

Rights in Hobbes

1 Euclid's *Elements* Book 1

1.1 Definitions

1. A point is that which has no part.
2. A line is breadthless length.
3. The ends of a line are points.
- ...
15. A circle is a plane figure contained by one line such that all the straight lines falling upon it from one point among those lying within the figure equal one another.
4. A straight line is a line which lies evenly with the points on itself.
16. And the point is called the center of the circle.

1.2 Postulates

Let the following be postulated:

1. To draw a straight line from any point to any point.
2. To produce a finite straight line continuously in a straight line.
3. To describe a circle with any center and radius.
4. That all right angles equal one another.
5. That, if a straight line falling on two straight lines makes the interior angles on the same side less than two right angles, the two straight lines, if produced indefinitely, meet on that side on which are the angles less than the two right angles.

1.3 Common Notions

- 1. Things which equal the same thing also equal one another.
- 2. If equals are added to equals, then the wholes are equal.
- 3. If equals are subtracted from equals, then the remainders are equal.
- 4. Things which coincide with one another equal one another.
- 5. The whole is greater than the part.

1.4 Proposition 1

To construct an equilateral triangle on a given finite straight line.

Let AB be the given finite straight line.

It is required to construct an equilateral triangle on the straight line AB.

Describe the circle BCD with center A and radius AB. Again describe the circle ACE with center B and radius BA. Join the straight lines CA and CB from the point C at which the circles cut one another to the points A and B. (Postulates 1 and 3)

Now, since the point A is the center of the circle CDB, therefore AC equals AB. Again, since the point B is the

center of the circle CAE, therefore BC equals BA. (Definition 15)

But AC was proved equal to AB, therefore each of the straight lines AC and BC equals AB. (Common notion 1)

And things which equal the same thing also equal one another, therefore AC also equals BC.

Therefore the three straight lines AC, AB, and BC equal one another.

Therefore the triangle ABC is equilateral, and it has been constructed on the given finite straight line AB. (Definition 20)

2 How lawyers analyze rights

2.1 Liberty

Meaning: the party with the right lacks obligations.

Example: If P has a liberty to use the gun, then P has no obligation not to use the gun.

Consequence: If P is obliged not to use the gun, then P has no liberty to use the gun.

2.2 Claim

Meaning: another party owes an obligation to the party with the right.

Example: If P has a claim to the gun, then there is at least one other party, Q, who has an obligation not to interfere with P's use of the gun.

Consequence: if Q is at liberty to use the gun, then P has no claim against Q.

2.3 Power

Meaning: having a right enables a party to do something that would not otherwise be valid.

Example: contracts.

2.4 Immunity

Meaning: there is something that others cannot do to the party with the right.

Example: contracts.

3 Hobbes: justice as giving each his own

I was presently advertised from the very word *justice*, (which signifies a steady will of giving every one his own), that my first enquiry was to be, from whence it proceeded that any man should call anything rather his *own*, than *another man's*. And when I found that this proceeded not from nature, but consent; (for what nature at first laid forth in common, men did afterwards distribute into several *impropriations*); I was conducted from thence to another inquiry; namely, to what end and upon what impulsives, when all was equally every man's in common, men did rather think it fitting that every man should have his inclosure. (Hobbes *De Cive* [1641], Epistle dedicatory, ¶ 9)

the ordinary definition of justice in the Schools [is -m]g] ... that *justice is the constant will of giving to every man his own*. And therefore where there is no *own*, that is, no propriety, there is no injustice; and where there is no coercive power erected, that is, where there is no commonwealth, there is no propriety; all men having right to all things: therefore where there is no commonwealth, there nothing is unjust. (Hobbes, *Leviathan*, [1651] 15.3)

4 Are there *no* valid covenants in the state of nature?

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 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. (Hobbes, *Leviathan*, 14.8)

But because covenants of mutual trust, where there is a fear of not performance on either part, (as hath been said in the former chapter,) are invalid; though the original of justice be the making of covenants; yet injustice actually there can be none, till the cause of such fear be taken away; which while men are in the natural condition of war, cannot be done. Therefore before the names of just, and unjust can have place, there must be some coercive power, to compel men equally to the performance of their covenants, by the terror of some punishment, greater than the benefit they expect by the breach of their covenant ... So that the nature of justice, consisteth in keeping of valid covenants: but the validity of covenants begins not but with the constitution of a civil power, sufficient to compel men to keep them: and then it is also that propriety begins. (Hobbes, *Leviathan*, 15.3)

5 Or are there *some* valid covenants in the state of nature?

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. (Hobbes, *Leviathan*, 14.27)

This next passage is tricky. If one party has already performed their part of a covenant, the covenant is valid (see the italicized phrase). Hobbes argues here that it makes sense to keep this valid covenant, even in the state of nature, because doing so is necessary to prove that you are a reliable to potential allies who can defend you in the state of nature.

For the question is not of promises mutual, where there is no security of performance on either side; as when there is no civil power erected over

the parties promising; for such promises are no covenants: but *either where one of the parties has performed already*; or where there is a power to make him perform; there is the question whether it be against reason, that is, against the benefit of the other to perform, or not. And I say it is not against reason. For the manifestation whereof, we are to consider; first, that when a man doth a thing, which notwithstanding any thing can be foreseen, and reckoned on, tendeth to his own destruction, howsoever some accident which he could not expect, arriving may turn it to his benefit; yet such events do not make it reasonably or wisely done. Secondly, that in a condition of war, wherein every man to every man, for want of a common power to keep them all in awe, is an enemy, there is no man can hope by his own strength, or wit, to defend himself from destruction, without the help of confederates; where every one expects the same defence by the confederation, that any one else does: and therefore he which declares he thinks it reason to deceive those that help him, can in reason expect no other means of safety, than what can be had from his own single power. He therefore that breaketh his covenant, and consequently declareth that he thinks he may with reason do so, cannot be received into any society, that unite themselves for peace and defence, but by the error of them that receive him; nor when he is received, be retained in it, without seeing the danger of their error; which errors a man cannot reasonably reckon upon as the means of his security: and therefore if he be left, or cast out of society, he perisheth; and if he live in society, it is by the errors of other men, which he could not foresee, nor reckon upon; and consequently against the reason of his preservation; and so, as all men that contribute not to his destruction, forbear him only out of ignorance of what is good for themselves. (Hobbes, *Leviathan*, 15.5; italics added.)