

Punishment and hostility

1 Distinction between public and private injuries

“... the injustice of an action, (that is to say injury,) supposeth an individual person injured; namely him, to whom the covenant was made: and therefore many times the injury is received by one man, when the damage redoundeth to another. ... And so also in commonwealths, private men may remit to one another their debts; but not robberies or other violences, whereby they are endamaged; because the detaining of debt, is an injury to themselves; but robbery and violence, are injuries to the person of the commonwealth. (*Leviathan*, 15.12)

... if the law impose a sum of money to be paid, to him that has been injured; this is but a satisfaction for the hurt done him; and extinguisheth the accusation of the party injured, not the crime of the offender. (*Leviathan*, 28.18)

2 Features of punishment contrasted with hostility

1. Public condemnation: a trial, e.g., something that shows there was a violation of the law. Hostility = violence without violation of law. (28.5)
2. Public authority, the condemned has to be author of the acts of the punisher. Hostility = usurper or other unauthorized source. (28.6)
3. Deterrent motivation. (28.7)
4. Penalty known in advance, in the law. Hostility = excess punishment. (28.10)
5. Prohibition known in advance, in the law. Hostility = violence without law. (28.11)
6. Never used against public authority. Hostility = violence against sovereign (28.12)
7. Never used against declared enemies. Hostility = violence against those who reject the commonwealth's laws. (28.13)

