

HOBBES AND THE LIBERAL TRADITION IN INTERNATIONAL LAW

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I. INTRODUCTION

A particular iteration of liberal theory is commonplace in international law and related discussions.¹ As Vasuki Nesiah recounts in a forthcoming chapter in the *Oxford Handbook on Women and International Law*, this iteration is a theory of individualized, disembodied political subjects who experience ever-improving conditions alongside the development of international law.² Critical scholars of various stripes have challenged this paradigm, and Nesiah's thoughtful chapter features critical feminist and queer scholars who remain committed to internationalism.

Nesiah highlights three ways these “feminist internationalist”³

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1. There are of course multiple versions of liberal theory, and multiple versions of liberal theory in international law. See Anne-Marie Slaughter, *A Liberal Theory of International Law*, 96 PROC. ANN. MEETING AM. SOC'Y INT'L. L. 240, 240 (2000).

2. See generally Vasuki Nesiah, “Re-enchanting the world”: Feminist Critiques of Liberal Theories of International Law, in THE OXFORD HANDBOOK ON WOMEN AND INTERNATIONAL LAW (Jaya Ramji-Nogales, J. Jarpa Duwuni, Nienke Grossman & Helene Ruiz Fabri eds., forthcoming 2025).

3. *Id.* at 3.

scholars have engaged with and refuted the commonplace liberal theory.⁴ Pairing lines of critique with domains of international law, she associates a critique of the liberal conception of subjects with human rights law,⁵ a critique of the tendency to “zon[e] . . . oppression to the past” with colonialism and decolonization,⁶ and a critique of neoliberal policies with development.⁷ Contemporary feminist internationalists are thus in conversation with a liberal tradition that Nesiah describes as stretching “from John Locke to John Rawls.”⁸

Another, perhaps even richer, conversation is available between contemporary critics of the liberal tradition and one of that tradition’s forerunners—Thomas Hobbes. The so-called “Monster of Malmesbury”⁹ has been derided as a “patriarchal theorist”¹⁰ and as a pernicious force in international law,¹¹ so he may seem an unlikely interlocutor. Yet to the extent Hobbes counts as a founder of liberalism,¹² commonplace liberal theory in international law has come unmoored from his foundations. Certain strands of his thought are strikingly harmonious with at least the first two feminist internationalist

4. As Nesiah notes, the interventions discussed “often take up overlapping themes and foreground mutually reinforcing lines of critique,” but it is productive to draw them apart “for heuristic purposes and the limits of length.” *Id.* at 19.

5. *Id.* at 3.

6. *Id.* at 8.

7. *Id.* at 13, 16–17.

8. *Id.* at 8 n.21.

9. See JEAN HAMPTON, HOBBS AND THE SOCIAL CONTRACT TRADITION 189 (1986) (“As one scholar of the seventeenth century notes, Hobbes was regarded as the ‘Monster of Malmesbury,’ the ‘bug-bear of the nation,’ and another scholar of the period relates that when Clarendon decided to spend his time during his banishment in France refuting Leviathan, he was embarking upon a ‘reputable and well-thought-of task.’” (citing first SAMUEL I. MINTZ, THE HUNTING OF LEVIATHAN vii (1970); then JOHN BOWLE, HOBBS AND HIS CRITICS 33 (1951))).

10. Carole Pateman, ‘*God Hath Ordained to Man a Helper*: Hobbes, Patriarchy, and Conjugal Right, 19 BRIT. J. POL. SCI. 445, 446 (1989).

11. See, e.g., Kostia Gorobets, *Doing Away with Hobbes: International Law, Normativity, and the Rule of Law*, VÖLKERRECHTSBLOG (Nov. 11, 2021), <https://voelkerrechtsblog.org/doing-away-with-hobbes>.

12. Compare LEO STRAUSS, NATURAL RIGHT AND HISTORY 182 (1953) (“[T]he founder of liberalism was Hobbes.”), and Jeremy Waldron, *Hobbes and the Principle of Publicity*, 82 PAC. PHIL. Q. 447, 448 (2001) (arguing Hobbes is part of the liberal tradition in a relevant sense), with SAMANTHA FROST, LESSONS FROM A MATERIALIST THINKER: HOBBSIAN REFLECTIONS ON ETHICS AND POLITICS 12 (2008) (denying Hobbes counts as a “liberal or even protoliberal”), and Quentin Skinner, *Thomas Hobbes’s Antiliberal Theory of Liberty*, in LIBERALISM WITHOUT ILLUSIONS 149 (Bernard Yack ed., 1996) (characterizing Hobbes as explicitly “antiliberal”). See generally Lucien Jaume, *Hobbes and the Philosophical Sources of Liberalism*, in THE CAMBRIDGE COMPANION TO HOBBS’S LEVIATHAN 199 (Patricia Springborg ed., 2007) (addressing this controversy).

critiques that Nesiah relays,¹³ and others provide fruitful ground for disagreement.

Hobbes was unique among the social contract theorists for denying natural sex-based inequality, as well as any sex-based justification for patriarchal subordination.¹⁴ Hobbes was especially unusual for rejecting one of the grounds of “classic patriarchalism”—that is, the notion that “political right originated naturally in fatherhood.”¹⁵ Instead, he insisted such views were “misreckon[ed].”¹⁶ It was not fathers but mothers who had a natural right of authority over their children in what Hobbes termed the commonwealth “by generation.”¹⁷ Women were thus natural sovereigns, and this sovereignty did not rest on essentialist views about the relationship between childbirth and care. As Susanne Sreedhar explains,

There is no sense in which Hobbes thought there was a natural maternal instinct, or any unique privilege that resulted from the mother-child bond. There is no expectation that a woman should want to keep her offspring, nor is there any condemnation of a woman who chooses to kill, give away, or “expose” her baby.¹⁸

Women likewise could be sovereigns—including ruthless ones—in civil states.¹⁹ Men had no distinctive claim to rule or rule in that way there, either.

Hobbes’s philosophical commitments to materialism and nominalism, as well as his discussions of conquest, inequality, and progress’s instability, also intersect productively with the interventions Nesiah highlights. As a materialist, Hobbes rejected Descartes’s dualism

13. In the interest of space and because it may not as clearly intersect with Hobbes’s work, this essay sets aside Nesiah’s third critique—of neoliberal policies and institutions reproducing discrimination through their regulations of gender and sexuality. *See* Nesiah, *supra* note 2, at 16–17 (describing the World Bank’s role in Uganda’s Anti-Homosexuality Act as an example).

14. *See* CAROLE PATEMAN, THE SEXUAL CONTRACT 41 (2018) (“[I]n Hobbes’ theory . . . both sexes are pictured as naturally free and equal . . .”); *see also id.* at 5 (no natural difference in rationality); *id.* at 6 (no necessity for women to enter into marriage contract); *id.* at 12, 26 (no marriage contract in the state of nature); *id.* at 44 (“no natural mastery in the state of nature, not even of men over women”); *accord* SUSANNE SREEDHAR, *Thomas Hobbes on Sex Difference and Gender Equality*, in HOBBS ON SEX (forthcoming Aug. 2025) (manuscript at 7) (on file with author) (“In all three of his major political works, he explicitly denies that there are general differences between men and women sufficient to justify the subordination of women to men.”).

15. PATEMAN, *supra* note 14, at 44.

16. THOMAS HOBBS, LEVIATHAN 308 (Noel Malcolm ed., Clarendon Press 2012) (1651) [hereinafter LEVIATHAN] (ch. 20).

17. *Id.* at 308, 310 (ch. 20).

18. SREEDHAR, *supra* note 14, at 8 (quoting LEVIATHAN, *supra* note 16, at 310 (ch. 20)).

19. *See, e.g.*, LEVIATHAN, *supra* note 16, at 310 (ch. 20) (discussing a case of a “Sovereign Queen”).

between mind and body,²⁰ believing “life is but a motion of Limbs.”²¹ As a nominalist, he believed there is “nothing in the world Universall but Names.”²² The Hobbesian subject, then, is both “wholly embodied”²³ and particular. Moreover, while he too presents the state as the solution to social strife, Hobbes offers no false hope that such institutions will be formed without violence or necessarily maintained with virtue. Indeed, he explicitly accounts for the history of conquest in a way the commonplace liberal theory may not. If liberal theory in international law treats legal subjects as disembodied and universalized and treats the history of international law as one of steady progress since its Westphalian birth, then Hobbes thus offers a glimpse of a path not taken. His works and those of contemporary scholars offer complementary critiques of fundamental liberal tenets.

What’s more, unearthing this shared ground reveals Hobbes’s potential as a generative foil for today’s feminist internationalists. He pursued some odious ends, to be sure—justifying absolute monarchies and aristocracies, accepting inequality under civil law, to some extent legitimating the outcomes of conquest, and the like. But he should not simply be discarded as a result. Instead, he should be treated as the puzzle he is. How can one avoid his worst conclusions while accepting similar premises and not resorting to the commonplace liberalism?

By building on the work of feminist theorists who have distinguished Hobbes’s views within the Western canon,²⁴ this essay seeks to illustrate one reason why Hobbes is still worth considering in international law and legal thought. Prominent scholars have already challenged Hobbes’s caricature as a proto-realist who believed states are embroiled in constant anarchy and war.²⁵ This essay emphasizes other elements of his political philosophy to underscore how the commonplace liberal theory might have lost its way and invite further engagement between recent and older works.²⁶

20. See STEWART DUNCAN, MATERIALISM FROM HOBBES TO LOCKE 27 (2022).

21. LEVIATHAN, *supra* note 16, at 16 (Introduction).

22. *Id.* at 52 (ch. 4).

23. Samantha Frost, *Fear and the Illusion of Autonomy*, in NEW MATERIALISMS 158, 160 (Diana Coole & Samantha Frost eds., 2010).

24. See, e.g., PATEMAN, *supra* note 14, at 5, 6, 12, 26, 41, 44 (repeatedly describing Hobbes as exceptional among classic social contract theorists); SREEDHAR, *supra* note 14, at 2 (arguing, against critics, that Hobbes should be understood as advancing a social constructionist view of gender).

25. See generally NOEL MALCOLM, *Hobbes’s Theory of International Relations*, in ASPECTS OF HOBBES 432 (2002); David Singh Grewal, *The Domestic Analogy Revisited: Hobbes on International Order*, 125 YALE L.J. 618 (2016).

26. It does so by relying primarily on Hobbes’s work in his “fullest and most mature political treatise,” LEVIATHAN. IOANNIS D. EVRIGENIS, IMAGES OF ANARCHY: THE RHETORIC AND SCIENCE IN HOBBES’S STATE OF NATURE 16 (2014). This is not intended to stake a position in the debates regarding the relationships between

The essay proceeds as follows: Part II contemplates the liberal legal subject that Nesiah discusses in relation to international human rights law. It argues that Hobbes's legal subjects have much in common with the embodied and particular subject of feminist internationalism. Not only are bodies and their differences central to Hobbes's state of nature, but they remain so in the civil state. Part III then reviews the Westphalian origin myth of international law that Nesiah relays in relation to colonialism and decolonization. According to this reproduction of liberalism's own origin myth, modern international society was born through agreement among newly equal partners in 1648, and it has continued to produce ever-greater redemption across the globe since then.²⁷ Hobbes's social contract account, by contrast, was not so sanguine. His frequently overlooked account of states built through conquest represents a far more sobering vision of political power, and he offers readers neither utopian redemption nor durable peace without effort. Collectively, the essay aims to demonstrate the usefulness of placing the history of political thought—and Hobbes's work in particular—into conversation with contemporary critique. Such efforts can, hopefully, illuminate both past and present.

II. RIGHTS AND POLITICAL SUBJECTIVITY

As Nesiah recounts, the “classic liberal conception of the subject” is not only individualized but also disembodied and “shorn of anything that translates the self from the universal to the particular.”²⁸ And while this image of the subject may have been constructed in the context of domestic legal theory,²⁹ it appears with particular force in international human rights law, where political subjectivity has been severed from material reality.³⁰ The Universal Declaration of Human Rights, for example, “conveys the enduring vision of the political subject of international human rights as universal and normatively and juridically legible within a liberal conception of politics and society.”³¹ In response, feminist critiques, such as Zeina Jallad's discussion of a young Tunisian

Hobbes's political treatises. See Deborah Baumgold, *The Difficulties of Hobbes Interpretation*, 36 POL. THEORY 827, 830 (2008) (describing debates). Indeed, I agree with Deborah Baumgold that “[i]t both helps and complicates textual analysis that Hobbes wrote the theory [at least] three times” between ELEMENTS OF LAW (1640), DE CIVE (1642 and 1647), and LEVIATHAN (1651 in English and 1668 in a revised Latin edition). Deborah Baumgold, *Subjects and Soldiers: Hobbes on Military Service*, 4 HIST. POL. THOUGHT 43, 45 (1983); see also EVRIGENIS, *supra*, at 4 (cataloging these works and editions). But for the purposes of outlining some of the essential elements of Hobbes's theory, I take LEVIATHAN to be sufficiently representative, as well as likely most familiar to American readers.

27. See Nesiah, *supra* note 2, at 8.

28. *Id.* at 3–4.

29. See *id.* at 8 n.21.

30. *Id.* at 6.

31. *Id.* at 5.

street vendor's self-immolation in 2010,³² have challenged this "disembodied conception" that "naturalizes the privileged as universal" in a way that is premised on "a whole range of dichotomies that code and legitimize inequality and hierarchy such as universal vs. particular, active vs. passive, law vs. culture, reason vs. the body, and public vs. private."³³

Hobbes's theory does reason from individuals as the primary unit of analysis. But these individuals are not necessarily isolated or selfish, as some secondary accounts might suggest.³⁴ On the contrary, their existence is defined by interaction with others, and they can be driven by a range of motivations. In focusing on individuals, however, Hobbes shares a core commitment with the liberal theory Nesiah describes.

Simultaneously, other elements of his theory resonate more with the feminist internationalists. Far from presenting a disembodied and universalized subject, Hobbes's theory rests on twin pillars of materialism and nominalism.³⁵ Hobbes's world consists exclusively of bodies in motion, and the attributes and needs of human bodies especially drive his approach. Moreover, Hobbes rejects the notion that anything can be truly universal other than names. Stewart Duncan helpfully illustrates this idea by explaining that "[a] common name such as 'cat' is universal in that it names several things. The things named are, however, all individuals."³⁶ In this vein, Hobbes advances an interesting mix of arguments: Natural material differences are "overwhelming, widespread, and manifest,"³⁷ but no natural hierarchy exists.³⁸ Natural equality accordingly is in right only,³⁹ but natural equality nonetheless

32. Zeina Jallad, *The Power of the Body: Analyzing the Logic of Law and Social Change in the Arab Spring*, 6 COLUM. J. RACE & L. 139, 139 (2016); see also Nesiah, *supra* note 2, at 5–7 (engaging with Jallad's work).

33. Nesiah, *supra* note 2, at 4.

34. See FROST, *supra* note 12, at 7 ("To state the point briefly, Hobbes's subject is not an autonomous, self-defining, integrated, and internally unified individual."); Frost, *supra* note 23, at 159–64 (outlining "Hobbes's argument about the impossibility of self-sovereignty," especially in light of his materialist metaphysics).

35. MINTZ, *supra* note 9, at 23.

36. DUNCAN, *supra* note 20, at 28.

37. Kinch Hoekstra, *Hobbesian Equality*, in HOBBS TODAY: INSIGHTS FOR THE 21ST CENTURY 76, 90 (S. A. Lloyd ed., 2012).

38. See Teresa M. Bejan, *Hobbes and Hats*, 117 AM. POL. SCI. REV. 1188, 1195 (2023) ("Hobbes sought . . . to deprive aristocrats in England and elsewhere of the claim that their social distinction derived from any natural superiority.").

39. Hoekstra, *supra* note 37, at 92; see also Eleanor Curran, *Hobbes on Equality: Context, Rhetoric, Argument*, 25 HOBBS STUD. 166, 178 (2012) ("The differences that do exist between people . . . are not so considerable as to justify any special rights claims by individuals.").

ought to be admitted,⁴⁰ even as the civil state generates inequality.⁴¹ These various commitments defy the commonplace mold of the liberal subject and state in interesting and potentially productive ways.

A. Hobbes's Bodies in Motion

Hobbes's famous but often-misread *Leviathan* rests in multiple respects on materialism. The logical progression of its opening chapters builds an account of human bodies interacting with and being shaped by the material environment. "All that *really* exists," for Hobbes, "is body."⁴² Even ideas—as well as the related and vitally important functions of imagination, memory, belief, judgment, and so on—are physical products in our organs of external objects, including other people, pressing against our bodies.⁴³

Commentators in Hobbes's time and our own have criticized this commitment to materialism. Contemporaries "excoriated" him "for the religious, ethical, and political entailments of his arguments," as Samantha Frost puts it.⁴⁴ They were especially concerned that materialism of this sort was incompatible with Christianity: "Either God is incorporeal, or he is finite, and consists of parts, and consequently is no God."⁴⁵ In more recent years, some have characterized Hobbes's materialism as reductive, as when Seyla Benhabib argued, "Life cannot be 'but a motion of limbs,' as Hobbes claimed. It is that, but it is also much more than that."⁴⁶

Yet Hobbes's materialism also sharply focuses his work on the physical realities and needs of human bodies, and it locates the embodied person as the essential political subject.⁴⁷ Indeed, the body and the

40. See LEVIATHAN, *supra* note 16, at 234 (ch. 15) (describing ninth law of nature); see also Curran, *supra* note 39, at 169 (characterizing this as an instrumental approach to equality).

41. See LEVIATHAN, *supra* note 16, at 234 (ch. 15).

42. MINTZ, *supra* note 9, at 63. Notably, as Mintz describes, Hobbes did not worry whether his materialist assumptions could be proven, *per se*. See *id.* at 66–67. This was consistent with Hobbes's general approach to philosophy and his distrust of the experimental method. See STEVEN SHAPIN & SIMON SCHAFER, LEVIATHAN AND THE AIR-PUMP 111, 127–28 (2011).

43. See LEVIATHAN, *supra* note 16, at 22–96 (ch. 1–6); accord FROST, *supra* note 12, at 7 (For Hobbes, even "thoughts and desires are constituted and reconstituted intersubjectively and in relation to the material environment").

44. FROST, *supra* note 12, at 5.

45. MINTZ, *supra* note 9, at 67 (quoting JOHN BRAMHALL, *The Catching of Leviathan*, in 3 WORKS 873 (1676)).

46. Seyla Benhabib, *Thomas Hobbes on My Mind*, 89 SOC. RSCH. 233, 235 (2022); see also PATEMAN, *supra* note 14, at 41 (describing individuals in Hobbes's theory as "entities reduced to matter in motion").

47. See Verna Gehring, *The Embodied Politics of Thomas Hobbes*, 60 ANALECTA HUSSELIANA 355, 361 (1999) ("[H]uman bodies are more than the material of the

possibility of pain are not only the impetus for the civil state.⁴⁸ They are also an essential source of individuals' retained right of resistance against state-imposed harms, civil laws, and other sovereign commands. Hobbes argues "a man cannot lay down the right of resisting them, that assault him by force to take away his life" and "[t]he same may be sayd of Wounds, and Chayns, and Imprisonment."⁴⁹ Hobbesian subjects are accordingly embodied in all the most important respects, at least to Hobbes—in their very existence, their perpetual interaction with the world around them, their need for political security, and the limits thereof.

B. Universal in Name Only

To this rejection of the mind vs. body (or reason vs. body⁵⁰) dichotomy and insistence on the centrality of bodies to politics, Hobbes adds a commitment to particulars. As mentioned above,⁵¹ this commitment is referred to as "nominalism" because Hobbes holds there is "nothing in the world Universall but *Names*; for the things named, are every one of them Individuall and Singular."⁵² Accordingly, even the term "body" should be understood as a universalized label referring to many heterogenous objects.⁵³ It is from Hobbes's nominalism, combined with his materialism, that his theory of an embodied and contextualized subject emerges. Again, this commitment was not popular even in his own time.⁵⁴ But it can, importantly, be seen in his accounts of natural differences and similarities, as well as equality and inequality.

Some have read Hobbes as a theorist of uncomplicated natural equality. Most prominently, the seventeenth-century Earl of Clarendon decried Hobbes for apparently being in league with, or at least playing

state: the human body is also its model."). This is not to say that Hobbes was concerned with the "norms, institutions, and discursive practices through which gendered, racialized, and sexualized subjectivities are produced." FROST, *supra* note 12, at 11. But his materialism represents a metaphysical commitment to embodied, if not socially embedded, subjects. *See id.* at 12 (arguing that "to use such categories of analysis in reading [Hobbes's] work is actually to circumscribe rather than to open up the possibilities for political insight").

48. *See infra* notes 65–69 and accompanying text.

49. LEVIATHAN, *supra* note 16, at 202 (ch. 14). Notably, this quote appears in the *De Homine* section of LEVIATHAN, so it applies to all forms of commonwealth—not only the more theoretically appealing commonwealth by institution but also the more violent commonwealth by conquest. For further discussion of these types, see *infra* Part III.A.

50. *See* Nesiah, *supra* note 2, at 4.

51. *See supra* note 22 and accompanying text.

52. LEVIATHAN, *supra* note 16, at 52 (ch. 4) (emphasis added).

53. *See id.* (using these as examples).

54. *See* DUNCAN, *supra* note 20, at 29.

into the hands of, the Levellers⁵⁵—a movement that emerged in the midst of the English Civil Wars and advocated for religious toleration and political equality.⁵⁶ More modern interpreters may share Clarendon's reading but produce the opposite reaction, finding Hobbes's “renowned doctrine that ‘all men are equal’” one of the only appealing elements of his philosophy.⁵⁷

As a matter of nature, however, Hobbes recognized that human beings are all unique. The notion that natural hierarchies exist was false and dangerous,⁵⁸ but he viewed humans as “naturally *unequal*” in every aspect of their bodily and mental powers—physical strength, experience, reason, and passion.⁵⁹ A “body” is only a universal name, so of course each thing referred to with the term will differ, including in these respects. Some people are stronger; others, especially those of greater age, have more experience and prudence.⁶⁰ Reason likewise varies, including with age.⁶¹ And for Hobbes, the sorts of passions individuals can have are drawn from a common pool—“desire, feare, hope, &c”—but the objects of these passions, as well as which passions each person experiences, differ according to their constitution, education, and so on.⁶² Some of these passions incline people to conflict along the lines of “the self-sovereign individual” we generally associate with “Hobbes's political work—the selfish, calculating, ‘possessive individual’ of political theory lore.”⁶³ Others incline people to peace.⁶⁴

The respects in which Hobbesian subjects are naturally equal, then, are not what's described in the commonplace liberal conception of the subject. First, they are equal in having a natural right to do whatever they

55. See EDWARD HYDE, EARL OF CLARENDON, *A BRIEF VIEW AND SURVEY OF THE DANGEROUS AND PERNICIOUS ERRORS TO CHURCH AND STATE, IN MR. HOBES'S BOOK, ENTITLED LEVIATHAN 181–83* (The Theater, Oxon 1676); *see also* Bejan, *supra* note 38, at 1198 (describing Clarendon's critique); Skinner, *supra* note 12, at 161 (noting that Hobbes agreed with the Levellers on premises but not conclusions).

56. See RACHEL FOXLEY, *THE LEVELLERS: RADICAL POLITICAL THOUGHT IN THE ENGLISH REVOLUTION 1*, 7–13 (2013).

57. See Hoekstra, *supra* note 37, at 76 (presenting this interpretation to critique it).

58. Indeed, Hobbes blamed the English Civil Wars, at least in part, on the prevalence of theories of natural hierarchy like Aristotle's. See THOMAS HOBES, *BEHEMOTH OR THE LONG PARLIAMENT* 95 (Ferdinand Tönnies ed., University of Chicago Press 1990) (1889) (“[T]he babbling philosophy of Aristotle and other Greeks serves only to breed disaffection, dissension, and finally sedition and civil war.”).

59. Hoekstra, *supra* note 37, at 78.

60. *See id.* at 78–79.

61. *Id.* at 80.

62. *LEVIATHAN*, *supra* note 16, at 18 (Introduction); *see also* Frost, *supra* note 23, at 162 (for Hobbes, passions “are constituted through a variable configuration and confluence of bodily constitution, experience, cultural norms, material opportunity, and dumb luck”).

63. FROST, *supra* note 12, at 7.

64. *See LEVIATHAN*, *supra* note 16, at 152–62 (ch. 11).

can to preserve themselves.⁶⁵ Second, they are equal in an extremely minimal sense:⁶⁶ being equal “in the face of death.”⁶⁷ That is, no one is strong enough, fast enough, wise enough, etc. to be able to guarantee their own survival in a possible string of violent encounters.⁶⁸ Hobbes’s account is thus one of embodied differences that yields a shared need for physical security,⁶⁹ and he derives his argument for the institutions of the civil state from these premises. This resonates more with contemporary vulnerability theory’s legal subject—“primarily defined by vulnerability and need”—than the “autonomous and independent being” that populates the liberal theory Nesiah describes.⁷⁰

The final twist in Hobbes’s account of natural equality emerges in his ninth law of nature. Whatever individuals’ differences (or not) from one another, at least some will view being called unequal as an affront. Accordingly, reason and peace require that we *talk as though* people were naturally equal,⁷¹ and thereby universalized, without necessarily holding this as true. As Kinch Hoekstra explains, “What follows from vulnerability is not equality, but the urgent requirement to admit equality.”⁷² Hobbes thus derives an argument for treating others as equals, even while accepting their particularized material differences.

Moreover, Hobbes’s insistence on subjects’ particularity extends into the civil state, most notably in the feature of individuals’ right of resistance. As described above, Hobbes believes individuals retain this natural right as something that they can never be understood to have transferred away.⁷³ The paradigmatic case where this right appears is when an individual is threatened with physical harm, as a right of self-defense.⁷⁴ However, Hobbes also provides other examples across his works where an individual could not have agreed to comply in the social contract, such as a sovereign ordering a subject to kill either the sovereign

65. *See id.* at 198 (ch. 14); *see also* Curran, *supra* note 39, at 178 (“All individuals are equal in the rights they may claim.”); Hoekstra, *supra* note 37, at 92.

66. SREEDHAR, *supra* note 14, at 5 (describing Hobbes’s notion as “a minimal sense of human equality”).

67. Benhabib, *supra* note 46, at 236 (referring to this as “the legacy of Stoicism in Hobbes’s thought”).

68. *See* Hoekstra, *supra* note 37, at 90 (emphasizing this problem of repeat players in the state of nature).

69. *See* LEVIATHAN, *supra* note 16, at 188 (ch. 13).

70. Martha Albertson Fineman, *Vulnerability and Social Justice*, 53 VALPARAISO U. L. REV. 341, 355–56 (2019); *see also* Nesiah, *supra* note 2, at 3–4.

71. LEVIATHAN, *supra* note 16, at 234 (ch. 15).

72. Hoekstra, *supra* note 37, at 104.

73. *See* LEVIATHAN, *supra* note 16, at 202 (ch. 14).

74. *Id.* at 336 (ch. 21); *see also* Alice Ristoph, *Respect and Resistance in Punishment Theory*, 97 CALIF. L. REV. 601, 615 (2009) (“[T]he right to resist a knife at one’s throat is inalienable.”).

or the subject's parent,⁷⁵ fighting as a soldier when others are available to do so,⁷⁶ or even incriminating oneself.⁷⁷ And, crucially, this right of resistance depends on individuals' personalized judgment. Everyone must decide for themselves when the "danger of death in resisting,"⁷⁸ is the lesser threat because everyone is, fundamentally, different.⁷⁹

Hobbes also accepts that civil law creates inequalities. Acknowledging inequalities of his own time, he asserted that these had been "introduced by the Lawes civil."⁸⁰ Put otherwise, subjects' inequality "proceedeth from the Acts of Sovereign Power."⁸¹ In this sense, astonishingly, he seems to approach what Hilary Charlesworth and Christine Chinkin describe as "radical feminism," which explains women's inequality in particular as a product of actual political and sexual relations.⁸² The enormous difference, of course, is that Hobbes accepts such inequalities, so long as they are commanded by the sovereign and promote or at least do not undermine the purposes of the civil state.⁸³

III. CONQUEST AND ORIGIN MYTHS

Another essential element of the commonplace liberal theory in international law that Nesiah identifies is its origin myth and associated progress narrative. Nesiah explains, "The origin myth of liberalism—i.e. the movement from the state of nature to the social contract establishing law and political society—reproduces itself in the origin myth of international law: the movement from the thirty-year war to the Peace of

75. See THOMAS HOBBS, ON THE CITIZEN 83 (Richard Tuck & Michael Silverthorne eds. & trans., Cambridge University Press 1998) (1647) [hereinafter DE CIVE] (ch. 6.13).

76. See LEVIATHAN, *supra* note 16, at 338 (ch. 21).

77. *Id.*

78. *Id.* at 214 (ch. 14).

79. Importantly, though, Hobbes argued that subjects should be educated to "correct[] the linguistic, scientific, moral and scriptural errors on which disruptive characterizations of religious duty and interest rest." See S.A. LLOYD, IDEALS AS INTERESTS IN HOBBS'S *LEVIATHAN* 271 (1992).

80. LEVIATHAN, *supra* note 16, at 234 (ch. 15).

81. *Id.* at 536 (ch. 30).

82. See HILARY CHARLESWORTH & CHRISTINE CHINKIN, THE BOUNDARIES OF INTERNATIONAL LAW: A FEMINIST ANALYSIS 42 (2000); *see also, e.g.*, SREEDHAR, *supra* note 14, at 6 (explaining Hobbes's description of women weeping more than men as a product of their subordinated social position, rather than innate qualities); Daniel Luban, *Hobbesian Slavery*, 46 POL. THEORY 726, 738 (2017) ("[Hobbes] clearly imagines that commonwealths will continue in their individual ways to enforce hierarchies between masters and servants, or husbands and wives; he merely suggests that all such distinctions are conventional rather than natural, and therefore alterable at will by the sovereign.")

83. *Accord* Bejan, *supra* note 38, at 1199 (describing sex-based inequality in Hobbes's work as a way of maintaining peace and stability).

Westphalia in 1648.”⁸⁴ International law then continues reproducing this story within its subfields, as with the founding moments of the Nuremberg trials or Genocide Convention for International Criminal Law.⁸⁵ As Nesiah observes, “This structure of legal argument situates atrocities as a past that it has overcome, and situates liberal order as the future that it will redeem.”⁸⁶ Against the progress narrative, feminist scholars such as Sherry Pictou have challenged this zoning of oppression to the past with the nation-state presented as a “redemptive path forward.”⁸⁷ In particular, Pictou, and Nesiah by extension, highlight the ongoing oppressions of colonialism, with decolonization very much an unfinished project.⁸⁸

Even as one of social contract theory’s most influential proponents,⁸⁹ Hobbes once again stood apart from the tradition that would follow him. To start, Hobbes recognized that states can—and perhaps most often do⁹⁰—arise through conquest. At very least, they arise with violence and moral violations,⁹¹ and the social contract is always made under conditions of duress.⁹² The resulting Hobbesian civil

84. Nesiah, *supra* note 2, at 8; *see also* CHARLESWORTH & CHINKIN, *supra* note 82, at 23 (noting that international lawyers trace “[t]he foundations of modern international law” to Westphalia); *see generally* Stéphane Beaulac, *The Westphalian Model in Defining International Law: Challenging the Myth*, 8 AUSTL. J. LEGAL HIST. 181 (2004); Andreas Osiander, *Sovereignty, International Relations, and the Westphalian Myth*, 55 INT'L ORG. 251 (2001).

85. Nesiah, *supra* note 2, at 8.

86. *Id.*

87. *Id.* at 9; *see generally* Sherry Pictou, *Decolonizing Decolonization: An Indigenous Feminist Perspective on the Recognition and Rights Framework*, 119 S. ATLANTIC Q. 371 (2020).

88. Nesiah, *supra* note 2, at 10–11; Pictou, *supra* note 87, at 373 (“Most often decolonization is confused with historic notions of colonization.”).

89. *See* EVRIGENIS, *supra* note 26, at 1; PATEMAN, *supra* note 14, at 43.

90. *See* Deborah Baumgold, “*Trust*” in Hobbes’s Political Thought, 41 POL. THEORY 838, 839 (2013) (describing the commonwealth by acquisition as “the ‘realistic’ corollary to the hypothetical tale of ‘sovereignty by institution’”); Kinch Hoekstra, *A Lion in the House: Hobbes and Democracy*, in *RETHINKING THE FOUNDATIONS OF MODERN POLITICAL THOUGHT* 191, 209–10 (Annabel Brett & James Tully eds., 2006) (classifying this mechanism as “central” to Hobbes’s theory); Peter Vanderschraaf, *Instituting the Hobbesian Commonwealth*, 82 PAC. PHIL. Q. 383, 383 (2001) (“Commonwealth by institution is a possibility logically distinct from commonwealth by acquisition, but as a matter of historical record, there are no clear-cut examples of actual commonwealths that were not commonwealths created by acquisition.”).

91. As Hobbes himself noted in the controversial “Review, and Conclusion” at the end of *Leviathan*, “there is scarce a Commonwealth in the world, whose beginnings can in conscience be justified.” LEVIATHAN, *supra* note 16, at 1135. For discussion of the controversy surrounding this section, see, for example, Mónica Brito Vieira, *Leviathan Contra Leviathan*, 76 J. HIST. IDEAS 271, 272–75 (2015); Kinch Hoekstra, “*Leviathan* and its Intellectual Context”, 76 J. HIST. IDEAS 237, 252–56 (2015).

92. Whether leaving the state of nature in a collective effort to institute a commonwealth, or following loss in war, individuals enter into this contract out of fear

state also defies the progress narrative Nesiah describes. It can be a fate better than death, but it can be fraught with its own perils, and it is vulnerable to backsliding. After all, the circumstances in which Hobbes wrote may have seemed to offer little redemptive hope; they were filled with international conflict and civil war, class antagonism, and extreme financial hardship.⁹³ In the words of Marxist historian Christopher Hill, “[t]he years from 1620 to 1650 were bad.”⁹⁴ And in Hobbes’s own words, laid out in a rhyming autobiography, strife had always been with him:

My Native place I’m not ashamed to own;
Th[e] ill Times, and Ills born with me, I bemoan:
For Fame had rumour’d, that a Fleet at Sea,
Wou’d cause our Nations Catastrophe:
And hereupon it was my Mother Dear
Did bring forth Twins at once, both Me, and Fear.⁹⁵

Despite all this, Hobbes provides a glimmer of hope in the unique shape the right of resistance takes within these states whose origins cannot be justified.

A. The Other Social Contract

The concept of the “social contract” often evokes the image of individuals, who collectively find themselves on relatively equal footing in a state of nature, banding together to create a civil state that will bring order and other benefits to their lives. And indeed, Hobbes includes such an account in his political works.⁹⁶ In *Leviathan* he describes a state brought about this way as a “commonwealth by institution,”⁹⁷ and this is the context in which he introduces many important components of his theory.⁹⁸

Institution is only one of two ways Hobbes describes

for a worse fate. Thus, for Hobbes, consent is compatible with both fear and necessity. *See LEVIATHAN*, *supra* note 16, at 326 (ch. 21); *see also* Kinch Hoekstra, *The de facto Turn in Hobbes’s Political Philosophy*, in *LEVIATHAN AFTER 350 YEARS* 33, 61 (Tom Sorell & Luc Foisneau eds., 2004) (“One who submits to a conqueror does so voluntarily, but one also does so necessarily.”).

93. *See CHRISTOPHER HILL, THE WORLD TURNED UPSIDE DOWN: RADICAL IDEAS DURING THE ENGLISH REVOLUTION* 8, 76 (2019).

94. *Id.* at 76.

95. THOMAS HOBBES, *THE LIFE OF MR. THOMAS HOBBES OF MALMESBURY. WRITTEN BY HIMSELF IN A LATINE POEM. AND NOW TRANSLATED INTO ENGLISH.* 2 (1680).

96. *See LEVIATHAN*, *supra* note 16, at 262 (ch. 17).

97. *Id.*

98. *See id.* at 264–304 (ch. 18–19) (discussing the “rights of sovereigns by institution” and “the several kinds of common-wealth by institution,” as well as “succession to the sovereign power”).

commonwealths being created, however.⁹⁹ The other is “by Naturall force,” including commonwealths created by “generation”—that is, by the relationship between parent and child—and those created by conquest.¹⁰⁰ In the latter, Hobbes reveals a stark pragmatism about political power that is absent in the liberal progress narratives Nesiah recounts.

The commonwealth by conquest comes about after a conqueror or victor in war presents the “vanquished” with a terrible choice: obedience or death.¹⁰¹ Hobbes outlines in *Leviathan* chapter 20,

Dominion is . . . acquired to the Victor, when the Vanquished, to avoyd the present stroke of death, covenanteth either in expresse words, or by other sufficient signes of the Will, that so long as his life, and the liberty of his body is allowed him, the Victor shall have the use thereof, at his pleasure.¹⁰²

This contract¹⁰³ more closely resembles colonial domination than either the Hobbesian commonwealth by institution or the rosy stereotype of the social contract do.¹⁰⁴ To the extent the social contract at the heart of the commonwealth by conquest remains an origin myth, it departs substantially from its more familiar and anodyne cousins.

B. A Right of Resistance for Subjects in Chains

At the same time, Hobbes offers a particularly potent account of individuals’ right of resistance in the context of these commonwealths, and this may be of interest in decolonial and anti-colonial struggles. Having based the commonwealth by conquest in a “neo-Roman account of slavery,”¹⁰⁵ Hobbes uses this language to describe the status of those bound to obedience. In *Leviathan*, those trusted to obey with “the liberty of [their] bod[ies]” are “Servants”; those “kept in prison, or bonds” are

99. *See id.* at 262 (ch. 17) (“The attaining to this Soveraigne Power, is by two ways.”).

100. *Id.* at 308 (ch. 20). For a brief discussion of the commonwealth by generation, see *supra* notes 15–19 and accompanying text.

101. It’s important that the commonwealth arises *after* this option is presented because, as Hobbes emphasizes, “[i]t is not . . . the Victory, that giveth the right of Dominion over the Vanquished, but his [the Vanquished’s] own Covenant.” LEVIATHAN, *supra* note 16, at 312 (ch. 20).

102. *Id.*; *see also* A.P. MARTINICH, HOBES’S POLITICAL PHILOSOPHY: INTERPRETATION AND INTERPRETATIONS 178 (2021) (describing this contract).

103. *But see* HAMPTON, *supra* note 9, at 170 (criticizing the commonwealth by conquest mechanism for failure to be an actual contract and failure to durably bind subjects).

104. This is not to say that Hobbes is either a *de facto* theorist who would legitimize all existing relationships of political authority or a proponent of conquest and aggressive war. On his position regarding *de facto* authority, see generally Hoekstra, *supra* note 92. On his position regarding aggressive wars, see MALCOLM, *supra* note 25, at 441–43.

105. Baumgold, *supra* note 90, at 840.

simply “Captives” or “Slaves.”¹⁰⁶ This may seem to evoke earlier notions that individuals could contract away all their rights and make themselves slaves to a sovereign,¹⁰⁷ but Hobbes had a different approach.

Individuals who are restrained rather than being trusted to obey of their own free will have no obligation to the state. As Hobbes explained in an earlier work, “confinement in bonds indicates a presumption on the part of the man who binds him that he is not adequately held by any other bond of obligation.”¹⁰⁸ Individuals experiencing such treatment may justly “break their bonds, or the prison,” and they may even “kill, or carry away captive their Master.”¹⁰⁹ On its own, this right might appear narrow. But consider how common such commonwealths are,¹¹⁰ that Hobbes’s various forms of commonwealths rely on similar logics and principles,¹¹¹ and that Hobbes’s materialism means even thoughts and judgments are physical.¹¹² This right of resistance may accordingly “carr[y] a genuine political bite.”¹¹³

C. Progress and Stability

That said, even once a civil state has been established with a potent right of resistance, it may not be a very nice place to live. Hobbes insists

106. Hobbes uses even starker language when writing in Latin. In his earlier work *DE CIVE*, he refers to those bound by agreement as *servi* (slaves) and those bound in chains as *ergastuli* (roughly, workhouse slaves). *See DE CIVE, supra* note 75, at 103 (ch. 8.1–8.2). Then, in the Latin translation of *LEVIATHAN* that Hobbes prepared, he replaced “Servant” with *servus* and replaced “Captives” or “Slaves” with *vincitus . . . vel incarceratus* (roughly, someone tied up, as a slave, or imprisoned). *See LEVIATHAN, supra* note 16, at 313 (ch. 20); *see also* Luban, *supra* note 82, at 734–35 (explaining “the basic distinction is identical throughout the English and Latin works”).

107. *See, e.g.*, HUGO GROTIUS, THE LAW OF WAR AND PEACE 103 (Francis W. Kelsey trans., Carnegie Endowment for International Peace 1925) (1625) (I.VIII.1) (“To every man it is permitted to enslave himself to any one he pleases for private ownership . . . Why, then, would it not be permitted to a people having legal competence to submit itself to some one person, or to several persons, in such a way as plainly to transfer to him the legal right to govern, retaining no vestige of that right for itself?”).

108. *DE CIVE, supra* note 75, at 103–04 (ch. 8.3–8.4); *see also* Luban, *supra* note 82, at 738–40 (arguing trust and the servant’s covenant are reversible, such that individuals can move back and forth between the statuses).

109. *LEVIATHAN, supra* note 16, at 312 (ch. 20).

110. *See supra* note 90.

111. *See Luban, supra* note 82, at 737 (noting Hobbes’s “insistence on the basic homology between all forms of interpersonal power”); *see also* Daniel Lee, *Sovereignty and Dominium, in HOBBS’S ON THE CITIZEN: A CRITICAL GUIDE* 126, 134–35 (Robin Douglass & Johan Olsthoorn eds., 2020) (arguing that Hobbes’s account of the commonwealth by conquest in *DE CIVE* is meant to explain “the origin of all forms of subjection, domestic or otherwise”).

112. *See supra* Part II.A.

113. Luban, *supra* note 82, at 728.

the state must fulfill or at least aim at certain ends,¹¹⁴ but he is seeking a local maximum. As Noel Malcolm explains, “Hobbes’s entire political theory depends on the presumption that living under a sovereign is better than remaining in the state of nature.”¹¹⁵ This does not mean that Hobbes presents his commonwealths, including those produced through natural force, as utopias. While an individual may have the right to resist punishment, for example, the sovereign absolutely has the right to punish.¹¹⁶

In addition, the civil state is in constant danger of dissolution; Hobbes offers no promise of constant progress. He devotes an entire chapter in *Leviathan* to “those things that Weaken, or tend to the Dissolution of a Common-wealth.”¹¹⁷ In it, he catalogues various structural defects,¹¹⁸ allegedly faulty philosophies,¹¹⁹ and material conditions¹²⁰ that threaten to return people to the state of nature.

A well-ordered Hobbesian commonwealth should do much more than simply lift us out of worse conditions. Perhaps it should treat people “as equals by law, as well as by nature,”¹²¹ among other things. But as he was writing amidst war, disastrous harvests, and repeated executions (both life-ending and posthumous) of political leaders,¹²² Hobbes bore no illusion that the civil state was necessarily easy or stable, and he offered no such illusion to his readers. Hobbes may not be a liberator, but he is, at least by comparison to the proponents of the commonplace liberal theory that Nesiah describes, a more realistic diagnostician of the patterns of violence and subordination that characterize circumstances around the globe. To the extent liberal theory in international law has abandoned this perspective, it seems to have lost something desperately

114. In a work in progress, I argue we should understand Hobbesian sovereignty as entailing obligations to pursue physical security, authoritative judgment, and human flourishing.

115. MALCOLM, *supra* note 25, at 446; *see also* LEVIATHAN, *supra* note 16, at 254 (ch. 17) (describing the civil state as “getting [people] out from that miserable condition of Warre” in the state of nature); *id.* at 320 (ch. 20) (arguing that even if people “fancy many evill consequences” of his conception of the civil state, “yet the consequences of the want of it . . . are much worse”).

116. *See* LEVIATHAN, *supra* note 16, at 276 (ch. 18) (right to punish according to sovereign’s law or judgment); *see also* Ristroph, *supra* note 74, at 617 (“Hobbesian rights [of resistance and otherwise] imply no correlative duties.”).

117. *See* LEVIATHAN, *supra* note 16, at 498–518 (ch. 29).

118. *See, e.g.*, *id.* at 498 (“want of absolute power”).

119. *See, e.g.*, *id.* at 502 (the view that “every private man is Judge of Good and Evill actions”).

120. *See, e.g.*, *id.* at 514 (“want of mony”).

121. Bejan, *supra* note 38, at 1195.

122. *See* HILL, *supra* note 93, at 1, 76; MICHAEL L. NASH, THE HISTORY AND POLITICS OF EXHUMATION: ROYAL BODIES AND LESSER MORTALS 39–40 (2019) (discussing Cromwell’s exhumation and posthumous beheading, along with two other individuals who had signed the death warrant for King Charles I).

important.

IV. CONCLUSION

To be sure, Hobbes is far from the vanguard of radical emancipation for international law. This essay does not mean to suggest either that his approach lacks substantial flaws or that Hobbes was a twenty-first-century feminist hiding out in seventeenth-century England. Interpreters continue to examine the form of individualism with which Hobbes is associated,¹²³ as well as the extent to which his theory aims not just for peace but peace understood as early capitalism.¹²⁴ And his works also offer justification for absolute monarchies and aristocracies—whether or not these are his preferred form of government¹²⁵—alongside justification for some level of inequality under civil law.

Nonetheless, Hobbes's work offers various productive intersections with the feminist internationalist critiques of liberal theory that Vasuki Nesiah outlines in her contribution to *The Oxford Handbook on Women and International Law*. Beyond advancing views specifically on sex and gender that were unusual among his contemporaries and remain so among some of our own, Hobbes was committed to an embodied and particularized conception of legal subjects, and he offered an alternate social contract account that avoids some of the dangerous reproductions Nesiah describes. In these respects, then, we can read Hobbes, a founder of or precursor to liberal theory, as offering a complementary critique of some of its core commitments and a puzzle for contemporary scholars to consider.

123. See, e.g., PATEMAN, *supra* note 14, at 43–44 (characterizing Hobbes as standing on the extreme end of “radical individualism” among social contract theorists); Gehring, *supra* note 47, at 355 (describing this form of individualism as the “standard interpretation” of Hobbes while seeking to upend it); FROST, *supra* note 12, at 7 (contesting that “Hobbes's subject is *not* an autonomous, self-defining, integrated, and internally unified individual” (emphasis added)).

124. See, e.g., Benhabib, *supra* note 46, at 234.

125. Scholars disagree on whether Hobbes should be understood as preferring democracy, or at least viewing democracy as the core of every form of government. To see such arguments side by side, compare Richard Tuck, *Hobbes on Democracy*, in RETHINKING THE FOUNDATIONS OF MODERN POLITICAL THOUGHT, *supra* note 90, at 171 (advancing pro-democracy view), with Hoekstra, *supra* note 90 (challenging pro-democracy view).