

## HOBBS: LEVIATHAN 14–15\*

### Leviathan 14

[14.18] But if there were to be a contract in which neither of the contractors is obliged to perform immediately, but rather at a definite future date, that covenant in the pure condition of nature (*i. e.* in war) is invalid if any suspicion about performance should intervene: in the commonwealth, not likewise. For he who performs first is, in the first case, uncertain whether the other will perform; in the commonwealth he is certain, since there is [something] to compel [performance]. Thus, unless there be some common coercive power, the one who performs first betrays himself to an enemy—beyond the natural right of defending himself and his [stuff].

[14.19] Now the cause of suspicion that can render a covenant invalid ought to be something that follows on the covenant and be a sign of the will not to perform; otherwise, it cannot make the covenant void. For what was notable to prevent it that he promised ought not to prevent it that he perform his promise.

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[14.26] Even if a covenant is extorted by fear it is nevertheless valid in the natural condition of men; for example, if I covenant with an enemy to give money for the sake of preserving my life, I am bound to perform. For it is a contract in which one transfers the right to life and the other transfers the money. Thus, where there is no other law (as in the natural condition) that prohibits performance, the covenant is valid. Thus a prisoner of war, if he were to have taken his freedom on the condition that he afterwards pay the price of his redemption, is obliged to pay it. Even a prince, if he were to have made a disadvantageous covenant with a stronger prince through fear, ought to observe [its terms]—unless, as stated above, some new and just cause arises that excuses him. Likewise, in the commonwealth, should I be forced to redeem my life from a thief by promising him money, the money ought to be [provided], unless the civil law prohibit it. For whatever it is legitimate to do when not obliged, the same I can legitimately covenant to

\* Translated from the Latin text of the *Leviathan* printed in Molesworth, *Opera latina* 3 (1839–1845): 107–109. The division into paragraphs is Hobbes's, as are the italics. I have tried to use the terminology and phrasing of the English *Leviathan* where possible.

do through fear. But what is legitimate to covenant is illegitimate not to perform.

[14.27] A prior covenant renders a later one invalid. For a man will lack today the right that he transferred yesterday.

[14.28] If anyone covenants that he is not going to defend himself against force, the covenant is invalid. For, as pointed out above, no one can lay down the right of defending himself against the threat of death, wounds, imprisonment—the natural right to all things is laid down for the sake of avoiding them. For although someone may correctly covenant as follows, Kill me unless I do such-and-so, he nevertheless cannot covenant as follows, Unless I do such-and-so, I will not resist being killed. For man naturally chooses the lesser evil, *i. e.* the danger of death in resisting, rather than the greater evil, namely certain death. And all men who, armed, lead condemned men to imprisonment or to death know these things.

[14.29] If anyone covenants to accuse himself. . .

### Leviathan 15

[15.1] From the law of nature that enjoins rights hindering human peace to be relinquished there follows a third law of nature: that covenants ought to be performed. For without this the right to all is laid down in vain, and there remains a war of all against all.

[15.2] And the nature of justice consists in this law. For where no covenant has gone before, there no right has been transferred, but all to all.<sup>1</sup> Therefore, nothing is unjust. From this, the definition of injustice is clear: injustice is the non-performance of covenants—or, what is the same, the violation of trust that has been given.

[15.3] But because covenants of mutual trust, as pointed out previously, are invalid due to the fear of the one that the other break it, although the origin of justice be the covenant, nevertheless the fact that the covenant is not performed is not an injustice when the cause of the fear has not been taken away. Yet it has not been taken away while the right of all to all remains. Therefore, the terms just and unjust had no place before there was a civil power able to punish the violation of covenants and to

<sup>1</sup> Hobbes's formulation is obscure: *omnia omnium sunt*. This could mean, variously, "all [rights remain] to all people"; "all [things] belong to all people"; "all [people retain rights] to all things." The last is closest to the English: "the right of all men to things remaining. . ."

make good for each his own proprietariness<sup>2</sup> acquired through covenants. The same point is understood from the received definition of justice in the Schools: justice is the constant will of giving to each his own. For where there is no own, that is, no proprietary, there is nothing unjust; and where there is no commonwealth, there is nothing proprietary. Yet the essence of justice consists in the performance of covenants, which begin to be valid at the time when the commonwealth is constituted; and so the commonwealth, the proprietariness of good, and justice are born at once.

[15.4] The Foole has said: “There is no justice; each person alone has the care of his own conservation; it is therefore reasonable that each person do whatever will seem to be conducive to his own benefit—*i. e.* to make or not make covenants and to keep or not keep them at will.” [The Foole] does not deny that making covenants is legitimate, nor that the observance of them is called justice and the violation injustice. But once the fear of God has been taken away, [the Foole] says that injustice is sometimes able to obtain along with right reason. “The Kingdom of God,” he says, “is gotten by violence. What if it could be gotten by unjust violence? Would it be against right reason, whenever it is impossible that there follow any evil to one from it but rather the highest good? If it is not against reason, how is it against justice?” Yet it stems from reasoning of this sort that successful wickednesses are thought virtues by some, and that, at least for the sake of ruling, trust ought to be violated. The heathen believed that Saturn was expelled from Heaven by Jove, and they nevertheless thought Jove to be the avenger of injustice: even some among legal scholars hold that the King’s heir, even if he be a betrayer, ought to succeed to the kingdom as soon as the King dies. “Crimes of this sort, by whatever name they are called, are not against reason,” says [the Foole], “because all voluntary actions of all men strive for some good to themselves, and those are the most rational that strive the most.” And yet this reasoning, somehow specious, is false.

[15.5] For the question does not concern mutual promises in the natural condition of men, where there is no coercive power; for such promises they are not covenants. But where there exists a coercive power and one were to have performed a promise, there the question is whether he who breaks it, suitably breaks it with reason and for a proprietary good. Yet for my part I say that it is against reason and that he does this imprudently. First of all, if anyone in a commonwealth were to do what so far as it can be foreseen and understood by reason tends toward his own destruction, despite the fact

<sup>2</sup> For ‘proprietariness’ Hobbes uses *proprietas*; slightly later he uses *proprium*, rendered ‘proprietary’. The English *Leviathan* uses ‘propriety’ in place of these throughout.

that something unforeseen happens that brings about a happy outcome it was nonetheless done imprudently, since unforeseen. Yet in the natural condition, where any person is an enemy to any other person, no one can live safely without the help of confederates. But who would admit the man who thinks it reasonable to break covenants into a society (which is entered into by mutual covenants for the defense of each person in it), except by ignorance—or will retain him once he is received [into a society]? Accordingly, having been cast out, he will perish, or he will owe the fact that he has not been cast out to the ignorance of the other man, which is against right reason. Also, the very instance of a heavenly kingdom gotten by injustice is ridiculous, for it can be gotten by justice alone.

[15.6] Besides, the instance that a kingdom be attained by rebellion will, even so, be attained against right reason. . .