

same cause, and that is, unpleasing priests, *and those not only amongst Catholics, but even in that church that hath presumed* most of reformation.²⁰

CHAPTER XIII
*Of the NATURAL CONDITION
of MANKIND, As Concerning Their
Felicity, and Misery*¹

[1] Nature hath made men so equal in the faculties of body and mind as that, though there be found one man sometimes manifestly stronger in body or of quicker mind than another, yet when all *Men by nature Equal.* is reckoned together the difference between man and man is not so considerable as that one man can thereupon claim to himself any benefit to which another may not pretend* as well as he. For as to the strength of body, the weakest has strength enough to kill the strongest, either by secret machination,* or by confederacy* with others that are in the same danger with himself.

[2] And as to the faculties of the mind—setting aside the arts grounded upon words, and especially that skill of proceeding upon general and infallible rules called science (which very few have, and but in few things), as being not a native faculty (born with us), nor attained (as prudence) while we look after somewhat else—I find yet a greater equality amongst men

20. Omitted in OL. Clarendon professed to see here a reference to the Church of England (*Brief View*, p. 25). Certainly Archbishop Laud alienated many members of that church by his policies, which did lead to schism in the Church. But one central criticism of the Laudians was that they were too inclined to Romanism. I think it more natural to take the church that “presumed most of reformation” to be the Presbyterians, who, according to Hobbes, claimed to outdo the reformation both of Luther and of Calvin, departing as much from them as they had from the pope. (Cf. *Behemoth*, p. 136) In the ms. version Hobbes presented to Charles II this last clause is replaced by the following: “On whom men by common frailty are carried to execute their anger. They bear down not only religion, which they reduce to private fancy, but also the civil government that would uphold it, reducing it to the natural condition of private force.”

1. OL: “Of the condition of mankind, as concerning their felicity in the present life.”

than that of strength. For prudence is but experience, which equal time equally bestows on all men in those things they equally apply themselves unto. That which may perhaps make such equality incredible is but a vain conceit of one's own wisdom, which almost all men think they have in a greater degree than the vulgar, that is, than all men but themselves and a few others whom, by fame or for concurring with themselves, they approve. For such is the nature of men that howsoever they may acknowledge many others to be more witty, or more eloquent, or more learned, yet they will hardly believe there be many so wise as themselves. For they see their own wit at hand, and other men's at a distance. But this proveth rather that men are in that point equal, than unequal. For there is not ordinarily a greater sign of the equal distribution of anything than that every man is contented with his share.

[3] From this equality of ability ariseth equality of hope in the attaining of our ends. And therefore, if any two men desire the same thing, which nevertheless they cannot both enjoy, they become enemies; and in the way to their end, which is principally their own conservation, and sometimes their delectation* only, endeavour to destroy or subdue one another. And from hence it comes to pass that, where an invader hath no more to fear than another man's single power, if one plant, sow, build, or possess a convenient seat, others may probably be expected to come prepared with forces united, to dispossess and deprive him, not only of the fruit of his labour, but also of his life or liberty. And the invader again is in the like danger of another.

*From Equality
proceeds Diffidence.*

[4] And from this diffidence* of one another, there is no way for any man to secure himself so reasonable as anticipation*, that is, by force or wiles to master the persons of all men he can, so long till he see no other power great enough to endanger him. And this is no more than his own conservation requireth, and is generally allowed. *Also, because there be some that taking pleasure in contemplating their own power in the acts of conquest, which they pursue farther than their security requires,² if others (that otherwise would be glad to be at ease within modest bounds) should not by invasion increase their power, they would not be able, long time, by standing only on their defence, to subsist. And by consequence, such augmentation* of dominion over men being necessary to a man's conservation, it ought to be allowed him.

From Diffidence War.

[5] Again, men have no pleasure, but on the contrary a great deal of grief, in keeping company where there is no power able to over-awe them all. For every man looketh that his companion should value him at the

2. OL: "For since there are those who, from pride and a desire for glory, would conquer the whole world . . ."

same rate he sets upon himself, and upon all signs of contempt, or undervaluing, naturally endeavours, as far as he dares (which amongst them that have no common power to keep them in quiet, is far enough to make them destroy each other), to extort a greater value from his contemners, by damage, and from others, by the example.

[6] So that in the nature of man we find three principal causes of quarrel: first, competition; secondly, diffidence; thirdly, glory.

[7] The first maketh men invade for gain; the second, for safety; and the third, for reputation. 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.

[8] 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 consisteth not in battle only, or the act of fighting, but in a tract of time wherein the will to contend by

Out of Civil States, there is always war of every one against everyone.

battle is sufficiently known. And therefore, the notion of *time* is to be considered in the nature of war, as it is in the nature of weather. For as the nature of foul weather lieth not in a shower or two of rain, but in an inclination thereto of many days together, so the nature of war consisteth not in actual fighting, but in the known disposition thereto during all the time there is no assurance to the contrary.³ All other time is PEACE.

[9] Whatsoever therefore is consequent to a time of war, where every man is enemy to every man, the same is consequent to the time wherein men live without other security than what their own strength and their own invention shall furnish them withal. In

The Incommodities of such a War.

such condition 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.⁴

[10] It may seem strange, to some man that has not well weighed these things, that nature should thus dissociate,* and render men apt to invade

3. Hobbes' definition is more inclusive than that of Grotius (*De jure belli ac pacis* I, i, 2).

4. Cf. Thucydides I, ii–viii.

and destroy one another. And he may, therefore, not trusting to this inference made from the passions, desire perhaps to have the same confirmed by experience. Let him therefore consider with himself—when taking a journey, he arms himself, and seeks to go well accompanied; when going to sleep, he locks his doors; when even in his house, he locks his chests; and this when he knows there be laws, and public officers, armed, to revenge all injuries shall be done him—what opinion he has of his fellow subjects, when he rides armed; of his fellow citizens, when he locks his doors; and of his children and servants, when he locks his chests. Does he not there as much accuse mankind by his actions, as I do by my words? But neither of us accuse man's nature in it. The desires and other passions of man are in themselves no sin.⁵ No more are the actions that proceed from those passions, till they know a law that forbids them—which till laws be made they cannot know. Nor can any law be made, till they have agreed upon the person that shall make it.⁶

[11] *It may peradventure* be thought, there was never such a time nor condition of war as this; and I believe it was never generally so, over all the world.⁷ But there are many places where they live so now. For the savage people in many places of *America* (except the government of small families, the concord whereof dependeth on natural lust) have no government at all, and live at this day in that brutish manner as I said before. Howsoever, it may be perceived what manner of life there would be where there were no common power to fear, by the manner of life which men that have formerly lived under a peaceful government use to degenerate into, in a civil war.⁸

5. This seems inconsistent with vi, 23; but cf. xxvii, 1.

6. OL adds: "But why try to demonstrate to learned men what even dogs know, who bark at visitors, sometimes, indeed, only at those who are unknown, but in the night at everyone?"

7. OL: "But someone may say: there has never been a war of all against all. What! Did not Cain out of envy kill his brother Abel, a crime so great he would not have dared it if there had at that time been a common power which could have punished him?" The Biblically alert reader might object that Cain *was* living under a power able to punish his misdeeds. (Genesis 4:6–16 relates that God punished him immediately.) This, perhaps, prompted Leibniz to write to Hobbes offering him the following defense against charges of license and impiety: assuming God's existence as ruler of the world, there can be no purely natural state of man, nor does Hobbes really think there is. (Letter of July 1670) If Hobbes replied, we do not have his letter. Cf. also EW V, 183–84, and EL I, xiv, 12.

8. Hobbes may be thinking of Thucydides' description of the civil war in Corcyra (III, lxix–lxxxv), though his account of the anarchy resulting from the plague in Athens (II, l–lv) is also pertinent.

[12] But though there had never been any time wherein particular men were in a condition of war one against another, yet in all times kings and persons of sovereign authority, because of their independency, are in continual jealousies and in the state and posture of gladiators, having their weapons pointing and their eyes fixed on one another, that is, their forts, garrisons, and guns upon the frontiers of their kingdoms, and continual spies upon their neighbours, which is a posture of war. But because they uphold thereby the industry of their subjects, there does not follow from it that misery which accompanies the liberty of particular men.

*In such a War,
nothing is Unjust.*

[13] To this war of every man against every man, this also is consequent: that *nothing can be unjust.⁹ 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.¹⁰

Force and fraud are in war the two cardinal virtues. Justice and injustice are none of the faculties neither of the body, nor mind. If they were, they might be in a man that were alone in the world, as well as his senses and passions. They are qualities that relate to men in society, not in solitude. It is consequent also to the same condition that there be no propriety,* no dominion, no *mine* and *thine* distinct, but only that to be every man's that he can get, and for so long as he can keep it. And thus much for the ill condition which man by mere nature is actually placed in, though with a possibility to come out of it, consisting partly in the passions, partly in his reason.

*The Passions that
incline men to Peace.*

[14] 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 suggesteth convenient articles of peace, upon which men may be drawn to agreement. These articles are they which otherwise are called the Laws of Nature, whereof I shall speak more particularly in the two following chapters.

9. OL: "nothing is to be called unjust." Perhaps this statement should be taken as qualified by the definition of the right of nature which follows (xiv, 1), so that no conduct is unjust if (in the agent's opinion) it is required for self-preservation. Hobbes' argument in *Leviathan* differs from the earlier EL and DCv, where the assertion of a common right of all to all things in the state of nature precedes (and partly justifies) the claim that the state of nature is a war of all against all (cf. EL I, xiv, 10–11; DCv i, 10–12). Here the absence of exclusive property rights in the state of nature is presented as a consequence of the fact that the state of nature is a war of all against all.

10. Not in OL. Absent this statement, Hobbes' argument seems to assume that *in war the laws are silent*, a maxim he elsewhere has reservations about (EL I, xix, 2, and DCv v, 2). With this statement, it seems he need not (for purposes of this argument) assume that the state of nature is a state of war.

CHAPTER XIV

Of the First and Second NATURAL LAWS and of CONTRACTS

[1] The RIGHT OF NATURE, which writers commonly call *jus naturale*, is the liberty each man hath to use his own power, as he will himself, for the preservation of his own nature, that is to say, of his own life, and consequently of doing anything which, in his own judgment and reason, he shall conceive to be the aptest means thereunto.¹ *Right of Nature what.*

[2] By LIBERTY is understood, according to the proper signification of the word, the absence of external impediments, *which impediments may oft take away part of a man's power to do what he would, but cannot hinder him from using the power left him, according as his judgment and reason shall dictate to him.² *Liberty what.*

[3] A LAW OF NATURE (*lex naturalis*) is a precept or general rule, found out by reason, by which a man is forbidden to do that which *is destructive of his life or taketh away the means of preserving the same, and to omit that by which he thinketh it may be best preserved.³ For though they that speak of this subject use to confound *jus* and *lex* (*right* and *law*),⁴ yet they ought to be distinguished, because RIGHT consisteth in liberty to do or to forbear, whereas LAW determineth and bindeth to one of them; so that law and *A law of Nature what.*

Difference of Right and Law.

1. Cf. Grotius: "Natural right (*jus naturale*) is a dictate of right reason indicating that some act is either morally necessary or morally shameful, because of its agreement or disagreement with man's nature as a rational and social being, and consequently that such an act is either commanded or forbidden by God, the author of nature." (*De jure belli ac pacis* I, i, 10, 12) Cf. below, ¶3, and xv, 40.

2. Not in OL. Cf. DCv ix, 9, where Hobbes complains that no previous writer has explained what the difference between liberty and bondage is.

3. OL: "seems to him to tend to his own loss." For the evolution of this definition, cf. EL I, xv, 1, and DCv ii, 1, which emphasize the lack of a universally agreed definition of natural law. Hobbes acknowledges the controversial nature of his definition in xv, 8. On the interpretation of the definition generally, see the concluding sections of xv (¶¶34–41).

4. Cf. *A Dialogue between a Philosopher and a Student of the Common Laws of England*, p. 73, where Coke is criticized for confusing these notions. Similarly, though Grotius distinguishes the different senses *jus* may have (*De jure belli ac pacis* I, i, 3–9), and identifies a sense in which it involves a liberty as the strict and proper sense of the term (I, i, 5), he still defines *jus naturale* in a way which makes it a command or prohibition (see n.1 above). There is a useful discussion of the history

right differ as much as obligation and liberty, which in one and the same matter are inconsistent.

Naturally every man has Right to every thing.
The Fundamental Law of Nature. To seek peace.

[4] And because the condition of man (as hath been declared in the precedent chapter) is a condition of war of everyone against everyone (in which case everyone is governed by his own reason and there is nothing he can make use of that may not be a help unto him in preserving his life against his enemies), it followeth that in such a condition every man has a right to everything, even to one another's body. And therefore, as long as this natural right of every man to everything endureth, there can be no security to any man (how strong or wise soever he be) of living out the time which nature ordinarily alloweth men to live. And consequently it is a precept, or general rule, of reason *that every man ought to endeavour peace, as far as he has hope of obtaining it, and when he cannot obtain it, that he may seek and use all helps and advantages of war.* The first branch of which rule containeth the first and fundamental law of nature, which is *to seek peace, and follow it.* The second, the sum of the right of nature, which is *by all means we can, to defend ourselves.*

The second Law of Nature. Contract in way of peace.

[5] From this fundamental law of nature, by which men are commanded to endeavour peace, is derived this second law: *that a man be willing, when others are so too, *as far-forth as for peace and defence of himself he shall think it necessary,⁵ to lay down this right to all things, and be contented with so much liberty against other men, as he would allow other men against himself.* For as long as every man holdeth this right of doing anything he liketh, so long are all men in the condition of war. But if other men will not lay down their right as well as he, then there is no reason for anyone to divest himself of his; for that were to expose himself to prey (which no man is bound to), rather than to dispose himself to peace. This is that law of the Gospel: "whatsoever you require that others should do to you, that do ye to them."⁶ And that law of

of the concept of rights, tracing the Hobbesian analysis to Suarez (*On Laws and God the Lawgiver*, I, ii, 5) in John Finnis, *Natural Law and Natural Rights*, Oxford, 1980, pp. 205–10.

5. OL states the condition more objectively: "as often as provision has been made for the peace and his own defense."

6. That the law of nature prescribes the Golden Rule was the teaching of both Luther ("On Secular Authority," pp. 400–401 in Dillenberger) and of Aquinas (*Summa theologiae*, I–II, qu. 94, art. 4). But Hobbes' identification of his fundamental law of nature with the Golden Rule may seem a bold act of appropriation. In the Gospel (e.g., *Luke 6:27–31*) the Golden Rule typically occurs in a context in which we are commanded to love our enemies and do good to those who hate us.

all men: *quod tibi fieri non vis, alteri ne feceris.*⁷

[6] To *lay down* a man's right to anything is to *divest* himself of the *liberty* of hindering another of the benefit of his own right to the same. For he that renounceth or passeth away his right giveth not to any other man a right which he had not before (because there is nothing to which every man had not right by nature), but only standeth out of his way, that he may enjoy his own original right without hindrance from him, not without hindrance from another. So that the effect which redoundeth to one man by another man's defect* of right is but so much diminution* of impediments to the use of his own right original.

What it is to lay down a Right.

[7] Right is laid aside either by simply renouncing it or by transferring it to another. By *simply* RENOUNCING, when he cares not to whom the benefit thereof redoundeth. By TRANSFERRING, when he intendeth the benefit thereof to some certain person or persons.

Renouncing a Right what it is.

*And when a man hath in either manner abandoned or granted away his right, then is he said to be OBLIGED or BOUND not to hinder those to whom such right is granted or abandoned from the benefit of it; and [it is said] that he *ought*, and it is his DUTY, not to make void that voluntary act of his own,⁸ and that such hindrance is INJUSTICE, and INJURY, as being *sine jure* [without right], the right being before renounced or transferred. So that *injury* or *injustice*, in the controversies of the world, is somewhat like to that which in the disputations of scholars is called absurdity. For as it is there called an *absurdity* to contradict what one maintained in the beginning, so in the world it is called injustice and injury voluntarily to undo that which from the beginning he had voluntarily done.

Transferring Right what.

Obligation. Duty. Injustice.

The way by which a man either simply renounceth or transferreth his right is a declaration, or signification by some voluntary and sufficient sign or signs, that he doth so renounce or transfer, or hath so renounced or transferred the same, to him that accepteth it. And these signs are either words only, or actions only, or (as it happeneth most often) both words and actions. And the same are the BONDS by which men are bound and obliged, bonds that have their strength, not from their own nature *(for nothing is more easily broken than a man's word)^{8a} but from fear of some evil consequence upon the rupture.

That does not appear to be consistent with the condition that others must be willing to lay down their right also.

7. I.e., do not do to others what you do not want done to yourself. Cf. xv, 35.

8. OL: "And however he does this, he ought not to hinder the person who has the right from using the thing. For this would be to make his own act void." Note that OL does not contain a definition of "obligation."

8a. Not in OL.

Not all rights
are alienable.

[8] Whensoever a man transferreth his right or renounceth it, it is either in consideration of some right reciprocally transferred to himself or for some other good he hopeth for thereby. For it is a voluntary act, and of the voluntary acts of every man the object is some *good to himself*. And therefore there be some rights which no man can be understood by any words or other signs to have abandoned or transferred. As, first, a man cannot lay down the right of resisting them that assault him by force, to take away his life, because he cannot be understood to aim thereby at any good to himself. [Second], the same may be said of wounds, and chains, and imprisonment, both because there is no benefit consequent to such patience* (as there is to the patience of suffering another to be wounded or imprisoned), as also because a man cannot tell, when he seeth men proceed against him by violence, whether they intend his death or not. [Third] and lastly, the motive and end for which this renouncing and transferring of right is introduced, is nothing else but *the security of a man's person, in his life and in the means of so preserving life as not to be weary of it. And therefore if a man by words or other signs seem to despoil himself of the end for which those signs were intended, he is not to be understood as if he meant it, or that it was his will, but that he was ignorant of how such words and actions were to be interpreted.

Contract what.

[9] The mutual transferring of right is that which men call CONTRACT.

[10] There is difference between transferring of right to the thing and transferring (or tradition, that is, delivery) of the thing itself. For the thing may be delivered together with the translation* of the right (as in buying and selling with ready money, or exchange of goods or lands); and it may be delivered some time after.

Covenant what.

[11] Again, one of the contractors may deliver the thing contracted for on his part, and leave the other to perform his part at some determinate time after (and in the meantime be trusted); and then the contract on his part is called PACT, or COVENANT; or both parts* may contract now, to perform hereafter, in which cases he that is to perform in time to come, being trusted, his performance is called *keeping of promise*, or *faith*, and the failing of performance (if it be voluntary) *violation of faith*.

Free-Gift.

[12] When the transferring of right is not mutual, but one of the parties transferreth in hope to gain thereby friendship or service from another (or from his friends), or in hope to gain the reputation of charity or magnanimity, or to deliver his mind from the pain of compassion, or in hope of reward in heaven, this is not contract, but GIFT, FREE-GIFT, GRACE, which words signify one and the same thing.

Signs of Contract
Express.

[13] Signs of contract are either *express** or *by inference*. Express are words spoken with understanding of what they signify; and

such words are either of the time *present* or *past* (as, *I give, I grant, I have given, I have granted, I will that this be yours*), or of the future (as, *I will give, I will grant*), which words of the future are called PROMISE.

[14] Signs by inference are: sometimes the consequence of words, sometimes the consequence of silence; sometimes the consequence of actions, sometimes the consequence of forbearing an action; and generally a sign by inference of any contract is whatsoever sufficiently argues the will of the contractor.

Signs of Contract by Inference.

[15] Words alone, if they be of the time to come, and contain a bare promise, are an insufficient sign of a free-gift, and therefore not obligatory. For if they be of the time to come (as, *tomorrow I will give*), they are a sign I have not given yet, and consequently that my right is not transferred, but remaineth till I transfer it by some other act. But if the words be of the time present or past (as, *I have given, or do give to be delivered tomorrow*), then is my tomorrow's right given away today; and that by the virtue of the words, though there were no other argument of my will. And there is a great difference in the signification of these words: *volo hoc tuum esse cras* and *cras dabo* (that is, between *I will that this be thine tomorrow* and *I will give it thee tomorrow*); for the word *I will* in the former manner of speech signifies an act of the will present, but in the latter it signifies a promise of an act of the will to come; and therefore the former words, being of the present, transfer a future right; the latter, that be of the future, transfer nothing.

Free gift passeth by words of the Present or Past.

But if there be other signs of the will to transfer a right besides words, then though the gift be free, yet may the right be understood to pass by words of the future (as, if a man propound a prize to him that comes first to the end of a race, the gift is free, and though the words be of the future, yet the right passeth; for if he would not have his words so be understood, he should not have let them run).

[16] In contracts the right passeth, not only where the words are of the time present or past, but also where they are of the future, because all contract is mutual translation, or change of right; and therefore he that promiseth only (because he hath already received the benefit for which he promiseth) is to be understood as if he intended the right should pass; for unless he had been content to have his words so understood, the other would not have performed his part first. And for that cause, in buying and selling, and other acts of contract, a promise is equivalent to a covenant, and therefore obligatory.

Signs of Contract are words both of the Past, Present, and Future.

[17] He that performeth first in the case of a contract is said to MERIT that which he is to receive by the performance of the other, and he hath it as *due*. Also when a prize is propounded to many, which is to be given to him only that winneth (or money is thrown amongst many, to be

Merit what.

enjoyed by them that catch it), though this be a free gift, yet so to win (or so to catch) is to *merit*, and to have it as DUE. For the right is transferred in the propounding of the prize (and in throwing down the money), though it be not determined to whom but by the event of the contention.

But there is between these two sorts of merit, this difference: that in contract I merit by virtue of my own power, and the contractor's need; but in this case of free gift, I am enabled to merit only by the benignity of the giver; in contract I merit at the contractor's hand that he should depart* with his right; in this case of gift, I merit not that the giver should part with his right, but that when he has parted with it, it should be mine rather than another's.

And this I think to be the meaning of that distinction of the Schools between *meritum congrui* and *meritum condigni*. For God Almighty having promised Paradise to those men (hoodwinked* with carnal desires) that can walk through this world according to the precepts and limits prescribed by him, they say: he that shall so walk shall merit Paradise *ex congruo*. But because no man can demand a right to it, by his own righteousness or any other power in himself, but by the free grace of God only, they say: no man can merit Paradise *ex condigno*. This, I say, I think is the meaning of that distinction; but because disputers do not agree upon the signification of their own terms of art longer than it serves their turn, I will not affirm anything of their meaning. Only this I say: when a gift is given indefinitely, as a prize to be contended for, he that winneth meriteth, and may claim the prize as due.⁹

Covenants of Mutual trust, when Invalid.

[18] If a covenant be made wherein neither of the parties perform presently, but trust one another, in the condition of mere nature (which is a condition of war of every man against every man) upon any reasonable suspicion it is void; but if there be a common power set over them both, with right and force sufficient to compel performance, it is not void. For he that performeth first has no assurance the other will perform after, because the bonds of words are too weak to bridle men's ambition, avarice, anger, and other passions, without the fear of some coercive power; which in the condition of mere nature, where all

9. Not in OL. The distinction between *meritum condigni* and *meritum congrui* is in Aquinas (*Summa theologiae* I-II, qu. 114, art. 3), where the view seems to be that no one can strictly merit eternal life by what he does of his own power, because the reward is out of proportion to anything he might do to deserve it; considered apart from divine grace, the just man's acts merit God's reward only by comparison with those of the unjust (he possesses *meritum congrui*, but not *meritum condigni*). But in relation to divine grace, the man who has received it is like an adopted son, to whom his inheritance is now owed. He possesses *meritum condigni*. Cf. xiv, 23.

men are equal and judges of the justness of their own fears, cannot possibly be supposed. And therefore, he which performeth first does but betray himself to his enemy, contrary to the right (he can never abandon) of defending his life and means of living.

[19] But in a civil estate, where there is a power set up to constrain those that would otherwise violate their faith, that fear is no more reasonable; and for that cause, he which by the covenant is to perform first is obliged so to do.

[20] The cause of fear which maketh such a covenant invalid must be always something arising after the covenant made (as some new fact or other sign of the will not to perform), else it cannot make the covenant void. For that which could not hinder a man from promising, ought not to be admitted as a hindrance of performing.

[21] He that transferreth any right transferreth the means of enjoying it, as far as lieth in his power. As he that selleth land is understood to transfer the herbage and whatsoever grows upon it; nor can he that sells a mill turn away the stream that drives it. And they that give to a man the right of government in sovereignty are understood to give him the right of levying money to maintain soldiers, and of appointing magistrates for the administration of justice. *Right to the End, Containeth Right to the Means.*

[22] To make covenants with brute beasts is impossible because, not understanding our speech, they understand not, nor accept of, any translation of right, nor can translate any right to another; and without mutual acceptation, there is no covenant. *No Covenant with Beasts.*

[23] To make covenant with God is impossible, but by mediation of such as God speaketh to (either by revelation supernatural or by his lieutenants that govern under him and in his name); for otherwise we know not whether our covenants be accepted or not.¹⁰ *Nor with God without special Revelation.* And therefore, they that vow anything [OL: to God] contrary to any law of nature vow in vain, as being a thing unjust to pay such vow. And if it be a thing commanded by the law of nature, [OL: they vow in vain;] it is not the vow, but the law that binds them.

10. In xviii, 3, Hobbes will narrow the conditions for mediation: only the sovereign can mediate a covenant with God (a view Clarendon found “destructive of our religion and against the express sense of Scripture,” *Brief View*, p. 50). In Hobbes’ favor: the covenant of Mt. Sinai did involve Moses’ mediation (though not for the reason Hobbes gives here; cf. Exod. 20:18–21 and 33:17–23). Against Hobbes: the Abramic covenant does not involve a mediator. For Hobbes’ discussion of that covenant, see xxvi, 41; xxxv, 4; and xl, 1–4. Hobbes’ conceptions of contract as a mutual transfer of rights (xiv, 9), and of covenant as a special kind of contract (xiv, 11; xxxv, 4), combined with his assertion of God’s absolute sovereignty (xxxi, 5), make it problematic that man could covenant with God even through a mediator.

No Covenant, but of Possible and Future.

[24] The matter or subject of a covenant is always something that falleth under deliberation (for to covenant is an act of the will; that is to say an act, and the last act, of deliberation) and is therefore always understood to be something to come, and which is judged possible for him that covenanteth to perform.

[25] And therefore, to promise that which is known to be impossible is no covenant. But if that prove impossible afterwards which before was thought possible, the covenant is valid and bindeth, though not to the thing itself, yet to the value; or, if that also be impossible, to the unfeigned endeavour of performing as much as is possible (for to more no man can be obliged).

Covenants, how made void.

[26] Men are freed of their covenants two ways: by performing or by being forgiven. For performance is the natural end of obligation; and forgiveness, the restitution of liberty (as being a retransferring of that right in which the obligation consisted).

Covenants extorted by fear are valid.

[27] Covenants entered into by fear, in the condition of mere nature, are obligatory. For example, if I covenant to pay a ransom, or service, for my life, to an enemy, I am bound by it. For it is a contract wherein one receiveth the benefit of life; the other is to receive money, or service, for it; and consequently, where no other law (as in the condition of mere nature) forbiddeth the performance, the covenant is valid. Therefore prisoners of war, if trusted with the payment of their ransom, are obliged to pay it; and if a weaker prince make a disadvantageous peace with a stronger, for fear, he is bound to keep it, unless (as hath been said before [¶20]) there ariseth some new and just cause of fear, to renew the war. And even in commonwealths, if I be forced to redeem myself from a thief by promising him money, I am bound to pay it, till the civil law discharge me. For whatsoever I may lawfully do without obligation, the same I may lawfully covenant to do through fear; and what I lawfully covenant, I cannot lawfully break.

The former Covenant to one, makes void the later to another.

[28] A former covenant makes void a later. For a man that hath passed away his right to one man today, hath it not to pass tomorrow to another; and therefore the later promise passeth no right, but is null.

If God's right follows from his omnipotence, it is obscure how God could give up his right. If he retains his omnipotence, but not his right, then the right did not follow from the omnipotence after all. To suppose that he does not retain his omnipotence seems an unattractive option. But if God always retains his right, then how can his promise of a reward for obedience give man a right to the reward if he obeys? This tension between the covenantal model and the theology of L xxxi appears also in xiv, 17, and xl, 1.

[29] A covenant not to defend myself from force by force is always void. For (as I have showed before) no man can transfer or lay down his right to save himself from death, wounds, and imprisonment (the avoiding whereof is the only end of laying down any right), and therefore the promise of not resisting force in no covenant transferreth any right, nor is obliging. For though a man may covenant thus *unless I do so, or so, kill me*, he cannot covenant thus *unless I do so, or so, I will not resist you, when you come to kill me*. For man by nature chooseth the lesser evil, which is danger of death in resisting, rather than the greater, which is certain and present death in not resisting. And this is granted to be true by all men, in that they lead criminals to execution and prison with armed men, notwithstanding that such criminals have consented to the law by which they are condemned.

A man's Covenant not to defend himself is void.

[30] A covenant to accuse oneself, without assurance of pardon, is likewise invalid. For in the condition of nature, where every man is judge, there is no place for accusation; and in the civil state the accusation is followed with punishment, which being force, a man is not obliged not to resist. The same is also true of the accusation of those by whose condemnation a man falls into misery (as, of a father, wife, or benefactor). For the testimony of such an accuser, if it be not willingly given, is presumed to be corrupted by nature, and therefore not to be received; and where a man's testimony is not to be credited, he is not bound to give it. Also accusations upon torture are not to be reputed as testimonies. For torture is to be used but as means of conjecture and light in the further examination and search of truth; and what is in that case confessed tendeth to the ease of him that is tortured, not to the informing of the torturers, and therefore ought not to have the credit of a sufficient testimony; for whether he deliver himself by true or false accusation, he does it by the right of preserving his own life.¹¹

No man obliged to accuse himself.

[31] The force of words being (as I have formerly noted) too weak to hold men to the performance of their covenants, there are in man's nature but two imaginable helps to strengthen it. And those are either a fear of the consequence of breaking their word, or a glory or pride in appearing not to need to break it. This latter is a generosity* too rarely found to be presumed on, especially in the pursuers of wealth, com-

The End of an Oath.

11. In opposing self-incrimination and the use of torture Hobbes' contractarian approach here puts him on the side of those seeking to reform English law (see J. T. Langbein, *Torture and the Law of Proof*, Chicago, 1977, and L. W. Levy, *Origins of the Fifth Amendment*, New York, 1968). This may help to explain his claim (in the Dedicatory Letter) to be taking a middle course between those who contended for too great a liberty and those who contended for too great an authority.

mand, or sensual pleasure (which are the greatest part of mankind).

The passion to be reckoned upon is fear, whereof there be two very general objects: one, the power of spirits invisible; the other, the power of those men they shall therein offend. Of these two, though the former be the greater power, yet the fear of the latter is commonly the greater fear. The fear of the former is in every man his own religion, which hath place in the nature of man before civil society. The latter hath not so, at least not place enough to keep men to their promises, because in the condition of mere nature the inequality of power is not discerned but by the event of battle.

So that before the time of civil society, or in the interruption thereof by war, there is nothing can strengthen a covenant of peace agreed on, against the temptations of avarice, ambition, lust, or other strong desire, but the fear of that invisible power which they every one worship as God and fear as a revenger of their perfidy. All therefore that can be done between two men not subject to civil power is to put one another to swear by the God he feareth; which *swearing*, or OATH, is a *form of speech, added to a promise, by which he that promiseth signifieth that unless he perform, he renounceth the mercy of his God, or calleth to him for vengeance on himself*. Such was the heathen form *Let Jupiter kill me else, as I kill this beast*. So is our form *I shall do thus, and thus, so help me God*. And this, with the rites and ceremonies which everyone useth in his own religion, that the fear of breaking faith might be the greater.

The form of an Oath.

No Oath but by God.

[32] By this it appears that an oath taken according to any other form or rite than his that sweareth is in vain, and no oath, and that there is no swearing by anything which the swearer thinks not God. For though men have sometimes used to swear by their kings, for fear or flattery, yet they would have it thereby understood they attributed to them divine honour. And that swearing unnecessarily by God is but profaning of his name, and swearing by other things, as men do in common discourse, is not swearing, but an impious custom, gotten by too much vehemence of talking.

An Oath adds nothing to the Obligation.

[33] It appears also that the oath adds nothing to the obligation.¹² For a covenant, if lawful, binds *in the sight of God¹³ without the oath as much as with it; if unlawful, bindeth not at all, though it be confirmed with an oath.

12. A doctrine for which Hobbes was condemned by the University of Oxford. Cf. Wootton, pp. 123–24.

13. OL: “by the force of natural law.”