

From Thomas Hobbes's *The Elements of Law*

The Elements of Law was circulated in manuscript form in 1640, eleven years before *Leviathan* was published. It covers much of the same material as *Leviathan* but is shorter and often clearer. Its Chapter 19 is similar to *Leviathan's* ch. 17: it discusses the need for a powerful sovereign and explains how a sovereign is to be set up. **Pay special attention to §2: there Hobbes claims there are some rules in war.**

CHAPTER 19: Of the Necessity and Definition of a Body Politic

[Summary of sections:] 1. That men notwithstanding these laws are still in the state of war, till they have security one against another. 2. The law of nature in war, is nothing but honour. 3. No security without the concord of many. 4. That concord of many cannot be maintained without power to keep them all in awe. 5. The cause why concord remaineth in a multitude of some irrational creatures, and not of men. 6. That union is necessary for the maintaining of concord. 7. How union is made. 8. Body politic defined. 9. Corporation defined. 10. Sovereign and subject defined. 11. Two sorts of bodies politic, patrimonial and commonwealth.

1. In chapt. 12, sect. 16, it hath been shewed, that the opinions men have of the rewards and punishments which are to follow their actions, are the causes that make and govern the will to those actions. In this estate of man therefore, wherein all men are equal, and every man allowed to be his own judge, the fears they have one of another are equal, and every man's hopes consist in his own sleight and strength; and consequently when any man by his natural passion, is provoked to break these laws of nature, there is no security in any other man of his own defence but anticipation. And for this cause, every man's right (howsoever he be inclined to peace) of doing whatsoever seemeth good in his own eyes, remaineth with him still, as the necessary means of his preservation. And therefore till there be security amongst men for the keeping of the law of nature one towards another, men are still in the estate of war, and nothing is unlawful to any man that tendeth to his own safety or commodity; and this safety and commodity consisteth in the mutual aid and help of one another, whereby also followeth the mutual fear of one another.

2. It is a proverbial saying, *inter arma silent leges* [in war the laws are silent]. There is little therefore to be said concerning the laws that men are to observe one towards another in time of war, wherein every man's being and well-being is the rule of his actions. Yet thus much the law of nature commandeth in war: that men

satiate not the cruelty of their present passions, whereby in their own conscience they foresee no benefit to come. For that betrayeth not a necessity, but a disposition of the mind to war, which is against the law of nature. And in old time we read that rapine was a trade of life, wherein nevertheless many of them that used it, did not only spare the lives of those they invaded, but left them also such things, as were necessary to preserve that life which they had given them; as namely their oxen and instruments for tillage, though they carried away all their other cattle and substance. And as the rapine itself was warranted in the law of nature, by the want of security otherwise to maintain themselves; so the exercise of cruelty was forbidden by the same law of nature, unless fear suggested anything to the contrary. For nothing but fear can justify the taking away of another's life. And because fear can hardly be made manifest, but by some action dishonourable, that bewrayeth the conscience of one's own weakness; all men in whom the passion of courage or magnanimity have been predominant, have abstained from cruelty; insomuch that though there be in war no law, the breach whereof is injury, yet there are those laws, the breach whereof is dishonour. In one word, therefore, the only law of actions in war is honour; and the right of war providence.

3. And seeing mutual aid is necessary for defence, as mutual fear is necessary for peace; we are to consider how great aids are required for such defence, and for the causing of such mutual fear, as men may not easily adventure on one another. And first it is evident: that the mutual aid of two or three men is of very little security; for the odds on the other side, of a man or two, giveth sufficient encouragement to an assault. And therefore before men have sufficient security in the help of one another, their number must be so great, that the odds of a few which the enemy may have, be no certain and sensible advantage.

4. And supposing how great a number soever of men assembled together for their mutual defence, yet shall not the effect follow, unless they all direct their actions to one and the same end; which direction to one and the same end is that which, §§chap. 12, sect. 7, is called consent. This consent (or concord) amongst so many men, though it may be made by the fear of a present invader, or by the hope of a present

conquest, or booty; and endure as long as that action endureth; nevertheless, by the diversity of judgments and passions in so many men contending naturally for honour and advantage one above another: it is impossible, not only that their consent to aid each other against an enemy, but also that the peace should last between themselves, without some mutual and common fear to rule them.

5. But contrary hereunto may be objected, the experience we have of certain living creatures irrational, that nevertheless continually live in such good order and government, for their common benefit, and are so free from sedition and war amongst themselves, that for peace, profit, and defence, nothing more can be imaginable. And the experience we have in this, is in that little creature the bee, which is therefore reckoned amongst *animalia politica* [political animals]. Why therefore may not men, that foresee the benefit of concord, continually maintain the same without compulsion, as well as they? To which I answer, that amongst other living creatures, there is no question of precedence in their own species, nor strife about honour or acknowledgment of one another's wisdom, as there is amongst men; from whence arise envy and hatred of one towards another, and from thence sedition and war. Secondly, those living creatures aim every one at peace and food common to them all; men aim at dominion, superiority, and private wealth, which are distinct in every man, and breed contention. Thirdly, those living creatures that are without reason, have not learning enough to espy, or to think they espy, any defect in the government; and therefore are contented therewith; but in a multitude of men, there are always some that think themselves wiser than the rest, and strive to alter what they think amiss; and divers of them strive to alter divers ways; and that causeth war. Fourthly, they want speech, and are therefore unable to instigate one another to faction, which men want not. Fifthly, they have no conception of right and wrong, but only of pleasure and pain, and therefore also no censure of one another, nor of their commander, as long as they are themselves at ease; whereas men that make themselves judges of right and wrong, are then least at quiet, when they are most at ease. Lastly, natural concord, such as is amongst those creatures, is the work of God by the way of nature; but concord amongst men is artificial, and by way of covenant. And therefore no wonder if such irrational creatures, as govern themselves in multitude, do it much more firmly than mankind, that do it by arbitrary institution.

6. It remaineth therefore still that consent (by which I understand the concurrence of many men's wills to one action) is not sufficient security for their common peace, without the erection of some

common power, by the fear whereof they may be compelled both to keep the peace amongst themselves, and to join their strengths together, against a common enemy. And that this may be done, there is no way imaginable, but only union; which is defined to be the involving or including the wills of many in the will of one man, or in the will of the greatest part of any one number of men, that is to say, in the will of one man, or of one COUNCIL; for a council is nothing else but an assembly of men deliberating concerning something common to them all.

7. The making of union consisteth in this, that every man by covenant oblige himself to some one and the same man, or to some one and the same council, by them all named and determined, to do those actions, which the said man or council shall command them to do; and to do no action which he or they shall forbid, or command them not to do. And farther: in case it be a council whose commands they covenant to obey, that then also they covenant, that every man shall hold that for the command of the whole council, which is the command of the greater part of those men, whereof such council consisteth. And though the will of man, being not voluntary, but the beginning of voluntary actions, is not subject to deliberation and covenant; yet when a man covenanteth to subject his will to the command of another, he obligeth himself to this, that he resign his strength and means to him, whom he covenanteth to obey; and hereby, he that is to command may by the use of all their means and strength, be able by the terror thereof, to frame the will of them all to unity and concord amongst themselves.

8. This union so made, is that which men call now-a-days a BODY POLITIC or civil society; and the Greeks call it *{polis}*, that is to say, a city; which may be defined to be a multitude of men, united as one person by a common power, for their common peace, defence, and benefit.

9. And as this union into a city or body politic, is instituted with common power over all the particular persons, or members thereof, to the common good of them all; so also may there be amongst a multitude of those members, instituted a subordinate union of certain men, for certain common actions to be done by those men for some common benefit of theirs, or of the whole city; as for subordinate government, for counsel, for trade, and the like. And these subordinate bodies politic are usually called CORPORATIONS; and their power such over the particulars of their own society, as the whole city whereof they are members have allowed them.

10. In all cities or bodies politic not subordinate, but independent, that one man or one council, to

whom the particular members have given that common power, is called their SOVEREIGN, and his power the sovereign power; which consisteth in the power and the strength that every of the members have transferred to him from themselves, by covenant. And because it is impossible for any man really to transfer his own strength to another, or for that other to receive it; it is to be understood: that to transfer a man's power and strength, is no more but to lay by or relinquish his own right of resisting him to whom he so transferreth it. And every member of the body politic, is called a SUBJECT (viz.), to the sovereign.

11. The cause in general which moveth a man to become subject to another, is (as I have said already) the fear of not otherwise preserving himself. And a

man may subject himself to him that invadeth, or may invade him, for fear of him; or men may join amongst themselves to subject themselves to such as they shall agree upon for fear of others. And when many men subject themselves the former way, there ariseth thence a body politic, as it were naturally; from whence proceedeth dominion, paternal and despotic. And when they subject themselves the other way, by mutual agreement amongst many: the body politic they make, is for the most part called a commonwealth, in distinction from the former, though the name be the general name for them both. And I shall speak in the first place of commonwealths, and afterward of bodies politic patrimonial and despotical.