

3 Hobbes' Wicked World

Aristotle thought that people, being rational, would be naturally inclined to organise themselves voluntarily in societies. Thomas Hobbes, writing nearly 2,000 years later, thought that people, being rational, wouldn't.

Thomas Hobbes has a more cynical and, he would say, realistic, view of human nature than the Greeks. Whilst he agrees that people have regard for their self-interest, there is little else Hobbes will accept from the Ancients. Where Aristotle and Plato imagined that (at least some) people were virtuous (and even Machiavelli at least believed it was worth appearing to be so), Hobbes considers that society is only a mixture of selfishness, violence and fear, topped with a healthy dollop of deceit, the last there to make things work more smoothly. Hobbes even has the temerity to describe this as the 'State of Nature', a shocking phrase calculated to arouse the wrath of the Church, directly conflicting with the rosy biblical image of Adam and Eve in the Garden of Eden before the Fall.

How had Hobbes come to such a negative view of society? After all, for most of the Middle Ages in Europe, virtually the only theorising on these matters had been that of the Catholic theologians in their monasteries and convents. In his commentaries on Aristotle, Saint Thomas Aquinas (1225–74) had built upon Aristotle's notion of rationality the necessity of a virtuous and divinely inspired social order, that none could challenge without challenging God. For precisely doing this (amongst other reasons) Hobbes was considered by many of his contemporaries to be, if not actually an atheist, certainly a heretic. Indeed, after the Great Plague of 1666, in which 60,000 Londoners died, and the Great Fire straight afterwards, a parliamentary committee was set up to investigate whether heresy might have contributed to the two disasters. The list of possible causes included Hobbes' writings.

But Thomas Hobbes was born in middle England into a Tudor society which was beginning to collapse into the acrimony of the English Civil War. Much has been made of this fact, as explaining

Hobbes' desire for one all-powerful authority, and perhaps it is too easy to explain away retrospectively Hobbes' unique contribution to the development of the western model of society. After all, the Greeks lived in circumstances in which governments were continually coming and going, and yet they produced theories favouring quite different aims. It might as reasonably be said by the psychological behaviourists that Hobbes' approach stems from emotional distress at being separated from his father, a vicar, who lost his job after quarrelling with another pastor at the church door. (This certainly would explain his own tendency to battle with the Church, yet not disown it.) After that event, the young Hobbes had to be brought up by his uncle, eventually becoming an accomplished scholar at Oxford.

Leaving university with a degree in scholastic logic and, it has been said, several more degrees of contempt for Aristotle in particular, and universities in general, Hobbes obtained a post as tutor to the Earl of Devonshire. He travelled widely with the Duke, moving in increasingly aristocratic circles and even meeting the celebrated Italian astronomer, Galileo, in 1636. Four years earlier, Galileo had published his famous *Dialogue*, setting out some of his conclusions from his observation of the heavens through the newly reinvented telescope, notably his discovery that the moons of Jupiter went around their mother planet and the suggestion that the planets too went around the Sun. Even for this carefully worded suggestion, Galileo was summoned to Rome by the Church, required to recant, and forbidden to make any further astronomical observations. After all, the Earth, the Cardinals reminded him, was the centre of the universe, and did not go round anything. Hobbes admired and to some extent modelled his own writings on Galileo's example. His political system is as radical an upturning of social life as anything the astronomers offered of the solar system.

Hobbes' books are a strange mixture of jurisprudence, religious enthusiasm and political iconoclasm. There is an undertone of guilt reminiscent of St Augustine a thousand years before. Augustine, who had, in his own writings, devoted many thousands of pages to alternately apologising and blaming himself for the wickedness of a soul that had led him, amongst other sins, to steal apples – and, as he solemnly recounts, worst of all, to enjoy it. Other aspects, however, particularly Hobbes' legal points, are innovative and frequently perceptive, even if occasionally dubious in the logic of their argument. Of it all, it is the political theory, the first significant

one since Machiavelli's, that is most interesting and, historically, the most influential.

Work

The starting point for Hobbes' theory of society is a mechanistic view of both the universe and of human life within it. 'Nature (the Art whereby God hath made and governs the World)', Hobbes writes, by way of introduction to the *Leviathan*:

... is by the *Art* of man, (as in many other things so in this also) imitated, [so] that it can make an Artificial Animal. For seeing life is but a motion of the limbs, the beginning whereof is in some principal part within; why may we not say, that all *Automata* (Engines that move themselves by springs and wheels as doth a watch) have an artificial life? For what is the *Heart*, but a *Spring*; and the *Nerves*, but so many *Strings*; and the *Joints*, but so many *Wheels*, giving motion to the whole Body, such as was intended by the artificer?

His view is that people are just machines, moved by what he terms 'appetites' and 'aversions'.

These small beginnings of Motion within the body of Man, before they appear in walking, speaking, striking, and other visible actions are commonly called ENDEAVOUR. This Endeavour, when it is toward something, is called APPETITE or DESIRE; the later, being the general name, and the other often times restrained to signify the Desire of Food, namely Hunger and Thirst. And when the Endeavour is fromward something, it is generally called AVERSION.

It follows that automata, the clockwork mechanisms that were such a great feature of the period, appearing like outrageous children's toys on the church steeples of the richest towns, didn't actually look alive, they *were* alive – artificially alive. 'Life itself is but Motion, and can never be without Desire, nor without Fear, no more than without Sense.'

The motion of the automata are no more mindless than the motion of the animal or human being, and the human being is no

more free to direct its impulses than the machine is. Some, but not many, of these 'motions' are innate, the rest are the result of experience. Everyone seeks to fulfil these appetites, varying only in degree and particular taste. Hobbes thinks the 'human machine' is programmed to direct its energies selfishly. He doubts if it is ever possible for human beings to act altruistically, and even apparently benevolent action is actually self-serving, perhaps an attempt to make them feel good about themselves. In human beings, the primary motion is towards power: '... in the first place, I put for a general inclination of all mankind, a perpetual and restless desire of Power after power, that ceaseth only in Death'.

This view is often associated with the writings of Nietzsche, sometimes with Hegel, but it is Hobbes who puts it so much more convincingly and elegantly 200 years earlier. This desire for power is the cause of human strife and conflict, the origin of the 'War of all upon all', as Hobbes puts it. It is only through an overarching authority that society can overcome this struggle for power over others, and this requires that people abandon their 'natural' rights in return for protection and stability. Hobbes begins the *Leviathan* thus:

Art goes yet further, imitating that Rational and most excellent work of Nature, *Man*. For by Art is created that great LEVIATHAN called a COMMON-WEALTH, or STATE, which is but an Artificial Man; though of greater stature and strength than the Natural, for whose protection and defence it was intended...

The political nature of human society is uncovered by an examination of its earliest origins, in this case traced by Hobbes from the 'invention' of speech, when God teaches Adam the names of the creatures.

The general use of discourse is to transfer our mental discourse into verbal; or the Train of our Thoughts, into a Train of Words; and that for two commodities; whereof one is, the Registering of the Consequences of our Thoughts; which being apt to slip out of our memory, and put us to a new labour, may again be recalled, by such words as they were marked by.

The other use is for communication – to teach, to 'make known to others our wills and purposes, that we may have the mutual help of one another'. But, immediately, alongside the opportunities for com-

munication, speech makes possible new abuses. People can use words to try to deceive others – or themselves.

For the errors of Definitions multiply themselves, according as the reckoning proceeds; and lead men into absurdities which at last they see, cannot avoid, without reckoning anew from the beginning; in which lies the foundation of their errors. From whence it happens, that they which trust to books, do as they that cast up many little sums into a greater, without considering whether those little sums were rightly cast up or not; and at last finding the error visible, and not mistrusting their first grounds, know not which way to clear themselves; but spend time in fluttering over their books; as birds that entering by the chimney, and finding themselves enclosed in a chamber, flutter at the false light of a glass window, for want of wit to consider which way they came in.

Many of the ideas in the *Leviathan* have, however, been fluttered over by philosophers. Nietzsche misappropriated the 'will to power', John Rawls borrowed the idea of a social contract to explain moral decision making, and social determinism in general is today often echoed, for example in talk of 'the selfish gene' that is sometimes claimed to explain human behaviour.

Commentators later made much of Hobbes' lack of academic or indeed scientific rigour, perhaps reflecting the prejudices of his contemporaries who despised his lowly origin, but Hobbes ploughs his own furrow, himself mocking the philosophers. Yet perhaps the most striking aspect of Hobbes' political philosophy is that, at a time of elaborate respect for the various authorities of God, the Pope, the high-born or whoever, it is resolutely rational in its approach. And, in his theory of motions, Hobbes is reflecting the popular view of science in his time, impressed by Galileo's rediscoveries of the mountains on the Moon (Democritus had written too of them), the phases of Venus and the movements of the planets, as well as by biological discoveries such as that of the circulation of the blood by Harvey, all of which tended to challenge established opinion. His arguments are based on clearly set out grounds, his reasoning shown in clear step-by-step terms with no waffle or 'fluttering', and no appeal to mystic or traditional authorities. This is a conscious aim, too, for as he writes of the 'abstruse philosophy' of the Schoolmen:

When men write whole volumes of the stuff, are they not Mad, or intend to make others so?... So that this kind of Absurdity, may rightly be numbered amongst the many sorts of Madness; and all the time that guided by clear Thoughts of their worldly lust, they forbear disputing, or writing thus, but Lucid intervals. And thus much of the Virtues and Defects Intellectual.

Hobbes' emphasis on clarity and common sense leads him to his low opinion of Aristotle's methods, and much of the work of the Ancients. Whereas Aristotle, and indeed Machiavelli, are often to be found extrapolating conclusions from inadequate data whenever and whatever their 'natural light' inspires them to, Hobbes is much more cautious. Experience confirms nothing, universally, Hobbes writes in another of the many books he produced during his 91 years, pre-dating David Hume in his rejection of induction.

Actually, Hobbes is challenging his critics here on a point that Aristotle himself had demonstrated originally: that inductive reasoning – that is, drawing general conclusions from limited actual occurrences – is always, philosophically speaking, invalid. Or, as Bertrand Russell has put it, a chicken may have plenty of evidence for a theory, thinking the farmer is its friend (handfuls of grain each morning) and still be mistaken when it attempts to generalise. For one morning the unfortunate bird will emerge to find its 'friend', the farmer not scattering the grain, but wringing its neck.

Hobbes is anxious to avoid such an undignified fate for himself, particularly in Civil War England, and is careful in his approach. He breaks down (by analysis) social phenomena into their 'basic constituents', and only then synthesises these to produce a new theory.

It is this technique, as much as his theory of power as the motivating spring of mankind, that makes Hobbes a distinctly modern thinker. This shows itself, for example, in what he then makes of his first and most basic commitment, the idea that people have internal desires or motions, and are 'of necessity' seeking the power to fulfil them.

The *Power of a Man* (to take it Universally,) is his present means, to obtain some future apparent Good. And is either *Original*, or *Instrumental*. *Natural Power* is the eminence of the Faculties of Body, or Mind; as extraordinary Strength, Form, Prudence, Arts, Eloquence, Liberality, Nobility. *Instrumental* are those Powers, which acquired by these, or by fortune, are means and

Instruments to acquire more; as Riches, Reputation, Friends, and the secret working of God, which men call Good Luck. For the nature of Power, is in this point, like to Fame, increasing as it proceeds; or like the motion of heavy bodies, which the further they go, make still the more haste.

There are three things that follow directly from this compulsion, three 'principle causes of quarrel' as Hobbes puts it. The first is *competition*, for gain; the second is *diffidence*, and a compulsion for safety; whilst the final one is the compulsion for *glory*, and for reputation. Yet they all precipitate violence.

The first use Violence, to make themselves Masters of other men's persons, wives, children, and cattle; the second, to defend them; the third, for trifles, as a word, a smile, a different opinion, and any other sign of undervalue either direct in their Persons, or by reflection in their Kindred, their Friends, their Nation, their Profession, or their Name.

Of course, people see that they are at risk from their fellow beings, and live perpetually both in danger and in fear.

Hereby it is manifest, that during the time men live without a common power to keep them all in awe, they are in that condition which is called War; and such a War as is of every man, against every man. For WAR, consists not in Battle only, or in the act of fighting; but in... the disposition.

Every man becomes 'Enemy to every man', living without any security other than 'what their own strength, and their own invention shall furnish them with'. In such conditions, Hobbes observes, in a passage culminating in the *Leviathan's* most notorious words:

... there is no place for Industry; because the fruit thereof is uncertain: and consequently no Culture of the Earth; no Navigation, nor use of the commodities that may be imported by Sea; no commodious Building; no instruments of moving, and removing such things as require much force; no Knowledge of the face of the Earth; no account of Time; no Arts; no Letters; no Society; and which is worst of all, continual fear, and danger of

violent death; And the life of man, solitary, poor, nasty, brutish, and short.

To those of his contemporaries who dispute this nature for Man, perhaps asking why God should create such a race, Hobbes challenges them to go to sleep with their doors and money chests unlocked. Anyway, he says, he is not accusing man's nature so much as man's actions. 'The Desires, and other Passions of man, are in themselves no Sin.' Because, in the

war of every man against every other man, this also is consequent; that nothing can be Unjust. The notions of Right and Wrong, Justice and Injustice have there no place. Where there is no common Power, there is no Law: where no Law, no Injustice.

Notions of 'justice' or 'fairness' and 'rights' are 'Qualities that relate to men in Society, not in Solitude'. Morality requires society. The solitary man is not moral. Only through society can 'the solitary man' achieve any relief from fear, any peace and security: 'Fear of oppression, disposes a man to anticipate, or to seek aid by society: for there is no other way by which a man can secure his life and liberty.'

Even an exceptionally strong or ruthless leader needs society, unable to escape from their essential equality with their fellows:

Nature hath made men so equal, in the faculties of the body, and mind; as that though there be found one man sometimes manifestly stronger in body, or quicker in mind than another; yet when all is reckoned together, the difference between man and man is not so considerable.

Although many may believe the differences in intellect to be great, this is but a 'vain conceit'. 'For they see their own wit at hand, and other men's at a distance.'

For individuals are all mortal and all fallible. This fundamental equality makes it impossible for anyone to feel secure from others, except by creating the overriding power of the state. Partly because of this, the founders of commonwealths will have to implant in the masses the beliefs that the laws are divine, 'from the dictates of some God, or other spirit', or else that they themselves are 'of a higher nature than mere mortals'. Hobbes' 'covenant' (by which the ruled exchange their freedom for security) is just such a virtuous fiction:

he does not suppose it to have any actual historical parallel, merely offers it as a convenient rationalisation. Philosophers sometimes raise the objection that the entire social contract raises the question of how it itself can ever be started or got going, as no one is supposed, on Hobbes view, to act out of anything but immediate self-interest – a kind of 'bootstrap' problem. But such objections are inappropriate. Hobbes himself is making no historical claims, only offering fictions.

However, the laws of nature are real enough. The most fundamental of these laws is the right to protect your own life. Since the best way of doing this is for there to be peace, and not war, the requirement is to seek peace.

The Passions that incline men to Peace, are Fear of Death; Desire of such things as are necessary to commodious living; and a Hope by their industry to obtain them. And Reason suggests convenient Articles of Peace, upon which men may be drawn to agreement. These Articles, are they, which otherwise are called the Laws of Nature.

Transferring the right to use force to the sovereign authority, by the people, 'the mutual transferring of Right' is 'that which men call CONTRACT'. The general expression of the Laws of Nature is that of the biblical commandment, to do unto others only what you would have done unto yourself. And Hobbes draws another contrast with the views of Aristotle on 'political creatures':

It is true, that certain living creatures, as Bees, and Ants, live sociably one with another... and yet have no other direction, than their particular judgments and appetites; nor speech, whereby one of them can signify to another, what he thinks expedient for the common benefit; and therefore some man may perhaps desire to know why Mankind cannot do the same.

The reason is that men like to compare themselves with each other – unlike the creatures, whose individual interest is more simply identical with the collective interest. Ants and bees do not differ over methods, merely accepting the system, far less do they try to trick each other. The only way, Hobbes continues, to reproduce such a virtuous system with people, is to

confer all the power and strength upon one Man, or upon one assembly of men, that may reduce all their Wills, by plurality of voices, unto one Will... This is more than Consent, or Concord; it is a real Unity of them all, in one and the same Person, made by Covenant of every man with every man...

And this is 'that Great Leviathan', the Commonwealth, and it comes about when either one man 'by War subdueth his enemies to his will', or 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'.

Hobbes quotes the book of Job on the great power God gives the Leviathan: 'There is nothing on earth to be compared with him. He is made so as not to be afraid. He seeth every thing below him; and is *King of all the children of pride*.'

Much of the *Leviathan* is legalistic in tone, as befits a theory based on constructing order out of anarchy. Crucially, there are even restrictions on the all-powerful sovereign. And, 'no man... can be obliged by Covenant to accuse himself' much less to 'kill, wound, or maim himself'.

Covenants entered into out of fear are obligatory, just as, Hobbes says, with Machiavellian pragmatism, if someone has agreed to pay a ransom, then they must pay it. 'For it is a contract wherein one receives the benefit of life; the other is to receive money, or service for it.' If it were not so, then it would invalidate the supposed contract between the individual and the sovereign, for this is precisely that of one motivated by fear. However, there is one exception to this, and that is a covenant not to defend yourself from force. (To forgo the 'right to self-defence'). This is always void, for 'no man can transfer, or lay down his Right to save himself from Death, Wounds, and Imprisonment'. For the same reason, most sound systems of law do not compel an accused person to testify against their own interests – the citizen has what today we would value as 'the right to silence'.

Hobbes even defends the man who flees court, a position which seems to be based on a low opinion of judges rather than any philosophical consistency. 'The Lords of England were judges, and most difficult cases have been heard and determined by them; yet few of them were much versed in the study of the Laws...' It is especially important for judges, of all people, to acknowledge equal rights.

Nor can anyone be bound to kill another. Even a soldier may refuse to fight the enemy 'though his Sovereign have the right to punish his refusal with death'. This may seem to be inconsistent, but there, that's autocracy for you! At least, Hobbes is more generous than the generals of World War One to their shell-shocked conscripts, in saying: 'Allowance may be made of natural timorousness, not only to women... but also to men of feminine courage.'

Indeed, if a man is in danger of dying, 'Nature compels him to' break the law. On the other hand, Hobbes has no time for 'the poisonous doctrine' that 'every man is a judge of Good and Evil actions', and that listening to your conscience takes higher priority than following the law. Judges should have a sense of 'equity', contempt of riches, be dispassionate and capable of listening patiently and attentively. At the same time, Hobbes bases his law on what he supposes to be the reality of human psychology, even rejecting the commandment not to 'covet', saying that this makes a sin out of human nature.

Certain technical repercussions of a system of laws are considered, such as what happens when someone does not know of the law. Ignorance of the 'Law of Nature' is no excuse, for the law of nature is simply that one should not do to others what one would not like done to oneself. However, ignorance of a civil matter, perhaps like that of a traveller in a strange country, is an excuse. Ignorance of the sovereign is never allowable, for the sovereign is always the citizen's protection, nor is ignorance of the penalty. Ideally, children should be brought up to obey the law instinctively. On the other hand, no law made 'after a Fact done', can make something a crime.

In general, premeditated crime is worse than that arising 'from a sudden Passion' and crimes undermining the law are worse than those of no effect. Punishment must be sufficient to deter a rational criminal, whilst being essentially positive in its aims, a notion which includes, for example, the deterring of others.

Hobbes recommends a series of limitations on the power of the law to punish. Punishments should not constitute revenge, but only restitution, that is, righting wrongs. They should inflict no pain unless it can be offset against some future good – perhaps persuading others not to behave similarly. But, the punishment must be greater than the benefits of the crime, and any ill effects that by chance strike the wrongdoer are not to be offset against the eventual sentence, for these are not 'inflicted by the Authority of man'.

The final Cause. End or Design of men, (who naturally love Liberty, and Dominion over others,) in the introduction of that restraint upon themselves... is the foresight of their own preservation and of a more contented life thereby; that is to say, of getting themselves out from that miserable condition of War, which is necessarily consequent... to the natural Passions of men, when there is no visible Power to keep them in awe, and tie them by fear of punishment to the performance of their Covenants... Covenants without the Sword are but Words.

Yet the sword has great range and freedom in Hobbes' civil society. To begin with, any man who fails to consent to the decrees of the Leviathan may 'without injustice be destroyed by any man whatsoever' (with the exception of 'natural fools, small children and madmen, who do not understand the injunction in the first place'). At the same time, anyone with sovereign power cannot justly be punished, for whatever they do is by definition just. It is not even acceptable to question their actions, for that is to superimpose a new authority over the sovereign. 'It belongeth to him that hath the Sovereign Power, to be Judge.'

There is one exception possible, when the Sovereign 'licenses' another to exercise power 'to certain particular ends, by that Sovereign limited'. (When a colony is funded, the sovereign may need to license them to govern themselves.) Anyway, people are bad judges. '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.'

So what are the details of Hobbesian commonwealths? There are three types. There is that of just one ruler, which is a monarchy; then there is that of an 'Assembly of All', which is a democracy; and lastly, there is that of an assembly of just part of society which is an 'Aristocracy'. Any other forms identified by the Greeks (that Aristotle again) are simply the same ones misnamed, because they are 'misliked'. Thus the Greeks dubbed an unpopular monarch a 'tyrant', a disliked aristocracy an 'oligarchy', and a rogue democracy, 'anarchy'. Hobbes has no time for such false distinctions. They only encourage 'sedition against the state'.

Of the various forms of government, Hobbes is not in principle opposed to assemblies, but monarchies, he thinks, are less likely to be subject to factionalism than assemblies, although there is one monarchic 'inconvenience' – that the crown may sometimes 'descend upon an infant'. Hobbes seems to have in mind when he writes of parliamentary government a body made up of unelected individuals serving for life, rather than representatives removable in the event of public dissatisfaction – the English House of Lords rather than the House of Commons.

What of social policy in the commonwealth? Hobbes thinks that those incapable of work should be helped and looked after, but those unwilling must be compelled. His egalitarianism extends to the distribution of 'Things that cannot be shared out': these must be held in common (or else distributed by lot).

State and church should be united – and then the Laws will be unambiguous. It is not possible for the sovereign to be accused of holding an heretical opinion, for the sovereign's opinion will be the highest and holiest. Most of the deliberate heresies are due to the 'vain and erroneous philosophies' of the Greeks, especially Aristotle, whom Hobbes cannot resist a final go at in the *Leviathan*.

Their Logic which should be their method of reasoning, is nothing else but Captions of Words, and Inventions how to puzzle such as should go about to pose them... there is nothing so absurd that the old Philosophers... have not some of them maintained. And I believe that scarce anything can be more absurdly said than that which now is called Aristotle's *Metaphysics*; nor more repugnant to Government, than much of that he hath said in his *Politics*; nor more ignorantly, than a great part of his *Ethics*.

This contempt is due because the 'Heathen Philosophers' define good and evil by reference to the 'appetite of men', by which measure, Hobbes has already said, there is no law, and no distinction between right and wrong. Aristotle's next mistake was to have not men, but laws, governing. For who thinks that 'words and paper' hurt more than the hands and the swords of men? Finally, by extending the laws to cover thoughts the Greeks allow government to exceed the proper role of the institution.

After this outburst, Hobbes piously hopes that there is nothing too controversial in his views, and brings to an end his 'Discourse

of Civil and Ecclesiastical Government, occasioned by the disorders of the present time...' with the respectful wish that it might some day in the future be adopted by a sovereign as a partial guide. 'I ground the Civil Right of Sovereigns, and both the Duty and Liberty of Subjects, upon the known natural Inclinations of Mankind, and upon the Article of the Law of Nature; of which no man... ought to be ignorant.'

However, as John Locke was to write a century later, for many people Hobbes' social contract is actually worse than the state of nature it is supposed to help them to rise above, because of the arbitrary powers it gives to the sovereign. Who, Locke asked, would sign a contract to escape from 'polecats and foxes', if the result was to be put 'at the mercy of lions'?

Influence

Hobbes' influence is profound. For the first time individual rights are deduced and derived from a supposed 'fundamental right' to self-preservation. Together with the works of the Dutch lawyer and politician, Hugo Grotius, he both set the style and laid the foundations for future work in the areas of political theory, social ethics and international law.

Key Ideas

Thomas Hobbes provides an antidote to the high-minded reasoning of the schoolmen and indeed the Ancients. Starting from a pragmatic assessment of human nature, he strengthens the case for a powerful political and social apparatus organising our lives. And with his interest in the methods of geometry and the natural sciences, he brings a new style of argument to political theorising that is both more persuasive and more effective. But from Hobbes we also obtain a reminder that social organisation, however committed to fairness and equality it may be intended to be, being motivated by a struggle between its members, is also inevitably both authoritarian and inegalitarian.

- People are motivated by selfishness. Left to their own devices they always come into conflict.
- Self-preservation is the highest law. Not even the state can overstep this mark.

Key Text

Hobbes' *Leviathan* (original text 1651)

3 Thomas Hobbes (1588–1679)

Hobbes was born in Malmesbury Somerset, the son of an incompetent country clergyman, in 1588. For much of his life he worked in the service of the aristocratic Cavendish family, and in 1647 was appointed mathematical tutor to the exiled Prince of Wales in Paris. During his time as a tutor for the Cavendish family he had the opportunity to travel to Florence, where he met and formed a friendship with Galileo, whose scientific method influenced the construction of *Leviathan*. An advocate of the royalist cause in the years leading up to the English Civil War, Hobbes thought it prudent to leave England in 1640 to avoid persecution by the Parliamentarians. His relationship with the exiled English court was uneasy, as many disliked his apparent atheism. During this period he wrote *De Cive* and *Leviathan* and made important contacts with European philosophers and scientists. He returned to England in 1650 or 1651, making his peace with the Parliamentary regime and re-establishing good relations with King Charles II at the time of the Restoration.

Hobbes, like many thinkers of his time, had wide-ranging philosophical and scientific interests and engaged in lengthy correspondence on geometry and physics. He was regarded as one of the most influential academic political thinkers of his time, although his impact on practical politics is far less clear. Contemporary accounts suggest a good-humoured, charitable man who was happy to put up with quite a lot of banter and baiting in order to get his views across. Aubrey writes;

The witts at court were wont to bayte him. But he feared none of them and would make his part good. The King would call him *the Beare*: Here comes the Beare to be bayted.

(Aubrey 1949: 232)

First published in 1651, *Leviathan* appeared during one of the most turbulent periods of early modern British political history, the English Civil Wars of 1642–9, in which issues of religious doctrine and the power of the monarchy relative to Parliament were inextricably connected. In terms of European politics, it appeared immediately after the Thirty Years' War, which had devastated Germany. These

was combined struggles for political supremacy with struggles concerning the jurisdiction of the Catholic Church. Hobbes's preoccupation with the breakdown of political order can thus be directly related to the English Civil War and to the politico-religious strife that had recently ravaged continental Europe. The general argument of all his political philosophy can be taken to be broadly supportive of hereditary monarchy. Hobbes believed that political stability and civil peace could only be secured within the context of a unitary political authority with a centralised state in which religious affairs were kept under the control of the sovereign.

It is not difficult, therefore, to see that Hobbes would be sympathetic to the Stuart monarchy, a state-sponsored Church and a parliament confined to a purely advisory role. Such doctrines would apparently be congenial to a monarch, particularly one in contention with a rebellious legislature. *Leviathan* was, however, thought to be in many respects offensive to the king and his supporters. The reason for this is to be found in Hobbes's treatment of Church–State relations and in his theology. Hobbes's main concern is that religious practice takes place within a framework set up by the sovereign; within such a framework different forms of Church governance are possible. It follows from this that the State might permit relatively democratic forms of church organisation and even a plurality of organisations. This was anathema to those who supported the primacy of the Church of England and the executive power of its bishops. Hobbes's theology was constructed so as to be as compatible as possible with his materialist outlook, and his account of the Day of Judgement and the afterlife in Part III of *Leviathan* was thought by many of the King's supporters to be quasi-atheistic.

Hobbes is best known for his political theory, but he was a thinker who also made contributions to the sciences and mathematics as well as to metaphysics and the philosophy of mind. *Leviathan* begins as a treatise on materialist metaphysics, from which a political theory is deduced. His political works include, as well as *Leviathan*, *De Cive*, *Elements of Law* and *Behemoth*. The last is an account, in dialogue form, of the course of the English Civil War; it is notable for its fine-grained study of the character and motivation of the participants, and it goes beyond the rather general moral psychology to be found in *Leviathan*. *De Cive* is, in some respects, a clearer outline of his thinking, although there are considerable differences in emphasis between it and *Leviathan* (notably on the interpretation of the laws of nature and in an account of parent–child relations, which does not occur in *Leviathan*). In this work Hobbes also provides a more comprehensive evaluation of different forms of government.

De Homine is a short work, mainly on the philosophy of mind, and *de Corpore*, published in 1655, is a treatise on the body. Other works included a treatise on liberty, necessity and chance, translations of the work of Thucydides and a verse autobiography. Hobbes also wrote on geometrical matters and, very late in life, translated Homer.

Leviathan is the most systematic exposition of his philosophy. It consists of four parts: 'Of Man', 'Of Commonwealth', 'Of a Christian Commonwealth' and 'Of the Kingdom of Darknesse', the last two being rarely read nowadays. The passages

reproduced here are taken from Chapters 17 and 26 of Part II and deal with the contract and the nature of sovereignty on the one hand, and the nature of the law on the other; these chapters expound some of the fundamental elements of Hobbes's political theory. The scope of the book is vast. Hobbes begins with an account of the human mind, including reason and motivation, and moves on to describe the natural state of human beings, from which he deduces a compelling need for them to associate together in political societies. In Part II, he discusses the rights of sovereigns, the nature of law and different kinds of political societies. Part III is concerned with governance in the context of the Christian and Judaic traditions and is concerned, firstly, to show how Hobbes's general and political philosophy is consistent with Christian doctrine and, secondly, to establish the proper nature of the relationship between Church and State. Part IV is principally concerned with errors in the interpretation of Christian doctrine and with a critique of pre-Christian philosophy and theology.

In *Leviathan*, as in his other political writings, Hobbes offers a *contractarian* account of the formation of the state and is, therefore, in an important sense, a precursor of liberal thinking about consent and obligation. His version of the social contract, however, leads to an account of the relationship between state and subject that we would now regard as absolutist, and one which later writers, such as Locke, also regarded as destructive of liberty. We have already seen why the contemporary national and European political situation may have persuaded Hobbes to produce such an account; we must now examine the reasoning in *Leviathan*, which, he thought, made the case for absolutism philosophically compelling.

Hobbes believed that, in the *state of nature*, that is life without any central authority, humans are in perpetual danger from each other and are incapable of living in harmony. Not only do humans seek to preserve their lives and their means of securing those lives, but they exist in a state of continual competition with each other for honour and dignity (unlike social animals such as bees). Since honour is a positional good – that is, one's honour is rated relative to the honour of others, it follows (although Hobbes does not put it in this way) – that competition amongst people is limitless: one person's gain in honour is another's loss. Hence, competition amongst people is unlimited, whereas amongst social animals it is virtually non-existent. This fact of human nature alone accounts for the 'war of all against all' in the state of nature (Chapter 13).

Although in this state people have the *right* to take any measures necessary to defend themselves, yet they recognise *laws of nature* in virtue of their rationality. These laws tell them what they should do in order to preserve their lives. However, they only become fully operative (capable of being followed) when other people also decide to recognise them. The fundamental law states that, in order to preserve peace, a man should lay down the right to all things in nature and 'be contented with as much liberty against other men, as he would allow other men against himselfe' (Chapter 14). This forms the rational basis for putting self-defence on a

secure and permanent footing within a framework of political order. It is achieved through an agreement amongst individuals that they give up all rights and transfer them to an individual who is to keep the peace (Chapter 17). However, given Hobbes's assumption that people are in continual competition with each other for honour, political authority must be absolute. If it were not, then it could not be secure, since competition would arise again, and such a situation would be no improvement on the state of nature. Only if a subject is threatened with death or imprisonment at the hands of the sovereign should he resist the sovereign power.

On the basis of this theory of sovereignty, Hobbes developed a theory of law which allowed the laws of nature to serve as a moral basis for law-making (in line with earlier thinking about the nature of law-making). But this also characterised the legal structure imposed by the state as essentially a series of commands given by the sovereign (who would himself recognise the validity of the laws of nature), backed up by the force that the sovereign had at his disposal after individuals, at the time of the contract, had given up to him their rights to use force (Chapter 26).

It is easy to understand the contemporary political problem that Hobbes thought he was addressing in advocating absolute sovereign power. It is much less easy to accept the plausibility of his assumption concerning human nature that leads to that position. Once it is allowed that continual competition is not our natural lot, the deduction of the need for absolute sovereignty goes as well, and we are instead left with an argument for a more conditional kind of sovereignty, such as that found in the work of Locke.

Hobbes is one of the most important thinkers in the contractarian tradition of accounting for political obligation, and, as such, should be counted as a major influence on the writings of Rousseau and Locke. At first sight, Hobbes is to be distinguished from these later writers by his advocacy of the absolutist nature of the state. His thinking, however, has certain radical aspects. First, he implicitly rejects the patriarchal argument for absolute power, such as that of Filmer. This leaves his account of the state of nature curiously incomplete. On the one hand, he acknowledges in *De Cive* that there are relations of authority and obligation between parents and children, irrespective of the existence of the state. On the other hand, the creation of a contract presupposes that people assemble as equal, isolated social atoms to create the state. If we assume that the state of nature is already, in some sense, a patriarchy, then it is much less easy to accept the genesis of absolute rule as it is described by Hobbes. Locke, too, had problems in reconciling the parent-child relationship with the individual atoms required for contractarian state formation. It could thus be said the case for patriarchy developed by Filmer is as relevant to Hobbes's work as it is to Locke's. Second, although Hobbes has a preference for Monarchy, his main concern is to advocate strong and unitary government, so that dictatorship could equally well serve his purpose. In this sense, Hobbesian doctrine could be used to justify the ruthless and effective usurper of monarchical power, such as Cromwell.

Hobbes's devices of the state of nature and the original contract were taken up by Rousseau and Locke, although not by Hume and Burke. In the work of Locke, these devices are used to justify a conditional and limited form of

government, while in the work of Rousseau they are used to justify small-scale direct democracies, such as city-states. Although Hobbes approaches political issues from a direction quite different from that of subsequent contractarian authors, he is wrestling with the same problem of how to provide a rational justification for political society. In the work of Hobbes, as in other sixteenth- and seventeenth-century writers in the contractarian tradition, the account of the formation of political society is not distinguished from a theoretical justification for certain forms of polity. For these writers, to explain the formation of polities in terms of a contract was also to justify their existence. Only with Hume, following the work of Vico, does one find the foundations of a natural historical political science, in which factual and normative elements are more clearly distinguished than they are in *Leviathan*. It is fair to say, however, that Hobbes is the founder of early modern and contemporary contractarian theorising about the state.

Hobbes's influence on contemporary political theory is enormous. Marxist interpretations, such as that of MacPherson, see him as a theorist of bourgeois moral psychology, and thus of a state erected on bourgeois principles. He is still much discussed within the contractarian tradition by authors such as Gauthier, where his work is given a game-theoretic interpretation.

His command theory of law, mediated through the utilitarian tradition, is still very influential. His account of the ethical foundations of the state, through appeal to the laws of nature, anticipates Kant and therefore the modern Kantian tradition of political thought. It is, however, in his writings on the relationship between religion and politics that Hobbes perhaps has most to say to us on a practical level. To many people, living in a world characterised by political instability and conflict which contains both religious and political elements intermixed, Hobbes should have much to say. He was preoccupied with the relationship between our inner and our political lives and strove to establish proper boundaries between the two, particularly in Part III of *Leviathan*. Paradoxically for an absolutist, he was particularly concerned to place some limits on the role that religion should play in our lives. He regards attempts to convert people from one religion to another as contrary to the laws of nature and holds that, although it is necessary for a sovereign to prescribe and administer a state-approved religion, the sovereign can only expect *orthopraxy* (that is, conformity to religious ceremony), rather than *orthodoxy* (or conformity to established religious doctrine). Whatever one's form of worship, one's religious beliefs are a matter between oneself and God. God, through his abiding interest in humanity flourishing through stable political societies, will not regard non-orthodox worship (if one is compelled to it) as a sin, since in so conforming one preserves civil peace. And, due to God's omnipotence, one cannot lie to Him about one's beliefs.

It is evident from Part III that Hobbes thought that attempts by Christians to convert non-Christians were wrong, and that Christians living in non-Christian polities should adopt the form of worship prescribed by the sovereign, whatever that might be. It also remains a possibility quite consistent with his general political outlook that the sovereign might allow more than one religious doctrine to flourish within the state, provided the authority of the sovereign was unconditionally

recognised. One finds in *Leviathan*, then, in the less-noticed Part III, a sensitive discussion of the relationship between Church and State which is of direct practical relevance to many troubled parts of the world. Hobbes's discussion is even more relevant to contemporary conditions, because he is considering the relationship between religious belief and state power in conditions where the latter is authoritarian rather than democratic in character: a state of affairs which, of course, applies in many parts of the world today.

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EXTRACT FROM THOMAS HOBBS, *LEVIATHAN*

Chapter XVII: Of the Causes, Generation, and Definition of a Commonwealth

The final cause, end, or design of men, who naturally love liberty, and dominion over others, in the introduction of that restraint upon themselves, in which we see them live in commonwealths, is the foresight of their own preservation, and of a more contented life thereby; that is to say, of getting themselves out from that miserable condition of war, which is necessarily consequent, as hath been shown in chapter xiii, to the natural passions of men, when there is no visible power to keep them in awe, and tie them by fear of punishment to the performance of their covenants, and observation of those laws of nature set down in the fourteenth and fifteenth chapters.

For the laws of nature, as *justice, equity, modesty, mercy*, and, in sum, *doing to others, as we would be done to*, of themselves, without the terror of some power, to cause them to be observed, are contrary to our natural passions, that carry us to partiality, pride, revenge, and the like. And covenants, without the sword, are but words, and of no strength to secure a man at all. Therefore notwithstanding the laws of nature, which every one hath then kept, when he has the will to keep them, when he can do it safely, if there be no power erected, or not

great enough for our security; every man will, and may lawfully rely on his own strength and art, for caution against all other men. And in all places, where men have lived by small families, to rob and spoil one another, has been a trade, and so far from being reputed against the law of nature, that the greater spoils they gained, the greater was their honour; and men observed no other laws therein, but the laws of honour; that is, to abstain from cruelty, leaving to men their lives, and instruments of husbandry. And as small families did then; so now do cities and kingdoms which are but greater families, for their own security, enlarge their dominions, upon all pretences of danger, and fear of invasion, or assistance that may be given to invaders, and endeavour as much as they can, to subdue, or weaken their neighbours, by open force, and secret arts, for want of other caution, justly; and are remembered for it in after ages with honour.

Nor is it the joining together of a small number of men, that gives them this security; because in small numbers, small additions on the one side or the other, make the advantage of strength so great, as is sufficient to carry the victory; and therefore gives encouragement to an invasion. The multitude sufficient to confide in for our security, is not determined by any certain number, but by comparison with the enemy we fear; and is then sufficient, when the odds of the enemy is not of so visible and conspicuous moment, to determine the event of war, as to move him to attempt.

And be there never so great a multitude; yet if their actions be directed according to their particular judgments, and particular appetites, they can expect thereby no defence, nor protection, neither against a common enemy, nor against the injuries of one another. For being distracted in opinions concerning the best use and application of their strength, they do not help but hinder one another; and reduce their strength by mutual opposition to nothing: whereby they are easily, not only subdued by a very few that agree together; but also when there is no common enemy, they make war upon each other, for their particular interests. For if we could suppose a great multitude of men to consent in the observation of justice, and other laws of nature, without a common power to keep them all in awe; we might as well suppose all mankind to do the same; and then there neither would be, nor need to be any civil government, or commonwealth at all; because there would be peace without subjection.

Nor is it enough for the security, which men desire should last all the time of their life, they be governed, and directed by one judgment, for a limited time; as in one battle, or one war. For though they obtain a victory by their unanimous endeavour against a foreign enemy; yet afterwards, when either they have no common enemy or he that by one part is held for an enemy, is by another part held for a friend, they must needs by the difference of their interests dissolve, and fall again into a war amongst themselves.

It is true, that certain living creatures, as bees, and ants, live sociably one with another, which are therefore by Aristotle numbered amongst political creatures; and yet have no other direction, than their particular judgments and appetites; nor speech, whereby one of them can signify to another, what he thinks expedient for the common benefit: and therefore some man may perhaps desire to know, why mankind cannot do the same. To which I answer,

First, that men are continually in competition for honour and dignity, which these creatures are not; and consequently amongst men there ariseth on that ground, envy and hatred, and finally war; but amongst these not so.

Secondly, that amongst these creatures, the common good differeth not from the private; and being by nature inclined to their private, they procure thereby the common benefit. But man, whose joy consisteth in comparing himself with other men, can relish nothing but what is eminent.

Thirdly, that these creatures, having not, as man, the use of reason, do not see, nor think they see any fault, in the administration of their common business; whereas amongst men, there are very many, that think themselves wiser, and abler to govern the public, better than the rest; and these strive to reform and innovate, one this way, another that way; and thereby bring it into distraction and civil war.

Fourthly, that these creatures, though they have some use of voice, in making known to one another their desires, and other affections; yet they want that art of words, by which some men can represent to others, that which is good, in the likeness of evil; and evil, in the likeness of good; and augment, or diminish the apparent greatness of good and evil; discontenting men, and troubling their peace at their pleasure.

Fifthly, irrational creatures cannot distinguish between *injury*, and *damage*; and therefore as long as they be at ease, they are not offended with their fellows: whereas man is then most troublesome, when he is most at ease: for then it is that he loves to shew his wisdom, and control the actions of them that govern the commonwealth.

Lastly, the agreement of these creatures is natural; that of men, is by covenant only, which is artificial: and therefore it is no wonder if there be somewhat else required, besides covenant, to make their agreement constant and lasting; which is a common power, to keep them in awe, and to direct their actions to the common benefit.

The only way to erect such a common power, as may be able to defend them from the invasion of foreigners, and the injuries of one another, and thereby to secure them in such sort, as that by their own industry, and by the fruits of the earth, they may nourish themselves and live contentedly; is, to confer all their power and strength upon one man, or upon one assembly of men, that may reduce all their wills, by plurality of voices, unto one will: which is as much as to say, to appoint one man, or assembly of men, to bear their person; and every one to own, and acknowledge himself to be author of whatsoever he that so beareth their person, shall act, or cause to be acted, in those things which concern the common peace and safety; and therein to submit their wills, every one to his will, and their judgments, to his judgment. This is more than consent, or concord; it is a real unity of them all, in one and the same person, made by covenant of every man with every man, in such manner, as if every man should say to every man, *I authorise and give up my right of governing myself, to this man, or to this assembly of men, on this condition, that thou give up thy right to him, and authorize all his actions in like manner.* This done, the multitude so united in one person, is

called a COMMONWEALTH, in Latin CIVITAS. This is the generation of that great LEVIATHAN, or rather, to speak more reverently, of that mortal god, to which we owe under the immortal God, our peace and defence. For by this authority, given him by every particular man in the commonwealth, he hath the use of so much power and strength conferred on him, that by terror thereof, he is enabled to perform the wills of them all, to peace at home, and mutual aid against their enemies abroad. And in him consisteth the essence of the commonwealth; which, to define it, is *one person, of whose acts a great multitude, by mutual covenants one with another, have made themselves every one the author, to the end he may use the strength and means of them all, as he shall think expedient, for their peace and common defence.*

And he that carrieth this person is called SOVEREIGN, and said to have sovereign power; and every one besides, his SUBJECT. The attaining to this sovereign power is by two ways. One, by natural force; as when a man maketh his children, to submit themselves, and their children to his government, as being able to destroy them if they 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.

[...]

Chapter XXVI: Of Civil Laws

By civil laws, I understand the laws, that men are therefore bound to observe, because they are members, not of this, or that commonwealth in particular, but of a commonwealth. For the knowledge of particular laws belongeth to them, that profess the study of the laws of their several countries; but the knowledge of civil law in general, to any man. The ancient law of Rome was called their *civil law*; from the word *civitas*, which signifies a commonwealth: and those countries, which having been under the Roman empire, and governed by that law, retain still such part thereof as they think fit, call that part the civil law, to distinguish it from the rest of their own civil laws. But that is not it I intend to speak of here; my design being not to show what is law here, and there; but what is law; as Plato, Aristotle, Cicero, and divers others have done, without taking upon them the profession of the study of the law.

And first it is manifest, that law in general, is not counsel, but command; nor a command of any man to any man; but only of him, whose command is addressed to one formerly obliged to obey him. And as for civil law, it addeth only the name of the person commanding, Which is *persona civitatis*, the person of the commonwealth.

Which considered, I define civil law in this manner. CIVIL LAW, *is to every subject, those rules, which the commonwealth hath commanded him by word, writing, or other sufficient*

sign of the will, to make use of, for the distinction of right, and wrong; that is to say, of what is contrary, and what is not contrary to the rule.

In which definition, there is nothing that is not at first sight evident. For every man seeth, that some laws are addressed to all the subjects in general; some to particular provinces; some to particular vocations; and some to particular men; and are therefore laws, to every of those to whom the command is directed., and to none else. As also, that laws are the rules of just, and unjust; nothing being reputed unjust, that is not contrary to some law. Likewise, that none can make laws but the commonwealth; because our subjection is to the commonwealth only: and that commands, are to be signified by sufficient signs; because a man knows not otherwise how to obey them. And therefore, whatsoever can from this definition by necessary consequence be deduced, ought to be acknowledged for truth. Now I deduce from it this that followeth.

1. The legislator in all commonwealths, is only the sovereign, be he one man, as in a monarchy, or one assembly of men, as in a democracy, or aristocracy. For the legislator is he that maketh the law. And the commonwealth only prescribes, and commandeth the observation of those rules, which we call law: therefore the commonwealth is the legislator. But the commonwealth is no person, nor has capacity to do anything, but by the representative, that is, the sovereign; and therefore the sovereign is the sole legislator. For the same reason, none can abrogate a law made, but the sovereign; because a law is not abrogated, but by another law, that forbiddeth it to be put in execution.
2. The sovereign of a commonwealth, be it an assembly, or one man, is not subject to the civil laws. For having power to make, and repeal laws, he may when he pleaseth, free himself from that subjection, by repealing those laws that trouble him, and making of new; and consequently he was free before. For he is free, that can be free when he will: – nor is it possible for any person to be bound to himself; because he that can bind, can release; and therefore he that is bound to himself only, is not bound.
3. When long use obtaineth the authority of a law, it is not the length of time that maketh the authority, but the will of the sovereign signified by his silence, for silence is sometimes an argument of consent; and it is no longer law, than the sovereign shall be silent therein. And therefore if the sovereign shall have a question of right grounded, not upon his present will, but upon the laws formerly made; the length of time shall bring no prejudice to his right; but the question shall be judged by equity. For many unjust actions, and unjust sentences, go uncontrolled a longer time than any man can remember. And our lawyers account no customs law, but such as are reasonable, and that evil customs are to be abolished. But the judgment of what is reasonable, and of what is to be abolished, belongeth to him that maketh the law, which is the sovereign assembly, or monarch.
4. The law of nature, and the civil law, contain each other, and are of equal extent. For the laws of nature, which consist in equity, justice, gratitude, and other moral virtues on these depending, in the condition of mere nature, as I have said before in the end of the

fifteenth chapter, are not properly laws, but qualities that dispose men to peace and obedience. When a commonwealth is once settled, then are they actually laws, and not before; as being then the commands of the commonwealth; and therefore also civil laws: for it is the sovereign power that obliges men to obey them. For in the differences of private men, to declare, what is equity, what is justice, and what is moral virtue, and to make them binding, there is need of the ordinances of sovereign power, and punishments to be ordained for such as shall break them; which ordinances are therefore part of the civil law. The law of nature therefore is a part of the civil law in all commonwealths of the world. Reciprocally also, the civil law is a part of the dictates of nature. For justice, that is to say, performance of covenant and giving to every man his own is a dictate of the law of nature. But every subject in a commonwealth, hath covenanted to obey the civil law; either one with another, as when they assemble to make a common representative, or with the representative itself one by one, when subdued by the sword they promise obedience, that they may receive life; and therefore obedience to the civil law is part also of the law of nature. Civil, and natural law are not different kinds, but different parts of law; whereof one part being written, is called civil, the other unwritten, natural. But the right of nature, that is, the natural liberty of man, may by the civil law be abridged, and restrained: nay, the end of making laws, is no other, but such restraint; without the which there cannot possibly be any peace. And law was brought into the world for nothing else, but to limit the natural liberty of particular men, in such manner, as they might not hurt, but assist one another, and join together against a common enemy.

5. If the sovereign of one commonwealth, subdue a people that have lived under other written laws and afterwards govern them by the same laws, by which they were governed before; yet those laws are the civil laws of the victor, and not of the vanquished commonwealth. For the legislator is he, not by whose authority the laws were first made, but by whose authority they now continue to be laws. And therefore where there be divers provinces, within the dominion of a commonwealth, and in those provinces diversity of laws, which commonly are called the customs of each several province, we are not to understand that such customs have their force, only from length of time; but that they were anciently laws written, or other wise made known, for the constitutions, and statutes of their sovereigns; and are now laws, not by virtue of the prescription of time, but by the constitutions of their present sovereigns. But if an unwritten law, in all the provinces of a dominion, shall be generally observed, and no iniquity appear in the use thereof; that law can be no other but a law of nature, equally obliging all mankind.
6. Seeing then all laws, written and unwritten have their authority and force, from the will of the commonwealth; that is to say, from the will of the representative; which in a monarchy is the monarch, and in other commonwealths the sovereign assembly; a man

may wonder from whence proceed such opinions, as are found in the books of lawyers of eminence in several commonwealths, directly, or by consequence making the legislative power depend on private men, or subordinate judges. As for example, *that the common law, hath no controller but the parliament*; which is true only where a parliament has the sovereign power, and cannot be assembled, nor dissolved, but by their own discretion. For if there be a right in any else to dissolve them, there is a right also to control them, and consequently to control their controllings. And if there be no such right, then the controller of laws is not *parliamentum*, but *rex in parlamento*. And where a parliament is sovereign, if it should assemble never so many, or so wise men, from the countries subject to them, for whatsoever cause; yet there is no man will believe, that such an assembly hath thereby acquired to themselves a legislative power. Item, that the two arms of a commonwealth, are *force and justice the first whereof is in the king; the other deposited in the hands of the parliament*. As if a commonwealth could consist, where the force were in any hand, which justice had not the authority to command and govern.

7. That law can never be against reason, our lawyers are agreed; and that not the letter, that is every construction of it, but that which is according to the intention of the legislator, is the law. And it is true: but the doubt is of whose reason it is, that shall be received for law. It is not meant of any private reason; for then there would be as much contradiction in the laws, as there is in the Schools; nor yet, as Sir Edward Coke makes it, *artificial perfection of reason, gotten by long study, observation, and experience*, as his was. For it is possible long study may increase, and confirm erroneous sentences: and where men build on false grounds, the more they build, the greater is the ruin: and of those that study, and observe with equal time and diligence, the reasons and resolutions are, and must remain discordant: and therefore it is not that juris *prudentia*, or wisdom of subordinate judges; but the reason of this our artificial man the commonwealth, and his command, that maketh law: and the commonwealth being in their representative but one person, there cannot easily arise any contradiction in the laws; and when there doth, the same reason is able, by interpretation, or alteration, to take it away. In all courts of justice, the sovereign, which is the person of the commonwealth, is he that judgeth: the subordinate judge, ought to have regard to the reason, which moved his sovereign to make such law, that his sentence may be according thereunto; which then is his sovereign's sentence; otherwise it is his own, and an unjust one.
8. From this, that the law is a command, and a command consisteth in declaration, or manifestation of the will of him that commandeth, by voice, writing, or some other sufficient argument of the same, we may understand, that the command of the commonwealth is law only to those, that have means to take notice of it. Over natural fools, children, or madmen, there is no law, no more than over brute beasts; nor are they capable of the title of just, or unjust; because they had never power to make any

covenant, or to understand the consequences thereof; and consequently never took upon them to authorize the actions of any sovereign, as they must do that make to themselves a commonwealth. And as those from whom nature or accident hath taken away the notice of all laws in general; so also every man, from whom any accident, not proceeding from his own default, hath taken away the means to take notice of any particular law, is excused, if he observe it not: and to speak properly, that law is no law to him. It is therefore necessary, to consider in this place, what arguments, and signs be sufficient for the knowledge of what is the law; that is to say, what is, the will of the sovereign, as well in monarchies, as in other forms of government.

And first, if it be a law that obliges all the subjects without exception, and is not written, nor otherwise published in such places as they may take notice thereof, it is a law of nature. For whatsoever men are to take knowledge of for law, not upon other men's words, but every one from his own reason, must be such as is agreeable to the reason of all men; which no law can be, but the law of nature. The laws of nature therefore need not any publishing, nor proclamation; as being contained in this one sentence, approved by all the world, *Do not that to another; which thou thinkest unreasonable to be done by another to thyself.*

Secondly, if it be a law that obliges only some condition of men, or one particular man, and be not written, nor published by word, then also it is a law of nature; and known by the same arguments, and signs, that distinguish those in such a condition, from other subjects. For whatsoever law is not written, or some way published by him that makes it law, can be known no way, but by the reason of him that is to obey it; and is therefore also a law not only civil, but natural. For example, if the sovereign employ a public minister, without written instructions what to do; he is obliged to take for instructions the dictates of reason; as if he make a judge, the judge is to take notice, that his sentence ought to be according to the reason of his sovereign, which being always understood to be equity, he is bound to it by the law of nature: or if an ambassador, he is, in all things not contained in his written instructions, to take for instruction, that which reason dictates to be most conducing to his sovereign's interest; and so of all other ministers of the sovereignty, public and private. All which instructions of natural reason may be comprehended under one name of *fidelity*; which is a branch of natural justice.

The law of nature excepted, it belongeth to the essence of all other laws, to be made known, to every man that shall be obliged to obey them, either by word, or writing, or some other act, known to proceed from the sovereign authority. For the will of another cannot be understood, but by his own word, or act, or by conjecture taken from his scope and purpose; which in the person of the commonwealth, is to be supposed always consonant to equity and reason. And in ancient time, before letters were in common use, the laws were many times put into verse; that the rude people taking pleasure in singing, or reciting them, might the more easily retain them in memory. And for the same reason Solomon (*Prov. vii. 3*) adviseth a man to bind the

ten commandments upon his ten fingers. And for the law which Moses gave to the people of Israel at the renewing of the covenant (*Deut.* xi. 19), he biddeth them to teach it their children, by discoursing of, it both at home, and upon the way; at going to bed, and at rising from bed; and to write it upon the posts, and doors of their houses; and (*Deut.* xxxi. 12) to assemble the people, man, woman, and child, to hear it read. Nor is it enough the law be written, and published; but also that there be manifest signs, that it proceedeth from the will of the sovereign. For private men, when they have, or think they have force enough to secure their unjust designs, and convoy them safely to their ambitious ends, may publish for laws what they please, without, or against the legislative authority. There is therefore requisite, not only a declaration of the law, but also, sufficient signs of the author and authority. The author, or legislator is supposed in every commonwealth to be evident, because he is the sovereign, who having been constituted by the consent of every one, is supposed by every one to be sufficiently known. And though the ignorance and security of men be such, for the most part, as that when the memory of the first constitution of their commonwealth is worn out, they do not consider, by whose power they used to be defended against their enemies, and to have their industry protected, and to be righted when injury is done them; yet because no man that considers, can make question of it, no excuse can be derived from the ignorance of where the sovereignty is placed. And it is a dictate of natural reason, and consequently an evident law of nature, that no man ought to weaken that power, the protection whereof he hath himself demanded, or wittingly received against others. Therefore of who is sovereign, no man, but by his own fault, (whatsoever evil men suggest) can make any doubt. The difficulty consisteth in the evidence of the authority derived from him; the removing whereof, dependeth on the knowledge of the public registers, public counsels, public ministers, and public seals; by which all laws are sufficiently verified; verified, I say, not authorized: for the verification, is but the testimony and record, not the authority of the law; which consisteth in the command of the sovereign only.

If therefore a man have a question of injury, depending on the law of nature; that is to say, on common equity; the sentence of the judge, that by commission hath authority to take cognizance of such causes, is a sufficient verification of the law of nature in that individual case. For though the advice of one that professeth the study of the law, be useful for the avoiding of contention; yet it is but advice: it is the judge must tell men what is law, upon the hearing of the controversy.

But when the question is of injury, or crime, by the public upon a written law; every man by recourse to the registers, by himself or others, may, if he will, be sufficiently informed, before he do such injury, or commit the crime, whether it be an injury, or not: nay he ought to do so: for when a man doubts whether the act he goeth about, be just, or unjust; and may inform himself, if he will; the doing is unlawful. In like manner, he that supposeth himself injured, in a case determined by the written law, which be may, by himself or others, see and

consider; if he complain before he consults with the law, he does unjustly, and betrayeth a disposition rather to vex other men, than to demand his own right.

If the question be of obedience to a public officer, to have seen his commission, with the public seal and heard it read; or to have had the means to be informed of it if a man would, is a sufficient verification of his authority. For every man is obliged to do his best endeavour, to inform himself of all written laws, that may concern his own future actions.

The legislator known; and the laws, either by writing, or by the light of nature, sufficiently published; there wanteth yet another very material circumstance to make them obligatory. For it is not the letter, but the intendment, or meaning, that is to say, the authentic interpretation of the law (which is the sense of the legislator), in which the nature of the law consisteth; and therefore the interpretation of all laws dependeth on the authority sovereign; and the interpreters can be none but those, which the sovereign, to whom only the subject oweth obedience, shall appoint. For else, by the craft of an interpreter, the law may be made to bear a sense, contrary to that of the sovereign: by which means the interpreter becomes the legislator.

All laws, written, and unwritten, have need of interpretation. The unwritten law of nature, though it be easy to such, as without partiality and passion, make use of their natural reason, and therefore leaves the violators thereof without excuse; yet considering there be very few, perhaps none, that in some cases are not blinded by self-love, or some other passion; it is now become of all laws the most obscure, and has consequently the greatest need of able interpreters. The written laws, if they be short, are easily misinterpreted, from the divers significations of a word, or two: if long, they be more obscure by the divers significations of many words: insomuch as no written law, delivered in few, or many words, can be well understood, without a perfect understanding of the final causes, for which the law was made; the knowledge of which final causes is in the legislator. To him therefore there cannot be any knot in the law, insoluble; either by finding out the ends, to undo it by; or else by making what ends he will, As Alexander did with his sword in the Gordian knot, by the legislative power; which no other interpreter can do.

The interpretation of the laws of nature, in a commonwealth, dependeth not on the books of moral philosophy. The authority of writers, without the authority of the commonwealth, maketh not their opinions law, be they never so true. That which I have written in this treatise, concerning the moral virtues, and of their necessity for the procuring, and maintaining peace, though it be evident truth, is not therefore presently law; but because in all commonwealths in the world, it is part of the civil law. For though it be naturally reasonable; yet it is by the sovereign power that it is law: otherwise, it were a great error, to call the laws of nature unwritten law; whereof we see so many volumes published, and in them so many contradictions of one another, and of themselves.

The interpretation of the law of nature, is the sentence of the judge constituted by the sovereign authority, to hear and determine such controversies, as depend thereon; and consisteth in the application of the law to the present case. For in the act of judicature, the

judge doth no more but consider, whether the demand of the party, be consonant to natural reason, and equity; and the sentence he giveth, is therefore the interpretation of the law of nature; which interpretation is authentic; not because it is his private sentence; but because he giveth it by authority of the sovereign, whereby it becomes the sovereign's sentence; which is law for that time, to the parties pleading.

But because there is no judge subordinate, nor sovereign, but may err in a judgment of equity; if afterward in another like case he find it more consonant to equity to give a contrary sentence, he is obliged to do it. No man's error becomes his own law; nor obliges him to persist in it. Neither, for in like cases becomes it a law to other judges, though sworn to follow it. For though a wrong sentence given by authority of the sovereign, if he know and allow it, in such laws as are mutable, be a constitution of a new law, in cases, in which every little circumstance is the same; yet in laws immutable, such as are the laws of nature, they are no laws to the same or other judges, in the like cases for ever after. Princes succeed one another; and one judge passeth, another cometh; nay, heaven and earth shall pass; but not one tittle of the law of nature shall pass; for it is the eternal law of God. Therefore all the sentences of precedent judges that have ever been, cannot altogether make a law contrary to natural equity: nor any examples of former judges, can warrant an unreasonable sentence, or discharge the present judge of the trouble of studying what is equity, in the case he is to judge, from the principles of his own natural reason. For example sake, it is against the law of nature, to punish the innocent; and innocent is he that acquitteth himself judicially, and is acknowledged for innocent by the judge. Put the case now, that a man is accused of a capital crime, and seeing the power and malice of some enemy, and the frequent corruption and partiality of judges, runneth away for fear of the event, and afterwards is taken, and brought to a legal trial, and maketh it sufficiently appear, he was not guilty of the crime, and being thereof acquitted, is nevertheless condemned to lose his goods; this is a manifest condemnation of the innocent. I say therefore, that there is no place in the world, where this can be an interpretation of a law of nature, or be made a law by the sentences of precedent judges, that had done the same. For he that judged it first, judged unjustly; and no injustice can be a pattern of judgment to succeeding judges. A written law may forbid innocent men to fly, and they may be punished for flying; but that flying for fear of injury, should be taken for presumption of guilt, after a man is already absolved of the crime judicially, is contrary to the nature of a presumption, which hath no place after judgment given. Yet this is set down by a great lawyer for the common law of England. *If a man, saith he, that is innocent, be accused of felony, and for fear flyeth for the same; albeit he judicially acquitteth himself of the felony; yet if it be found that he fled for the felony, he shall notwithstanding his innocency, forfeit all his goods, chattels, debts, and duties. For as to the forfeiture of them, the law will admit no proof against the presumption in law, grounded upon his flight.* Here you see, *an innocent man judicially acquitted, notwithstanding his innocency,* when no written law forbad him to fly, after his acquittal, *upon a presumption in law,* condemned to lose all the goods he hath.

If the law ground upon his flight a presumption of the fact, which was capital, the sentence ought to have been capital: if the presumption were not of the fact, for what then ought he to lose his goods? This therefore is no law of England; nor is the condemnation grounded upon a presumption of law, but upon the presumption of the judges. It is also against law, to say that no proof shall be admitted against a presumption of law. For all judges, sovereign and subordinate, if they refuse to hear proof, refuse to do justice; for though the sentence be just, yet the judges that condemn without hearing the proofs offered, are unjust judges; and their presumption is but prejudice; which no man ought to bring with him to the seat of justice, whatsoever precedent judgments, or examples he shall pretend to follow. There be other things of this nature, wherein men's judgments have been perverted, by trusting to precedents: but this is enough to show, that though the sentence of the judge, be a law to the party pleading, yet it is no law to any judge, that shall succeed him in that office.

In like manner, when question is of the meaning of written laws, he is not the interpreter of them, that writeth a commentary upon them. For commentaries are commonly more subject to cavil, than the text; and therefore need other commentaries; and so there will be no end of such interpretation. And therefore unless there be an interpreter authorized by the sovereign, from which the subordinate judges are not to recede, the interpreter can be no other than the ordinary judges, in the same manner, as they are in cases of the unwritten law; and their sentences are to be taken by them that plead, for laws in that particular case; but not to bind other judges, in like cases to give like judgments. For a judge may err in the interpretation even of written laws; but no error of a subordinate judge, can change the law, which is the general sentence of the sovereign.

In written laws, men used to make a difference between the letter, and the sentence of the law and when by the letter, is meant whatsoever can be gathered from the bare words, it is well distinguished. For the significations of almost all words, are either in themselves, or in the metaphorical use of them, ambiguous; and may be drawn in argument, to make many senses; but there is only one sense of the law. But if by the letter, be meant the literal sense, then the letter, and the sentence or intention of the law, is all one. For the literal sense is that, which the legislator intended, should by the letter of the law be signified. Now the intention of the legislator is always supposed to be equity – for it were a great contumely for a judge to think otherwise of the sovereign. He ought therefore, if the word of the law do not fully authorize a reasonable sentence, to supply it with the law of nature; or if the case be difficult, to respite judgment till he have received more ample authority. For example, a written law ordaineth, that he which is thrust out of his house by force, shall be restored by force: it happens that a man by negligence leaves his house empty, and returning is kept out by force, in which case there is no special law ordained. It is evident that this case is contained in the same law: for else there is no remedy for him at all; which is to be supposed against the intention of the legislator. Again, the word of the law commandeth to judge according to the

evidence: a man is accused falsely of a fact, which the judge himself saw done by another, and not by him that is accused. In this case neither shall the letter of the law be followed to the condemnation of the innocent, nor shall the judge give sentence against the evidence of the witnesses; because the letter of the law is to the contrary: but procure of the sovereign that another be made judge, and himself witness. So that the incommmodity that follows the bare words of a written law, may lead him to the intention of the law, whereby to interpret the same the better; though no incommmodity can warrant a sentence against the law. For every judge of right, and wrong is not judge of what is commodious, or incommodious to the commonwealth.

The abilities required in a good interpreter the law, that is to say, in a good judge, are not the same with those of an advocate; namely the study of the laws. For a judge, as he ought to take notice of the fact, from none but the witnesses; so also he ought to take notice of the law from nothing but the statutes, and constitutions of the sovereign, alleged in the pleading, or declared to him by some that have authority from the sovereign power to declare them; and need not take care beforehand, what he shall judge; for it shall be given him what he shall say concerning the fact, by witnesses; and what he shall say in point of law, from those that shall in their pleadings show it, and by authority interpret it upon the place. The Lords of parliament in England were judges, and most difficult causes have been heard and determined by them; yet few of them were much versed in the study of the laws, and fewer had made profession of them: and though they consulted with lawyers, that were appointed to be present there for that purpose; yet they alone had the authority of giving sentence. In like manner, in the ordinary trials of right, twelve men of the common people, are the judges, and give sentence, not only of the fact, but of the right; and pronounce simply for the complainant, or for the defendant; that is to say, are judges, not only of the fact, but also of the right: and in a question of crime, not only determine whether done, or not done; but also whether it be *murder, homicide, felony, assault*, and the like, which are determinations of law: but because they are not supposed to know the law of themselves, there is one that hath authority to inform them of it, in the particular case they are to judge of. But yet if they judge not according to that he tells them, they are not subject thereby to any penalty; unless it be made appear, that they did it against their consciences, or had been corrupted by reward.

The things that make a good judge, or good interpreter of the laws, are, first, *a right understanding* of that principal law of nature called equity; which depending not on the reading of other men's writings, but on the goodness of a man's own natural reason, and meditation, is presumed to be in those most, that have had most leisure, and had the most inclination to meditate thereon. Secondly, contempt of *unnecessary riches, and preferments*. Thirdly, *to be able in judgment to divest himself of all fear, anger, hatred, love, and compassion*. Fourthly, and lastly, *patience to hear; diligent attention in hearing; and memory to retain, digest and apply what he hath heard*.

The difference and division of the laws, have been made in divers manners, according to the different methods, of those men that have written of them. For it is a thing that dependeth

not on nature, but on the scope of the writer; and is subservient to every man's proper method. In the Institutions of Justinian, we find seven sorts of civil laws:

1. *The edicts, constitutions, and epistles of the prince*, that is, of the emperor; because the whole power of the people was in him. Like these, are the proclamations of the kings of England.
2. *The decrees of the whole people of Rome*, comprehending the senate, when they were put to the question by the senate. These were laws, at first, by the virtue of the sovereign power residing in the people; and such of them as by the emperors were not abrogated, remained laws, by the authority imperial. For all laws that bind, are understood to be laws by his authority that has power to repeal them. Somewhat like to these laws, are the acts of parliament in England.
3. *The decrees of the common people*, excluding the senate, when they were put to the question by the tribune of the people. For such of them as were not abrogated by the emperors, remained laws by the authority imperial. Like to these, were the orders of the House of Commons in England.
4. *Senatus consulta*, the *orders of the senate*; because when the people of Rome grew so numerous, as it was inconvenient to assemble them; it was thought fit by the emperor, that men should consult the senate, instead of the people; and these have some resemblance with the acts of council.
5. *The edicts of praetors*, and in some cases of *aediles*: such as are the chief justices in the courts of England.
6. *Responsa prudentum*; which were the sentences, and opinion of those lawyers, to whom the emperor gave authority to interpret the law, and to give answer to such as in matter of law demanded their advice; which answers, the judges in giving judgment were obliged by the constitutions of the emperor to observe: and should be like the reports of cases judged, if other judges be by the law of England bound to observe them. For the judges of the common law of England, are not properly judges, but *juris consulti*; of whom the judges, who are either the lords, or twelve men of the country, are in point of law to ask advice.
7. Also, *unwritten customs*, which in their own nature are an imitation of law, by the tacit consent of the emperor, in case they be not contrary to the law of nature, are very laws.

Another division of laws, is into *natural* and *positive*. Natural are those which have been laws from all eternity; and are called not only *natural*, but also *moral* laws; consisting in the moral virtues, as justice, equity, and all habits of the mind that conduce to peace, and charity; of which I have already spoken in the fourteenth and fifteenth chapters.

Positive, are those which have not been from eternity; but have been made laws by the will of those that have had the sovereign power over others; and are either written, or made known to men, by some other argument of the will of their legislator.

Again, of positive laws some are *human*, some *divine*; and of human positive laws, some are *distributive*, some *penal*. *Distributive* are those that determine the rights of the subjects, declaring to every man what it is, by which he acquireth and holdeth a propriety in lands, or goods, and a right or liberty of act on: and these speak to all the subjects. *Penal* are those, which declare, what penalty shall be inflicted on those that violate the law; and speak to the ministers and officers ordained for execution. For though every one ought to be informed of the punishments ordained beforehand for their transgression; nevertheless the command is not addressed to the delinquent, who cannot be supposed will faithfully punish himself, but, to public ministers appointed to see the penalty executed. And these penal laws are for the most part written together with the laws distributive; and are sometimes called judgments. For all laws are general judgments, or sentences of the legislator; as also every particular judgment, is a law to him, whose case is judged.

Divine positive laws (for natural laws being eternal, and universal, are all divine), are those, which being the commandments of God, not from all eternity, nor universally addressed to all men, but only to a certain people, or to certain persons, are declared for such, by those whom God hath authorized to declare them. But this authority of man to declare what be these positive laws of God, how can it be known? God may command a man by a supernatural way, to deliver laws to other men. But because it is of the essence of law, that he who is to be obliged, be assured of the authority of him that declareth it, which we cannot naturally take notice to be from God, *how can a man without supernatural revelation be assured of the revelation received by the declarer? and how can he be bound to obey them?* For the first question, how a man can be assured of the revelation of another, without a revelation particularly to himself, it is evidently impossible. For though a man may be induced to believe such revelation, from the miracles they see him do, or from seeing the extraordinary sanctity of his life, or from seeing the extraordinary wisdom, or extraordinary felicity of his actions, all which are marks of God's extraordinary favour; yet they are not assured evidences of special revelation. Miracles are marvellous works: but that which is marvellous to one, may not be so to another. Sanctity may be feigned; and the visible felicities of this world, are most often the work of God by natural, and ordinary causes. And therefore no man can infallibly know by natural reason, that another has had a supernatural revelation of God's will; but only a belief; every one, as the signs thereof shall appear greater or lesser, a firmer or a weaker belief.

But for the second, how can he be bound to obey them; it is not so hard. For if the law declared, be not against the law of nature, which is undoubtedly God's law, and he undertake to obey it, he is bound by his own act; bound I say to obey it, but not bound to believe it: for men's belief, and interior cogitations, are not subject to the commands, but only to the operation of God, ordinary, or extraordinary. Faith of supernatural law, is not a fulfilling, but only an assenting to the same; and not a duty that we exhibit to God, but a gift which God freely giveth to whom he pleaseth; as also unbelief is not a breach of any of his laws; but a rejection of them all, except the laws natural. But this that I say, will be made yet clearer, by

the examples and testimonies concerning this point in holy Scripture. The covenant God made with Abraham, in a supernatural manner, was thus, (*Gen. xvii. 10*) *This is the covenant which thou shalt observe between me and thee and thy seed after thee*. Abraham's seed had not this revelation, nor were yet in being; yet they are a party to the covenant, and bound to obey what Abraham should declare to them for God's law; which they could not be, but in virtue of the obedience they owed to their parents; who, if they be subject to no other earthly power, as here in the case of Abraham, have sovereign power over their children and servants.

Again, where God saith to Abraham, *In thee shall all nations of the earth be blessed; for I know thou wilt command thy children, and thy house after thee to keep the way of the Lord, and to observe righteousness and judgment*, it is manifest, the obedience of his family, who had no revelation, depended on their former obligation to obey their sovereign. At Mount Sinai Moses only went up to God; the people were forbidden to approach on pain of death; yet they were bound to obey all that Moses declared to them for God's law. *Upon what ground, but on this submission of their own, Speak thou to us, and we will hear thee; but let not God speak to us, lest we die?* By which two places it sufficiently appeareth, that in a commonwealth, a subject that has no certain and assured revelation particularly to himself concerning the will of God, is to obey for such, the command of the commonwealth: for if men were at liberty, to take for God's commandments, their own dreams and fancies, or the dreams and fancies of private men; scarce two men would agree upon what is God's commandment; and yet in respect of them, every man would despise the commandments of the commonwealth. I conclude therefore, that in all known to be things not contrary to the moral law, that is to say, to the law of nature, all subjects are bound to obey that for divine law, which is declared to be so, by the laws of the commonwealth. Which also is evident to any man's reason; for whatsoever is not against the law of nature, may be made law in the name of them that have the sovereign power; and there is no reason men should be the less obliged by it, when it is propounded in the name of God. Besides, there is no place in the world where men are permitted to pretend other commandments of God, than are declared for such by the commonwealth. Christian states punish those that revolt from the Christian religion, and all other states, those that set up any religion by them forbidden. For in whatsoever is not regulated by the commonwealth, it is equity, which is the law of nature, and therefore an eternal law of God, that every man equally enjoy his liberty.

There is also another distinction of laws, into *fundamental* and *not fundamental* but I could never see in any author, what a fundamental law signifieth. Nevertheless one may very reasonably distinguish laws in that manner.

For a fundamental law in every commonwealth is that, which being taken away, the commonwealth faileth, and is utterly dissolved; as a building whose foundation is destroyed. And therefore a fundamental law is that, by which subjects are bound to uphold whatsoever, power is given to the sovereign, whether a monarch, or a sovereign assembly, without which the commonwealth cannot stand; such as is the power of war and peace, of judicature, of

election of officers, and of doing whatsoever he shall think necessary for the public good. Not fundamental is that, the abrogating whereof, draweth not with it the dissolution of the commonwealth; such as are the laws concerning controversies between subject and subject. Thus much of the division of laws.

I find the words *lex civilis*, and *jus civile*, that is to say *law* and *right civil*, promiscuously used for the same thing, even in the most learned authors; which nevertheless ought not to be so. For *right* is *liberty*, namely that liberty which the civil law leaves us: but *civil law* is an *obligation*, and takes from us the liberty which the law of nature gave us. Nature gave a right to every man to secure himself by his own strength, and to invade a suspected neighbour, by way of prevention: but the civil law takes away that liberty, in all cases where the protection of the law may be safely stayed for. Insomuch as *lex* and *jus*, are as different as obligation and liberty.

Likewise *laws* and *charters* are taken promiscuously for the same thing. Yet charters are donations of the sovereign; and not laws, but exemptions from law. The phrase of a law is, *jubeo, injungo, I command* and *enjoin*: the phrase of a charter is, *dedi, concessi, I have given, I have granted*: but what is given or granted, to a man, is not forced upon him, by a law. A law may be made to bind all the subjects of a commonwealth: a liberty, or charter is only to one man, or some one part of the people. For to say all the people of a commonwealth, have liberty in any case whatsoever, is to say, that in such case, there hath been no law made; or else having been made, is now abrogated.