Space and Fates of International Law

Between Leibniz and Hobbes

Ekaterina Yahyaoui Krivenko

SPACE AND FATES OF INTERNATIONAL LAW

The book offers the first analysis of the influence exercised by the concept of space on the emergence and continuing operation of international law. By adopting a historical perspective and analysing work of two central early modern thinkers – Leibniz and Hobbes – it offers a significant addition to a limited range of resources on early modern history of international law. The book traces links between concepts of space, universality, human cognition, law, and international law in these two early modern thinkers in a comparative fashion. Through this analysis, the book demonstrates the dependency of the contemporary international law on the Hobbesian concept of space. Although some Leibnizian elements continue to operate, they are distorted. This continuing operation of Leibnizian elements is explained by the inability of international law, which is based on the Hobbesian concept of space, to ensure universality of its normative foundation.

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Space and Fates of International Law

BETWEEN LEIBNIZ AND HOBBES

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To my husband, Y.M.B.S.

Contents

Note on Uses of Leibniz's and Hobbes's Works and Abbreviations

Throughout this study, the majority of references to Leibniz's works contain two indicators: first, a reference to the original text and, second, a reference to an English translation of the specific source used, when such a translation is available. In all other instances (when no source of translation is indicated), translations of Leibniz's texts as well as translations of other texts in languages other than English are my own. For the original text of Leibniz's works, the Academy edition is used for all works that have been published as such. For later works that did not yet appear in the Academy edition but are published in other collections of Leibniz's works, the reference is made to the collection used. The bibliography contains references to the collections of Leibniz's works used, not to individual pieces within these collections. These individual pieces are always mentioned in the footnotes.

The following abbreviations are used for the most frequently cited editions and translations:

A   *Sämtliche Schriften und Briefe* (Darmstadt and Berlin: Berlin Academy, 1923–)

GM   *Leibnizens Mathematische Schriften*, Karl Immanuel Gerhardt, ed., 7 Vols. (Berlin: Verlag von A. Ascher, 1849–63)

GP   *Die philosophischen Schriften von Gottfried Wilhelm Leibniz*, Karl Immanuel Gerhardt, ed., 7 Vols. (Berlin: Weidmannische Buchhandlung, 1875–90)

L   *Philosophical Papers and Letters*, Leroy E. Loemker, ed., 2nd ed. (Dordrecht: D. Reidel, 1969)

Hobbes's works are mostly cited according to Thomas Hobbes, *The English Works of Thomas Hobbes of Malmesbury: Now First Collected and Edited by Sir William Molesworth, Bart.* (London: John Bohn, 1839), which is abbreviated as EW. Because English texts of Hobbes's works used here are mostly either his own translations or translations endorsed by himself, reference is usually made directly to the English text. In a few instances where Latin text provides additional clarity, the Latin text is also reproduced.

The following abbreviations of Hobbes's works are used:

DeCi   Thomas Hobbes, *De Cive*, EW II
DeCo   Thomas Hobbes, *De Corpore*, EW I
DH   Thomas Hobbes, *De Homine*, in Thomas Hobbes, *Opera philosophica quae latine scripsit omnia in unum corpus nunc primum collecta*, Vol. 2 (London: Bohn, 1839)
Lev: Thomas Hobbes, *Leviathan, or the Matter, Form, and Power of a Commonwealth, Ecclesiastical and Civil*, EW III

Introduction

CONTEXT AND THE MAIN ARGUMENTS OF THE STUDY

This book is a study of the influence exercised by the discussions relating to the concept of space around the seventeenth century on the development of the idea of modern international law. This study demonstrates a dependence of the standard account of international law as it established itself in the late nineteenth and early twentieth century on a particular conceptualisation of space that emerged in the seventeenth century. However, this underlying concept of space became invisible in international law. Absence of direct engagement with the spatial-conceptual underpinnings of international law today conditioned several recurrent difficulties within the discipline. The study also argues that any proposal for a reform of international law has to take the underlying conceptualisation of space seriously and propose an alternative vision of space. Based on the book's findings, a few suggestions regarding possible future developments of the discipline of international law are formulated. Most notably, the argument is presented to demonstrate that international law is an oxymoron. If the global order continues to be conceived as international, it has to abandon its claim to being law. On the other hand, if the global order wishes to retain its character of law, it has to rethink the underlying concept of normativity away from its international or inter-state side. This rethinking requires a redefinition of the spatial-conceptual underpinnings of international law.

This first section of the introduction presents the underlying motivation for delving into the question of spatial underpinnings of international law and explains certain choices that determined the direction of this study against the main arguments of the book. The next section describes the unfolding of the argument in the structure of the book. The final section of the introduction clarifies certain methodological issues.

The rhetoric of human rights and international obligations today very often replaces serious consideration of competing claims for justice and practical redress to those suffering and seeking better life opportunities. This happens side by side with functioning and often efficient human rights institutions. However, success of human rights claims by some does not necessarily translate into more justice for all experiencing the same type of suffering. This point is well illustrated in the area of international refugee law. Despite the recognised international right to international protection in a series of specified circumstances, the disparity of individual states' treatment of those seeking protection from a similar type of harm is well documented.[1] Whatever legal arguments can be brought forward to explain this situation, there is no mechanism available thus far in international law, despite the plethora of human rights commitments to redress the situation. I argued elsewhere that the inability of human rights and international law more broadly to meet competing demands for justice is due to the underlying paradigm inbuilt into the structure and mechanisms of human rights and international law.[2] This paradigm is best described as a paradigm of inclusion, which by including into its circle of protection many situations and persons nevertheless always has as its hidden side the exclusion of others.[3] The foundational logic of inclusion and the accompanying exclusion presupposes drawing of boundaries and imposition of limits, as well as naturalisation of the very need for these boundaries and limits. The vocabulary of boundaries already points towards spatial concepts. Spatiality of law, including international law, is traditionally addressed by legal geography and spatial justice studies. However, the general

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[1] This is a well-documented phenomenon since at least the publication of Jaya Ramji-Nogales, Andrew L. Schoenholtz, and Philip G. Schrag, *Refugee Roulette: Disparities in Asylum Adjudication and Proposal for Reform* (New York and London: New York University Press, 2009), but it continues until today. For a more recent example, see Martina Burmann and Madhinee Valeyatheepillay, 'Asylum Recognition Rates in the Top 5 EU Countries' (2017) 15 *IFO DICE Report* 48–50.

[2] Ekaterina Yahyaoui Krivenko, *Rethinking Human Rights and Global Constitutionalism: From Inclusion to Belonging* (Cambridge: Cambridge University Press, 2017).

[3] This operation of inclusion and exclusion, the drawing of boundaries as a foundational function of law was addressed by many prominent scholars in various ways. This book is not a place to discuss the various forms of operation of this function in law or international law. Apart from the book mentioned in the previous footnote, which discusses this function in relation to human rights, the reader can also refer to broader studies presenting a different version of the same idea; e.g., in Giorgio Agamben, *Stato di eccezione, Homo sacer II, 1* (Torino: Bollati Borighieri, 2003), translated into English as *State of Exception (Homo sacer, II, 1)*, Kevin Attell, trans. (Chicago: University of Chicago Press, 2005); Hans Lindahl, *Authority and the Globalisation of Inclusion and Exclusion* (Cambridge: Cambridge University Press, 2018); Carl Schmitt, *Verfassungslehre* (Berlin: Dunker & Humblot, 1928), translated as *Constitutional Theory*, Jeffrey Seitzer, trans. (Durham and London: Duke University Press, 2008).

orientation of most scholars working in this field does not question or investigate the concept of space underlying the current international legal thinking.[4] This is in so far surprising, as the broader critical geography literature has long pointed out the diversity of meanings and uses of the concept of space.[5] Since the relationship between international law and concept(s) of space is hardly addressed, the first step is to demonstrate that the concept of international law is indeed dependent on conceptualisation(s) of space. The main bulk of this study is dedicated to the defence of this proposition.

An attempt to understand and clarify spatial underpinnings of international law has to start somewhere. Given that spatial-conceptual underpinnings of international law are only indirectly visible today – for instance, through the above-mentioned inclusion and exclusion dynamic – a better place to start is where space was still an explicit analytical category and was also explicitly theorised. Moreover, in order to be able to prove the hypothesis that conceptualisations of space influence conceptualisations of law, including international law, it was important to identify traditions where both space and law, including international law, were still being theorised and conceptualised. Early modernity was such an epoch where a thinker would not shy from delving into topics separated today by disciplinary boundaries. Moreover, it was also a period during which many modern concepts were being formed, discussed, and considered from a variety of perspectives; concepts that have today a settled meaning were in a flux. Turning to the early modernity, it was important to identify authors who gave serious considerations to both the concept of space and the concept of law. Moreover, the very existence of such authors was already a first confirmation of the hypothesis. Both Leibniz and Hobbes contributed significantly to discussions of the concept of space as well as the concept of law, including international law. They also both in

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[4] Obviously, there are some exceptions to this general trend. The most prominent example is Andreas Philippopoulos-Mihalopoulos, *Spatial Justice: Body, Lawscape, Atmosphere* (London: Routledge, 2014). However, even this scholar discusses the concept of space in relation to law in general without addressing the specificities of international law, which as will become clear in due course has distinct, more pronounced spatial underpinnings due to its claim to applicability across the globe.

[5] The most prominent examples of scholarly work discussing the multiplicity of concepts of space and variety of uses of the concept are Henry Lefebvre, *La production de l'espace* (Paris: Anthropos, 1974), translated into English as *The Production of Space*, Donald Nicholson-Smith, trans. (Oxford: Blackwell, 1991), and David Harvey, *The Condition of Postmodernity: An Inquiry into the Origins of Cultural Change* (Oxford: Blackwell, 1990). For a critique of the superficial engagement with the concept of space from the side of law and geography studies, see e.g., Andreas Philippopoulos-Mihalopoulos, 'Spatial Justice: Law and the Geography of Withdrawal' (2010) 6 *International Journal of Law in Context* 201–16.

different ways impacted on the development of modern concepts such as law, state, and sovereignty. Of course, it is legitimate to question the choice of these two authors and exclusion of others who perhaps had a more lasting impact on one or another area relevant for this study. For instance, Isaac Newton comes to mind as the author who played a decisive role in the establishment of the today dominant concept of absolute space, which in recognition of his role is often called Newtonian.[6] However, although he offered some general views on religion and society of his time, he hardly ever expressed opinions on law and even less so on international law.[7] Therefore, many scholars were excluded from the circle of possible candidates simply because they did not bring the necessary depth of investigation of both concepts – that of law and that of space. The next paragraph justifies in more detail the choice of Leibniz and Hobbes in relation to the argument of this book.

The book argues that the main role in developing the conceptualisation of space underlying the current concept of international law and international relations was played by the works of Hobbes. It can even be affirmed that in this particular sense, the contemporary international law remains at its basis Hobbesian. To defend this argument, the study proceeds in a comparative fashion, contrasting the position of Hobbes to one of his contemporaries, namely Gottfried Wilhelm Leibniz. For the comparative approach to produce a strong defence of the argument, as already mentioned, it was necessary to select a scholar who engaged as actively as Hobbes in both issues: the concept of space and the concept of international law. Therefore, the choice had to be limited to Hobbes's contemporaries because the tradition of polymaths or at least the possibility of engagement with a variety of issues from areas separated today by quite solid disciplinary boundaries by one single author quite rapidly died out after the seventeenth century. Moreover, with the seventeenth century representing a period when the concept of international law in a traditional sense was still being formed, it is possible to find during this century concepts of international law more radically distinct from the contemporary concept of international law.

The choice of Leibniz's work as a comparative counterpart to the Hobbesian ideas on space and international law is dictated by two main considerations. First, Leibniz produced and defended one of the most widely

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[6] For a general overview, see e.g., Robert Disalle, 'Newton's Philosophical Analysis of Space and Time', in I. Bernard Cohen and George E. Smith (eds.), *Cambridge Companion to Newton* (Cambridge: Cambridge University Press, 2002), 33–56.

[7] For example, the *Cambridge Companion to Newton* cited in the footnote above discusses Newton's views on Christianity and his metaphysics but does not contain a single entry dealing with his views on law or justice.

known alternative visions of space that stands in oppositions to many early modern views of space, including that of Hobbes. This contrast facilitates the building of a stronger argument regarding the main thesis of this book – namely, dependency of the concept of international law on the underlying Hobbesian concept of space. Moreover, Leibniz is easily comparable to Hobbes in another aspect: his relatively limited engagement with the concept of international law as opposed to his much deeper work on the general concept of law. In addition, the recent scholarship on Leibniz as a legal scholar demonstrates that some of his ideas entered the modern concept of law and influenced the development of legal science. This reception of some of the Leibniz's ideas was accompanied by a selective and therefore distorted reading of his heritage. The book argues that this distorted inclusion of Leibniz's ideas into the contemporary legal scholarship and practice is due to the need to adapt his ideas to the dominant view of space. As far as international law is concerned, this coexistence of Hobbesian and Leibnizian elements in international law explains several problems and contradictions haunting international law today. The book argues that by combining elements from two systems of thought that are based on entirely different conceptualisations of space, international law is bound to remain caught in contradictions. Without bringing the spatial underpinnings of its system to the forefront of conscious and explicit discussion, international law will remain hostage to the continuing surge of irresolvable conundrums. Based on this historical examination of Hobbes's and Leibniz's heritage and their relevance for contemporary international law, the book defends an argument in favour of the development of an explicit study of space in international law. The next section explains how the argument unfolds in the structure of this book.

STRUCTURE OF THE STUDY

The book starts with a general description of the main trends in scientific and political life in early modernity (Chapter 1). Obviously, this description is limited to the aspects that are significant for the development of the argument in this volume. Then the book moves to the concept of space as it was considered and developed by Hobbes and Leibniz. In Chapter 2, as in several other instances, a discussion of the views of each philosopher is first presented separately. Their views are compared only in the final section of the chapter. This choice of presenting the views of two scholars is dictated by the very different approaches they adopted on the topic, which makes a parallel discussion almost impossible. In this chapter on space, I focus not only on explaining how each of the authors conceptualised the idea of space but also

on analysing the main differences between both authors on the issue of space, which led each of the authors to propose a distinct view of law, especially international law.

Chapter 3, entitled 'The Idea of Universals and Human Cognition', functions as a bridge between the concept of space and the concept of law for both authors. For both Hobbes and Leibniz, the question of possibility of scientific knowledge as knowledge independent of experience is the pivotal point supporting subsequent theorisation of the modalities of interaction between the concept of space and the concept of law.

Once the bridge is constructed, it is possible to discuss how Hobbes and Leibniz respectively approached the concept of law. Similarly to their concepts of space, Leibniz and Hobbes adopted two entirely different perspectives on the concept of law. They also have two very different points of departure for their respective concepts of law; therefore, similarly to the chapter on space (Chapter 2), the discussion of Leibniz's and Hobbes's ideas in the chapter on law (Chapter 4) first goes side by side without much dialogue. Only the final section of this chapter analyses these two different positions in a comparative fashion. It is also at this stage that the foundational character of space for any conceptualisation of law becomes obvious. Through a contrasting comparison of Hobbes's and Leibniz's respective positions, the foundational character of spatial-conceptual approach in legal analysis becomes evident. This chapter is followed by an Intermezzo, which further strengthens links between the various issues discussed in the preceding chapters and prepares a better ground for the final chapter of the book.

Once the concept of space, the concept of law, as well as the connection between them in the form of the idea of universals and human cognition have been discussed, the book moves into its central and final chapter, dealing with the conceptual-spatial underpinnings of international law. In this chapter the discussion is organised around two central international law issues: the theory of subjects of international law and the theory of sources of international law. Within each area not only differences of opinions between Leibniz and Hobbes are presented, but deep underlying reasons for their respective positions are identified, demonstrating how these differences follow from their respective views on space. The chapter also demonstrates the importance of the conscious and explicit discussion of space for international law, which is even more acute than for law in general. It highlights how some of the current contradictions within international law are easily explainable through the prism of specific underlying conceptualisations of space. The book ends with a few conclusions that are lessons drawn from the analysis performed in the book and suggestions for future research.

METHODOLOGICAL ISSUES

The research, which in its essence wishes to inform contemporary thinking using seventeenth-century examples, inevitably needed to face a few methodological conundrums. In this section I will highlight the most general methodological difficulties faced. Some more details related to specific issues discussed in the subsequent chapters are added as they emerge in these chapters.

The first major difficulty concerns the use of concepts across languages, times, and places. The most telling example is that of the concept of 'a state'. This concept is self-explanatory and obvious today, despite many debates about the status of states in relation to some entities. Turning to Hobbes's and Leibniz's texts, the self-explanatory and obvious nature of the concept disappears. The difficulty emerges at the terminological and conceptual levels. As far as terminology is concerned, although some English translations of Hobbes's and Leibniz's works contain the term 'state', one has to be very careful with presuming that the corresponding terms in the original texts really referred to the idea of the state in our contemporary understanding of the term. This becomes particularly obvious when considering original Latin terms translated as 'state' into English. These terms in the original texts are not equivalent. Moreover, even in works of the same author, different terms are sometimes translated as 'state'. These terminological fluctuations are partly explainable by the evolving nature of political communities of the seventeenth century. As is widely known today, the Westphalian moment was in reality a long period of evolution, which gradually crystallised in the concept of the state as we know it today. However, more importantly than that, some authors of that time used different terms to designate distinct understandings of political life in common. Thus this terminological variety implied certain conceptual diversity. Methodologically, for this study this realisation signified that even the use of such obvious today terms as 'state', 'law', or 'right' has to be explained constantly from within the heritage of a particular author. Simply reproducing in English certain statements by Leibniz or Hobbes about 'state' or 'law' without explaining the meaning they attributed to these terms and the relation they established with neighbouring terms leads to misunderstandings. Therefore, this book does not take any of the concepts discussed for granted, but every time enquires into the meanings attributed to different concepts by the two authors.

Even when the two authors discussed here make recourse to more settled language and concepts (like, for example, the term '*jus gentium*', which is traditionally translated as 'international law'), this uniform terminological use

does not signify an underlying uniform concept. Moreover, translating '*jus gentium*' as 'international law' today immediately deracinates the seventeenth-century concept, depriving it of its contextual peculiarity. While seventeenth-century '*jus gentium*' and today's 'international law' might have many commonalities, they remain distinct.

These terminological and conceptual difficulties required frequent recourse to texts in the original language together with a constant return to definitional issues in the works of both authors. For this reason, in all instances where any ambiguity might arise from the use of available English translations, the text in the original language is also reproduced.

1

Science and Law in the Seventeenth Century

Both Leibniz and Hobbes worked mainly in the seventeenth century. Therefore, this section provides a general context of scientific debates of the time, which is essential for the understanding and correct interpretation of their own views. Hobbes was born in 1588 and died in 1679. All of his works were published during the seventeenth century and are deeply imbued into the seventeenth-century debates.[1] Leibniz, on the other hand, was born in 1646 and died in 1716 and thus was influenced by a slightly different cohort of thinkers compared to Hobbes.[2] In fact, Hobbes himself had a lasting impression on Leibniz in several areas.[3] This influence of Hobbes on Leibniz is of a twofold manner. On the one hand, Leibniz was highly impressed by Hobbes's methodological rigor and as a consequence by some of his ideas that he adopted and reworked in his own thinking.[4] On the other hand, Leibniz sharply disagreed with some of Hobbes's premises and conclusions.

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[1] For an overview of Hobbes's life and work, see e.g., Aloysius P. Martinich, *Hobbes: A Biography* (Cambridge: Cambridge University Press, 1999).

[2] On Leibniz's life and work, see e.g., Maria Rosa Antognazza, *Leibniz: An Intellectual Biography* (Cambridge: Cambridge University Press, 2009).

[3] On Hobbes's influence on Leibniz in a variety of areas ranging from metaphysics and natural philosophy to law, politics, and history, see the volume edited by Marquer and Rateau: Éric Marquer and Paul Rateau (eds.), *Leibniz lecteur critique de Hobbes* (Montreal: Les Presses de l'Université de Montréal VRIN, 2017). On Hobbes's influence on Leibniz in relation to some specific issues, see e.g., George MacDonald Ross, 'Leibniz's Debt to Hobbes', in Pauline Phemister and Stuart Brown (eds.), *Leibniz and the English-Speaking World* (Dordrecht: Springer, 2007), 19–33; Howard R. Bernstein, 'Conatus, Hobbes and the Young Leibniz', (1980) 11 *Studies in History and Philosophy of Science*, Part A, 25–37; Catherine Wilson, 'Motion, Sensation, and the Infinite: The Lasting Impression of Hobbes on Leibniz', (1997) 5 *British Journal for the History of Philosophy* 339–51.

[4] Two letters that Leibniz wrote to Hobbes, one of which never reached Hobbes, and another remained an unfinished draft, thus preventing direct exchange between the two philosophers represent a particularly powerful proof of this admiration Leibniz held for Hobbes. The first of these letters dated 13/23 July 1670 (A II.1, 90–4) is a completed letter that was even sent by

Therefore, he worked on disproving these in a variety of ways. This latter tendency is particularly visible in the area of law and is discussed in the corresponding chapter. In the current chapter, the main philosophical and scientific debates relevant to the issues discussed in this study but not fitting neatly into any of the subsequent chapters are presented first followed by a general overview of the legal and political climate in the seventeenth century.

1.1 MAIN RELEVANT DEBATES IN SCIENCE AND PHILOSOPHY

Seventeenth century is the century associated with the philosophical tradition of modernity and rationalism. It is commonly imagined as an age of reason and scientific enquiry. However, how exactly seventeenth-century philosophers understood reason and scientific enquiry cannot simply be assumed based on a contemporary lay understanding of these notions. One important feature of seventeenth-century intellectual life that often does not receive sufficient attention is the continuing relevance of religious doctrines and beliefs. Moreover, for many philosophers their particular view of God as well as their ability through their intellectual work to contribute to the glory of God and church are central guiding principles in all areas, including the sciences.[5] Even the most materialistic philosophers, such as Hobbes, could not and never did distance themselves completely from Christian teachings.[6] This is particularly visible in Hobbes's discussions in relation to law, for instance through his continuing inclusion of divine law as a part of natural law, which, as discussed in the corresponding chapter, often looks like a simple tribute to the requirements of his time.

Leibniz through one of his acquaintances for transmission to Hobbes. However, most probably Hobbes has never received the letter. See on this note in A II.1, 90. Another letter is an unfinished draft dating from Leibniz's time in Paris, 1674 (A II.1, 383–6). It is unknown if this letter was ever finished and sent to Hobbes (see note in A II.1, 383). See also a powerful statement in Leibniz's letter to Lambert van Velthuysen (letter of 6/16 April 1670, A II.1, 63), where Leibniz acknowledges that Hobbes is the philosopher of his century that he admires and respects the most. An interesting analysis of these two letters is Karl Schuhmann, 'Leibniz' Briefe an Hobbes', (2005) 37 *Studia Leibnitiana* 147–60.

[5]   For a general overview of the relationship between science and religion in the seventeenth century, see e.g., Gary B Ferngren (ed.), *Science and Religion: A Historical Introduction* (Baltimore: John Hopkins University Press, 2002), which contains several chapters dealing with the seventeenth-century context. Another good reading focusing on England is Richard S. Westfall, *Science and Religion in the Seventeenth Century England* (New Haven: Yale University Press, 1958).

[6]   See, for example, a powerful explanation of this impossibility in Douglas M. Jesseph, 'Hobbes's Atheism', (2002) 26 *Midwest Studies in Philosophy* 140–56, 152–5.

Even issues that at first sight appear to a contemporary reader free of religious influences remain in the seventeenth century deeply intertwined with religious views of particular scholars and influence their decisions on publication and dissemination of their writings. For instance, Hobbes had to defend himself against accusations of heresy and atheism. For this reason, he also had to flee his place of residence on several occasions. According to researchers, Hobbes was able to avoid prison, punishment, and some more serious consequences only thanks to the protection of his powerful supporters.[7] The reaction to the publication of the English text of *Leviathan* in 1651 is one telling example. Hobbes becomes not only 'Monster of Malmesbury' and arch-atheist but also '[h]is doctrines were cited by Parliament as a probable cause of the Great Fire of 1666'.[8] As a result, he is compelled to justify some of his positions against such accusations in an appendix to the Latin edition of *Leviathan* published in 1668.[9] Although he did not necessarily change his materialistic views, nonetheless, in order to avoid confrontation, he had to present them in a more acceptable way.[10]

Another telling example is the relatively recent discovery of religious motivations and the underlying Christian worldview of Newton, a scholar who is traditionally celebrated as an exemplary pioneer of pure rational scientific investigation.[11] For this reason, religious underpinnings of Leibniz's and Hobbes's work as well as the general religious environment within which they worked cannot be ignored. In some instances, it is possible to detach

[7] For biographical details, see e.g., the above mentioned Martinch, *Hobbes*.

[8] For a detailed overview of contemporary reactions in England to Hobbes's works with a particular emphasis on his materialism and moral philosophy, see Samuel I. Mintz, *The Hunting of Leviathan. Seventeenth-Century Reactions to the Materialism and Moral Philosophy of Thomas Hobbes* (Cambridge: Cambridge University Press, 1962). This quotation is at vii.

[9] The appendix has three chapters. One of them (chapter 3) is entirely devoted to refutation of objections and attacks on his English version of *Leviathan*. These refutations are all of theological nature. For a more detailed study of the appendix and its link to Hobbes's religious views, see e.g., Georges Wright, 'The 1668 Appendix and Hobbes's Theological Project', in Patricia Springborg (ed.), *Cambridge Companion to Hobbes's Leviathan* (Cambridge: Cambridge University Press, 2007), 392–409.

[10] While some authors would argue that Hobbes's materialism was weaker in the Latin version of *Leviathan*, more plausible is the argument that he simply presented his claims in a form more acceptable to his contemporaries without weakening the nature of his argument. See Anne Staquet, 'Comment Hobbes tente de rendre son matérialisme acceptable dans les appendices du *Léviathan*', *Les Dossiers du Grihl* (online), Les dossiers de Jean-Pierre Cavaillé, Les limites de l'acceptable, 8 November 2011, visited 11 December 2018: http://journals.openedition.org/dossiersgrihl/4791.

[11] Some of the links between Newton's religious views and his conceptualisation of space are discussed in the introductory section of Chapter 2.

specific ideas from religious considerations and contexts without affecting their functionality and sense. On the other hand, there are instances where this detachment is not possible at all without a distortion of the underlying thesis. In some of these instances, it is possible to supress the underlying religious motivation or justification, but oblivion will simply mean that the religious underpinnings will continue to operate in the subconscious. The present research therefore does not discard the religious side of various theories and conceptualisations examined but evaluates the status of religious ideas and motivations within the context of the specific topic discussed.

From the point of view of developments in philosophy and science, the seventeenth century can be characterised by a constant search for 'new philosophies', which would provide a more coherent alternative to the traditional scholastic Aristotelianism.[12] The emergence and dominance of the mechanical philosophies[13] during the seventeenth century are the result of this search for 'new philosophies' and represent the overarching achievement of this epoch. Given the importance – although in very distinct ways – of mechanical philosophies for both Hobbes and Leibniz, major tendencies of these philosophies need to be sketched. One common trait of mechanical philosophies was the endeavour to explain all natural phenomena through matter and motion.[14] In this sense, as will become clear in the course of this book, Hobbes might be viewed as one of the

[12] For a summary of this development, see Stephen Menn, 'The Intellectual Setting', in Daniel Garber and Michael Ayers (eds.), *The Cambridge History of Seventeenth-Century Philosophy*, Vol. 1 (Cambridge: Cambridge University Press, 1998), 33–86.

[13] It is partially misleading to talk about 'the mechanical philosophy' in the singular. Although many of the new philosophies 'taking their origins from an incongruous mixture of Archimedian mechanics, chemical and medical traditions, humanist Epicureanism, scholastic voluntarism and nominalism, and many other philosophy new and old' share some common motivations and characteristics, they still represent a group of competing 'new philosophies'. Ibid., 73–4. Similarly, Helen Hattab, 'The Mechanical Philosophy', in Desmond M. Clarke and Catherine Wilson (eds.), *The Oxford Handbook of Philosophy in Early Modern Europe* (Oxford: Oxford University Press, 2011), 71–95: 'to be a *mechanical* philosopher meant different things in different contexts' (72, emphasis in the original) with further references.

[14] For a brief introductory overview of mechanical philosophies, see e.g., Hattab, 'The Mechanical Philosophy', 71, or Alan Gabbey, 'Mechanical Philosophies and Their Explanations', in Christoph Lüthy, John E. Murdoch, and William R. Newman (eds.), *Late Medieval and Early Modern Corpuscular Theory* (Leiden: Brill, 2001), 441–64, Margaret J. Osler, 'Mechanical Philosophy', in Gary B. Ferngren (ed.), *Science and Religion: A Historical Introduction* (Baltimore and London: Johns Hopkins University Press, 2002), 143–52; for a more complex but brief overview that traces the emergence of mechanical philosophies from philosophical debates of the previous century, see Menn, 'The Intellectual Setting'. For a more detailed discussion, see e.g., Marie Boas Hall, *The Mechanical Philosophy* (New York: Arno Press, 1981), or Daniel Garber and Sophie Roux (eds.), *The Mechanization of Natural Philosophy* (Dordrecht: Springer, 2013).

exemplary mechanical philosophers. He explains through matter and motion not only natural phenomena but legal and political developments as well. However, there are significant differences in the approach to the explanation of the world in many philosophers who either claimed themselves to be mechanists or who were associated with this tradition by others. As Helen Hattab demonstrates, the initial idea and ideal that could be placed at the origin of mechanical philosophies is the rediscovery of the Platonian image of the universe as an intricate machine.[15] Since mechanics of a machine can be studied and understood in depth using mathematical methods, this leads to the perception of the superior value of mathematical, including geometrical, demonstrations for the study of any natural phenomenon. For many philosophers, this also led to a particular view of matter – most importantly, matter as a passive extended substance that can only be moved by an external force.[16] The many disputations on the nature of matter and substance were central preoccupation of the seventeenth-century philosophy and produced a range of divergent opinions, some of which continue to be debated today.[17] Leibniz's theory of substance and the ensuing understanding of matter is one of the most intriguing legacies of this period.[18] As this book demonstrates, it is a cornerstone to the understanding of connections between space and law in Leibniz's work. For our purposes, it is not necessary to go into detail of the many particular manifestations of the mechanical philosophies in the seventeenth century. The insight or consequence of mechanical philosophies that needs to be discussed in more detail here is the belief in the power of mathematical and more specifically geometrical method.

The geometrical method[19] had a significant impact on both Leibniz and Hobbes. Moreover, the geometrical method influenced their approach not

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[15] Hattab, 'The Mechanical Philosophy', 75–6.

[16] The does not mean that divergent views of matter did not exist even among philosophers who proclaimed themselves to be mechanists. See on this e.g., John Henry, 'Occult Qualities and the Experimental Philosophy: Active Principles in Pre-Newtonian Matter Theory', (1986) 24 *History of Science* 335–81.

[17] For an overview of discussions on matter, see e.g., Gideon Manning (ed.), *Matter and Form in Early Modern Science and Philosophy* (Leiden: Brill, 2012). On substance in seventeenth century, see e.g., Roger S. Woolhouse, *The Concept of Substance in Seventeenth Century Metaphysics* (New York: Routledge, 1993), or Joshua Hoffman and Gary S. Rosenkrantz, *Substance: Its Nature and Existence* (New York: Routledge, 1997), which draws on seventeenth-century philosophers without being limited to them. A voluminous literature discussing specific views of substance of various individual seventeenth-century philosophers also exists.

[18] Interpretation of several aspects of Leibniz's theory of substance remain subject to debate. Leibniz's theory of substance as it informs analysis in this book is presented in Chapter 2.

[19] On the impact and different uses of geometrical method in relation to law and theories of state from Hobbes as the founder of the method through Leibniz to Thomasius, see

only in such areas as physics, natural philosophy, or metaphysics, but also and most importantly in legal and political matters. In a widely known account of Hobbes's life, his encounter with the geometrical method is described as follows:

> He was forty years old before he looked on geometry; which happened accidentally. Being in a gentleman's library, Euclid's Elements lay open, and 'twas the forty-seventh proposition in the first book. He read the proposition. 'By G', said he, 'this is impossible!' So he reads the demonstration of it, which referred him back to such a proof; which referred him back to another, which he also read. Et sic deinceps, that at last he was demonstratively convinced of that truth. This made him in love with geometry.[20]

Hobbes then established as his project the development not only of the study of philosophy, but also of politics and law following the same rigorous method he discovered in the *Elements of Geometry*.

Euclid's *Elements of Geometry* or simply Euclid's *Elements* is an ancient Greek treatise on geometry in thirteen books attributed to Greek mathematician Euclid of Alexandria, who lived approximately from mid-fourth century BC to mid-third century BC.[21] Its main feature, which attracted Hobbes and many other philosophers of the seventeenth century, is its method. This method consists in a step-by-step proof of a particular proposition starting from a relatively small number of postulates (axioms) and some common notions. The axioms were themselves composed of simple basic terms defined in advance. For example, one of the postulates in book one of the *Elements* is the following: 'That all right angles are equal to one another.'[22] This postulate relies on the definition of a right angle, which is formed 'when a straight line set up on a straight line makes the adjacent angles equal to one another, each of the equal angles is right'.[23] This definition is dependent upon

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Wolfgang Röd, *Geometrischer Geist und Naturrecht. Methodengeschichtliche Untersuchungen zur Staatsphilosophie im 17. und 18. Jahrhundert* (München: Verlag der Bayerischen Akademie der Wissenschaften, 1970). In English-language literature, geometrical method is more actively discussed in relation to Spinoza. See e.g., Edwin Curley, *Behind the Geometrical Method: A Reading of Spinoza's Ethics* (Princeton: Princeton University Press, 1988).

[20]   John Aubrey, 'The Life of Mr Thomas Hobbes, of Malmesburie', in John Aubrey, *Brief Lives*, Vol. 1 (Oxford: Clarendon Press, 1898), 322–403, 332.

[21]   For a good overview of his life and work placing it in its historical context, including reception of Euclid's *Elements* not only in Europe but also other parts of the world, see Peter Schreiber, *Euklid* (Dresden: Teubner Verlag, 1987).

[22]   Euclid, *The Thirteen Books of Euclid's Elements*, Thomas Heath, trans., Vol. 1 (Cambridge: Cambridge University Press, 1908), Book 1, postulate 4, 154.

[23]   Ibid., definition 10, 153.

a previous definition of a straight line as 'a line which lies evenly with the points on itself'.[24] This in turn depends on definitions of a point as 'that which has no parts' and a line as 'breadthless length'.[25] Although we did not yet consider how propositions are dependent on postulates and definitions, this example already provides a good illustration of the type of progression from simple and obvious terms, to first definitions and from them to more complex statements.

The interest in mathematical method as a way to achieve certainty in knowledge was widespread in the seventeenth century but manifested itself differently in various authors.[26] For Hobbes, the possibility of achieving certainty using the geometrical method is limited to the science of mathematics and civil philosophy that included politics and as a consequence law. In the realm of natural science according to Hobbes, this method leads only to probability, not certainty. This is due to the different nature of the object of study in both areas. As Hobbes clarifies,

> the science of every subject is derived from a precognition of the causes, generation, and construction of the same. . . . Geometry therefore is demonstrable, for the lines and figures from which we reason are drawn and described by ourselves; and civil philosophy is demonstrable, because we make the commonwealth ourselves. But because of natural bodies we know not the construction, but seek it from the effects, there lies no demonstration of what the causes be we seek for, but only of what they may be.[27]

Geometrical bodies or political bodies (states) are created by humans. Therefore, by reconstituting the process of these bodies' construction, we attain certain and clear knowledge of them, which is not possible with regard to natural phenomena. Hobbes applied this method in his works on civil philosophy with remarkable rhetorical consistency, although the degree of success of this method is rather ambiguous and to what extent Hobbes really faithfully followed this method can be questioned.[28] Despite all possible

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[24] Ibid., definition 4.
[25] Ibid., definitions 1 and 2, respectively.
[26] For an overview of different manifestations of the mathematical method in the seventeenth century, mostly in relation to natural philosophy, see Peter Dear, 'Method and the Study of Nature', in Daniel Garber and Michael Ayers (eds.), *The Cambridge History of Seventeenth Century Philosophy*, Vol. 1 (Cambridge: Cambridge University Press, 1998), 147–77.
[27] Thomas Hobbes, *Six Lessons to the Professors of Mathematics*, EW, Vol. 7, 181–356, 184.
[28] For a critical assessment of both aspects, see e.g., Jeremy Valentine, 'Hobbes's Political Geometry', (1997) 10 *History of the Human Sciences* 23–40, and Hardy Grant, 'Geometry and Politics: Mathematics in the Thought of Thomas Hobbes', (1990) 63 *Mathematics Magazine* 147–54. For an overall assessment of different views on Hobbes's articulation of

shortcomings of practical application of the method, its theoretical impor-
tance for Hobbes's work cannot be overestimated. Therefore, it forms part of
the discussion in the assessment of Hobbes's views on law and politics in the
subsequent chapters of this book.

As mentioned previously, the rigour of method in Hobbes is one of the most
admirable for Leibniz aspects of Hobbes's work.[29] It is no surprise then that
Leibniz himself worked with significant dedication on questions of method.
One of the central issues that will determine his approach to law and justice
relates to the capacity of the human mind to discover truths that are certain, as
well as methods required for such a process of discovery. Leibniz indeed
believed that humans are capable of achieving certain and definitive knowl-
edge in many areas, including the realm of law and justice. To achieve this,
however, methodological rigor is central. In terms of his development of
method, Leibniz held views very similar to those of Hobbes. On many occa-
sions, he insisted on the centrality of definitions for the attainment of knowl-
edge and truth. For instance, on several occasions he insisted that
demonstration is nothing but a chain of definitions.[30] However, Leibniz's
view of method was more complex than the Hobbesian position on the matter.

Leibniz's project of *scientia generalis* and the associated development of
characteristica universalis, as well as the resulting general encyclopaedia, are
particularly telling in this regard.[31] Although Leibniz never completed either

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politics as science, see Noel Malcolm, 'Hobbes's Science of Politics and His Theory of
Science', in Noel Malcolm, *Aspects of Hobbes* (Oxford: Clarendon Press, 2002), 146–55.

[29] In both of his letters to Hobbes, Leibniz highlighted Hobbes's rigor of method (A.II.1, 91, 384).
In his first letter, he added, 'There is nothing more polished and better adapted to the public
good than your definitions. Among the theorems which you deduce from them there are many
which will remain established' (L 105).

[30] This thesis is for example defended in Leibniz's correspondence with Conring (A.II.1, 153, 580,
599–600, 687). One of the relevant letters (dated 19 March 1678) is translated in L 186–91. This
thesis also appears in Leibniz's *Elementa juris naturalis* (A.VI.1, 460–461) and *De Principiis
praecipue contradictionis et rationis sufficientis* (1686/87) (A.VI.4.A, 803–6; translated in
L 225–7). This defence of the same principle in relation to a variety of contexts, here
specifically in relation to law and science, confirms that Leibniz viewed it as a broadly relevant
methodology for discovery of truths.

[31] The literature on these three interrelated ideas of Leibniz is quite rich if we include con-
sideration of these notions by authors writing on Leibniz's logic (see, for instance, a chapter on
scientia generalis in Louis Couturat, *La logique de Leibniz d'après des documents inédits* [Paris:
Alcan, 1901]). In this sense different authors' interpretations are not always in agreement.
However, most recent literature criticises this reduction of e.g., *scientia generals* to logic. The
below short summary of the main traits of these three concepts is based on the most recent
research on the subject, which does point towards a common denominator regarding the
general orientation of Leibniz's thought on these topics. The most important secondary
sources in this regard are Arnaud Pelletier, 'The *Scientia Generalis* and the Encyclopaedia',
in Maria Rosa Antognazza (ed.), *The Oxford Handbook of Leibniz* (Oxford: Oxford University

of these endeavours, he was highly passionate about them and only the immensity of the task prevented him from completing them. One of the most telling statements highlighting both Leibniz's continuing interest in the topic as well as the golden thread of his thoughts on the matter is contained in a letter written in March 1716, shortly before his death: 'My big historical work prevents me from accomplishing my idea which I have to put philosophy into demonstrations . . . because I see that it is possible to invent a general characteristic which could achieve in all types of research capable of certainty what Algebra does in Mathematics.'[32]

Scientia generalis was thought by Leibniz as a universal science that forms the basis of all other sciences in a twofold manner: it presents in a manner ordered according to specific methodological principles all existing knowledge, and simultaneously it establishes certain logical and methodological principles that ensure rational thinking that leads to invention and certainty of knowledge, including the scientific certainty about the truth of inventions.[33] In this latter aspect of *scientia generalis*, the very creation of the logical steps that lead to invention and discovery was as important as truth of thus obtained new knowledge. This twofold manner in which *scientia generalis* formed the basis of all sciences is connected to the way method was treated traditionally in the seventeenth century. As a part of logic, method had two meanings: (1) 'method as an overall ordering of a subject-matter (*ordo*)' and (2) 'method as a logical technique of discovery (*methodus*, properly so called)'.[34] However, if in traditional logic these two

Press, 2018), 162–76; Paul Rateau, 'La philosophie et l'idée de l'encyclopédie universelle des connaissances selon Leibniz', (2018) 81 *Archives de philosophie* 115–41. On *characteristica universalis* more specifically, see Hans Burkhardt, 'The Leibnizian Characteristica Universalis as Link between Grammar and Logic', in Dino Buzzetti and Maurizio Ferriani (eds.), *Speculative Grammar, Universal Grammar, and Philosophical Analysis of Language* (Amsterdam and Philadelphia: John Benjamins Publishing Company, 1987), 43–63; Christian Leduc, 'The Epistemological Functions of Symbolization in Leibniz's Universal Characteristic', (2014) 19 *Foundations of Science* 53–68; Martin Schneider, '"Leibniz" Konzeption der Characteristica universalis zwischen 1677 und 1690' (1994) 48 *Revue internationale de philosophie* 213–36.

[32] Eduard Bodemann, *Der Briefwechsel von Gottfried Wilhelm Leibniz in der königlichen öffentlichen Bibliothek zu Hannover* (Hannover: Hahn'sche Buchhandlung, 1889), 15–16. This is an unpublished letter of which Bodermann reproduces only this part. Original French: 'Mon grand ouvrage historique m'empeche d'executer la pensée que j'ay de metre philosophie en demonstrations . . . car je voy qu'il est possible d'inventer une caracteristique generale, qui pourroit faire dans toutes les recherches capables de certitude, ce que l'Algebra fait dans les Mathematiques.'

[33] See e.g., Paul Rateau, 'L'encylopédie universelle', 134, who in this regard speaks of the double function of *scientia generalis*: architectonic and methodological.

[34] Peter Dear, 'Method', 148.

steps were still separable, in Leibniz one is intimately dependent and linked to the other because the ordering of available scientific concepts was at the same time an indispensable tool for invention and discovery.

Characteristica universalis as a tool for *scientia generalis* exemplifies this specifically Leibnizian view of method. *Characteristica universalis* can be understood first of all as a type of universal language that Leibniz attempted to develop. This language would bring mathematical clarity to all areas of knowledge through an introduction of a system of signs, which will allow making thinking and argumentative process akin to calculation. Obviously, mathematics, and more specifically algebra, served as a model for this type of calculation as the first quotation on the topic confirms.[35] However, Leibniz also intended to enrich it with the possibility to use formulas and signs for calculating not only quantity, which is a usual procedure in mathematics, but also quality, or similarity and dissimilarity, which is a more unusual procedure.[36] *Characteristica universalis* served the purpose of invention and introduction of such a system of signs. An important basic premise of this system of signs was its non-arbitrary character. The signs according to Leibniz should represent adequately not only each individual concept, but also the relationships between concepts.[37] For this purpose, Leibniz worked very intensely for several years on defining basic concepts and establishing links between them. The basic concepts of science are those that cannot be further partitioned into a combination of other concepts. These basic concepts would function as primary numbers. All other concepts are a product of these primary numbers or basic concepts.

This brief discussion of Leibniz's work on methodological issues demonstrates the centrality of reliance on precise definitions and relationships between them, which Leibniz and Hobbes share. According to some authors, Leibniz has more debt towards Hobbes in this regard than he is able to admit.[38] This centrality of definitions for scientific enquiry links both Leibniz and Hobbes to the geometrical method and the tradition of

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[35]   See text on note 32 above.

[36]   On this aspect of Leibniz's work, see Martin Schneider, 'Funktion und Grundlegung der Mathesis Universalis im Leibnizschen Wissenschaftssystem', in Albert Heinekamp (ed.), *Leibniz: Questions de logique: Symposon organise par la Gottfried-Wilhelm-Leibniz Gesellschaft E.V. Hannover, Bruxelles, Louvain-La-Neuve 26 au 28 aoûte 1985* (Wiesbaden: Franz Steiner Verlag, 1988), 162–82.

[37]   This double function of characteristics universalis is well discussed in Schneider, 'Characteristica universalis', 206–8, in particular.

[38]   Marine Picon, 'Leibniz, Hobbes et les principes des sciences', in Éric Marquer and Paul Rateau (eds.), *Leibniz lecteur critique de Hobbes* (Montreal: Les Presses de l'Université de Montréal Vrin, 2017), 53–73.

mechanical philosophy, which were dominant in the seventeenth century. While recognising this link, it is equally necessary for a correct interpretation of Leibniz's and Hobbes's work to pay attention to differences between Leibniz's and Hobbes's respective connections to these traditions. Even this brief introductory discussion of the question of method in Leibniz and Hobbes demonstrates that Hobbes is more closely and directly connected to the tradition of mechanical philosophies. Leibniz on the other hand integrated only some aspects of this tradition. His main objective was precisely the broadening of what counts as methodological and logical reasoning. This broader reflection on logical reasoning was instrumental to Leibniz's view of justice in particular, but certainly affected his reflection in other areas relevant to the present volume.

This interdependency between Leibniz's and Hobbes's thinking, which was made visible here at the level of method, combined with the fact that they lived and worked in a similar intellectual, institutional, and societal setting, makes comparison between the two authors more interesting and scientifically valid and valuable. For the purposes of this book, this situatedness of both authors in a similar environment and in similar times facilitates the establishment of the link between the conceptualisation of space and the conceptualisation of law by each of the authors because the relevance of influence exercised by other exogenous factors on their respective conceptualisations of law is reduced significantly and makes comparison easier.

1.2 POLITICAL CLIMATE AND LAW

The seventeenth century is often characterised by historians as a period of crisis in many areas. The first half of the seventeenth century is particularly turbulent and according to some historians even 'among the most uncomfortable and even frantic years in all European history'.[39] Although other historians dispute this assessment of the situation in Europe in the seventeenth century,[40] from the

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[39]   Stephen Toulmin, *Cosmopolis: The Hidden Agenda of Modernity* (Chicago: University of Chicago Press, 1992), 16. For various accounts of the crisis of the seventeenth century, see e.g., Roland Mousnier, *Les XVIe et XVIIe siècles la grande mutation intellectuelle de l'humanité: l'avènement de la science modern et l'expansion de l'Europe* (Paris: Presses universitaires de France, 1953); Eric Hobsbawn, 'The General Crisis of the European Economy in the 17th Century: I', (1954) 5 *Past and Present* 33–53, and 'The Crisis of the 17th Century: II', (1954) 6 *Past and Present* 44–56; Hugh Trevor-Roper, 'The General Crisis of the 17th Century', (1959) 16 *Past and Present* 31–64.

[40]   See, for instance, Theodore K. Rabb, *The Struggle for Stability in Early Modern Europe* (Oxford: Oxford University Press, 1975), chapter 3: 'Proponents and Critics of the Crisis' with further references.

point of view of legal-political developments, especially from the perspective of international law, the Thirty Years' War is certainly a notable event that impacted entire populations of Europe also through its consequences. Although, as already mentioned, historians differ in their assessment of the degree of turbulence caused by this war, the imagination of contemporaries who lived either during or shortly after the war was definitely shaken by accounts of 'all-pervasive violence and unremitting destruction'.[41]

The war itself, along with the famous Treaties of Westphalia, inevitably raise a series of foundations for law in modern sense as well as for international law questions about authority, government, and legitimacy. Without repeating the tropes of the myth of Westphalia about the creation of modern territorial sovereign states, it needs to be highlighted that this period witnessed significant political instability and challenges to traditional structures of authority, thus creating fertile ground for the rethinking of legal and political arrangements. Similarly, in face of confessional conflicts, which produced such a misery and suffering, scholars' effort was directed at producing concepts able to result in legal and political structures capable of preventing and avoiding future conflicts. This direction of scholarly effort is a significant driving force for the development of international law. Both Leibniz and Hobbes participated in this effort to such a degree that both of them could be called philosophers of peace. However, their respective paths to peace differed significantly. Moreover, on several central issues they adopted radically different positions, as will become clear in the remainder of the book. As much as Leibniz was inspired by Hobbes's work in several areas, the opposition to some of his conclusions grew stronger. This general orientation towards the establishment of peace understood in a widest possible sense, including general well-being, on as large scale as possible, makes the thought of these two thinkers highly relevant to contemporary international law. The overall goal of contemporary international law is exactly the same, namely 'to safeguard international peace, security and justice'[42] or to use a more recent

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[41]　Peter H. Wilson, *Europe's Tragedy: A New History of the Thirty Years War* (London: Penguin, 2010) 779. The author also highlights how this account started to change slowly at the very end of the eighteenth century (ibid.); however, it is important to realise the impact of the account of atrocities on contemporaries, including such scholars as Leibniz and Hobbes. The atrocities of the war were known in England through publications such as Dr Vincent's *The Lamentations of Germany*, and Wilson highlights, 'All parties in the subsequent British Civil Wars struggled to avoid their conflict descending into the depravity they believed affected Germany' (ibid.).

[42]　Christian Tomuschat, 'International Law: Ensuring the Survival of Mankind on the Eve of a New Century: General Course of Public International Law', (1999) 281 *Recueil des Cours* 1–440, 23.

formulation, to support 'order in the world and the attainment of humanity's fundamental goals of advancing peace, prosperity, human rights, and environmental protection'.[43] Although international law as law had always been geared towards introducing some degree of order into a supposed anarchy of the inter-state or inter-community relations, this deeper preoccupation with peace as prosperity was not necessarily always regarded as an integral part of goals of international law as a discipline. Thus the 'standard English treatise for forty-five years',[44] William Edward Hall's *A Treatise on International Law*, in its eighth edition published in 1924, paints quite a grim picture of international law: 'International law . . . has no alternative but to accept war, independently of the justice of its origin, as a relation which the parties to it may set up if they choose, and to busy itself only in regulating the effects of the relation.'[45] Although clearly international law is viewed here as an instrument introducing a certain order into the anarchy of war, simultaneously, it contains an obvious affirmation of international law's inability to prevent even unjust wars. Both Leibniz and Hobbes expected from their respective plans for peace, which included for each a specific vision of international law, more than simple reactionary intervention into an already raging war. This position corresponds to the contemporary expectations, which international lawyers place on their discipline. Therefore, the seventeenth-century thinking on international law, especially as reflected in the works of Hobbes and Leibniz is reconfirmed again as an important source of insights relevant to the operation of international law today.

It is extremely difficult to paint an overall picture of law and politics in Europe in the seventeenth century because on the one hand it was a period of significant and rapid changes and on the other hand the political and legal landscape of this time is highly fragmented. Sixteenth-century Europe could be described as 'a Europe of composite states, coexisting with a myriad of smaller territorial and jurisdictional units jealously guarding their independent status'.[46] This situation was complicated by religious division and

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[43]   Mary Ellen O'Connell, *The Power and Purpose of International Law: Insights from the Theory and Practice of Enforcement* (Oxford: Oxford University Press, 2008), first sentence of the abstract.

[44]   George Grafton Wilson, 'Book Review of *A Treatise on International Law*', (1925) 19 *American Journal of International Law* 656–7, 656.

[45]   William Edward Hall, *A Treatise on International Law*, 8th ed. (Oxford: Clarendon Press, 1924), 82.

[46]   John H. Elliott, 'A Europe of Composite Monarchies', (1992) 137 *Past and Present* 48–71, 51. Similarly, but from a different perspective, see Helmut G. Koenigsberger, 'Monarchies and Parliaments in Early Modern Europe. Dominium Regale or Dominium Politicum et Regale', (1978) 5 *Theory and Society* 191–217, 202, especially.

conflict, which itself could be viewed as a source of tendency towards unity that emerged in the seventeenth century as one of the strategies to minimise conflict.[47] Even though the seventeenth century witnessed efforts at creating more homogenous and clearly delimited territorial units, the numerous works by scholars have provided sufficient proof of the mythological nature of the thesis fixing the emergence of the modern state through the Westphalian settlement.[48] Therefore, the multilayered, composite, and fragmented structure of political and legal authority was the reality not only of Hobbes's but also of Leibniz's life and work.

At the level of legal practice and practical operation of law, this resulted in a multilayered overlap of legislative and jurisdictional authorities often known in the contemporary literature as 'legal pluralism'.[49] For the users of such a legal pluralist universe law might appear quite confusing. Not only did they have to initiate lawsuits in several jurisdictions if they wished to maximise their chances to success, which increased cost and time of litigation, but different jurisdictions drew on different sources of law. This not only created an additional layer of complexity and therefore more possibilities for manipulation of law, but was actively used by authority holders to tailor law to social status of litigants as well as utilise law as 'an important means of transmitting the wishes and aspirations of authority into the popular consciousness'.[50] Although the contemporary historiography also offers examples of a positive impact of legal pluralism on seventeenth-century population of lower and lower middling groups,[51] the contemporary state of scholarship does not allow

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[47] Elliott, 'Composite Monarchies', 54, 62–4.

[48] See e.g., Stéphane Beaulac, 'The Westphalian Legal Orthodoxy – Myth or Reality', (2000) 2 *Journal of the History of International Law* 148–77; Andreas Osiander, 'Sovereignty, International Relations, and the Westphalian Myth', (2001) 55 *International Organization* 251–87.

[49] The term 'legal pluralism' was not utilised in early modern Europe. The concept mostly developed in the eighties of the twentieth century is applied to early modern European legal arrangements, retrospectively. For an early development of the concept with further references, see John Griffiths, 'What Is Legal Pluralism', (1986) 18(24) *Journal of Legal Pluralism and Unofficial Law* 1–55. However, this does not mean that theory and practice in early modern Europe ignored the pluralist nature of its legal order. For an overview of engagement with legal pluralism in early modern Europe, see Richard J. Ross and Philip J. Stern, 'Reconstructing Early Modern Notions of Legal Pluralism', in Lauren Benton and Richard J. Ross (eds.), *Legal Pluralism and Empires, 1500–1850* (New York and London: New York University Press, 2013), 109–41.

[50] James A. Sharpe, 'The People and the Law', in Barry Reay (ed.), *Popular Culture in Seventeenth-Century England* (London and Sydney: Croom Helm, 1985), 244–70, 264.

[51] This is particularly visible when seventeenth-century Europe is compared to later, less pluralist eighteenth-century Europe; see e.g., Julie Hardwick, *Family Business. Litigation and the Political Economies of Daily Life in Early Modern France* (Oxford: Oxford University Press,

a unique and unambiguous assessment of the impact of legal pluralism as it unfolded in seventeenth-century Europe on various strata of society.[52] For our purposes, it is important to highlight that both Hobbes and Leibniz lived in a normative landscape where overlapping jurisdictions and multiplicity of legal regulations were a norm. Simultaneously, they witnessed how overlapping authority of various types can lead to conflict and atrocities. It was obvious to both of them as to many of their contemporaries that religious division fuelled by extreme religious zeal plays a major role in the escalation of conflicts of authority into violent clashes.[53] Many scholars of this period worked on the development of ideas and proposals that would reduce conflict, especially violent conflict. Hobbes and Leibniz were at the centre of this intellectual tradition. However, their approaches differ significantly. This resulted in an articulation of concepts of state and law, which are, as discussed in Chapter 4, in many regards on opposite sides of the spectrum. This chapter on law as well as the Intermezzo demonstrate an intellectual dependency of these divergent perspectives on law and state upon the disjunction between Hobbes's and Leibniz's conceptualisations of space.

Situating Hobbes's and Leibniz's work on law and statehood within their times also requires a brief reminder about the place of natural law in the seventeenth century. Natural law was an important common denominator in discussing law and legal-political issues at that time. However, the precise understanding of its meaning, structure, philosophical underpinnings, and other aspects were subject to heated debates among scholars.[54] One of the

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2009) or Craig Muldrew, 'Credit and the Courts: Debt Litigation in the Seventeenth-Century Urban Community', (1993) 46 *The Economic History Review New Series* 23–38.

[52] A good overview of recent scholarship with an indication of gaps and directions for future research is Griet Vermeesch, 'Reflections on the Relative Accessibility of Law Courts in Early Modern Europe', (2005) 19 *Crime, Histoire & Sociétés/Crime, History & Societies* 53–76.

[53] See e.g., the characterisation of the age of Enlightenment as 'a series of programmes for reducing the power of either churches or congregations to disturb the peace of civil society by challenging its authority' in John G. A. Pokock, *Barbarism and Religion*, Vol. 1 (Cambridge: Cambridge University Press, 1999), 7; as well as the determination of the latter half of the seventeenth century as the origin of Enlightenment: Juan Pablo Domínguez, 'Introduction: Religious Toleration in the Age of Enlightenment', (2017) 43 *History of European Ideas* 273–87, 275–6.

[54] An excellent overview of these debates in the seventeenth century and the impact of these seventeenth-century debates on subsequent developments is Knud Haakonssen, *Natural Law and Moral Philosophy: From Grotius to the Scottish Enlightenment* (Cambridge: Cambridge University Press, 1996). Other examples of interesting perspectives on natural law theories in the seventeenth century include Tim J. Hochstrasser, *Natural Law Theories in the Early Enlightenment* (Cambridge: Cambridge University Press, 2000), and Tim J. Hochstrasser and Peter Schröder (eds.), *Early Modern Natural Law Theories: Contexts and Strategies in the Early Enlightenment* (Berlin: Springer, 2003).

most well-known confrontations on the nature of natural law opposed Leibniz to Pufendorf.[55] Hobbes's concept of natural law, especially as expressed in *Leviathan*, also sparkled many attacks.[56]

The significance of the debates over natural law can only be appreciated against the backdrop of the competing claims to authority existing at that time. Traditional scholasticism articulated a concept of natural law that relied too heavily on a particular version of Christianity favoured by Catholicism. Reformation, Renaissance, and discovery of new lands made this position untenable. By the seventeenth century, relativity of religious and moral notions was obvious and required a response able to overcome ensuing moral scepticism while at the same time reducing the possibility of conflict. Obviously, different scholars proposed different responses to this problem and therefore different new conceptualisations of natural law.[57] Both Hobbes and Leibniz contributed to this debate in their own distinct ways. Moreover, in both cases their account of natural law is central to their conceptualisation of law, state, and international law. Despite all the differences between Leibniz's and Hobbes's views on the matter, which are discussed in the two final chapters of this book, one common trait is their attempt to produce an objective and scientifically certain account of natural law. This is something common to the majority of seventeenth-century scholars and connects to the broader tendencies in science described in the previous section, making the link between Leibniz's and Hobbes's respective conceptualisations of space and their conceptualisations of law visible.

1.3 CONCLUSIONS

This brief overview of the main tendencies in science, law, and political life in the seventeenth century highlights the tumultuous and highly unstable nature

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[55]   For an introductory reading, see e.g., Detlef Döring, 'Leibniz's Critique of Pufendorf: A Dispute in the Eve of the Enlightenment', in Marcelo Dascal (ed.), *The Practice of Reason: Leibniz and His Controversies* (Amsterdam and Philadelphia: John Benjamins Publishing, 2010), 245–72. The dispute is also addressed by almost any author writing on natural law from a historical perspective. For some examples, see sources mentioned in the previous footnote, which all contain a section on this debate.

[56]   On the opposition with which the English edition of *Leviathan* was met, see the beginning of the preceding section and Mintz, *Hunting of Leviathan*.

[57]   In addition to book-length treatment of the topic mentioned in note 54 above, for a short overview of natural law debates in the seventeenth century, see Knut Haakonssen, 'Divine/Natural Law Theories in Ethics', in Daniel Garber and Michael Ayers (eds.), *The Cambridge History of Seventeenth Century Philosophy*, Vol. 2 (Cambridge: Cambridge University Press, 1998), 1317–57, or Ian Hunter, 'Natural Law as Political Philosophy', in Desmond M. Clarke and Catherine Wilson (eds.), *The Oxford Handbook of Philosophy in Early Modern Europe* (Oxford: Oxford University Press, 2011), 475–99.

of this period when all so far fixed and settled concepts were being rethought, reworked, and in many cases completely changed. Many new ideas and concepts were being proposed. Among these actively discussed concepts were both the concept of space and the concept of law, including international law. In particular, the orientation towards a search for peace and avoidance of conflict characteristic of the seventeenth century was a tendency that particularly influenced the development of what later became international law as we know it today. This elaboration of the concept of international law was happening side by side with many scientific discussions, one of which concerned the nature of space. Already at this stage we can remark that for scholars of that time thinking about law in a new more global context when new lands with different cultures were being explored necessarily raised the question of the nature of space. The remaining chapters of this book will bring this connection to the surface and demonstrate how this connection affected deep foundational structures of international law and continues to operate today.

Most of these new ideas and concepts had certain connection to the achievements of previous centuries, as well as to other intellectual developments of the time. However, when some of the ideas and concepts of the seventeenth century entered the mainstream thinking of the subsequent centuries, many of the connections were lost. One of such lost connections is the connection between conceptualisations of space and conceptualisations of law, especially international law, which the remaining chapters of the book will uncover.

2

Space

Emily Grosholz opens her chapter on space and time in early modern philosophy with the following statement: 'Space and time have cast a spell over philosophers for two thousand years. No other pair of metaphysical items has proved so elusive and yet accessible to reason, so impalpable and yet obviously *there*.'[1] This statement perfectly captures two essential features of discussions related to the concept of space, namely the immense interest philosophers held in the concept of space for centuries and even millennia and the inescapable difficulty and trap they had to face. The difficulty and trap are particularly relevant to the central thesis of this book, namely exposing the influence exercised by conceptualisations of space on conceptualisations of law. The obviousness with which space and time reveal themselves in the human experience and everyday life conceals the extreme complexity of these two notions and their interactions. Philosophers engaged in investigations of space and time consciously attempting to reach beyond the obviousness and accessibility of space and time. For several centuries, the same philosophers who reflected on space and time also developed their conceptualisations of law. Many of them exercised significant influence on the formation of the modern concept of law. However, with the emergence of stricter divisions between disciplines and narrower specialisations, the conscious reflection on the nature of space and time was completely separated from the conceptualisation of law. Therefore, this difficulty and trap involved in the obviousness with which space appears to law and the easiness with which for this very reason it is disregarded is exacerbated in relation to law today.[2]

[1] Emily Grosholz, 'Space and Time', in Desmond M. Clarke and Catherine Wilson (eds.), *The Oxford Handbook of Philosophy in Early Modern Europe* (Oxford: Oxford University Press, 2011), 51–70, 51, emphasis in the original.
[2] In what follows, as reflected in the title of the chapter, the focus will remain on the concept of space, although space and time are intertwined notions and ideally should be treated together.

In the seventeenth century, the concept of space was the subject of heated debates and involved contestation of the metaphysical framework of the late Middle Ages with its Christian foundations. It was equally influenced by the purposes and debates of mechanical philosophies, including the effort at providing a rational explanation of the world. To fully appreciate both Hobbes's and Leibniz's views on space, it is important to situate them within debates on space of the time. This is particularly significant in Leibniz's case because his views on space are famous for his opposition to another dominant concept of space, namely the idea of absolute space as articulated by Newton. The correspondence between Leibniz and Samuel Clarke, 'Newton's mouth-piece', is the central debate of the seventeenth century on the concept of space. It remains one of the foundational discussions on the nature of space even today.[3] Therefore, the main tenets of the debate on the issue of space as they existed prior to Hobbes and Leibniz entering the scene will be presented first, followed by a brief discussion of the principal tenets of the debate on the nature of space as it unfolded at the time when Hobbes and Leibniz developed their respective conceptualisations of space. The next two sections focus each on the specific views of Hobbes and Leibniz on the issue of space. The concluding section of this chapter focuses on highlighting differences between Leibniz's and Hobbes's concepts of space.

2.1 THE CONTEXT OF THE DEBATE ON SPACE IN THE SIXTEENTH AND SEVENTEENTH CENTURY

Early modernity inherited from the Middle Ages a particular view of the physical or natural world, which focused on the idea of place more than on the concept of space as we understand it today. In the Medieval scholastic tradition, Aristotelian heritage figured prominently. The dominance of the

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Unfortunately, the size of this book does not allow for such a comprehensive approach. Moreover, it should be noted that in the works of two philosophers considered here, the concept of space exists side by side but separately from the concept of time. Therefore, focusing on space is a conceptually defensible strategy in this context. An intriguing investigation could be conducted on the significance of this overemphasis on space in constructing the concept of law, but it remains outside the scope of this book.

[3] The focus on this debate in the scholarship is so significant that for many scholars Leibniz's views on space are known only from these debates. However, Leibniz's views on space are presented with more detail and from different perspectives elsewhere in his works. Scholars who produced more in-depth studies of Leibniz's concept of space than the dominant reduction of these views to Leibniz-Clarke correspondence demonstrate clearly the necessity to go beyond this debate for a correct understanding of Leibniz's concept of space. Such a broader orientation is adopted below in the section discussing Leibniz's concept of space.

idea of place in the Medieval understanding of the world is also articulated in the scholastic tradition in Aristotelian terms. In this tradition, philosophers studied equally deeply metaphysics, mathematical science, and natural philosophy (including physics).[4] Natural philosophy was mainly understood as a study of natural things and was dominated by the 'search for causes of change in natural bodies'.[5] From this focus on change in natural bodies emerges the primary consideration of place as a notion determining spatial positioning of bodies. Therefore, the depiction of the universe took form of a description of places of its various components. Thus Aristotelian space is basically a sum of all places. Aristotle defines place as 'the boundary of the containing body at which it is in contact with the contained body', highlighting a few sentences later that it should be 'the innermost motionless boundary'.[6] In Aristotle's *Physics*, there is no term denoting space independently of place (tópos). Only tópos is defined and discussed by Aristotle from a variety of angles. The same goes for an important passage in Aristotle's *Categories*, which is often used when discussing the Aristotelian concept of space.[7]

Aristotelian cosmology adapted to Church teachings in scholasticism placed earth at the centre of the universe with the other three elements (water, fire, and air) occupying their respective natural places. Thus space in this vision remains

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[4]   These were the tree branches of speculative philosophy, which itself was one of the two main divisions of philosophy in this tradition along the practical philosophy. Practical philosophy dealt with such areas as moral philosophy, including politics, and mechanical arts. This tradition was dominant in formal institutional settings, even in the seventeenth century, despite the presence of other traditions. Therefore, all philosophers had to face it by either accepting, rejecting, or modifying it. See e.g., Menn, 'The Intellectual Setting', 33–86, or Roger Arew and Alan Gabbey, 'The Scholastic Background', in Daniel Garber and Michael Ayers (eds.), *The Cambridge History of Seventeenth-Century Philosophy*, Vol. 1 (Cambridge: Cambridge University Press, 1998), 425–53, 425–9.

[5]   Arew and Gabbey, 428. They highlight that this understanding of natural philosophy was dominant in the seventeenth century and continued into the eighteenth century.

[6]   Aristotle, *Physics*, Book VI, Part 4, 212a, 6–7 and 20–21, in William D. Ross (ed.), *Works of Aristotle*, Vol. 2 (Oxford: Clarendon Press, 1930).

[7]   Aristotle, *Categories*, 5a in chapter 6, where place and time are discussed under the category of quantity. Although some translations use the terms 'space' here and interpret this conceptualisation of space as a sum total of places, the original text does not state this explicitly because there is no term corresponding to the idea of space distinct from place (tópos). See e.g., the classical translation of *Categories* by Ella M. Edgehill, available in various online sources and for instance in the following compilation: Aristotle, *The Organon: The Works of Aristotle on Logic*, Roger Bishop Johnes, ed. (CreateSpace Independent Publishing Platform, 2012), 13. Although this interpretation does not distort Aristotle's understanding of space, it is important to highlight the entirely different point of departure for his reflection, which influenced the way space was conceptualised by subsequent authors. For a detailed discussion of Aristotle's concept of space, see e.g., David Bostock, *Space, Time, Matter, and Form: Essays on Aristotle's Physics* (Oxford: Oxford University Press, 2006), chapter 8 in particular.

dependent on matter and place. In the sixteenth and seventeenth century, re-working of scholasticism and development of new philosophies led to the emergence of new understandings of space. Breaking of this dependence of space on matter as well as considering space independently of place were important steps in this process.[8] An emblematic evidence of the transition in the ways space is discussed from the Middle Ages to early modernity is the evolving meanings and uses of the term 'space', or '*spatium*' in Latin. Latin was the dominant language of scholars, even in the seventeenth century. Scholarly works in the vernacular still remained marginal at that time.[9] Originally, in the twelfth century, the term had an exclusively temporal meaning similar to 'time span'.[10] Only towards the end of the twelfth century is a more 'spatial' meaning of the Latin '*spatium*' attested.[11] However, at this point '*spatium*' means only 'span of an area'. In the early fourteenth century appears a supplementary meaning of '*spatium*' as a distance between two points, including in a figurative sense.[12] At that time and until at least the sixteenth century, the meaning of the term '*spatium*' does not have any of the cosmic or abstract connotations, which today predominate our intuitive understanding of what the word 'space' means. For instance, according to the *Oxford English Dictionary*, first uses associating the term 'space' with 'the expanse in which celestial objects are situated' appear in the late sixteenth century; while space as a 'continuous, unbounded, or unlimited extent in every direction, without reference to any matter that may be present',

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[8]   It should be acknowledged that even before the sixteenth century some scholars developed ideas standing in contrast to and even directly contesting Aristotelian view of space. However, these views remained isolated and did not influence intellectual life in Europe. Some of these early anti-Aristotelian views of space are analysed in Max Jammer, *Concepts of Space: A History of Theories of Space in Physics* (Cambridge, MA: Harvard University Press, 1969), chapter 3. However, as Jammer astutely notes: 'If the notion of space was to be emancipated from the Aristotelian tradition, it would have to be done, as history proved, more gradually. It was not done until the sixteenth century.' Jammer, *Concepts of Space*, 84.

[9]   For a short but informative piece, which demonstrates the continuing significance of Latin in the seventeenth century as well as various challenges to the use of Latin in scholarly work that were emerging at the time, see Pippin Aspaas, 'The Use of Latin and the European Republic of Letters: Change and Continuity in the Seventeenth and Eighteenth Centuries', (2014) 33 *Nordlit* 281–95, with further references.

[10] Jean Dubois, Henri Mitter, and Albert Dauzat, *Grand dictionnaire etymologique et historique du francais* (Paris: Larousse, 2005), 346.

[11] Ibid. The intertwined nature of time and space in the Middle Ages is well illustrated through the analysis of the medieval world maps – *mappamundi* – which contrary to the received opinions are not primarily spatial but narrative, both historical and moral pictures where time plays one of the primary roles. See on this David Woodward, 'Reality, Symbolism, Time, and Space in Medieval World Maps', (1985) 75 *Annals of the Association of American Geographers* 510–21. For a more general set of examples using medieval art, see Gerald B. Guest, 'Space', (2012) 33 *Studies in Iconography* 219–30.

[12] Dubois, Mitter, Dauzat, 346.

appears only in the seventeenth century.[13] Intellectually, there is a significant gap to bridge in order to transition from the understanding of space as a distance between two points or a determined area to a space as an abstract concept considered independently of any matter contained in it. By the time Hobbes and Leibniz were writing, this abstract idea of space or what I call here 'conceptualisation of space' was firmly part of scholarly discussions. However, care is needed when analysing discussions of space in that period because the transition was still new and many previous thinkers whose work constituted the background of Hobbes's and Leibniz's reflections on space did not have the same concept of space in mind. Thus the seventeenth century was a period when our common-sense understanding of space was established, which means that a variety of concepts of space are possible.

Since, as explained in Chapter 1, religion continued to play a significant and even determining role in the development of philosophy, including natural philosophy, in the seventeenth century, it greatly influenced the development of conceptualisations of space. This is also equally true for Hobbes's and Leibniz's conceptualisations of space. Both Leibniz and Hobbes achieved quite a high degree of detachment from religious considerations in their respective articulations of space, which is particularly obvious in contemporary discussions of their views on space where no exposition of religious aspects is included. However, for all early modern scholars, such questions as the relationship between God and space, God's creation and space, constituted the background of their reflections. This is particularly visible in the Leibniz-Clarke correspondence where many of the arguments exchanged bear precisely on these issues.[14] In this section, the influence of religion on the development of Newton's concept of space is discussed concisely because, as already mentioned, Leibniz-Clarke controversy remains the most enduring legacy of the seventeenth-century debates on space. Leibniz's own views on space acquire some additional nuances through this exchange where Leibniz was forced to defend his position in face of criticism coming from a Newtonian perspective. This warrants a brief overview of Newton's view of space.

Newtonian space is absolute and immutable, homogenous and isotopic.[15] The absoluteness of space in Newton's view is necessary in order to provide a fixed

[13]   *Oxford English Dictionary*, 3rd edition, 2008. Online edition was consulted.
[14]   An incisive analysis of Leibniz-Clarke correspondence from the perspective of underlying political and religious disputes of the time is provided by Steven Shapin, 'Of Gods and Kings: Natural Philosophy and Politics in the Leibniz-Clarke Disputes', (1981) 72 *Isis* 187–215.
[15]   For a more detailed overview of Newton's concept of space, see e.g., James E. McGuire, 'Existence, Actuality, and Necessity: Newton on Space and Time', (1978) 35 *Annals of Science* 463–508; Ori Belkind, 'Newton's Conceptual Argument for Absolute Space', (2007) 21 *International Studies in the Philosophy of Science* 271–93; Disalle, 'Newton's Philosophical Analysis'.

frame of reference for the analysis of motion, and in particular to sustain the validity of his first law of motion. According to this law, 'Every body perseveres in its state of rest, or of uniform motion in a right line, unless it is compelled to change that state by forces impressed thereon.'[16] The notion of absolute space becomes necessary in order to enable identification of the state of real, absolute rest, namely 'the continuance of the body in the same part of the immovable space'.[17] These two quotations together demonstrate the dependency of the idea of true rest on the presupposition of an absolute, immovable space as a container of all events, objects, and motions. In later years, Newton revealed the intimate link between his idea of absolute space and the tenets of his religious beliefs. Absolute space was not only necessary logically to sustain his first law of motion; it was also an expression of his 'metaphysical spiritualism'.[18] Arguably, Newton developed this 'metaphysical spiritualism' under the influence of his Cambridge teachers, particularly Henry More.[19] More is known for his strong theological views defending the existence of extended incorporeal substances or spirits. This view was specifically aimed against Descartes's attribution of extension to matter only,[20] a position that according to More led to atheistic views because it impeded an explanation of communication between spirits and material objects. The idea of extended incorporeal substances allowed More to think of space as an attribute of such an extended incorporeal substance, namely God.[21] As a result, space as an attribute of God could be viewed as infinite, singular, and absolute. Some might

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[16]   Sir Isaac Newton, *The Mathematical Principles of Natural Philosophy*, Andrew Motte, trans., revised by N. W. Chittenden (New York: Daniel Adee, 1846), 83.

[17]   Ibid., 78.

[18]   Paul Redding, *Continental Idealism: Leibniz to Nietzsche* (Abington and New York: Routledge, 2009) 11.

[19]   For an overview of discussions around Henry More's influence on Newton, see e.g., Alfred Rupert Hall, *Henry More and the Scientific Revolution* (Cambridge: Cambridge University Press, 1990), of which part II focuses specifically on More and Newton. For a focused discussion on space and time, see 202–24. More's influence on Newton is also carefully traced in great detail in the famous biography by Westfall: Richard S. Westfall, *Never at Rest: A Biography of Isaac Newton* (Cambridge: Cambridge University Press, 1980).

[20]   Descartes famously distinguished mind and matter as two substances apart from God. Only matter was according to Descartes an extended substance. Mind was a thinking nonextended substance. The whole universe was conceived as full of matter. Space for Descartes was equivalent to the three-dimensional extended matter, not a container for the matter. See, for example, René Descartes, 'The Principles of Philosophy', part 1, article 53, part 2, articles 9 and 10. Using these references, the reader can consult any edition of this work. It is contained for example in René Descartes, *The Philosophical Writings of Descartes*, John Cottingham, Robert Stoothoff, and Dugald Murdoch, trans., Vol. 1 (Cambridge: Cambridge University Press, 1984), 177–292.

[21]   For an overview of More's idea of space and its relationship to God, see e.g., Michael Boylan, 'Henry More's Space and the Spirit of Nature', (1980) 18 *Journal of the History of Philosophy* 395–405; J. E. Power, 'Henry More and Isaac Newton on Absolute Space: An Extra-Scientific

contest the dependency of Newton's account of absolute space on More's and most importantly Newton's own theological preoccupations. For instance, Newton is credited with a very thorough reliance on experimental method and for this reason is hailed as one of the key figures in detaching scientific study from religion and beliefs.[22] However, the centrality of the theological argument for Newtonian apparently secular framework is clearly visible among others in the fact that the 'General Scholium', an essay appended to the second and third edition of his *Principia*, makes an explicit connection between God and absolute space.[23] Similarly, Connolly presented very convincing arguments to demonstrate the primacy of Newton's theological position to his conceptualisation of space, including references to earlier works where the link between God and absolute space is obvious.[24] For his part, Force strengthens this reading of Newton, revealing how 'God's totally free will in conjunction with his absolute power' become a common denominator of all his work, providing it with unity.[25] Whether the link between God and space was always present in Newton's mind and only acknowledged in an explicit form later or emerged as a later addition to his purely scientific investigation, in both scenarios there is no doubt that in postulating the absolute space, Newton deviated from his own methodological principles: 'Intimately acquainted with the problems of religion and metaphysics, Newton managed to keep them in a separate compartment of his mind, but for one exception, namely, his theory of space.'[26]

This particular status of space in Newton's system is an indicator of the perplexing but at the same time foundational nature of space recurrent in all authors who touched upon the conceptualisation of space in some depth. This peculiarity of space as a concept re-emerges in other ways in works of Hobbes and Leibniz. And like Newton was unable to escape space or

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Category', (1970) 31 *Journal of the History of Ideas* 289–96; Jasper Reid, *The Metaphysics of Henry More* (Dordrecht: Springer, 2012). Part 4 of the book deals specifically with space.

[22] As an example of such a celebration of Newton's impact on modern science, see Mordechai Feingold, *The Newtonian Moment. Isaac Newton and the Making of Modern Culture* (Oxford: Oxford University Press, 2004).

[23] See e.g., discussion of this aspect in Stephen D. Snobelen, '"God of Gods, and Lord of Lords": The Theology of Isaac Newton's General Scholium to the Principia', (2001) 16 *Osiris* 169–208.

[24] Patrick J. Connolly, 'Space before God? A Problem in Newton's Metaphysics', (2015) 90 *Philosophy* 83–106.

[25] James E. Force, 'Newton's God of Dominion: The Unity of Newton's Theological, Scientific, and Political Thought', in James E. Force and Richard H. Popkin (eds.), *Essays on the Context, Nature, and Influence of Isaac Newton's Theology* (Dordrecht: Kluwer, 1990), 75–102, 78, and the chapter in general.

[26] Jammer, *Concepts of Space*, 98. Here Jammer refers in particular to Newton's famous '*hypotheses non fingo*', whereby Newton attempted to keep anything occult or metaphysical from scientific investigation.

subsume it under his scientific method, international law, despite all attempts and efforts, will be unable to either ignore space or conceal it completely. However, before dealing with space and law, and in order to prepare a better ground for our analysis of the interrelationship between law and space, conceptualisations of space in Hobbes and Leibniz need to be analysed.

2.2 HOBBES ON SPACE

2.2.1 *Hobbes's System of Sciences*

Hobbes's view of space determines how he views many other foundational aspects of his first philosophy, which in turn influences his views on law, states, sovereignty, and international relations. Before we embark on discussing the details of Hobbes's view of space, a few preliminary remarks on the general framework of his studies are required.

Importantly, Hobbes's overall ambitious objective, within which his views on space and law are articulated, was to develop a comprehensive philosophical system modelled upon Euclid's *Elements of Geometry*. His trilogy of *Elementorum philosophiae*[27] (*Elements of Philosophy*) is the best illustration of this point. *De Corpore*, logically placed by Hobbes as the first volume of this trilogy, contains some of the most widely known and detailed Hobbes's discussions of the concept of space. This trilogy also includes a volume entitled *De Cive* addressing legal and political questions. This volume placed logically as the third and last one but published before the other two volumes indicated Hobbes's ideal vision of the interdependency and logical connection between first philosophical notions, one of the most foundational being space, and politico-legal questions. However, this structure also confirms that law is not viewed as a separate and independent realm, as we do it today, but is part and parcel of the philosophical system. How exactly law and space are connected is a more complex question, which

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[27]   The following three volumes constitute the trilogy: *Elementorum philosophiae sectio prima de corpore* (1655), *Elementorum philosophiae sectio secunda de homine* (1658), and *Elementorum philosophiae sectio tertia de cive* (1642). They are cited hereinafter as *De Corpore* (DCo), *De Homine* (DH), and *De Cive* (DCi), respectively, with an indication of part, chapter, and paragraph. This allows the reader an easy use of any edition of these works. I also include a page number referring to the English translations of *De Corpore* and *De Cive* contained in EW, Vol. 1 and 2, respectively. As for DH, the English translation used is the following: Thomas Hobbes, *Man and Citizen (De Homine and De Cive)*, Bernard Gert, ed. (Indianapolis: Hackett Publishing, 1991).

will be addressed once Hobbes's conceptualisations of space and law are analysed separately.[28]

Turning to the general framework of Hobbes's *Elements of Philosophy*, two interconnected foundational notions dominate his thought and act as golden threads uniting various parts of his thinking: the notion of body and the notion of motion. This is very much in line with the trend of mechanical philosophies popular at that time. The centrality of the idea of body to his construction of philosophy indicates Hobbes's strong inclination towards materialism central to most versions of mechanical philosophies. Although there are persuasive arguments in favour of a more nuanced view of Hobbes than simply labelling him as a materialist,[29] the predominance of the idea of body for his construction of philosophy places him very close to the materialist tradition. This will also be important for his conceptualisation of space. For instance, one scholar remarked, 'Hobbes always ridiculed the idea that existence could be understood on its own or in the abstract, without reference to the concept of body or location in space.'[30] Most importantly for our purposes, Hobbes utilised the distinction between natural and civil bodies to build his systematisation of philosophy. Thus according to him, two parts of philosophy, namely natural and civil, correspond to the study of generation and properties of these two types of bodies: natural and civil.[31] Moreover, Hobbes compared the study of civil bodies to the study of artificial bodies. In his preface to *De Cive* he explained his method as follows:

> For as in a watch, or some such small engine, the matter, figure, and motion of the wheels cannot well be known, except it be taken insunder and viewed in parts; so to make a more curious search into the rights of states and duties of subjects, it is necessary, I say, not to take them insunder, but yet that they be so considered as if they were dissolved.[32]

This parallel between civil and artificial bodies has equally important consequences for Hobbes's approach to knowledge and truth, which in turn

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[28] Chapter 3 is central to establishing these links. Some additional details are provided in the conclusions of Chapter 4 and Chapter 6.

[29] See e.g., the characterisation of Carl Schmitt's and Michael Oakeshott's reading of Hobbes as '*moralist*, not as a materialist and a mechanistic thinker' and the related discussion in Jan-Werner Müller, 'Re-imagining Leviathan: Schmitt and Oakeshott on Hobbes and the Problem of Political Order', (2010) 13 *Critical Review of International Social and Political Philosophy* 317–36.

[30] Tom Sorell, 'Hobbes's Scheme of Sciences', in Tom Sorell (ed.), *Cambridge Companion to Hobbes* (Cambridge: Cambridge University Press, 2006), 45–61, 47.

[31] Lev I.9, 72 (here Hobbes talks of 'politic' bodies instead of civil or artificial bodies).

[32] DeCi, Preface, xiv.

influences the way law and space are connected. This aspect will be explored in more detail in the next two chapters.

The place of the idea of movement in the construction of Hobbes's philosophy is more uncertain. This is mainly due to inconsistencies in his elaboration of the system of philosophy, especially in *De Corpore* as compared to *Leviathan*. The idea of motion does unite many parts of Hobbes's philosophy. In particular, it is certainly a conceptual core of both his vision of geometry and physics, as well as his vision of the man and the commonwealth or the realm of the political. Thus, in *De Corpore* after having defined geometry as the knowledge of the simple motion, physics as the knowledge of the effects of the motion of one body produced on another,[33] he states that 'the principles of the politics consist in the knowledge of the motions of the mind'.[34]

Hobbes distinguishes the study of geometry and physics from the study of politics only through the different method that can be applied to the study of politics. In particular, he affirms that it is possible to study and acquire full knowledge of politics without fully understanding geometry and physics because knowledge of the motions of the mind can also be acquired 'by the *Syntheticall Method* and from the very first Principles of Philosophy'.[35] This might diminish the strength of the link between geometry and physics on the one hand and politics on the other, but this does not affect the central thesis of this book regarding the link between space and law because space, like time, is for Hobbes part of the first principles of philosophy, not of geometry or physics. As this quotation demonstrates, according to Hobbes, the study of the first principles of philosophy is still required for the attainment of the full knowledge of politics. Moreover, as will be demonstrated later, the idea of motion remains central in Hobbes's conceptualisation of space, and the concept of motion itself is in fact defined already within the first principles of philosophy.[36]

On the other hand, in *Leviathan* the study of the first principles of philosophy is not completely separated from natural philosophy. Here Hobbes defines natural philosophy as knowledge of 'consequences from the accidents of bodies natural' and presents *philosophia prima*, which is according to him

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[33] DeCo I.6.6, 70–2.
[34] Ibid., I.6.7, 74.
[35] Ibid.
[36] See DeCo II.8.10, 109. Motion is defined here as 'a continual relinquishing of one place, and acquiring of another'. The second part of *De Corpore* where this definition is contained is entitled 'The First Grounds of Philosophy'. Therefore, although motion is also treated separately, in the third part of *De Corpore*, conceptually it remains part of the first principles of philosophy.

a knowledge of 'consequences from quantity and motion *indeterminate*' as a part of natural philosophy.[37] Other parts of natural philosophy deal with consequences from quantity and motion determined and consequences from qualities.[38] Therefore, the uniting strength of the idea of motion for Hobbes's system of philosophy cannot be denied.

   The precise relationship between the concept of space and the concept of motion is quite ambiguous in Hobbes. Some authors pointed out the circularity of this relationship in some of the central statements about motion and space.[39] In what follows the focus is on the conceptualisation of space in Hobbes with a particular attention to the question of how motion and body with its magnitude come into play in this conceptualisation of space. As will become clear later, this is necessary because motion, together with the concept of body, is an important element that allows establishing stronger links between space, time, and politico-legal notions that are further discussed in this book.

2.2.2 *Real and Imaginary Space*

In order to fully understand Hobbes's view of space, it is essential to take into account the distinction Hobbes makes between imaginary and real space. When he starts discussing the concept of space in *De Corpore*, which contains the most detailed discussion of the concept of space, Hobbes starts by introducing the concept of imaginary space. In my interpretation, this is due to the desire of Hobbes to establish foundational and fundamental nature of imaginary space. To what extent he succeeded will be clear towards the end of this section. However, among Hobbes's interpreters, there is no unanimity on the issue of relationship between imaginary and real space, especially because of the divergence in interpretations of the concept of imaginary space.[40]

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[37]   Lev I.9, 72–73, where 'Table of the Several Subjects of Science' is presented. The Latin edition of *Leviathan* published later than the English edition (despite some debates over the timing of writing of the Latin version of *Leviathan*, the overall consensus is that it was written after the English version. See on this Noel Malcolm, 'Editorial Introduction', in Thomas Hobbes, *Leviathan*, Vol. 1 (Oxford: Oxford University Press, 2012), 165–75) does not contain the table but the textual account is very similar.

[38]   Ibid. In the Latin text, it is clear that quantity refers to magnitude as one of the two accidents of a body (along motion). See Latin version of *Leviathan* in the previously cited edition by Malcolm. Ibid., Vol. 2, 127: 'Magnitudo definite, quae & *Quantitas* dictur'.

[39]   Douglas Jesseph, 'Hobbes's Theory of Space', in Vincenzo De Risi (ed.), *Mathematizing Space, Trends in the History of Science* (Berlin: Springer, 2015), 193–208, 198.

[40]   For some examples, see different interpretations in Jesseph, 'Hobbes's Theory of Space', 193–208, and Gary B. Herbert, 'Hobbes's Phenomenology of Space', (1987) 48 *Journal of the History of Ideas* 709–17. See also Edward Slowik, 'Hobbes and the Phantasm of Space', (2014)

Therefore, what follows is yet another interpretation of some ambiguous statements made by Hobbes justified and supported by textual sources. I will also present arguments as to why this interpretation should prevail, as well as indicate elements of my interpretation that are not disputed.

In order to introduce the idea of imaginary space, Hobbes uses a thought experiment in which the world is annihilated except for one human being. In this annihilated world, only ideas of the world would remain to that man.[41] These ideas and phantasms will happen to the man internally yet will appear to the man as if they were external.[42] Hobbes's concept of imaginary space in all its purity becomes obvious precisely at this moment: when a man imagines things that existed before the annihilation 'and consider[s], not that the thing was such and such, but only that it had a being without the mind'.[43] At this point, Hobbes adds, 'we have presently a conception of that we call space' and continues 'an imaginary space indeed, because a mere phantasm'.[44] These two phrases indicate that according to Hobbes's imaginary space is in fact the description of the commonly used concept of space. This statement can also be read as indicating certain primacy of imaginary space in the everyday usage of the term. In this regard, Hobbes also highlights that men call something 'space' because it may be filled and also the fact that 'the same space contains sometimes one, sometimes another body'.[45] When clarifying his definition of space, Hobbes also mentions that space is an accident of the body – namely, 'that it appears without us'.[46] Therefore, Hobbes's conceptualisation of space is closely linked to his conceptualisation of body. Through this link to the concept of body, space becomes closely connected to the idea of magnitude, which leads to the concept of real space establishing a dependency of both real and imaginary space on magnitude and the idea of motion that in turn will connect space to time.

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27 *Hobbes Studies* 61–79, 70–8, where different interpretations of Hobbes's concept of imaginary space are presented, although not exhaustively.

41 DeCo II.7.1, 92.

42 Ibid.

43 DeCo II.7.2, 93.

44 Ibid.

45 Ibid.

46 DeCo II.7.2, 94. Hobbes defines accident as 'the manner by which any body is conceived' or 'that faculty of any body, by which it works in us a conception of itself' (DeCo II.8.2, 103). To illustrate this point in relation to space as an accident of the body highlighting that it is not part of the body or the body itself, Hobbes gives some examples: 'Let us imagine, therefore, that a body fills any space, or is coextended with it; that coextension is not the coextended body'. Ibid., 102.

Just after defining space (imaginary space) Hobbes, before turning to the concept of time, states, 'As a body leaves a phantasm of its magnitude in the mind, so also a moved body leaves a phantasm of its motion, namely, an idea of that body passing out of one space into another by continual succession.'[47] Since this sentence appears just after the restatement of the definition of space, we can assume that the imaginary space is produced also by the phantasm of the magnitude of the body. This is confirmed later when Hobbes introduces his idea of real space and contrasts it with imaginary space (as discussed later). In this regard, an important question arises: Can there be a concept of space in relation to objects of thought without magnitude? This question is very important for the purposes of contrasting Hobbes's and Leibniz's concepts of space. We will return to this in due course. For the moment, it is important to highlight that for Hobbes, magnitude determines the existence not only of the real but also of imaginary space. In order for our senses, our imagination, to be able to produce the phantasm of the body existing outside of the mind, or imaginary space, extended bodies with their magnitude have to have real objective existence. As Jesseph puts it, '[i]n the end, Hobbes held, what is truly real is simply bodies moving and colliding; everything else is some kind of effect produced by that ultimate causal principle'.[48] This also connects to an important issue – namely, Hobbes's conceptualisation of motion.

Hobbes defines motion as an idea of a body passing from one space to another.[49] This statement appears to contradict his definition of space because it does not seem from the conceptualisation of space as imaginary space that there is a multiplicity of spaces. Perhaps, in this regard, Hobbes uses the term 'space' as a synonym of 'place'. Hobbes's utilisation of these two terms – 'space' and 'place' – is confusing at times and needs to be interpreted very cautiously. On the other hand, later in the same chapter, Hobbes discusses the operation of division in relation to space and time.[50] Therefore, he indeed continues to affirm the possibility of existence of several spaces, which confirms to his definition of motion. Nevertheless, this use of terminology stands at odds with his definition of imaginary space as a phantasm of a body existing without the mind. Could he really have meant that this phantasm can be divided? It could be suggested that his use of the term 'space' in these instances does not refer to the imaginary but to the real space. However, the concept of real space

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[47]   DeCo II.7.3, 94.
[48]   Jesseph, 'Hobbes's Theory of Space', 207.
[49]   DeCo II.8.10, 109. The text of the definition is reproduced in note 36 above.
[50]   DeCo II.7.5, 95–6.

is defined by Hobbes only later, in chapter 8 'Of Body and Accident'. Hobbes's discussion of real space should provide more clues in this regard.

Before the concept of real space appears in *De Corpore*, Hobbes introduces his definition of a body: '[A] body is that, which having no dependence upon our thought, is coincident or coextended with some part of space.'[51] Here again space appears as having parts. Perhaps Hobbes envisaged this operation of partitioning space as another activity of human imagination. If this is true, which the whole interpretation of Hobbes's statements seems to confirm,[52] then this peculiar way of envisaging imaginary space demonstrates a certain tension between his materialistic inclination demonstrated by the centrality of the body to his philosophy and his realisation that space cannot be explained only through material processes. This tension led certain scholars to affirm that even Hobbes's account of a body is phenomenal.[53] While such an opinion would seem too extreme taking into account Hobbes's own insistence on the reality and materiality of bodies, linking it to the assertion of the materiality and objective existence of the real space,[54] such a reading of Hobbes remains an expression of the tension mentioned above. This tension confirms the impossibility of entirely absolving the concept of space from non-materialistic considerations.[55] This is again confirmed in a different way by the fact that (imaginary) space appears here as something external to the bodies that are 'coincident or coextended with some part of space'. The existence of space that initially is made dependent on magnitude and bodies appears here outside and independently of them, thus breaking the logic of Hobbes's argument. Finally, and this will be further confirmed in Hobbes's discussion of real space and its links to imaginary space, even imaginary space

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[51] DeCo II.8.1, 102.
[52] In fact, Hobbes describes division not as a physical but as a mental operation when he talks about imaginary space (DeCo II.7.1, 92).
[53] Herbert, 'Hobbes's Phenomenology of Space', 712.
[54] See e.g., Jesseph, 'Hobbes's Theory of Space' highlighting that according to Hobbes, real space would exist even when there would be nobody to perceive and imagine (197).
[55] For instance, Leijenhorst in his detailed study of Hobbes's natural philosophy remarks: 'Hobbes does not hold that this "solid space" [three-dimensional space that a body occupies] is a real, self-subsisting entity. Space is a concept, an imaginary entity, which does not exist outside of us, but solely in our imagination' (Cees Leijenhorst, *Mechanisation of Aristotelianism: The Late Aristotelian Setting of Thomas Hobbes', Natural Philosophy* (Leiden, Boston, Köln: Brill, 2002), 105). I agree with this assessment of Hobbes's theory of space as a consequence following from interpretation of Hobbes's theory, but I hold that Hobbes himself never stated this clearly and even made some statements in relation to the idea of real space that contradict this interpretation. This is discussed in the next few paragraphs. See also the rejection of the phenomenal view of space, which negates any externality by Slovik, 'Phantasm of Space', 76.

on this account remains dependent on the idea of measurement, which as we will see is another important feature separating Hobbes's view of space from Leibniz's vision of space.

The following is the shortest Hobbes's definition of real space: 'The *extension* of a body is the same thing with the *magnitude* of it, or that which some call *real space*.'[56] He immediately adds the following to distinguish real space from imaginary space: 'But this *magnitude* does not depend upon our cogitation, as imaginary space doth; for this is an effect of our imagination, but *magnitude* is the cause of it; this is an accident of the mind, that of a body existing out of the mind.'[57] This contrast and at the same time connection between real and imaginary space makes both of them dependent on magnitudes and therefore measurements and materiality of bodies. Hobbes conceived extension or magnitude as an accident of the body. Like the imaginary space is an accident of the body, which concerns its capacity to exist without the mind, so the extension is an accident of the body related to the possibility of delimiting it without situating it in any particular place. Hobbes defined accident of a body as 'the manner of our conception of body'.[58] Therefore, both real and imaginary space remain dependant on the work of the human mind. However, Hobbes also highlighted that 'place is nothing out of the mind, nor magnitude anything within it'.[59]

To some extent we can say that mind and imaginary space become secondary in this picture because the real space or magnitude is the cause of imaginary space and only insofar as human's mental process intervenes. The imaginary space is effectively produced by real bodies and their action on our minds; more specifically, imaginary space is an effect of magnitude produced by our minds. Or to put it differently, real bodies' extension puts our minds into motion, and this motion results in the production of imaginary space. Therefore, while it is important to remember that Hobbes's materialism is dependent on the ways he conceives the work of the human mind and is not as pure and simplistic as some tend to assume, the primacy of material bodies as real externalities in his philosophy is paramount. In this regard both real and imaginary space are products of human mind. However, these products would not exist, were it not for the real material and extended bodies existing outside of the mind. On the other hand, remembering that Hobbes started his exposition of the concept of space with the idea of imaginary space, it is essential to

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56   DeCo II.8.4, 105.
57   Ibid.
58   DeCo II.8.2, 104.
59   DeCo II.8.5, 105.

highlight that despite its dependency on body and its magnitude the concept of space is indistinguishable from the activity of the human mind because at the end real space is nothing but extension or magnitude of bodies, and the concept of space and the term 'space' would not have emerged were it not for the human mind's capacity to think of bodies.

Two elements emerge as essential in this Hobbesian conceptualisation of space: Hobbes's understanding and theorisation of human cognition as the main activity of the human mind and his understanding of body. Therefore, these two elements are discussed in more detail. The concept of the body is addressed in the next paragraph, while Hobbes's conceptualisation of human cognition is treated in the next chapter. It will become clear that in both elements, the idea of movement is the essential uniting factor.

2.2.3 *Body and Space*

Hobbes defines a body as 'that, which having no dependence upon our thought, is coincident or coextended with some part of space'.[60] From this definition follows the objective and independent existence of bodies,[61] as well as their extension.[62] Body is also identified by Hobbes with substance: all substance is material and bodily: '[S]ubstance and body signify the same thing; and therefore substance incorporeal are words, which when they are joined together, destroy one another, as if a man should say, an incorporeal body.'[63] In *De Corpore*, the equation of body and matter is made clear in the following way: 'Materia prima, therefore, is body in general, that is, body considered universally, not as having neither form nor any accidents, but in which no form nor any other accidents but quantity are at all considered, that is, they are not drawn into argumentation.'[64]

Thus, breaking with the long and established tradition in distinguishing substance, body, and matter in various ways, Hobbes simply equates the three notions. If any difference is maintained between them, it is reduced to the way

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[60] DeCo II.8.1, 102.
[61] Just a few lines before formulating this definition, Hobbes makes this point explicitly: 'and because it depends not upon our thought, we say a thing subsisting of itself, as also existing, because without us'. Ibid.
[62] According to Hobbes, we call something 'body' because it has extension: '[W]hen we see any thing, or conceive in our mind any visible thing, that thing appears to us, or is conceived by us, not in one point, but as having parts distant from one another, that is, being extended and filling some space. Seeing therefore we call the thing so conceived body, the cause of the name is, that that thing is extended, or the extension or corporeity of it.' DeCo I.3.3, 32.
[63] Lev II.34, 381.
[64] DeCo II.8.24, 119.

human mind considers different aspects of a body. For instance, when talking about matter, only materiality of bodies is considered, as the last quotation clarifies. In the notion of substance, the capacity of bodies to be subject to various accidents is considered:

> [B]ecause bodies are subject to change, that is to say, to variety of appearance to the sense of living creatures, is called substance, that is to say, subject to various accidents: as sometimes to be moved; sometimes to stand still; and to seem to our senses sometimes hot, sometimes cold, sometimes of one colour, smell, taste, or sound, sometimes of another.[65]

From the philosophical standpoint, this results in the primacy of body over other notions traditionally considered more fundamental in philosophy. However, the definition of body provided at the beginning of this paragraph in its reliance on the capacity of bodies to occupy a part of (imaginary) space as well as previously discussed definitions of the real and imaginary space beg the question about the codependence of space and bodies: according to Hobbes, as soon as there is a body, at least real space exists and for real space to exist no observer is needed. This real space is basically extension or magnitude, and thus measurement is enough to comprehend this space. As a consequence, space becomes easily controllable as soon as there is a possibility to measure it. This produces certain externality of space, which reappears in a different form in the imaginary space too: with regard to imaginary space, the existence of bodies is affirmed to happen outside of the human mind. Human mind simply registers this fact, reacts to it. This externality of space reinforces the controllability of space because it is not human mind dependent in its characteristics and therefore not subjective. Thus, in Hobbes's system, there is an underlying idea of the possibility of an objective determination of space. Moreover, all human beings 'receive' the imaginary space in the same way, so there is no variation in individuals' perception of space. Thus, space in Hobbes is truly universal and controllable. However, despite the controllability of Hobbes's space and its objective reality, it cannot be equated with Newton's absolute space because for Hobbes space is not a container of bodies, which subsists without them.[66] For Hobbes, there is no space without bodies, as there is no body without space.

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[65] Lev III.34, 381.

[66] This assessment of Hobbes's view of space is true even though Hobbes stated in his examination of Thomas White's De Mundo that 'if the world were to vanish, then unmoved space ... would still exist' (Thomas Hobbes, *Thomas White's De Mundo Examined*, H. W. Johns, trans. (Bradford: Bradford University Press, 1976), 41). This statement is made only in relation to imaginary space to demonstrate its independence from the existence of bodies in principle. However, as the discussion in *De Corpore* demonstrates, if Hobbes was more careful, he would clarify this statement to highlight that at least one human being experiencing material world is

2.3 LEIBNIZ ON SPACE

Leibniz's view of space differs drastically from the Hobbesian conceptualisation of space. Moreover, Leibniz's view of space is so different from anything produced on the topic that until today his name is associated with the main alternative vision of space – namely, relational space. The concept of relational space is central to several contemporary critical streams of scholarships, especially in geography but also in neighbouring disciplines.[67] The central concept defining space in Leibniz's philosophy is the concept of relation. In order to understand Leibniz's conceptualisation of the idea of space, it is important to connect many statements Leibniz formulated in different contexts. Unlike Hobbes, Leibniz did not produce one systematic treatise where his view of space is stated in sufficient detail.[68] Moreover, Leibniz's views on space evolved quite significantly over time. Another difficulty resides in the strong connections between Leibniz's monadology[69] and metaphysics more broadly and his conceptualisation of space. However, these two fields of Leibniz's thought have never been connected *systematically* by Leibniz himself either.[70] Thus it is important to situate these different discussions of space

needed for space to subsist after the vanishing of the world. The fact that Hobbes might not have been as precise and careful in his formulation as he should be is confirmed by the fact that this work was drafted before his published works on the topic and never published by Hobbes himself. Therefore, it cannot be taken as an acceptance of the absolute view of space.

[67] For instance, the idea of relational space with a direct reliance on Leibniz is central to many works of David Harvey, although discussions of Leibniz's ideas themselves remain limited; see e.g., David Harvey, *Justice, Nature, and the Geography of Difference* (Oxford: Blackwell, 1996), chapter 3. In contrast, Doreen Massey, who uses many Leibnizian ideas in advancing here a discussion of the relationality of space, does not discuss Leibniz directly; see e.g., Doreen Massey, *For Space* (London: Sage, 2005). For an argument on the importance of studying Leibniz's view of space in more depth from the perspective of contemporary spatial justice, see Ekaterina Yahyaoui Krivenko, 'Law, Space, and Spatial Justice: Leibniz as a Theorist of Spatial Justice', (2018) 36 *Law and History Review* 891–914.

[68] Leibniz-Clarke correspondence remains the most systematic and detailed treatment of the topic but, unfortunately, it cannot be regarded as a complete presentation of Leibniz's views on space. See e.g., Heinrich Schepers, 'Neues über Zeit und Raum bei Leibniz', 38/39 (2006–7) *Studia Leibnitiana* 3–18, 5, and discussion of this below footnote 121 and the accompanying text.

[69] In this chapter and subsequently 'monadology' refers to the corresponding Leibnizian set of ideas about monads in general (as discussed in the section 'Space and Monadology' more specifically) and *'The Monadology'* refers to the treatise by Leibniz where his monadology is summarised. Full title: *The Principles of Philosophy, or the Monadology* (1714). Here mainly the Arew's and Garber's translation is used, but the references are made to paragraphs of *The Mondaology* so that the reader can easily access any translation of the work or refer to the original text that being written in French is accessible to many contemporary readers.

[70] This does not mean that we cannot find any connections between the concept of space and Leibniz's monadology in Leibniz's writings, but that these discussions remain fragmentary

by Leibniz in their context without introducing too much confusion. For this reason, Leibniz's conceptualisation of space is discussed first separately, without any reference to monadology. Only after Leibniz's conceptualisation of space is clarified in its main tenets is his monadology and its relevance for Leibniz's articulation of space introduced.

2.3.1 General Discussions of Space

Some of the most famous of Leibniz's statements on space are simple clarifications of one or another aspect of his view of space, not a definition of space. It is possible to suggest that Leibniz never formulated a succinct definition of space. Therefore, in order to start a discussion of Leibniz's view of space, I adopt the following definition of space as the Leibnizian definition of this concept as it emerges from his studies on geometry: 'a set of relations between unextended (but situated) elements'.[71] This definition is suggested by De Risi in his extremely detailed and thorough study of Leibniz's heritage, which includes many previously unexplored sources. However, in order to understand Leibniz's view of space and all its implications beyond geometry, it is essential to analyse Leibniz's clarifications and elaborations of different aspects of this definition.

Leibniz's efforts at conceptualising space focus on the notions of relation and situation (*situs*) in addition to the terms 'extension' and 'point'. Some of the examples of Leibniz's discussion of the nature of space are the following: 'Space is the locus of all points.'[72] '[Space] is an order of situations, or an order according to which situations are disposed.'[73] '[S]pace is nothing else but an order of the existence of things, observed as existing together.'[74] Already these few brief quotations indicate that depending on perspective, different elements of the concept of space come to the forefront. For instance, the latter of these three quotations takes space in the most general sense referring to existence.

From the outset, Leibniz emphasises that points have no extension, in point 'nothing but situation can be considered'.[75] On the other hand, he states that

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and disseminated among different letters, pieces, and other writings. De Risi's is the most detailed and focused attempt to bring these connections forward and analyse them: Vincenzo De Risi, *Geometry and Monadology: Leibniz's Analysis Situs and Philosophy of Space* (Basel, Boston, Berlin: Birkhäuser, 2007).

[71] De Risi, *Geometry and Monadology*, 174.

[72] Ibid., 166.

[73] Gottfried W. Leibniz, 'Fifth Paper to Clarke', in L 714.

[74] Ibid., 700.

[75] Gottfried W. Leibniz, 'On Space and Point', in De Risi, *Geometry and Monadology*, 624. Here Leibniz clearly states both ideas: that a point has no extension and that in point only a situation can be considered. In this passage, Leibniz addresses point and space from the perspective of

'the basis of space' is 'the extended in itself'.[76] This basis of space is indivisible.[77] So how indivisible, extension, and non-extended elements relate to each other in Leibniz's conceptualisation of space? The key resides in the notion of relation (or order). Relation has to be something different from extension. Extension cannot be reduced to a simple sum of points (those non-extended elements) because however much you add non-extended to each other, this will never result in something extended. It is similar to adding zeros: as many zeros as you add, they will never become anything else but zero.[78] In this regard, Leibniz himself highlighted the distinction between 'made' or 'composed' and 'constituted' of something.[79] According to Leibniz space is constituted of points, not made of or composed of them. Composing something implies such operations as combination, putting something together,

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geometry and therefore discussed the mathematical point, which is also discussed here and in the next paragraph. Similar views are expressed in Leibniz's 'New System' (Gottfried W. Leibniz, 'Système nouveau de la nature et de la communication des substances, aussi bien que de l'union qu'il y a entre l'âme et le corps', published originally in *Journal des savants*, 27 June 1695, available in GP IV, 474–503, translated into English as 'A New System of the Nature and the Communication of Substances, as well as the Union between the Soul and the Body', L 453–9), where this time he distinguishes three types of points: metaphysical point, mathematical point, and physical point. Metaphysical points are for Leibniz 'real unities that are absolutely destitute of parts' and thus also have no extension. This is particularly clear in *The Monadology*, which is discussed later in this section. Only physical points that are formed 'when a corporeal substance is contracted' is divisible. Physical points are thus indivisible in appearance only' (L 456, para 11). This view of the point is in contrast with Hobbes's definition of point, which highlights that although point is considered as indivisible, it is actually only an abstraction: 'by a point is not to be understood that which has no quantity, or which cannot by any means be divided; for there is no such thing in nature; but that, whose quantity is not considered, . . . so that a point is not to be taken for an indivisible, but for an undivided thing' (DeCo III.15.2, 206). For Hobbes, the concept of point as such is not relevant to his conceptualisation of space. It only plays a role when discussing the concept of motion of bodies, which then impacts on the conceptualisation of space as discussed above. For example, the first express discussion of point in *De Corpore* appears not in chapter 7, 'Of Place and Time', where the concept of space is discussed, but in chapter 8, 'Of Body and Accident', in relation to movement of body, where he explains that when magnitude of a body is disregarded in the study of the movement of the body, this body is called a point, like the earth can be called a point when we consider its yearly revolution, the ecliptic line (DeCo II.8.12, 111).

[76] Gottfried W. Leibniz, 'De origine rerum ex formis', (1676) A.VI.3, 517–22, partially translated into English as Gottfried W. Leibniz, 'On the Origin of Things from Forms', in *The Labyrinth of the Continuum: Writings on the Continuum Problem, 1672–1686*, Richard T. W. Arthur, trans. (New Haven: Yale University Press, 2001), 119–23, 119.

[77] Ibid.

[78] See e.g., Leibniz, 'New System', L 454, para 3. See also Leibniz's letter to Electress Sophie, 31 October 1705, GP VII, 558–65, 560. Here he refers to geometry as a proof of this proposition.

[79] Gottfried W. Leibniz, 'Dynamica de potentia et legibus naturae corporeae', GM VI, 281–514, 370.

whereas constitution of something signifies a broader and less mechanical operation associated with the act of instituting, establishing something.

Another distinction, which is essential for the correct understanding of Leibniz's conceptualisation of space, is that between the situation (also called 'position' or 'location', more rarely 'place') on the one hand (thereafter I use the term 'situation' to convey this Leibnizian concept, which in Latin is denoted by the term '*situs*')[80] and point on the other. In this regard the following Leibniz's remark is particularly telling: 'The *situation* is in the *point* as well as in the *space* and, as a consequence, the situation can be without extension or diffusion and *the diffusion of the situation forms the space*.'[81] This statement clarifies that situation (*situs*) is anterior to both the point and space. In a late (1715) summary of his views, Leibniz defines situation as a mode of coexistence, and highlights that it involves not only quantity but also quality.[82] This resonates strongly with his statements on space, which highlights the nature of space as a pure possibility of relations of coexistence as logically compatible.[83] Thus it follows logically that for Leibniz space as an order of relations cannot be measurable nor divisible and is a concept emerging purely from understanding.[84] For Leibniz, space emerges from proliferation of situations,[85] because we cannot think of relations if there is only one situation. Relations emerge when situations proliferate. It is important to keep in mind that *situs* is not equivalent to a physical place and relations do not concern only the existing things or bodies but also

[80]   In contemporary legal geography and spatial justice studies, a commonly used term closely related in its meaning to the Leibnizian understanding of the concept of *situs* is 'place'. However, it has some additional connotations and uses, which might be either confusing or misleading. Therefore, when I refer to the specifically Leibnizian concept, I utilise the term 'situation' with terms 'place' or 'position' being reserved for a broader usage referring to their ordinary meanings.

[81]   'Le *lieu* est dans le *point* aussi bien que dans l'*espace*, et, par conséquant, le lieu peut être sans étendue ou diffusion et *la diffusion du lieu forme l'espace*.' Gottfried W. Leibniz, 'Examen des principes de R.P. Malebranche', 1712, in Gottfried W. Leibniz, *Opera philosophica, quae exstant Latina Gallica Germanica omnia*, Joannes Eduardus Erdmann, ed. (Berlin: G. Eichler, 1840), 690–8, 693, emphasis added.

[82]   Gottfried W. Leibniz, 'Initia Rerum Mathematicarum Metaphysica', GM VII, 17–29, 18: 'Situs est coexistentiae modus. Itaque non tantum quantitatem, sed et qualitatem involvit.'

[83]   See e.g., statement in the corresponded with Clarke, reproduced on note 73 above or the following statement in the 'Initia Rerum', 18: 'Space is an order of coexistence or an order of existence between those things that are at the same time' (Spatium est ordo coexistendi seu ordo existendi inter ea quae sunt simul) and just before that he clarifies: 'If several states of things that do not involve anything that is opposed are supposed to exist, they are said to exist at the same time.' (Si plures ponantur existere rerum status, hihil oppositum involventes, dicentur existere simul.)

[84]   The next chapter deals in detail with the relationship between space and understanding.

[85]   Leibniz, 'Principes de Malebranche', 693.

the totality of possibilities, which are thinkable simultaneously without any contradiction.

The notion of point in Leibniz's conceptualization of space can be articulated only after the role of *situs* and relations is clear. The idea of point is needed to understand the paradox of space as indivisible, nevertheless allowing for partition and measurement. Point as a real indivisible is, like situation, a mode. However, if situation as a mode indicates positioning, point as a mode indicates the extremity (of a body).[86] The extremity is situated but has no extension. Nonetheless, its situation as extremity allows imagining connection between two points (e.g., extremities of a body), which in turn allows measurement.[87] Therefore, the situation is the basis not only of space but also of extension, which can be envisaged only after situations are brought into relationships through space. Thus in Leibniz measurement and extension are only a secondary product of space as a concept but space is in no way somehow dependent on measurement and extension.

The above described emergence of space from unextended and separate elements appears as very counterintuitive and difficult to grasp. The notion, which helps grasping Leibniz's position, is that of the fold. Gilles Deleuze extensively theorised the notion of the fold in relation to Leibniz's philosophy in general and his *The Monadology* more specifically.[88] Although Deleuze does not discuss the notion of space in Leibniz explicitly, as will be demonstrated later, Leibniz's understanding of space is closely linked to his articulation of monadology, which is directly addressed by Deleuze. Therefore, the concept of the fold has the same explanatory force in relation to Leibniz's conceptualisation of space as it has in relation to Leibniz's monadology. The best image, which illustrates the notion of the fold, in turn clarifying how something can be indivisible like space but still have parts (unextended elements), is invoked by Deleuze with reference to Leibniz as follows: 'The division of the continuous must not be taken as of sand dividing into grains, but as that of a sheet of paper or of a tunic in folds, in such a way that an infinite number of folds can be produced, some smaller than others, but without the body ever dissolving into points or minima.'[89]

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[86] Mathematical point is nothing but a mode, namely extremity 'Punctum Mathematicum imsum non est nisi modus, nempe extremitas'. Gottfried W. Leibniz, 'Letter to De Bosses', 8 February 1708, GP III, 347–9, 347.

[87] Metaphysical point is addressed in more detail a few paragraphs below in relation to monadology.

[88] Gilles Deleuze, *Le pli – Leibniz et le baroque* (Paris: Les Éditions de Minuit, 1988) translated into English as *The Fold. Leibniz and the Baroque* (London: Athlone Press, 1993).

[89] Gottfried W. Leibniz, 'Placidius Philaleti', in Gottfried W. Leibniz, *Opuscules et fragments inédits*, Louis Couturat, ed. (Paris: Félix Alcan, 1903), 614–15, as translated in Deleuze, *Fold*, 6.

When it comes to defining space, Leibniz's most mature and clear definition is summarised as follows by De Risi: 'a set of relations between unextended (but situated) elements'.[90] In understanding this definition, it is important to focus on the idea of relations and the fact that according to Leibniz space is not somehow composed or made of these relations but is the relations or is constituted by them. In his famous correspondence with Clarke, he highlights this in the following way when responding to Clarke's contention that space does not depend on the situation of bodies: ''Tis true, it does not depend on such and such a situation of bodies, but it is that order which renders bodies capable of being situated, and by which they have a situation among themselves when they exist together, as time is that order with respect to their successive position.'[91]

In this brief discussion, Leibniz's conceptualisation of space emerges as a complex relational notion that unlike the traditional Newtonian absolute space does not precede bodies or phenomena and is not external to them. The idea of measure in relation to space becomes secondary, while 'relation' and 'situation' emerge as defining elements. This appears as one of the main contrasts between Leibniz's and Hobbes's conceptualisations of space. This aspect is discussed in more detail in the next section. Another significant difference between Hobbes's and Leibniz's approaches to space results from Hobbes's reliance on body as an extended material object as the basis of space, which contrasts with Leibniz's focus on points as unextended elements as extremities of the body. A complete understanding of this notion of unextended situated points as a basis of space can only be grasped in light of Leibniz's monadology or theory of substance. Monadology is most succinctly explained by Leibniz in his short treatise widely known under the same name: *The Monadology*. However, this treatise is only a condensed exposition of the main tenets of his complex philosophy.[92] The next section is dedicated to a brief discussion of the elements of monadology relevant for Leibniz's conceptualisation of space.

2.3.2 *Space and Monadology*

According to Leibniz, the most basic building block of the universe is a simple substance or monad. Comprehending the nature and activity of monads is indispensable for a correct understanding of many other areas and 'most of the

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[90] De Risi, *Geometry and Monadology*, 174.
[91] Gottfried W. Leibniz, 'Fourth Letter to Clarke', in L 687–91, 690.
[92] For a detailed discussion of the origin and context of *The Monadology*, see e.g., Lloyd Strickland, *Leibniz's Monadology: A New Translation and Guide* (Edinburgh: Edinburgh University Press 2014), section 'The Origins and Fate of the Monadology'.

important truths about God, the soul and the nature of body'.[93] Thus monadology is also central to Leibniz's conceptualisation of human cognition, which is discussed in the next chapter and also impacts his views on law and justice. Monad is a simple substance with no parts.[94] Therefore it also has no extension similarly to the point.[95] On the other hand, monads are non-situated, contrary to the point.[96] However, for Leibniz, people perceive phenomena as situated. Therefore, a question arises: how situation, extension, and space arise from non-situated and non-extended substances. The answer lies in the nature of monads and their activity.

Monads' essential activity consists in perception and constant change in perception.[97] For Leibniz, perception is a particular type of expression. Leibniz defines expression as the possibility to 'pass from a consideration of the relations in the expression to a knowledge of the corresponding properties of the thing expressed' as, for example, in the way the model of a machine expresses the machine itself or speech expresses thoughts.[98] Perception as a particular type of expression is distinguished by its ability to express multiplicity within unity, many in the one.[99] Leibniz differentiates three types of monads: monads simply, which have only perceptions and appetites;[100] souls,

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[93]   Gottfried W. Leibniz, 'Reflexions sur l'avancement de la métaphysique réelle, et particulièrement sur la nature de substance expliquée par la force', in Jacques-Bénigne Bossuet, *Oeuvres de Bossuet, évéque de Meaux, revues sur les manuscrits originaux et les éditions les plus correctes*, Vol. 37 (Versailles: J. A. Lebel, 1818), 490–5, 493, translated into English as 'Reflections on the Advancement of True Metaphysics and Particularly on the Nature of Substance Explained by Force', in Roger S. Woolhouse and Richard Francks (eds.), *Leibniz's 'New System' and Associated Contemporary Texts* (Oxford: Oxford University Press, 1997), 31–4, 32.

[94]   *The Monadology*, para 1.

[95]   Ibid., para 3.

[96]   See Gottfried W. Leibniz, 'Letter to Des Bosses', 24 April 1709, L 596–9 and note 3 at 615. See also important remarks on this letter in De Risi, *Geometry and Monadology*, note 12 at 313–14. Some authors advanced that monads are at least secondarily situated when we consider composition of bodies from monads. See e.g., Michael J. Futch, *Leibniz's Metaphysics of Time and Space* (Berlin: Springer, 2008), 155. While for the purposes of the argument in this book, this is not a decisive point, I still think it is hard to argue taking into account Leibniz's view of space for even the second-order situatedness of monads.

[97]   *The Monadology*, para. 17.

[98]   Gottfried W. Leibniz, 'What Is an Idea', L 207–8.

[99]   *The Monadology*, para. 13, 14.

[100] Leibniz uses the term 'appetite' ('appetition' in French) to designate 'the action of the internal principle which brings about change or passage from one perception to another' (*The Monadology*, para. 15). This is the second foundational defining element of monads because monads are closed (windowless) simple substances, which cannot be affected from outside in any way. Therefore, any changes happening in monads, all their activities are determined by this internal principle.

or monads 'where perception is more distinct and accompanied by memory';[101] and minds, or rational souls as monads able to have 'knowledge of eternal and necessary truths'.[102] While both souls and minds are capable of activities that they do not share with simple monads – and these distinct activities are considered in the next chapter – at the basis, all monads share the essential activity of perception. Without perception, no other activity is possible.

The content of each monad's perception is the whole world but viewed from this particular monad's perspective. Only this perceptual content (the particular perspective on the world) distinguishes monads from each other.[103] Each created monad represents the totality of the universe: 'each simple substance has relations that express all other monads and as a consequence each monad is a living perpetual mirror of the universe.'[104] The perception of each monad is perspectival. Leibniz compares the perception by each monad of the totality of the universe to a view of the same town from a different perspective: although it may appear as a multitude of different towns to some, in reality, these are just different views of the same town:

> Just as the same city viewed from different directions appears entirely differ-
> ent and, as it were, multiplied perspectively, in just the same way it happens
> that, because of the infinite multitude of simple substances, there are, as it
> were, just as many different universes, which are, nevertheless, only perspec-
> tives on a single one, corresponding to the different *points of view* of each
> monad.[105]

The concept of the point of view evokes the idea of monads as metaphysical points. The concept of a metaphysical point differs considerably from the point as a situation or from the point as extremity. Metaphysical points contrary to the other two types of points are not only exact but also real; they are not modalities like the two types of mathematical points discussed above.[106] Metaphysical points are atoms of substance and are therefore real. Despite

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[101]   *The Monadology*, para. 19. The French term is 'âme'.
[102]   *The Monadology*, para. 29. In French: 'âme raisonnable ou esprit'. I prefer to use the term 'mind' and not 'spirit' to translate French 'esprit' because it denotes better the conceptual meaning of the activity distinguishing this third type of monads, but also because 'spirit' evokes a tradition of spiritualist metaphysics with its division between matter and spirit, which is far removed from Leibniz's monadology.
[103]   Ibid., para. 9.
[104]   Ibid., para. 62 and 58.
[105]   Ibid., para. 57 (emphasis added).
[106]   Physical points are also real, but they are not exact since they are unities in appearance only; they are extended and do have parts. Leibniz, 'New System', para. 11, L 456.

being substance, they remain unextended: they are 'real unities that are absolutely destitute of parts'[107] and therefore are exact. Being real and exact at the same time, monads as metaphysical points are the ultimate source of action.

Perception as the first and foremost foundational activity of monads as we have seen makes the monads' activity perspectival and relational. In this sense, Leibniz affirms that '*mathematical points* are the *points of view* from which they express the universe'.[108] This unique point of view of each monad is an essential part of the nature of monads because as mentioned above, only this perceptual content distinguishes one monad from another. According to Leibniz, there can be no monad, which is identical to another monad. This is excluded by the principle of identity of indiscernibles.[109] Each monad has to be unique to exist. Perception produced from a particular point of view unique to each monad is the origin of situatedness of everything monads perceive. Thus, paradoxically, although monads themselves are not situated and in this sense it is wrong to say that each monad occupies a particular place not shared with another monad, the perception from a particular point of view of the monad is the very foundational enabling precondition of situatedness, relationships, and thus space.[110] A very important term that already appeared in this description of monads' activity is 'relation'. Leibniz emphasises this relational nature of the activity of monads as follows: 'each substance expresses

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[107] Ibid.

[108] Ibid.

[109] The principle is one of the central principles of Leibniz's philosophy. It states that 'there cannot be numerically distinct but perfectly similar things'. Gonzalo Rodriguez-Pereyra, *Leibniz's Principle of Identity of Indiscernibles* (Oxford: Oxford University Press, 2014), 1. The book is an excellent study on the meaning, development, and place of this principle in Leibniz's philosophy.

[110] In this sense I found very inspiring the discussion on the concept of point in Leibniz by Martial Gueroult, 'L'espace, le point et le vide chez Leibniz', (1946) 136 *Revue Philosophique de la France et de l'Étranger* 429–52, 439–41, in particular. However, this has to be read with extreme care because at times it might seem to suggest that monads occupy a place that is impossible since monads are not situated as clearly stated by Leibniz (see note 96 above). However, the available terminology and our imagination make it extremely hard to explain this unique point of view of each monad without making recourse to the language of location, place, or situation. In this regard, some misreading of Leibniz in relation to the issue of the point of view of monads results from a too materialistic and place-oriented interpretations of his analogy comparing the point of view of monads with views of the same town from different perspectives as, e.g., in Margarita R. Levin, 'Leibniz's Concept of Point of View', (1980) 12 *Studia Leibnitiana* 221–8. To avoid such misunderstandings, in my view, it is essential to remember each time that the analogy of a town viewed from different perspectives is just that: an analogy used to illustrate one and only one aspect of the activity of monads, which acquires its full meaning only if taken in connection with other characteristics of this activity and especially the non-situated nature of monads.

exactly all other substances through relations that it has with them'.[111]
Therefore, the activity of monads as perception is at the same time expressive,
perspectival, and relational.

According to De Risi's very detailed justification, which cannot be reproduced in its entirety here, the expressivity of the perception of monads is not
simply imaginative but does have an object – namely, phenomena.[112] These
phenomena represent relations between monads and thus monads themselves
since monads consist in representation of relations.[113] When representing
these nonsituated non-extended substances as relations, phenomena do so
through *situs*, through situated relations.[114] Therefore, the activity of monads
and thus of all minds is essentially reduced to the expressive perception, or in
other words to representation of relationships between monads as situations of
phenomena.[115]

In this context space emerges not as something given, but as something
constructed, something created by the mind. As De Risi writes, 'we need to
look at things from a radically different perspective – that of denying any
(substantial) reality of space, and claiming its phenomenal and ideal nature
instead'.[116] This means that space as far as existing bodies or phenomena are
concerned is real in the sense that relations between bodies/phenomena and
their situated character result in space (and time). However, as such space is
not possible, there is no empty space as in the Newtonian concept of space: 'if
there were no creatures, space and time would be only in the ideas of God'.[117]
The concept of space could be reduced to a series of relationships of compatibility and incompatibility between possibles or as Leibniz says, 'an order
among possibles as though they existed'.[118] Therefore, Newtonian abstract

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[111] *The Monadology*, para. 59: 'every substance expressing exactly all the others through the
     relations it has to them'.
[112] De Risi, *Geometry and Monadology*, 319.
[113] Ibid., 320.
[114] Ibid., 323.
[115] De Risi at some point raises the issue of what comes first, the phenomena or the monads: 'Do
     monads express phenomena or do phenomena express monads?' De Risi, *Geometry and
     Monadology*, note 17 at 320. However, for our purposes, an answer to this question is not
     required.
[116] Ibid., 314.
[117] Leibniz, 'Fourth Letter to Clarke', 690. In this correspondence, Clarke defends Newton's
     view of space.
[118] 'L'ordre entre les possible, comme s'ils existaient', Gottfried W. Leibniz, *Nouveaux essais sur
     l'entendement humain*, A.VI.6, II.13.17. Translated into English as *New Essays on Human
     Understanding*. Here the following edition is used: Gottfried W. Leibniz, *New Essays on
     Human Understanding*, Peter Remnant and Johnathan Bennett, eds. (Cambridge:
     Cambridge University Press, 1996). The reference is made to book, chapter, and paragraph,

space as an empty container, a priori framework is an absurdity from Leibniz's perspective. If there is no existence, no actualisation of theses possibles, there is no space as such, there is just an order of logical relationships between these possibles in the mind of God. Space outside of the mind of God emerges only as a result of passing to actual existence of some of these possibles and represents in essence logical relations of compatibility between these existing possibles. The spatialisation occurs only as a result of monads' activity of perception, which always occurs from a specific point of view. Therefore, space is by its nature imaginary or ideal, as it always results from monads' activity of perception.[119] But from the perspective of monadology, the reverse is also true: the activity of monads and thus the resulting perception of phenomena is necessarily spatial. This is further confirmed if the definition of space and the activity of monads as conceptualised by Leibniz are considered side by side: monads' activity is described as a representation of *relationships* between monads as *situations* of phenomena; space is defined as a set of *relationships* between *situated* elements. Thus both space and perception are relational as well as situated and therefore perspectival.

Leibniz's monadology and his general metaphysical views are not simply an important explanatory element of his conceptualisation of space but represent a foundational basis without which it is impossible to fully grasp Leibniz's views on space. In this regard, perhaps his contemporaries were never able to entirely comprehend Leibniz's conceptualisation of space because he was very hesitant to broadly publicise his metaphysical views in any significant detail. As Heinrich Schepers remarks, this might be partly due to the need Leibniz felt to first elaborate these views more fully, but mostly is attributable to his fear to be misunderstood and eventually run the danger of condemnation by church, including banning of his books.[120] Today, when most scholars focus on Leibniz-Clarke correspondence in trying to grasp Leibniz's

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so that the reader can use any edition of the essays. Leibniz's text was written in 1704 but was not published until 1765, after Locke's death.

[119] See also Leibniz, 'Fifth Paper to Clarke', where Leibniz affirms: 'Since space in itself is an ideal thing like time, space out of the world must needs be imaginary', L 701. This ideality of space in Leibniz should in no way lead to regarding his concept of space as subjective. Since this perceptual activity of monads reflects the world of phenomena as they exist and focuses on the logical relationships of compatibility between possibles brought into existence, space while being ideal is fundamentally objective. Later European philosophical tradition associating strongly ideality with subjectivity leads to misinterpretation of Leibniz's concept of space, most prominently by Russell. See Bertrand Russell, *A Critical Exposition of the Philosophy of Leibniz* (London, Routledge, 1992), chapter 5, in general and, for example, 122 in particular, where he says that space is necessarily subjective.

[120] Schepers, 'Neues über Zeit und Raum', 5.

conceptualisation of space,[121] it is even more urgent to highlight broader metaphysical underpinnings of Leibniz's concept of space. In this regard, without realising that space for Leibniz could not be defined the way it is were it not for simple substances and their activity, we simply miss many foundational elements in Leibniz's definition of space. To complicate things, even the above presentation of monads and their activity of perception sheds light on only one albeit central feature of space as conceptualised by Leibniz. Since space is foundational for the argument of this book without being the focus of this book, I conclude this section by only briefly explaining a few other elements, which enrich our understanding of Leibniz's conceptualisation of space.

First of all, Leibniz places primary emphasis on space as an order of (simultaneous) coexistents, like time being an order of successive coexistents. In this regard, order is understood in a very specific way as linked to Leibniz's concept of pre-established harmony and his theory of possible worlds[122] because what coexists and thus is ordered are not simply objects, not even phenomena, but also possibilities: '[space] is a relationship: an order not only among existents, but also among possibilities as though they existed.'[123] The implications of this vision of space for the interpretation of law and justice in Leibniz are very significant, as is made clear in the two final chapters of the book. Order for Leibniz has an absolute standard of perfection of things, which is defined as a maximum effect achieved 'with a minimum outlay, so to speak'.[124] Thus, to achieve the best possible world, there is a need to balance simplicity and variety: the greatest possible variety should be arranged according to the simplest possible laws. This order needs to be achieved in a balance between as many as possible simple substances constituting the world. All simple substances are according to Leibniz complete beings because they contain all predicates, which define them for the entirety of their existence. Being

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[121]   Here, when I say 'most scholars', I mean the majority of scholars who use Leibniz's heritage in some ways in their own context, not scholars who focus on Leibniz's thought as such. However, even Leibniz's scholars for whom space is not a central concept of analysis will often make only limited use of Leibniz's other writings in relation to the concept of space. Some elements of this argument in relation to spatial justice scholars are presented in more detail in Yahyaoui Krivenko, 'Spatial Justice in Leibniz', 4–5.

[122]   On the idea of possible worlds and its importance for space in Leibniz, see Nicholas Rescher, 'Leibniz on Possible Worlds', (1996) 28 *Studia Leibnitiana* 129–62, and Schepers, 'Neues über Zeit und Raum'. On possible worlds in Leibniz in general, see e.g., Gregory Brown and Yual Chiek (eds.), *Leibniz on Compossibility and Possible Worlds* (Berlin: Springer, 2016).

[123]   Leibniz, 'New Essays', II.13.17.

[124]   Gottfried W. Leibniz, 'De rerum originatione radicali', (1697) GP VII, 301–8, 303, translated into English as Gottfried W. Leibniz, 'On the Radical Origination of Things', L.486–91, 487.

closed and impermeable to influences and change coming from outside, they are nonetheless connected to all other simple substances through perception and representation. When creating the world God had to consider the possibilities of non-contradictory coexistence of the widest possible variety of simple substances, taking into account not only their state at the moment of their actualisation, but also all the changes each single simple substance undergoes over time. An infinite number of possibilities emerge in this process, with only one among them being selected according to the above definition of perfection and actualised. Considering that space is precisely the order of coexistence as emerging from different possibilities enclosed within simple substances and the infinite variety of their combinations, we can comprehend why space is ideal and why it makes up not only the world but also the understanding. First of all, space makes up the understanding of God,[125] if we accept Leibniz's religious premises, but also, as I argue in more detail in the next chapter, the understanding of human minds.

2.4 DIVIDE BETWEEN HOBBES AND LEIBNIZ ON THE ISSUE OF SPACE

Both Leibniz and Hobbes reject in different ways the Newtonian absolute space, space as a container of things existing independently of them. However, if in Leibniz this rejection is total and consequential, Hobbes's materialism inadvertently leads him to the maintenance of elements that make him closer to Newton than he would have perhaps wanted. This difference in the respective views on space in Hobbes and Leibniz is determining their different views on legal regulation, as explained in Chapter 4. Most remarkably, for Hobbes the defining feature of space is extension or magnitude, which is due to the centrality of body as a three-dimensional object in his materialist philosophy. In contrast to this extremely materialistic basis for space, Leibniz postulates perceptual activity of unextended, nonsituated simple substances as the basis of space. As a result, measure and thus the possibility of control of space dominate Hobbes's conceptualisation, both of which are impossible according to Leibniz's view of space. For Leibniz, space is simply

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[125] See e.g., Schepers, 'Neues über Raum und Zeit': 'Raum und Zeit … machen das Verstand Gottes aus' ('Space and time … make up the God's understanding'), 11. This is contra Rescher, who affirms: 'The only thing that links different spaces together is that one single mind (God's) can apprehend them all in thought, and this mode of cognitive consolidation is itself nowise spatial.' (Rescher, 'Leibniz on Possible Worlds', 144) The next chapter dealing with human cognition and universals addresses this issue in more detail.

put a logical order that we can try to comprehend through the human mind's activity, as discussed in the next chapter, but not control.

Hobbes's and Leibniz's visions of space intersect at one point: for both authors, the human mind's activity is essential to the conceptualisation of space. In this both Hobbes and Leibniz differ drastically from Newton's concept of absolute space. However, this dependence on the activity of the mind operates differently in Hobbes as opposed to Leibniz. In Hobbes, certain primacy of the three-dimensional body is still maintained because even if imaginary space as a phantasm is a pure production of the mind, ideal space is impossible if the mind has not first experienced the world of three-dimensional bodies: Hobbes's annihilation thought-experiment would not work if the world would have not existed in the first place prior to its annihilation. On the contrary, for Leibniz, the very activity and nature of monads as building blocks of the universe is constitutive of space. Moreover, even human mind is not per se required in order for space to exist; the activity of even the lowest level monads is already enough for space to emerge. The confusion between the idea of abstract extension more akin to the Newtonian absolute space and the concept of space in the Leibnizian sense emerges according to Leibniz because humans experience spatial relationships through their sensory apparatus.[126]

The above analysis demonstrates that although some elements of the conceptualization of space are common to Leibniz and Hobbes – most importantly, their rejection of Newtonian absolute space – space as a container existing independently of objects within it, as well as dependency of space on the activity of the human mind, they also have significant differences. This shared basis in the conceptualisation of space between Hobbes and Leibniz that nevertheless is marked by distinct characteristics on each side will facilitate arguments in the subsequent chapters as they relate to the dependency of law on visions of space. However, before this argument is developed further, it is necessary to exploit in more detail Hobbes's and Leibniz's views on the activity of the mind as the main mediating device between space and law. The discussion in the next chapter focuses on cognition as the most important element of the mind's activity leading to the emergence of law. Other elements are considered as far as they assist in the elaboration of this book's theme.

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[126] This confusion between the two notions is very common according to Leibniz and plays, I argue, a foundational role in the way we take space for granted and thus fail to include it in our analysis, for instance of international law. See more on this confusion between the two concepts in Gueroult, 'L'espace', 448.

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The Idea of Universals and Human Cognition

The preceding chapter analysing the concept of space demonstrated at the same time that an intimate link between the concept of space and the functioning of the human mind exists. Although this link appears different according to Hobbes and Leibniz, its existence as such cannot be disputed. Therefore, this chapter focuses on examining in more detail Hobbes's and Leibniz's respective approaches to the idea of human cognition to highlight further differences and similarities. It will become clear that this question of the functioning of the human mind constitutes a bridge between the concept of space and the concept of law for both Hobbes and Leibniz. Although the way this bridge connects both concepts is again different for both authors. The discussion of human cognition cannot be separated from the discussion of universals as will become clear in the course of this chapter. This question of universals, which in the early modern philosophical tradition is a cognitive or epistemological[1] question, represents at the same time the first emergence of the idea of law because the question of universal values, beliefs, and truths is always an integral part of discussions about law.

Law through its claim to objectivity at the same time assumes universal validity, at least within a certain territory. This is even truer for international law, which claims either explicitly or implicitly universal validity and standing across the globe. In the contemporary discussions of such issues as universal

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[1] During the lifetime of Hobbes and Leibniz, the term 'epistemology' did not even exist. For an overview of the history of epistemology, see Jan Wolenski, 'The History of Epistemology', in Ilkka Niiniluoto, Matti Sintonen, Jan Wolenski (eds.), *Handbook of Epistemology* (Dordrecht: Springer, 2004), 3–54. The questions raised today under the heading of epistemology or theory of knowledge were at that time discussed in relation to the nature of the human mind and human understanding, often linking it to the position of the particular philosopher on the problem of universals. This tendency is particularly visible in Hobbes and Leibniz, as will become clear in the course of this chapter.

human rights, global constitutionalism, or community interest, the idea of the universals is paramount. However, an explicit discussion of the idea of universals – what is a universal, what counts as a universal – is to the best of my knowledge mostly lacking in international law. Most authors when discussing universal values, or universality of international law and human rights, simply presume the meaning of 'universal' as given or self-evident. How problematic such an attitude can be will become clear towards the end of this book. This chapter offers an opportunity to focus on the concept of universals because in Leibniz's and Hobbes's times, this discussion was still part of philosophy. Moreover, it is tremendously important for the correct understanding of Hobbes's and Leibniz's views on law. Therefore, this chapter focuses on the ways the concept of the universal was addressed by these two philosophers. Moreover, the idea of universals in its intimate link to human cognition and the nature of truth represents an indispensable link between the concept of space and the concept of law.

The chapter proceeds by first sketching the general philosophical background against which Hobbes and Leibniz developed their views on the idea of universals. The next section discusses the central for this chapter concept of universals itself as developed in the works of Leibniz and Hobbes. This discussion reveals the intimate interrelationship between the concept of universals and the discussions on human cognition, especially the question of whether human beings are able to access truth; however this latter term may be defined. Therefore, after the approach of Leibniz and Hobbes to the idea of the universals is discussed, the next section of this chapter analyses their respective positions on the topic of human cognition as it relates to the possibility of knowing universals. The concluding section of the chapter not only summarises the arguments but also puts into relief the necessary links between concepts of space, universals, and human cognition.

3.1 GENERAL PHILOSOPHICAL CONTEXT

The way the idea of the universal influenced work of Leibniz and Hobbes can best be understood through the prism of discussions under the heading of the 'problem of universals' originating in antiquity. This problem of universals received extensive treatment and further development in scholasticism.[2]

[2]   For some examples of detailed exposition of the problem of universals as it unfolded until the early modernity, see e.g., Alain de Libera, *La querelle des universeaux: De Platon à la fin du Moyen Age* (Paris: Éditions du Seuil, 1996), or Paul Vincent Spade, *Five Texts on the Medieval Problem of Universals: Porphyry, Boethius, Abelard, Duns Scotus, Okham* (Indianapolis, Cambridge: Hackett, 1994), containing a very informative introduction. The problem of

Some philosophers of early modernity sharply distanced themselves from scholasticism; others reworked the scholastic tradition. In any event, early modernity partly changed the way the questions about the problem of the universals were asked and partly contributed to the fading away of the problem of universals from the European philosophical tradition.[3] Without going into any detail of the way the problem of the universals was addressed in antiquity or scholasticism, I briefly sketch the way the problem of universals was traditionally raised so that the context of Hobbes's and Leibniz's ideas on the topic is clear.

Very broadly the problem of universals can be summarised as follows: 'With regard to epistemology, the problem is how universal cognition of sensory particulars is possible. The metaphysical problem concerns the precise ontological status of the universal features that we grasp by means of such cognition.'[4] A related and very important question concerns 'the order of metaphysical priority between concrete particulars and universals'.[5] These three ways of approaching the problem of universals are interdependent. For example, the answer to the epistemological question of the possibility of universal cognition will often be very much influenced by the position a particular scholar adopts on the metaphysical problem regarding the ontological status of the universals. The seventeenth-century philosophy achieved a break from some main tenets of scholastic discussions on the problem of universals; therefore, the question of foundation of universals in things did not occupy seventeenth-century philosophers. However, even if philosophers agree that universals have no reality in particular existing things, the question of their existence, for example, in human minds or in God was still debated.

universals is also discussed in contemporary philosophy, but it takes different forms that are not relevant for our discussion. For some contemporary examples, see e.g., David M. Armstrong, *A Theory of Universals* (Cambridge: Cambridge University Press, 1978) in two volumes or James Porter Moreland, *Universals* (Montreal: McGill-Queen's University Press, 2001), or for an overview Gabriele Galluzo and Michael J. Loux (eds.), *The Problem of Universals in Contemporary Philosophy* (Cambridge: Cambridge University Press, 2015).

[3] For a general overview of the way the problem of universals was addressed in early modernity, including its links to antiquity and scholasticism, see Stefano Di Bella and Tad M. Schmaltz (eds.), *The Problem of Universals in Early Modern Philosophy* (Oxford: Oxford University Press, 2017), especially their introduction at 1–12 and also Martha Bolton, 'Universals, Essences, and Abstract Entities', in Daniel Garber and Michael Ayers (eds.), *The Cambridge History of Seventeenth-Century Philosophy*, Vol. 1 (Cambridge: Cambridge University Press, 1998), 178–211.

[4] Stefano Di Bella and Tad M. Schmaltz, 'Introduction to Universals in Modern Philosophy', in Stefano Di Bella and Tad M. Schmaltz (eds.), *The Problem of Universals in Early Modern Philosophy* (Oxford: Oxford University Press, 2017), 1–12, 1.

[5] Bolton, 'Universals', 178.

This way of reframing the question of universals also heightened the importance of investigating the process of human cognition. In particular, since scientific investigation came to the forefront of seventeenth-century philosophy, the nature of scientific truth and processes leading to the finding of scientific truth were central to many philosophical debates. These debates also had antecedents in scholasticism. The issue of distinction between essence and existence, as well as their relationship to eternal truths, are particularly relevant.[6] In order to present these issues in the works of Hobbes and Leibniz as comprehensively and as clearly as possible without decontextualization, the approach selected in the next two sections follows respective views of Leibniz and Hobbes, situating them against the views of some other early modern philosophers whose opinions they opposed or commented on – namely, Descartes for Hobbes and Hobbes, and Locke for Leibniz.

3.2 what are universals?

Traditionally the problem of universals emerged because humans observed certain features in the world shared by many individual objects. This observation led to an enquiry about the status and reason for the recurrence of these features. Common examples in philosophical discussions include the rationality of men, form of horses, or other animals, or features of a triangle. Some of the typical ways of dealing with this problem are to see the recurring three sides of a triangle as a reflection of some ideal entity existing in God or in the triangle itself. As highlighted in the first chapter, the seventeenth century with its scientific spirit led to the popularity of mechanical philosophies, which emphasised materialism. Therefore, at that time a general agreement on the non-existence of universals in things was reached. However, the continuing importance of Christian beliefs complicated some of these discussions because the philosopher, while affirming materialism, had to strike a fine balance between the materiality of the world and main tenets of Christianity. Thus, while many early modern philosophers viewed universals as only concepts or ideas, they still differed significantly as to the nature of these ideas with

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[6] For a general overview of the origins of the debate, see John Wippel, 'Essence and Existence', in Robert Pasnau (ed.), *The Cambridge History of Medieval Philosophy*, Vol. 2 (Cambridge: Cambridge University Press, 2009), 622–34. Another useful way of understanding this debate and its influence on early modern philosophy is through the work of Francisco Suárez, who while still working in a scholastic tradition held many original views that influenced early modern philosophers. See e.g., Marco Sgarbi (ed.), *Francisco Suárez and His Legacy: The Impact of Suárezian Metaphysics and Epistemology on Modern Philosophy* (Milano: Vita e Pensiero, 2010).

some affirming that human cognition of universal ideas or concepts is possible due to the source of these universal ideas in the divine mind. Leibniz, with his firm stance on the existence of innate, natural, and eternal necessary truths, represents this stream of early modern philosophers who to various degrees maintained the link between the materialist rationality of human cognition and the world of spiritual or divine forces. Hobbes can be viewed as one of the exemplary mechanical materialist philosophers who attempted an explanation of all issues from movement of matter, avoiding any reliance on spiritual or divine forces.

3.2.1 *Hobbes*

Hobbes and Leibniz had quite contrasting views on the problem of universals. Although it cannot be said that they were on opposite sides of the spectrum on all issues related to the idea of universals, they did express conflicting views on several foundational aspects of the topic. The most obvious and well-known opposition between Leibniz and Hobbes on the issue of universals is apparent in Leibniz's rejection of Hobbes's extreme nominalism.[7] According to Hobbes, 'there is *nothing universal* but *names*'.[8] This position was labelled by Leibniz as 'super-nominalism'.[9] The extreme character of Hobbes's opinion can best be appreciated against the backdrop of prevailing opinions at the time, most importantly that of Descartes.[10]

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[7]   Medieval nominalism is defined as 'the view that universals are nothing but general concepts or linguistic names' placing emphasis on the absence of foundation of universals in physical things: Bolton, 'Universals', 183. Medieval and following them some early modern nominalists would, however, accept the reality of universals in the mind. Nonetheless, the specific nature of this reality, its degrees were debated along with the issue of whether the mind where universals existed is the mind of God or the finite minds of human beings. Some of these debates are reflected in the below discussion of Leibniz's and Hobbes's views on universals.

[8]   Thomas Hobbes, *Human Nature or the Fundamental Elements of Policy. De Corpore Politico: Or the Elements of Law*, G. A. John Rogers, ed. (Bristol, Thoemmes Press, 1994), I.5.6, 22.

[9]   Gottfried W. Leibniz, 'Dissertatio preliminaris de alienorum operum editione, de Scopo operis, de Philosophica diction, de lapsibus Nizolii', (1670) GP IV 131–76, 158 ('pluquam nominalis'), partially translated into English as Gottfried W. Leibniz, 'Preface to an Edition of Nizolius', L 121–30, 128. For an interesting discussion of this labelling of Hobbes as super-nominalist, see Wolfganf Hübener, 'Ist Thomas Hobbes Ultranominalist gewesen?', (1977) 9 *Studia Leibnitiana* 77–100.

[10]   I sketch here only the main elements necessary for the further discussion. For an example of a more detailed analysis with further references, see e.g., Marcus P. Adams, 'The Wax and the Mechanical Mind: Reexamining Hobbes's Objections to Descartes's Meditations', (2014) 22 *British Journal for the History of Philosophy* 403–24. On the broader relationship between Hobbes and Descartes, see for instance Dominique Weber (ed.), *Hobbes, Descartes et la métaphysique* (Paris: Vrin, 2005).

The nominalist position as such and rejection of the reality of universal *things* was quite common and appeared already in medieval times.[11] However, Hobbes's extremism led him to the rejection of the existence not only of universal things but also of universal *ideas*: '[T]he name 'universal' is not the name of some thing existing in nature, nor of an idea or of some phantasm formed in the mind, but is always the name of some vocal sound or name.'[12] Descartes, in line with the spirit of the time, clearly held that universals are ideas.[13] However, he also said that they are in human understanding or modes of thinking[14] and they have a true and immutable nature.[15] This raised several discussions about implications of Descartes's view on the problem of universals. In particular, his emphasis on the eternal and immutable nature of these ideas led some scholars to argue that Descartes had to accept that these ideas existed in God's mind, for example, because otherwise they cannot be eternal: they would not have existed before creation, and they would cease if human beings are extinguished. Hobbes also opposed many of the Descartes's views in this regard. In several of his objections to Descartes's *Meditations*, Hobbes made clear why Descartes's rationality and materialism are only partial. Thus, in his tenth objection, Hobbes criticises among others the affirmation by Descartes that the idea of God is born and resides in us, in human beings. Hobbes's criticism is typical of his materialist orientation: 'I should like to know if the souls of people who are in a deep, dreamless sleep are thinking. If they are not, they do not have any ideas at the time. It follows that no idea is innate; for what is innate is always present.'[16]

First, Hobbes interprets Descartes's view that ideas are born and reside in us as signifying the existence of ideas and thus universals, a position he as a consequential nominalist and materialist rejects. For Hobbes even the thinking process itself is just a material process explicable through movement of matter; therefore ideas – even universal ideas – being immaterial, just concepts, cannot be said to exist.

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[11]   See above notes 3 and 7.

[12]   DeCo I.2.9, 20.

[13]   See e.g., René Descartes, 'Principles of Philosophy', section 59 in John Cottingham, Robert Stoothoff, Dugald Murdoch (trans.), *The Philosophical Writings of Descartes*, Vol. I (Cambridge: Cambridge University Press, 1985), 177–291, 212. The original text is available, e.g., in Charles Adam and Paul Tannery (eds.), *Oeuvres de Descartes*, Vol. 8 (Parsi: Vrin, 1982).

[14]   Ibid., section 58.

[15]   René Descartes, *Meditations on First Philosophy*, Fifth Meditation in John Cottingham, Robert Stoothoff, Dugald Murdoch (trans.), *The Philosophical Writings of Descartes*, Vol. 2 (Cambridge: Cambridge University Press, 1984), 44. The original text is available in Charles Adam and Paul Tannery (eds.), *Oeuvres de Descartes*, Vol. 7 (Paris: Vrin, 1983).

[16]   Ibid., 132.

Another important aspect of Hobbes's position is highlighted by his four-teenth objection. This objection is directed at one of Descartes's clearest statements affirming the existence of immutable and eternal essence of things. In this statement, Descartes starts by affirming that even if a triangle would not exist in this world, and would have never existed, a human being still could imagine a triangle with all its properties as we know it. And this triangle conceived only in the mind would have 'a determinate nature, or essence, or form of the triangle which is immutable and eternal, and not invented by me or dependent on my mind'.[17] Hobbes objects first by highlighting that a triangle that exists nowhere cannot have a nature. According to him humans can conceive of things only if they experienced them in one way or another. He admits that once humans have conceived an idea of the thing they call triangle, even if this thing (the triangle) does not exist anymore, the *name* of the thing and thus its concept will remain, but this does not mean for Hobbes that the *nature* of the thing will remain. He adds another example to clarify his point: 'Similarly, the proposition "Man is an animal" will be eternally true because the names are eternal; but when the human race ceases to be, there will be no human nature any more.'[18] Hobbes then concludes by saying that essence of a thing when it is distinguished from the existence of the thing is nothing more than an assemblage of names with the help of the verb 'is'.[19]

This brief discussion of the differences between views of Descartes and those of Hobbes highlights the extremely consequential nominalism of Hobbes, which places him apart from many early modern philosophers. In relation to Descartes, contemporary scholars produced conflicting interpretations of his view of universals ranging from reading in Descartes's Christian Platonist affirmation of existence of eternal essences in God[20] to defences of pure conceptualism of Descartes, namely reduction of essences and eternal truths about them 'to the objective being of innate intellectual ideas in the human mind'.[21] Although the

[17]   Ibid., fifth meditation, 45.
[18]   Ibid., 136.
[19]   Ibid.
[20]   See, e.g., views in Marleen Rozemond, 'Descartes's Ontology of the Eternal Truths', in Paul Hoffman, David Owen, and Gideon Yaffe (eds.), *Contemporary Perspectives on Early Modern Philosophy: Essays in Honor of Vere Chappell* (London: Broadview, 2008), 41–63, and Tad M. Schmaltz, 'Platonism and Descartes's View of Immutable Essences', (1991) 73 *Archiv für Geschichte der Philosophie* 129–70.
[21]   Lawrence Nolan, 'Descartes on Universal Essences and Divine Knowledge', in Stefano Di Bella and Tad M. Schmaltz (eds.), *The Problem of Universals in Early Modern Philosophy* (Oxford: Oxford University Press, 2017), 87–116, 88. Nolan is one of the strongest defenders of this interpretation, but he points out himself – he is not the only one. The cited chapter contains further references to other scholars holding similar views.

latter position is extremely persuasive,[22] Hobbes's objections demonstrate how, perhaps unintendedly, through the use of scholastic terminology[23] and less attention to the role of language compared to Hobbes, Descartes slipped into the reification and objectification of ideas, concepts, and thus of universals. This extreme position of Hobbes on the problem of universals raises serious questions about the possibility of knowledge and truth: if everything is just a linguistic convention, how can scientific knowledge and truth be achieved? The next section of this chapter will focus on Hobbes's and Leibniz's approach to human cognition; however, a few remarks connecting Hobbes's nominalism and his conceptualisation of truth are necessary here.

For Hobbes, restriction of universals to names did not mean a complete arbitrariness and absence of possibility for discovering truth. For instance, Hobbes effectively admitted that the agreement among humans to use a universal name for a group of individual things is based on the similarity people observe in things: 'One universal name is imposed on many things for their similitude in some quality, or other accident.'[24] However, Hobbes does not equate 'similitude in some quality or other accident' with the essence or nature of things: 'For considering that new names are daily made, and old ones laid aside; that diverse nations use different names, and how impossible it is either to observe similitude, or make any comparison betwixt a name and a thing, how can any man imagine that the names of things were imposed from their natures?'[25]

Thus, placing both statements side by side strengthens the following central argument of Hobbes: names are not imposed on things because of the nature of things, but because of some similitude between things. Two important consequences follow from this: first, based on the fact that similitude does not amount to the nature of things, it is normal for Hobbes that different groups of people will form different ways of grouping things, different concepts, and as a consequence different approaches to naming them. Therefore, the structural differences in languages and the impossibility of a direct translation from one language to another is easily explained. This also highlights the importance of collective agreement, which plays, as will be demonstrated in the next chapter, such

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[22] See, in particular, the work of Lawrence Nolan on Descartes.
[23] An important term in this context is 'idea', which prior to Descartes had a very specific meaning related to Plato's philosophy. However, Descartes appropriated the term but transformed its meaning. See a discussion of this in Roger Ariew and Marjorie Grene, 'Ideas, in and before Descartes', 1995 (56) *Journal of the History of Ideas* 87–106.
[24] Lev I.4, 21.
[25] DeCo I.2.4, 16.

a central role in Hobbes's concept of state and the ensuing concept of law, from a new angle. Second, human cognition according to Hobbes has to rely on the use of names given to things, names that do not really explain the nature of things or connect to that nature. Hobbes's extreme form of nominalism effectively places language and linguistic conventions of usage among humans at the forefront not only of his discussion of universals but also of his theory of knowledge. This in turn plays a decisive role in the articulation of his views on law and politics as the next chapter demonstrates.

3.2.2 *Leibniz*

Leibniz can also be legitimately called nominalist, at least if we define as a nominalist someone 'who denies that there are abstract entities, asserts that only concrete individuals exist and in consequence considers that all meaningful statements appearing to be about abstract entities must somehow be rephraseable as statements more clearly concerning concrete individuals only'.[26]

Leibniz's stance on nominalism as this strand of thought was commonly understood in his time is most clearly expressed in his preface to an edition of Nizolius. Overall, Leibniz expresses his approval of nominalism, calling it 'the most profound of all the Scholastics, and the most consistent with the spirit of our modern philosophy'.[27] He defines nominalism as follows: 'Nominalists are those who believe that all things except individual substances are mere names; they therefore deny the reality of abstract terms and universals forthright.'[28] However, Leibniz also expresses certain views on nominalism, which place him apart from other nominalist thinkers. In particular, despite the central place Leibniz and Hobbes reserved for language in their account of truth and knowledge, despite significant influence Hobbes exercised on Leibniz, Leibniz held views that separated him from Hobbes significantly. Most importantly, contrary to Hobbes, Leibniz admitted existence of eternal, universal, and necessary truths.

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[26] Benson Mates, *The Philosophy of Leibniz: Metaphysics and Language* (Oxford: Oxford University Press, 1986), 170. See also arguments for Leibniz as a nominalist in Stefano Di Bella, 'Some Perspectives on Leibniz's Nominalism and Its Sources', in Stefano Di Bella and Tad M. Schmaltz (eds.), *The Problem of Universals in Early Modern Philosophy* (Oxford: Oxford University Press, 2017), 198–219.

[27] Leibniz, 'Preface to Nizolius', 127.

[28] Ibid., 128.

The current scholarship is still torn in difficulties in trying to discern how precisely Leibniz conceived of this existence of eternal truths. On the one hand, it is clear that Leibniz affirmed that real things are only concrete, not abstract entities. Abstract entities for Leibniz are just modes of thinking.[29] On the other hand, when turning to the idea of essences and possibles, Leibniz made several statements, which can be interpreted as affirming the existence of eternal truths, ideas, and essences.[30] One very powerful statement is made in *Theodicy*:

> Evil springs rather form the *Forms* themselves in their detached state, that is, from the *ideas* that God has not produced by an act of his will, any more than he thus produced numbers and figures, *and all possible essences* which one must regard as eternal and necessary; for *they are* in the ideal region of possibles, that is, *in the divine understanding*.[31]

This statement contains two important elements. First, as emphasised, Leibniz clearly states that ideas and all possible essences are not *produced by* but *are in* the divine understanding. The second element will become important later and relates to the example of numbers and figures mentioned here: numbers and figures are not produced either; they are in the divine understanding. In a short essay published in 1990 Fabrizio Mondadori brought forward numerous other statements on the same problem from Leibniz's voluminous scholarly work where the 'are' of the statements similar to the one quoted here is even more directly associated with presence and existence.[32] At this stage it is not necessary to resolve any of these difficulties, but to highlight that despite Leibniz's attitude towards abstract language, which is very similar to Hobbes's, he still firmly held to certain reality of essences, ideas, and truths, unlike Hobbes.

In order to better understand the difference between Hobbes and Leibniz on this point, a few more words about Hobbes's view on truth and science are necessary. According to Hobbes, truth is a property of language as a discourse.

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[29] For a powerful defence of this thesis, see Benson Mates, *The Philosophy of Leibniz*, 171–3.

[30] See, for instance, Gottfried W. Leibniz, *Essais de Théodicée sur la bonté de Dieu, la liberté de l'homme, et l'origine du mal* (1710) GP VI, 1–487, I.20; translated into English as Gottfried W. Leibniz, *Theodicy. Essays on the Goodness of God, the Freedom of Man and the Origin of Evil*, Austin Farrer, ed., E. M. Huggard, trans. (Chicago and La Salle: Open Court, 1990), I.20, 135: 'eternal verities which are in the understanding of God, independently of his will'. In addition to the page number, I indicate chapter and paragraph so that the reader can consult any edition of this book.

[31] Ibid., II.335, 326–7 (emphasis added except the first emphasised word).

[32] See Fabrizio Mondadori, 'Review of the Philosophy of Leibniz by Benson Mates', (1990) 99 *The Philosophical Review* 613–29, 622–6.

As explained earlier in this section, this position is closely tied to Hobbes nominalism – namely his view that the only universals are names. Thus, in Leviathan, Hobbes states: '*[T]rue* and *false* are attributes of speech, not of things. And where speech is not, there is neither *truth* nor *falsehood*; *error* there may be.'[33] And again, 'truth consisteth in the right ordering of names in our affirmations'.[34] However, as already mentioned, for Leibniz truth is not a simple convention, at least not the universal eternal truths to which Leibniz also equated precepts of justice. For instance, in his *Elements of Natural Law*, Leibniz states:

> The doctrine of Right belongs to those sciences which depend on definitions and not on experience and on demonstrations of reason and not of sense. . . . For since justice consists in a kind of congruity and proportionality, we can understand that something is just even if there is no one who practices it or upon whom it is practiced. Just so the relations of numbers are true even if there is no one to count and nothing to be counted. . . . We need not wonder, therefore, that the principles of these sciences possess eternal truth.[35]

This is quite an early work of Leibniz. However, this comparison between truth and method in the science of right and science of mathematics is one of the features of Leibniz's thought that did not change over time. In a late piece 'Reflections on the Common Concept of Justice' a piece dated to 1703,[36] Leibniz expresses the same idea. After explaining the distinction between eternal necessary truths and truths that are changeable and arbitrary using the example of arithmetic, Leibniz affirms:

> This same thing is true of justice. If it is a fixed term with determinate meaning . . . the term or word *justice* will have some definition or intelligible meaning. And by using the incontestable rules of logic, one can draw definite consequences from every definition. This is precisely what we do in building the necessary and demonstrative sciences which do not depend at all on facts but solely on reason; such as logic, metaphysics, arithmetic, geometry, the science of motion, and the science of Right [droit] as well.[37]

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[33] Lev I.4, 23

[34] Ibid.

[35] Gottfried W. Leibniz, *Elementa Juris naturalis* (1669–71) A.VI.1, 431–88, translated into English as Gottfried W. Leibniz, 'Elements of Natural Law' L 131–8, 133.

[36] Although this piece is usually referred to as a single work following the first edition of this work by Mollat and Loemker's English translation, the recent scholarship demonstrates that these are actually two different pieces. The dating of these two pieces to 1703 is also the result of this same research. The original text of both pieces with detailed editorial notes can be found in Wenchao Li (ed.), '*Das Recht kann nicht ungerecht sein . . .*' *Beiträge zu Leibniz' Philosophie der Gerechtigkeit* (Stuttgart: Franz Steiner Verlag, 2015), 140ff. Following the usual convention, the work is referred here as 'Reflections on the Common Concept of Justice' L 561–73.

[37] Leibniz, 'Common Concept of Justice', L 563–4.

These eternal and necessary truths, which include the principles of the science of right according to Leibniz, have certain existence and are discoverable by human reasoning. The next section discusses this process of discovery through human reasoning that also sheds more light on the nature of truth.

The issue of the nature of truth and human knowledge as it relates particularly to eternal truths represents the dividing line between Hobbes and Leibniz. Thus, in his 'Preface to Nizolius', Leibniz expresses his disagreement with Hobbes in the following way: 'For not content like the nominalists, to reduce universals to names, he says that the truth of things itself consists in names and what is more, that it depends on the human will, because truth allegedly depends on the definition of terms, and definitions depend on the human will.'[38]

This interpretation of Hobbes's position provided here by Leibniz is an overstatement, because, as mentioned previously, the arbitrariness of names and definitions in Hobbes's view are not such that a simple act of will as whim determines definitions. Hobbes argued that names have a basis in reality and that one of the main purposes of naming, definition, and language is communication. For this reason alone, it is not possible to say that the human will determines definitions in the sense suggested by Leibniz. The close connection between Leibniz and Hobbes on the issue of universals and truth is particularly visible in a dialogue written by Leibniz in August 1677 and aimed expressly at Hobbes's identification of truth with arbitrariness (at least in Leibniz's and some other scholars' readings of Hobbes).[39] First, in this dialogue Leibniz expresses the foundational agreement with Hobbes on the following point: 'no truth is ever known, discovered, or proved by me except by the use of words and other signs presented to the mind.'[40] The disagreement is expressed in the next logical step of this dialogue when Leibniz contests the *complete* arbitrariness of signs: 'although characters are arbitrary, their use and connection have something which is not arbitrary, namely a definite analogy between characters and things, and the relations which different characters expressing the same thing have to each other.'[41] According to my reading of Hobbes, he would not disagree with Leibniz on this. As discussed previously, Hobbes effectively admitted to the

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[38]   Leibniz, 'Preface to Nizolius', L 128.

[39]   Gottfried W. Leibniz, 'Dialogus', (1677) GP VII, 190–3, translated into English as Gottfried W. Leibniz, 'Dialogue' L 182–5. Hobbes is not named in this Dialogue, but it is clear that Hobbes's views whom Leibniz calls 'a very gifted writer' are targeted here. See L 182, and Martha B. Bolton, 'Leibniz and Hobbes on Arbitrary Truth', (1977) 3 *Philosophy Research Archives* 242–73, 258.

[40]   Leibniz, 'Dialogue', L 183. This obviously does not imply Leibniz's agreement with Hobbes's view that truth is by its nature *always* linked to words or speech.

[41]   Ibid., 184.

existence of a connection between signs or names of things and things themselves.[42] Even Leibniz's understanding of the nature of these connections would not be inacceptable to Hobbes. Leibniz effectively clarifies that characters or signs always maintain a certain order or 'complex mutual relation [situs]' which 'fits the things',[43] and this relation (*situs*) or connection and coordination is the basis of truth.[44] This position perfectly fits Hobbesian materialism. Moreover, Hobbes himself suggested something similar when he said that names are imposed on things because of some similitude observed in their qualities.

The real disagreement between Leibniz and Hobbes arises at the next stage, when Leibniz enquires about the nature of truth or perhaps its logical origin. For Leibniz, this similitude or relation exists not only between things and their names but also between things themselves. This later type of relation is moreover independent of the human mind, but discoverable by it. This argument about the nature of truth is closely linked to Leibniz's conceptualisation of human cognition, which is discussed in the next section. Here I illustrate this point by presenting Leibniz's views on Locke's *An Essay Concerning Human Understanding*.[45]

Leibniz's response to Locke's essays is a book-length series of arguments developed in a dialogical form. Therefore, there are many subtle aspects to Leibniz's disagreements with Locke, which cannot be addressed here. I focus on only one aspect that further highlights the degree of difference on the issue of the nature of truth between Leibniz and Hobbes. Locke's view of universals is very close in many regards to that of Hobbes. In particular, similarly to Hobbes, Locke held that 'general and universal belong not to the real existence of things; but are the inventions and creatures of the understanding, made by it for its own use, and concern only signs, whether words or ideas'.[46] Although Leibniz agrees on many of the elements affirmed in this statement by Locke, one of the main disagreements relates to the affirmation that *everything* is a creation of the human mind. Leibniz produces several arguments demonstrating that certain ideas and principles are innate, necessary, and eternal. Leibniz insists that they still need to be proven, but to him this does not diminish or deny their character as innate and eternal truths.[47] It is also highly symbolic that the issue of innate ideas is the first

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42 See previous section, especially text on note 24.
43 Leibniz, 'Dialogue', L 184.
44 Ibid.
45 John Locke, *An Essay Concerning Human Understanding* (London: The Basset, 1690).
46 Leibniz, *New Essays*, III.3.11.
47 Ibid., I.1, 72. On the relationship between innateness of truths and their eternal character, see the below section 'Innate and Eternal Truths, Senses, Reason, and the Human Brain'. For the moment, suffice it to say that the eternal character of truths stems from their location in the

addressed in Leibniz's response: indeed, book one of *New Essays* is entitled 'Innate Ideas' and is placed before book two, which treats ideas in general. Since innate ideas or truths are not and cannot be explained by reference to material processes, Hobbes would never accept such a view.[48] As already noted, these divergent positions on the problem of universals are intimately tied to Hobbes's and Leibniz's respective theories of knowledge, especially the question of how human beings arrive at knowledge of truth.

3.3 KNOWLEDGE OF UNIVERSALS AND DISCOVERY OF TRUTH

For those scholars who held that universals existed in one form or another, the question of their knowledge was also of paramount importance. It is one thing to affirm that something exists but another to know its nature and properties. Moreover, it was important for all scholars to explain how from their particular position in relation to the problem of universals, the attainment of truth in knowledge or in other words genuine scientific knowledge is possible. Leibniz's approach to the issue is less systematic and ordered compared to that of Hobbes, the main reason being that Leibniz's main work on the topic is a chapter-by-chapter disputation of Locke's *An Essay Concerning Human Understanding*. Other elements of his thought on the topic are dispersed across his voluminous work over the years. Hobbes's work on the topic is more systematic due to his general approach to philosophy focused on producing exposition of elements faithful to the geometrical method as explained earlier.

3.3.1 *Hobbes*

Due to Hobbes's particular approach to the problem of universals, his main challenge was to demonstrate how knowledge can emerge from the use of language, which, as mentioned before, was conceived by Hobbes as an arbitrary – although based on some observable similarity – imposition of names. Hobbes's approach to the issue is influenced by his effort at providing a materialistic and mechanistic explanation of all issues raised in his philosophy. In particular, the idea that everything should be explainable through the

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God's mind while their innate character emphasises their imprint, presence in the minds of humans.

[48]   On the extent and reasons for Leibniz's opposition to Hobbes's materialism, especially in his later writings, which is linked to their respective divergent views on human thought processes discussed in the next section, see the very brief but insightful Stewart Duncan, 'Leibniz on Hobbes's Materialism', (2010) 41 *Studies in History and Philosophy of Science* 11–18.

movement of matter was a central driving force behind many of his philoso-
phical explanations. This is also true with regard to the question of human
cognition. Hobbes's extreme nominalism is another important element in the
full comprehension of Hobbes's theory of knowledge. In particular, since
Hobbes, unlike Leibniz, rejected the objective existence of universal ideas
or truths, the question about the nature of truth for Hobbes takes an entirely
different shape. This question becomes particularly important in relation to
the issue of the possibility of scientific enquiry and scientific truth. Since
Hobbes included political science or the science of commonwealth in his
system of philosophy as a scientific discipline, these considerations are highly
relevant to the discussion in the following chapters. Law being one of the
building blocks of the commonwealth, Hobbes's theory of knowledge and
scientific truth is equally important to a full understanding of his conceptua-
lisation of law.

According to Hobbes, all conceptions we have are originally produced by
the action or movement of a thing (material body) that is an object of our
conception: 'For there is no conception in a man's mind, which hath not at
first, totally, or by parts, been begotten upon the organs of Sense.'[49] He calls
such action 'sense' if the object is present.[50] Importantly, this production of
conceptions of external bodies in human minds is explained as a series of
movements from the object, to the sensory organ of the human body, and then
within the human body from the sensory organ to other organs until the
conception is produced.[51] Once the object, which acts upon our sensory
organs, is not present anymore, this does not mean for Hobbes that the
conception we have of the object disappears completely. He affirms that
these images or conceptions of things remain in us but in a more obscure
form – like a movement, which becomes lighter but does not disappear
immediately. [52] This decaying conception or sense is called by Hobbes
'imagination'.[53] In this brief description of the basis of human cognition, the
central place of sensory perception as well as of image-based conceptualisation
of the whole cognitive process has to be highlighted.[54] The significance of the

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[49] Lev I.1, 1; see also Hobbes, *Elements of Law* I.2.2, 3.
[50] Ibid.
[51] Ibid., II.8–9, 6–8.
[52] Ibid., III.1, 9.
[53] See ibid. and I.2, 3–6.
[54] For more on sense and imagination in Hobbes with further references, see Cees Leijenhorst,
'Sense and Nonsense about Sense: Hobbes and the Aristotelians on Sense Perception and
Imagination', in Patricia Springborg (ed.), *The Cambridge Companion to Hobbes's Leviathan*
(Cambridge: Cambridge University Press, 2007), 82–108.

latter element is also visible in the important place attributed by Hobbes to the discussion of optics in *De Homine*.[55]

Memory is also conceptualised by Hobbes as decaying sense: 'when we would express the *decay*, and signifie that the Sense is fading, old and past, it is called *Memory*. So that *Imagination* and *Memory*, are but one thing, which for diverse considerations hath diverse names.'[56] Finally, Hobbes defines the most developed cognitive facility – namely understanding as imagination raised by words or other voluntary signs.[57] He recognised that this general type of understanding is common to humans and animals. However, in humans understanding can take another unique form, which is not observable in animals, namely the understanding of 'conceptions and thoughts, by the sequel and contexture of the names of things into Affirmations, Negations, and other forms of Speech'.[58] Hobbes calls this type of understanding 'mental discourse' or also 'consequence or trayne of imagination'.[59] For the simplicity of distinction between these two types of imagination, I will use 'understanding' to designate the first type common to men and animals and 'reasoning' to designate the second type specific to humans.[60] Thus, basically, reasoning for Hobbes is simply an able use of speech guided by method[61] while truth is

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55 The majority of *De Homine* deals with optics. Traditionally, scholars were perplexed by the dominance of optics in a book dedicated to a human being. However, the centrality of images to human cognition explains this fact well. Moreover, optics, dealing with images produced by light, not by bodies directly like in the case of touch or taste, could not be as easily explained by direct action of physical bodies, which is treated in *De Corpore*. For a detailed analysis of the place of optics in *De Homine*, see Christoph Béal et al., 'Introduction', in Thomas Hobbes, *De L'homme. De Homine* (Paris: Vrin, 2015), 12–174, 31–83.

56 Lev I.2, 6.

57 Lev I.2, 11. The notion of sign and words as signs are essential and even foundational to a Hobbesian understanding of truth and knowledge. For a detailed argument, see Éric Marquer, 'Le signe et les fondements de la certitude chez Hobbes', (2016) 16 *Methodos. Savoirs et textes*, available online: https://journals.openedition.org/methodos/4629 (last visited 1 August 2019).

58 Lev I.2, 11. In *De Homine* this is described as follows: 'Speech or language is the connexion of names constituted by the will of men to stand for the series of conceptions of the things about which we think. Therefore, as a name is to an idea or conception of a thing, so is speech to the discourse of mind.' DH X.1, 37.

59 See the title and the first sentence of chapter II in *Leviathan*. This terminology is not used in *De Homine*. There, Hobbes simply proceeds to discussing this peculiar human type of understanding.

60 Hobbes uses the term 'reason' and 'reasoning' in a more restrictive sense in chapter V of *Leviathan*. In order to distinguish it from the reasoning in a broad sense, I will use the term 'reason' when possible, or 'technical reasoning' and 'reasoning in a strict sense' for this latter type of intellectual activity, which is discussed few sentences later and has bearing on Hobbes's understanding of truth.

61 DeCo I.1.1, 1–3.

something, which refers to the way we use speech and words, not to the nature of things.[62] This method and the corresponding nature of truth are important for the correct understanding of Hobbes's conceptualisation of law and are therefore presented in more detail in the next paragraph.

The reason for Hobbes is computation or reckoning, two terms used as synonyms in English translations for the same Latin word '*computatio*'.[63] *Leviathan* provides a more nuanced and later than *De Corpore*, despite what date of publication might indicate explanation of reason as computation.[64] Computation is basically adding and subtracting.[65] Computation applies to 'consequences of general names agreed upon for the marking and signifying of our thoughts'.[66] As explained above, for Hobbes names are attributed arbitrarily,[67] but not randomly. Language is used by human beings for 'the remembrance of the consequence of causes and effects' through an imposition 'of names and the connexion of them'.[68] As already mentioned, the imposition of names is not connected for Hobbes to the essence or nature of things. Hobbes rejected essentialism. The imposition of names is determined by some similitude observable in bodies or things, and as already mentioned, this similitude for Hobbes is not reflective of the nature of things. Moreover, since imposition of names happens in the thought process that is directed by some human desire, we can also affirm that the imposition of names is determined by human needs.

This understanding of reason as reckoning transformed through speech should be read in conjunction with Hobbes's description of the 'train of thoughts' peculiar to human beings. As already mentioned, Hobbes defines understanding as imagination raised by voluntary signs. In men these voluntary signs take the form of language. By 'train of thoughts', Hobbes understands 'succession of one thought to another' or 'mental discourse'.[69] When this

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[62] DeCo I.3.7–8, 35–36. For a good summary of the dependence of truth on language and able use of language see Stewart Duncan, 'Hobbes on Language: Propositions, Truth and Absurdity', in Aloysius P. Martinnich and Kinch Hoekstra (eds.), *The Oxford Handbook of Hobbes* (Oxford: Oxford University Press, 2016), 60–75.

[63] Compare different English translations of Lev I.5, 30 and DeCo.I.1.2, 3. In general on Hobbes's approach to reason and place of reason in his philosophy, see Jean-Marc Chadelat, '"For REASON . . . Is Nothing but *Reckoning*": The Postulates of Hobbes's and Descartes's Rationalism' 12 (2014) *Revue LISA/LISA e-journal*, available online: http://journals .openedition.org/lisa/6307 (last visited 1 August 2019).

[64] For this argument, see Jeffrey Barnouw, 'Reason as Reckoning: Hobbes's Natural Law as Right Reason', (2008) 21 *Hobbes Studies* 38–62.

[65] Multiplication and division are reducible to adding and subtracting. Lev I.5, 29–30.

[66] Ibid., 30 emphasis omitted.

[67] See e.g., Hobbes, *Elements of Law*, I.4.11, 18, 'names imposed arbitrarily by men'.

[68] Lev I.4, 20–1.

[69] Lev I.3, 11.

succession of thoughts is regulated by some desire or design, it becomes more constant.[70] In human beings it takes a particular form: 'the discourse of the mind, when it is governed by design, is nothing but seeking, or faculty of invention, which the Latins called *sagacitas*, and *solertia*; a hunting out of the causes, of some effect, present or past; or of the effects, of some present or past cause.'[71]

This description of thought process demonstrates that the process of thinking is dependent on language. For Hobbes speech or language is a very powerful tool allowing humans to remember consequences of our thoughts, namely these particular causes and effects discovered through thinking process. Thus, Hobbes notes that one of the uses of language is 'the registering of the consequences of our thoughts; which being apt to slip out of our memory, and put us to a new labour, may again be recalled, by such words as they were marked by'.[72] This connection between speech and thought process becomes central to Hobbes's understanding of science, truth, and ultimately law.

This depiction of thought process driven by human needs and desires using language and names themselves produced based on these very needs of human society raises serious questions about the very possibility of science and scientific truth for Hobbes. If truth for Hobbes is simply an attribute of speech,[73] how is science which should provide some durable explanation of reality possible? Hobbes defines science as

> the knowledge of consequences, and dependence of one fact upon another: by which, out of that we can presently do, we know how to do something else when we will, or the like another time; because when we see how any thing comes about, upon what causes, and by what manner; when the like causes come into our power, we see how to make it produce the like effects.[74]

Here it is important to realise that for Hobbes science is different from simple experience. Knowledge humans gain through experience only is called by Hobbes 'prudence' and is clearly distinguished from science or '*sapientia*'.[75] The transition from experience to science is allowed precisely by language, when it is used 'aptly':

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[70]   Ibid., 13.
[71]   Ibid., 14.
[72]   Lev I.4, 19.
[73]   See above text on notes 33, 34.
[74]   Lev I.5, 35.
[75]   See e.g., ibid., 37. In *De Homine*, he opposes science (*scientia*) to simple knowledge (*cognitio*). But the basic idea remains the same: to distinguish science as truths about consequences from simple truths of fact (DH X.4, 41). This is similar to the terminology used in Lev I.9, 71.

> reason is . . . attained by industry; first in apt imposing of names; and secondly
> by getting a good and orderly method in processing from the elements, which
> are names, to assertions made by connexion of one of them to another; and so
> to syllogisms, which are the connexions of one assertion to another, till we
> come to a knowledge of all the consequences of names appertaining to the
> subject in hand; and that is it, men call *science*.[76]

Instead of being an impediment to truth, language becomes the enabler, the
instrument of achieving truth. Hobbes's affirmation 'that in the right defini-
tion of names lies the first use of speech; which is the acquisition of science'[77]
comes then as no surprise.

Thus, far from being an impediment to truth and science, Hobbes's nomin-
alism and his view of names as the only universals constitute the very founda-
tion of science and truth. Truth for Hobbes emerges from the only available
universal, namely names. The advantage of this conceptualisation of truth is
that it is always and only a creation of human beings and thus open to scrutiny
and contestation by other human beings. This was an extremely important
achievement for Hobbes, who was a fervent opposer of any indoctrination and
superstitious beliefs. As detailed in the next chapter, combined with Hobbes's
view of space this particular view of human knowledge led Hobbes to his
specific concept of law.

3.3.2 *Leibniz*

As already mentioned, Leibniz was no less dedicated to the importance of
language and reasoning than Hobbes. Moreover, even while rejecting
Hobbes's extreme nominalism and being especially critical of his position
on eternal truths, Leibniz remained influenced by the rigor of his method,
including his work on logic and scientific demonstration. In particular, as
noted by Tönnies and more recently reaffirmed by MacDonald Ross, 'Leibniz
was indebted to Hobbes for the central idea that all reasoning was computa-
tion (or "calculation" in Leibniz's preferred terminology), and hence a kind of
arithmetic or algebra. Without this idea, Leibniz would never have developed
his combinatory art, nor his universal characteristic.'[78]

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[76] Ibid., I.5, 35.
[77] Ibid., I.4, 24.
[78] MacDonald Ross, 'Leibniz's Debt', 21. See also Ferdinand Tönnies, 'Leibniz and Hobbes',
(1887) 23 *Philosophische Monatshefte* 557–73. MacDonald Ross places work of Tönnies in
light of subsequent research by Couturat, who attempted a rejection of Tönnies's thesis about
Hobbesian influences in Leibniz's art of combinations and universal characteristic.
(Couturat, *Logique de Leibniz*, chapter 'Leibniz et Hobbes, leur logique, leur nominalism',

As mentioned in the first chapter of this book, universal characteristic was central to Leibniz's scientific method. However, due to the difference on the problem of universals and the ensuing position on the question of eternal truth between the two authors, their views on knowledge and the human mind differed significantly when it came to the issues beyond simply logical reasoning. Since Leibniz firmly held that eternal truth exists, he had to explain how humans can get access to this eternal truth, a step superfluous for Hobbes. This in turn significantly influenced their divergent approaches to law and ordering of human societies, as explained in two subsequent chapters.

3.3.2.1 Innate and Eternal Truths, Senses, Reason, and the Human Brain

Leibniz was persuaded that knowledge and understanding are not possible without truths that are innate in us, that we do not gain from outside, from experience or from senses, but that come from inside, from within us. According to Leibniz, senses help us 'to know what is, but they cannot help us to know what must be or what cannot be otherwise'.[79] The knowledge of these two later types can only be acquired if sense experience is joined with 'a light which is born with us'.[80] This light that is within us enables humans to get access to eternal and necessary truths. However, Leibniz also acknowledges that certain types of innate truths are not known to us exclusively through the light that is within us but also by reference to our senses.[81] One clear example mentioned in *New Essays* is related to ethics and concerns the principle that 'we ought to pursue joy and avoid sorrow'.[82] In his 'Reflections on the Common Concept of Justice', Leibniz equates truths of justice (or ethical truths as they are called in *New Essays*)[83] to the 'eternal and necessary truths' of

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457–72). MacDonald Ross makes a nuanced observation, affirming the indebtedness of Leibniz to Hobbes as far as the general idea is concerned, but concluding based on Couturat's work that 'Hobbes lacked the logical and mathematical ability to make any formal advances'.

[79] Gottfried W. Leibniz, 'On What Is Independent of Sense and of Matter (Letter to Queen Sophia Charlotte of Prussia)', (1702) L 547–53, 550.

[80] Ibid., 551.

[81] Leibniz talks about knowledge by instinct on this occasion: Leibniz, *New Essays*, I.2.1.

[82] Ibid. Thus Leibniz explains that we need to *experience* joy and sorrow in order to gain access to this principle. It is in this way that senses participate in accessing this type of innate knowledge.

[83] It is clear that Leibniz means precepts of justice when he talks about ethical truths in *New Essays* because the terminology used switches between ethics and justice without there being any distinction between the two. See, e.g., the reference to ethics in para. 1, which turns to be justice in para. 2 while the conversation continues on the same topic (Leibniz, *New Essays*, I.2).

mathematics.[84] Moreover, Leibniz states that the science of Right[85] is based on reason, like all other demonstrative science.[86] Another confirmation of the status of justice or moral science as being on par with scientific truth (e.g., of arithmetic) is provided when Leibniz explains that this knowledge by instinct in relation to morality is given by God to human beings because it is more important than truths of arithmetic and helps prompting human beings to act accordingly even without knowledge at least to some extent.[87] In this regard the question about the existence of a difference between the type of innate truths mathematical science represents and innate truths represented in justice and juridical science might legitimately be raised. Some authors suggested that jurisprudence is based not on logical but on moral necessity and thus differs from truths of mathematics that are based purely on logical necessity.[88] However, such a view contradicts just mentioned Leibniz's statement in the 'Concept of Justice' and *New Essays*. Although distinction between moral and logical necessity is important to Leibniz's philosophy, it has little bearing on our present discussion as to the status of truths of justice or science of right as innate truths because innate truths can be either logically or morally necessary.[89]

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[84] Gottfried W. Leibniz, 'Reflections on the Common Concept of Justice', (1702) L 561–73, 563.

[85] The English translation of 'Concept of Justice' renders in this way French 'science de droit'. For the French original text of this piece, see Georg Mollat (ed.), *Mittheilungen aus Leibnizens ungedruckten Schriften* (Leipzig: Verlag von H. Haessel, 1893), 41–70. In French, like in Latin or German, two distinct terms can be used to translate English 'law': 'droit' and 'loi'. The distinction between the two terms is fundamental to Leibniz's concept of law. This is detailed in the next chapter (see the section 'Leibniz's Conceptual Approach' in particular). For the moment, suffice it to say that justice as a concept is equated with the science of right. Law needs according to Leibniz to be based on justice and science of right but is not always based on those.

[86] Leibniz, 'Concept of Justice', 564.

[87] Leibniz, *New Essays*, I.2.9. Just before this affirmation, he clearly states, 'Setting aside instincts, like the one which makes us pursue joy and flee sorrow, moral science is innate in just the same way that arithmetic is, for it too depends upon demonstrations provided by the inner light.'

[88] See e.g., Robert McRae, *Leibniz: Perception, Apperception, and Thought* (Toronto and Buffalo: University of Toronto Press, 1976), 120–1.

[89] On logical necessity in relation to truths and the concept of necessary truth, see e.g., Margaret D. Wilson, 'On Leibniz's Explication of "Necessary Truth"', in Roger S. Woolhouse (ed.), *G. W. Leibniz: Critical Assessments* (London: Routledge, 1994), 114–27. According to some authors, the difference between logical and moral necessity is negligible because the distinct character of moral necessity as opposed to the logical necessity depends solely on God's choice of this world as the best of all possible worlds, but this choice itself is necessary because God cannot choose any other world but the best one and this world is the best. See e.g., Arthur O. Lovejoy, *The Great Chain of Being: A Study of the History of an Idea* (Cambridge, MA, and London: Harvard University Press, 1964), 172–5.

Leibniz's *New Essays* indicates only one distinction relevant to our discussion of humans' access to innate truth. This distinction pertains to the way we access knowledge of some ethical principles through instincts as opposed to the remainder of the science of Right, which requires the use of the natural light or reason only.[90] We could say that jurisprudence (science of Right) consists in these ethical principles discovered by instinct and then heightened and clarified by reason. Since this instinctive knowledge is not treated by Leibniz in any length and occupies only a marginal portion of the science of Right, we need to focus on the way human reason accesses these innate truths through natural light or reason. Before detailing with this process, it is important to introduce another distinction in Leibniz's discussion of innate truths: that between primitive and derivative truths.

Leibniz describes the distinction between primitive and derivative truths in the following way: 'the knowledge of the primitives does not need to be formed; they must be distinguished only; that of the derivatives is formed by the understanding and by reasoning upon occasion'.[91] Leibniz immediately clarifies that both primitive and derivative truths are all in us, and are innate because all derivative ideas and truths that result from them are produced from primitive ideas that are in us.[92] This distinction plays a significant role in Leibniz's arguments related to the innate status of moral rules, which determine the content of the science of Right. This is particularly clear when Leibniz formulates a response by Theophilus to Philaletes, who objects that rules of morality always need to be proven and therefore are not innate:

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[90]   We could make a parallel here to the tripartite distinction between concepts introduced by Leibniz, e.g., in his letter to Queen Sophia Charlotte of Prussia in 1702 (L 547–53, 549). According to this letter, concepts are either sensible only or sensible and intelligible (like concepts of mathematics) or finally intelligible only (like concepts of metaphysics, logic, and ethics). The latter two types of concepts correspond to the way humans access innate truths either by instinct or by natural light (reason). In this sense it would be more precise to say that some principles of ethics, like the one according to which we ought to pursue joy and avoid sorrow, belong to the second group of concepts that are both sensible and intelligible, but the remainder of the science of Right (or ethics) belongs to the intelligible concepts only.

[91]   Gottfried W. Leibniz, 'Specimen of Thoughts upon the First Book of the Essay on Human Understanding', in Gottfried W. Leibniz, *New Essays Concerning Human Understanding Together with an Appendix Consisting of Some of His Shorter Pieces*, Alfred G. Langley, trans. (New York: Macmillan Company, 1896), 21. The original French text of this piece can be found in A.VI.6, 9–14.

[92]   Ibid. For Leibniz, it is also important that this production from primitive ideas is done by understanding and reason only, senses are not needed to produce derivative truths. However, as already mentioned, Leibniz acknowledges that sense experience somehow leads us to start thinking about innate truths and bring them to the conscious.

there are moral rules that are not innate principles; but that does not prevent them from being innate truths, for a derivative truth will be innate supposing that we can draw it from our mind. But there are innate truths, which we find in us in two ways – by insight and by instinct. . . . It is thus that we are prompted to act as humanity, by instinct because it pleases us, and by reason because it is just.[93]

Here Leibniz makes a distinction between ethical principles and justice clear. Although both are innate, one comes from instinct and another comes from reason. Reason is required for a moral or ethical principle, which is an inclination, to become a percept of justice comprehended rationally, through intelligible concepts.[94] Leibniz confirms this in his subsequent discussion when he affirms that we obtain proof of these truths of instinct when 'we explain the instinct in question', a process that occurs through the use of different types of logical reasoning.[95]

Leibniz emphasises that senses and induction (proof by examples) 'can never teach us truths that are fully universal or absolutely necessary'.[96] Deduction is one of the most well-known reasoning processes, although not the only one for Leibniz, that allow access to innate truths without the participation of senses. At this stage it is important to recall Leibniz's work on universal characteristic and *scientia generalis*, which, as explained in Chapter 1, represent his effort at creating a universal scientific language as a reflection of specific reasoning processes. Moreover, Leibniz not only expressly and consciously worked on articulating as scientifically as possible truths that we know for the moment only confusedly, but he also believed that it is possible to develop a scientific method for discovering new truths, including innate truths.[97] This process, as will be demonstrated a few paragraphs later, has important connections to Leibniz's concept of space. Before discussing this point, it is necessary to establish the status of space as an innate truth to which the same process of understanding or knowledge discovery applies.

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93 Leibniz, *New Essays*, I.2.4.
94 Reason plays a foundational role in Leibniz's approach to law and justice. This is discussed in more detail in the next chapter.
95 Leibniz, *New Essays*, I.2.4. Leibniz adds explicitly that although the knowledge of this type of innate truths is instinctive, 'the logicians demonstrate the reasons for them; as mathematicians explain what we do unthinkingly when we walk or jump'.
96 Leibniz, 'Letter to Queen Sophia', L 550.
97 This is what he called 'art of invention'. See e.g., Gottfried W. Leibniz, 'Discours touchant la méthode de la certitude et l'art d'inventer pour finir les disputes et pour faire un peu de temps de grands progrès', (1688–90) GP VII, 174–83.

As far as the concept of space is concerned, Leibniz also affirms several times that it belongs to innate eternal truths.[98] The specificity of space similarly to that of time as eternal truth consists in the fact that they consider the actual and the possible simultaneously.[99] However, there is more uncertainty about other aspects of human cognition or understanding of space. At this stage, it should be highlighted that, as explained in the previous chapter, space for Leibniz is an order of relationships. Therefore, space as an eternal truth concerns this specific Leibnizian definition of space, not space as defined or imagined by other authors. In particular, in *New Essays*, Leibniz expressly denies ideal and innate status of measurements, highlighting that 'it is impossible to have the idea of a precisely determined length'.[100] He explains that the meaning of any term related to measurement can only be preserved by reference to 'real standards of measure which are assumed to be unchanging'.[101] Thus, overall, what was said and will be said about the way humans access knowledge of innate truths equally applies to the concept of space.

Having established the nature of both precepts of justice and space as innate eternal truths, it is possible to focus on the nature of eternal truths according to Leibniz before discussing in more detail processes allowing the human mind to access these truths. Eternal truths are in God's understanding; they form God's understanding, or as Leibniz says in *Theodicy*, the divine understanding 'gives reality' to eternal truths.[102] The eternal truths in God's mind as an expression of the logic of necessity extend to everything actual and possible: 'In the region of eternal verities are found all the possibles, and consequently the regular as well as the irregular.'[103] This is very similar to the concept of space, which also concerns relationships not only between actual existences but also possibles.

Leibniz strongly emphasises that this presence of eternal truths in God's understanding does not mean dependence of eternal truths on God's will. In this regard he was one of the most fervent opposers of Descartes's idea that eternal truths are created by God and entirely dependent on his will. As Leibniz says in *The Monadology*, 'we should not imagine, as some do, that since the eternal truths depend on God, they are arbitrary and depend on his

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[98]   Leibniz, *New Essays*, II.14.26.
[99]   Ibid.
[100] Leibniz, *New Essays*, II.13.4.
[101] Ibid.
[102] Leibniz, *Theodicy*, para. 184, 243; see also Leibniz, *The Monadology*, para. 43.
[103] Leibniz, *Theodicy*, para. 189, 246. See also the text on note 31 above, reproducing a portion of para. 335.

will, as Descartes appears to have held'.[104] So eternal truths are in God's understanding without being a creation of God. I would say that according to Leibniz they somehow are part of the essence of God's mind and their actualisation in existents is the result of God's thinking.[105] However, how are these truths that form God's mind accessible to human beings? The idea of innateness of certain truths explains this process.

The creation of human beings in the image of God also means that eternal truths are imprinted as innate ideas into the human mind. Here one point made by Leibniz in his *New Essays* is crucial. In this particular paragraph, Philalethes and Theophilus, the two protagonists of the dialogue each representing Locke's and Leibniz's views, discuss understanding in the context of the capacity to distinguish ideas (or discerning), which in turn is part of book 2 on ideas. Philalethes starts by comparing understanding to a closet shut from light with some little openings left.[106] These openings let in external images. The understanding according to Philalethes is possible if these images stay in this dark closet in an orderly fashion allowing their use when needed.[107] While Theophilus accepts this analogy, he adds significant features to the description of this closet representing understanding. Here is the lengthy but nonetheless important passage:

> To increase the resemblance we should have to postulate that there is a screen in this dark room to receive the species, and that it is not uniform but is diversified by *folds representing items of innate knowledge*; and, what is more, that this screen or membrane, being under tension, has a kind of elasticity or active force, and indeed that it acts (or reacts) in ways which are adapted both to past folds and to new ones coming from impressions of the species. This action would consist in certain vibrations or oscillations, like those we see when a cord under tension is plucked and gives off something of a musical sound. For not only do we receive images and traces in the brain, but we form new ones from them when we bring 'complex ideas' to mind; and so the screen which represents our brain must be active and elastic. This analogy would explain reasonably well what goes on in the brain. As for the soul, which is a simple substance or 'monad': without being extended it represents these various extended masses and has perception of them.[108]

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[104] Leibniz, *The Monadology*, para. 46, see also Leibniz, *Theodicy*, para. 180, which connects this issue more directly with justice and morals as eternal truths.

[105] Leibniz noted on the margins of his manuscript of the dialogue on the connection between things and words, which contests certain Hobbesian ideas: 'When God calculates and exercises his thought, the world is made.' Leibniz, 'Dialogue', L 185.

[106] Leibniz, *New Essays*, 2.11.17.

[107] Ibid.

[108] Ibid., emphasis added.

This passage illustrates well the way Leibniz conceptualised the presence of innate ideas in the human brain. In this description and in several other responses of Theophilus to Philalethes, it is clear that innate items of knowledge can be present in the human brain without the particular human being having any awareness or reason-based knowledge of them. In addition, this analogy with a folded elastic screen spatialises innate knowledge in the human brain in a double sense: first, through the analogy itself which uses a clearly spatial image, but also through perception of these extended masses in monads – perception which is spatial because representing phenomena as relationships.

Leibniz constantly emphasised that a directed methodologically rigorous effort at discovering these innate pieces of knowledge is required. This process has two essential aspects to it. First, it is linked to certain activities of superior type of monads, namely minds, which is addressed in the next few paragraphs. Second, Leibniz also produced significant amount of writing developing the art of invention and the required methodology that is briefly mentioned in the final paragraphs of this section. Two other important points emerge from this description of understanding as an activity in the brain in the last quotation that needs to be highlighted: the spatial nature of the understanding itself and the spatialisation of this understanding through perception in monads. Human understanding being spatialised through the fold analogy bears significant resemblance to the way continuity and divisibility are reconciled in Leibniz's conceptualisation of space in the discussion of space in the previous chapter. In addition, since the perception in monads is spatial because it represents relationships between monads as situations of phenomena, it enables emergence of the idea of situatedness and place from a non-situated reality of monads. Therefore, we can observe a mirroring of underlying structures of human knowledge in brain, perception as the foundational activity of monads, and the conceptualisation of space. Moreover, the nature of eternal truths in the divine mind as expressing the logic of necessity in relation to both existences and possibles has a direct relationship to Leibniz's understanding of both space and time.

This layer of discussion focusing on the nature of eternal truths and their place in human minds needs to be supplemented by a brief overview of Leibniz's metaphysical views, especially as they connect to cognition and provide additional clarifications as to the process involved in human minds' access to items of innate knowledge. This is indispensable for a complete picture that can form the basis for the further development of the argument. As already mentioned, Leibniz's mature metaphysical views are summarised in his *The Monadology*.

3.3.2.2 Process of Truth Discovery

The text known today as *The Monadology* is a summary of several aspects of Leibniz's philosophy united by the notion of a monad as a simple substance. It was not published during Leibniz's lifetime. Nonetheless, it is one of the most widely known Leibniz's writings representing a concise but highly complex summary of his philosophy. The main tenets of monadology were discussed in relation to space.[109] At this stage, in order to connect monadology and Leibniz's theory of knowledge, it is necessary to briefly recall some of the basic principles and provide more detail on those aspects of monadology, which have more bearing on Leibniz's approach to the human mind.

As already mentioned, monads are simple substances and are divided by Leibniz in three different types: simple monads, souls, and minds.[110] Minds are those monads that are capable of highest rational activity, allowing them to access eternal and necessary truths. All monads share the same essential activity, namely perception.[111] As detailed in the preceding chapter, perception is the foundational basis of all other activities of monads. It can be defined as representation of relationships between monads as situations of phenomena.[112] The analysis in the above-mentioned chapter also demonstrated the parallels between Leibniz's conceptualisation of space and his description of monads' perception. They share the same underlying perspectival and relational character.

Perception is the starting and foundational activity without which no knowledge and no understanding at all is possible. However, this is not the only activity of which monads are capable. In what follows, I focus on the specificities of minds' activity, which allows them to get access to eternal truths thus exercising the reasoning faculty. Leibniz noted, 'But the knowledge of eternal and necessary truths is what distinguishes us from simple animals'.[113] At the same time, the focus on eternal truths is essential for the subsequent discussion of Leibniz's conceptualisation of law because, as mentioned previously, according to Leibniz principles of justice that are foundational building blocks of his juridical science are eternal truths.

First, Leibniz wrote that the activity of minds, which leads to thought, is a perceptual representation accompanied by consciousness or reflection of the percipient.[114] Leibniz calls this reflective expression 'thought': 'cette réprésentation

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[109]   See the section 'Space and Monadology' in the preceding chapter

[110]   See the above text on notes 100–1 in the preceding chapter.

[111]   See the above text on note 97 in the preceding chapter.

[112]   See the above justification in the section 'Space and Monadology' in the preceding chapter.

[113]   *The Monadology*, para. 29.

[114]   Gottfried W. Leibniz, 'Lettre à Arnaud', (9 October 1687) GP II, 111–29, 112; Leibniz, *New Essays*, 2.21.5.

est accompagnée de conscience dans l'ame raisonnable, et c'est alors qu'on l'appelle pensée'.[115] Another term that he uses to describe this consciousness or 'reflexive knowledge of this internal state' is 'apperception'.[116] In Leibniz's own writings the distinction between apperception, consciousness, reflection, and thought is extremely complex and confusing at times, which can also be explained by the gradual refinement of his thought. This led to some conflicting interpretations by scholars.[117] For our purpose it will not be necessary to delve into all the debates animating Leibniz's scholarship in this area. The aspects that are highlighted here are supported by direct textual sources and are relevant at a very general level of analysis.

According to Leibniz, in order for thought to exist, both perception and apperception are necessary.[118] Since perception is already present in all monads, Leibniz emphasises apperception as the necessary precondition of thought and knowledge. Therefore, understanding the way apperception and thought relate to perception and its spatiality becomes central. Apperception enables both discovery and knowledge of eternal truths.[119] The most foundational sense in which apperception plays a role in the process of discovery of innate truths is its focus on 'the inner state itself' or 'what is in us'.[120] In *New Essays* Leibniz adds that this attention to what is within us is not the only component of apperception as an act leading to the discovery of innate truths. He adds that in addition to this inner-oriented attention, order is also required: 'L'apperception de ce qui est en nous depend d'une attention et d'un ordre.'[121] The distinction made in the previous section between primitive

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[115]   Leibniz, 'Lettre à Arnaud', 112.

[116]   Gottfried W. Leibniz, 'Principes de la nature et de la grâce fondés en raison', (1714) GP VI 598–606, translated into English as Gottfried W. Leibniz, 'Principles of Nature and of Grace, Based on Reason' L 636–42, 637, para. 4.

[117]   See, for example, divergent interpretations offered in McRae, *Leibniz*, and Mark Kulstad, *Leibniz on Apperception, Consciousness and Reflection* (München, Hamden, Wien: Philosophia, 1991). For instance, McRae claims that apperception, consciousness, and reflective knowledge are basically interchangeable terms (33), a position Kulstad contests by arguing that at least on some occasions Leibniz does distinguish separate, non-overlapping meanings for these terms (148–9).

[118]   Of course, going into details of Leibniz's distinction between different types of knowledge, distinction between concepts and principles, and so forth, more precision might be required in connecting perception, apperception, reflection, and thought. However, for the present purposes, the general dependence of thought on perception and apperception as discussed in this section is sufficient. For a more detailed discussion of the various connections between perception, apperception, and thought, see the two works cited in the previous footnote.

[119]   See McRae, *Leibniz*, 69, with reference to several passages in Leibniz.

[120]   Leibniz, 'Principles of Nature and of Grace', L 637, para. 5, and Leibniz, *New Essays*, I.1.25.

[121]   Leibniz, *New Essays*, 1.1.25. 'Apperception of what is within us depends on attention and on an order' (my translation). Some translations can be misleading: e.g., 'To be aware of what is

and derivative truths helps illustrate the different role of attention and order in apperceptions.

The discovery in us of such a primitive truth as 'we ought to pursue joy and avoid sorrow' can be made by simply paying attention to our inner feelings and their correspondence with events in our life. However, going beyond this primitive truth and establishing general principles of the science of Right requires more than just attention. It requires a methodological reasoning or order, or as Leibniz says in the passage quoted above,[122] a process of forming and deducing these derivative truths from primitive ideas and truths. Thus, according to Kulstad, the terms: 'forming' and 'deriving' refer respectively to 'composition' and 'deduction'.[123] I suggest that to fully appreciate the role of 'order' in apperception, it is necessary to place a stronger emphasis in this regard on Leibniz's development of *scientia generalis* as a universal method for discovering new truths, or as Leibniz says, 'the art of thinking correctly'.[124] *Scientia generalis* is closely connected to Leibniz's art of combinations and his project of a universal encyclopaedia, which are briefly discussed in Chapter 1. Overall, they indicate Leibniz's desire to elaborate a rigorous language and procedures, which would enable discovery of eternal truths. While attempting to elaborate them theoretically, Leibniz at the same time applied some of these in his own thinking. In this regard, the work on Leibniz's thinking and its mathematical models by Michel Serres is particularly revealing.[125] He highlights the nature of Leibniz's thought as being constructed in opposition to the traditional linear deductive thinking. In fact, he clearly demonstrates that Leibniz's thinking is more correctly described as a network-type of thinking where there are many possible ways, many possibly entry points, and many connections. However, this does not diminish the orderly nature of Leibniz's thought, but refers back to the notion of order, which consists, like for monads' perception as well as for the idea of space, of the simultaneous plurality of

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within us, we must be attentive and methodical' (Rennant and Bennett 86). In this translation, the crucial term 'appeception' disappears and 'order' is replaced with 'methodological'. These changes can be explained by the underlying interpretative frame of translators. However, since Leibniz's scholarship is still disputing the possibility of distinguishing technical and non-technical uses of 'apperception' in Leibniz, it is preferable to keep the term, especially when it is used as a noun, which is more unusual for the French language.

[122] See text on n. 121.
[123] Kulstad, *Leibniz on Apperception*, 139.
[124] Gottfried W. Leibniz, 'Definitio brevis scientiae generalis', (1683–5) A.VI.4, 532. See also a longer piece on *scientia generalis*, where invention is one of the foundational pillars of *scientia generalis*: Gottfried W. Leibniz, 'Paraenesis de scientia generali', (1688) A.VI.4, 971–80.
[125] Michel Serres, *Le système de Leibniz at ses modèles mathématiques. Etoiles – Schémas – Points* (Paris: PUF, 1968).

mutual relationships, which can be approached from a variety of perspectives. Thus in Leibniz there is a mirroring of underlying structural dynamics between space and the nature of eternal truths, as well as of the structure of cognitive processes leading to the discovery and knowledge of these truths.

3.4 CONCLUSIONS AND TRANSITION

International law is especially preoccupied with asserting its universal validity. Universal values play an important part in this process. The way universals were discussed and theorised in the seventeenth century constitute a significant factor influencing the shape of the nascent international law, as will become clear in the two remaining chapters. The discussion of the views of both Hobbes and Leibniz on the idea of universals and human cognition in this chapter is an indispensable milestone for the successful development of the argument of this book. The influence exercised by the concept of space on the concept of law and international law more specifically is mediated by the question of universals and human cognition. Both Leibniz's and Hobbes's views on the topic are intimately connected to their conceptualisations of space.

   This chapter demonstrated an important dividing line between Hobbes and Leibniz on the issue of universals and human cognition determined by their respective divergent general philosophical approaches, but most importantly by their conceptualisations of space. For Hobbes, materiality of bodies and their movement is the defining starting point for the comprehension and conceptualisation of reality. Therefore, his articulation of both the concept of space as well as his position on the idea of universals and human cognition are initially determined by his materialism. Real space is reduced to the magnitude of bodies while imaginary space is produced by what can be called an imprint of this magnitude on the human mind and how the human mind thinks about bodies and their magnitude. Human cognition can be reduced to the result of the impact of the movement of material bodies on human organs. To consequentially maintain his materialism, Hobbes obviously had to deny the existence of any universals. On the other hand, knowledge production beyond simple re-production of our sense experience, and in particular scientific knowledge, required Hobbes to go a step further and consider a mechanism able to impose certain order on and control over the movement of material bodies. This mechanism for Hobbes is language. Language as a convention agreed between humans, if used according to certain rules, organises impressions left by material bodies on our senses and leads to the production of scientific knowledge and a level of certainty. The absolute

certainty remains reserved only to the knowledge of things produced by humans themselves, which includes the commonwealth discussed in the next chapter. The common point of departure in the materiality of bodies and their movements can be observed throughout Hobbes's discussion of apparently disconnected topics. The next chapter clarifies how space conceived as real extension of material bodies becomes a more immediately relevant factor in Hobbes's articulation of his concept of law as based on his view of the role of language.

The situation is quite different for Leibniz. In Leibnizian thought, a clear shared structural mechanism can be observed at different levels of analysis. This shared structural mechanism has at its basis a specific vision of logical consistency concerning both everything actually existing and everything possible. The actualisation of this structural mechanism is based on relationality, multiplicity, and perspectivism, and immediately requires both the concept of space and the concept of eternal truths. The process of discovery of these truths and thus scientific knowledge is enabled by the very nature of the structural mechanism and thus of space. Space as a logical relational grounding of this world determines the inner structure and processes of other elements related to human existence, such as human cognitive processes, innate truths, or order in human societies.

Thus, in both Hobbes and Leibniz, their conceptualisation of space determines their approach to human knowledge and human cognition, which in turn has significant consequences for their view of law and, even more explicitly, their concept of international law as remaining chapters demonstrate.

4

Law

Hobbes and Leibniz approached the conceptualisation of law from two entirely different perspectives. As already mentioned in Chapter 2, Hobbes endeavoured in his writings to provide as complete as possible philosophical exposition of different branches of science, rigorously following his geometrical method. In relation to law, this resulted in a very specific approach where every single element had to be defined and placed in a logical progression from human nature, with its passions and needs, to actual legal regulation and enforcement. For example, in *Leviathan*, law is situated as one of the elements of the broader enquiry into the establishment and functioning of the state.

Leibniz's interest in law is driven by his interest in justice. His main project in relation to law was twofold: first, he worked on ways to establish a positive law, conforming to precepts of justice, which he believed to exist as innate and eternal truths discoverable by human reason. Second, he attempted to find ways of reducing uncertainty and ambiguity in law. These two goals in Leibniz's work are interrelated because he believed that in order to ensure the applicability of precepts of justice in real life, they have to be defined and codified as precisely and concisely as possible. These different perspectives adopted by Hobbes and Leibniz, respectively, which are clarified and explained below, resulted in the different weight accorded by each of the two authors to various aspects related to their conceptualisation of law. As a consequence, the task of comparing their respective views on law becomes very complex, even more so than the previous discussion of their respective concepts of space. For this reason, in this chapter too the views of both authors on law are first presented separately, and only after their views are clarified separately does the concluding section of this chapter proceed with a comparative analysis of their views.

4.2 HOBBES ON LAW

Hobbes's main focus when it comes to the political and legal aspects of his philosophy is on discussions about state and sovereignty. To some extent, it could be said that Hobbes's discussions of law are subordinate to his articulation of the formation and functioning of the commonwealth or the state. For this reason, some authors judged his concept of law to be too simplistic and inadequate.[1] However, the interpretation of Hobbes's views on law developed in this chapter rather sides with those authors who view Hobbes's concept of law as subtle and deserving of attention.[2] In this section, the discussion of Hobbes's concept of law starts by analysing Hobbes's explicit views on the role of law in the state of nature, followed by a discussion of the process of emergence of the state or, more specifically, the transition from the state of nature to a commonwealth. Hobbes's view of the conditions of humanity in the state of nature is central to his articulation of the characteristics and the role of law both in the state of nature and in the commonwealth. In this regard, particular attention is paid to the distinction and relationship between civil and natural law. This aspect is essential for the later comparison of Hobbes's views on law to those of Leibniz. Once these views are made clear, more nuances related to the place of law within his state framework are introduced.

4.2.1 *State of Nature and Its Relation to Law*

As is well known, Hobbes's conceptualisation of the state and its functions proceeds from a certain view of the state of nature – a hypothetical state in which humans exist before the establishment of the state. In this state of nature, the foundational premise is that of equality and unrestricted liberty of human beings: 'in the state of nature, to have all, and do all, is lawful for all'.[3] This statement already indicates that the complete freedom in the state of nature is not a lawless space.[4] Law that applies in the state of nature is the

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[1] See e.g. John Plamentaz, *Man and Society*, Vol. 1 (New York: McGraw Hill, 1963), 138.
[2] See e.g. Robert Ladenson, 'In Defense of a Hobbesian Conception of Law', (1980) 9 *Philosophy & Public Affairs* 134–59.
[3] DeCi I.10, 11.
[4] The idea of the lawlessness of the human condition prior to the establishment of authority existed at least since ancient Greek and Roman times. Hobbes is sometimes wrongly associated with this tradition. See e.g. Heinrich A. Rommen, *The Natural Law. A Study in Legal and Social History and Philosophy* (Indianapolis: Liberty Fund, 1998), 9 and 73. This association of the state of nature and lawlessness might be justified to a degree only, since Hobbes himself insists that the laws of nature 'are not properly laws, but qualities that dispose men to peace and obedience. When a commonwealth is once settled, then are they actually laws' (Lev II.26, 253).

natural law. Unlike many other authors, Hobbes clearly distinguished the law of nature (in Latin, *lex naturalis*) from the right of nature (*jus naturale*). Therefore, the use of the term 'natural law', which usually represents a translation of the Latin *jus naturale*, might be misleading in the context of Hobbes's own discussions. For this reason, when discussing Hobbes's ideas and definitions, either the term 'law of nature' or the term 'right of nature' is used to denote one or the other concept as defined by Hobbes and explained in the next paragraph. The term 'natural law' will only be used when referring to the broad theoretical-philosophical stream of thought on the topic.

Hobbes defines the law of nature as follows: 'a percept or general rule, found out by reason, by which a man is forbidden to do that, which is destructive of his life, or taketh away the means of preserving the same; and to omit that, by which he thinketh it may be best preserved'.[5] The right of nature, on the other hand, 'is the liberty each man hath, to use his own power, as he will himself, for the preservation of his own nature; that is to say, of his own life; and consequently, of doing any thing, which in his own judgment, and reason, he shall conceive to be the aptest means thereunto'.[6] This distinction between right and law is maintained by Hobbes not only in relation to natural law but also in a broader context of discussion of the definition of law – for instance, in *Dialogue*. Thus the philosopher representing Hobbes's view states: 'Law obligeth me to do, or forbear the doing of something; and therefore it lies upon me an Obligation; but my Right is a Liberty left me by the Law to do any thing which the Law forbids me not, and to leave undone any thing which the Law commands me not.'[7] A similar means of distinguishing law and right as, respectively, constraint and freedom is found in *De Cive*.[8] In this particular instance, Hobbes emphasises that right as liberty, even if it is a natural or divine right, can be restricted by law, including civil law.[9] Thus Hobbes's conceptualisation of right differs radically from today's familiar view of rights as entitlements. The concept of the right of nature in Hobbes is foundational because it forms the basis for the development of his idea of the laws of nature, civil law, state, sovereignty, and sovereign power.

However, he still examines these 'qualities' that constitute the laws of nature in a lot of detail and confirms that they represent an indispensable condition for a transition to a commonwealth. Therefore, it is wrong to simply say that the state of nature is pure lawlessness.

[5] Lev I.14, 116–17.
[6] Ibid., 116.
[7] Thomas Hobbes, *A Dialogue between a Philosopher and a Student of the Common Laws of England*, Joseph Cropsey, ed. (Chicago: University of Chicago Press, 1971), 35.
[8] DeCi XIV.3, 185–6.
[9] Ibid., 186.

The right of nature as defined by Hobbes perfectly fits into the picture of the state of nature characterised by complete freedom and complete equality. The right of nature is the first foundational principle derived from the nature of human existence and from human nature itself. This point is clear in *De Cive*, when Hobbes associates right with 'that liberty which every man hath to make use of his natural faculties according to right reason'.[10] However, care is needed in interpreting the role of right reason and reason more generally in relation to right in Hobbes's philosophy.

During Hobbes's times, the term 'right reason' had a very specific meaning, appealing to some infallible faculty of the human mind participating in divine reason. Hobbes, with his materialistic orientation and particular hostility towards obscure explanations making appeal to supernatural forces or concepts, could not accept such a reading of reason. Despite his occasional use of the term 'right reason' in his works, particularly in relation to the definition of natural or divine law,[11] he did not espouse the traditional understanding of right reason but attributed to it his own distinct meaning.[12] A note on right reason that Hobbes added to his Latin edition of *De Cive* clarifies this point: 'By right reason in the natural state of men, I understand not, as many do, an infallible faculty, but the act of reasoning, that is, the peculiar and true

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[10] DeCi I.7, 9.

[11] Importantly, Hobbes distinguishes natural law from divine law, although he admits that laws of nature are also confirmed by the precepts of divine law and that all natural laws are also divine laws (see e.g., Lev II.26, 272). Moreover, if laws of nature for Hobbes are always unwritten, divine laws can be positive (or written) once they are expressed through revelation as a word of God to particular individuals (see ibid., 272–3). However, Hobbes significantly restricts the scope of validity of divine positive law because only the person receiving revelation has knowledge of God's authority. Other believers, if they choose to follow divine law, follow it only by belief and not by reason ('no man can infallibly know by natural reason, that another has had a supernatural revelation of Gods will; but only a belief' (ibid., 273)). Therefore, in a commonwealth, the validity and efficacy of both natural and divine law is subordinated to the civil law as a sovereign's commandment. For this reason, the discussion below focuses on the relationship between natural law and civil law exclusively. There is no need to treat divine laws separately. Some authors even argued that Hobbes's doctrine of natural law was designed to function independently from any religious references. On this debate, as well as in defence of this argument, see Greg Forster, 'Divine Law and Human Law in Hobbes's Leviathan', (2003) 24 *History of Political Thought* 189–217. See also Pierre-François Moreau, 'Loi divine et loi naturelle selon Hobbes', (1979) 129 *Revue internationale de philosophie* 443–51, where the subordination of both natural and divine law to civil law is highlighted.

[12] For a particularly instructive and detailed defence of this thesis, see Robert A. Greene, 'Thomas Hobbes and the Term "Right Reason": Participation to Calculation', (2015) 41 *History of European Ideas* 997–1028. Other instructive but less focused discussions of right reason in Hobbes can be found in Daniel M. Farrell, 'Reason and Right in Hobbes's Leviathan', (1984) 1 *History of Philosophy Quarterly* 297–314; Gregory S. Kavka, 'Right Reason and Natural Law in Hobbes's Ethics', (1983) 66 *Monist* 120–33.

ratiocination of every man concerning those actions of his, which may either redound to the damage or benefit of his neighbours.'[13]

In the same note, he explains that this ratiocination is peculiar because each man makes this reasoning for himself as there is no universal authority to impose one single understanding. He also clarifies that by 'true' he means 'concluding from true principles rightly framed'.[14] Because law and right are so intimately linked with reason that Hobbes sometimes even says that law is the true reason,[15] the significance of Hobbes's conceptualisation of reasoning for the correct understanding of his concept of law becomes obvious. The importance of the preceding chapter dealing with the idea of universals and human cognition becomes obvious in this context.

At this stage, we recall that Hobbes held a very pragmatic and materialistic view of knowledge and reasoning, emphasising precision in his definition of notions and use of language. Due to his materialist stance, he refused to acknowledge any universals beyond words. Hobbes did not deny the possibility that humans could discover truths through an able use of language, but this process was bound to be fraught with difficulties due to the 'peculiar' nature of reasoning. Moreover, as discussed in the previous chapter, Hobbes limited the possibility of certain knowledge only to phenomena produced by humans themselves, which, for instance, included the commonwealth but not the natural world. Therefore, any reference by Hobbes to right reason and infallibility of natural law should not be read as a reliance on a God-given, predetermined truth existing outside and independently of human effort at exercising reasoning.

Returning to the definition of the right of nature, in Hobbes's understanding, human beings have a liberty to use their natural faculties – not a prerogative, nor a correlate of an obligation, but a natural capacity to use a given range of faculties. Therefore, when Hobbes highlights one specific aspect of the right of nature, namely the use of all means and all actions to preserve himself, Hobbes also stresses that the right of nature presupposes that the judgement about appropriate means and actions remains with each individual human being who tries to preserve oneself. This decision in the state of nature does not belong to a collectivity, nor any other party or judge.

The best way to understand this peculiar function of right in Hobbes's philosophy is to view it as 'what right reason exercises, but as itself possessing an independent moral normativity'.[16] This normativity, although having some

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[13] DeCi II.1, 16.
[14] Ibid.
[15] Ibid.
[16] David Gauthies, 'Hobbes: and the Laws of Nature', (2001) 82 *Pacific Philosophical Quarterly* 258–84, 267.

moral force for Hobbes, by its nature, by its origin in the liberty of human beings to use their naturally given faculties, is more closely affiliated with cognitive processes than any contemporary view of the normative and moral notions. Thus right of nature is the right of governing oneself[17] through the use of natural faculties. However, these natural faculties have to be used not arbitrarily, to one's liking, but by following precisely determined reasoning procedures. In this sense, right of nature precedes law of nature: '[O]nce an act is judged necessary for preservation then, at that point, it becomes obligatory. But the obligation in action presupposes the right of judgment. ... [A]n individual can be obliged in conduct only through the exercise of his prior right of judgment.'[18]

This conceptualisation of the right of nature makes apparent the dependency of the laws of nature on the right of nature: without the right of nature, there can be no law of nature. As a result of this dependency, it comes as no surprise that the law of nature is also closely linked to reason. Thus, in *De Cive*, Hobbes says, 'Therefore *true reason* is a certain *law*; which, since it is no less a part of human nature, than any other faculty or affection of the mind, is also termed natural.'[19] In *Leviathan*, Hobbes is more succinct: 'A LAW OF NATURE, *lex naturalis*, is a percept or general rule, found out by reason.'[20] Both definitions establish a connection between natural law and the human mind through reason.

While the right of nature basically acknowledges the freedom human beings enjoy in judging the best means and actions for self-preservation, laws of nature in a way introduce a limit to this freedom. The first and the most fundamental law of nature according to Hobbes is 'that every man, ought to endeavour peace, as far as he has hope of obtaining it'.[21] As a consequence of this law, a human being faced with equally successful strategies for preservation – one through peaceful means, another through war – has to choose the one involving peaceful means. The law does not exclude recourse to war completely because the second part of this law states that 'when he cannot obtain it, that he may seek, and use, all helps, and advantages of war'.[22] However, it still limits the choice of means of self-preservation in certain situations. The second law of nature is even more explicit in this regard because it requires a willingness 'to lay

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[17]   Donald J. C. Carmichael, 'The Right of Nature in *Leviathan*', (1988) 18 *Canadian Journal of Philosophy* 257–70, 261–5.
[18]   Ibid., 265.
[19]   DeCi II.1, 16, emphasis in the original.
[20]   Lev I.14, 116.
[21]   Ibid., 117.
[22]   Ibid.

down this right to all things; and be contended with so much liberty against other men, as he would allow other men against himself'.[23] This laying down of a right, which for Hobbes means renouncing part of the liberty a human being has as a right of nature,[24] can only happen under certain conditions. These conditions, as well as the second law of nature itself, signal the possibility for humans to envisage the transition from the state of nature to a commonwealth, as discussed in the next section.

4.2.2 Transitioning from the State of Nature to a Commonwealth

There are two basic or foundational conditions that allow humans to envisage the transition from the state of nature to a commonwealth or the state form: first, that others are willing to do the same and, second, that the purpose of this act is the achievement of peace and defence of oneself for each human being.[25] As already pointed out, in achieving this transition, humans renounce their complete freedom implied in the right of nature. However, Hobbes clarifies that certain portions of the original complete liberty can never be renounced. He explicitly states that no man can ever renounce 'the right of resisting them, that assault him by force, to take away his life; ... The same may be said of wounds, and chains, and imprisonment.'[26] Hobbes also emphasises that since the goal of this voluntary restriction of liberty is security and preservation of life of the person who renounces the right, 'therefore if a man by words, or other signs, seem to despoil himself of the end, for which those signs were intended; he is not to be understood as if he meant it, or that it was his will'.[27] It is not necessary to go into detail about the other laws of nature, of which Hobbes mentions nineteen in *Leviathan* and twenty in *De Cive*.[28] However, the binding force of these laws, the source of their efficacy, which is discussed later in this chapter, is a very important element in

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[23] Ibid., 118.
[24] Ibid.
[25] Ibid.
[26] Ibid., I.14, 120.
[27] Ibid.
[28] Strictly speaking, the twentieth law of nature of *De Cive* is also mentioned in *Leviathan*, but not as a separate law. In *Leviathan*, Hobbes highlights that the only laws of nature he addresses are those 'which only concern the doctrine of civil society' (Lev I.15, 144). However, the twentieth law of nature in *De Cive* relates to actions that destroy or weaken the reasoning faculty in men, such as drunkenness (DeCi I.3, 25). The following laws of nature are not addressed in *Leviathan*: 'There be other things tending to the destruction of particular men; as drunkenness, and all other parts of Intemperance; which may therefore be reckoned among those things which the law of nature hath forbidden; but are not necessary to be mentioned, not are pertinent enough to this place' (Lev I.15, 144).

Hobbes's philosophy, which also explains some of the central aspects of Hobbes's view of civil law.

At this stage of analysis, it should be noted that the interaction between the right of nature and laws of nature in Hobbes's account is the first spatial border that founds law and the state. However, the broader consideration of spatiality in Hobbes's construction of law enters into the scene much earlier, although in a different form, not as a border, but a particular view of human existence that emphasises materiality and above all corporeality of human existence. Even before starting his discussion of the right of nature and the law of nature that then leads Hobbes to his argumentation about the concept of the state and civil law as a command of a sovereign, he emphasises a very important premise that grounds contemporary theories of spatial justice: '[M]any men at the same time have an appetite to the same thing which yet very often they can neither enjoy in common, nor yet divide it.'[29] This view of the state of nature combined with his conceptualisation of space emphasising bodies as determinants of space resonates very strongly with the contemporary spatial justice literature.[30] In particular, the emphasis on bodies as determinants of space is as strong in the contemporary theories of spatial justice as it is in Hobbes. The same is true of the emphasis on the uniqueness of body's corporeal position and the ensuing impossibility of division.[31] Obviously, contemporary theories of spatial justice are more nuanced and detailed.[32] However, perhaps surprisingly, the contemporary thought on spatiality and law through its foundational focus on the materiality of bodily existence despite its occasional uses of Leibniz remains more Hobbesian than many would be ready to admit.

The body is central to Hobbes's account of both law and space. When Hobbes, like the contemporary spatial justice scholars, has to account for the

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[29]   DeCi I.6, 8.

[30]   See e.g., Philippopoulos-Mihalopoulos, *Spatial Justice*: 'the space that is produced and is occupied by bodies' (68); 'Space in the lawscape . . . is a continuum of material and immaterial bodies, that includes humans, nonhumans, linguistic bodies, buildings, objects, animals, vegetables, minerals, and so on' (70). He builds his theory of spatial justice and the connected understanding of space on the pre-existing tradition and literature. For instance, the same idea about bodies producing space is also foundational to the writings of a famous French philosopher and sociologist who extensively theorised the concept of the social space Henri Lefebvre. See e.g., Lefebvre, *Production of Space*, especially discussion on 169–74.

[31]   '[S]patial justice is the ultimate expression of one's spatial and legal claim to a unique corporeal position which by necessity excludes all others.' Philippopoulos-Mihalopoulos, *Spatial Justice*, 176.

[32]   For instance, Philippopoulos-Mihalopoulos emphasises that materiality of bodies 'is co-extensive with immateriality' (59). He also affirms that the concept of space in the lawscape 'requires different strategies than the ones relying on measurement' (71). This significantly complexifies the initial Hobbesian underpinnings but does not negate them entirely.

body and its role in law and space, another important notion emerges – namely that of motion: 'bodies differentiate themselves from each other on the basis of their differentiated velocities or pauses – it is all about how a body moves or rests.'[33] Hobbes acknowledges that bodies move and come into conflict or interaction because of their movement. Humans are no exception to this rule. In the state of nature, the constant movement of each human being results in an uncontrolled movement of the multitude. Moreover, Hobbes emphasises the inbuilt endeavour as a smallest invisible unit of motion that operates in human beings as a natural drive towards seeking more power, wealth, and glory.[34] If humans wish to have any control over their lives and make peaceful social life possible, they need to control this movement, at least to some extent. From this premise starts Hobbes's elaboration of the theory of state and law within the state.

As was already noted, the complete equality and freedom in the state of nature are not conductive to peace according to Hobbes. Since human beings by nature prefer present good to future benefit, anybody willing to comply with the laws of nature, thus limiting his or her own right of nature, faces the danger of imminent peril because others will continue exercising their full rights of nature. To overcome this vicious cycle, Hobbes proposes that a group of human beings simultaneously makes the same commitment to transferring parts of their natural liberty to decide about their own self-preservation to one person or group of persons (a sovereign). Moreover, undertaking of this commitment becomes a law of nature and thus an obligation as soon as the group is big enough to procure certain safety and peace.[35] This is basically reflected in the second law of nature. Moreover, this group of human beings has to transition from a multitude that it represents in the state of nature to a unity required for the emergence of the commonwealth. This element is as

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[33] Ibid., 47.

[34] Lev VI.1, 34, Mikko Jakonen, *Multitude in Motion: Re-readings on the Political Philosophy of Thomas Hobbes* (Helsinki: Jyväskylän Yliopisto, 2013), 61; see also Gabriella Slomp, 'The Politics of Motion and the Motion of Politics', in Raia Prokhovnik, Gabriella Slomp (eds.), *International Political Theory after Hobbes: Analysis, Interpretation and Orientation* (Basingstoke: Palgrave Macmillan, 2011), 19–41. The notion of conatus is central not only in Hobbes's discussion of human psychology with its consequences for his legal and political theory but plays an equally central role in his natural philosophy. See on this, e.g., Douglas Jesseph, 'Hobbes on "Conatus": A Study in the Foundations of Hobbesian Philosophy', (2016) 29 *Hobbes Studies* 66–85.

[35] Hobbes does not indicate how big this group of men should be. He makes it dependent on the size and strength 'of the enemy we fear' (Lev I.17, 155). For Hobbes, it is important that the size of the commonwealth is big enough to prevent enemies from easily invading it. Only in this case is this coming together of men abandoning their right of nature conductive to peace. If the groups are too small, it is easy for others to form a bigger group and invade the smaller one.

important to Hobbes's account of the generation of the state as the well-known contractual element. However, this is usually less widely discussed in various accounts of the Hobbesian heritage. Hobbes himself puts it this way when comparing the capacity to socially live together of animals to that of men:

> [T]he agreement of these creatures is natural; that of men, is by covenant only, which is artificial: and therefore it is no wonder if there be somewhat else required, besides covenant, to make their agreement constant and lasting; which is a common power, to keep them in awe, and to direct their actions to the common benefit.[36]

This statement makes clear that an agreement reached by a group of human beings on the restriction of their rights of nature is not sufficient in itself. He then explains that creation of such a common power is possible through a transfer of power of all these human beings to one man or assembly of men 'that may reduce all their wills, by plurality of voices, into one will'.[37] This existence of one will is one of the most important characteristics of the state according to Hobbes, because only when the multitude is united in one person does it deserve the name of the commonwealth. This unity shall be real and achieved through a 'covenant of every man with every man'.[38] To highlight this unity, Hobbes talks about commonwealth as a body, artificially created by men, but a body nonetheless. The famous frontpage illustration of *Leviathan* represents this idea perfectly. Upon careful inspection, one can see how the body of Leviathan is composed of individual men.[39] The transition from multitude to the real unity highlighted by Hobbes is a significant explanatory factor for his subsequent views on civil law. Therefore, I will focus on some of the most important elements in Hobbes's description of this transition.[40]

As Jakonen persuasively argues, in Hobbes, the concept of multitude points out a central political problem that Hobbes aimed to solve through his political philosophy. In this Hobbesian political philosophy, law is one of

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[36] Lev II.17, 157.

[37] Ibid.

[38] Ibid., 158.

[39] For an interesting and revealing discussion of the visual image on the engraved title page of Hobbes's *Leviathan*, comparing it with the original drawing at the beginning of the manuscript of *Leviathan* presented to Charles II in Paris, see Noel Malcolm, 'The Title Page of Leviathan, Seen in a Curious Perspective', (1998) 13 *The Seventeenth Century* 124–55. Malcolm highlights the symbolic importance of this image for Hobbes as a means to clarify his central argument in *Leviathan* about the sovereign as the bearer of the person of the commonwealth.

[40] This discussion of transition from multitude to unity is inspired by and partly based on Jakonen, *Multitude in Motion*. Another interesting discussion of this aspect of Hobbes's theory from a slightly different perspective, see Slomp, 'The Politics of Motion', in general.

the chief instruments used by the sovereign to solve the problem of 'free, rampant motion of the crowds'.[41] According to Hobbes, human beings in the state of nature, despite their ability to reason and their knowledge, remain a simple anarchic, disorganised crowd unable to achieve order and common purposeful action. This, Hobbes argues, is due to the inability of the crowd or multitude to form one will. The danger of the multitude is not only in its unrestricted and disorderly motion but also in the fact that it is easy to manipulate the crowd through demagogy.

The most important political task for Hobbes becomes the search for ways not to impede or stop this motion completely but direct it and make it orderly, serving the main purpose of the commonwealth – namely peace and prosperity of the state – which at the same time realises the basic principle and the right of nature. A sovereign to whom multitude transfers their strength and who becomes thus empowered to speak for all and direct their actions is the main tool imagined by Hobbes to this end. In the moment of establishment of the commonwealth, the multitude becomes united in one person, and this person is called the common- wealth, while the multitude becomes the people. It is significant that *common- wealth* is defined in *Leviathan* precisely as 'one person, of whose acts a great multitude, by mutual covenants one with another, have made themselves every one the author, to the end he may use the strength and means of them all, as he shall think expedient, for their peace and common defence'.[42]

For Hobbes the representing capacity of the sovereign as one person is central to his account of the commonwealth: 'A multitude of men, are made *one* person, when they are by one man, or one person, represented; . . . For it is the *unity* of the represener, not the *unity* of the represented, that maketh the person *one*.'[43] Using the analysis of different visual technics available at Hobbes's times, Malcolm persuasively demonstrates that Hobbes's idea of the unity and the associated concept of the state as an artificial body goes clearly beyond the common literary trope of comparing subjects to limbs and organs of the body.[44] The unity that Hobbes views in the commonwealth as represented by the sovereign is more cohesive and profound, while at the same time less mysterious.[45]

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[41]   Jakonen, *Multitude in Motion*, 56.
[42]   Lev II.17, 158. A similar idea is expressed in *De Cive* in a note on multitude: '[I]f the same multitude do contract one with another, that the will of one man, or the agreeing wills of the major part of them, shall be received for the will of all; then it becomes one person.' DeCi VI.1, 72.
[43]   Lev I.16, 151 (emphasis in the original).
[44]   Malcolm, 'The Title Page', 224–5.
[45]   As Malcolm astutely remarks, Hobbes's alternative to the natural body is not 'supernatural' but 'artificial body' (ibid., 228).

4.2.3 *The Commonwealth and the Role of Law*

There are several essential elements in Hobbes's definition of commonwealth. First of all, a state is established with one goal: peace and common defence of all members of the commonwealth. Second, the contractual agreement at the basis of the state is not a single contract but a series of bilateral contracts tying everyone to everyone, except the sovereign. This element is very important for Hobbes's theory of civil law and justification of sovereign not being subject to civil laws.[46] Finally, the agreement reached consists not only in the transfer of power ('strength and means') but also of the natural capacity to decide about the best means and actions for one's self-preservation. Once the commonwealth is established, individuals lose a big portion of their right of nature, the unlimited freedom as explained above. However, as already pointed out, there are portions or aspects of this right of nature that can never be given up.[47] In this regard, Hobbes clarifies, 'Nature gave a right to every man to secure himself by his own strength, and to invade a suspected neighbor, by way of prevention: but the civil law takes away that liberty, *in all cases where the protection of the law may be safely stayed for.*'[48] Thus the limitations that are imposed on the right of nature through the creation of a commonwealth are dependent upon the same central consideration: peace and safety. This particular limitative aspect of the creation of a commonwealth and the role civil law plays in the process can best be appreciated in light of Hobbes's description of the law's purpose.

Hobbes clarifies law's purpose in the context of his discussion of good and bad law. He points out that civil law cannot be unjust,[49] but can be good or bad. Then he states, 'A good law is that, which is *needful*, for the *good of people*, and withal *perspicuous*.'[50] According to Hobbes, law is needful if it is confirming to the purpose of law. The purpose of law is explained as follows: 'For the use of laws, which are but rules authorized, is not to bind people from all voluntary action; but to direct and keep them in such a *motion*, as not to hurt themselves by their own impetuous desires, rashness or indiscretion.'[51] Thus the idea of motion is central to Hobbes's view of the transition from the state of nature to commonwealth but also for the operation of the commonwealth once it is established. Moreover, law acquires a central role in regulating the motion of people within the state.

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[46]   See Lev II.18, 159, in conjunction with II.26(2), 252.
[47]   See the above text on notes 26 and 27.
[48]   Lev II.26, 276, emphasis added.
[49]   Ibid., II.30, 335.
[50]   Ibid., emphasis in the original.
[51]   Ibid., emphasis added.

The discussion so far clarified that the idea of disorderly motion of multitude that determines Hobbes's vision of humans in the state of nature is instrumental to the correct interpretation and understanding of his concept of the state and the role of law within a state. However, we still need to understand more specifically the role of law in controlling the motion of people in a commonwealth. What happens to the nature and role of law in humanity's transition from the state of nature to a commonwealth that makes law able to control and direct the motion of human beings, which, as discussed, was impossible in the state of nature?

The first step to understanding the distinction between the role and the nature of law in the state of nature as opposed to its nature and role in a commonwealth is Hobbes's remark on 'law properly so called'. It emerges in the context of his discussion of the binding force of the laws of nature. As explained in previous sections of this chapter, according to Hobbes all human beings in the state of nature are equal and possess the same right of nature, which entails the possibility for every individual deciding on the best means and action required for the individual's self-preservation. This places all human beings into a very hostile and competitive environment. If one individual limits his or her initial liberty by following the laws of nature, without others doing the same, this might place this individual at a disadvantage and ultimately endanger his or her existence. Therefore, when considering natural law in the state of nature, Hobbes unequivocally states that '[t]he laws of nature oblige *in foro interno*; that is to say, they bind to a desire they should take place: but *in foro externo*; that, to the putting them in act, not always'.[52] This means that in the state of nature, compliance with the laws of nature requires only an endeavour to comply with them.[53]

Different people will also hold different opinions on what is good and what is evil, and although through reason they all will be able to understand that future peace is the best solution, due to human nature that drives them to the present profit at the expense of a future benefit, there will be no lasting agreement on notions of good and evil. Hobbes highlights that because of this particular status of the laws of nature, they are not properly called laws. On this occasion he explains what a proper law is according to him. In *Leviathan* this is as follows: '[L]aw, properly, is the word of him, that by right has command over others.'[54] In *De Cive* the clarification on the law properly so-called is slightly more detailed: '[A] law, to speak properly and accurately, is

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[52] L I.15, 145.
[53] L I.15, 145–6.
[54] L I.15, 147.

the speech of him who by right commands somewhat to others to be done or omitted.'[55] So if natural law is reason, proper law is speech or word of the person (or persons) who have the right to command. At this stage it is useful to examine Hobbes's definitions of law in detail.

Hobbes, with his attachment to definitions, formulated several succinct and clear definitions of law. Thus, in *Leviathan*, he states, 'CIVIL LAW, is to every subject, those rules, which the commonwealth hath commanded him, by word, writing, or other sufficient sign of the will, to make use of, for the distinction of right and wrong; that is to say, of what is contrary and what is not contrary to the rule.'[56] A very similar definition is provided in *De Cive*. Here the definition of law comes up in the context of the discussion of the different powers of the sovereign.[57] After having established that the coercive power of the sovereign is required to ensure peace and security,[58] Hobbes proceeds to the discussion of various facets of this power. Law, or more specifically civil law, is defined in the context of the discussion of legislative power, which according to Hobbes is needed to avoid unrest resulting from discussions of such undefined notions as 'meum and tuum, just and unjust, profitable and unprofitable, good and evil, honest and dishonest and the like'.[59] Law is precisely the instrument needed to establish a common under-standing around these notions through the legislative power of the sovereign: 'And the civil laws (that we may define them) are nothing else but the commands of him who hath the chief authority in the city, for direction of the future actions of his citizens.'[60] In the *Elements of Law*, Hobbes's defini-tion is slightly different: '[A]ll laws are declarations of the mind, concerning some action future to be done, or omitted.'[61] This difference is due in the first place to the fact that here, contrary to *Leviathan* and *De Cive*, Hobbes defines law in general, not only civil law. The definition is thus situated at a more abstract and general level. However, in his *Dialogue*, Hobbes, it could be argued, also formulates a general definition of law[62], which does not refer to mind, but to will, or more precisely to command, similarly to the definitions of civil law in *De Cive* and *Leviathan* reproduced above: 'A Law is the Command

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[55]   DeCi III.33, 49.
[56]   Ibid., II.26, 251; see also DeCi VI.9, 14, and Hobbes, *Elements of Law*, II.10.1, 220.
[57]   The title of chapter VI where this definition appears is 'Of the right of him, whether council or one man only, who hath the supreme power in the city'.
[58]   DeCi VI.4–8, 75–7.
[59]   Ibid., VI.9, 77.
[60]   Ibid.
[61]   Hobbes, *Elements of Law*, II.10.1, 220.
[62]   Larry May, *Limiting Leviathan: Hobbes on Law and International Affairs* (Oxford: Oxford University Press, 2013), 104.

of him, or them that have the Sovereign Power, given to those that be his or their Subjects, declaring Publickly, and plainly what every of them may do, and what they must forbear to do.'[63] A question that legitimately arises in relation to these definitions is whether Hobbes was prepared at some level to break the link he usually defended between law and will or command[64] and replace it with the link between law and mind. This question can only be fully answered against the backdrop of Hobbes's views on the relationship between natural law and civil or positive law. An equally important interpretative factor is the fact that *Elements of Law* is the earliest among Hobbes's works dedicated to law, whereas *Dialogue* is the latest of his works on the topic. Therefore, it is legitimate to presume that his views in *Elements of Law* might not be as well developed and justified as his views in the later writings.[65] On the other hand, even if Hobbes later changed his views on this point, this earlier definition of law can provide important hints to the thought process through which Hobbes arrived at his later conceptualisation of law, as well as serve as an interpretative tool for some of its aspects.

One of the clearest statements on the relationship between civil and natural law is as follows:

> The law of nature, and the civil law, contain each other, and are of equal extent. . . . The law of nature therefore is part of the civil law in all commonwealths of the world. Reciprocally also, the civil law is a part of the dictates of nature. . . . [C]ivil and natural law are not different kinds, but different parts of Law; whereof one part being written, is called civil, the other unwritten, natural.[66]

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[63]   Hobbes, *Dialogue*, 31. Similarly, in *Leviathan*, Hobbes provides the following definition of 'Law in general': 'not counsel, but command; nor a command of any man to any man, but only of him, whose command is addressed to one formerly obliged to obey him' (Lev II.26, 251). However, based on the Latin version of *Leviathan*, as well as on the fact that this definition is placed in chapter 26, 'Of Civil Laws', it cannot be properly called a definition of law in general. In the Latin version, 'in general' is omitted and the sentence is reduced to a simple emphasis of the difference between advice and law: 'Legem consilium non esse; sed imperatum; quod, ut in praecedente capite dictum est, à consilio differ' (Thomas Hobbes, *Opera philosophica quae latine scripsit omnia in unum corpus nunc primum collecta*, Vol. 3 (London: Bohn, 1841), 196).

[64]   For Hobbes, command presupposed the will of the person commanding. More specifically, he says in the *Leviathan*, '[L]aw in general is not counsel, but command' (Lev II.26, 251); the reason for the command is the will of the person who issues it (ibid., II.25, 241).

[65]   A similar argument is made by David Gauthier in relation to views expressed by Hobbes in *Leviathan* as opposed to earlier *De Cive* and *Elements of Law* with regard to the issue of the definition of the laws of nature. Gauthier, 'Laws of Nature' 259.

[66]   Lev II.26, 253.

From these statements it follows first that for Hobbes civil law is equally a dictate of reason, in the same way as natural law follows from true reason as discussed earlier in this chapter. Despite being different part of law, civil and natural law contain each other and therefore overlap. However, this overlap is not a simple duplication because '[o]bedience to the civil law is part also of the law of nature',[67] which, combined with the story of the emergence of the commonwealth, implies a certain logical priority of the law of nature.

This description of the relationship between civil law and law of nature shall not be transferred to the right of nature because, as Hobbes explains, the end of making laws is the restraint of the natural liberty or the right of nature.[68] If the laws of nature are not properly laws without a commonwealth,[69] whether they become civil laws or remain unwritten, it is only in commonwealth that they become law properly so-called because they acquire their force. The force of laws stems from the will of the commonwealth, which is the will of the sovereign[70] who is the one person representing the multitude of men united in a commonwealth. Thus, law as a proper law is essentially a will transformed into a command properly communicated (word, speech) to citizens. While all law is based on reason and 'can never be against reason',[71] law properly so-called requires in addition to the basis in true reason the expression in words of the will of the authorised representative.

The above discussion of the relationship between civil law and law of nature leads to the following interpretation of Hobbes's definition of law as a declaration of mind in *Elements of Law*. Laws, whether laws properly so-called (civil law), or not (laws of nature), first emerge from the human mind. However, in order for law properly so-called to emerge, a declaration of mind, even if it is the mind of a sovereign, is not enough, but declaration of the will of the sovereign as a command is required. Before being an expression of the will of the sovereign, law has to emerge as a conclusion of sovereign's mind arrived at through the process of reasoning. However, without a will expressed in a command, it remains an opinion – a moral percept. Despite the primacy of mind and reason for Hobbes's general conception of law, which encompasses both natural and civil law, the emphasis placed on the will when dealing with civil law is more significant. The element of will distinguishes law in the commonwealth from the laws in the state of nature and constitutes the capacity

[67] Ibid., 254
[68] Ibid.
[69] See text in note 54 above.
[70] Lev II.26(6), 255.
[71] Ibid., II.26(7), 256.

of law to direct the motion of people. To fully appreciate the importance of this, it is necessary to remember that since humans naturally disagree on such notions as good and bad, just and unjust, unless there is sovereign authority representing them all, they will never be able to agree on the issues pertaining to these questions and continue to move in an anarchic, disorderly fashion. The will of the sovereign as a command brings an end to the disagreement and directs movement of a multitude of men into the right direction.

4.2.4 *Law as a Border*

Hobbes's concept of law functions as a border in a double sense: it limits and directs the anarchical movement of a multitude. This vision of law as a border is anchored in Hobbes's view of space as emerging from corporeal bodies and their movement. The corporeality of bodies in relation to space transforms into the corporeality of human existence in relation to a human society. Since the corporeality of bodies is based on their magnitude, which is knowable, measurable, and thus controllable, Hobbes confidently proceeds to envisaging controlling devices for human corporeal existence. If the movement of bodies can be directed and controlled, Hobbes concludes that the movement of humans can also be directed and controlled because they are essentially bodies. However, in order to devise efficient strategies to control human movement, Hobbes needs to investigate reasons or driving factors for humans' movement. This is the main reason why Hobbes in both *Leviathan* (a study essentially dedicated to the state) and in *Elements of Law* (a study dedicated to law) starts with a section 'Of Man' or 'Human Nature', respectively. In both cases, the first section of a book dealing either with law or with the concept of the state essentially explores topics associated today with human psychology and cognition. Hobbes's vision of human nature exposed in these sections determines his view of the state of nature as a disorderly movement of a multitude that needs to be overcome by establishing certain controls and directing this movement. His view of human cognition discussed in the preceding chapter structures his elaboration of the concept of law as such a controlling mechanism.

Human cognition and access to truth for Hobbes is only possible through an able use of language. Since Hobbes recognised no universals but words, laws of nature, despite their theoretically eternal and universal character, are not properly laws for as long as there is no single will to determine their concrete content and enforce this determination of the content of the laws of nature in each particular situation. To a significant extent, Hobbes's extreme nominal-ism supports the opinion of those authors, who argued that Hobbes's

maintenance of natural law and divine law as eternal and universal was just a tribute to the requirements of the seventeenth century. Laws of nature, as any other laws, are in need of interpretation,[72] and humans outside of a commonwealth due to the factors determining their movement, namely passions driving them, will never agree on one interpretation of the laws of nature. By surrendering to the sovereign portions of their power that allows them to move freely in the state of nature, humans thus limit their naturally unrestricted freedom of movement. They also surrender to the sovereign portions of their cognitive faculties, their reasoning, and interpretative powers. The will of the sovereign expressed in words as a civil law becomes that bordering device that simultaneously limits and directs the motion of humans.

4.3 LEIBNIZ ON LAW

Leibniz was as averse to anarchy and multitude as Hobbes, and perhaps even more. For instance, in a letter to Burnett, he emphasised that the goal of political science should be to establish a reign of reason and that various governmental tasks should be exercised by individuals with best knowledge and reasoning abilities.[73] He expressed several reservations with regard to the popular democracy, especially people's rule through voting. Leibniz feared that this allowed more people to be guided by their whims in making political choices without being discovered and without the need to justify themselves and their choices.[74] Leibniz's criticism of democracy and voting in assemblies is closely linked to his belief in the need to make all decisions subject to reason, which is also the central feature of his conceptualisation of law. Whenever Leibniz sees the opportunity for personal preferences to guide choices of decision makers, he attempts to build safeguards. Very telling in this regard is his extremely innovative and useful even today suggestions about

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[72] Lev II.26, 262–3.

[73] Gottfried W. Leibniz, 'Letter to Thomas Burnett' (two versions of the same letter: one dated 1/12 February 1700, second 2/13 February 1700, both versions contain the same idea expressed slightly differently), A.I.18, 367–81, 380, and 381–9, 388. Small portion of the first version is translated into English in Patrick Riley (ed. and trans.), *Leibniz: Political Writings* (Cambridge: Cambridge University Press, 1988), 191–3, 192.

[74] Gottfried W. Leibniz, 'Letter to Thomas Burnett' (two versions dated 18 July 1701, references here to the second, longer version), A.I.20, 282–8, 284. Small portions of the second version are translated into English in Riley, *Political Writings*, 193–4, 193. Leibniz emphasised that arbitrariness is opposed to reason and that arbitrariness needs to be combatted not only in relation to monarchical forms of government but also in democracies: 'Thus, one must think in this world of laws which can serve to restrain not only kings, but also the deputies of the people, and judges.'

means to control unreasonable decision-making in different assemblies. He proposed to make any vote, even a secret vote, always accompanied by written reasons. Control of voting results will then, according to Leibniz, include a stage where reasons for voting are examined. He also envisaged a separate mechanism for holding those voting accountable for their votes, especially if they unreasonably refuse to vote for a measure, which is evidently necessary for the safety of the state.[75] Thus, contrary to Hobbes, the way to avoid anarchy and arbitrariness was different for Leibniz. It could mainly be described as a reign of reason or virtue guided by reason:[76] 'Le but de la science politique à l'égard de la doctrine des Formes des Republiques, doit ester de faire fleurir l'Empire de la raison.'[77] Importantly, for Leibniz law was capable of functioning as the mechanism ensuring the reign of reason. A deep understanding of the details of this mechanism is required for an adequate appreciation of differences between Leibniz's and Hobbes's views in all subtlety and in order to establish correct links to their respective views on space.

Presenting a systematic view of Leibniz's conceptualisation of law is fraught with some difficulties. The first major difficulty and at the same time already a difference between Leibniz's and Hobbes's way of approaching the topic is the scattered nature of Leibniz's writings on law. Unlike, for example, his views on metaphysics, which Leibniz was able to present in a systematic manner towards the end of his life in *The Monadology* and *Theodicy*, his views on law remain distributed across a number of shorter pieces dedicated to particular issues. Most importantly, many of his self-contained and more complete writings dedicated to legal questions were produced in his early years. Leibniz changed his opinions on certain issues quite considerably over his lifetime.[78] Therefore, a particular care is needed when using Leibniz's earlier works. For instance, Leibniz changed quite significantly his definition of justice – a concept central to his vision of law. Leibniz's concept of justice

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[75]   These ideas are formulated by Leibniz when drafting the letter to Burnett mentioned in the previous footnote. They are, however, omitted from the letter. These remarks are reproduced at the bottom of the page in A.I.20, 285.

[76]   The relationship between virtue and reason is very intimate in Leibniz's theory of justice and will be discussed in more detail later in this chapter. The argument for the primacy of reason in this constellation will also be substantiated at that point.

[77]   A.I.20, 284, translated in Riley, *Political Writings*, 193, as follows: 'The end of political science with regard to the doctrine of forms of commonwealths [*républiques*] must be to make the empire of reason flourish.'

[78]   Even if it is not possible to speak about a complete rupture between Leibniz's earlier and Leibniz's mature views on law and justice, the evolution of his views is at times quite significant so that if his earlier views are taken in isolation from their subsequent development, misinterpretation is possible.

acquired its more or less final form only towards the end of the 1670s,[79] more than a decade after he completed his widely known treatises on law.[80] These fluctuations have to be taken into account in any interpretation of Leibniz's concept of law. Another element that explains the scattered nature of Leibniz's writings on law and complexifies their interpretation relates to Leibniz's habit of writing in response to other scholars' work. In this type of writing, it is possible to get only a partial view of Leibniz's opinions, and their interpretation requires certain attention to the piece to which Leibniz is reacting.

4.3.1 *Leibniz's Conceptual Approach*

Leibniz vigorously and carefully maintained a distinction between *jus* and *lex*, *Recht und Gesetz*, *droit et loi*. This distinction denotes for Leibniz a difference between the normative ideal of justice and its concrete realisation in laws and legal regulations of a particular community. Sometimes this distinction can be reduced to natural law/positive law distinction. For Leibniz, this distinction carries a meaning distinct from Hobbes's distinction between *jus* and *lex*.[81] The first statement by Leibniz, which allows a good comprehension of the meaning and significance of this distinction for Leibniz himself, is the following:

> The error of those who have made justice dependent upon power comes in part from their confusion of *Right* with *law*. Right cannot be unjust, this would be a contradiction. But law can be, for it is power which gives and maintains law; and if this power lacks wisdom or good will, it can give and maintain very bad laws. But happily for the world, the laws of God are always just.[82]

The original French text reads as follows:

> La faute de ceux qui ont fait dependre la justice de la puissance vient en partie de ce qu'ils ont confondu le droit et la loy. Le *droit* ne sauroit estre injuste, c'est une contradiction; mais la *loy* le peut estre. Car c'est la puissance qui donne et

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[79]   This issue is briefly discussed below at the beginning of the section 'Justice'.

[80]   On the progressive development of the concept of justice in Leibniz, see Werner Schneiders, 'Naturrecht und Gerechtigkeit bei Leibniz', (1966) 20 *Zeitschrift für Philosophische Forschung* 607–50; Hans-Peter Schneider, 'Der Begriff der Gerechtigkeit bei Leibniz', in Manuel Medina, Roberto Mesa, and Primitivo Mariño (eds.), *Pensamiento juridico y sociedad internacional: Libro-homenaje al professor D. Antonio Truyol Serra*, Vol. 2 (Madrid: Centro de estudios constitucionales Universidad complutenese de Madrid, 1986), 1089–113.

[81]   For Hobbes's understanding of this distinction, see the section 'State of Nature and Its Relation to Law'.

[82]   Leibniz, 'Reflexions', 564.

maintient la loy; et si cette puissance manqué de sagesse ou de bonne volonté, elle peut donner et maintenir de fort mechantes loix: mais heureusement pour l'univers, les loix de dieu sont toujours justes.[83]

In the original text, the two ideas are clearly marked by two different terms: 'droit', translated into English as 'right', and 'loi', translated as 'law' to maintain this distinction. However, for a person unfamiliar with this linguistic usage of two distinct terms in such languages as German, French, or Latin, there is a danger of reading the term 'right' in a more familiar sense of personal legal entitlements, which obviously is not what Leibniz had in mind. Therefore, in order to avoid any confusion when this distinction is central to the correct presentation of Leibniz's views, the equivalent Latin terms will be utilised – namely, 'jus' and 'lex' (or 'leges' for plural). In most cases, however, it is possible to use the term 'justice' to denote 'jus' and 'law' to denote 'lex', a usage that will be followed in this chapter.

In an earlier work, *Elementa juris naturalis*, Leibniz highlighted another aspect of the distinction between *jus* and *lex*. Although here, he rather opposes natural law (*jus naturale*) and positive law (*jus civile*); in essence, it addresses the same foundational distinction from another perspective. Leibniz affirms that all positive law (*jus civile*) is a factual rather than a legal question because in positive law the proof comes not from the nature of things, but from history or facts.[84] This idea is even more clearly expressed in a letter to Conring: 'Porro ipsa prudentia dicastica duas rursum partes habet, scientiam et peritiam, scientiam juris *naturalis*, peritiam *juris positive*. Jus enim positivum est facti potius quam juris.'[85] Here Leibniz highlights that judicial knowledge (*prudentia dicastica*) has two parts: science and experience, whereby science refers to the science of natural law and experience to the experiential basis of positive law. He adds that positive law is more a fact than law.

Leibniz's interest in law is strongly motivated by his belief in the human capacity to discover eternal and universal truths, as well as the possibility to develop ways of making these eternal truths part of human life. Since, according to Leibniz, precepts of justice form part of these eternal truths discoverable by human beings, knowing them and then translating them into law was the best way to perfect human existence approaching it to the divine ideal. Therefore, although Leibniz clearly distinguishes *jus* and *lex*, justice and law, his own

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[83]   Li, 'Das Recht', 155.
[84]   Leibniz, *Elementa juris naturalis*, A.VI.2, 525: 'Nam si accurate rem consideramus, omne Jus Civile magis facti est quàm Juris: Quia probandum est non ex natura rerum, sed ex historia seu facto.'
[85]   Gottfried W. Leibniz, 'Letter to Hermann Conring', (13/23 January 1670) A.II.1, 44–50, 45. Emphasis in the original.

conceptualisation of law is closely linked to his conceptualisation of justice: Leibniz's concept of law is a reflection of how to ensure that law is as much as possible compliant with precepts of justice. Hence, before discussing Leibniz's views on law as positive law, as *lex*, his conceptualisation of justice needs to be examined.

4.3.2 *Justice*

Leibniz's definition of justice in its shortest mature form is that of justice as the charity of the wise (*caritas sapientis*).[86] After Leibniz arrived at this definition of justice arguably already in May 1677,[87] he never changed it or deviated from it significantly until his death in 1716. In contrast, his previous effort at connecting love and justice[88] saw several versions and variations.[89] Therefore, this Leibniz's

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[86] See e.g. Gottfried W. Leibniz, *Codex juris gentium diplomaticus* (1693) A.IV.5 48–79, 61, since this work is a collection of various international treaties and other documents; only the preface contains Leibniz's reflection on some issues relevant to law and justice and is partially translated, e.g., L 421–4 or in Riley, *Political Writings*, 165–76 (contains an additional passage not included in Loemker's translation). The relevant passage can be found at L 421 or Riley 172. According to Horowska, *Codex* is the first published text where Leibniz adopts this definition of justice (see Aleksandra Horowska, 'Justitia ut caritas sapientis: The Relationship between Love and Justice in G. W. Leibniz's Philosophy of Right', 65 (2017) *Roczniki Folozoficzne* 185–204, 191). For another example, see Gottfried W. Leibniz, 'La félicité' (1694–1698?), in Gaston Grua, *Textes inédits de G.W. Leibniz. D'après les manuscrits de la bibliothèque principale de Hanovre* (Paris: Presses universitaires de France, 1948), 579–84, 579, first part translated into English as Gottfried W. Leibniz, 'On Felicity', in Riley, *Political Writings*, 82–4, 83. In some instances, '*caritas*' is translated as 'love'; see e.g., Gregory Brown, 'Happiness and Justice', in Maria Rosa Antognazza (ed.), *The Oxford Handbook of Leibniz* (Oxford: Oxford University Press, 2018), 623–40, 623, or Patrick Riley, *Leibniz's Universal Jurisprudence. Justice as the Charity of the Wise* (Cambridge, MA, and London: Harvard University Press, 1996), 144. Although '*caritas*' has for Leibniz strong connections to love, it should not be confused with it, especially because Leibniz intentionally avoided in his later discussions of justice the use of terminology more directly referring to love, as explained later in this section.

[87] See Schneider, 'Der Begriff der Gerechtigkeit', 1100, pointing out that Leibniz reports in a letter dated May 1677 to Duke Johann Friedrich of Hannover to have found the inspiration in the demonstration of natural jurisprudence out of the sole principle of justice as the charity of the wise. However, at this point Leibniz does not elaborate on the meaning of this definition.

[88] As explained later in this section, Leibniz's definition of '*caritas*' or charity is linked to his understanding of love. The term 'love' (in Latin 'amor', noun, and 'amare', verb) appears explicitly in some of Leibniz's earlier definitions of justice and some of his general observations on justice in later years. Therefore, in his early reflections on justice the link to love is more visible. On Leibniz's early definition of justice as 'habitus amandi omnes' (A.VI.1, 465), in *Elementa juris naturalis* and its relationship to the mature definition of justice as the charity of the wise, on which this section focuses, see Horowska, 'Justitia' in general.

[89] For a summary of Leibniz's earlier efforts at defining justice, see Schneider, 'Der Begriff der Gerechtigkeit', 1094–7. An important general and detailed study of Leibniz's concept of

definition of justice as *caritas sapientis* is definitely a final and perfect definition from Leibniz's viewpoint that moreover fitted well his broader metaphysical and political views. This definition encapsulates all important elements of Leibniz's vision of justice. However, in order to reveal these elements, it is necessary to delve into the meaning of terms 'charity' and 'wise', as elaborated by Leibniz, as well as explore the way Leibniz connected these two terms.

The term 'wise' establishes a connection to the necessary cognitive element of justice while the term 'charity' links to its action component. The cognitive element of Leibniz's definition of justice is obvious to anybody familiar to some extent with Leibniz's work. The discussion of Leibniz's approach to universals and human cognition in the preceding chapter also provides a necessary back-ground on this issue. If, as explained, for Leibniz precepts of justice are items of innate eternal and thus universal and immutable knowledge, humans first need to discover these precepts. The chapter also highlighted that Leibniz insisted on the possibility for human beings to discover, organise, and efficiently utilise these items of innate knowledge, especially through his work on *Scientia generalis* and *Characteristica universalis*.[90] Therefore, all Leibniz's works in relation to innate human knowledge and its discovery are highly important for his concept of justice. However, apart from the procedural aspect of knowledge acquisition, the definition of justice as the charity of the wise also raises the question of the area within which the wise person needs to be knowledgeable: when Leibniz defines justice as the charity of the wise, does he mean wise people in general or does he define 'wise' more distinctively?

When Leibniz developed his *Scientia generalis*, he not only supplied his thoughts on its theoretical foundation, but also left us various attempts at constructing this systematic overview of essential terms through definitions. In particular, many of these attempts concern the concept of justice and a chain of concepts necessary for its comprehensive description. If justice is for Leibniz the charity of the wise (*caritas sapientis*), 'sapientia est scientia felicitatis' (wisdom is the science of happiness).[91] Happiness in turn is defined

justice as the charity of the wise in English remains Patrick Riley, *Leibniz's Universal Jurisprudence*. However, outside of the English-speaking world, the works of Gaston Grua are as important. See in particular, Gaston Grua, *Jurisprudence universelle et théodicée selon Leibniz* (Paris: Presses universitaires de France, 1953). See also Hans-Peter Schneider, *Justitia Universalis. Quellenstudien zur Geschichte des 'christlichen Naturrechts' bei Gottfried Wilhelm Leibniz* (Frankfurt am Main: Klostermann, 1967).

90   See on this text on note 30 in the first chapter and the subsequent discussion. As already noted, *Scientia generalis* also included *ars inventendi* (art of inventions).

91   Gottfried W. Leibniz, 'Aphorismi de felicitate, sapientia, caritate, justitia', A.VI.4 2792–808. This piece contains several versions in Latin and a German translation of the final version. The final version is used here.

as a lasting joy ('laetitia durabilis'). 'Laetitia est status voluptatum in quo sensus voluptatis tantus est, ut sensus doloris prea eo non sit notabilis.' Joy is a state of pleasure in which the feeling of please is so great that in comparison to it pain is not noticeable. Pleasure in turn is defined as a sense of perfection, which can relate either to ourselves or to others.[92] It is remarkable that although many of the terms in this chain of definitions starting from the cognitive portion of the concept of justice evoke sensations, Leibniz emphasised that these particular feelings, such as joy or pleasure, can be taught and learned.[93]

According to Leibniz, justice needs to be a practice; it cannot stand as a purely theoretical concept, as knowledge, although knowledge remains a necessary precondition of justice. In *Codex* Leibniz defines charity as 'a universal benevolence'; benevolence in turn is defined as 'the habit of loving or willing the good' and finally love according to Leibniz 'signifies rejoicing in the happiness of another, or, what is the same thing, converting the happiness of another into one's own'.[94] Habit is defined in the *New Method* as 'an acquired permanent readiness to act'.[95] This sequence of definitions establishes a clear link between justice and action.

The habit can be acquired in two ways: either through 'supernatural infusion or natural familiarization'.[96] Leibniz does not deny either divine or devilish supernatural infusion,[97] but for the purposes of his treatise, he focuses on familiarization or teaching. In his discussion of habituation or familiarisation, Leibniz emphasises the necessary balance between frequency of acts (repetition or quantity) and their intensity or magnitude (quality).[98]

If wisdom is the science of happiness and charity through love is converting happiness of another into our own, then happiness becomes a bridging device uniting cognitive and practical (or action-oriented) elements[99] of Leibniz's concept of justice. Leibniz's definition of happiness and its connection to love

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[92]   Ibid.
[93]   See Leibniz, 'La félicité', 579, where he emphasises that wisdom as a science of happiness is what needs to be studied above anything else.
[94]   Leibniz, *Codex*, 61 (Riley, *Political Writings*, 171).
[95]   Gottfried W. Leibniz, *Nova Methodus discendae docendaeque Jurisprudentiae* (1667) A.VI.1, 259–364, translated into English as Gottfried W. Leibniz, *New Method of Teaching and Learning Jurisprudence*, Carmelo Massimo de Juliis, trans. (Clark: Talbot Publishing, 2017), Part 1, para. 2, 1.
[96]   Ibid., Part 1, para. 8, 4.
[97]   Ibid., Part 1, para. 9, 4–5. In the whole book, there is only this one paragraph dedicated to this issue.
[98]   Ibid., Part 1, paras. 10–27, 5–18.
[99]   Riley says that in Leibniz 'love is "affective", wisdom "cognitive"' (Riley, *Leibniz's Universal Jurisprudence*, 5). While love is affective in certain sense, the fact that the mature definition is

is quite intricate and raised debates during his lifetime. These debates are linked to the question of whether a disinterested love is possible, which in turn connects to those objectors to justice who contend that 'justice is supreme folly, because it commands us to consider the interests of others while we neglect our own'.[100] Leibniz through his particular view of happiness was able to avoid arguing for an existence of disinterested love while at the same time rejecting the view that justice requires us to prefer the interests of others to the detriment of our own interests.[101] Leibniz defines happiness as 'a state of permanent joy'.[102] As mentioned before, Leibniz defines joy as 'a pleasure which the souls feels in itself' and pleasure as 'the feeling of a perfection or an excellence, whether in ourselves or in something else'.[103] Leibniz provides an example of pleasure we experience when listening to music or seeing an object of art.[104] For him, this is a crucial point where justice, while being based on personal interest (pleasure and need for happiness), at the same time includes the possibility to experience pleasure and thus happiness through others. Thus Leibniz eliminates the paradox of justice mentioned above, demonstrating that our own interests are not necessarily opposed to interests of others.

Leibniz is well aware that achievement of this capacity to experience happiness as a feeling in our souls arising when experiencing perfection and excellence in others does not always come naturally and actually needs to be cultivated. For

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based on charity (not love) and wisdom, the action element in 'love' or later 'charity' part of the definition is more important to highlight than the affective element. As I argue later in this chapter, affective element, which is more closely linked to happiness than love, serves as a bridging device connecting action to cognition.

[100] Leibniz, *Codex*, 61 (Riley, *Political Writings*, 171), saying attributed to Carneades and according to Riley taken from the Epitome of the *Divinae Institutiones of Lactantius*, ch. I (see note 2 at 171). More on the debate on disinterested love itself and Leibniz's position on it, see Émilienne Naert, *Leibniz et la querelle du pur amour* (Paris: Vrin, 1959). See also Gregory Brown, 'Desinterested Love: Understanding Leibniz's Reconciliation of Self- and Other-Regarding Motives', (2011) 19 *British Journal for the History of Philosophy* 265–303.

[101] The fact that Leibniz was not arguing for justice as disinterested love is particularly clear in the way he introduces the idea of justice in his 'Concept of Justice': 'La sagesse qui est la connaissance de notre proper bien, nous porte à la justice, c'est-à-dire à un avancement raisonnable du bien d'autrui.' Mollat, *Mittheilungen*, 58–9 ('Wisdom, which is the knowledge of our own good, brings us to justice, that is to a reasonable advancement of the good of others'; Riley, *Political Writings*, 57). This formulation clearly establishes priority of own good. Only through a particular interpretation of our own good do we arrive at the realisation that the advancement of this personal good requires us to advance the good of others too. In the paragraphs preceding this sentence, Leibniz provides ample evidence of the logical priority of our own good over the good of others but also their intimate connection.

[102] Gottfried W. Leibniz, 'Weißheit' GP VII, 86–9, 86 (L 425). See also a series of definitions in GP VII, 73.

[103] Leibniz, 'Weißheit', 86 (L 425).

[104] Ibid., 86–7 (L 425–6).

instance, in a series of pieces, which Leibniz drafts as a part of his project of *Scientia generalis* and *Characteristica universalis*, he establishes in more detail his vision of happiness and its links to wisdom, piety, and pleasure.[105] Thus he states that in order to arrive at a happy life, which is defined as soul entirely satisfied and quiet,[106] it is necessary to observe three principles in life: one related to wisdom, one related to virtue, and one concerning the right state of mind, certain tranquillity.[107] The link between these three elements can be summarised as follows: one has first to learn what the reason dictates (wisdom), then act according to these precepts of reason (virtue), and finally accept what happens to us.[108] I suggest that Leibniz envisages here a type of a technology of the self, whereby humans, through constant striving not only of an intellectual nature but also based on particular behaviours and habits, acquire a sense of existence most conductive to the realisation of Leibniz's ideal of justice.

The Leibnizian definition of justice being set, the next important step both for Leibniz and for this book is the investigation of the ways to realise this ideal of justice in practice. Two sides of this issue are addressed by Leibniz: (1) the political form of life, which is conductive to the realisation of justice as the charity of the wise, and which today we would call 'state' but as the next section explains is a more complex concept for Leibniz, and (2) the practical normative form necessary for its implementation, namely law, which is discussed in the subsequent section.

4.3.3 *Political Form of Life*

'*Respublica*' is the notion that encapsulates in Leibniz a particular vision of a political community able to realise justice as the charity of the wise at least to some extent. In this context, Leibniz attributes to the term '*respublica*' a specific meaning, which makes it irreducible either to the idea of the state or to the republicanism. More broadly, the term '*respublica*' has in Leibniz's writings a variety of uses and thus meanings, some of which are briefly touched upon here as far as they are relevant to the discussion of the political dimension of the idea of justice as the charity of the wise.[109]

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[105]   Gottfried W. Leibniz, 'De Vita Beata: Von Glückseligkeit' GP VII, 90–8. Very similar content but in a much shorter form is contained in a piece written in French in the same volume: Gottfried W. Leibniz, 'De la vie heureuse', GP VII, 81.

[106]   Ibid., 81 and 90.

[107]   Ibid.

[108]   Ibid.

[109]   For instance, Luca Basso identifies the following six uses of the term in Leibniz: (1) community as a whole, (2) Church as a political structure, (3) contrast to the monarchy, (4) one of types of government, (5) République des lettres, (6) metaphysical 'republic of spirits'.

First of all, *respublica* in Leibniz's works is distinguished from *civitas*. In various translations, both terms are translated as 'state'. However, neither of them is reducible to the idea of the state. One of the main differences between *civitas* and *respublica* from Leibniz's perspective is most visible in the following passage from the *Elementa juris naturalis*: 'The Republic [*respublica*] is that political community [*civitas*] which apart from the form of security [*forma securitatis*], has the form of autarkeia or of an element apt for bringing about happiness.'[110] Leibniz continues with a definition of *civitas* as '*societas securitatis*', or society of security: 'multitude of human beings who live in an expectation to procure each other mutual security'.[111] This definition of *civitas* places it very close to the idea of the state as defined by Hobbes. Then Leibniz continues with a discussion of factors which influence *civitas* and thus change its nature. In this regard, he highlights one decisive factor that leads to the emergence of the best possible state or *respublica optima*, namely growth in quality so that human beings do not only live in expectation of security, but also other goods, and in the highest degree of community, in the *respublica optima* they live in happiness.[112]

This discussion demonstrates that difference between *civitas* and *respublica* is a qualitative difference, but one which goes by degrees from a simple provision of security, through a guarantee of other goods, to achieving its pinnacle (*respublica optima*) when humans live in complete happiness. In this way, *respublica* is linked to justice as the charity of the wise, giving political expression to its normative ideal. The ideal of *respublica optima* as a realisation of justice is closely linked to the idea of *respublica universalis* or *civitas dei* as an ideal society uniting all minds under the reign of God.[113] However, it is clear that Leibniz used the term *respublica optima* not only as a designation for this theological and metaphysical ideal. *Respublica optima* also had a distinct normative-political function in his thought. This latter function of *respublica optima* in Leibniz's thought is the essential element allowing one to understand the potential possibility of realisation of justice as the charity of the wise, which should perhaps always remain a potential. Leibniz attempted to connect his ideal of *respublica optima* both in its

Luca Basso, 'The Republic in Leibniz: Between Philosophy and Politics', (2011) 43 *Studia Leibnitiana* 103–21, 104.

[110]   A.VI.1, 457.

[111]   A.VI.1, 446.

[112]   Ibid.

[113]   On this, see in particular Werner Schneiders, 'Respublica optima: Zur metaphysischen und moralischen Fundierung der Politik bei Leibniz', (1977) 9 *Studia Leibnitiana* 1–26, 1–14. See also Johannes Weiss, *Die Idee des Reiches Gottes in der Theologie* (Gießen: J. Rickersche Verlagsbuchhandlung, 1901), 64–8.

normative-political function as well as in its theological and metaphysical aspects to the political realities of his time. However, these attempts are only cursory.

As far as the metaphysical aspect of the ideal of *respublica optima* is concerned, the reasons for only cursory connections to practice are easily explained. As Schneiders points out, at least the metaphysical ideal of *respublica optima* had to remain an ideal and could not be realised in real life.[114] On the other hand, in my interpretation, this metaphysical ideal precisely because of its status as an ideal retained an important normative function in Leibniz's conceptualisation of *respublica optima* as a political form enabling at least a partial realisation of Leibniz's concept of justice. Through their striving to approach this ideal, humans can continue improving their life in common.[115] In contrast to the metaphysical side of *respublica optima*, its theological side could never become a political goal because according to Leibniz *republica optima*, as God's perfect society is always already realised in reality. Although he admitted the possibility of improvement of *respublica optima* as God's perfect society to some degree, his insistence on the perfect nature of God's creation following from the idea of the God's actualisation of the best possible world, offers little room for human involvement.[116] The theological aspect of the ideal of *respublica optima* acquires its practical significance through Leibniz's identification of the laws of God's perfect society with natural law: 'praecepta perpetui juris, quod et natural appellamus, eadem esse cum legibus aptimae rei publicae.'[117] This identity between natural law and laws applicable

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[114] Schneiders, 'Respublica optima', 25: 'dieser metaphysischer Maßstab, der weder konkret noch konkretisierbar war, vernünftigerweise gar nich konkret angewandt werden konnte.'

[115] This programmatic function of the metaphysical side of *respublica optima* is very similar to the way Derrida theorised democracy to come or justice as an experience of the impossible. See e.g., Jacques Derrida, 'Force of Law: The "Mystical Foundation of Authority"', (1990) 11 *Cardozo Law Review* 919–1046, and Jacques Derrida, *Rogues: Two Essays on Reason* (Stanford: Stanford University Press, 2005).

[116] On this, see e.g. the following statements by Leibniz: '[L]e monde est une espèce de cité *aussi bien ordonné(e) que possible*, dont le Seigneur a en main la sagesse et la puissance souveraine' (Gottfried W. Leibniz, 'Conversation du marquis de Pianese Ministre d'Estat de Savoye, et du Pere Emery Eremite: qui a esté suivie d'un grand changement dans la vie de ce ministre ou Dialogue de l'application qu'on doit avoir à son salut', (1679–1681) A.VI.4, 2245–83, 2252, emphasis added); and also his insistence to consider God 'comme Monarque absolu de *la plus parfaite Cité ou République*, telle qu'elle est, celle de l'univers composée de tous les esprits ensemble' (Gottfried W. Leibniz, 'Discours de Métaphysique', (1686) para 35, A.VI.4, 1584–5, emphasis added). On the notion of the best possible world in Leibniz, see Paul Rateau, *Leibniz et le meilleur des mondes possibles* (Paris: Classqiues Garnier, 2015).

[117] Gottfried W. Leibniz, 'Initium institutionum juris perpetui', in Georg Mollat, *Mittheilungen aus Leibnizens ingedruckten Schriften* (Leipzig: Verlag von H. Haessel, 1893), 1–7, 5.

to God's perfect society highlight again the centrality of the cognitive element aimed at the discovery of eternal truths in Leibniz's concept of law.

Turning to the few available indications as to the concrete, to some extent realisable characteristics of *respublica optima*, one idea becomes dominant: the balance or proportion between reason and power. Leibniz highlights that the right proportion between power and reason is the basis of any state, as it is also the basis of justice and beauty in reasonable beings.[118] Leibniz affirms that if a person has more power than reason (*Verstand*), then he simply will be either an instrument in somebody else's hands or a dictator. Ideally, people who have more power than reason should listen to the advice of others, more wise and well-informed persons. Those who have more reason than power should act as advisors and be wary of being dominated.[119] Therefore, unlike some scholars who emphasised the role of power in politics, Leibniz advanced a balanced view of the role of both reason and power in political arrangements. This mirrors his definition of justice as the charity of the wise, which, as explained earlier, is founded on the harmony between knowledge (reason) and action (power).

The need to balance power and reason in politics is reflected in a few of Leibniz's comments on political situations in various countries during his lifetime.[120] Observing the existing multiplicity of forms of political arrangements, he was very reluctant to reduce the multiplicity of forms of life in common to only one form.[121] Although a certain preference for hereditary monarchy might be observed in Leibniz, this preference was not absolute[122] but determined only by what he was able to observe as inclinations in general populations of his time.[123]

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[118] Gottfried W. Leibniz, 'Grundriss eines Bedenkens von Aufrichtung einer Societät', (1671) A. IV.1, 530–43, 531, para. 5. An interesting study, which addresses the power-reason relationship from a political perspective in Leibniz's work is André Robinet, *G. W. Leibniz: Le meilleur des mondes par la balance de l'Europe* (Paris, Presses universitaires de France, 1994).

[119] Leibniz, 'Aufrichtung einer Societät', 531, para. 5 and 533, para. 11.

[120] See e.g., his remarks on insufficient power of the English king in Gottfried W. Leibniz, 'Letter to Landgraf Ernst' (4/14 August 1683), in Chr. Von Rommel (ed.), *Leibniz und Landgraf Ernst von Hessen-Rheinfels: Ein ungedruckter Briefwechsel über religiose und politische Gegenstände*, Vol 1 (Frankfurt am Main: Literarische Anstalt, 1847), 348–82, 369.

[121] As Herrmann observes: 'Es ist seine Eigenart, daß er im Wissen um die unendliche Mannigfaltigkeit des Leben seine Scheu davor hat, bestimmte Fromen herauszustellen und als schlechthin besser gegenüber anderen zu bezeichnen.' Karl Herrmann, *Das Staatsdenken bei Leibniz* (Bonn: Bouvier, 1958), 58.

[122] For instance, he made critical remarks both about the absolute monarchy leading to too many wars (Leibniz, 'Letter to Landgraf Ernst', 370) and about extreme limitations on monarch's power (ibid., 369).

[123] 'Les peuples ont une veneration pour la haute naissance qu'ils n'accordent point à la vertu, de sorte que je croy, que les Royaumes Electifs seroient fort sujets aux troubles.' Ibid., 369.

Despite Leibniz's emphasis on the balance of reason and power, it is still possible to discern certain primacy of reason and knowledge in Leibniz's view of politics, as well as his view of justice. This follows from the fact that according to him, action follows knowledge and power follows reason. Moreover, in his various attempts to find a balance between private and public benefit, Leibniz always returned to reason (wise men) as means to find this balance.[124] Reducing Leibniz's view of justice to the simplistic view of justice as proportion resulting from calculation does not reflect the richness of Leibniz's thought,[125] but proportion or balance remain an important element in his particular definition of love or *caritas* (charity).

In the political practical moral realm, Leibniz suggested that to assist a decision-making process in the balancing act, one should consider any given situation from the point of view of the other.[126] 'The place of the other is the true perspective point in politics as well as morals.'[127] Its functionality is explained as follows: 'Thus, we can say that the place of the other in morals as well as in politics is a place for discovering considerations, which without it would not appear to us: that everything we would find unjust if we were in the place of the other shall appear to us as suspected of injustice.'[128]

This quite well-known ethical rule acquires in Leibniz's concept of *respublica* as a reality quite a significant role as a tool for reconciling unavoidable perspectivism and thus relativism of each individual position with the general universal orientation of his theory of justice. Moreover, it is a principle valid

[124] Schneiders, 'Naturrecht und Gerechtigkeit', 617.
[125] This is particularly obvious if various Leibniz's attempts at defining justice in different versions of *Elementa juris naturalis*. This is incisively analysed by Schneiders 'Naturrecht und Grechtigkeit', 613–20. On a broader issue of complexity of Leibniz's rationality in the moral realm not reducible to the proportionality calculus, see Martine de Gaudemar, 'Leibniz and Moral Rationality', in Marcelo Dascal (ed.), *Leibniz: What Kind of Rationalist* (Berlin: Springer, 2008), 343–54.
[126] See, e.g., Leibniz's short essay 'La place d'autruy', in A.IV.3, 903–4. See also the analysis of this idea in Fernando Gil, 'Leibniz: La place d'autrui, le principe du pire et la politique de la monadologie', (1984) 3 *Passé Présent* 147–64; Quintin Racionero, 'El princip de la "place d'autrui" y la racionalidad de la politica', in Ildefonso Murillo (ed.), *La filosofia ante la encrucijada de lanueva Europa* (Colmenar Viejo: Diálogo filosófico, 1994), 583–611.
[127] Leibniz, 'La place d'autruy', 903. Original French text reads as follows: 'La place d'autruy est le vray point de perspective en politique aussi bien qu'en morale.'
[128] Ibid., 904. Original French text reads as follows: 'Ainsi on peut dire que la place d'autruy en morale comme en politique, est une place propre à nous faire decouvrir des considerations qui sans cela ne seroient point venus: que tout ce qui nous trouverions injuste, si nous etions à la place d'autruy, nous doit paroistre suspect d'injustice.'

both internally and externally, and thus has impact on Leibniz's conceptualisation of international relations.[129]

Beyond this very general principle with a few practical consequences mentioned expressly, Leibniz provided only very limited observations in relation to the theory of state and sovereignty, which occupied many of his contemporaries. In particular, he viewed the state form that fascinated so many scholars of his time, including Hobbes, as only one out of many possible forms for humans' life together and one out of many possible ways to cooperate in achieving justice.[130] Therefore, the search for the optimal form of community able to achieve the aims of *respublica optima* was more important to Leibniz than the determination of specific characteristics of the state as the form of political life acquiring dominance at his time. A very similar attitude can be observed in Leibniz's approach to law not as an ideal, as justice, but as a social fact and an instrument that the practice offers for realisation of justice.

4.3.4 *Normative Form of Life*

Law and justice in Leibniz's thought are intimately linked. Cairns states correctly that '[a]t the root of his social theory of law was a conception of law and justice as a totality, a resolute opposition to any attempt at a bifurcation of the legal order into law on one side and justice on the other'.[131] As mentioned earlier, Leibniz was eager to highlight the distinction between *jus* and *lex*, between justice and law. However, this distinction served the purpose of creating better conditions and firmer ground for a theory of law, which is fully receptive of justice, which embodies the ideal of justice. The understanding of distinctness of justice and law, their disjunction in the practice of human communities is a necessary precondition for a theory and future practice of law, which aims at creating a unity between justice and law. One of the principal means for achieving this unity between justice and law was according to Leibniz legal systematisation and codification.

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[129]   For instance, in the above essay, Leibniz mentions the following situations where this principle is useful: in morals to know our duty towards our neighbour, but also in politics to know what intentions our neighbour might harbour against us (ibid., 903).

[130]   Very telling in this regard is Leibniz's discussion on classification of societies or communities in a short piece 'Divisio Societatum'. When he describes in this short treatise unlimited societies (unbegrenzte Gesellschaften), which he affirms all are aimed at well-being of humans, he lists all different examples without singling out the state. Gottschalk E. Guhrauer (ed.), *Leibnitz's Deutsche Schriften*, Vol. 1 (Berlin: Veit und Comp, 1838), 417–19, 418. For a detailed discussion of this aspect of Leibniz's thought, see Herrmann, *Das Staatsdenken*, 34–42.

[131]   Huntington Cairns, 'Leibniz's Theory of Law', (1946) 60 *Harvard Law Review* 200–32, 227.

Leibniz started his effort at systematising legal science from early on, and he has not abandoned his effort at advancing various codification and systematisation projects until his death.[132] This legal systematisation and codification project is closely linked to Leibniz's view of justice in its relationship to the political community discussed above, as well as to his endeavour at creating *Scientia generalis*.[133] In relation to law, Leibniz particularly relied on the similarity of reasoning and logical structure between geometry and law.[134] Despite these general trends identifiable in Leibniz's thought, his specific approach to addressing the relationship between the ideal of justice as the charity of the wise or natural law and positive law, law as practiced in living human communities evolved over time.

The basic tenet of Leibniz's early approach is exemplified by the combinatorial method. This method is exposed in one of his first works, *Dissertatio de arte combinatoria*.[135] In essence, Leibniz advances the idea that all concepts can be decomposed in simple concepts or elements, which are constitutive blocks of all other more complex concepts. The total amount of these simple elements is limited, but their combinations are numerous. If one is proficient in the art of combinations knowing various ways of establishing connections between these simple elements, one can discover all the variety of complex concepts, ensuring at the same time their completeness. Moreover, by assigning special signs to each of the simple concepts, one can create a type of universal language where all complex concepts are representable as combinations of signs of simple

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[132]   Famously, it is reported that at Leibniz's death, *Nova Methodus* marked with marginal annotations laid open on his desk. See e.g., Christopher Johns, *The Science of Right in Leibniz's Moral and Political Philosophy* (London: Bloomsbury, 2013), 165, note 2; Roger Berkowitz, *The Gift of Science. Leibniz and the Modern Legal Tradition* (Cambridge, MA, and London: Harvard University Press, 2005), 12; Schneider, *Justicia Universalis*, 50. Another evidence of Leibniz's continuing interest in the project of systematisation and codification of law are his letters written in the last years of his life to promote his efforts in this area.

[133]   On *Scientia generalis* in general, see text on note 30 in the first chapter and the subsequent discussion.

[134]   See, e.g., Gottfried W. Leibniz, *Dissertatio de Arte combinatoria*, (1666) A.VI.1, 189. See also Heinrich Schepers, 'Leibniz' Arbeiten zu einer Reformation der Kategorien', (1966) 20 *Zeitschrift für philosophische Forschung*, 539–67, 545. Peter König, 'Das System des Rechts und die Lehre von den Fiktionen bei Leibniz', in Jan Schröder (ed.), *Entwicklung der Methodenlehre in Rechtswissenschaft und Philosophie vom 16. Bis zum 18. Jahrhundert* (Stuttgart: Franz Steiner, 1998), 135–61, 138–40.

[135]   This work was published in 1666, around the same time when he published his early treatises on law: *Specimen Quaestionum Philosophicarum ex Jure collectarum* (1664), *Disputatio juridical de conditionibus* (1665), and *Disputatio Inauguralis de Casibus Perplexis in Jure* (1667). This shows how closely both issues: juridical and logico-mathematical occupied him from early on.

concepts.[136] In this regard, Leibniz highlighted that this procedure is only applicable to eternal truths.[137] Therefore, the inclusion of jurisprudence in the discussion[138] confirms that Leibniz conceived of principles of justice as eternal truths from early on. In relation to law, this project signified the possibility of reduction of legal complexity and diversity of both cases and regulations to a limited number of foundational building blocks: elements.[139] These elements, if correctly determined, can be brought into a series of logical relations reducing uncertainty and judicial discretion to the point that some aspects of judicial reasoning can be similar to mathematical calculation.[140]

In his more mature writings, this attempt of bridging justice and law through reduction of uncertainty and judicial discretion takes a slightly different form linked on the one hand to his development of *Scientia generalis*[141] and on the other hand to his project of codification of law, both of which remain interdependent.[142] In this context, Leibniz shifts his attention from considering combinations to systematisation and definitions. He adopts a scientific method aimed at establishing absolute, clear, and distinct truths about relevant notions starting from simple concepts through definitions. More specifically, his method in this regard is linked to his understanding of transferability of certain logical procedures of invention or discovery in geometry and algebra to other areas of human knowledge, including jurisprudence.[143] Leibniz never

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[136]   For more detail on Leibniz's art of combinations, see, e.g., Serres, *Le système de Leibniz*, 409–42, and Eberhard Knobloch, *Die mathematischen Studien von G. W. Leibniz zur Kombinatorik: Aufgrund fast ausschlieslich handschrfitlicher Aufzeichnungen dargestellt und kommentiert* (Wiesbanden: Franz Steiner Verlag, 1973), 23–53. Couturat's work on Leibniz's logic (Couturat, *Logique de Leibniz*) is also highly relevant, but it does not have a chapter or portion dedicated to this early work of Leibniz. It rather presents various developments in Leibniz's logic according to specific subject areas. Chapter 2, dedicated to combinatoric, is the most relevant.

[137]   Leibniz, *De arte combinatoria*, A.VI.1, 199.

[138]   See in particular his discussion, ibid., 460 ff.

[139]   Contemporary scholarly assessment of the usefulness of combinatorial method ranges from 'worthless' to praise. For the former opinion, see Gerhard Otte, 'Leibniz und die Juristische Method', (1983) 5 *Zeitschrift für Neuere Rechtsgeschichte* 1–21, 8; for the latter, see Hubertus Busche, 'Einleitung' in Gottfried W. Leibniz, *Frühe Schriften zum Naturrecht* (Hamburg: Felix Meiner Verlag, 2003), i–cxii, xxxi.

[140]   Leibniz held a strong belief in the need to reduce judicial discretion. For instance, he stated, 'in any state whatsoever, a judicial matter is the better treated, the less is left to the decision of the judge'. Leibniz, *De arte combinatoria* GP IV, 58.

[141]   Leibniz's later project of *Scientia generalis* remains in some important regards linked to the ideas expressed in his *De arte combinatoria*.

[142]   The interdependency is visible if we consider Leibniz's work on positive law as a systematisation of law. See on this König, 'Das System des Rechts', in general.

[143]   A very detailed discussion of this project from the perspective of logic as a project of uniting general logic with local logic of specific disciplines is contained in Arnaud Pelletier, 'Logica

completed his work in this area, but we have several drafts in various languages on a variety of topics.[144] His project of codification was based on a similar approach aimed at systematic presentation of all areas of law through formation of categories and classes, as well as articulation of relationships between them.

Two most important drafts demonstrate how Leibniz envisaged the process of codification that would lead to the complete or exhaustive but brief and clear exposition of all laws: *Tabula Juris* and *Systema Juris*.[145] These drafts should not be taken in isolation, but considered in connection with his earlier drafts in relation to the *Elementa juris naturalis*[146] because the ultimate goal of his project in relation to law and justice included the formulation of both elements of natural law and elements of civil law. Moreover, as König highlights, 'Leibniz utilises the order of natural law (in the sense of ideal law of respublica optima, which is conceived as the world under the reign of God) as a backdrop against which he systematises Roman law',[147] which was the dominant positive law of his time. Moreover, both *Tabula Juris* and *Systema Juris* have an introductory part – 'generalia' – which indicated a type of preliminary knowledge that all lawyers require. This preliminary knowledge included not only knowledge of types of laws (*leges*) and rules of their interpretation (*verborum signification. Huc philologia juris*), topics which might appear as quite obvious to a contemporary lawyer, but also what Leibniz calls '*regulae juris*' and which, as he explains, include juridical logic and juridical metaphysics. These two areas lead to the requirement of knowledge in such domains as combinatoric and broader logical procedures, which Leibniz elaborated as part of his *Scientia generalis* and *Characteristica universalis*, as well as to the knowledge of natural law foundations. This foundation of law in a broader cognitive and metaphysical dimension is an important feature of Leibniz's conceptualisation of law. This returns us back to the idea with which

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est sicentia generalis. Leibniz et l'unité de la logique', (2013) 76 *Archives de philosophie* 271–94.

[144] The chains of definitions used in the section on the concept of justice are taken from these various drafts.

[145] Both works are contained in Gaston Grua, *Textes inédits de G.W. Leibniz. D'après les manuscrits de la bibliothèque principale de Hanovre* (Paris: Presses universitaires de France, 1948), 791–7 and 819–38, respectively. For a discussion of these pieces and their analysis form the perspective of systematisation of law, see König, 'Das System des Rechts'; for their consideration from the perspective of codification as well as their impact on several codifications projects in Germany, see Berkowitz, *Gift of Science*.

[146] All drafts are contained in A.VI.1, 431–88.

[147] König, 'Das System des Rechts', 144. Original German reads as follows: 'Leibniz benutzt nun die Ordnung des Naturrechts (im Sinne des idealen Rechts einer respublica optima, als die die unter der Regierung Gottes stehende Welt vorgestellt wird) als seine Folie zur Systematisierung des Römischen Rechts'.

this section started – namely, an intrinsic continuity in Leibniz's thought between his concept of justice and his concept of law. This continuity in turn brings about the continuity between Leibniz's metaphysics, including his conceptualisation of space and his views on cognition, which is, as argued in the preceding chapter, equally spatialised.

4.3.5 *Law as a Cognitive Device*

Some authors compared elements of law to monads.[148] However, this comparison holds only to a degree. Monads as simple substances represent the whole universe from one particular perspective. Although we might attempt to suggest that each element of law represents a particular perspective on a juridical universe, this is not reflective of the nature of these elements. It is important to recall that principles of justice are items of innate knowledge in the human brain, which in turn represent eternal and necessary truths. The analogy of monads to elements of law is not needed to understand the connection between Leibniz's metaphysics and his conceptualisation of law. The status of precepts of justice as items of innate knowledge and Leibniz's efforts at finding out procedures allowing access to these items of innate knowledge, in addition to making them part of functioning of human societies, make the link between metaphysics and conceptualisation of law through human cognition direct and non-analogical.

As discussed in relation to Leibniz's view of human cognition, items of innate knowledge are like folds in the human brain's elastic structure.[149] They diversify human understanding. In this sense, we can also say that precepts of justice as items of innate knowledge possess this elasticity and folded nature of Leibniz's picture of a human brain. Simultaneously, as discussed in this and previous chapter, according to Leibniz, justice and goodness belong to the necessary and eternal truths like numbers and proportions.[150] From this follows two consequences: first, the concept of justice is the same everywhere; it is not contingent, changeable, or arbitrary. Second, the knowledge and understanding of justice is accessible to human reason in the same way as the truths of mathematics or geometry. Leibniz emphasises that the word 'justice' has 'some definition or some intelligible notion'.[151] Therefore, as the analysis in this and preceding chapter demonstrated, the science of justice

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[148]   Berkowitz, *Gift of Science*, 28: 'These elements of law (*elementa iuris*) are the precursors to Leibniz's famous monads.'
[149]   See quotation on note 108 in the previous chapter.
[150]   Leibniz, 'Concept of Justice', 45.
[151]   Ibid., 49.

belongs to those sciences that Leibniz calls necessary and demonstrative science, which do not depend on facts but rather 'give reasons for facts'.[152] This implies, as mentioned, that the concept of justice is one of the items of innate knowledge contained in the dark room representing human understanding. Therefore, the concept of justice also possesses elasticity, despite its universal and eternal nature. This elasticity is most clearly visible when the link between justice and law is considered.

Justice needs law to be realised, or attempted to be realised, to have any validity in humans' lives. Just like *civitas dei* as an ideal *respublica optima* remains an ideal, so also justice and its precepts as eternal and necessary truths remain an unattainable ideal. However, they act as a compass guiding attempts by human beings to organise their lives in the best way possible. In order to use this compass, certain skills are required. Leibniz's work on how to discover items of innate knowledge that reflect eternal and necessary truth are aimed at developing all necessary skills for an able use of this compass. Although similarly to the impossibility of realising the metaphysical ideal of *respublica optima*, it is not possible to realise the eternal ideal of justice, similarly to the programmatic function of the metaphysical ideal of *respublica optima*, these eternal precepts of justice have to guide efforts of human beings.

Law as a product of human activity remains relational and perspectival because as any phenomenon it results from monads' activity of perception, which is the result of the representation of relationships between monads as relationships between situated phenomena from a particular monad's perspective. Thus law as a product of human activity is necessarily relative. However, for the very same reason – because law results from the perceptual activity of monads, which essentially is a representation of many in the one, of diversity as unity – law holds within itself the possibility of universality, which is not only receptive of diversity but has diversity as its integral part. Law can realise this potential only thanks to the compass of justice. The crucial from Leibnizian point of view element is the cognitively oriented juridical activity, which consists in the application of carefully elaborated procedures to constantly check if law has not deviated from the path leading it to the ideal of justice. This is the reason why until his last moments, Leibniz invested so much time in developing teaching and learning methodology for jurists. The foundationally primary legal activity is not application of rules but discovery of bad – meaning unjust, not compliant with eternal precepts of justice – rules and situations, with the aim of correcting these rules and situations.

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[152]   Ibid., 50.

4.4 CONCLUSIONS

Hobbes's materialism leads him to the affirmation of the foundational nature of the material body for any aspect of his philosophy. Thus he basically equates the concept of substance with the concept of material body. The same equation can be observed with regard to the concept of space. Real space for Hobbes is simply the extension of the material body. The material bodily existence of humans also founds the Hobbesian concept of law. The explanation about the Hobbesian concept of law from material bodily existence of humans requires a presumption – which in Hobbes's own opinion is a scientific truth – about human nature or as we would say today about human psychology. Without reproducing here all the facets of this presumption, suffice it to say here that human bodies just like other material bodies are presumed by Hobbes to move in an anarchic or disorderly fashion. Therefore, just like non-human bodies' movement can be controlled and organised through various mechanisms, Hobbes envisages both the concept of state (as an artificial body) and the ensuing concept of law as a mechanism for creating limits or borders to the anarchical movement of human bodies. In order to fully appreciate Hobbes's conceptualisation of the state and law as controlling mechanisms, Hobbes's extreme nominalist stance has to be recalled here. His extreme nominalism, which leads to the denial of any universals but words, also follows from his materialism, which posits material extended bodies as the basis of space. Hobbes's extreme nominalism denying existence of any universal values and therefore norms leads to the assertion of the need to artificially create common values and norms. This can happen according to Hobbes only through the creation of states as territorially delimited units and law as a command of a sovereign. The importance of the state as a territorially delimited artificial body is double because it leads to the creation of the order not only internally, through law as was discussed in this chapter, but also externally. This external aspect is discussed in the next chapter, as it is relevant to the question of international law. As for the internal aspect, law becomes the device for controlling and directing the motion of humans by being an expression of the will of the sovereign that creates common values and norms. Through founding contract of all with all transferring portions of the natural right to self-preservation to the body of the one, the sovereign – be it a monarch or an assembly – is created. This idea of the artificial body of the sovereign being composed of the multitude of bodies of citizens of a commonwealth becomes an expression of common values and norms as a representation of many by the one. The universality, at least at the level of the state, is created through this artificial construct, which makes the state

personified by the sovereign a single will producing values and norms presumably shared by all the members of this artificial 'one'.

Leibniz's concept of law founded on the concept of justice, precepts of which are eternal and necessary and thus universal truths, stands in sharp contrast to the Hobbesian concept of law. The starting point of Leibniz's philosophy is the idea of substance as an unextended and non-situated unit. This simple substance through its foundational activity of perception requires the conceptualisation of space as relational. At the same time, from the point of view of each simple substance, the world is always perspectivised, but all these perspectives are different so that the unity of the world arises as a result of harmonious coexistence of the diversity of these perspectives. From the point of view of human knowledge, it means that although Leibniz believes that by using correct procedures humans can access eternal truths, including principles of justice, each item of truth discovered by human beings will always remain but a perspectivised reflection of the content of the eternal truth. From the point of view of the legal system, this means that the process of discovery and improvement could never be said to be finally completed. Lastly, this also means that unity and universality can only emerge through a proper attention to complexity and diversity. Unity from a monads' perspective is a representation of many in the one. True unity can be achieved only through a harmonious set of relationships between the multitude of 'ones' (substances, human minds), which themselves account for the whole complexity and diversity of the world, each from their own perspective.

Through the focus of this chapter on the concept of law in Hobbes and Leibniz, two contrasting views on the multitude and complexity of the world were revealed. Hobbes's materialist stance leads him to an attempt to control this complexity. His concept of space facilitates this task because it presents the world ultimately as controllable. This position is to a large extent a hallmark of modernity that continues to influence Western attitudes towards the world. As will be argued in the next chapter, contemporary international law and international relations are largely heirs of this tradition. However, contemporary international law conceals one aspect of Hobbesian tradition made obvious in this chapter, namely the entirely artificial nature of universals. Hobbesian position is irreconcilable with any belief in any pregiven universal. Law introducing unity and universal values, even within the borders of a state, is simply a fiction created by human beings. This aspect of Hobbesian heritage is often concealed or forgotten today, leading to paradoxes and sometimes fruitless debates in international law. Reliance on the pre-existing or given universals is possible only from a Leibnizian perspective. However, this perspective does not postulate space and other aspects of human existence as

controllable but as knowable. Leibniz's attitude in face of complexity and multitude is not to control it, but to understand and explain it. This understanding and explanation are made possible because of the logical-structuring status of the concept of space, which provides a grounding to this complexity. From Leibniz's perspective law becomes another instrument assisting human beings in understanding the complexity of their existence and organising it according to the acquired knowledge.

In sum, in Hobbes law based on the concept of material space is a controlling device, control being performed through a bordering function. For Leibniz, justice, and even law are primarily conceived as cognitive devices. The cognitive activity of discovery of truths necessarily had to be followed by action, since the ultimate aim of law is to improve the conditions of life of humans. However, law cannot be reduced according to Leibniz neither to its aims nor to a set of actions. This nature of law and justice as primarily cognitive devices follows naturally from both the concept of relational space and the nature of activity of simple substances, which remain intertwined in Leibniz's philosophy.

5

Intermezzo

This transitional section aims at bringing together a variety of arguments made in the previous chapters and prepares the ground for the transition to the discussion in the final chapter. The discussion and analysis in preceding chapters had a twofold aim: present all notions relevant for the discussion of the link between international law and the conceptualisation of space in the final chapter, and demonstrate the dependency of the concept of law on conceptualisations of space.

Hobbes and Leibniz share a number of commonalities in their approach to the tasks as scholars: they both attempted to engage in high level scholarly discussions on a variety of topics ranging from mathematics (including geometry) and physics through philosophy and history to law and politics. Equally notable is their admiration for the application of the 'geometrical method' to law and politics. From these two points emerges the possibility of comparison for the purposes of this study because both scholars offered an equally deep engagement with two areas: conceptualisation of space and conceptualisation of law.

For Hobbes, the idea of space emerges out of his idea of body. Body for Hobbes is an extended material object. This thought about extension of the body and its positioning creates the idea of space. Although he distinguishes the imaginary space from real space, the ideality of the imaginary space remains dependant on the extension of the material body and material processes leading to how the human brain receives and processes this information about extended material bodies. Thus, ultimately, the concept of space for Hobbes is dependent on measurement and bodies taken as isolated, separate, and independent units. Hobbes's conceptualisation of space is novel in that it achieves a break from the Newtonian abstract space as an attribute or sensorium of God. This is a significant move away from spiritualism, which made the existence of the whole world dependent on God as

a creator and as a ruler. In his attempt to explain everything from its material causes and free all areas of science and knowledge from mysticism, Hobbes is also forced to rethink the concept of space. If for Newton matter has no necessary existence and we can conceive space as empty, as an infinite empty container, for Hobbes space only becomes conceivable if we had a prior experience of matter as an extended material substance. Hobbes's concept of space, unlike Newton's, does not need God but needs a material extended body.

Leibniz viewed the concept of space first of all as a logical ordering principle. Therefore, space in relation to existence was inconceivable without the multitude of diverse existing entities. Space for Leibniz has a certain connection to God without being dependent on him. As Leibniz's approach to knowledge and cognition demonstrated, he firmly held to the eternal nature of certain truths. These truths did not depend on God but were part of his understanding and determine how God conceives the best possible world. Space as a logical order of relations between coexistents but also between possibles and between possibles and existents determines God's conception of his creation. In this regard, like in Hobbes, space can be imagined or ideal. However, unlike Hobbes, Leibniz would regard as impossible to talk about space without a multitude of relations between a variety of phenomena. For example, Hobbes's annihilation experiment, if it could hold any explanatory force for Leibniz's view of space, could do so only as the starting point because a single human being imagining one single body does not illustrate at all Leibniz's insistence on relationships as basic structuring elements of the concept of space. In addition, for Leibniz, space holds supplementary functionality in relation to existents and human cognition. As the chapter on universals and human cognition demonstrates, the perceptual activity of all monads and thus the way all humans observe and comprehend the world around them is fundamentally spatial, as it is based on the same idea of relationality on which Leibniz's concept of space is based. As the space structuring God's mind is an order of relationship, so is the perceptual activity of monads. Monads perceive the world as relationships between phenomena. The difference is that monads' perception always remains perspectival, reflecting the particular situation of the monads and their relationships of proximity to all other monads, while God's mind comprehends all possible perspectives. In this Leibniz achieves certain reconciliation between transcendence and immanence. At the level of human cognition or activity of minds, space as a logico-relational concept functions as a structuring device, including within the human brain.

From these two very different visions of space emerge two different objectives for Hobbes and Leibniz, respectively, in their broader philosophical and politico-legal endeavours. For Hobbes, the concept of space being reduced to measurement and existence of isolated material bodies, the task becomes twofold. First, he needs to account for interactions between these bodies simultaneously proposing ways to achieve at least a degree of truthfulness in this account. Since he rejects any real existence of anything except material bodies, he cannot rely on some pre-existing truths like Leibniz. Second, since ultimately his view of the movement of bodies, especially of human bodies, is that of unregulated anarchy, he also needs to suggest ways to introduce order into this anarchy. Here his concept of space based on measurement of material bodies and thus ultimately controllable plays a foundational role. The idea of the state as a clearly delimited territorially anchored artificial body could only make sense against the Hobbesian view of space as measurable and controllable emerging from material bodies. In a thus defined state, order becomes possible through a mechanism of discourse control, namely law. The need to control discourse and the particular mechanism Hobbes proposes to ensure such a control is also intimately linked to Hobbes's view of space as emerging from material bodies only. He explains all acquisition of knowledge about the world around us through material processes. In a simplified form, we could say that all we know is a result of various actions of bodies on different organs. In this context language becomes for Hobbes the only mechanism, which, if used correctly, can lead to an accurate description of these various actions of bodies on our organs we experience and their effects. Thus the control of language and public discourse within a state is the only way to produce a common 'truth' for a multitude of human beings, each of which experiences very different actions by a variety of bodies on their organs and then interprets these experiences in divergent ways.

Leibnizian space as an order of relationships with functionalities at different levels determines quite different objectives for his enquiry. If space is a logical-structuring order of relationships based on eternally existing and thus eternally valid truths, the whole question becomes how humans can access these truths. In this regard, Leibniz cannot be viewed as an heir to the medieval tradition simply because of the superficial analogy between medieval beliefs in the pre-existent objective order and Leibniz's idea of eternal truths. Medieval beliefs in a pre-existent order, even when based not only on faith but also on reason (*recta ratio*), always referred to some substantive principles on which such an order is based. In contrast to this, Leibniz focuses on logico-epistemological and cognitive processes that allow human beings to ascertain truthfulness of certain substantive statements. Anything Leibniz ever said about the substance

of certain principles or ideas, which he maintained were part of these eternal truths, was always based on a detailed argumentative process. This argumentative process is at the core of his lifelong endeavour at creating a *Scientia generalis* and *Characteristica universalis*. Leibniz always emphasised the need to examine critically the reasoning process behind any statement. Thus this distinct objective of Leibniz's enquiry, namely the focus on processes of truth discovery, utilises the concept of space in yet another way: space as an order of relations holds the place of this logico-structural reasoning, which humans have to discover and use in their intellectual activity. This explains such an important place occupied in Leibniz's writings on law and politics by discussions of appropriate teaching and organisation of sciences. This also explains why Leibniz believed that lawyers have to study both logic and metaphysics. This equally provides a grounding to Leibniz's investment in and passion for legal codification. Relationality of space offered itself as the most appropriate procedural tool to arrive at a well-ordered and comprehensive table systematising all law. In politics, the logico-structural functionality of Leibniz's concept of space is most clearly visible in his reliance on the place of the other as the most appropriate point of view. Here again, this particular relational-perspectival mechanism is proposed not as a substantive standard but as a procedural mechanism allowing one to arrive at most appropriate substantive standards. This focus on process directed by space as a logico-structuring mechanism explains absence of interest in Leibniz for the accounts of the nature and form of the state as one of the existing political entities. Moreover, reduction of the diversity to one political form only is an absurdity from Leibniz's point of view. A worthwhile task from Leibniz's perspective is rather to understand and account for this diversity.

These divergent orientations of scholarly interrogations in Hobbes's and Leibniz's work determined by their different conceptualisations of space had an equally strong influence on their views on international law, which are discussed in the next chapter.

6

Space(s) of International Law

This chapter aims not only to demonstrate how Hobbes's and Leibniz's divergent views of space impacted on their respective visions of international law but also to exhibit the continuing operation of these two contradictory visions of space in contemporary international law. The chapter will defend the following argument: while contemporary international law can mostly be characterised as Hobbesian, for reasons which will become clear later, it also integrated elements from Leibniz's heritage; this union of contradictory principles determines continuing emergence of paradoxes in international law. In particular, it is clearly visible that the theory of subjects and the idea of the state is based on Hobbes's conceptualisation of international law while the theory of sources has a more distinctly Leibnizian legacy. This simultaneous integration of both Hobbes's and Leibniz's elements into the structure of contemporary international law signified the need to reconcile within the same system elements underpinned by very different and at times contradictory concepts. The integration of these heterogenous elements within the same system could only occur through the distortion of their conceptual foundation. It also signified that a foundational scission became an integral element of the contemporary international law. One form in which this scission is widely known today is through the analysis of the argumentative structure of international law by Martti Koskenniemi.[1] Other subtle manifestations of this scission are discussed later in this chapter.

The chapter starts with a brief overview of the reception of Leibniz's and Hobbes's heritage in the contemporary international law. Although the present study is not focused on reception of Leibniz's and Hobbes's ideas, a few remarks about their influence on the formation of contemporary international

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[1] See Martti Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument* (Cambridge: Cambridge University Press, 2005), in general.

law are necessary in order to better ground the discussion in this chapter. Then the discussion proceeds by unpacking Leibnizian and Hobbesian elements in two foundational notions of public international law: states as subjects of international law and the theory of sources of international law. In the final sections of this chapter, the relevance of these findings for the contemporary international law is assessed, including suggestions about possible future developments of the discipline in face of these findings.

6.1 INFLUENCES

Hobbes's and Leibniz's work had extremely unequal influence in the relevant scholarly fields. Part of this can be explained by different levels of accessibility of their writings to readers of different epochs.[2] Other possible factors are less clear and cannot be investigated here. The lasting imprint of Hobbes on international relations, political theory, and legal positivist thought is undisputable.[3] Through a variety of interactions between these fields and international law, Hobbes's views also deeply penetrated the area of public international law. However, assessments of the truly 'Hobbesian' nature of these influences vary. Some of the widely circulated representations of Hobbesian ideas are either oversimplifications or even caricatures of his views. A deeper and more nuanced understanding of Hobbesian heritage is more widely available in such disciplines as political theory or international

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[2] Generally, Hobbes's writings were easier available than Leibniz's writings due to the fact that the majority of Hobbes's works were published, while many of Leibniz's central works remained unpublished for a very long time. Even today many of Leibniz's later works remain unpublished as the academy edition of Leibniz's works is not yet completed. For example, Busche states the following in relation to Leibniz's concept of natural law: 'Since the second half of the 19th century appeared first interpretations of Leibniz's natural law thought supported by new editions. But these first one-man expeditions into the overall "terra incognita Leibnitiana" remained limited to a few aspects and, moreover, contained some misjudgments due to the all too narrow textual basis' (Busche, 'Einleitung', xiv–xv).

[3] An interesting recent assessment of Hobbes's legacy in international relations is Raia Prokhovnik and Gabriella Slomp (eds.), *International Political Theory after Hobbes: Analysis, Interpretation and Orientation* (Basingstoke: Palgrave Macmillan, 2011). Slightly older but still relevant and penetrating analysis of the ambiguous influence of Hobbes's thought on international relations in contemporary scholarship is Noel Malcolm's chapter on Hobbes's theory of international relations in Noel Malcolm, *Aspects of Hobbes* (Oxford: Clarendon Press, 2002), 432–56. As far as legal tradition and international law is concerned, 'Intensive discussions of Hobbes in legal scholarship are as rare as the fleeting reference to him is common' (David Singh Grewal, 'The Domestic Analogy Revisited: Hobbes on International Order', (2016) 125 *Yale Law Journal* 618–80, 622, note 10). One more detailed assessment of the reception of Hobbes in modern international law, which takes account of recent re-assessment of Hobbes's heritage is Charles Covell, *Hobbes, Realism and the Tradition of International Law* (Basingstoke: Palgrave Macmillan, 2004).

relations. International law saw in the last years a few novel re-assessments of Hobbes's legacy.[4] However, the wider discipline remains dominated by stereotypical representations of Hobbes's views associating him with 'anarchy, war, and lawlessness'.[5]

Leibniz is less widely known for his influences on law and even less so on international law, especially among English-speaking legal scholars. Admittedly, recent scholarship on Leibniz's relevance to contemporary legal theory and practice saw a revival and broadened our understanding of the importance of Leibniz's ideas to the development of the modern concept of law in the form we know it today.[6] However, the importance of Leibniz for the development of international law is still assessed only cursorily.[7] This chapter will contribute to fill this gap within the limits of the aims of the study. In particular, although the significance of Leibniz's metaphysics for his conceptualisation of law is widely acknowledged, the importance of his conceptualisation of space is not taken into account. For this reason, some of the existing assessments of the connection between Leibniz's metaphysics and his conceptualisation of law are quite superficial and thus lead to misinterpretations, which this chapter will attempt to correct.

[4] One interesting example in this regard is Grewal, 'Domestic Analogy'.

[5] Janne Nijman, 'A Universal Rule of Law for a Pluralist World Order: Leibniz's Universal Jurisprudence and His Praise of the Chinese Ruler', in Anthony Carty and Janne Nijman (eds.), *Morality and Responsibility of Rulers: European and Chinese Origins of a Rule of Law as Justice for World Order* (Oxford: Oxford University Press, 2018), 222–44, 226.

[6] Particularly significant is Berkowitz, *Gift of Science*, which traces the impact of Leibniz's ideas on the positivist tradition and legal codification. Other significant works in English contributing to the understanding of Leibniz's concept of law and justice but which are less directly concerned with his impact on contemporary concept of law are Johns, *The Science of Right*, and Riley, *Universal Jurisprudence.*

[7] One of the most detailed and best-known studies tracing the impact of Leibniz's ideas on the development of notions relevant to contemporary international law is a chapter on Leibniz's idea of international legal person (*persona juris gentium*) in a book on the topic: Janne E. Nijman, *The Concept of International Legal Personality: An Inquiry into the History and Theory of International Law* (The Hague: T.M.C. Asser Press, 2004), 29–84. A few other available studies are very short and usually represent a simple summary of some ideas, which might be relevant to international law today, without focusing on the actual possible impact of Leibniz on formation of contemporary international law. Very telling in this regard is the recent publication in the *European Journal of International Law* of an article, which summarises the state of literature on Leibniz and international law along with a few additional suggestions of Leibniz's ideas, which might be relevant for international law today very much in line with the traditional approach (Tilmann Altwicker, 'International Law in the Best of Possible Worlds: An Introduction to G. W. Leibniz's Theory of International Law', (2019) 30 *European Journal of International Law* 137–58). Although the article is very precise and well-written, it remains a simple descriptive summary of ideas. The fact that such a prominent journal judged it necessary to publish a descriptive article is the best proof of the dearth of literature on Leibniz and international law.

6.2 STATES AS SUBJECTS OF INTERNATIONAL LAW

6.2.1 General Remarks

Leibniz's and Hobbes's epoch is a time when the concepts of state and sovereignty were hotly debated by different scholars. Though the standard account of the Westphalian moment as a birth hour of the modern state-system has long been dismissed, the importance of the whole seventeenth century with the Thirty Years' War, the treaties of Westphalia, and ensuing political struggles in Europe for the emergence of the idea of modern international law built on the concept of the sovereign state as its subject cannot be underestimated. Despite many fluctuations, states as subjects of international law remain until today 'the basic units of currency'.[8] Before the seventeenth century, including in the preceding sixteenth century, the dominant unit of consideration, when discussing the regulation at the global level, was still a human being, not any collective unit.[9] The sixteenth century saw the emergence of the discussion of global regulation as a regulation of relationships not only between individual human beings but also between societies they form.[10] This marks the transition to the modern understanding of *jus gentium* as a law between nations, as international law, which will be fully accomplished in the seventeenth century. The emergence of the idea of the state as a unit of political organisation signified the need to shift away from the traditional view of the relationships on the global and even European scale. In both Leibniz's and Hobbes's thought, it is clearly visible that these two processes – development of thinking about the state and transformation of the approach to international relations – are intricately linked and shape each other.

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[8]   James Crawford, *Brownlie's Principles of Public International Law*, 8th ed. (Oxford: Oxford University Press: 2012), 16. Same emphasis on the nation-states as the principal subjects of international law can be found in Malcolm N. Shaw, *Public International Law*, 7th ed. (Oxford: Oxford University Press, 2014), 1.

[9]   See on this, for instance, interpretations of the idea of *jus gentium* as not a law between nations but law among people, among human beings as reasonable beings, and this even after Vittoria: Joseph Höffner, *Christentum und Menschenwürde: Das Anliegen der spanischen Kolonialethik im goldenen Zeitalter* (Trier: Paulinus Verlag, 1947) in general and 233 in particular, and also Albert de Geouffre de La Pradelle, *Maîtres et doctrines du droit des gens* (Paris: Les éditions internationales, 1950), 43.

[10]   For a very detailed discussion of the sixteenth-century perspectives on the relevant unit of regulation (whether human individual or collective) also placing these discussions in the context of preceding centuries, see Gaëlle Demelemestre, 'Sense, portée et enjeu de la reference à l'unité du genre humain dans la doctrine classique du droit des gens', (2017) 85 *Réforme, Humanisme, Renaissance* 95–136.

The seventeenth century characterised as the epoch of 'densification of war'[11] is also the time when many scholars intensively worked on proposals to achieve peace. For many, this project of peace was linked to the need to create and elaborate the concept and the reality of states as territorially delimited unified entities.[12] Leibniz and Hobbes were both philosophers of peace in a broad sense: they both viewed the attainment of peaceful and prosperous human existence as their life-long goal. Peace for both is understood not simply as absence of war but refers to a broader security and prosperity of human beings.[13] However, they took very different roads to peace and as a consequence have quite different visions of the role of law, especially international law, in achieving this aim. From the formal point of view, the main difference between Hobbes and Leibniz, as far as the issue of sovereignty is concerned, is that Hobbes had a clear theory of sovereignty and of the concept of the state while Leibniz's writings do not attest to the existence of a proper theory in this regard as is argued below, despite some of his writings presenting a focused discussion of the concept of sovereignty. On the other hand, Leibniz produced some clear statements on the issue of subjects of international law while Hobbes remained rather silent on the topic. This does not mean that an implicit understanding of subjects of international law is not present in Hobbes's writing – quite the contrary. However, this understanding can only be extracted from his work through interpretation. Leibniz's view of

[11]   Johannes Burkhardt, *Der Dreißigjährige Krieg*, 7th ed. (Frankfurt am Main: Suhrkamp, 2006), 9–28.

[12]   This is true not only at the level of scholarship and theoretical development, but also at the level of practice, since according to some historical research the seventeenth-century wars can also be described as wars of state formation and prevalence of war can be explained by the existence of 'unfinished' or imperfect states. See e.g., Johannes Burkhardt, 'Wars of States or Wars of State-Formation', in Olaf Asbach and Peter Schröder (eds.), *War, the State and International Law in Seventeenth-Century Europe* (Farnham, Burlington: Ashgate, 2010), 17–34.

[13]   For example, Hobbes clearly states in *Leviathan* when describing the purpose of the institution of the commonwealth: 'to defend them from the invasion of foreigners, and the injuries of one another, and thereby to secure them in such sort, as that by their own industry, and by fruits of the earth, they may nourish themselves and *live contentedly*' (Lev II.17, 157, emphasis added), and later, when Hobbes describes the purpose of the institution of the office of the sovereign as 'procuration of the safety of the people', he adds, 'But by safety here, is not meant a bare preservation, but also all other contentments of life, which every man by lawful industry, without danger, or hurt to the commonwealth, shall acquire to himself' (ibid., II.30, 322). He also highlights in the next paragraph that the duty of care of the state is not limited to protection from injuries in case of complaint but in an active attitude of the sovereign in arranging good life for its citizens. In Leibniz, this idea naturally flows from his definition of justice. The concept of *respublica optima* is also closely linked to achievement of a broader general well-being. These two concepts are discussed in the preceding chapter, more specifically in the sections 'Justice' and 'Political Form of Life'.

subjects of international law despite some explicit statements also requires substantial interpretative effort.

The discussion in the next section focuses on Leibniz's and Hobbes's views on these two interrelated topics: sovereignty and the concept of subjects of international law. Some connections to their respective visions of space are already indicated here, although a focused discussion is reserved for the subsequent sections of this chapter.

6.2.2 Leibniz on Sovereignty and Subjects of International Law

6.2.2.1 General Context

Leibniz's writings related to the international or global realm reveal his acceptance of a significant mix of possible actors ranging from individuals to various types of collectives. The concept of the state was just one out of many other concepts considered by Leibniz. As a consequence, contemporary literature on Leibniz as a theorist of international law is rather scarce.[14] Nonetheless, it is wrong to say that 'an der Schwelle zur modernen Aufklärung hält er so an einem letztlich mittelalterlichen Ideal fest'.[15] Leibniz's desire to reconcile old and new, widely supported emerging political constellations and fading political forms is not a sign of his attachment to some idealised past. Rather, Leibniz, with his admiration for diversity and belief in universal harmony, sought to bring the best out of each existing element or form and provide explanations of how different elements and forms can coexist. Therefore, despite this support for old forms of political life, Leibniz is rather a very progressive thinker who displayed 'extraordinary imaginative originality'[16] not only as a metaphysician and mathematician, but also in law

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[14]   As mentioned in note 7 above, in English, the literature on Leibniz and international law mostly consists of short descriptive articles suggesting a few possible links between Leibniz's thought and contemporary international law or his activities as a councillor. Nijmann's chapter on the concept of international legal personality as well as her 'Universal Rule of Law' remain the most analytically deep analyses in this regard. The literature in other languages is not significantly deeper. An interesting book-length study in French that without specifically focusing on international law by addressing Leibniz's effort at achieving peace in Europe provides valuable insights into some relevant aspects of Leibniz's thought is Robinet, *Meilleur des mondes*.

[15]   'On the brink of the modern Enlightenment he holds to an ultimately medieval Ideal', Schneiders, 'Respublica optima', 26. A similar view with particular reference to Leibniz's early writings is expressed by other scholars too; see, for example, Patrick Riley's 'Introduction' in Patrick Riley, *Political Writings*, 29.

[16]   Carl J. Friedrich, 'Philosophical Reflections of Leibniz on Law, Politics, and the State; Note', (1966) 11 *The American Journal of Jurisprudence* 79–91, 79.

and politics, including international realm. This argument is further developed in subsequent discussions in this chapter.

One factor that might have contributed to a narrow vision of Leibniz's scholarship in relation to international law and the question of sovereignty assessing it as a conservative endeavour needs to be mentioned from the outset. This factor relates to an excessive focus of several scholars attempting a reconstruction of Leibniz's views on sovereignty and international relations on a few of his political writings without paying sufficient attention to the context of their emergence. The two main writings in question are *De jure suprematus*[17] and *Entretien de Philarète et d'Eugene*.[18] Both works were completed very early in Leibniz's career. *De jure suprematus* is even the very first publication order from his employer Duke John Frederick of Brunswick-Lüneburg.[19] *Entretien* expresses the ideas of *De jure suprematus* in a less scientific, more polemical form. Reportedly, Leibniz interrupted his work on *De jure suprematus* in order to complete what he regarded as a more easily accessible and persuasive *Entretien*.[20] Both works, as in fact a significant portion of his political writings, were published either anonymously (*Entretien*) or under a pseudonym (*De jure suprematus*).[21] In order to interpret Leibniz's views expressed in these works correctly, it is important to take all

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[17] The full title of this monograph is *De jure suprematus ac legationis principum germaniae*. Often, in many contemporary uses, the work is cited as 'Caesarini Fürstenerii', abbreviating 'Caesarini Fürstenerii De jure suprematus ac legationis principum germaniae'. However, Ceasarini Fürstenerii is a genitive of Caesarinus Fürstenerius, which is the name of the putative author of the work (Leibniz's pseudonym). Therefore, here the work is referred to as *De jure suprematus* to follow the established convention of abbreviating the title, not the name of the author. A.IV.2, 14–270; selected extracts translated in Riley, *Political Writings*, 111–20.

[18] *Entretien de Philarete et d'Eugene sur la question du temps agitée à Nimwegue touchant le droit de Souveraineté et d'Ambassade des Electeurs et Princes de l'Empire*. A.IV.2, 289–338.

[19] A.IV.2, 4.

[20] Ibid., 11.

[21] *De jure suprematus* was published under the pseudonym of Caesarini Fürstenerii, which obviously sounded as a pseudonym to all his contemporaries. However, unlike some other of his pseudonyms, it did not indirectly reveal his identity as the author. Leibniz's authorship of this work was carefully guarded. Even though with the passage of time some did point at Leibniz as the possible author, Leibniz himself did not want to be known as the author of *De jure suprematus*. (See on this A.IV.2, 12.) *Entretien* was published anonymously and even indicated a false publication place. In this case, Leibniz also attempted to guard anonymity for as long as possible (A.IV.2, 282). On the significant number of political writings Leibniz published anonymously or under a pseudonym, really guarding his authorship secret, see Sabine Sellschopp, 'Segeln ohne oder unter falscher Flagge: Zu Anonymität und Pseudonymität bei politischen Schriften von Leibniz', in Wenchao Li and Simona Noreik (eds.), *G. W. Leibniz und der Gelehrtenhabitus. Anonymität, Pseudonymität, Camouflage* (Köln, Weimar, Wien: Böhlau Verlag, 2016), 205–16, 205–6.

three factors – their belonging to an early period, writing upon an order from the employer, and publication without or under a false name – into account. In particular, taking both texts on their face value as completed expressions of Leibniz's views on the appropriate conduct of political affairs and the concept of sovereignty is erroneous. Without suggesting that views expressed in these works are not authentically Leibnizian, a careful interpretation should pay attention to their origin and at least relativize some of the statements with direct relevance to the political goal, which Leibniz had the duty to achieve.

Equally significant is the need to interpret this type of writings in light of Leibniz's work in the final years of his life, as well as in light of his broader philosophical and metaphysical views. This is not always an easy endeavour, as Leibniz did not produce anything comparable in focus and density on international relations and sovereignty in his final years. However, his later years still provide important clues as to the general orientation of his opinions as discussed later in this chapter. For the purposes of this study, this is also important due to the fact that, as mentioned in the chapter on space, Leibniz's mature definition of space, which helped him achieve a higher level of elaboration of his metaphysics, appeared only later in his life.

6.2.2.2 *Jus suprematus*

Leibniz adopted a very practical and pragmatic approach to the issue of sovereignty and the idea of the subject of international law (*jus gentium*). Most detailed thoughts on these topics are contained in two of Leibniz's works: the already mentioned *De jure suprematus* and *Entretien*, none of which was published under Leibniz's name or completed on Leibniz's own initiative.[22] As mentioned before, they are produced on the order of his employer. In the winter of 1673, the previous patron of Leibniz, elector of Mainz, passed away. Leibniz needed another employment and the offer, which he accepted for lack of better prospects, was the post of a counsellor to the Duke John-Frederick of Brunswick. Although the offer was made in 1673, Leibniz delayed his arrival to Hannover until the end of 1676. The first indices of Leibniz's work on the issues related to the topics of *De jure suprematus* and *Entretien* date back to 1677. This indicates how quickly after his entry into service Leibniz became charged with this task. The task was related to the broad desire of the Duke to achieve the status of an Elector within the Holy Roman

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[22]   Although it is attested that Leibniz revised the text of *Entretien* several times over about fifteen years after its first publication, the latest being presumably around 1691, he always kept his authorship of this piece a secret, except for a few nearest confidents. See A.IV.2, 288.

Empire. In this particular instance, the specific target was the status of ambassadors to the international congress in Nijmegen. Duke wished his representatives at the congress to have the rank of ambassadors of first order, like those sent by Electors. The work Leibniz was entrusted with was aimed at influencing opinions of the relevant public (for example, other envoys at the Congress) as well as European powers.

Leibniz approached this task very pragmatically but also with a lot of preparation. He focused on covering all possible sources related to the existing at his time practices and opinions, but also history of the topic. One particularly thorny aspect of the issue related to the fact that some Italian princes, who held towards the emperor of the Holy Roman Empire a position similar that of German princes (non-electors), did have the right to send ambassadors (*legatus primi ordinis*)[23] while this right was denied to German princes, mostly because of the opposition from France. To Leibniz, this was a clear factual contradiction due to power imbalance. Therefore, he mobilised existing resources to formulate a persuasive argument in favour of German princes. One of the main tools in this argument was the concept of sovereignty. Since the concept of sovereignty was the main basis for the right to send ambassadors in the literature of the time, Leibniz had to use the concept of sovereignty as creatively as possible to reconcile the widest possible array of interests. In construing this argument, he in no way intended to develop a full theory of sovereignty or of the subject of international law. His purpose was simply to demonstrate that the existing situation is inherently contradictory, and the concept of sovereignty does not stand scrutiny as a defence of this contradictory situation. Leibniz's attitude in these two works can be compared to that of a contemporary professional lawyer composing a legal document in defence of the cause of his client. The lawyer will obviously make recourse to certain theoretical notions; he or she might even demonstrate a significant degree of creativity in using relevant theoretical notions, but his goal is not to construct a full-blown theory. Therefore, Leibniz's views on sovereignty and the concept of subjects of international law should not be read as a statement of theoretical principles having undeniable validity in the same way in which, for instance, for Leibniz his *The Monadology* was a statement of his metaphysical views, or *New Essays* of his epistemological views, or finally in the way in which

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[23] At that time a complicated hierarchy of different types of envoys existed and ambassadors or *legatus primi ordinis* was the highest ranked envoy. See on this, including the significance of different ranks of envoys, Niels F. May, 'Le ceremonial diplomatique et les transformations du concept de la représentation au XVIIe siècle', in Daniel Aznar, Guillaume Hanotin, and Niels F. May (eds.), *À la place du roi: vice-rois, gouverneurs et ambassadeurs dans les monarchies francaise et espagnole (XVIe=XVIIe siècles)* (Madrid: Casa de Velázquez, 2015), 35–49.

sovereignty was a central theoretical and abstractly valid concept in Hobbes's works. Leibniz's statements on sovereignty should only be read as his ways to problematise and complexify the concept that was used and developed by others but which he did not have a personal interest in, except as one of the existing practical modalities with which he had to deal anyway. This is very similar to Leibniz's engagement with the concept of the state as discussed in the preceding chapter.

This background on Leibniz's attitude towards sovereignty then explains well his specific views on the topic, in particular his articulation of what different contemporary commentators called relative or relational sovereignty.[24] Leibniz's position could not be different if we consider the above explained fact of the practical orientation of his views on sovereignty and the complex reality of several European nations or political communities of his time. Not only the Holy Roman Empire, but also the Old Swiss Confederacy or the United Provinces, represented a highly complex web of relationships between different territorial rulers, some of which were clearly overlapping. Leibniz, with his convictions that ours is the best possible world (which requires the greatest diversity with the greatest simplicity) and that universal harmony reigning in this world means that each and every constellation existing in this world serves its function, had a natural tendency to regard all political communities and complexity of their existence first in a positive light. He admired diversity in human existence. In his works, he attempted to provide a logical explanation to this diversity and complexity using existing theoretical devices.

The specificity of the idea of relative or relational sovereignty can best be appreciated against its dissimilarity to limited sovereignty. Limited sovereignty would simply oppose the prevalent view of sovereignty as absolute expressed by Bodin and to a lesser extent by Hobbes. Absolute sovereignty as a hallmark of the political thinking of modernity determines state-centricity of the contemporary international law. Limited sovereignty does not displace this paradigm but simply works within it to limit its effects, especially through institutional arrangements. In contrast, Leibniz's relative sovereignty requires a different view of the world where states are only one out of many units of currency. Moreover, the nature or the quality of states and other entities as subjects of international law is not determined in absolute terms but only through their interaction with the other entities and thus relationally.

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[24] See e.g., Nijman, *International Legal Personality*, 67; Philippe Crignon, 'Deux rationalités politiques de la modernité. Hobbes et Leibniz sur l'État', in Éric Marquer et Paul Taeau (eds.), *Leibniz lecteur critique de Hobbes* (Montreal: Les presses de l'Université de Montréal Vrin, 2017), 307–38, 327.

The neologism Leibniz utilises in the text and the title of *De jure suprematus* is at times suggested as a synonym to sovereignty. However, the very utilisation of this neologism (*suprematus*)[25] in combination with other more traditional terms also indicates a need to find an appropriate way to describe the complex political reality of many European communities of the time. In particular, it avoids the above-mentioned absolutism of the traditional vision of sovereignty and the state-centricity. *Jus suprematus* allows Leibniz to describe a certain type of superiority relevant internationally, which at the same time does not exclude other social and institutional arrangements within and next to itself.

Jus suprematus is built on territorial supremacy (*superioritas territorialis*, also *jus territorii*) but is distinct from it. Territorial supremacy is not only a factual domination over a piece of land but indissociably unites in itself the factual domination of the inhabited portion of land with rights attached to it.[26] However, these rights attached to the territorial superiority have only an internal dimension, like the right to enforce laws on this territory or the right and the ensuing capacity to ensure obedience of people living on the territory.[27] *Jus suprematus* adds to this internal dimension, an external aspect, namely factual and legal capacity to act (*potentat*), which is measured by European or international standards.[28] Moreover this capacity to act becomes legal only if the real factual capacity is present, namely the capacity to 'wage war, sustain it, survive somehow by their own power, make treaties, take part with authority in the affairs of other peoples (*gentium*)'.[29] Thus this factual capacity to actively participate in and influence European affairs becomes

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[25] More traditional Latin terms for sovereignty are 'imperium' or 'summa potestas', not 'suprematus'. For example, 'summa potestas' is used to denote 'sovereignty' in the Latin version of Hobbes's *Leviathan*.

[26] Leibniz, *De jure suprematus*, chapter X, A.IV.2, 54.

[27] Ibid., 54–5.

[28] Some authors discuss in this regard an internal and an external dimension of *sovereignty* (see in particular Jérémie Griard, 'Guerre et paix selon Leibniz', (2007) 46 *Dialogue* 501–29, see in particular the discussion on 503–6). There is some ambiguity in Leibniz's discussion of sovereignty, *suprematus* and *potentat*, which is further complicated by the use of two languages: Latin *in De jure suprematus* and French in *Entretien*, which make impossible strict parallel lexical choices (see on this also note 31). For the purposes of our discussion, it is not necessary to dispel this ambiguity completely. I would suggest that Leibniz admits of broader uses of the term 'sovereignty' as compared to what he means when he employs the term '*suprematus*' or '*potentat*' (see also note 31). On the other hand, the distinction between '*suprematus*' and '*potentat*' is not so much qualitative as connotative: '*potentat*' has a stronger emphasis on the factual side related to the capacity of the sovereign while '*suprematus*' denotes the ensuing legal status of this sovereign, thus the '*jus suprematus*'.

[29] Leibniz, *De jure suprematus*, chapter X, A.IV.2, 56 (translation from Riley, *Political Writings*, 116). It is important to notice that the use of term 'peoples' or '*gentium*' in Latin refers back to

a determining criterion. Leibniz emphasises that this capacity and thus the criterion is not negated by the submission of one sovereign to another as long as the obedience is based exclusively on dignity or esteem of those involved.[30] In particular, using the example of the relationship between the Emperor and Princes, Leibniz highlights the absence of the possibility of criminal proceedings against princes as the sign of their submission to the Emperor based on their esteem of his role, not on their inferior status as far as their *suprematus* is concerned.[31]

Jus suprematus is apparently built on and presupposes territorial supremacy. However, the importance of this territorial supremacy for the definition of the concept of the subject of international law should not be overestimated. With Leibniz's articulation of *jus suprematus* being linked to the reality of his time, he simply acknowledges through the concept of territorial supremacy the fact that small territory does not allow an entity to exercise enough influence at the European level. Therefore, he contends that certain territorial entities simply in virtue of the small size of their territory cannot have *suprematus*. He does not necessarily negate sovereignty in a broad sense to these smaller territorial entities, but to what extent he is ready to accord to them a place in international affairs of his time is unclear.[32] On the other hand, beyond the realities of his time, it is also clear that definitionally territory in itself, even a big territory, is not an essential and indispensable criterion of the subject of international law. Rather, Leibniz highlights that the capacity to wage and sustain war, which in his time is itself dependent upon a significant territorial possession, is determined by the ultimate goal or supreme purpose of international law (*jus gentium*), which is avoidance of war.[33] Conceptually, this signifies that if an entity without territory is able to contribute to the supreme purpose of international law, namely the avoidance of war, Leibniz would be ready to recognise its status as a *persona juris gentium*. Thus, all this complex discussion of a network of relationships between territory, sovereignty, and *suprematus* is very pragmatic in nature and aims to account for existing complexities of

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the concept of international law (*jus gentium*) and therefore indicates not the internal but the external dimension of the concept.

30 Leibniz, *De jure suprematus*, chapter XXX, A.IV.2, 124.

31 Leibniz, *Entretien*, A.IV.2, 310–14.

32 On this question, see in particular a very interesting discussion in Griard, 'Guerre et paix', 503–8. He argues that the recognition of sovereignty for small territorial entities comes not from their own *suprematus* but from opinions of other sovereigns having *suprematus*. The fact of recognition by other sovereigns acts as a mechanism to restrain the possible desires of others to contest this sovereignty.

33 Leibniz, *De jure suprematus*, chapter XXXIII, A.IV.2, 140 ('gentium juris summa ratio est, ut bella evitentur').

political arrangements, not to posit sovereignty as something absolute or an end in itself.

6.2.2.3 *Majestas*

Another aspect of Leibniz's vision of sovereignty and the connected concept of the subject of international law that highlights the relational and relative nature of sovereignty is his interpretation of the term '*majestas*' or 'majesté' and its relationship to *suprematus*. Leibniz highlights that majesté is what distinguishes the Emperor from Electors and Princes without destroying the latter's sovereignty. He distinguishes majesté and soveraineté[34] as follows: '[T]he majesty is the right to command without being commanded by any-body: but that the sovereignty is the legitimate power to constrain the subjects to obey, without being able to be constrained, but by war.'[35] First of all, majesty is described here as a right and thus in legal terms, while sovereignty is a factual power in the first place, despite the legal aspects of this concept that Leibniz acknowledges elsewhere. The more fundamental difference between the right to command proper of majesty and the power to constrain proper of sovereignty is visible at two levels: first, sovereignty has an inward direction because it is aimed at subjects first, but its strength (or degree)[36] is measured by the outward or external capacity as already men-tioned before. Majesty does not seem to have this twofold dimension. The capacity to command attached to majesty is the same in both directions.

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[34] It is quite obvious that in *Entretien* Leibniz very often uses the term souveraineté when he talks in fact about *suprematus*. The reason for this is the absence in French of an adequate term to denote the concept of *suprematus*. On the other hand, even in *De jure suprematus*, Leibniz at times says that *suprematus* and sovereignty are synonyms (see e.g., Leibniz, *De jure suprema-tus*, A.IV.2, 18, 25, 52). All this makes it extremely difficult to clearly delineate *suprematus* and sovereignty. It seems that sovereignty for Leibniz is a broader concept, while *suprematus* focuses on the external capacity mentioned above. Since in *Entretien* this distinction is not made due to narrower lexical choices in French, when discussing *Entretien* in this paragraph, I conserve the terms sovereignty as translation from French 'souveraineté' without using the term *suprematus*.

[35] Leibniz, *Entretien* A.IV.2, 308. French original reads as follows: 'la Majesté est le droit de commander sans pouvoir estre commandé de qui que ce soit: mais que la souveraineté est un pouvoir legitime de contraindre les sujets à obeir, sans pouvoir estre contrainte, si ce n'est par une guerre.'

[36] Leibniz clearly acknowledges different degrees of sovereignty (see e.g., Leibniz, *De jure suprematus*, chapter X, A.IV.2, 55, and Leibniz, *Entretien* A.IV.2, 305). He does not provide a clear threshold for separating these degrees; only a general criterion as explained above. On the other hand, this is understandable because conditions under which one or another entity is viewed as capable of producing impact at the international level can easily change.

Another aspect of the distinction between majesty and sovereignty emerges when Leibniz returns in the *Entretien* to the nature and foundation of the obedience owed by a sovereign to another sovereign, who in addition to sovereignty possesses majesty: '[T]he sovereignty subsists, despite all obligations or is you want subjections, which submit a Prince under the orders of another; provided that it is not a present and immediate power which control him at home, but the consideration of his honour and his duty which obliges him to obey.'[37]

Thus again the issue of the basis for obedience re-emerges here as another explanatory element that helps distinguish various facets of entities interacting at the international plane. Leibniz emphasises that to be an actor at the international level, a particular entity does not need to possess majesty and sovereignty (or *suprematus*) simultaneously. For instance, within the context of the Holy Roman Empire, the Emperor possesses majesty without possessing *suprematus*, while Electors possess both and princes only the latter, but all of them can have the status of *persona juris gentium*. The way the concept of majesty is utilised by Leibniz makes it even more clear that his effort is directed at capturing the complexity of political reality of his time without simplifying it. Since war was a problem at a pan-European level at that time, all his discussion around the notion of sovereignty aims at providing such an account of international relations that a solution to this problem can at least be envisaged. For instance, simply denying international legal personality to German princes was definitely not a way of avoiding war because many of them had the capacity to wage war despite their allegiance to the Emperor. The concept of majesty allowed Leibniz to account for this fact without contesting the existing political realities.

The above brief exploration of the issue of sovereignty and subjects of international law in Leibniz's two early writings clearly illustrates the deep and intricate deployment by Leibniz of the existing theoretical notions to account for the complexity of political relations he witnessed while attempting to achieve reconciliation of conflicting interests. Although his use of the theoretical notions, such as sovereignty, is certainly very innovative, it is difficult to read into these treatises a full theory of international legal personality or sovereignty. This is further confirmed by Leibniz's approach to international law and politics in his late writings.

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37 Leibniz, *Entretien* A.IV.2, 309. The French original reads as follows: 'la souveraigneté subsiste, non obstant toutes les obligations ou si vous voulez, sujections, qui sousmettent un Prince aux orders de quelque autre; pourveu que ce ne soit pas une puissance presente et promte qui le maistrise chez luy, mais la consideration de son honneur et de son devoir, qui l'oblige à l'obeissance.'

6.2.2.4 Leibniz's Later Writings

As mentioned, Leibniz's later writings provide no comparable focused discussion on the issues relevant to this section, namely sovereignty and subjects of international law, as the two early writings mentioned above. *Codex juris gentium diplomaticus* (1693)[38] and *Mantissa codicis juris gentium diplomatici* (1700)[39] are the two majors works of Leibniz which need to be mentioned before proceeding further. Both these works represent a collection of diplomatic documents, many of which could be called treaties by modern standards and contain interesting prefaces. Due to the brevity of the prefaces in both works, their contents provide only limited information on Leibniz's opinions related to international law. Nonetheless, it is highly significant that the preface to the *Codex* contains about four to five pages[40] of substantive discussions on law-related matters, directly addressing international law–related issues on about half a page. The main part of the substantive discussion is dedicated to presenting a summary of Leibniz's views on law and justice in general, including the three degrees of natural law.[41] Moreover, the discussion of issues related to international law such as *persona juris gentium* and sovereignty is separated from other general discussion on law.[42] The only aspect related to international law that is contained within the theoretical section on law and justice is the affirmation of the existence of the voluntary international law.[43] Thus these few sentences on sovereignty and subjects of international law in the preface to the *Codex* cannot be read as signifying any revival of Leibniz's interest in theoretical aspects of international law or a restatement of theoretical principles that are supposed to be always valid. The amount of historical detail as well as Leibniz's focus on the relevance of history to the study of law at the beginning of the preface rather confirm the initial assessment of Leibniz's attitude towards such issues as sovereignty and subjects of international law as being of a purely practical and pragmatic nature.

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[38]   A.IV.5, 50–79. This contains only the preface to the Codex. The entire text with all the documents collected is referenced in the notes to the preface at 48.

[39]   A.IV.8, 40–85. Like the previous document, this is also only the preface, with the reference to the entire edition available at 40.

[40]   The page count is according to the Academy Edition of Leibniz's works. The total page count of the preface is about 29 pages.

[41]   This aspect of Leibniz's theory of natural law is not discussed in this book as it is not central to the construction of the argument. Although it could provide some additional insights, the relatively lower significance of these insights compared to the space required for the presentation and defence of related arguments led to the decision about the exclusion of this discussion from the scope of this book, in order to keep the size of the book more accessible to readers.

[42]   Leibniz, *Codex*, A.IV.5, 74.

[43]   Leibniz, *Codex*, A.IV.5, 64. This aspect of Leibniz's view of international law is further discussed in the next section dealing with sources of international law.

A further confirmation of this practical attitude Leibniz conserved towards issues, which we would classify today as belonging to the realm of international law, is his reaction to the work of Abbé de St Pierre.[44] All Leibniz's remarks can be summarised as a critical attitude towards the practicability of Abbé de St Pierre's proposal.[45] He also attempted to introduce more detail in the historical vision of European relations portrayed in the work of Abbé de St Pierre and even recommended him to introduce more historical detail into his treatise.[46] Leibniz's reactions to this work contain no engagement with the theoretical side of the issues pertaining to international law. Therefore, even in his last years, Leibniz did not change his very pragmatic and practical attitude to the questions of international law.

If the theoretical development of the ideas of sovereignty, the state, and subjects of international law is not Leibniz's answer to international problems of his time, how exactly did he envisage a road to peaceful coexistence? To some extent the answer to this question is already implicit in Leibniz's attitude discussed above as well as in the preceding chapter. A more focused overview with links to the contemporary international law is provided in the final sections of this

[44] Charles Irénée Castel de Saint-Pierre, *Projet pour rendre la paix perpetuelle en Europe* (Utrecht: Antoine Schouten, 1713). An abridged version of this work is translated into English as *An Abridged Version of the Project for Perpetual Peace*, Roderick Pace, ed. and Carmen Depasquale, trans. (Valletta: Midsea Books, 2009).

[45] The following three documents contain Leibniz's comments of Abbé de St Pierre's work: Gottfried W. Leibniz, 'Lettre à Abbé de Saint-Pierre' (7 February 1715) in *Œuvres de Leibniz publiées pour la première fois d'après les manuscrits originaux*, A. Foucher de Careil, ed., Vol. 4 (Paris: Firmin Didot, 1862), 323–7; Gottfried W. Leibniz, 'Observations sur le projet d'une paix perpetuelle de M. Abbé e Saint-Pierre' (1715), in *Œuvres de Leibniz publiées pour la première fois d'après les manuscrits originaux*, A. Foucher de Careil, ed., Vol. 4 (Paris: Firmin Didot, 1862), 328–36. There are also a few remarks contained in Leibniz's letter to Grimarest dated June 1712. (The relevant passage from the letter is translated in Riley, *Political Writings*, 183–4.) However, these remarks have to be interpreted very cautiously because at that time Leibniz had not yet read carefully Abbé de St-Pierre's work as he acknowledges himself in the former letter and observations. In his letter to Grimarest, he also says that he only has 'seen something of the project of M. de St Pierre' (Riley, *Political Writings*, 183). It is particularly noticeable how the tone of Leibniz's remarks changes from this letter, written before a careful reading of Abbé's work and the letter, as well as observations written after reading it. Although the general target of his criticism, namely the practicability of the proposal, does not change, the remarks in the earlier letter can even be characterised as sarcastic, since he compares his proposal to a work of fiction. The later letter and observations on the other hand are still critical, but in a more positive way, suggesting ways of making the proposal more successful without dismissing its practicability completely.

[46] See in particular his letter to Abbé de St Pierre, where he says that 'it would perhaps be good that your work be even further embellished with examples and with history' (Leibniz, 'Lettre à Abbé', 326–7; Riley, *Political Writings*, 178), but his general comments in the letter and in observations are also full of additional historical detail.

chapter, after the concept of sources of international law in Leibniz and Hobbes is clarified.

6.2.3 *Hobbes on Sovereignty and Subjects of International Law*

Since for Hobbes stability and peace is introduced into the state of nature through the creation of the commonwealth or the state, he extensively discussed not only the concept of the state but also that of sovereignty. Several of the foundational ideas related to states and sovereignty in general, but especially as far as the internal dimension is concerned, were discussed in the preceding chapter. In this section, the external or international dimension becomes paramount.

Contrary to Leibniz, Hobbes's view of the regulation at the global level can properly be characterised as international due to his focus on states in the modern sense. A widespread misunderstanding regarding Hobbes ascribes to him a set of views that make international cooperation and international law impossible: '[H]is argument taken as a whole, is an almost classical expression of the ever recurrent feeling that international law is no more than a inane phrase.'[47] This view is shared by international relations theorists who customarily associate Hobbes with the realist tradition,[48] where the interaction at the international level is viewed as a simple power struggle.[49] However, the

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[47] Arthur Nussbaum, *A Concise History of the Law of Nations* (New York: Macmillan Company, 1961). Generally, it is also remarkable that Hobbes is discussed in a section entitled 'Deniers of International Law', where he is the only author discussed in any detail. Spinoza is mentioned very briefly as another 'denier' of international law. This attitude towards Hobbes's opinions on international law still dominates international law scholarship. For example, see the characterisation of Hobbes as a 'denier' of international law in Antje von Ungern-Sternberg, 'Religion and Religious Intervention', in Bardo Fassbender and Anne Peters (eds.), *The Oxford Handbook of the History of International Law* (Oxford: Oxford University Press, 2012), 294–316, 298, and the characterisation of the view of international society as being one of anarchy as 'Hobbesian', in Arthur Eyffinger, 'Diplomacy', in the same volume 813–39, 822. This volume, which contains several contributions by most prominent scholars of international law and aims 'to depart from what has been aptly described as the "well-worn path" of how the history of international law has been written so far' (ibid., 1, introduction by the editors) contains several of such statements describing certain views as 'Hobbesian' without engaging any further with the argument. This certainly contributes to the perpetuation of caricature views of Hobbes in international law.

[48] Hans J. Morgenthau, *Politics among Nations: The Struggle for Power and Peace* (Boston: McGraw Hill, 1993), 67, where Hobbes's work is associated with unlimited desire for power of imperialism. This same view of Hobbes is also taken up in Hanna Arendt, *The Origins of Totalitarianism* (Cleveland and New York: Meridian Books, 1958), 14 3, in particular. Although Arendt's analysis of Hobbes is more nuanced, she strongly associates his thought with the politics of imperialism.

[49] For a historical presentation of the realist tradition in international relations with attention to variants of this tradition, see Michael C. Williams, *The Realist Tradition and the Limits of International Relations* (Cambridge: Cambridge University Press, 2005).

view presented and defended in this chapter aligns with the newer scholarship, which by carefully reading and interpreting Hobbes's works with attention to detail situates him as a true thinker of international law. Moreover, the vision of international law that Hobbes advocated (albeit not always explicitly) situates him directly into the liberal tradition usually traced back to Kant.

In order to fully appreciate Hobbes's view of states as actors at the international arena, it is important to keep in mind some of the basic premises of Hobbes's theory about transition from the state of nature to the commonwealth. Since this aspect of Hobbes's theory was already discussed in the preceding chapter, only a reminder of main elements is necessary here with a stronger emphasis on those aspects, which are important for the subsequent discussion of his view on international law. The state of nature is characterised by Hobbes as anarchical – full of uncontrolled motion. All human beings in the state of nature are in relation to each other fundamentally equal. This equality is complete and unaltered only in the state of nature and follows for Hobbes from the ability of anybody to kill any other person. According to Hobbes, this ability to kill is the ultimate measure of equality independently of respective strength of people because even the weakest person can find means to kill even the strongest person.[50] As a consequence, each has to fear for his or her life similarly. The condition of humanity in the state of nature as well as the transition from the state of nature to the commonwealth is explained by Hobbes with reference to human psychology and cognition. One important explanatory element related to cognition can be called *epistemic uncertainty* or *indeterminacy*.[51] This element is crucial for the subsequent discussion of Hobbes's view of international relations. It follows from Hobbes's nominalist stance discussed in detail in the chapter on universals and human cognition and revolves around the central issue of the nature of truth and human knowledge. According to Hobbes, human senses furnish only an imperfect knowledge of the world. Knowledge obtained through senses requires an additional validation criterion before it can be qualified as reflecting truth. According to Hobbes, the nature of this validating criterion differs depending on the area or branch of science. The main uniting element, which according to Hobbes leads to truth, is a method based

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[50]   '[T]he weakest has strength enough to kill the strongest, either by secret machination, or by confederacy with others, that are in the same danger with himself' (Lev I.13, 110).

[51]   This use of terminology is obviously contemporary, not an original Hobbesian vocabulary. For examples of this terminological use, see e.g., Raia Prokhovnik, 'Hobbes, Sovereignty, and Politics: Rethinking International Politcal Space', in Raia Prokhovnik and Gabrielle Slomp (eds.), *International Political Theory after Hobbes: Analysis, Orientation, and Interpretation* (Palgrave Macmillan, 2010), 189–212, 208, or Michael C. Williams, 'Hobbes and International Relations: A Reconsideration', (1996) 50 *International Organization* 213–36, 218.

on an able use of language.[52] In *Leviathan*, he also affirms the possibility of scientific truth in relation to political science, defined as the science of generation of commonwealth. The access to truth about commonwealth is possible because humans create commonwealth themselves.[53] On the other hand, Hobbes's view of political science should not be interpreted as an unconditional possibility of true knowledge in relation to all aspects of what we call today political science and law. More specifically, Hobbes highlights that there are certain words that can never be ground for true reasoning – or, as he says, 'ratiocination'. These are words that have a signification 'of the nature, disposition, and interest of speaker; such are the names of virtues and vices; for one man calleth wisdom, what another calleth fear; and one cruelty, what another justice'.[54] Moreover, for Hobbes these types of words are particularly dangerous because their 'inconsistency' is concealed by their usage.[55] The foundational role of commonwealth and law as a command of a sovereign is to introduce certainty and consistency into this fundamentally inconsistent area of human existence. Since subjective visions of values such as justice lead in the state of nature to a disorderly movement always threatening human existence, states with the idea of sovereignty and law emanating from the sovereign introduce order by allowing a creation of a unique and uniform understanding of words related to values and thus ordering the movement of people within this unified space. This account explains well why and how Hobbes viewed the role of the state internally but begs several questions in relation to the international or external aspect of states' existence.

6.2.3.1 Domestic Analogy

A conventional account of Hobbes's view of the international relies heavily on the so-called domestic analogy. In the international relations literature, domestic analogy is understood as an approach treating states like individuals and concluding from it a possibility to draw parallels between interpersonal and interstate relations.[56] Some of Hobbes's statements taken out of context

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[52] The importance of method and language through definitions in Hobbes was discussed in Chapter 1. Here we can recall Hobbes's comparison of the process of reasoning to mathematical operations of addition and subtraction and refer the reader to Lev I.5 in general.

[53] In this regard to comparison, Hobbes makes a watch, which a human can decompose and reassemble again; thus, knowing all its parts is very telling. See DeCi, preface.

[54] Lev I.4, 29.

[55] Ibid. Hobbes compares these words to metaphors and tropes of speech, which reveal their inconsistency.

[56] For a discussion of this analogy and its role in international relations theory, see e.g., Hidemi Suganami, *Domestic Analogy and World Order Proposals* (Cambridge: Cambridge

can easily be mistaken for an unrestricted and direct domestic analogy. A good example is provided by the famous passage in *Leviathan* where persons of sovereign authority are compared to gladiators in a posture of war. It reads as follows:

> But though there had never been any time, wherein particular men were in a condition of war one against another; yet in all times, kings, and persons of sovereign authority, because of their independency, are in continual jealousies, and in the state and posture of gladiators; having their weapons pointing, and their eyes fixed on one another; that is, their forts, garrisons, and guns upon the frontiers of their kingdoms; and continual spies upon their neighbours; which in a posture of war. But because they uphold thereby, the industry of their subjects; there does not follow from it, that misery, which accompanies the liberty of particular men.[57]

This passage is often cited only partially, leaving out the final sentence, which nuances Hobbes's position. This shortened version of the passage coupled with the statements equating international law to the law of nature can legitimately be used as a statement of domestic analogy argument by Hobbes. Moreover, Hobbes's thought in general contributed significantly to the personification of the state. The image used on the cover page of first edition of *Leviathan* was, as explained earlier, a very carefully developed idea of Hobbes himself aimed at representing the concept of the commonwealth visually.[58] Thus Hobbes definitely drew important analogies between states and individuals. However, these analogies were never complete and, in particular, did not extend to the international level in the way usually presented in international relations literature.

Hobbes articulated the idea of the personality of states in a very consequential way. Contrary to Leibniz, for whom states were just another politically relevant unit to consider, for Hobbes states represented the ideal way of organising a politically meaningful life for human beings. In this sense, the contemporary international law theory of states as primary subjects of

University Press, 1989), or Hedley Bull, 'Society and Anarchy in International Relations', in James Der Derian (ed.), *International Theory: Critical Investigations* (New York: Palgrave Macmillan, 1995), 75–93. Domestic analogy in international law can also take a distinct form of analogous reasoning in relation to legal regulation, namely transposing by analogy a particular legal rule from the domestic to the international context. See e.g., in this sense, An Hertogen, 'The Persuasiveness of Domestic Law Analogies in International Law', (2018) 29 *European Journal of International Law* 1127–48. This is not the sense in which domestic analogy plays a role in the interpretations of Hobbes.

[57] Lev I.13, 115.

[58] See the section 'Transitioning from the State of Nature to the Commonwealth' in the preceding chapter, especially the discussion towards the end of this section.

international law relies significantly on Hobbesian heritage. The view of states as persons employing an analogy between states and individuals, which was construed and defended by Hobbes, permeates international law literature to the point that it is normal in international law to speak not only of rights and duties of states[59] but also, for instance, of morality of states.[60] This personification of states coupled with their character as ideal units of political organisation thus excluding other forms of political organisation shaped the emergence of international law in its contemporary form, namely as inter*national* and not, for example, global or transnational law. For this reason, I argue that the doctrine of subjects of international law, on which public international law is built, is and remains Hobbesian.

On the other hand, beyond the parallel between states and individuals in attributing to states personality, the domestic analogy is not further articulated in Hobbes's writings. In particular, although Hobbes denies the existence of international law as distinct and independent from the law of nature,[61] he does not equate the realm of interstate relations to the state of nature *between individuals*. As already highlighted, this is particularly obvious in the context of the above quotation, which compares the stance of sovereigns to that of gladiators.[62] Hobbes emphasises in this particular instance that by its very nature, behaviour of states or behaviour of sovereigns is different from the behaviour of individuals. Both are moved by entirely different motivations.

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59   The following documents widely used in international law literature to discuss the nature of states are illustrative of this point: Montevideo Convention on Rights and Duties of States (1933); International Law Commission, Draft Declaration on Rights and Duties of States (6 December 1949), (1949) *Yearbook of the International Law Commission* 287–290; United Nations General Assembly, Declaration on the Principles of International Law, Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations (24 October 1970) UN GA Res 2625 (XXV). This tendency is also maintained in the most recent literature. For instance, an entire issue of the *Cambridge International Law Journal* (vol 4, issue 3, 2015) is dedicated to fundamental rights of states. Although some of the contributions are more historically or critically oriented, most do not deny the continuing relevance of the doctrine in contemporary international law but focus on their changing relevance (contribution by Jean D'Aspremont), while others defend this doctrine (contribution by Sahib Singh).

60   See on this e.g., Matthew Crawen, 'Statehood, Self-Determination, and Recognition', in Malcolm D. Evans (ed.), *International Law*, 3rd ed. (Oxford: Oxford University Press, 2010, 203–51, 211) or Fernando R. Tezón, 'Feminism and International Law: A Reply', (1993) 33 *Virginia Journal of International Law* 647–84, 668, where he affirms that 'States come in many moral shapes'.

61   This denial has important consequences for the theory of sources of international law and therefore is discussed further in the next section of this chapter.

62   For the text of the quotation, see text on note 57 above. As mentioned, most scholars relying on this quotation for the maintenance of Hobbes's view of the international realm as anarchical usually omit the last sentence.

Hobbes assumes that the main motivation of states, namely that of upholding 'the industry of their subjects',[63] prevents them from behaving in the same way in which individuals behave in the state of nature. In particular, he emphasised the main goal of sovereigns to be the promotion and protection of the interests of their subjects. In this sense, the duty of self-preservation underpinning natural law reigning between states is not directed at states *qua* states but at their subjects. Therefore, the calculations that states make in upholding their subjects' rights and protecting their existence are not identical to those of individuals – the most important difference being the greater propensity to cooperate. In light of the goal of states to protect the interests of their subjects, war generally is a costly and risky endeavour to be avoided and cooperation is preferred.

If Hobbes would really think that the interstate relations are in all regards equal to the conditions in the state of nature between individual human beings, he would certainly propose some type of solution. Logically, if states are equated to individuals in the state of nature, this solution should be a global state or a global sovereign. Hobbes never advanced such an idea. It is wrong to attribute this apparent gap in Hobbes's thinking to lack of imagination or to an omission.[64] Moreover, if Hobbes saw his work to be a 'highway to peace',[65] it would be contradictory for him to leave the state of war of all against all at the interstate level unaddressed. The proposal of a global state or global government does not follow logically from Hobbes's portrayal of interstate relations, despite his affirmation of certain similarities between the state of nature between individuals and the interstate relations. These similarities boil down to the law of nature being the only regulatory framework in both contexts. However, due to the different ways states and individuals act, their distinct motivations and calculations, the conditions reigning in both contexts are very different. Therefore, for Hobbes, international relations are in no way anarchical. They are controllable, constrained, and lead to cooperation and improvement of the well-being of citizens of states. As persuasively argued by Grewal,[66] Hobbes, very similarly to Kant, viewed the solution to peace, including international peace, in the composition of the commonwealths, their internal arrangements, and aspirations. Beyond the previously discussed Hobbes views on interstate relations, and in particular his reliance on domestic structures of commonwealth for the achievement of both internal

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[63]   Lev I.15, 115.
[64]   As highlighted by Grewal, the idea of world government or world state was readily available to
        Hobbes: Grewal, 'Domestic Analogy', 642–3.
[65]   DeCi, preface, xiv.
[66]   Grewal, 'Domestic Analogy', in general.

prosperity and external peace, the question of underlying reasons for such a position arises. An explanation of these underlying reasons lies in Hobbes's conceptualisation of space.

6.2.3.2 Space and States as Subjects of International Law

For Hobbes, space is determined by the materiality of bodily extension, which in turn allows the control of space. Anarchy is for Hobbes a disorderly, uncontrolled motion of bodies. Similarly to the embodiment of human beings in their physical bodies, states are also bodies, although artificial. As with the individuals' motion, which needs to be controlled and brought into certain order through the creation of the sovereign authority and thus of states, the motion of states as bodies also needs to be controlled if disorder is to be avoided. Liberty as unimpeded motion[67] is therefore not necessarily a positive value for Hobbes because absolute liberty in the state of nature among individuals coupled with men's natural desires and predispositions leads to that dark anarchical state of nature so familiar from Hobbes's writings. To create impediments to motion of individuals as natural bodies and thus to direct it, make it orderly, commonwealths are needed. The role of the commonwealth in ordering the motion of natural bodies consists mainly in the 'well-governing of opinions'.[68] How is the motion of artificial bodies to be controlled or regulated? The answer lies in Hobbes's definition of what it means to have no liberty.

The absence of liberty is also conceptualised by Hobbes from the point of view of bodies and their movement: 'For whatsoever is so tied, or environed, as it cannot move but within a certain space, which space is determined by the opposition of some external body, we say it hath no liberty to go further.'[69] Hobbes expressly emphasises that this conceptualisation of absence of liberty is applicable 'no less to irrational and inanimate creatures, than to rational'.[70] Therefore, this definition of liberty as well as explanation of the meaning of absence of liberty is applicable not only to human beings, but also to states as artificial bodies. Applying this view of absence of liberty as an inability to move

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[67] For a discussion of liberty, which also suggests the understanding of liberty as unimpeded motion, see chapter 21 of *Leviathan*. The definition of liberty can be found, e.g., in Lev II.21, 196.

[68] Ibid. By controlling opinions, states control actions of individuals and law plays the main role in this process by setting such definitions as 'good' and 'bad', 'just' and 'unjust'. For more details, see the discussion in the preceding chapter.

[69] Lev II.20, 196.

[70] Ibid.

due to the restricted space to the interstate relations signifies that only the multiplicity of states placed so close to each other that the body of one state opposes and thus impedes the motion of the body of another state is the only available means to control the motion of states externally. Space is restricted according to Hobbes by the opposition of some other external body. Therefore, states as artificial bodies restrict each other's space and thus enable restrictions on each other's motion. From this follow two consequences. First is the need for a multiplicity of states and the negation of possibility of a global super-state. For such a global super-state, there would be no external body limiting its absolute liberty. As a consequence, the condition of such a super-state would be anarchy or tyranny or both: a body moving without any limitations, in absolute liberty. The second consequence is the need to have as tight as possible disposition of states' bodies in space to produce as much order as possible. This leads to the need to create states everywhere on the surface of the earth without leaving out spaces uncaptured within the body of one or another state.[71]

This connection between Hobbes's understanding of space and his view of regulation of human life within and between states demonstrates that Hobbes's use of domestic analogy is only partial. The domestic analogy operates only in the process of personification of the state, the establishment of its quality as a subject, which is an essential step in order to be able to say that the state is a body. However, since the natural body of the human being and the artificial body of the state behave differently, the domestic analogy does not go further. On the other hand, because both the human body and the artificial body of the state fundamentally are characterised by their materiality – we should remember that for Hobbes there can be no 'immaterial' bodies and metaphors are despised – the solution in both cases resides in the appropriate attitude in relation to this materiality of bodies. Although the solution to anarchy in relation to humans as well as in relation to states is based on the same underlying requirement, namely the need to control movement of bodies in order to make it more orderly, the means chosen by Hobbes to control movements of human bodies as opposed to the control of the movement of states as artificial bodies are different because of their fundamentally different nature. As far as

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[71] Hobbes never articulated these arguments in such an express fashion, perhaps because this seemed so obvious to him. However, *Leviathan* contains a clear textual confirmation that a global sovereign is an impossibility according to Hobbes: 'For if we could suppose a great multitude of men to consent in the observation of justice, and other laws of nature, without a common power to keep them all in awe; we might as well suppose all mankind to do the same; and then there would be, no need to be any civil government, or commonwealth at all; because there would be peace without subjection' (Lev II.17, 155).

human bodies are concerned, the required degree of control and thus direction of their movement is ensured by the establishment of a sovereign (artificial body) who is entitled to influence the motion of humans at a cognitive-epistemological level (control of opinions). As far as states are concerned, this ordering of motion comes from the very existence of a plurality of states (artificial bodies). Put another way, the ordering of movement at the international level becomes possible due to the nature of space and spatial embodiment of states. In this sense, international law is more directly spatial than domestic legal orders. Viewed from the perspective of spatiality and the means employed by Hobbes to limit the anarchical movement of bodies, the domestic analogy does not hold at all at the level of conditions reigning within the international society and the human societies in the state of nature. However, the domestic analogy conserves one important function at this level. This function relates to the establishment of the equality between states, a principle foundational to the contemporary international law.

The principle of equality is ensured by two factors: domestic analogy leading to the attribution to states of the status of persons with artificial bodies and the identification of the interstate relations with the state of nature. Since individuals in the state of nature find themselves in a condition of absolute equality because each can fear for his life at hands of everybody else, the same principle is transferable to the interstate state of nature: states as persons find themselves in a situation where their existence can be endangered even by the smallest state if it acts 'either by secret machination, or by confederacy with others'.[72] Equality as a foundational cornerstone of interstate relations sharply distinguishes Hobbes from Leibniz. As demonstrated in the previous section, Leibniz's view of the realm of the international acknowledging diversity of existing political forms, including among entities recognised as sovereign, does not require postulating equality as the basis of interstate relations. If for Hobbes sovereignty is a uniform concept, for Leibniz this same concept is multidimensional with a variety of manifestations. For this reason, although respect among sovereigns is a foundational premise, it does not translate itself into a completely levelled out principle of equality. Resorting to contemporary terminology, it could be suggested that Leibniz's principle of respect coupled with recognition of differences between various subjects of international law amounts to a principle of substantive equality. This contrast between Leibniz and Hobbes sheds new light on the contemporary international law understanding of equality between states. Hobbesian theory supports the idea of formal equality between sovereigns, which is a defining feature of

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[72]   Ibid., I.13, 110.

contemporary international law. Leibniz's view could form a basis of the idea of substantive equality between states, which remains unexplored until today. This difference in the attitude towards the issue of equality is only one of the many distinctions that can be drawn between Leibniz's and Hobbes's views on the issue of subjects of international law, which are determined by their distinct conceptualisations of space, as discussed in the remainder of this chapter.

6.2.4 Relevance to Contemporary International Law

Leibniz and Hobbes approach the issue of states as subjects of international law from two entirely different perspectives. Hobbes's position is easier to account for by making parallels and comparisons to the contemporary international law terminology and principles. Leibniz's account on the other hand is less straightforwardly translatable into concepts and principles, as well as the language of contemporary international law. Moreover, his account was quite unconventional even by the scientific standards of his time. The introduction by Leibniz of several neologisms in his discussions of international law is the best proof of this. Although the subsequent scholarship retained Leibniz's term of '*persona juris gentium*', it abandoned his understanding of this term. Leibniz needed the idea of '*persona juris gentium*' precisely because the state for Leibniz was not a self-evident and main actor at the international level. For this reason, even talking about international law or international relations with regard to Leibniz is misleading. A more adequate expression of Leibniz's ideas would refer to an interaction transcending individual political communities.[73] The contrast with Hobbes is particularly revealing in this regard. The obviousness with which Hobbes viewed states or commonwealths as principal actors at the level of interaction between political communities and thus the state form as the only acceptable form of organisation of political life is so overwhelming that he did not need any specific term to talk about states or commonwealths as subjects of international law. The very existence of states as persons, as acting entities (bodies in Hobbes's terminology), is constitutive of international arena and international law. This obviousness is one of the reasons for several of the misreadings of Hobbes discussed in this section. The connection to contemporary conceptualisation of international law is visible even at the

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[73]   For convenience purposes, this book will continue to refer to international law and international relations. In particular, since the analysis refers to a contemporary situation as well as compares it to views of Hobbes, which included a true concept of international, constantly switching terminology would make the text excessively heavy. However, the reader should keep in mind that from Leibniz's perspective this is a misnomer.

terminological level. It is evident that Hobbes's conceptualisation concerns precisely international (nations organised as states) relation, and therefore, he employed the term '*jus gentium*' only reluctantly as a tribute to the dominant terminology of the time. Leibniz, on the other hand, with his recognition of variations of ways political communities are formed and interact between themselves, had no hesitation to talk about *jus gentium* as a true law applicable to relations between people constituting a variety of types of communities.

Hobbes and Leibniz approach the discussion of actors at the international arena from different viewpoints. In the case of Hobbes, his entire discussion of political life whether within a state or between states is geared towards explaining how the political realm needs to be organised in order to produce the desired result: prosperity and peace for citizens. Leibniz's account of international law also has peace as one of its main orientations. However, he proceeds by accepting the diversity and multiplicity of existing actors able to influence international law and relations. Starting from this acceptance of existing diversity and existing arrangements, he provides an explanation as to how these can be conductive to peace. Thus Hobbes definitely has an ideal in mind when constructing his conception of the state as well as its place in international law. Leibniz, on the other hand, proceeds from the given realities and tries to capture them in all their complexity. From this different attitude follow distinct criteria for determining the subjecthood or personality of the state as subject of international law.

Hobbes defines states through their sovereignty, which for him has an absolute meaning, despite the recognition of a few different manifestations of sovereignty. Thus the criterion of statehood and thus of the nature of subjects of international law for Hobbes is absolute. It is comparable to the current approach to defining a state as a subject of international law, which accepts an entity as a state once a set of conditions are fulfilled.[74] Leibniz

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[74] Of course, the issue of definition of states as subjects of international law is not firmly settled in the doctrine of international law, and the argument here does not mean to simplify the complexity of debates, which are best evidenced by book-length analyses of the topic. See, for example, James R. Crawford, *Creation of States in International Law* (Oxford: Oxford University Press, 2007). However, the central feature of any contemporary approach to the conceptualisation of states as subjects of international law is the process of identification and interpretation of a series of criteria, which, if fulfilled, qualify an entity as a state. Although some of these criteria are interpreted by some authors functionally, and therefore are closer to the Leibnizian approach to the question of subjects of international law, the formal overall approach is still maintained. The most prominent example of the 'functional' criterion is the criterion of 'capacity to enter into international relations'. Not surprisingly, this is one of the most contested criteria of statehood with many, including Crawford, arguing that it is rather a consequence than a criterion of statehood. See the below discussion in the text in notes 83–85.

adopts a functional determination of the quality of an entity as a subject of international law. What makes a particular entity into a subject of international law is its capacity to influence international relations, which is determined with reference to the realities in each particular point in time. This point is particularly visible in the way Hobbes and Leibniz address the question of territory as a possible criterion of statehood.

Significantly, territory for Hobbes is an indispensable element of a state despite the fact that, to my knowledge, he never explicitly stated this. The need for territory is implicit in Hobbes's conceptualisation of states as artificial bodies. Bodies are always material. Human beings living on a particular territory united by the allegiance to the same sovereign is what makes for Hobbes the essence of the state. The importance of territory as well as its indispensable nature is discussed in chapter 24 of *Leviathan*, entitled 'On the Nutrition, and Procreation of a Commonwealth'. Nutrition of a commonwealth consists, according to Hobbes, also in the plenty and distribution of matter conducing to life.[75] The plenty of matter is defined as 'a thing limited by nature, to those commodities, which from the two breasts of our common mother, land and sea, God usually either freely giveth, or for labour selleth to mankind'.[76] It is obvious that this essential function of a commonwealth requires states to have access to a portion of territory. Another interesting element in this chapter is the definition of the procreation of a commonwealth. Hobbes states, 'The procreation or children of a commonwealth, are those we call *plantations*, or *colonies*'.[77] Here a certain relation to a portion of a new territory is called 'a child' of a commonwealth. This again indicated an indispensable nature of territory for an entity to acquire a status of a state and therefore to be a subject of international law.

Leibniz approaches the issue of territory differently. Although he is more explicit in discussing territory as an apparently indispensable element of a state and even insists that territory needs to be quite significant for a particular entity to acquire a status of *persona juris gentium*, this should not be interpreted as a postulate making territory an absolute objective criterion of international legal personality of the state or any other subject of international law. In light of the functional definition of the concept of international legal personality, it is conceivable that if this particular function determining the international legal personality of an entity can be fulfilled by an entity without territory,

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[75] Lev II.24, 232. The definition mentions also other aspects of nutrition, which are not discussed here because they are not relevant to the issue of territory.
[76] Ibid.
[77] Ibid., 239.

Leibniz would not object to recognising such an entity as a subject of international law.[78]

These two different approaches to the idea of international legal personality are unevenly reflected in the contemporary international law. It is clear that the core and foundational principles of the theory of subjects of international law are Hobbesian. The very focus of a discipline defining itself as law applicable to relationships between states[79] makes it deeply Hobbesian. As discussed in this and the preceding chapter, a Hobbesian view means a view where a state is the main structuring unit, the artificial person, which generates the need for such a law, even if implicitly. Moreover, state personality in itself as the real subject of sovereignty was arguably a uniquely Hobbesian achievement successfully received and amplified by subsequent generations.[80]

Another way in which the current international law concept of states as subjects of international law is Hobbesian relates to the definition of the state commonly adopted in any classical textbook. This definition relies on apparently objective criteria of statehood, which include a permanent population, a defined territory, government, and capacity to enter into international relations.[81] Just like Hobbes constructed his idea of the state as an objectively existing unit determined by supposedly externally verifiable criteria, so the classical definition of the state in international law pretends to observe states as objectively existing reality and determine their nature by reference to some supposedly neutral objective criteria. Of course, international legal scholarship was very hesitant in adopting a formal universal definition of a state. However, despite the absence of a formal universal definition, constant

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[78]   This argument is closer connected to Leibniz's view of the idea of subjects of international law above towards the end of the section 'Jus suprematus'.

[79]   This definition is constantly repeated in all classical treatises on international law. It can be found, for instance, in the Hall's *Treatise on International Law* (William Edward Hall, *A Treatise on International Law*, 4th ed. (Oxford: Clarendon Press, 1895)), 'International law consists in certain rules of conduct which modern civilized states regard as being binding on them' (1), or in later monographs such as 8th edition of *Brownlie's Principles of Public International Law*, where the following statement can be found: 'International law provides a normative framework for the conduct of interstate relations' (Crawford, *Brownlie's Principles*, 20). This continuous affirmation of the centrality of the state to the discipline of international law continues despite recognition of new actors, complexification of dynamics of state power in the global economy, and many other trends pointing towards a change in disciplinary orientation possibly attributed to the phenomenon of 'globalisation'.

[80]   On this, see e.g., Quentin Skinner, *Visions of Politics*, Vol. 2 (Cambridge: Cambridge University Press, 2002), 229, as well as the third volume in general.

[81]   As already pointed out, this definition is subject to debate, but it continues to be utilised and constantly repeated. See e.g., Crawford, *Brownlie's Principles*, 128; Shaw, *International Law*, 144; for an even more recent example, see Jan Klabbers, *International Law*, 2nd ed. (Cambridge: Cambridge University Press, 2017), 75.

repetition and reuse of the Montevideo Convention definition still points out the overall tendency in how international lawyers present their discipline's subjects. It is crucial to realise that for Leibniz, the definition of a state was never a priority. As discussed in the section dealing with Leibniz's view of subjects of international law above, Leibniz was never interested in extracting an abstract theory of a state. His objective was to make sense of the complexity of various political constellations he observed during his lifetime and explain how some of these entities participate in international relations while others do not. Thus he arguably accorded sovereignty even to entities, which do not directly influence international affairs.[82] Therefore, the line of deductions from sovereignty to statehood and then to the existence of a subject of international law, which is a hallmark of Hobbesian thinking and of contemporary international law theory of subjects, is alien to Leibniz.

On the other hand, the Montevideo Convention's criterion of the capacity to enter into international relations is reminiscent of Leibniz's analysis. Not surprisingly, this criterion was one of the most criticised by international scholars.[83] Many pointed out that it is unsuitable for defining a state for such reasons as it being a consequence, not a prerequisite of statehood,[84] or proliferation of certain 'capacities' to entities other than states.[85] However, this latter point was precisely what Leibniz regarded as a worthy exercise: establish those entities, which can be regarded as subjects of international law. States were for him not the only, nor even the principal, subject of international law. They did not need a separate definition. International law evolving around the functional determination of the quality of its subjects could have seen a completely different development. The reasons for the insertion of the requirement of capacity to enter into international relations into the definition of a state remain obscure. However, by inserting this requirement into the definition of a state international law injected an element alien to its own construction of the idea of subjects of international law. From this perspective,

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[82]   This is particularly obvious in Leibniz's discussion of micro-states. Although he clearly denied that these states have the capacity to conduct war, he did not deny a degree of sovereignty to this type of entities. For the purposes of his treatises where this question is discussed, he did not need to explain what this means in terms of international relations. However, this definitely had an external impact on other states, as they had to respect the sovereignty of micro-states. For a careful exposition of this issue with a detailed table clarifying Leibniz's view of sovereignty, see Griard, 'Guerre et paix', 503–8.

[83]   See on this Thomas D. Grant, 'Defining Statehood: The Montevideo Convention and Its Discontents' 37 (1999) *Columbia Journal of Transnational Law* 403–57, 434–5.

[84]   Most prominently, see Crawford, *Creation of States*, 47.

[85]   This obviously referred to the international legal personality of international organisations. See e.g., Grant, 'Defining Statehood', 285.

the uneasiness with this criterion can straightforwardly be explained. This insertion of an element from a different conceptual framework produces conundrums of the type that are discussed later in this chapter. The conceptual spatial framework of both authors analysed here helps describe the incompatibility of both conceptual systems at the deepest level.

In Hobbes, the concept of space itself posits the possibility of control over the world through the measurement of material bodies that exclusively constitute the world. By conceptualising states and human beings first of all as bodies, Hobbes, based on his conceptualisation of space, is able to develop his theory about how these bodies can be controlled or directed. Space then disappears as an unchanging, always present but if necessary manageable background. For Leibniz, space is not controllable but comprehendible through human reasoning effort. Space as an order of relationships is not something human beings can control in any way. The order of relationships is set because, as explained before, it is a logical order based on a highly complex set of coordination between both existing and possible substances. The human mind can only gain access to the understanding of the concept of space and thus of this complexity of relationships. Once humans understood some aspects of the complexity of relationships, they can use this understanding for improving the life of human communities. However, as such, space is not something humans can either influence or control. Therefore, Leibniz proceeds to explain the complexity of the international relations existing at his time without attempting to simplify them or reduce them to one form only. Simplifying things and reducing complexity of existing relations might appear as an efficient strategy in the short term. However, long-term prospects of simplification are counterproductive at best because it merely leads to hiding of problems and complexities, not their resolution.

This is well visible in the contemporary international law, where long-term dominance of the state form as a quintessential form of the idea of a subject of international law led to the inability of international law to respond to the growing complexity and diversification of actors at the international arena, which in turn conditioned the entry of the discipline of international law into a sort of crisis in the face of the growth of the governance paradigm, where informal regulation, not law, is a dominant tool. These ideas are developed further in the remaining sections of this chapter. At this stage, the explanatory force of the spatial-conceptual framework placed in a historical perspective is already visible.

6.3 the theory of sources of international law

If the theory of subjects of international law is mainly Hobbesian, as argued in the preceding section, this section will demonstrate that the theory of sources

is on the surface mainly Leibnizian. However, the Leibnizian elements were taken without keeping all the complexity of and interconnections to Leibniz's metaphysical principles. This resulted in a system integrating within itself contradictory elements unable to coexist together.

The starting point, which sharply distinguishes Hobbes's position on sources of international law from that of Leibniz, concerns the possibility of voluntary or positive international law. As is widely known, Hobbes equated international law with natural law: 'Concerning the offices of one sovereign to another, which are comprehended in that law, which is commonly called the law of nature, I need not say anything in that place; because the law of nations, and the law of nature, is the same thing.'[86] On the other hand, Leibniz clearly affirmed that 'outside of the state, or among those who participate in the supreme power (of whom there may be more than one, even in the same state), is the sphere of the voluntary law of nations, originating in the tacit consent of peoples'.[87] By this, he did not deny his ideas about natural law, which were discussed in the previous chapter. However, unlike Hobbes, he admitted that international law is not reducible to natural law. On the contrary, he held that similarly to the coexistence within states of natural law and civil or positive laws, while natural law remains valid between subjects of international law, positive or voluntary law is also possible. To fully understand how Hobbes's and Leibniz's positions relate to each other and how they are reflected in the contemporary international law, further discussion of at least the two following points is essential: their respective definitions of law and their conceptualisations of natural law. These two aspects of Hobbes's and Leibniz's thought were addressed in the previous chapter. Therefore, further discussion in this section focuses only on those additional aspects, which clarify their respective positions in relation to international law.

First of all, Leibniz and Hobbes held two very different, even opposing, views on the concept of law. Hobbes operated with a clear definition of law as a command of a sovereign. Whether he talked about positive law or laws of nature, he maintained the same definition of law. Simply the commander changed. In case of natural law, this commander was God (or if we wish to

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[86] Lev II.30, 342.

[87] Leibniz, *Codex*, A.IV.5, 64 (Riley, *Political Writings*, 174). Original Latin text reads as follows: 'extra Rempubl[icam] vel inter eos qui summae potestatis participes sunt (quales interdum plures sunt etiam in eadem Republica) locus est juri Gentium Voluntario, tacito populorum consensu receptor.' Notable here is the use of term '*respublica*', translated as 'state' by Riley. Although it is generally a correct translation, if we try to comprehend Leibniz's position from the perspective of the contemporary international law, this translation obscures the richness of Leibniz's thought on the issue of 'state' or '*respublica*' discussed in the preceding chapter, as well as the complexity of his theory of subjects of international law.

arrive at a secularised Hobbesian definition of natural law, then the command would come from reason). Moreover, the command of the sovereign to acquire the character of law needs to be known to the subjects. In an interesting passage from chapter 31 of *Leviathan*, dedicated to the kingdom of God, by nature Hobbes makes a distinction between the power of God addressed to inanimate bodies and irrational creatures as opposed to rational men, which clarifies this point:

> But to call this power of God, which extendeth itself not only to man, but also to beasts, and plants, and bodies inanimate, by the name of kingdom, is but a metaphorical use of the world. For he only is properly said to reign, that governs his subjects by his word, and by promise of rewards to those that obey it, and by threatening them with punishment that obey it not.[88]

Since inanimate bodies and irrational creatures do not have, according to Hobbes, any understanding of these precepts of God's governance, while they are subject to the power of God, they are not subjects of his kingdom in a proper sense of the world and do not submit to his laws. The government by words is obviously for Hobbes government by laws because when the words of the sovereign are 'manifestly made known', they become laws.[89] So the next point Hobbes clarifies is the manner in which God's words are made known. In this regard, he distinguishes three ways: 'by the dictates of *natural reason*, by *revelation*, and by the *voice* of some *man*, to whom by the operation of miracles, he procureth credit with the rest'.[90] Hobbes limits the applicability of the laws made known either through revelation or through miracle to the community to which they are revealed in the former case and to the man having heard the voice of God in the latter case. Thus the natural law applicable as law between nations is only limited to the word of God known by natural reason. This type of law was already addressed in the previous chapter.[91] An important aspect in this regard is Hobbes's vision of natural reason, which is detached from any reference to something pregiven, something simply to be discovered, as Hobbes's ultra-nominalist position highlights. Reason for Hobbes is always linked to specific process of reasoning using words (ratiocination).[92]

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[88]   Lev II.31, 344.
[89]   Ibid.
[90]   Ibid., 345 (emphasis in the original).
[91]   See the preceding chapter, section 'State of Nature and Its Relation to Law,' in particular.
[92]   See on this text, note 13 in the preceding chapter and subsequent remarks. Although Hobbes uses 'right reason' in this instance, it is clearly a synonym to natural reason, which he uses in the context of God's kingdom. A few lines below the above quotation, Hobbes talks about this

This conceptualisation of law as a command of a sovereign expressed in words also explains why for Hobbes the law of nations is limited to natural law: at the international level, as there is no sovereign, there can be no other law except the natural law. Moreover, it should be emphasised again that according to Hobbes global sovereign is not simply inexistent but impossible.[93] On the other hand, this absence of positive law at the interstate level does not translate into anarchy, as already highlighted in the previous chapters. Hobbes is keen to emphasise the possibility and even the necessity of interstate cooperation. It is even possible to read into some of his remarks about interstate relations an early concept of the idea of treaties and international organisations.

Hobbes discusses different types of 'systems', as he calls them, which arise when men join together for a common business or a common interest.[94] A particular type of such systems arises when men come together 'not by obligation of one to another, but proceeding only from a similitude of wills and inclinations'.[95] Hobbes mostly views such types of assembly of men as either unnecessary or unlawful. However, he expresses a very supportive view of 'leagues', as he calls these assemblages, if they are constituted by commonwealths: 'leagues between commonwealths, over whom there is no human power established, to keep them all in awe, are not only lawful, but also profitable for the time they last'.[96] This coming together of commonwealths proceeding from a similitude of wills and inclinations is reminiscent of the contemporary concept of a treaty where the central defining feature is the 'agreement' being reached between states.[97] Obviously the more long-lasting cooperation between states emerging within international organisations, which also have as their foundation an international treaty, is another contemporary expression of the same idea. Nonetheless, this voluntary cooperation between states, however beneficial it may be, can never satisfy Hobbesian definition of 'law' as a command of a sovereign. In this regard, Hobbes's position, despite his denial of the voluntary law of nations and reduction of the law of nations to natural law, is exceptionally close to the contemporary international law scholarship. Despite this close connection to Hobbes in the

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type of God's word as simply 'rational', which in Latin is rendered as '*recta ratio*', the very same term he used in *DeCive* to talk about 'right reason' in the Latin version (DeCi II.1).

[93]　This argument was defended in the previous section.

[94]　Lev II.21, 210.

[95]　Ibid., II.22, 222.

[96]　Ibid., 223.

[97]　See the definition of a treaty provided by Art. 2(1)(a) of the Vienna Convention on the Law of Treaties (22 May 1969) 1115 UNTS 331.

conceptual basis of sources of international law, at least in the form of treaties or custom, as proceeding from the agreement between wills of states, it is not possible to argue that the contemporary international law doctrine of sources of international law is Hobbesian precisely because contemporary international law dresses this agreement of wills into an inacceptable (from Hobbes's point of view) fiction of 'law'.

Leibniz's point of departure is radically different. He never focused on the definition of law. He produced several statements on law, its nature, and its other aspects, which hint towards what his concept of law looks like, but all these statements do not amount to a proper definition. This stands in a sharp contrast to his incessant attempts at defining the concept of justice. As detailed in the section 'Justice' of the preceding chapter, Leibniz produced several definitions of justice and the neighbouring concepts in a constant effort to bring this definition to perfection. As discussed in the above-mentioned section, Leibniz viewed justice as a sort of a foundation for positive law. He was very realistic in his assessment of existing laws, including international law. To a great extent, he acknowledged the imperfect nature of many positive laws. However, this did not prevent him from continuous efforts at improving existing legislation. One of the foundational pillars of Leibniz's conceptualisation of law, which was determined by his underlying doctrine of eternal truths, was his confidence in the capacity of the human mind to discover the principles of justice (natural law) and translate them into well-formulated positive laws. In this particular aspect, Hobbes and Leibniz join each other to some extent. Hobbes also maintained his belief in the capacity of human reason through certain procedures to discover the precepts of natural law and, with the help of a well-intentioned sovereign, to embed these precepts into positive law.[98] The difference between their respective views emerges from the way they viewed the possibility of discovery of natural law, which in turn is dependent on their concept of universals and their approach to human cognition, which itself is determined by their conceptualisations of space.

As highlighted in Chapter 3, Hobbes viewed the possibility of discovery of precepts of natural law (rights of nature and laws of nature) only in the reasoning procedures to be followed strictly by human beings. Leibniz's discovery of precepts of justice (natural law) also relied on certain reasoning

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[98] This hope is particularly evident in the following conclusion of the second part of *Leviathan*: 'I recover some hope, that one time or other, this writing of mine may fall into the hands of a sovereign, who will consider it himself (for it is short, and I think clear) without the help of any interested, or envious interpreter; and by the exercise of entire sovereignty, in protecting the public teaching of it, convert this truth of speculation, into utility of practice.' Lev II.31, 358.

procedures. However, if for Leibniz these reasoning procedures were needed in order to gain access to universal eternal truths, for Hobbes truth as a universal did not exist. The line of reasoning relying on words as the only universal was simply an ability given to humans to make sense of the world around them. Therefore, Leibniz could trust that there is an underlying common core understanding of justice that human beings share. The question is how to find it and make it part of reality. Hobbes was more sceptical in this regard. On face value of his theory of law and state, he seemed to acknowledge natural law as something common to all humans. Within the habits and prevailing beliefs of his time, he could hardly deny it. However, at the bottom line of his thinking is a fundamental scepticism about the capacity of humans as humans to share any universal values. If words are the only universals and the use of human language is without outside intervention highly manipulable and at the service of desires of individual men, then achievement of some universal consensus between human beings qua human beings is a sheer impossibility. Ultimately, these divergent visions of the possibility of some universal principles being agreed upon by the humanity are determined by their divergent conceptualisations of space. Leibniz's space as a relational logical grounding underlying the actual and the future ordered complexity of existence simply calls for discovery of itself as this logical grounding, as an order. This immediately brings human beings into a set of relations making everything and everyone interconnected and interdependent by nature. On the other hand, Hobbes's concept of space founded on material embodiment of human and non-human existence alike posits human beings first of all as separate units, which need to be brought into relations to create order. Hence follows the need for outside intervention, control, which in Hobbes's system is ensured through the state form.

  This difference between Hobbes and Leibniz on the issue of discoverability of precepts of natural law has important consequences for their respective approaches to international law, including the theory of sources. Because Leibniz holds to the capacity of human beings to access eternal truths, which include precepts of justice, he is able to ground his concept of international law not only in natural law but also in voluntary law, which for him with sufficient effort can approach the content of natural law. Moreover, the inherent diversity and changing nature of the voluntary law of nations is simply part of the foundational relationality of his worldview, following from his concept of space. For instance, in his preface to *Codex*, he affirms with regard to the voluntary law of nations, 'It is not necessary that this be the agreement of all peoples or of all times; for there have been many cases in which one thing was considered right in India and another in Europe, and

even among us it has changed with the passage of centuries'.[99] Although principles of natural law are eternal, their application and unfolding in concrete circumstances, taking into account the need for search and understanding of these eternal principles, will necessarily produce differences across times and places. This is reminiscent of the elasticity of the membrane containing items of innate knowledge in the human brain: even if precepts of justice are eternal truths, they nonetheless are subject to some variation. Therefore, Leibniz accepted easily diversity of legislations and variety of expressions even of *jus gentium*. Moreover, similarly to his effort at capturing the complexity of diversity of various political forms, he was also eager to capture and understand diversity of various positive laws, including international agreements.

In the above short quotation from Leibniz's *Codex*, we can discern his acceptance of regional international law. Moreover, the fact that he founded the voluntary law of nations on agreement of people can be read as a nascent conceptual underpinning of both treaty law and customary law. Both treaty and custom are based on agreement of states; in the former case this agreement is explicit, and in the latter case it is tacit. Even the concept of general principles of law is easily discernible in this succinct description of the voluntary law of nations. Nonetheless, Leibniz seems to accord certain primacy to tacit agreement because he explicitly says in the sentence reproduced earlier in this section that the voluntary law of nations originates in the tacit agreement of people. An important point about this Leibnizian description of the voluntary law of nations concerns his use of the term 'people'. When Leibniz discusses a specific form of political organisation in Europe that comes very close to the idea of the state, he uses the term 'Respublica'. However, in this description of the law of nations, he talks about the agreement of people (*populorum*). The Latin term 'populus' chosen here by Leibniz designates various groups of people, including but not limited to nations. This further confirms his broad view of the concept of subjects of international law, which is more diversified than the equivalent Hobbesian concept, but also the contemporary interpretation of this notion. Therefore, although conceptually his idea of voluntary law of nations is very close to the contemporary international law sources based on agreement of its subjects, Leibniz's concept remains far broader than the contemporary theory of sources because of his acceptance of the role played in the creation of the voluntary law of nations by a variety of human communities without limiting it to states.

[99] Leibniz, *Codex*, A.IV.5, 64 (Riley, *Political Writings*, 174).

At this stage, another interesting point of convergence at the same time indicating another difference between Leibniz and Hobbes emerges. This is the recognition of the value of agreements between states (or in Leibniz's case also between other subjects of international law). However, Hobbes denies them the status of law, while Leibniz explicitly acknowledges legal value of these agreements. By now it should have become evident that this follows from different definitions of law that both scholars adopt. For Hobbes, law is always a command of a sovereign, whereas for Leibniz, law can result from the will of a superior, but it can equally emerge from the consent of people.[100] Leibniz's broader vision of law follows from his view of natural law as a set of eternal truths and the general trust in the capacity of human beings to discover eternal precepts of natural law and act upon them. This view of natural law and trust follows from his relational view of space closely tied to his monadology, which sets the background of human existence on a logical footing. Hobbes's sceptical attitude towards universals creates the need for an intervention into the life of human beings qua human beings for natural law to become part of life. To a certain extent, the natural law itself contains this need for intervention, which takes the form of a sovereign authority within a state.

This distinction in Hobbes's and Leibniz's conceptualisations of law based on their view on the discoverability of natural law has little impact at the level of internal state regulation of human behaviour. However, as this section has demonstrated, it leads to radically different views as far as international law is concerned. The consequences of these differences for other aspects of international law are discussed in the next section. At this stage, it is necessary to consider in more detail the argument formulated earlier in this chapter according to which the theory of sources is less Hobbesian than the theory of subjects of international law.

Recognising either tacit or explicit agreements between states as law is a proposition Hobbes would have rejected vigorously. To admit the value of agreements between states and even seek to promote and increase their number is a very loadable goal according to Hobbes. However, this does not make them law. One essential characteristic that Hobbes denied to interstate agreements, which for contemporary international law doctrine is an indispensable characteristic of

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[100] Leibniz says explicitly that law can be 'derived from custom or made by a superior' (Leibniz, *Codex*, A.IV.5, 63). Notable here is the use of the term 'jus', not 'lex', to talk about law (*jus voluntarium*), which again indicates a necessary continuity between Leibniz's idea of justice and principles of natural law, which are eternal, and the ensuing effort needed to translate these precepts into positive law.

international law, is normativity.[101] Normativity in very simple terms can be defined as applicability of law 'even against a State (or other legal subject) which opposed its application to itself'.[102] For Hobbes, there was no international law possessing such a characteristic, not even natural law. Hobbes strictly adhered to the requirement of normativity as being a definitional feature of law. However, realistically he could not admit that this characteristic is present in international agreements. Therefore, he denied the quality of law to all voluntary international law reducing *jus gentium* to natural law. Natural law in Hobbes's conceptualisation had the characteristic of normativity in relation to God as the sovereign but did not produce any impact at the international level remaining no more than a moral guidance. In this sense, the normative side of natural law in Hobbes's theory, especially in relation to international law, was no more than a homage to prevailing mores of the time. Thus *jus gentium*, as the term commonly used in the seventeenth century or international law as the contemporary designation of the regulation of relationships between states, is a misnomer according to Hobbes. This does not mean absence of any type of regulation or order at the interstate level. However, this order does not arise from law as a normative phenomenon but from internal conditions within states and the composition of global relations as interstate relations. A study and understanding of this order, its emergence, conditions of stability, and so forth would be more akin to contemporary study of international relations or international politics, but not to the traditional legal approach. This order, which, as explained in the previous section, according to Hobbes is the most conductive to peace, does have certain temporary norms by which states will abide as long as conditions are favourable to compliance from the perspective of these states. However, it is wrong to describe these norms as law and deal with them as if they had the force of law.

Leibniz's acceptance of the voluntary law of nations, his support for and investment in the study of international agreements, originates from a very peculiar understanding of law. The criterion of normativity is not being disregarded entirely but is transformed significantly. The compelling force of legal norms is not external, as in the account of normativity widely circulated today, which is the hallmark of modernity, but internal. Leibniz's

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[101]   This and following discussions of the nature of international law, its attributes as 'law', are based on Martti Koskenniemi's by now classical analysis in *From Apology to Utopia*.

[102]   Ibid., 513.

definition of justice as the charity of the wise from which follow both natural law and positive or voluntary law is based on a combination of knowledge and action.[103] The action is the result of an internal disposition that is the outcome of either 'a liberal education or a noble way of living or the discipline of life or of sect'.[104] Therefore, when contemporary international law postulates treaties or custom as having legal force in the sense of being binding on states despite their will, it misplaces Leibnizian concept of law from its foundation. In this sense, although one could say that contemporary theory of sources is more Leibnizian than Hobbesian because Leibniz admitted the existence of voluntary law of nature, this is only a superficial assessment. Through this displacement of the meaning of normativity contemporary international law empties the theory of sources of international law of any Leibnizian foundation. The result is a self-defeating system that asserts its normativity in a Hobbesian fashion – as an imposition of an external will on non-compliant actors – in an environment empty of the essential precondition from Hobbes's point of view for such an assertion, namely existence of a sovereign. International law pretends to be able to assert its normativity despite the absence of a sovereign, which conceptually is possible from the point of view of Leibniz. However, this requires an internal not an external view of normativity, as well as adherence to the existence of at least basic eternal universal truths common to all humanity, as well as development of capacity for their discoverability, which is so far alien to international law. This conceptual fallacy at the heat of international law's theory of sources constantly creates a need for universals in the discourse of international law, which itself leads to further contradictions discussed in the next section.

A general lesson, which can be drawn from the above analysis of the theory of sources from the perspective of the two scholars, Leibniz and Hobbes, is that Leibniz's and Hobbes's theories, despite several apparent points of convergence, are fundamentally incompatible. For example, it is not possible to say as contemporary international law does that because there is agreement between states either in the form of treaties or custom, we can affirm the existence of norms binding the behaviour of states independently of their will. Leibniz was able to accept the binding nature of agreements between subjects of international law precisely because he did not define normativity as externally compelling force of norms. And the other way around, precisely because Hobbes strongly and consequentially adhered to the view of normativity as the

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[103]   See the section 'Justice' in the preceding chapter.
[104]   Leibniz, *Codex*, A.IV.5, 63 (Riley, *Political Writings*, 173).

capacity to compel compliant behaviour despite unwillingness of subjects, he had to deny normativity to agreements between states.

As this section has demonstrated earlier, the incompatibility of the two concepts of law and the two systems is explained by the underlying distinct visions of space both authors held, which in turn determined their approach to the idea of universals and the discoverability of precepts of natural law. Therefore, the true point of discord as to the nature and the very possibility of international law as law hinges on this question of discoverability of the precepts of natural law itself determined by the question of universals and the concept of space.

6.4 UNIVERSALITY AND POSSIBILITY OF INTERNATIONAL LAW

International law by its very nature as a set of rules applicable to relations between states requires universality as its defining feature. In this defining and foundational regard, universality of international law refers to 'international law as a global system of law, which is of worldwide validity and is binding on all States'.[105] Despite regional or local variations, international law in this formal aspect of its claim to universality presupposes simultaneously the concept of subjects of international law and the concept of sources of international law. Occasionally, international law relies on other concepts of universality, some of which are of a more substantive nature claiming to establish shared values, international community, and similar notions of a globally encompassing nature.[106] This is particularly visible through such concepts of contemporary international law as *jus cogens*, *erga omens*, the

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[105] André Nollkaemper, 'Universality' in *Max-Planck Encyclopedia of Public International Law* (online), para 1, available at https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1497, last visited 20 August 2019.

[106] Some of these various sides of universality in international law are discussed in Bruno Simma, 'Universality of International Law from the Perspective of a Practitioner', (2009) 20 *European Journal of International Law* 265–97, or Jan Klabbers, 'On Epistemic Universalism and the Melancholy of International Law', (2018) 29 *European Journal of International Law* 1057–1069. More broadly, many prominent scholars in their analyses of international law argue that the discipline has moved to a true community of interests and values and defend an even deeper sense of universality in international law, which can be traced back to the common humanism of humanity qua community of human beings of the sixteenth century *jus gentium*. Some of the most prominent representatives of this strand are Christian Tomuschat (see e.g., Christian Tomuschat, 'International Law') and Bruno Simma, as well as several protagonists of global or international constitutionalism. The most exemplary is Erika de Wet, whose version of global constitutionalism is founded on the idea of universal values (see e.g., Erika de Wet, *The International Constitutional Order* (Cambridge: Cambridge University Press, 2005)).

principle of universality of human rights, or universal jurisdiction. However, international law scholars never reflect on the meaning of the term 'universal' in any of the above senses. For example, in relation to universal values, some shared attachment to this value is presumed, but the questions of the meaning of 'universal' in this expression and their knowability is not raised but presumed. Both Hobbes and Leibniz would never be satisfied with such an attitude. Moreover, as discussed towards the end of the previous section, the very possibility and conceptual foundation of international law depends on the way this question is answered. The examples of Leibniz and Hobbes discussed in this book reveal the following. For Leibniz, the question would be how to know this universal value, if it is indeed universal, and how to bring the evidence of the universality of this particular value. For Hobbes, the issue would be rather how to arrive at a universal value because according to Hobbes nothing universal exists as such, as a universal. Since he held that even such ideas as justice or good are simply words that need to be filled with meaning, he would be very sceptical about any postulate of a universal value that does not justify and explain the creation of this universal value. Moreover, for Hobbes himself, shared values, universals, can only be created within the framework of a state. As explained above, the state creates meaning through the office of the sovereign and thus limits the anarchy arising out of a multitude of subjective interpretations.

These two opposing positions lead to radically different answers to the question of the possibility of international law as a globally applicable law and the nature of this globally applicable law as international or, to put things into a more contemporary framework, interstate law. If a global universal is not possible, then international law is simply a mirage because its claim to universal validity is not sustained. As already discussed, Hobbes held a very precise concept of law, which made law dependent on the will of a sovereign. This followed from his nominalism and denial of any universals but names. He also denied the possibility of a global sovereign, which is closely connected to his conceptualisation of space. Therefore, he could not recognise the possibility of an international law. A certain international order certainly existed according to Hobbes. Nonetheless, this order does not satisfy the criteria for law. On the other hand, this order is a true international or interstate order because it follows from the existence of states; both their internal structure as well as their coexistence is the only guarantee of such an order. This is justified by Hobbes's concept of space emerging from the material body conceived as an isolated object measurable and thus controllable. The contrasting Leibnizian position recognises the existence of universal ideas and therefore can easily not only accept the existence of a set of global

norms and values but even requires and presupposes them. The possibility of such an order emerging from these universal values or truths can only be envisaged if a way to access these truths is found. As a consequence, the main point becomes not control but access to knowledge. This access to knowledge is enabled by the concept of space. Space as an order of relationships between phenomena represents a logical grounding of everything existent and possible. Because space offers this logical grounding, Leibniz can safely focus on the reasoning procedures that allow human beings to access these universal truths. However, in this order, founded on the possibility of knowing universal values or truths, the main subject has to be a human being endowed with an ability to use reasoning procedures and develop them further. Thus the centrality of the idea of state has to be dismissed in this global order, where following a Leibnizian vision of the concept of law, it is possible to affirm the existence of law, but its international (or interstate) character has to be denied. This explains Leibniz's use of the term 'people' when he defined the basis of voluntary *jus gentium* and his effort to catch the complexity of various entities influencing relationships at the European and global level.

In sum, Leibniz's view of space leads him to the belief in the universals and at the same time allows him to ask the question of the knowability of universals. Hobbes's view of space denies the possibility of universals simply existing out there and raises instead the question of the control necessary to produce universals. Again, as in the case of Leibniz, space is the concept, which allows one to affirm the existence of the form of control producing the universals. These two contrasting attitudes and contrasting views of space produce contrasting answers to the question of the possibility of international law. For Hobbes, international law is impossible because the control and thus universals are produced by states and their multiplicity. So while the order is international, it is not law. For Leibniz, law with a universal claim to applicability does exist, but due to its foundation in knowability, it cannot be truly international or interstate law. The contemporary international law, by claiming both the status of law and its nature as international, and by uniting within the single disciplinary tradition the theory of subjects and the theory of sources, combines two irreconcilable visions of universals and two irreconcilable visions of space. Before the consequences of such a system based on a series of internal contradictions are discussed further, a few additional remarks regarding Hobbes's and Leibniz's respective positions are necessary.

The positions of both Hobbes and Leibniz are each haunted by a major difficulty as far as their attitude towards universals is concerned. Regarding the Leibnizian position, for contemporary lawyers, but also many other specialists

in other fields dealing with order, public policy, and neighbouring issues, it is very difficult to adhere to his belief in the existence of universals as an objective reality, even if just as ideas. The difficulty with Hobbes's position relates to the fact that despite his denial of universals theoretically, Hobbes's view to some extent hides at least one universal. This is his continuing attachment to natural law: if there are no universals, how is it possible to postulate principles of natural law as universally applicable? As already mentioned, the universality of natural law in Hobbes is reducible to the God's sovereign will as expressed in the natural reason of human beings. Does this lead to the necessary acceptance of the belief in God as a universal? These difficulties in reality are only apparently linked to transcendental beliefs either in God or the existence of ideas. Both authors lived and worked during the time when not considering God in constructing philosophical explanations about the world was simply impossible. This does not necessarily mean that all philosophical theories of the seventeenth century cannot be sustained without the belief in God. In the case of Leibniz and Hobbes, in relation to the issue of the concept of international law, the idea of God is dissolvable into the question of the conceptualisation of space.

Leibniz's concept of God, unlike many other discussions of God of his time, places an important emphasis on God's intellect as something that determines God's choices in creating this world and arranging it. This emphasis on intellect and the eternal nature of certain truths, which even God respects in his creation, opens the possibility for his system to hold without a belief in God. In this case, the idea of God has to be replaced by certain logical principles corresponding in their content to the content of eternal truths. More importantly for the purposes of this book, space viewed by Leibniz as a logical relational order in fact represents this background against which everything unfolds and at the same time everything is embedded in it. In this sense, the only assumption that is required for the Leibnizian system to hold is the assumption about the nature of space and the ensuing logical principles that govern this world.

Hobbes's materialism led to accusations of atheism already during his lifetime. This demonstrates the degree to which he was able to make his thought independent of religious beliefs. Even with regard to natural law, although Hobbes maintained its link to God, by placing natural law on the foundation of *recta ratio*, which he understood as certain logical reasoning procedures accessible to the human brain, he offered an easy way out of the dependence of natural law on God. On the other hand, at least in a procedural sense, certain universal truths need to be part of the Hobbes's system despite his nominalism. If certain reasoning procedures lead to the same conclusions

about the basic principles of natural law, then something in these procedures has to be universal, like for instance the reasoning capacity and mechanisms employed by the human mind. Even Hobbes's comparison of right reason to mathematical operations presupposes a certain basis on which mathematical procedures are organised, which needs to be universally valid everywhere. This is similar to the materiality of bodies, which has to be postulated as valid universally in order for Hobbes's concept of space to hold true. Therefore, although Hobbes's system is easier to detach from religious foundations, his nominalism remains in a vulnerable position. International law by adopting Hobbesian vision of space as its foundation and following mainly Hobbesian ideas in its approach to the regulation of the international order internalised this vulnerability, which appears mainly as a constant re-emergence of various claims to universals being part of international law mentioned at the beginning of this section. This claim in turn determines the necessary recourse to Leibnizian elements mentioned in the previous sections of this chapter.

6.5 FATES OF INTERNATIONAL LAW

Having established a picture of contradictory tendencies deriving from an impossible union of Leibnizian and Hobbesian ideas within international law, the question of significance of this finding for contemporary international law can be addressed.

First of all, the discussion in the previous sections of this chapter clearly demonstrates a contradiction inherent in the very denomination of the discipline: 'international law'. The two terms of this denomination simply cannot exist together. Either something (an order, normative arrangement) is international or it is law. Law cannot be international. Depending on the underlying concept of normativity, it can be either exclusively national or global or universal, but not international. By claiming to be both international and law, the discipline unites two opposing traditions that undermine each other. This, however, does not mean that there is no way out of this vicious circle. The way out is quite complex and can lead into several directions, opening up different futures for the discipline of international law. The first step consists of a careful reflection on the meaning of normativity when talking about law. This reflection on the meaning of normativity in relation to 'international law' has to be conducted hand in hand with a simultaneous consideration of implications of various meanings of normativity for the claim to universal validity of such law.

For Hobbes, the normativity of law stems from the fact that it is a declaration of the will of the sovereign. Thus, as explained above, this normativity is viewed as an external constrain imposed upon a body. This view proceeds

from Hobbes's nominalism, which itself emerges from Hobbes's materiality of space and world. The materiality of space in Hobbesian fashion also dominates contemporary international law. Normativity and material spatiality of 'international law' today are Hobbesian. However, as argued in the preceding sections, order established on the materiality and controllability of space as well as the connected idea of external normativity of law positioning states as central organising units has to abandon its claim to be law. By committing to state centrality, by committing to its international side, 'international law' rejects its own normativity as defined through its state-focused nature. Therefore, the first option consists of 'international law' fully embracing its own political underpinnings, argumentative practices, and other devices, which make it at the end a professional technique to intervene politically or even a political project, but not law in the sense it claims to be. This path of 'international law' is already explored and clearly articulated in the works of some scholars, especially Martti Koskenniemi, but is still far from being the mainstream in the discipline.[107] The disadvantage of this path is its acceptance of the status quo without reworking the concept of normativity, but its realism in the sense of its near perfect lucidity regarding the conditions and possibilities of the discipline is its biggest advantage.[108]

From the description of the first possibility follows the second – namely one that takes seriously the rethinking of the meaning and foundation of international law's normativity. Based on the analysis performed in this book, Leibniz's concept of law can be suggested as one of such alternative meanings of normativity. The analysis in the previous chapters demonstrated that Leibniz's approach to the conceptualisation of law and its consequence, namely the distinct vision of normativity, is possible because Leibniz did not produce his vision of law against a material spatial concept, but articulated a relational concept of space. This relational space, which also operates as a logical grounding of this world, pushed Leibniz to accept the complexity of the existent, including in the legal-political sphere, and provide a logical structure, which can serve as a guiding tool for different areas of human activity. In the legal-political realm, the concept of justice serves as such a guiding tool allowing one to question opinions and values and demonstrate their falsity. Due to two factors, the need to capture complexity and

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[107] The previous sentence's description of international law as a technique or a political project is one of the important elements of Koskenniemi's scholarship. See e.g. Martti Koskenniemi, *The Politics of International Law* (Oxford and Portland: Hart, 2011).

[108] I say that the lucidity is near perfect and not perfect for two reasons: there might always be some elements we fail to see now and might discover later; second, one of such elements, namely the spatial conceptual element analysed in this book, is missing from the picture.

dependence of this process on human mind, which is the only mechanism allowing the guiding tool of justice to function, the normativity in Leibniz's version cannot function at any other level but interpersonal. The actors of this process have to be individual human beings. Moreover, due to its dependence on cognitive processes, Leibniz's normativity remains internal to the acting subject, not externally imposed upon it. The way Leibniz's system captures complexity through perspectival and relational activity of simple substances leads to a significant advantage of Leibniz's concept of normativity from the perspective of international law. This advantage is the possibility of a more authentic or more encompassing universality. This universality does not come at the cost of reduced diversity, like in the Hobbesian vision. On the contrary, true universality is only possible if the existing diversity is fully captured because the full picture of the world can emerge only if the various perspectives of all the simple substances are taken together in their relationality.

The contrast between Leibniz and Hobbes on the issue of possibility of universal law is best illustrated through the comparison of the underlying concept of representation. In Hobbes, representation of many by the one is what creates the state and enables legal regulation. It resembles a hierarchical relation where several elements are subordinated to and encompassed by one single element. In Leibniz, representation of many in the one as the activity of simple substances is the enabler of human understanding of the world in all its complexity. It can be compared to a network of equally positioned elements in which every single element is connected to all other elements. These connections constitute the essence of each single element. In both Hobbes and Leibniz, there is a necessary multiplicity of the ones. However, the one representing the many in Hobbes is positioned in isolation from the other representing ones. This isolation also cuts all connections between one group of many represented by one of the ones from all other groups of many represented by other ones. In Leibniz, all the many are at the same time ones, which represent all the other many. These two different views of the relationship between unity and diversity perfectly illustrate the difference between Leibniz's and Hobbes's approach on the possibility of universality. As mentioned, this more authentic Leibnizian universality because of its dependence on cognitive processes and on internal normativity prevents any transition from an interpersonal level to an interstate level. Law for Leibniz is always law as applicable between human beings. Therefore, if international law wishes to realise its claim to universality, it has to abandon any claim to an international character, redefining itself as global. Therefore, rethinking normativity in a Leibnizian fashion will require a significant transformation of

many foundational concepts of international law, including its theory of subjects and its theory of sources. On the other hand, the Leibnizian concept of normativity is perhaps not the only available alternative and other productive avenues might be available, for example, in non-European traditions. A turn to these traditions in search for an alternative concept of normativity always has to go hand in hand with a reflection on the underlying spatial conceptualisation because, as the discussion in this book demonstrated without considering the spatial-conceptual underpinnings of the normative, it is impossible to get a complete concept of the global or international.

One final remark is needed to explain the continuing turn of international law to Leibnizian elements. This turn is determined by the maintenance of international law's claim to universality. As the discussion of space and the concept of universals demonstrated, Hobbes's space prevents the emergence of any universals valid globally. For Hobbes, even if we could say that universals can be produced through a control of discourse, this can only happen within a limited territory of a state where materiality of space allows for division and thus control of the discourse. On the other hand, true universals having global validity are a foundational element of the Leibnizian system. The Leibnizian concept of space as a logical relational order produces universals as a necessity. Since international law continuously makes a claim to universality and constantly faces the inadequacy of this claim, it turns to Leibnizian elements in an effort to overcome or at least cover up this inadequacy.

Among the two possible futures of international law – one accepting its reality as a political not a legal project, thus maintaining the currently dominant concept of normativity and another thinking anew its normativity beyond the confines of the state and beyond a simple external imposition of constraints – the second option has three advantages. First, it clearly moves beyond the status quo on the issue of normativity thus opening more possibilities for future developments, adaptations, and changes. This plurality of avenues for the future development of the discipline currently called international law, only one of which is indicated by the Leibnizian view of space and normativity, constitutes the second advantage of this future. Finally, different forms of normativity based on a more detailed and complex understanding of space can offer greater adaptability to globalisation and other future developments. As mentioned earlier in this chapter, Hobbes's conceptualisation implies simplification of existing reality while Leibniz's view aims at capturing the complexity of the existent in all its diversity. For this reason, it can be argued that global law developed along the lines of Leibnizian view of normativity and space would have avoided current difficulties international law is facing, for example, in accepting and accommodating greater diversity of actors or responding to new transboundary problems.

Conclusions and the Way Forward

International law positions itself as a discipline able to produce a more peaceful, more prosperous existence across the space of the globe. In doing so, it also posits claims to certain universality. However, contemporary discipline of international law omitted any in-depth reflection on the meaning and implications of either the concept of universality or the concept of the (global) space. Both concepts – that of space and that of universality – are intimately linked. If the latter is part of the conversation in the discipline of international law, although not on its own but as an attribute of other concepts, such as international law, values, or norms, the concept of space remains absent from scholarly discussions, despite centrality to the discipline of such spatial notions as border, territory, or jurisdiction. Given the absence of a spatial-conceptual approach in the discipline of international law, this study focused on demonstrating the centrality of the concept of space to the discipline of international law. The focus on an express discussion of the *concept* of space or a spatial-conceptual approach adopted a historical perspective as a most efficient way to reveal the centrality of the concept of space for the construction of the discipline. Situating the discussion in an epoch when both the concept of space and the concept of international law were being debated and formed, the study is able to bring to the surface of international law its hidden spatial-conceptual underpinnings.

Revealing that conceptualisations of space are diverse and not self-evident, not overlapping with our common-sense understanding of space, through a comparison of concepts of space in two early modern thinkers, Leibniz and Hobbes, was the first essential step. If spatial-conceptual approach has any explanatory force for the discipline of international law, these two divergent conceptualisations of space had to result in divergent conceptualisations of international law. Some major differences between Hobbes and Leibniz on the concept of law and international law more specifically are quite evident.

However, neither Leibniz nor Hobbes made any obvious statements connecting their concepts of space and their concepts of international law. Therefore, to provide a stronger defence of the argument of this book, an additional intermediary step revealing clear connections between these scholars' respective concepts of space and concepts of international law was necessary. The unfolding of the concept of universals together with the question of humans' access to these universals provided such an intermediary step connecting the concept of space to that of law, including international law.

Hobbes and Leibniz offered two opposing concepts of space. For Hobbes, space is anchored in the materiality of corporeal bodies, offering a framework for controlling the space and thus the world through human intervention. This controllability of space also enables a subsequent removal of the concept of space from the foreground of human intervention into the world. Controlled space easily turns into an unimportant and invisible background of human action. Leibniz's concept of space, usually described as relational, emphasises the logical or cognitive dimension of human existence. Space is both that logical grounding against which all human action unfolds as well as the result of the activity of simple substances constituting the world, including human minds. In both cases, space is positioned as knowable, not as controllable. From these two very different conceptualisations of space, Hobbes and Leibniz embark on two contrasting journeys towards their goal of articulating ways towards a peaceful and prosperous human existence in which law plays a central role.

Hobbes focuses on articulating the specific ways of controlling space, which are conductive to a peaceful existence. The concept of a state as a territorially anchored and delimited unit plays a pivotal role in this account. However, the explanatory force of the concept of state, which through control of space enables peaceful existence, can only be fully grasped against Hobbes's view of the universals. Hobbes's extreme nominalism, which is determined by his insistence on matter as the only real substance, led him to the denial of any universals but words. This in turn required for universals to be produced or created, not discovered. Therefore, through the control of space, the state structure offered a possibility of control of discourse, which in turn enabled the production of universal values as expressed in law. In this scheme, the essential function of law became external control of the behaviour of subjects. The state as a portion of material space within which the discourse and thus the behaviour of subjects is controlled, apart from controlling the space within which domestic law unfolded its function, also exercised an additional regulating function externally. This function of external control became efficient only under the condition of multiplicity of states: each state through a control

of its own portion of space conditioned the limits of behaviour of all other states. Just like many bodies in a container have less freedom of movement, so the states tightly distributed on the surface of the globe limit each other's freedom of action.

Since for Leibniz space is first of all knowable as a logical grounding of this world, he fully acknowledged the existence of universals as certain logical principles structuring space and governing the world. Since these principles governing the world and space as their expression exist independently of human will or action, Leibniz brought the knowability of these logical principles to the forefront of his investigations, in addition to his articulation of the way to a prosperous human existence. By being able to access this immutable knowledge about the world, which conditions their existence, humans can structure their life in a way most conductive to peace and prosperity. In this scheme, law through its orientation towards discoverability of justice as these immutable principles governing social human interaction become a tool for knowing the social world around us. Thus knowledge retains a certain element of value judgement in the sense of the necessary assessment of compliance of existing social institutions with the immutable precepts of justice. However, since the immutable precepts of justice themselves retain a degree of elasticity and adaptability to the concrete conditions of life, law guided by precepts of justice becomes primarily a cognitive device allowing for betterment of the human condition.

These two visions of law – one based on control, another based on knowledge – clearly emerge and are conditioned by the two distinct concepts of space articulated by Hobbes and Leibniz, respectively. The explanatory nature of these two distinct understandings of space for international law is even stronger than for law in general. International law's claim to global and universal applicability brings its spatial underpinnings to the forefront of its claim to a certain identity as a discipline.

When envisaging ways to ensure peace at a global scale, consideration of the spatial underpinnings of this global scale becomes indispensable. Today's neglect by international lawyers of the concept of space is easily explained by the conceptualisation of space implied in the concept of state as the main structuring unit of the discussions about the possibility of peace at the global scale. As argued in previous chapters, the analysis of the Hobbesian heritage, with its intimate link between material and controllable space and state as an artificial body restraining the movement of other artificial bodies externally and of natural bodies of humans internally, demonstrates that the very conceptualisation of this law that is supposed to bring about global peace as international or interstate presupposes a specific conceptualisation of space.

The reliance of international law on the centrality of states, despite all the recent diversification in discussions of subjects of international law, indicates that the underlying foundational concept of space, with which international law operates, is Hobbesian. This finding has important consequences for the central claim of international law, namely the claim to universality. In this universe of material and controllable space, universals need to be produced through the control of discourse. States as spatially structuring units of the global enable the production of universals both internally and externally. Without returning to the details of this process of production of universals as it emerges from the works of Hobbes, an important lesson for contemporary international law is the very recognition of the emergence of universals as artificially produced elements. The second lesson is that the process enabling the production of universals is a discourse or able use of words. In this light, the important place that works of Martti Koskenniemi came to occupy in the discipline of international law is easily explained by their strong explanatory force.

The Hobbesian underpinnings of the current spatial-conceptual framework of international law question the central claim of the discipline of international law – namely, its claim to a certain, equally Hobbesian, identity as law, as a normative force able to constrain actors despite their will. The discussion in the previous chapter demonstrated the vulnerability of this claim, especially within the Hobbesian framework. Of course, the development of legal theory over centuries led to the articulation of different concepts of law. This study acknowledged that international law could potentially retain its claim to being a discipline concerned with law in a proper sense. However, in this case, international law needs to rethink its normativity and its international character. Leibniz's concept of law based on emphasis on the relational nature of space and the universals as a necessary logical grounding of the world expressed through space deprives the international component of its central place. States as structuring units and the international become just one out of many possible ways to organise human life in a way leading to prosperity and peace. However, the focus on the cognitive dimension of space, law, and global regulations in the Leibnizian vision offers new horizons for exploring possible models of organising the life of humanity in a way most conductive to peace and prosperity. This cognitive dimension remains yet to be explored in my future work.

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