Politics*, (lib. 6. cap. 2.) "In democracy, Liberty is to be supposed; for it is commonly held that no man is Free in

15. OL: "democratic and aristocratic commonwealths."

16. OL: "only those are free who live in a popular commonwealth."

thing  
State cannot make  
you do ① ② ③ ④

any other government."<sup>17</sup> And as *Aristotle*, so *Cicero* and other writers have grounded their civil doctrine on the opinions of the Romans, who were taught to hate monarchy, at first by them that having deposed their sovereign shared amongst them the sovereignty of *Rome*, and afterwards by their successors. And by reading of these Greek and Latin authors men from their childhood have gotten a habit (under a false show of liberty) of favouring tumults and of licentious controlling the actions of their sovereigns, and again of controlling those controllers, with the effusion of so much blood as I think I may truly say: there was never anything so dearly bought, as these western parts have bought the learning of the Greek and Latin tongues.

[10] To come now to the particulars of the true liberty of a subject (that is to say, what are the things which, though commanded by the sovereign, he may nevertheless without injustice refuse to do), we are to consider what rights we pass away, when we make a commonwealth, or (which is all one) what liberty we deny ourselves by owning all the actions (without exception) of the man or assembly we make our sovereign. For in the act of our *submission* consisteth both our *obligation* and our *liberty*, which must therefore be inferred by arguments taken from thence, there being no obligation on any man which ariseth not from some act of his own; for all men equally are by nature free. And because such arguments must either be drawn from the express words *I authorise all his actions*,<sup>18</sup> or from the intention of him that submitteth himself to his power (which intention is to be understood by the end for which he so submitteth), the obligation and liberty of the subject is to be derived, either from those words (or others equivalent) or else from the end of the institution of sovereignty, namely, the peace of the subjects within themselves, and their defence against a common enemy.

[11] First, therefore, seeing sovereignty by institution is by covenant of every one to every one, and sovereignty by acquisition, by covenants of the vanquished to the victor, or child to the parent, it is manifest that every subject has liberty in all those things the right whereof cannot by covenant be transferred. I have shewn before in the 14th chapter [¶29] that covenants not to defend a man's own body are void. Therefore,

*Liberty of Subjects  
how to be measured.*

*Subjects have Liberty  
to defend their own  
bodies, even against  
them that lawfully  
invade them;*

17. A free translation of 1317a40. But Aristotle is merely reporting a common opinion, and elsewhere he is critical of the false conception of liberty characteristic of the most democratic states (1310a26-35).

18. OL gives the formula of submission in the following form: "I make myself the author of all the actions of that man to whom we have granted supreme power."

[12] If the sovereign command a man (though justly condemned) to kill, wound, or maim himself, or not to resist those that assault him, or to abstain from the use of food, air, medicine, or any other thing without which he cannot live, yet hath that man the liberty to disobey.

[13] If a man be interrogated by the sovereign, or his authority, concerning a crime done by himself, he is not bound (without assurance of pardon) to confess it, because no man (as I have shown in the same chapter [xiv, 30]) can be obliged by covenant to accuse himself.

[14] Again, the consent of a subject to sovereign power is contained in these words *\*I authorize, or take upon me, all his actions*,<sup>19</sup> in which there is no restriction at all of his own former natural liberty; for by allowing him to kill me, I am not bound to kill myself when he commands me. It is one thing to say *kill me, or my fellow, if you please*, another thing to say *I will kill myself, or my fellow*.<sup>20</sup> It followeth, therefore, that

[15] No man is bound by the words themselves, either to kill himself or *\*any other man*,<sup>21</sup> and consequently, that the obligation a man may sometimes have, upon the command of the sovereign, to execute any dangerous or dishonourable office, dependeth not on the words of our submission, but on the intention, which is to be understood by the end thereof. When, therefore, our refusal to obey frustrates the end for which the sovereignty was ordained, then there is no liberty to refuse; otherwise *\*there is*.<sup>22</sup>

[16] Upon this ground a man that is commanded as a soldier to fight against the enemy, though his sovereign have right enough to punish his refusal with death, may nevertheless in many cases refuse without injustice, as when he substituteth a sufficient soldier in his place; for in this case he deserteth not the service of the commonwealth. *\*And* there is allowance to be made for natural timorousness, not only to women (of whom no such dangerous duty is expected), but also to men of feminine courage.<sup>23</sup> When armies fight, there is, on one

19. OL: "I am the author of all the actions of him to whom we have granted the supreme power."

20. Note that what in the preceding sentence had seemed to be a right not to kill oneself has apparently become as well a right not to kill any other man (or fellow citizen? OL: *conciuis*).

21. OL: *conciuem*.

22. OL: "he can use his natural liberty." This is one of those passages which gives rise to Bramhall's accusation that *Leviathan* is a "rebel's catechism." Even a limited right to refuse dangerous or dishonorable commands makes the empowerment of the sovereign problematic.

23. OL: "Moreover, something is to be subtracted from the supreme right because of the natural timidity of certain men, not only of women, from whom duties of such great danger are never expected, but also of men of feminine courage."

side or both, a running away; yet when they do it not out of treachery, but fear, they are not esteemed to do it unjustly, but dishonourably. For the same reason, to avoid battle is not injustice, but cowardice. But he that enrolleth himself a soldier, or taketh imprest\* money, taketh away the excuse of a timorous nature, and is obliged, not only to go to the battle, but also not to run from it without his captain's leave. And when the defence of the commonwealth requireth at once the help of *\*all* that are able to bear arms, every one is obliged,<sup>24</sup> because otherwise the institution of the commonwealth, which they have not the purpose or courage to preserve, was in vain.

[17] To resist the sword of the commonwealth in defence of another man, guilty or innocent, no man hath liberty, because such liberty takes away from the sovereign the means of protecting us, and is therefore destructive of the very essence of government. But in case a great many men together have already resisted the sovereign power unjustly, or committed some capital crime for which every one of them expecteth death, whether have they not the liberty then to join together, and assist, and defend one another? Certainly they have; for they but defend their lives, which the guilty man may as well do as the innocent. There was indeed injustice in the first breach of their duty; their bearing of arms subsequent to it, though it be to maintain what they have done, is no new unjust act. And if it be only to defend their persons, it is not unjust at all. But the offer of pardon taketh from them to whom it is offered the plea of self-defence, and maketh their perseverance in assisting or defending the rest unlawful.

[18] As for other liberties, they depend on the silence of the law. In cases where the sovereign has prescribed no rule, there the subject hath the liberty to do or forbear, according to his own discretion. And therefore such liberty is in some places more, and in some less, and in some times more, in other times less, according as they that have the sovereignty shall think most convenient. As, for example, there was a time when in *England* a man might enter into his own land and dispossess such as wrongfully possessed it by force. But in aftertimes that liberty of forcible entry was taken away by a statute made (by the king) in parliament. And in some places of the world men have the liberty of many wives; in other places such liberty is not allowed.<sup>25</sup>

[19] If a subject have a controversy with his sovereign (of debt, or of

24. OL: "all citizens, each person who either can bear arms or contribute something, however little, to victory, is obliged to military service."

25. Hobbes here seems to sanction polygamy, to the dismay of Clarendon (cf. *A Brief View*, p. 88).

state can make you  
do everything else.

The Greatest Liberty of  
Subjects, dependeth on  
the Silence of the Law.

② Are not bound to  
hurt themselves;

③ Nor to warfare, unless  
they voluntarily  
undertake it.

④

right of possession of lands or goods, or concerning any service required at his hands, or concerning any penalty, corporal or pecuniary) grounded on a precedent law, he hath the same liberty to sue for his right as if it were against a subject, and before such judges as are appointed by the sovereign. For seeing the sovereign demandeth by force of a former law, and not by virtue of his power, he declareth thereby that he requireth no more than shall appear to be due by that law. The suit therefore is not contrary to the will of the sovereign; and consequently the subject hath the liberty to demand the hearing of his cause, and sentence according to that law. But if he [the sovereign] demand or take anything by pretence of his power, there lieth in that case no action of law, for all that is done by him in virtue of his power, is done by the authority of every subject, and consequently, he that brings an action against the sovereign brings it against himself.

[20] If a monarch or sovereign assembly grant a liberty to all or any of his subjects, which grant standing, he is disabled to provide for their safety, the grant is void, unless he directly renounce or transfer the sovereignty to another. For in that he might openly (if it had been his will) and in plain terms have renounced or transferred it, and did not, it is to be understood it was not his will, but that the grant proceeded from ignorance of the repugnancy between such a liberty and the sovereign power; and therefore the sovereignty is still retained, and consequently all those powers which are necessary to the exercising thereof (such as are the power of war and peace, of judicature, of appointing officers and councillors, of levying money, and the rest named in the 18th chapter).<sup>26</sup>

*In what Cases  
Subjects are absolved  
of their obedience to  
their Sovereign.* [21] The obligation of subjects to the sovereign is understood to last as long, and no longer, than the power lasteth by which he is able to protect them. For the right men have by nature to protect themselves, when none else can protect them, can by no covenant be relinquished. The sovereignty is the soul of the commonwealth, which, once departed from the body, the members do no more receive their motion from it. The end of obedience is protection, which, wheresoever a man seeth it, either in his own or in another's sword, nature applieth his obedience to it, and his endeavour to maintain it. And though sovereignty, in the intention of them that make it, be immortal, yet is it in its own nature, not only subject to violent death by foreign war, but also through the ignorance and passions of men it hath in it, from the very

26. This seems to be intended to nullify any claims to rights Parliament might have on the basis of historical concessions by the King, such as were made in Magna Carta and the Petition of Right.

institution, many seeds of a natural mortality by intestine\* discord.

[22] If a subject be taken prisoner in war, or his person or his means of life be within the guards of the enemy, and hath his life and corporal liberty given him, on condition to be subject to the victor, he hath liberty to accept the condition; and having accepted it, is the subject of him that took him, because he had no other way to preserve himself. The case is the same if he be detained on the same terms in a foreign country. But if a man be held in prison or bonds, or is not trusted with the liberty of his body, he cannot be understood to be bound by covenant to subjection, and therefore may, if he can, make his escape by any means whatsoever.

[23] If a monarch shall relinquish the sovereignty, both for himself and his heirs, his subjects return to the absolute liberty of nature, because (though nature may declare who are his sons, and who are the nearest of his kin, yet) it dependeth on his own will (as hath been said in the precedent chapter)<sup>27</sup> who shall be his heir. If therefore he will have no heir, there is no sovereignty, nor subjection. The case is the same if he die without known kindred and without declaration of his heir. For then there can no heir be known, and consequently no subjection be due.

[24] If the sovereign banish his subject, during the banishment he is not subject. But he that is sent on a message, or hath leave to travel, is still subject; but it is by contract between sovereigns, not by virtue of the covenant of subjection. For whosoever entereth into another's dominion is subject to all the laws thereof, unless he have a privilege by the amity\* of the sovereigns, or by special licence.

[25] If a monarch subdued by war render himself subject to the victor, his subjects are delivered from their former obligation, and become obliged to the victor. But if he be held prisoner, or have not the liberty of his own body, he is not understood to have given away the right of sovereignty; and therefore his subjects are obliged to yield obedience to the magistrates formerly placed, governing not in their own name, but in his. For, his right remaining, the question is only of the administration, that is to say, of the magistrates and officers, which (if he have not means to name) he is supposed to approve those which he himself had formerly appointed.

27. The reference seems to be to xix, 20, rather than to anything in ch. xx. Cf. the note to the similar expression in xx, 3. Perhaps at one stage the order of chapters xix and xx was reversed.

the authority of the same, either in the present time or in succession, which crimes the Latins understand by *crimina laesae majestatis*, and consist in design or act contrary to a fundamental law.

[38] Likewise those crimes which render judgments of no effect are greater crimes than injuries done to one or a few persons (as, to receive money to give false judgment or testimony is a greater crime than otherwise to deceive a man of the like or a greater sum), because not only he has wrong that falls by such judgments, but all judgments are rendered useless, and occasion\* ministered\* to force and private revenges.

[39] Also robbery and depeculation\* of the public treasure or revenues is a greater crime than the robbing or defrauding of a private man, because to rob the public is to rob many at once.

[40] Also the counterfeit usurpation of public ministry, the counterfeiting of public seals or public coin, than counterfeiting of a private man's person or his seal, because the fraud thereof extendeth to the damage of many.

[41] Of facts against the law done to private men, the greater crime is that where the damage, in the common opinion of men, is most sensible. And therefore,

[42] To kill against the law is a greater crime than any other injury, life preserved.

[43] And to kill with torment greater than simply to kill.

[44] And mutilation of a limb greater than the spoiling a man of his goods.

[45] And the spoiling a man of his goods by terror of death or wounds, than by clandestine surreption.\*

[46] And by clandestine surreption, than by consent fraudulently obtained.

[47] And the violation of chastity by force greater than by flattery.

[48] And of a woman married, than of a woman not married.

[49] For all these things are commonly so valued, though some men are more, and some less sensible of the same offence. But the law regardeth not the particular, but the general inclination of mankind.

[50] And therefore, the offence men take from contumely in words or gesture, when they produce no other harm than the present grief of him that is reproached, hath been neglected in the laws of the Greeks, Romans, and other (both ancient and modern) commonwealths, supposing the true cause of such grief to consist, not in the contumely (which takes no hold upon men conscious of their own virtue), but in the pusillanimity of him that is offended by it.

[51] Also, a crime against a private man is much aggravated by the

person, time, and place. For to kill one's parent is a greater crime than to kill another; for the parent ought to have the honour of a sovereign (though he have surrendered his power to the civil law), because he had it originally by nature. And to rob a poor man is a greater crime than to rob a rich man, because it is to the poor a more sensible damage.

[52] And a crime committed in the time or place appointed for devotion is greater than if committed at another time or place; for it proceeds from a greater contempt of the law.<sup>14</sup>

[53] Many other cases of aggravation and extenuation might be added; but by these I have set down, it is obvious to every man, to take the altitude\* of any other crime proposed.

[54] Lastly, because in almost all crimes there is an injury *Public Crimes what.* done, not only to some private men, but also to the commonwealth, the same crime, when the accusation is in the name of the commonwealth, is called *public crime*, and when in the name of a private man, a *private crime*; and the pleas according thereunto called public (*judicia publica*, Pleas of the Crown) or Private Pleas. As in an accusation of murder, if the accuser be a private man, the plea is a Private Plea; if the accuser be the sovereign, the plea is a Public Plea.

## CHAPTER XXVIII

## Of PUNISHMENTS and REWARDS

[1] A PUNISHMENT is an evil inflicted by public authority on him that hath done or omitted that which is judged by the same authority to be a transgression of the law, to the end that the will of men may thereby the better be disposed to obedience.<sup>1</sup>

*The Definition of Punishment.*

[2] Before I infer anything from this definition, there is a question to be answered of much importance, which is: by what door the right or authority of punishing in any case came in? For by that which has been said before, no man is supposed bound by covenant not to resist violence; and consequently, it cannot be intended\* that he gave any right to another to lay violent hands upon his person. In the making of a common-

*Right to Punish whence derived.*

14. OL adds: "and of divine worship."

1. OL: "Punishment is an evil inflicted on a transgressor of the law by public authority, to the end that the wills of the subjects may be conformed to obedience by fear of this evil." Cf. Grotius, *De jure belli*, II, xx, 1: "Punishment, in its general meaning, is an evil of suffering which is inflicted on account of an evil of acting."

wealth, every man giveth away the right of defending another, but not of defending himself. Also, he obligeth himself to assist him that hath the sovereignty in the punishing of another, but of himself not. But to covenant to assist the sovereign in doing hurt to another, unless he that so covenanteth have a right to do it himself, is not to give him a right to punish. It is manifest therefore that the right which the commonwealth (that is, he or they that represent it) hath to punish is not grounded on any concession or gift of the subjects.

But I have also showed formerly [xiv, 4] that before the institution of commonwealth, every man had a right to everything, and to do whatsoever he thought necessary to his own preservation, subduing, hurting, or killing any man in order thereunto. And this is the foundation of that right of punishing which is exercised in every commonwealth. For the subjects did not give the sovereign that right, but only (in laying down theirs) strengthened him to use his own as he should think fit, for the preservation of them all; so that it was not given, but left to him, and to him only, and (excepting the limits set him by natural law) as entire as in the condition of mere nature, and of war of every one against his neighbour.

Private injuries  
and revenges no  
Punishments:

[3] From the definition of punishment, I infer, first, that neither private revenges nor injuries of private men can properly be styled punishments, because they proceed not from public authority.<sup>2</sup>

Nor denial of  
preferment:

[4] Secondly, that to be neglected and unpreferred\* by the public favour is not a punishment, because no new evil is thereby on any man inflicted; he is only left in the estate he was in before.

Nor pain inflicted  
without public hearing:

[5] Thirdly, that the evil inflicted by public authority without precedent public condemnation\* is not to be styled by the name of punishment, but of an hostile act, because the fact for which a man is punished ought first to be judged by public authority to be a transgression of the law.

Nor pain inflicted  
by Usurped power:

[6] Fourthly, that the evil inflicted by usurped power, and judges without authority from the sovereign, is not punishment, but an act of hostility, because the acts of power usurped have not for author the person condemned, and therefore are not acts of public authority.

Nor pain inflicted  
without respect to  
the future good.

[7] Fifthly, that all evil which is inflicted without intention or possibility of disposing the delinquent (or, by his example, other men) to obey the laws is not punishment, but an act of hostility; because without such an end, no hurt done is contained under that name.

[8] Sixthly, whereas to certain actions there be annexed by nature divers hurtful consequences (as when a man, in assaulting another, is himself

2. Grotius had allowed punishment by private men. Cf. *De jure belli*, II, xx, 8.

slain or wounded, or when he falleth into sickness by the doing of some unlawful act), such hurt, though in respect of God, who is the author of nature, it may be said to be inflicted, and therefore a punishment divine, yet it is not contained in the name of punishment in respect of men, because it is not inflicted by the authority of man.

Natural evil  
consequences, no  
punishments.

[9] Seventhly, if the harm inflicted be less than the benefit or contentment that naturally followeth the crime committed, that harm is not within the definition, and is rather the price, or redemption, than the punishment of a crime, because it is of the nature of punishment to have for end the disposing of men to obey the law; which end (if it be less than the benefit of the transgression) it attaineth not, but worketh a contrary effect.

Hurt inflicted, if  
less than the benefit  
of transgressing, is  
not Punishment.

[10] Eighthly, if a punishment be determined and prescribed in the law itself, and after the crime committed there be a greater punishment inflicted, the excess is not punishment, but an act of hostility. For seeing the aim of punishment is not a revenge, but terror, and the terror of a great punishment unknown is taken away by the declaration of a less, the unexpected addition is no part of the punishment.

Where the Punish-  
ment is annexed to the  
Law, a greater hurt is  
not Punishment, but  
Hostility.

But where there is no punishment at all determined by the law, there whatsoever is inflicted hath the nature of punishment. For he that goes about the violation of a law wherein no penalty is determined expecteth an indeterminate, that is to say, an arbitrary punishment.

[11] Ninthly, harm inflicted for a fact done before there was a law that forbade it is not punishment, but an act of hostility; for before the law there is no transgression of the law; but punishment supposeth a fact judged to have been a transgression of the law; therefore, harm inflicted before the law made is not punishment, but an act of hostility.

Hurt inflicted for a  
fact done before the  
Law, no Punishment.

[12] Tenthly, hurt inflicted on the representative of the commonwealth is not punishment, but an act of hostility, because it is of the nature of punishment to be inflicted by public authority, which is the authority only of the representative itself.

The Representative of  
the Commonwealth  
Unpunishable.

[13] Lastly, harm inflicted upon one that is a declared enemy falls not under the name of punishment, because seeing they were either never subject to the law, and therefore cannot transgress it, or having been subject to it and professing to be no longer so, by consequence deny they can transgress it, all the harms that can be done them must be taken as acts of hostility. But in declared hostility all infliction of evil is lawful. From whence it followeth, that if a subject shall, by fact or word, wittingly and deliberately deny the authority of the representative of the commonwealth, (whatsoever penalty hath been

Hurt to Revolted  
Subjects is done by  
right of War, not by  
way of Punishment.

formerly ordained for treason) he may lawfully be made to suffer whatsoever the representative will. For in denying subjection he denies such punishment as by the law hath been ordained, and therefore suffers as an enemy of the commonwealth, that is, according to the will of the representative. For the punishments set down in the law are to subjects, not to enemies; such as are they, that having been by their own act subjects, deliberately revolting, deny the sovereign power.

[14] The first and most general distribution of punishments is into *divine* and *human*. Of the former I shall have occasion to speak in a more convenient place hereafter [xxxi, 2; xxxviii, 6-14; xlv, 14-16, 23-40].

[15] *Human* are those punishments that be inflicted by the commandment of man, and are either *corporal*, or *pecuniary*, or *ignominy*, or *imprisonment*, or *exile*, or mixed of these.

[16] *Corporal punishment* is that which is inflicted on the body directly, and according to the intention of him that inflicteth it, such as are stripes, or wounds, or deprivation of such pleasures of the body as were before lawfully enjoyed.

[17] And of these, some be *capital*, some *less than capital*. *Capital* is the infliction of death, and that either simply or with torment. *Less than capital* are stripes, wounds, chains, and any other corporal pain, not in its own nature mortal. For if upon the infliction of a punishment death follow not in the intention of the inflictor, the punishment is not to be esteemed capital, though the harm prove mortal by an accident not to be foreseen; in which case death is not inflicted, but hastened.

[18] *Pecuniary punishment* is that which consisteth not only in the deprivation of a sum of money, but also of lands or any other goods which are usually bought and sold for money. And in case the law that ordaineth such a punishment be made with design to gather money from such as shall transgress the same, it is not properly a punishment, but the price of privilege and exemption from the law, which doth not absolutely forbid the fact, but only to those that are not able to pay the money (except where the law is natural, or part of religion; for in that case it is not an exemption from the law, but a transgression of it; as, where a law exacteth a pecuniary mulct of them that take the name of God in vain, the payment of the mulct is not the price of a dispensation to swear, but the punishment of the transgression of a law indispensable). In like manner, if the law impose a sum of money to be paid to him that has been injured, this is but a satisfaction for the hurt done him, and extinguisheth the accusation of the party injured, not the crime of the offender.

[19] *Ignominy* is the infliction of such evil as is made dishonourable (or the deprivation of such good as is made honourable) by the commonwealth. For there be some things honourable by nature: as, the effects of

courage, magnanimity, strength, wisdom, and other abilities of body and mind. Others made honourable by the commonwealth: as, badges, titles, offices, or any other singular mark of the sovereign's favour. The former (though they may fail by nature or accident) cannot be taken away by a law; and therefore, the loss of them is not punishment. But the latter may be taken away by the public authority that made them honourable, and are properly punishments; such are degrading men condemned of their badges, titles, and offices; or declaring them incapable of the like in time to come.

[20] *Imprisonment* is when a man is by public authority deprived of liberty, and may happen from two divers ends, whereof one is the safe custody of a man accused, the other is the inflicting of pain on a man condemned.

The former is not punishment, because no man is supposed to be punished before he be judicially heard and declared guilty. And therefore, whatsoever hurt a man is made to suffer by bonds or restraint before his cause be heard, over and above that which is necessary to assure his custody, is against the law of nature.

But the latter is punishment, because evil, and inflicted by public authority, for somewhat that has by the same authority been judged a transgression of the law. Under this word imprisonment I comprehend all restraint of motion caused by an external obstacle, be it a house (which is called by the general name of a prison) or an island (as when men are said to be confined to it) or a place where men are set to work (as in old time men have been condemned to quarries, and in these times to galleys), or be it a chain or any other such impediment.

[21] *Exile* (banishment) is when a man is for a crime condemned to depart out of the dominion of the commonwealth (or out of a certain part thereof), and during a prefixed time, or forever, not to return into it; and seemeth not in its own nature, without other circumstances, to be a punishment, but rather an escape, or a public commandment to avoid punishment by flight. And \*Cicero says,<sup>3</sup> there was never any such punishment ordained in the city of Rome, but calls it a refuge of men in danger. For if a man banished be nevertheless permitted to enjoy his goods, and the revenue of his lands, the mere change of air is no punishment, nor does it tend to that benefit of the commonwealth for which all punishments are ordained (that is to say, to the forming of men's wills to the observation of the law), but many times to the damage of the commonwealth. For a banished man is a lawful enemy of the commonwealth that banished him, as being

3. OL: "Cicero, who was most knowledgeable about Roman laws, says." Cf. *Pro Caecina* §100.



no more a member of the same. But if he be withal deprived of his lands or goods, then the punishment lieth not in the exile, but is to be reckoned amongst punishments pecuniary.

*The Punishment of Innocent Subjects is contrary to the Law of Nature.*

[22] All punishments of innocent subjects, be they great or little, are against the law of nature. For punishment is only for transgression of the law; and therefore, there can be no punishment of the innocent. It is therefore a violation, first, of that law of nature which forbiddeth all men, in their revenges, to look at anything

but some future good [xv, 19]. For there can arrive no good to the commonwealth, by punishing the innocent. Secondly, of that which forbiddeth ingratitude [xv, 16]. For seeing all sovereign power is originally given by the consent of every one of the subjects, to the end they should, as long as they are obedient, be protected thereby, the punishment of the innocent is a rendering of evil for good. And thirdly, of the law that commandeth equity [xv, 23], that is to say, an equal distribution of justice, which in punishing the innocent is not observed.

*But the Harm done to Innocents in War, not so:*

[23] But the infliction of what evil soever on an innocent man that is not a subject, if it be for the benefit of the commonwealth, and without violation of any former covenant, is no breach of the law of nature.

For all men that are not subjects are either enemies or else they have ceased from being so by some precedent covenants. But against enemies, whom the commonwealth judgeth capable to do them hurt, it is lawful by the original right of nature to make war, wherein the sword judgeth not, nor doth the victor make distinction of nocent\* and innocent as to the time past, nor has other respect of mercy than as it conduceth to the good of his own people.<sup>4</sup>

*Nor that which is done to declared Rebels.*

And upon this ground it is that also in subjects who deliberately deny the authority of the commonwealth established the vengeance is lawfully extended, not only to the fathers, but also to the third and fourth generation not yet in being (and consequently innocent of the fact for which they are afflicted), because the nature of this offence consisteth in the renouncing of subjection, which is a relapse into the condition of war, commonly called rebellion; and they that so offend suffer, not as subjects, but as enemies. For rebellion is but war renewed.

*Reward is either Salary or Grace.*

[24] REWARD is either of gift or by contract. When by contract, it is called salary and wages, which is benefit due for service performed or promised. When of gift, it is benefit proceeding from the grace of them that bestow it, to encourage or enable men to do them service.

\*And therefore, when the sovereign of a commonwealth appointeth a salary to any public office, he that receiveth it is bound in justice to perform

4. Cf. Grotius' treatment of these issues, *De jure belli* III, iv & xi.

his office; otherwise, he is bound only in honour, to acknowledgment and an endeavour of requital. For though men have no lawful remedy when they be commanded to quit their private business to serve the public without reward or salary, yet they are not bound thereto by the law of nature, nor by the institution of the commonwealth, unless the service cannot otherwise be done; because it is supposed the sovereign may make use of all their means, insomuch as the most common soldier, may demand the wages of his warfare, as a debt.<sup>5</sup>

[25] The benefits which a sovereign bestoweth on a subject for fear of some power, and ability he hath to do hurt to the commonwealth are not properly rewards; for they are not salaries, because there is in this case no contract supposed, every man being

*Benefits bestowed for fear, are not Rewards.*

obliged already not to do the commonwealth disservice; nor are they graces, because they be extorted by fear, which ought not to be incident to the sovereign power; but are rather sacrifices which the sovereign (considered in his natural person, and not in the person of the commonwealth) makes for the appeasing the discontent of him he thinks more potent than himself, and encourage not to obedience, but on the contrary, to the continuance and increasing of further extortion.

[26] And whereas some salaries are certain and proceed from the public treasure, and others uncertain and casual, proceeding from the execution of the office for which the salary is ordained, the latter is in some cases hurtful to the commonwealth, as in the case of judicature. For where the benefit of the judges and ministers of a court of justice ariseth for the multitude of causes that are brought to their cognizance, there must needs follow two inconveniences: one is the nourishing of suits (for the more suits, the greater benefit); and another that depends on that which is contention about jurisdiction (each court drawing to itself as many causes as it can). But in offices of execution there are not those inconveniences, because their employment cannot be increased by any endeavour of their own. And thus much shall suffice for the nature of punishment and reward, which are, as it were, the nerves and tendons that move the limbs and joints of a commonwealth.

*Salaries Certain and Casual.*

5. OL: "For although all subjects are obliged to quit their private business to serve the commonwealth, even without wages, if there is need, nevertheless, this is not [an obligation imposed] by the law of nature or by the institution of the commonwealth unless the commonwealth cannot otherwise be defended. For it is supposed that the sovereign can fairly use the resources of all subjects, and that from these resources those who defend the commonwealth, having set aside their own affairs, ought to be compensated, so that the lowest of soldiers can demand the wages of his service as a thing owed by right."



[27] Hitherto I have set forth the nature of man, whose pride and other passions have compelled him to submit himself to government, together with the great power of his governor, whom I compared to *Leviathan*, taking that comparison out of the two last verses of the one and fortieth of *Job*, where God, having set forth the great power of *Leviathan*, calleth him King of the Proud. "There is nothing," saith he, "on earth to be compared with him. He is made so as not to be afraid. He seeth every high thing below him, and is king of all the children of pride." [Job 41:33-34] But because he is mortal and subject to decay, as all other earthly creatures are, and because there is that in heaven (though not on earth) that he should stand in fear of, and whose laws he ought to obey, I shall in the next following chapters speak of his diseases and the causes of his mortality, and of what laws of nature he is bound to obey.

## CHAPTER XXIX

*Of those things that Weaken or tend to the*  
DISSOLUTION of a COMMONWEALTH

*Dissolution of  
Commonwealths  
proceedeth from their  
Imperfect Institutions.*

[1] Though nothing can be immortal which mortals make, yet if men had the use of reason they pretend to, their commonwealths might be secured at least from perishing by internal diseases. For by the nature of their institution they are designed to live as long as mankind, or as the laws of nature, or as justice itself, which gives them life. Therefore, when they come to be dissolved, not by external violence but intestine\* disorder, the fault is not in men as they are the *matter*, but as they are the *makers* and orderers of them. For men, as they become at last weary of irregular\* jostling\* and hewing\* one another, and desire with all their hearts to conform themselves into one firm and lasting edifice, so for want, both of the art of making fit laws to square their actions by, and also of humility and patience to suffer the rude\* and cumbersome points of their present greatness to be taken off, they cannot, without the help of a very able architect, be compiled into any other than a crazy building, such as, hardly lasting out their own time, must assuredly fall upon the heads of their posterity.

[2] Amongst the *infirmities*, therefore, of a commonwealth I will reckon in the first place those that arise from an imperfect institution, and resemble the diseases of a natural body which proceed from a defectuous\* procreation.

[3] Of which this is one: *that a man, to obtain a kingdom, is sometimes content with less power than to the peace and defence of the commonwealth is necessarily required.* From whence it cometh to pass that, when the exercise of the power laid by is for the public safety to be resumed, it hath the resemblance of an unjust act, which disposeth great numbers of men (when occasion is presented) to rebel (in the same manner as the bodies of children, gotten by diseased parents, are subject either to untimely death, or to purge the ill quality, derived from their vicious\* conception, by breaking out into biles\* and scabs). And when kings deny themselves some such necessary power, it is not always (though sometimes) out of ignorance of what is necessary to the office they undertake, but many times out of a hope to recover the same again at their pleasure. Wherein they reason not well, because such as will hold them to their promises shall be maintained against them by foreign commonwealths, who in order to the good of their own subjects let slip few occasions to *weaken* the estate of their neighbours.

*Want of Absolute power.*

So was *Thomas Becket*, Archbishop of *Canterbury*, supported against *Henry the Second* by the Pope, the subjection of ecclesiastics to the commonwealth having been dispensed with by *William the Conqueror* at his reception, when he took an oath not to infringe the liberty of the church. And so were the *barons*, whose power was by *William Rufus* (to have their help in transferring the succession from his elder brother to himself) increased to a degree inconsistent with the sovereign power, maintained in their rebellion against King *John* by the French.

[4] Nor does this happen in monarchy only. For whereas the style of the ancient Roman commonwealth was *The Senate and People of Rome*, neither senate nor people pretended to the whole power; which first caused the seditions of *Tiberius Gracchus*, *Caius Gracchus*, *Lucius Saturninus*, and others, and afterwards the wars between the senate and the people under *Marius* and *Sulla*, and again under *Pompey* and *Caesar*, to the extinction of their democracy, and the setting up of monarchy.

[5] The people of *Athens* bound themselves but from one only action, which was that no man on pain of death should propound the renewing of the war for the island of *Salamis*; and yet thereby, if *Solon* had not caused to be given out he was mad, and afterwards (in gesture and habit of a madman, and in verse) propounded it to the people that flocked about him, they had had an enemy perpetually in readiness, even at the gates of their city; such damage or shifts are all commonwealths forced to, that have their power never so little limited.<sup>1</sup>

1. This paragraph is not in OL. The anecdote is from Plutarch's *Life of Solon*, viii.