There Is No Law: A Critical Re-Reading of the Natural Fool in Hobbes' Leviathan

Hasselt, Thijmen

There Is No Law: A Critical Re-Reading of the Natural Fool in Hobbes' *Leviathan*

Bachelor Thesis: Readings in the History of Political Thought

Thijmen Hasselt

s2757990

Bachelor Thesis

First reader: Dr Matthew Longo

Second reader: Dr Paul Nieuwenburg

Word count: 7908

TABLE OF CONTENTS

"For as it is Uncharitablenesse in any man, to neglect the impotent"
(Hobbes, 2021 [1651], *Leviathan*, XXX, p. 150)

I. *Contending with disability in a rational contract*

From the very beginning of *Leviathan*, Thomas Hobbes makes it clear to his readers that this work is one founded in rationality. Introducing the idea of the state as an "Artificial Man", he makes a point out of emphasising what exactly makes mankind so impressive: "Rationall" (Hobbes, 2021 [1651], Introduction, p. i).[1] Rationality–or *Reason*, as he refers to it more commonly–forms the cornerstone of Hobbes' theory of the covenant: it informs the state of nature, the laws of nature, and the formation of the Hobbesian state (Kavka, 1986, pp. 190-191). Much has been written about Hobbes' 'rational contractarianism' and the way it has informed the contractarian logic that would follow, including a substantial amount of critique (Eggers, 2017. p. 28). This critique, often leveraged by feminist and postcolonial scholars, aims to demonstrate that the traditional way of understanding rationality as the basis for state formation ends up excluding large populations, such as women and people of colour.[2]

Newer to the conversation are critiques from the perspective of disability theory. Authors such as Nussbaum (2006), Whitney (2011), and Hirschmann (2013), have sought to demonstrate several issues flowing from building up a state based on Reason in the presence of large populations who are *incapable of it*. According to Maurik et al. (2011), approximately 1% of the global population can be designated as being "intellectually disabled"–constituting significantly lowered constitutive, adaptive, and practical functioning (American Psychiatric Association, 2021). These people pose a significant issue to the contractarian logic of the rational state, as they are unable to adhere to our 'standards' of rationality (Nussbaum, 2006, p. 99). How does Hobbes' contractarianism contend with this challenge?

Most authors hold that Hobbes simply does not contend with those with disabilities at all, leaving significant cracks in his theory which the disabled threaten to slip through (Hirschmann, 2013, p. 168). In this paper, however, I argue a different point: *I pose that Hobbes does contend–at least in part–with disabled individuals under his commonwealth, but that his approach herein is both insufficient and incoherent.* The means by which I arrive at this conclusion is the character of the "Natural Fool" in *Leviathan* (IV, p. 9). As I will show in

[1] Throughout this paper, citations of *Leviathan* will take the form ([Chapter number in Roman numerals], [page number]).
[2] Notable feminist critiques of rationality include Skinner (1996), Prokhovnik (2002), and Hirschmann & Wright (2012). For a postcolonial analysis of reason, Eze (2008) is a good starting point.

chapter II, the 17th century understanding of 'Fools' concurs with our contemporary understanding of intellectual disability. It is by analysing the role of the Natural Fool within *Leviathan* that I draw my conclusions about the position of those with intellectual disabilities within Hobbes' theory of state.

The language that will be used throughout the remainder of this paper is that of (intellectual) disability. The decision to use specifically these terms is twofold. Firstly, it is the language propagated by most of the existing literature within the fields of disability studies and political science (see e.g.: Kavka, 1992; Whitney, 2011; Metzler, 2016). Secondly, it is the terminology regarded by disability and linguistics scholars to be most inclusive (see e.g.: Andrews et al., 2019). Furthermore, this paper will make use of both person-first and identity-first language. The primary reason for this is that I will be discussing wide groups of disabled people, which in turn include multiple different disabled communities. Because of this, it is nigh-impossible to find a consensus on which language approach should be prioritised. My approach herein is recognised and approved by the American Psychological Association (2022).

I begin my case by examining the state of the literature concerning *Leviathan* and disability. This literature review is split across two chapters. In chapter II, I discuss scholarship on the Hobbesian Fool: the split between natural and unjust Fools, academics' inclination to neglect the Natural Fool in favour of the unjust Fool, and what we can learn from discussions of the unjust Fool when examining those with intellectual disabilities in *Leviathan*. I follow this discussion up in chapter III, where I take a step back and analyse arguments made more broadly about disability within Hobbes' theory–pertaining in particular to his concepts of liberty and personhood. After discussing the academic backdrop against which this paper is written, I move on to my own analysis of Hobbes' original text. From chapters IV through VI, I describe, examine, and place the character of the Natural Fool. First, in chapter IV, by tracing and characterising Hobbes' use of his character. Then, in chapter V, I continue by examining the relationship between the Natural Fool and Hobbes' theory of the covenant. In VI, I discuss the implications of the Natural Fool for Hobbes' broader theory, particularly in the field of Liberty. Finally, this analysis of the relevance and impact of the Natural Fool within *Leviathan* will then be followed, in chapter VII, by a short discussion of the newfound importance of Hobbes' theory for disability critiques of contractarianism.

II. *Confronting irrationality: 'The Fool' in Leviathan*

This section concerns itself with current literature on the Hobbesian Fool. Before getting into this, however, it is important to properly define what Hobbes meant when he spoke of 'Fools'. Whilst diagnostics and classifications remained crude for most of ancient and early medieval European history thirteenth century Britain would already see an early legal categorisation of the intellectually disabled into 'idiots' and 'lunatics' (Digby, 1996, pp. 1-2). The main difference between the two was that the disability of 'idiots' was *permanent*, and present from birth. 'Lunatics', on the other hand, would only develop their conditions at a later point in life (p. 2). By the time Hobbes wrote *Leviathan*, these terms had come to change slightly: whilst 'idiot' was still a widely used term, 'Fool' had now become the dominant manner for denoting the intellectually disabled (Metzler, 2016, p. 41). Confusingly, 'Fool' had also retained its original meaning of someone who acted or spoke irrationally, often for the entertainment of others (p. 41). 'Lunatic', on the other hand, became gradually replaced by 'mad-man' (p. 42). The irrational condition of Fools is unique: they are born with their condition, unlike mad-men, but they will never grow out of it, unlike children.[3]

Hobbes' own invocation of 'Fools' in *Leviathan* stands in longstanding philosophical tradition. In ancient times, Plato and Aristotle already concerned themselves with the concept of folly as a failure of natural reason (Stainton, 2001). Aristotle would divide between two different types of irrational beings: the 'stultus'–or Fool–and the 'dolum'–or treacherous (Springborg, 2010, p. 45).[4] The use of, and wariness against, folly was preserved throughout the centuries, most notably by neo-Platonians and the Epicureans (Stainton, 2001, pp. 458-459; Springborg, 2010). It may come as no surprise that Hobbes, lovechild of these traditions (Strauss, 1950), would come to perceive Fools in an extremely similar manner. Hobbes, too, divides between two distinct and mutually exclusive types of folly: those who are "Natural Fools" and those who are "abusive Fools" (Reiners, 2008, p. 75). Reiners defines Natural Fools in *Leviathan* as those with "biological errors in development or from diseased organs" (p. 75). This definition is consistent with what we know about the use of the term Fool in the 17th century, as discussed above.

[3] For this reason, this paper will limit its scope to the discussion of only fools as irrational beings within *Leviathan*, and not irrational persons as a whole. Where it proves useful, however, I *will* make use of these other categories to demonstrate *differences* between them and the Natural Fool.

[4] Demonstrating his awareness of the longstanding philosophical tradition, Hobbes references this passage from *Eudemian Ethics* in his *Historia Ecclesiastica* (Springborg, 2010, p. 45)

The attitude of academics towards Hobbes' Natural Fool can be best summed up as put by Lloyd (2009):

> […] I shall not consider the sorts of ordinary failures of reason that do not importantly affect the stability of political society. Children not yet arrived at the age of reason, persons with dementia and those severely mentally disabled […] and all other politically insignificant violators of the requirements of reason need not to be considered in order to assess the viability of Hobbes's political theory. (pp. 295-296)

Despite the problematic nature of calling children and disabled people insignificant to the functioning of the state, Lloyd's perspective is not anomalous. Those who study 'the Fool' in *Leviathan* almost unanimously cast the Natural Fool aside without mention, including some of the most notable works on the subject (see e.g.: Kavka, 1986; Hoekstra, 1997). The exception that proves the rule is seen in the work of Kronman (1980), who argues for the relevance of the cognitive faculty of abstraction within *Leviathan*, over the backs of Natural Fools–whom he perceives to be incapable of such abstractions (pp. 173-174). Here, the Natural Fool serves but as a tool for Kronman, immediately discarded once the favoured argument no longer requires their presence, and having no argumentative relevance of their own.

Contrarily, decades' worth of writing exists surrounding the case of the Unjust Fool who "hath sayd in his heart, that there is no such thing as Justice" (XV, p. 60). This passage has been the subject of long and intensive debate, that is vastly too broad to be entirely discussed in this paper. Due to this, I will attempt to keep my discussion of the unjust Fool here to a minimum–with my focus lying primarily on discussions of covenant, society, and irrationality. The question central to this debate is whether or not Hobbes is successful in defending his rational contractarian thesis against the unjust Fool's proposition; whether or not a rational actor will *always* follow the terms of contract (Hoekstra, 1997, p. 620). If proven correct, the Fool's assertion that it can be rational to violate the terms of the covenant of the state would undermine the entirety of Hobbes' political project (Zaitchik, 1982, pp. 246-247).

More relevant to this project, however, is what happens *if* we deem Hobbes to be *successful* in his defence against the Fool? If the covenant is solely a product of rationality, *what happens to those who behave irrationally?* When it comes to the unjust Fool, the answer given by many scholars is clear: they will be shunned from the commonwealth (Kavka, 1986,

p. 367; Martinich, 1992, p. 118). By (advocating for) breaking the covenant, the unjust Fool demonstrates themselves to be a particularly untrustworthy partner, limiting the expected gains of the covenant for others (Hoekstra, 1997, p. 623). Whilst this line of thinking might vindicate our sense of justice, by punishing the unjust Fool for their irrational behaviour and betrayal, taking the covenant as a purely rational cost-benefit analysis provides a dual issue for the inclusion of the intellectually disabled, Natural Fool. First, it *directly* excludes them from engaging in covenant, for they lack the mental faculties for reason altogether. Second, it excludes the Natural Fool *indirectly*, by mandating they provide some arbitrary value to the contract for their able-bodied counterparts.

Their inherent exclusion, by means of defending Hobbes' argument against the unjust Fool makes the complete disregard for the Natural Fool within *Leviathan* all the more problematic. Not only is their impact upon the commonwealth considered wholly negligible, the rational case for covenanting appears to not consider them subjects in the first place. When examining the position of the intellectually disabled within *Leviathan* literature on the Fool fails to provide any sort of satisfactory answer. In the following chapter, I will examine the practical use of disability theory as an alternative approach to literature on the Fool. By taking a step back and employing a wider angle, this should–in theory–provide a more comprehensive answer to the problem of irrationality within a rational contract.

III. *Reading between the lines: Disability in Leviathan*

Academic literature on disability within Hobbes' theory of the covenant is highly limited, in both number and scope (Kavka, 1992, p. 262). Those scholars who do study it argue that, in *Leviathan*, Hobbes barely concerns himself with the position of the disabled within society (Hirschmann, 2013, p. 168). This lack of direct engagement within the text means that the literature is largely stuck with indirect arguments: examining whether or not certain concepts and principles within *Leviathan* are *compatible* with societal inclusion of the disabled (Kavka, 1992, p. 263). Herein, there exist two distinct strands of theory which come to vastly different conclusions about disability inclusion within Hobbes' theory. On the one hand, there are the liberal scholars who attempt to incorporate those with disabilities under the covenant, often times through specific issue-areas. On the other hand, there are the critical scholars who argue for the *inability* of Hobbes' liberal contractarianism to incorporate the disabled. This following section will briefly analyse the main arguments of each of these strands of theory, in order to form a comprehensive image of the state of the scholarship on disability in *Leviathan*.

Traditionally, liberal commentators had regarded Hobbes as diametrically opposed to the ideas of private liberty, or tolerance (Judd Owen, 2005, pp. 131-132). To them, *Leviathan* was an absolutist project, meant to elevate the position of the sovereign at the expense of the liberty of their subjects. Later liberal scholars would revisit this position: they would come to argue that *there exists a large space for toleration within Leviathan* (Ryan, 1988). Although most of these discussions about toleration were held in general terms, the space they opened up allowed for more specific arguments about the inclusions of marginalised groups. One such author who took advantage of this space was Kavka (1992), who re-examined the way in which the Hobbesian contractarian argument deals with disabled people's *right to work*.

Kavka (1992) argued that those with disabilities have a *prima facie* right to employment, based on their capabilities to fulfil economically meaningful tasks and their need for protection against the economic and social consequences of their disability (pp. 270-272). The best way to ground this argument, he stated, was to incorporate it into contractarianism: proving that the disabled's right to work is not only moral, *but also rational* (p. 273). This inclusion into Hobbes' contractarianism hinges on two points: 1) most people will want to insure the protection of the right to work in case they themselves become disabled, and 2) *even if some* do not see the merit to this protection, Hobbesian contractarianism does not require

unanimity–making minority dissent a non-issue (pp. 275-276). Thus, Kavka concludes that Hobbes' contract is *not opposed* to the right to employment of those with disabilities.

It is exactly this non-opposition, however, which constitutes the most substantial point of critique leveraged against 'Hobbesian inclusion' by Eggers (2017). Although he does not limit himself to *Leviathan* in his discussion of Hobbes' theory, the criticisms voiced against Hobbes–and his defenders, such as Kavka–are still highly relevant here. Eggers' main problem with disability inclusion within Hobbesian contractarianism is the lack of fundamental protections for those who are disabled (pp. 35-36). He does not deny that there is space within Hobbes' theory for readings that allow for disability inclusion but laments the fact that there are no provisions to *mandate* this inclusion (p. 36). This allows for a situation in which the sovereign of a Hobbesian commonwealth institutes absolutely no governmental protections for the disabled. This, combined with the strict rationalism of Hobbes' contractarianism, leads Eggers to conclude that Hobbesian theory will ultimately fail to protect the disabled within society.

Though Eggers' account is distinctly critical of Hobbes and his academic followers, it still fundamentally operates within the same frame as them: it concerns itself with the decisions that able-bodied individuals–be they other subjects, or the sovereign–make *about* the disabled. This outlook on disability 'inclusion' is precisely the focal point of critique for feminist scholars. Hirschmann (2013) writes that the Hobbesian conception of freedom fails to "appreciate the disability perspective", and "draws on the disabled body to articulate the limiting conditions of freedom" (p. 168). She argues that Hobbes' splitting of liberty into a lack of external impediments, and the c*apability* to exercise one's desires, makes that the question of liberty fundamentally excludes the disabled (p. 173). After all, this would require us to expect for the disabled to be willing *and* able to relinquish those human desires and passions that are unattainable to them, solely for the reason that they would be unfree otherwise (p. 175). The problem with limiting the scope of liberty for the disabled in such drastic fashion is that it is completely fantastical: we cannot reasonably expect an immobile person to simply 'give up' their desire to walk, even if they know they never will (p. 172).

Whereas Hirschmann's argument targets the internal, liberal logic of 'disabled liberty', other feminist scholars have chosen to move beyond this frame. Whitney (2011), for example, chooses to focus their attention upon a more fundamental form of disability exclusion in *Leviathan*: exclusion from personhood. Whitney observes in Hobbes a fundamental human

equality: the state of nature and the contract that flow from it, are predicated upon the idea that humans are both mentally and physically equal (p. 556). For those with disabilities, however, this might not be the case. The problem that Whitney identifies within the Hobbesian argument is that, to Hobbes, dependency is seen as a violation of the self: you cannot be truly free if you are dependent on another subject for your equality (pp. 556-557). They call this the "normative independence of personhood" (p. 565). What this means is that those who are not equal, and thus dependent–like people with disabilities–cannot achieve normative personhood under Hobbes.

The perspectives provided by the critical scholars here examined are each valuable in painting a more comprehensive picture of disability within *Leviathan*. Whilst it is true that almost any specific form of disability inclusion could be defended, it is unlikely that they would be implemented in practice. Moreover, the problem of societal integration of those with disabilities runs much deeper than questions of individual civil rights: *Leviathan* might not account for the general freedom and personhood of disabled people. It is clear that Hobbes' theory has a substantially large hole in it: it does not explicitly account for those with disabilities, which leads to their exclusion. There remains, however, one theoretical difficulty left unanswered by any of the above-mentioned theories and perspectives: *the lack of direct input from Hobbes on disability*. They each assume that Hobbes says nothing about disabled people within his *Leviathan*, and therefore move to adjacent issues to make indirect claims about the rights and inclusion of those with disabilities. If it were indeed true that the disabled were at best an afterthought to Hobbes, that would naturally necessitate the making of indirect arguments.

As I demonstrated in the previous chapter, however, Hobbes does appear to mention explicitly those with intellectual disabilities, in the form of his 'Natural Fool'. The rest of my project will be dedicated to uncovering the role that the Natural Fool plays within *Leviathan*, and the way in which this affects those with intellectual disabilities. I will attempt to resolve this lacuna present in current literature, starting in the following chapter. There, I will provide a novel reading of Hobbes' *Leviathan*, in order to carefully construct an image of the Natural Fool. The consequences of this characterisation will be discussed in the sections that follow.

IV. *Hobbes' thesis: The Natural Fool characterised*

As demonstrated in the previous chapters, there exists a serious scholarly deficiency concerning disability in *Leviathan.* To rectify this, I spend the following chapters closely reading Hobbes' original text to uncover the importance of the Natural Fool to his argument. I begin this process by examining Hobbes' own use of the Natural Fool throughout *Leviathan*. This way, I build up a character profile for the Natural Fool that will be used throughout the following chapters of this paper.

First appearing in IV–'Of Speech'–the Natural Fool's entrance in *Leviathan* is rather quiet. Hobbes conjures up this character in order to strengthen, through contrast, his conceptualisation of language. To Hobbes, speech is mankind's prime achievement: a way for humans to not only communicate their observations, but also their *thoughts*; allowing for the creation and flourishing of complex human society (IV, p. 8-9). He demonstrates this importance by providing an example of those who *cannot* understand the meanings of words:

> A naturall Foole that could never learn by heart the order of numerall words, as One, Two, and Three, may observe every stroak of the Clock, and nod to it, but can never know what houre it strikes. (IV, p. 9)

Hobbes herein acknowledges the existence of persons within society who lack the mental faculties to understand the meanings and implications of simple words, such as numbers. The consequences of this lack of mental faculties extend far beyond time-telling, however:

> Much lesse will he be able to add, and subtract, and performe all other operations of Arithmetique. So that without words, there is no possibility of Numbers; much lesse of Magnitudes, of Swiftnesse, of Force, and other things, the reckonings whereof are necessary to the being, or well-being of man-kind. (IV, p. 9)

Two things stand out here. Firstly, Hobbes makes use of the Fool as an example of what people *should not* be: one must understand and make proper use of language, *or else they end up like Natural Fools*. This is not the last time Hobbes will use Fools like this, as will be further demonstrated throughout this section. Secondly, Hobbes appears to be obsessed with mathematical capabilities. Though initially remarkable, the reason for this obsession becomes clear in the following chapter. In V–'Of Reason, and Science'–Hobbes sets out to lay the

foundations of what I call his *rational contractarianism*: the concept of Reason itself, which Hobbes identifies as being "[…] nothing but Reckoning (that is, *Adding and Subtracting*) of the Consequences of generall names agreed upon, for the Marking and Signifying of our thoughts" (V, p. 13; emphasis mine).

Hobbes' conceptualisation of Reason hinges on two things: a capability to reckon, to do 'math' with meanings and experiences, to understand *consequences*, and an understanding of general meanings themselves. As shown above, the Natural Fool is demonstrated in IV to possess *neither of these qualities*. Inferentially, *we must conclude that the Natural Fool is inherently incapable of Reason.* This sets Fools apart from other groups of irrational persons, such as the unjust Fool in XV, madmen, and children, because the irrationality of these groups is *temporary* (Metzler, 2016). Hobbes makes this distinction explicit when he discusses the rationality of children:

> Children therefore are not endued with Reason at all, till they have attained the use of Speech: but are called Reasonable Creatures, for the possibility apparent of having the use of Reason in time to come. (V, p. 15)

The existential nature of the Fool's irrationality means that Hobbes cannot, under any circumstances, regard them as a reasonable person. This becomes particularly relevant in Hobbes' discussion of authorship and covenant in XVI–'Of Persons, Authors, and Things Personated'. Here, Hobbes defines what it means for a person to be 'author' to a covenant: someone who a) *has ownership over their own actions*, and b) delegates part of this ownership to another person–either natural or artificial (XVI, p. 68). The existence of irrational persons poses an obvious issue here: if they cannot understand the meanings of their thoughts, nor the consequences of their actions, as established above, they do not meet the requirements for authorship. Hobbes, being well aware of this issue, points it out and attempts to fix it by entrusting authority over the Natural Fool to others:

> Likewise Children, Fooles, and Mad-men that have no use of Reason, may be Personated by Guardians, or Curators; but can be no Authors (during that time) of any action done by them, longer then (when they shall recover the use of Reason) they shall judge the same reasonable. Yet during the Folly, he that hath right of governing them, may give Authority to the Guardian. (XVI, p. 69)

The entrusting of authority through the sovereign, onto guardians and curators, appears an adequate enough solution at face value. After all, it is *familiar*: we entrust authority over our children to their parents until they are old enough to take care of themselves, and we expect those stricken by madness and severe mental illness to be helped in institutions to get better. Both of these examples, however, hinge on the *temporality* of the condition of irrationality. For the Natural Fool the moment "when they shall recover the use of Reason" (XVI, p. 69) *will never arrive*, meaning that authority over them, from the day they are born, until the day they die, lies in the hands of *others*. Even if we can justify this fact when it comes to a total loss of authorship *within* a society–e.g. by arguing that the actors entrusted with authority over Natural Fools know what is best for them, when they cannot understand this themselves–what happens when the terms of the contract at stake are *the formation of the commonwealth in the first place?*

V. *Hobbes' problem: The Natural Fool subjected*

Having established the Natural Fool as an irrational character in the previous section, we must then ask ourselves what this means for their position within the Hobbesian state. This chapter will concern itself with exactly this problem, describing the complicated and *contradictory* nature of the Fool's presence within the commonwealth.

The crux of Hobbes' project comes in XVII–'Of the Causes, Generation, and Definition of a Common-wealth'–where he carefully lays out the process that leads to state formation. To Hobbes, the state is nothing more than a mass-scale covenant which binds the citizens of a state to their ruler. He defines a commonwealth as follows:

> One Person, of whose Acts a great Multitude, by mutuall Covenants one with another, have made themselves every one the Author, to the end he may use the strength and means of them, as he shall think expedient, for their Peace and Common Defence. And he that carryeth this Person, as called SOVERAIGNE, and said to have Soveraigne Power, and every one besides, his SUBJECT. (XVII, p. 73)

Out of this covenant emerges a specific *type of author and actor*: the actor of the covenant of the commonwealth becomes *sovereign*, and the authors become their *subjects*. The main factor that distinguishes the relationship between sovereign and subject from that generic author-actor relationship is the *scope* of the covenant at hand: whereas the generic author relinquishes some chosen part of their authority to an actor, for the sake of some specific purpose, the *subject gives up all authority to the sovereign*, so that the sovereign may use it to defend the peace and well-being of all their subjects (XVII, p. 73). As to how this power is established, Hobbes writes:

> The attaining to this Soveraigne Power, is by two wayes. One, by Naturall force; as when a man maketh his children, to submit themselves, and their children to his government, as being able to destroy them if they refuse […] The other, is when men agree amongst themselves, to submit to some Man, or Assembly of men, voluntarily, on confidence to be protected by him against all others. (XVII, p. 73)

As proven in the previous chapter, the second way of attaining power is wholly incompatible with Hobbes' Natural Fool: they are incapable of consenting to authority through the means of ordinary contract. As to the first method, things stand to be a bit more complicated. Hobbes very clearly establishes a method for children–who, as previously established, he considers irrational–to consent to the covenant nonetheless: *because their parents say so*. However, as established in the previous section, Hobbes already creates a provision for children to consent to general contracts: the temporal nature of their irrationality. It is not radical to imagine that their ability to consent to the covenant of commonwealth equally hinges upon hindsight; that they would consent to the covenant of the commonwealth once they gain the faculties of Reason. For the Natural Fool this earlier provision does not exist, nor can we assume them to *understand* the threatened consequences of not engaging in covenant, such as physical violence. Thus, the first method of attaining authority proves to be equally inapplicable to the Natural Fool. We must conclude that *the Hobbesian Natural Fool is incapable* of becoming a subject of the commonwealth.

Whilst this logic is internally consistent, it leaves Hobbes with a problem: if the Fool is not a subject, then what is their relationship to the commonwealth and sovereign? One answer to this question might be, logically, that the Fool is completely outside of the covenant; that no such obligations to the commonwealth exist. This view seems to be substantiated by Hobbes himself, in XXVI–'Of Civill Lawes'–where he defines civil laws as "Lawes, that men are therefore bound to observe, because they are members […] of a Common-wealth" (XXVI, p. 115). However, because the covenant de facto excludes the Natural Fool from becoming a subject of the commonwealth, Natural Fools are exempt from the law. Hobbes writes:

> Over naturall Fooles, children, or mad-men there is no Law, no more than over brute beasts […] because they had never power to make any covenant, or to understand the consequences thereof; and consequently never took upon themselves to authorise the actions of any Soveraign, as they must do that make to themselves a Common-wealth. (XXVI, p. 117)

Though consistent with the characterisation and positioning of the Natural Fool throughout *Leviathan*, placing a group of people such as the Fools entirely outside of the covenant–and through it, the commonwealth–is obviously problematic. Hobbes himself appears to realise this, as some passages within *Leviathan* ascribe a certain degree of implicit

subjecthood to the Fool. Those with a keen memory will recall the passage cited in the previous chapter of this paper, in which Hobbes deals with the question of authorship and the Natural Fool: "Yet during the Folly, he that hath right of governing them, may give Authority to the Guardian." (XVI, p. 69). Here, Hobbes grants the sovereign the right to delegate authority over irrational persons such as the Natural Fool. However, by Hobbes' own logic, for the sovereign to have authority over the Fool, the Fool needs to be subject. A similar problem arises in XXX– 'Of the Office of the Soveraign Representative'–where Hobbes advocates that the sovereign institute social provisions for those who cannot take care of themselves, writing:

> And whereas many men, by accident unevitable, become unable to maintain themselves by their labour; they ought not to be left to the Charity of private persons; but to be provided for, (as far-forth as the necessities of Nature require,) by the Lawes of the Common-wealth. (XXX, p. 150)

Hobbes expects the sovereign to take care of those within society who cannot take care of themselves through no fault of their own, such as is the case for those born with intellectual disabilities.[5] In doing this, he ascribes a substantial level of responsibility towards the Natural Fool from the sovereign. However, as previously discussed, the sovereign cannot hold any responsibilities towards anyone but their subjects. Hobbes clearly contradicts himself herein, ascribing both non-authorship and subjecthood to the Natural Fool when these two are inherently mutually exclusive.

The reason for this, I believe, is *necessity*. Hobbes' internal contradiction stems from the fact that he needs the Fool in *Leviathan* to both be non-author *and* subject, at the same time. Having built his entire conception of the commonwealth upon sequential steps originating from rationality, Hobbes *has* to deal with those failures of rationality that are present within any society. His initial answer, as displayed in this section, is to exclude the Natural Fool. This provides a satisfactory solution for his internal logic, which remains consistent: society forms based on rationality, and those who are not rational are excluded. What it does not provide, however, is a means by which the theory can incorporate those with intellectual disabilities.

[5] Hobbes makes use of near-identical phrasing when describing those who ought to receive state welfare, as he used to describe those who cannot take note of the law – where the Natural Fool is explicitly included (XXVI, p. 117).

Rather than having to either *a)* give up his rational logic of the covenant by incorporating irrational actors, or *b)* fail to deliver a theory which is universal by fully excluding from society the group of unthreatening 'Fools', Hobbes instead decides that being inconsistent in regards to the position of Natural Fools within the commonwealth is preferable, if it means that the main pillars of his project of state stand. As made evident by the complete lack of critical examination of this inconsistency by the broader scholarship, one can hardly fault Hobbes for making this decision. As I will demonstrate in the following chapter, however, Hobbes' attempt to include the Fool is hardly successful in defending their right to exist within the society of *Leviathan*.

VI. *Hobbes' folly: The Natural Fool liberated*

As discussed earlier in this paper, critical readers of Hobbes have often pointed towards his conceptualisation of liberty as excluding those with (intellectual) disabilities. Hobbes, however, seems to explicitly define liberty as *including* the Natural Fool:

> Liberty, or FREEDOME, signifieth (properly) the absence of Opposition; (by Opposition, I mean external Impediments of motion;) and *may be applyed no lesse to Irrational, and Inanimate creatures, than to Rationall*. (XXI, p. 91; emphasis mine)

The described "opposition" can take two forms: either external–through something or someone preventing you from doing something you would otherwise be capable of doing–or internal–through an innate desire for the unobtainable (Hirschmann, 2013, p. 172). Leading Hobbes to conclude that "A FREE-MAN, is "he, that in those things, which by his strength and wit he is able to do, is not hindered to doe what he has a will to."" (XXI, p. 91). Whilst the feminist argument that the logic of internal opposition is problematic and inherently exclusionary is sound (Hirschmann, 2013), I will here argue that Hobbes provides an explicit method of exclusion through the derivative concept of *civil liberty*.

Civil liberty, which Hobbes calls "the Liberty of Subjects" (XXI, p. 92), constitutes what remains of liberty when it is constrained by means of covenant. When creating the commonwealth, all subjects bound themselves to the sovereign by giving up their "Right of Governing [their] selfe" (XVII, p. 73). The giving up of these rights, Hobbes states, is where we find the *limits of civil liberty*. He writes: "[…] we are to consider, what Rights we passe away, when we make a Common-wealth […] For in the act of our Submission, consisteth both our Obligation, and our Liberty" (XXI, p. 93). Some rights, such as the natural right of preserving one's own life, cannot be taken away by the sovereign (XXI, pp. 94). Within these boundaries, however, Hobbes makes the sovereign *the sole authority* to determine which liberties are attainable to subjects:

> The Liberty of a Subject, lyeth therefore only in those things, which in regulating their actions, the Soveraign hath praetermitted; such as is the Liberty to buy, and sell, and otherwise contract with one another; to choose their own aboad, their own diet, their own trade of life, and institute their children as they themselves think fit; & the like. (XXI, p. 92)

By hinging civil liberty on the will of the sovereign and membership of the commonwealth, Hobbes once again ends up excluding the Natural Fool. As established in the prior chapter, the Natural Fool is unable to covenant and is therefore not a subject. Thus, the rights that "the Soveraign hath praetermitted" exist nor apply for them. A sceptic might counterpose that Hobbes has already created exceptions for the Fool's subjecthood in the past, and that we must assume that these exceptions hold true here as well. To this, however, I raise two objections.

First, the way in which Hobbes includes the exceptions for the Fool is both specialised and narrow: the only degrees of subjecthood granted to them *come in contexts where others are in charge of protecting them*. This holds true for all three examples given in the previous chapter: delegation of authorship (XVI, p. 69), treatment under the law (XXVI, p. 117), and state provisions to guarantee their livelihood (XXX, p. 150). Additionally, all three of these exceptions are made *explicitly*, whereas Hobbes makes no mentions of incorporating the Natural Fool into the system of civil liberties–something that he *does* do earlier in XXI when referring to general liberty (XXI, p. 91). The same intent and context of the earlier exceptions is absent here, making it highly unlikely that Hobbes envisions some sort of exceptional inclusion of the Natural Fool within civil liberty.

Second, *even if* we assume that a similar–and equally contradictory–exception of subjecthood without contract exists in this case, the specific liberties that Hobbes describes are largely unattainable for the Natural Fool. In particular "the Liberty to buy, and sell, and otherwise contract with one another" (XXI, p. 92) is one that Hobbes explicitly *denies* the Natural Fool in XVI, where he states that they "can be no authors" (XVI, p. 69). The material rights that Hobbes grants subject, such as the rights to decide over one's own housing and diet, seem hardly compatible with the position of the Natural Fool, either. This comes, again, through their lack of authorship, which makes it impossible to engage in contracts in order to transfer rights of ownership (XIV, p. 55). The issue of ownership is further exemplified in XXIV–Of the Nutrition, and Procreation of a Common-wealth–where Hobbes explains how the commodities that the commonwealth generates should be divided:

> The Distributions of the Materials of this Nourishment, is the constitution of Mine, and Thine, and His, that is to say, in one word Propriety; and belongeth in all kinds of Common-wealth to the Soveraign Power. […] Seeing therefore the Introduction of Propriety is an effect of Common-wealth; which can do nothing but by the Person that

> Represents it, it is the act onely of the Soveraign; and consisteth in the Lawes, which none can make that have not the Soveraign Power. (XXIV, p. 107)

Commodities are distributed by the sovereign–with whom the Natural Fool shares no contract–through civil laws–from which the Natural Fool is excluded. This leaves both common routes for obtaining property firmly closed: they have no right to the fruits of the commonwealth, nor can they garner them through contractual trade.

Thus, the Natural Fool in *Leviathan* is left in limbo: existing within Hobbes' ideal state, but never being a part of it. They are awarded neither civil liberties nor property, the absence of which only serves to further isolate Natural Fools as a population within the commonwealth. Moreover, their limited protections within *Leviathan* come in the form of inherently contradictory after-thoughts–the likes of which even Hobbes himself seems to recognise as being irreconcilable with his broader theory. Whilst Hobbes' perception of the Natural Fool seems to be centred around them being largely harmless and in need of protection–an attitude widely shared at the time of writing *Leviathan* (Metzler, 2016, p. 41)–this does nothing to plug up the hole that it leaves in his theory of the covenant. The question becomes, then, what the exclusion of the Natural Fool means for the way that we look at *Leviathan,* and its position within broader (Hobbesian) contract theory. The final section of this paper will be dedicated to answering exactly this question.

VII. *A missing piece? Leviathan and disability theory*

Having established that the Natural Fool in *Leviathan* proves an unsolvable inconsistency within Hobbes' theory of the commonwealth, the logical follow-up is to question what the broader implications of this conclusion are. I argue here for the theoretical importance of Hobbes' failure to properly provide for the Natural Fool for disability theorists, as it pertains to both *Leviathan* and contractarianism as a whole. I will begin by briefly returning to the arguments made by Hirschmann (2013) and Whitney (2011), for whom my analysis of the Natural Fool provides more *explicit* textual evidence of Hobbes' failure to incorporate the intellectually disabled. Following this, I will widen the scope of my discussion to include disability-centred critiques of social contract theory as a whole. Herein, I will argue that my analysis of the Natural Fool provides newfound relevancy to Hobbesian theory, and *Leviathan* in particular, in structural analyses of the failure of contractarianism to incorporate the disabled. As I will show through the arguments of renowned disability theorist Martha Nussbaum (2006), the importance of the Hobbesian contract has often been overlooked in establishing these patterns.

In the second chapter of this paper I discussed the current state of disability scholarship on *Leviathan*. Herein, I describe the critiques of two leading disability theorists towards Hobbes' theory of the state: Hirschmann's (2013) critique of *liberty*, and Whitney's (2011) critique of *personhood*. Whilst both approaches rely on indirect arguments, I believe that including the Natural Fool in their analyses would provide a more direct argument to substantiate their claims. In Hirschmann's (2013) case, demonstrating the shortcomings of Hobbes' definition of *civil liberty* allows her to prove that Hobbes purposefully excludes the intellectually disabled from a subsection of his liberty claim. This would make the claim that he neglects them in his broader argument much stronger–whether he did it purposefully, like with civil liberty, or negligently, due to his misunderstanding of the societal positioning of those with disabilities.

Whitney (2011), centring their argument around the concept of dependency could find in the Natural Fool their ultimate vessel. Comparing the works of Hobbes and Kittay, Whitney (2011) observes that Hobbes sees dependency as synonymous with *domination*: if you are dependent on another person for your life, that person has domination over you (p. 565). When examining the Natural Fool in *Leviathan*, however, this conflation of dependency and domination becomes problematic: if the Natural Fool is inherently dependent on others–such as is made clear through previously discussed passages in XVI, XVII, and XXX–this would

make them fail to meet one of Hobbes' fundamental criteria for personhood. Currently, Whitney makes this same argument *hypothetically*, but an inclusion of the Natural Fool would allow them to demonstrate their argument directly through Hobbes' writing.

The impact of rereading *Leviathan* through the medium of the Natural Fool carries consequences outside of disability critiques of Hobbes' work, too. In particular, it is highly relevant to the broader discussion of disability within social contract theory in general. As mentioned on multiple occasions throughout this paper, the general reading of Hobbes regards his theory as largely silent on matters of disability. This has lead those who examine the position of the disabled within contractarianism to minimalize or outright dismiss Hobbes' relevance. Nussbaum (2006), for example, argues that the difficulty that contractarianism has with disability is "built into the theoretical structure itself" and has a "deep and broad influence on our political life" (p. 4). However, when discussing the history of disability and rationality within contractarianism, she describes Hobbes' contribution as follows: "Hobbes includes no discussion of people with disabilities" (p. 40).

Nussbaum, in her analysis of the contractarian tradition–and the work of Rawls in particular–makes many of the same observations that I have made within *Leviathan*. She describes the importance of those with intellectual disabilities as proving to be a unique threat to the contractarian logic, which is "characterized by a rather idealized rationality" (pp. 98-99). Because of this, Nussbaum concludes that "such theories must handle severe mental impairments and related disabilities as an afterthought, after the basic institutions of society are already designed" (p. 98). When it comes to establishing the systemic issues of disability within contractarianism, however, she completely ignores Hobbes in favour of Locke and Rawls (pp. 103-108). Herein lies a valuable addition to Nussbaum: the Hobbesian natural fool provides proof that the systemic shortcomings she observes in contractarianism are equally present within "the text that stands at the beginning of the classical Western social contract tradition" (p. 9); that these issues truly were there from the very start.

An interesting final note, Nussbaum's overall theory for creating a more inclusive society–the capabilities approach–makes use of elements which feel very much Hobbesian in their execution. Firstly, there is a parallel in the way in which Nussbaum builds up her capabilities approach: after discussing principles of justice and disability, and what it means to 'care' for one another, Nussbaum spends a lot of time discussing specific, practical policy area's. In this way, chapter 3 of *Frontiers of Justice* feels akin to part II of *Leviathan*. Within the discussions

of policy, this becomes even clearer: Nussbaum places a lot of emphasis both on education as a means of creating a just society, and on the importance of guardianship (Bérubé, 2009). Both are also key components of Hobbes' theory as it relates to disability and the state: Hobbes famously sees education as a means for educating the masses on matters of the state (Bejan, 2010), and as discussed earlier his sole consideration for care of the Natural Fool consists of guardianship (XVI, p. 69). Nussbaum's emphasis on the importance of guardians is particularly controversial, with the main criticism leveraged against it being the same as was made in the third chapter of this paper: a fundamental disregard for the disabled perspective (Bérubé, 2009, pp. 357-358). Herein, Nussbaum fails in a way to escape the contractarian frame, as developed initially by Hobbes.

The bulk of this paper was spent building up the Natural Fool: first as a character, then as a subject, and finally as a free individual. Through this, I have shown a number of distinct inconsistencies and issues within Hobbes' approach towards the disabled: their lack of agency, their exclusion from the contract and citizenship, their lack of civil rights, and their general treatment as an afterthought to the broader theory. This was then followed up in this final chapter, where I demonstrated the Natural Fool to have a serious impact even outside of the contents of the work they are featured in. The internal issues provide strong support for the cases of critical scholars such as Whitney and Hirschmann, and their arguments against the Hobbesian contract. Furthermore, they serve to strengthen the foundations of broader, more structural critiques of contractarian theory such as that of Nussbaum. All of this is to say that building up a theory of state on the basis of hyper-rationalism provides serious structural issues to Hobbes' argument: issues that he himself is aware of and *cannot* seem to resolve, and issues that carry over into later social contract theory. Hobbes' legacy is both long and extensive, with his theory inspiring many modern state-building projects. We must realise that, so too, is the legacy of his oversights.

"A good Law is that, which is Needfull, for the Good Of The People, and withal Perspicuous." (Hobbes, 2021 [1651], *Leviathan*, XXX, p. 151)

References

American Psychiatric Association. (2021, August). *What is intellectual disability?* Psychiatry.org. https://www.psychiatry.org/patients-families/intellectual-disability/what-is-intellectual-disability

American Psychological Association. (2022, July). *Disability*. APA Style. https://apastyle.apa.org/style-grammar-guidelines/bias-free-language/disability

Andrews, E. E., Forber-Pratt, A. J., Mona, L. R., Lund, E. M., Pilarski, C. R., & Balter, R. (2019). #SaytheWord: A disability culture commentary on the erasure of "disability". *Rehabilitation Psychology, 64*(2), 111–118. https://doi.org/10.1037/rep0000258

Bejan, T. M. (2010). Teaching the "Leviathan": Thomas Hobbes on education. *Oxford Review of Education, 36*(5), 607-626.

Bérubé, M. (2009). Equality, freedom, and/or justice for all: A response to Martha Nussbaum. *Metaphilosophy, 40*(3-4), 352-365.

Digby, A. (1996). *From idiocy to mental deficiency. Historical perspectives on people with learning disabilities*. Routledge.

Eggers, D. (2017). Applied Ethics. A challenge to contractarianism? In Courland, S. D. (Ed.), *Hobbesian applied ethics and public policy* (28-47). Routledge.

Eze, C. E. (2008). *On reason: Rationality in a world of cultural conflict and racism.* Duke University Press.

Goodey, C. F. (2018). Exclusion from the eucharist: The re-shaping of idiocy in the seventeenth-century church. In McDonagh, P., Goodey, C. F., & Stainton, T. (Eds.),

Intellectual disability: A conceptual history, 1200-1900 (80-103). Manchester University Press.

Hirschmann, N. J. & Wright, J. H. (2012). Hobbes, history, politics, and gender: A conversation with Carole Pateman and Quentin Skinner. In N. J. Hirschmann, J. H. Wright (Eds.), *Feminist interpretations of Thomas Hobbes* (pp. 18-43). Penn State University Press.

Hirschmann, N. J. (2013). Freedom and (dis)ability in early modern political thought. In Hobgood, A. P., & Wood, D. H. (Eds.), *Recovering disability in early modern England* (167-186). Ohio State University Press.

Hobbes, T. (2020). *Leviathan*. Amazon Italia Logistica. (Original work published in 1651)

Hoekstra, K. (1997). Hobbes and the Foole. *Political Theory, 25*(5), 620-654.

Kavka, G. S. (1986). *Hobbesian moral and political theory*. Princeton University Press.

Kavka, G. S. (1992). Disability and the right to work. *Social Philosophy & Policy, 9*(1), 262-290. https://doi.org/10.1017/S0265052500003678

Kronman, A. T. (1980). The concept of author and the unity of the commonwealth in Hobbes's Leviathan. *Journal of the History of Philosophy, 18*(2), 159-175. https://doi.org/10.1353/hph.2008.0479

Lloyd, S. A. (2009). *Morality in the philosophy of Thomas Hobbes. Cases in the law of nature.* Cambridge University Press. https://doi.org/10.1017/CBO9780511596759.009

Martinich, A. P. (1992). *The two Gods of Leviathan. Thomas Hobbes on religion and politics.* Cambridge University Press.

Maurik, P. B., Mascarenhas, M. N., Mathers, C. D., Dua, T., & Saxena, S. (2011). Prevalence of intellectual disability: A meta-analysis of population-based studies. *Research in Developmental Disabilities, 32*, 419-436. http://doi.org/10.1016/j.ridd.2010.12.018

Metzler, I. (2016). *Fools and idiots? Intellectual disability in the Middle Ages.* Manchester University Press.

Nussbaum, M. C. (2006). *Frontiers of justice: Disability, nationality, species membership.* Harvard University Press. https://doi.org/10.2307/j.ctv1c7zftw

Judd Owen, J. (2005) The tolerant Leviathan: Hobbes and the paradox of liberalism. *Northeastern Political Science Association, 37*(1), 130-148. https://www.doi.org/10.1057/palgrave.polity.2300004

Prokhovnik, R. (2002). *Rational woman: A feminist critique of dichotomy* (2nd ed.). Manchester University Press.

Reiners, D. (2008). Biological correctness: Thomas Hobbes' natural ethics. *Hobbes Studies, 21*(1), 63-83. https://doi.org/10.1163/187502508X349567

Ryan, A. (1988). A more tolerant Hobbes? In Mendus, S. (Ed.), *Justifying toleration: Conceptual and historical perspectives* (pp. 37-60). Cambridge University Press.

Skinner, Q. (1996). *Reason and rhetoric in the philosophy of Hobbes*. Cambridge University Press.

Springborg, P. (2010). Hobbes's Fool, the *Stultus*, Grotius, and the Epicurean tradition. *Hobbes Studies, 23*, 29-53. https://www.doi.org/10.1163/187502510X496345

Stainton, T. (2001). Reason and value: The thought of Plato and Aristotle and the construction of intellectual disability. *Mental Retardation, 39*(6), 452-460.

Strauss, L. (1950). On the spirit of Hobbes' political philosophy. *Revue Internationale de Philosophie, 4*(14), 405-431.

Whitney, S. Y. (2011). Dependency relations. Corporeal vulnerability and norms of personhood in Hobbes and Kittay. *Hypatia, 26*(3), 554-574. https://doi.org/10.1111/j.1527-2001.2011.01188.x

Zaitchik, A. (1982). Hobbes's reply to the Fool. The problem of consent and obligation. *Political Theory, 10*(2), 245-266.