

even if men could go back to the beginning and re-create the state, they would voluntarily do so in such a way that they would set up a Sovereign more absolutist than any contemporary king dared to be. A large part of the argument in *Leviathan* is designed to show why this must be so. The argument is fairly technical, because Hobbes is a meticulous thinker. The argument is carried on at a high level of abstraction, but it is marvellously clear. Later in this chapter we will have to stand back from Hobbes's argument and try to give it a historical context, because none of Hobbes's readers at the time could have doubted that a very thorough commentary on English political history lay not very far below the surface. First we must see what the argument for unlimited sovereignty is, and then try to make it historically specific.

SOVEREIGNTY NOT LIMITABLE BY CONTRACT

Hobbes's argument that sovereignty is not limited by contract rests on the sheer impossibility of a Sovereign making a contract with his future subjects in the State of Nature, and on the sheer unlikelihood that he would make a contract with them in Civil Society. There are only two possible conditions of life for Hobbes, life in the State of Nature, which is a state of war of everyman against everyman, and Civil Society, which is a state of peace. The question then arises as to which of these conditions offers the opportunity and possibility for a Sovereign to make a contract with his subjects. Take the State of Nature first. Its chief feature is a kind of atomistic chaos. Men being solitary in the State of Nature, the only way a would-be Sovereign could make a contract with his future subjects would be to chase around making an agreement with each man individually. Not only would this task be next to impossible (why should they trust him rather than trust anyone else?), but it would also be pointless, because contracts in the State of Nature are unlikely to be binding any way. Nobody in the State of Nature would be foolish enough to abide by the terms of any agreement made with anyone else about anything, because of the fear of non-performance of the terms of the contract in the absence of a system of law-enforcement. A contract to limit sovereignty in the State of Nature would not be a valid contract at all, so that only leaves Civil Society in which the Sovereign could make a contract with his subjects to limit his sovereignty. Hobbes thinks that a Sovereign who would make such a contract would have to misunderstand his own nature and to misunderstand the nature of sovereignty itself.

To understand why a Hobbesian Sovereign would have no motive for making a contract with his subjects to limit sovereignty in Civil Society we have to go back to the position a rational egotist would find himself in in the State of Nature. There, thinking the matter out, a rational egotist would come to the conclusion that the best possible situation for him to be in would be where everyone else would be obliged to obey laws made and enforced by himself, while he was not obliged to obey. We saw that one of the things which makes the State of Nature so unbearable would be the realisation that everyone would be thinking the same way, and this would lead to the conclusion that, if only someone were in that enviable position, then the end of the State of Nature would be in sight. In its Hobbesian version, the social contract effectively puts one man in the

position that all men coveted in the State of Nature. By choosing one man (or a body of men) to be Sovereign, men make the Sovereign a beneficiary of the contract, not a contracting party. The transfer of the Right of Nature from separate individuals to a Sovereign requires no formal act of consent on the Sovereign's part, let alone any kind of deal. Any rational egotist would be bound by his own nature to accept the job. In formal terms, the Hobbesian contract is an agreement between contracting parties to make one man (or group of men) Sovereign; it therefore follows that in the transition from the State of Nature to Civil Society, everyone except the Sovereign makes the transition. The Sovereign himself therefore remains in the State of Nature, because he has made no agreement with anyone. It follows that if the Sovereign is the one man who gets what everyone else wanted, he would be a fool to bargain away some of his absolute power when everyone except him was in Civil Society. He would simply have no motive. His own nature would tell him not to limit his sovereignty by contract, and the beauty of Hobbes's argument is that any rational man who was chosen to be Sovereign would think the same thing, and so would any group.

Now it is just conceivable that a Sovereign chosen by chance or by choice might take it into his head, in a moment of mistaken benevolence perhaps, to make a contract with his subjects to hold sovereign power on terms. He might say: This will I do, and if I don't, sack me. Hobbes believes that a Sovereign who did something like that would be failing to understand the very nature of sovereignty. Suppose a Sovereign who had not thought the matter out properly were to make such an agreement. Who would judge when the terms of the contract had been violated? Each man judging for himself would not help much, because who would be the first to rebel when the Sovereign was still powerful enough to kill him? Suppose that all of his subjects taken together, or a majority of them, had the right to decide when the Sovereign had broken the terms of his contract. What then? This is where Hobbes boxes very clever indeed. How could that dissent be made known and make itself felt? Hobbes's answer is that a collective dissent could only articulate itself through the election of another Sovereign, and, sovereigns being in the State of Nature, the two rival sovereigns would have to fight it out, which would mean the miserable condition of civil war which is a condition only just preferable to the State of Nature.

Hobbes's argument that attempting to judge the Sovereign's conduct would lead inevitably to civil war is an ingenious one, and again we have to go back to the condition of men in the State of Nature to understand its full force. The atomistic chaos of the State of Nature clearly means that men can have no collective will. All choices in the State of Nature are individual choices. (This is even true of the social contract, which is made when every individual, or a majority of them, agrees to give up his Right of Nature to the Sovereign provided only that every other individual, or a majority of them, does the same.) The only way that scattered, solitary individuals can have some kind of collective will, or even identity, is by choosing a Sovereign to represent them by providing that measure of law and order which all men want. As Hobbes puts it, the unity of a thing consists not in the thing represented but in its representer. A Civil Society acts only as a unity through the Sovereign; it is only then that Civil Society, Leviathan, that artificial man and mortal god, can come into existence. Unity, then, does not arise spontaneously,

but is the deliberate creation of disparate human wills. Being artificial, the unity of Civil Society is always to a degree precarious. It is important to remember that Hobbesian men do not come into Civil Society in order to change their natures. On the contrary, they enter Civil Society to fulfil their natures as rational egotists in so far as that is possible within the bounds of law, so that in Civil Society the only unity that can exist between essentially egotistical and competitive men is provided by the Sovereign who stands for them all. If the people in Civil Society were ever in a position to judge whether their Sovereign had broken the terms of a contract, they would have to find another man, or a body of men, to represent them and make that judgement. There would have to be some kind of collective will which was not the Sovereign's will, but if Hobbes is right then the only way that men in Civil Society could exercise a collective will which is not the Sovereign's will would be to elect another Sovereign, because only sovereigns, by definition, can create that artificial unity without which all collective action is impossible. There would, in effect, be two rival sovereigns in a single Civil Society. That, by definition, would be civil war, which is only a step away from the State of Nature which all rational men rightly dread.

There is yet another difficulty about judging the Sovereign in Civil Society which in Hobbes's terms is the really killing argument against it. In Civil Society there would only be two possibilities for judging the Sovereign. Either the Sovereign would judge himself, or he would be judged by what would effectively be another Sovereign. Men being rational egotists, and both parties to the dispute about breaking a contract being single individuals (or small groups of individuals), each party would, given the opportunity, judge in his own favour. The Sovereign would always deny that he had broken the contract, while the rival Sovereign would always say that the Sovereign for the time being had broken the contract, because that would be the only way for the rival Sovereign to press his own egotistical claims. (We should never forget that according to Hobbes any man, or body of men, would be Sovereign if he could.) Each Sovereign would be judge in his own cause, which is a very odd principle of jurisprudence. There would only be one way of judging whether the rival Sovereign had judged the Sovereign for the time being correctly, and that would be to set up some other kind of mechanism for judging the judgement. This would be possible, at least in principle, but it would be a foolish thing to do because, in effect, it would amount to creating yet another Sovereign. All the arguments about creating unity out of diversity would apply to this third judging mechanism. The third judge would have to be one man, or a body of men, representing a considerable body of men in Civil Society, and so he would effectively be a third Sovereign. The civil war would now be worse, because there would now be three rival sovereigns. And why stop at three? This third Sovereign would act egotistically in exactly the same way as the already existing Sovereigns would act. He would always put in a judgement against both other Sovereigns to advance his own claims to sovereignty, and, since he is judge in his own cause, it would be necessary to create a fourth Sovereign to make sure that the third Sovereign had judged correctly. Of course, the same arguments would apply against the fourth Sovereign as applied to the previous three. The fourth Sovereign judging in his own cause would always find in his own favour, which would make it necessary to create a fifth Sovereign to judge him, and so it would go on,

regressively, until there were as many rival Sovereigns as there were men living in Civil Society, and every man his own judge is the State of Nature by another name. The outcome of Hobbes's argument is clear: either you stick with a single Sovereign who makes no contracts with his subjects, or you begin to fall back down the slippery slope into the State of Nature, which no rational man wants.

SOVEREIGNTY CREATED BY INSTITUTION AND SOVEREIGNTY CREATED BY ACQUISITION

The account which Hobbes gives of the original contract is the paradigm case of social contract. It is what must have happened at the imagined beginning of Civil Society, and Hobbes thinks that it is what would have to happen again if a Civil Society were to be unfortunate enough to find itself back in the miserable condition of the State of Nature. It is always important when reading Hobbes to remember what he is arguing *against*. In particular, Hobbes has in mind the libertarian and egalitarian aspects of other social contract theory. Other social contract thinkers had always gone back to the postulate of an original, rough natural equality between men, in order to argue that some of that natural equality should be reflected in the arrangements of Civil Society. If men were originally free and equal, then surely they would be unwilling to give it all up when they entered Civil Society by voluntary contract. Hobbes argues the opposite. The original Right of Nature, by which a man may do *anything* which to him seems good to protect his own life, is for Hobbes not a blessing but a curse. If everyone has that same equal and unlimited liberty to do as he pleases in pursuit of the literally selfish end of self-preservation, then without law every man is a menace to every other man. Far from being an original endowment for which men should be grateful, the unlimited liberty of the Right of Nature is a millstone round men's necks, of which they would be wise to unburden themselves at the first opportunity. Of course, it is not in fact possible for men entirely to give up their Right of Nature to a Sovereign. In Civil Society men would retain the right of self-defence. A man would go armed on a journey, and at night he would lock up his chests even against his own children, and on these matters the positive law of a commonwealth might be silent. Again, no man is obliged to go unbound to the scaffold, because it would be unreasonable to expect a man who was in imminent danger of violent death at the Sovereign's hands to submit gracefully. With these exceptions, which are either everyday exceptions or exceptions of last resort, any rational man would rid himself of his Right of Nature if he could.

Hobbes has neatly turned the tables on his opponents. He says: Allow the maximum amount of natural liberty conceivable in the State of Nature and you end up with absolute Sovereignty if you think the matter out properly. The results would be the same even if an existing Civil Society were to dissolve itself into its component individual parts and begin again from scratch. So why bother even trying? Much better to put up with the system of government as it presently exists, no matter how absolutist its pretensions, than to go through the whole process of a return to the horrific State of Nature only to set up another absolutist form of government. (It may well be that if a Civil Society were to

return to the State of Nature it would have to set up a Sovereign who was even more absolutist than the Sovereign who previously ruled in that society.)

Hobbes is of course aware that the states which existed in his own contemporary world did not have their origins in contract, or if they did all record of the original transactions has been lost. Voluntary contract-making, may never, or very seldom, have happened. This does not alter the fact that the creation of sovereignty by Institution is what men would have to do to get themselves out of a State of Nature at some time in the future; Hobbes knows very well that states do not exist in isolation, and he knows that most states were acquired by conquest. This creation of sovereignty by Acquisition is the ordinary historical case. What Hobbes is very clever at is applying the lessons to be learned from the case of sovereignty by Institution to the case of the creation of sovereignty by Acquisition.

On the face of it, the two cases could not be more different. The creation of sovereignty by Institution is voluntary, whereas the Acquisition of sovereignty is by conquest. According to Hobbes, however, the difference between the two cases is only superficial. What actually happens when a new sovereignty is acquired by a conqueror? Hobbes thinks the matter is very simple. Two Sovereigns lead their armies out to battle, and one Sovereign loses, flies the field, or is killed. Where does that leave his defeated subjects? Plainly, in Hobbes's terms, they are sovereignless, that is to say back in the State of Nature. Being back in the State of Nature, they fear violent death, but this time they fear it at the hands of the victorious Sovereign who may kill them if he chooses. Instead, the victorious Sovereign might say to the defeated army: I will kill you all if you do not agree among yourselves to recognise me in the future as your lawful Sovereign. It is quite unnecessary for the victorious Sovereign to put any conditions on his newly acquired sovereignty beyond sparing the lives of his new subjects, or at least of some of them. He may kill whom he chooses. As a rational egotist intent on the extension of the absolute sovereignty which he already possesses, the victorious Sovereign has no more a motive for making a contract with his new subjects than he had for making a contract with his old subjects in Civil Society, and it is equally obvious that the defeated and demoralised army is in no condition to force the victorious Sovereign to come to terms with them. They must be grateful for their lives, and that is all.

Hobbes says that the making of sovereignty by Acquisition is not in fact very different from the making of sovereignty by Institution. The main objection against saying that the agreement among themselves of a defeated army to recognise a new Sovereign is a valid contract is that it was made through fear. Hobbes thinks that this is no objection to the validity of the battlefield contract because, properly considered, all contracts are made through fear. Take the case of men in the original State of Nature. It was fear of each other which led them voluntarily to give up their Right of Nature to the Sovereign. Even in an ordinary Civil Society, men insist on spelling out the terms of contracts when they fear non-performance from the other contracting parties. If fear does not invalidate the original social contract by Institution, and if fear does not invalidate contracts in Civil Society, then why should fear of the victorious Sovereign invalidate the contract on the battlefield? We might still say that the battlefield contract was invalid because the defeated army had no option but to agree to recognise the new Sovereign. Not so says

Hobbes. The human will cannot be coerced. Just as men could have chosen originally to remain in the State of Nature and take their chances, so could the defeated men on the battlefield. They could try to run away, for instance, or try to preserve their lives in any other way, and the Right of Nature would allow them to do it. Of course, Hobbes thinks that it would be foolish for these defeated and sovereignless men not to agree among themselves to recognise the new Sovereign because of the risk to their lives consequent on their refusal, but the choice is still theirs. The men in the original State of Nature would have been foolish to remain there, but they still had the choice. And besides, what we ordinarily call coercion of a man's will is really nothing of the kind. Take the case of a man on board a ship in a storm with his goods stored below. He very willingly throws his goods overboard to lighten the ship and increase the chances of preserving his own life if he thinks the ship might sink. Coercion through fear makes a man act very willingly indeed where he still has alternatives. The man on board the ship could choose to preserve his goods at the cost of risking his own life, but in fact he would very willingly sacrifice his goods. (The doctrine of the uncoercibility of the will is in fact at least as old as Aristotle's *Politics*, where he uses the same example of the man on a sinking ship.)

Hobbes thinks that a Sovereign can be one man, a few, or many men. He knows his ancient political theory well enough (he made a famous translation of Thucydides) to know that states are either monarchies, aristocracies or democracies. Although Hobbes developed a profound contempt at Oxford for the scholastic philosophy which was the legacy of Aristotle, he none the less has a remarkably Aristotelian view about possible forms of government. In particular, he thinks that the sovereignty which is exercised by a Sovereign is the same sovereignty, no matter how that sovereignty is in fact constituted. The sovereignty which is exercised by a Sovereign people, as at ancient Athens or republican Rome, does not change its nature as sovereignty just because it is democratic. Democratic sovereignty properly understood would have the same attributes as the sovereignty of an absolute monarch. Hobbes is remarkably far-sighted in seeing this. Ever since the theory of the democratic republic made its appearance in Western political thought in the middle of the seventeenth century, democratic theorists have been divided about what the democratic theory of sovereignty actually means. Some thinkers, notably in the United States, have tended to argue that democratic sovereignty (or republican sovereignty as it was originally called) is somehow less sovereign than the sovereignty exercised by kings, and hunting the Sovereign in the American Constitution, let alone in the American political system, is still an endless game. In democratic polities there has sometimes been a tendency, notably absent in France because of the Rousseauist tradition, to think that sovereignty will not bite so hard because it is democratically exercised, and this in its turn has sometimes led liberal democrats to be surprised that democratic states can on occasion act just as viciously as the monarchies they were meant to replace (or to modify into constitutional polities with universal suffrage). Hobbes could have saved them the trouble: sovereignty is sovereignty no matter who exercises it. Although Hobbes could not know it, the political science of the late nineteenth and twentieth centuries was to concern itself centrally with just this problem, and the conclusion most of that political science would come to is implicitly Hobbesian. A

distinction would come to be made between how sovereignty is *exercised* and how sovereignty is *legitimised*. Mass democracy came to be seen as a way of making the exercise of sovereignty acceptable to citizens whose hands would be very far from the levers of power, and whose representatives in parliamentary assemblies would for ever complain how difficult it was in practice to control the exercise of the supreme powers of law-making and law-enforcement. It could even be argued that mass democracy makes the exercise of a Hobbesian type of sovereignty easier, not more difficult, because if everybody is involved in the process of law-making through the ballot box, then nobody can ever have a legitimate cause for complaint about what laws are made, provided only that those laws are made by the right people and in proper form. As Sam Adams, the erstwhile radical of the American Revolution, was to say after the revolution was over, any man who opposes the laws of a republic ought to suffer death. Hobbes would have liked that.

SOVEREIGNS AND WAR

Hobbes's argument that sovereigns remain in the State of Nature because they cannot make contracts with their subjects has very definite implications for international relations, and in particular for war. Like Machiavelli, Hobbes knows that most of the sovereignties as they actually exist in the world were acquired through conquest. Hobbesian sovereigns, remaining as they do in the State of Nature, are perfectly entitled to go to war with each other if they feel threatened. This would include the right of attacking first, because a preemptive strike might be one of the ways in which a Sovereign might increase his own sense of security. It might appear that this is a recipe for international anarchy. Would not sovereigns, who are in a State of Nature in relationship with each other, be inclined to fight each other the whole time? The answer is probably no. The idea that sovereigns in the State of Nature with regard to each other would always be fighting is based on a misunderstanding of the original State of Nature as it is described by Hobbes. It is easy to forget that men in the original State of Nature would be inclined to live solitary lives because trials of strength with other men would simply not be worth the risk where all were roughly and naturally equal. The same thought would occur to a prudent Sovereign. The doctrine of the legitimate creation of sovereignty by Acquisition would mean that every time a Sovereign went to war he would risk losing his sovereignty to another Sovereign, and we must never forget that, granted Hobbes's view of men as rational egotists, sovereignty is what all men want above everything else. A Sovereign would therefore be a fool to risk his own sovereignty in the uncertain trial by combat. Prudent sovereigns would certainly prepare for war in a world where nothing is certain, but going blithely into a war would be a different matter. Large and powerful states would probably tend to gobble up small and weak neighbours, but a time would come when a more or less stable international system of more or less equally powerful states emerged, or, if not more or less equally powerful, then states powerful enough in alliance with others to make rival states think twice about attacking them.