CHAPTER 6

Property and Despotic Sovereignty

Laurens van Apeldoorn[*]

In *On the Citizen*, Thomas Hobbes maintains that sovereigns have "lordship [*dominium*]" of their citizens (OC 5.12, 8.1),[1] that commonwealths are "formed from a *Master* [*dominus*] and a number of *slaves* [*servi*]" (OC 10.5),[2] and that a "*slave's* possessions as well as his person belong to his *Master*" (OC 8.8; also OC 8.6, 8.10, 9.2). Few contemporary scholars have concluded that Hobbes really means to defend what Aristotle (*Politics*, 1255b16–20) called "despotic" rule and grant sovereigns ownership of their subjects and all they possess. Based on a reading of the more famous *Leviathan*, interpreters have rather detected in Hobbes's writings the reluctant expression of a distinctly modern liberalism (Strauss 1950: 181–2; Macpherson 1962; Tuck 1989: 72–3; Wolin 2004: 214–56, especially at 240–2; Dyzenhaus 2012: 189; Ryan 2012: 159–219, especially at 182, 211; Vinx 2012: 160). They see him as an early exponent of a tradition that takes political institutions regulated by stable precedent law as instrumental to citizens' commodious living, consisting chiefly in the secure enjoyment of their private property (L 13.14: 196). While the word *dominium* in Roman law denoted private property of such things as land and slaves (Berger 1953: 411), by the early-modern period it had evolved into a generic concept of right that could signify both property (*proprietas*) and *imperium* or political authority (Coleman 1983; Brett 1997: 22; Chapter 7). *Dominium* accordingly had become more closely related to *potestas*, which may be translated as rightful power, and from the outset

[*] I thank Arash Abizadeh, Bartholomew Begley, Robin Douglass, Karolina Hübner, Klem Ryan, Johan Olsthoorn, and Ericka Tucker, as well as audiences at the University of Amsterdam (May 2018), University of Turku (April 2016), American Philosophical Association, Central Division Meeting, Chicago (March 2016), and KU Leuven (December 2015), for helpful comments on material contained in this chapter.

[1] For the analogy between sovereignty and lordship see OC 9.3, 9.10. More generally Hobbes treats sovereignty (*summum imperium*) as equivalent to *dominium* (OC 5.12, 7.16, 8.1–3, 8.5).

[2] For the analogy between a citizen (*subditus*) and slave (*servus*) see OC 8.7–9, 9.9.

had a diversity of meanings depending on the context in which it was used (*Digest* 50.16.215). When Hobbes attributes "lordship" to sovereigns he could thus be read as making the ordinary observation that sovereigns have jurisdictional authority – the right to impose binding law – or *imperium* over their citizens.

The few interpreters that have considered the possibility that Hobbes really attempts to treat citizens as the property of their sovereigns have suggested that this attempt must fail (Zarka 1995; Lukac de Stier 1997; Abizadeh 2016). They posit that Hobbes takes property to consist in having exclusive rights (granted by the civil law or resulting from individual contracts) to enjoy, use, and dispose of a thing. This conception of property resists treating citizens as property of the sovereign for two reasons. First, since the sovereign may by means of legislation grant citizens property they may legally hold even against the sovereign himself, the sovereign does not *necessarily* have ownership of his citizens and their possessions. The sovereign can legislate anything to be his property, yet it "remains a contingent effect, not an intrinsic part, of his or her jurisdictional authority" (Abizadeh 2016: 406; also Goldsmith 1966: 198). Second, even if they wished, sovereigns could never have *full* ownership of their subjects. Hobbes posits the existence of several inalienable natural rights, such as the right to resist threats of bodily harm (OC 2.18–19, 9.9). A property right in a person is therefore never fully exclusive, since it cannot comprise exclusive rights to those actions that individuals have an inalienable right to resist (Zarka 1995: 187).

In this chapter I seek to show that in *On the Citizen* Hobbes does complete a conceptually coherent defense of despotic sovereignty in a manner not previously appreciated. I will do so by presenting a novel reading of Hobbes's treatment of the nature of property. I will suggest that ownership consists in having preeminent power with a natural right to exercise that power. On that basis, I shall argue, Hobbes is entitled to conclude that sovereigns, by virtue of their sovereignty, *necessarily* and *fully* own their subjects and all they possess. Sovereigns own their subjects and everything they possess because they rule over them with preeminent power and (at a minimum) a natural right to exercise that power. *On the Citizen* thus contains a philosophically coherent account of why all sovereignty is necessarily despotic. Perhaps even more importantly, it provides him access to a very powerful, but profoundly illiberal, argument against the existence of property titles of citizens against their sovereign: it is a conceptual truth, on Hobbes's conception of property, that the sovereign owns everything in the commonwealth that can be owned.

Property

Hobbes maintains that a person owns "what he can keep for himself," can "use and enjoy," and can "dispose of" (OC 1.10, 6.15, 8.5, 14.7). On this basis interpreters conclude that for Hobbes property consists in an exclusive right of using, enjoying, and disposing, with correlative obligations on the part of others not to interfere. As one interpreter remarks, "Hobbes understands property just as Locke does, as a claim with an implication of exclusivity, or a duty of forbearance and abstention on the part of others" (Zuckert 1994: 275).[3] In this section I argue against this standard reading. I maintain that in *On the Citizen* Hobbes does not hold a Lockean conception of property but rather conceives of property or ownership as consisting in a natural right and capacity or power (*potentia*) of using, enjoying, and disposing (from now on I summarize this conjunction of incidents with the term "possession").

This alternative reading does not deny that having full ownership entails that no-one else has ownership; that property is "proper" to a person in the antiquated sense of applying or ascribing exclusively. However, exclusivity is not secured by exclusivity of *right* but by exclusivity of *power*. The juridical basis for ownership is a natural right that need not be exclusive, and ownership is only secured when this right is made effective: when one's power over thing is preeminent, which is to say that there is, in Hobbes's vocabulary, no higher power. Certainly, it is possible to have ownership and *also* have an exclusive right to possess, but this exclusive right is not a conceptually necessary condition for ownership, or so I will argue.

Hobbes defines property as follows:

> [1] a person's property is what he can keep for himself [*sibi retinere potest*] by means of the laws and the power [*potentia*] of the whole commonwealth, i.e., by means of the one on whom its *sovereign power* has been conferred. (OC 6.15; also OC 8.5)

[3] Similarly, M. M. Goldsmith (1966: 197, also 193–4) maintains that according to Hobbes property is a "private right exclusive of other men." Johan Olsthoorn (2015b: 485, also 487) suggests that for Hobbes, "A's propriety in *x* consists in obligations (imposed by law) on A's fellow-subjects not to interfere with A's enjoyment of *x*." Others who present or imply this reading include Abizadeh (2016: 400, 405); Foisneau (2004: 109); Horne (1990: 26); Macpherson (1962: 95–6); Pierson (2013: 173–4); Schlatter (1951: 140); and Zarka (1995: 173, 179–81).

This definition suggests that property is that which one can keep for oneself, that is to say, what one *de facto* controls or possesses.[4] Possession is secured *by means* of positive law and the *potentia* of the commonwealth. *On the Citizen* does not contain a definition of *potentia*, but in the Latin edition of *Leviathan* it is defined as the capacity or means to obtain some future good (LL 10.1: 133). In *On the Citizen* Hobbes systematically associates *potentia* with physical strength (*vis*) in conformity with this definition.[5] Hobbes elaborates the instrumental character of the legal system in relation to property in the following passage:

> [2] [a] For if a law says nothing more than, for example, *let that be yours* [*tuum*] *which you have caught with your own net in the sea*, it is useless [*frustra*]. [b] For though someone else may take from you what you have caught, that does not prevent it from still being yours [*tuum*]; [c] for in the state of nature where all things are common to all men, the same thing is both yours and another's so that what the law defines as yours was also yours before the law, and does not cease to be yours after the law, even though it is in the possession of another; [d] the law achieves nothing therefore, unless it is taken to mean that the thing is yours in the sense that all are prohibited from obstructing your ability to use and enjoy it at all times in security at your discretion. [e] What is required for man to have property in goods is not that he be able to use them, but that he alone be able to use them [*non ut quis iis possit uti, sed possit solus*], and that is achieved by prohibiting others from obstruction: [f] But it is useless [*frustra*] even to prohibit, unless you instill the fear of punishment; [g] hence a law is useless [*frustra*], unless it contains both parts, the part which forbids wrongs to be done and the part which punishes those who do them. (OC 14.7, translation altered)

In the Tuck and Silverthorne translation of (2e) property in goods requires that a person "alone *may* be able to use them" (my emphasis). This gives the false impression of a juridical assertion, the attribution of an exclusive (claim-)right to the owner of the goods. Hobbes asserts no such thing.

[4] From now on I will speak only of "possession," but I also mean to include under that heading more complex forms of control that may be exercised through the legal system, for instance, when the law provides effective remedies for infractions of one's property right.

[5] For the argument that Hobbes's conception of *potentia* changes from the *Elements* and *On the Citizen* to *Leviathan* see Field (2014). She argues that (unlike in *Leviathan*) in *On the Citizen* sovereign *potentia* is equivalent to *potestas* and consists in a faculty of the sovereign as artificial person to have right to the powers of its subjects (68). One weakness of her argument is that she relies predominantly on the *Elements* to establish this conclusion about *On the Citizen* (see 62, n.9). Another weakness is that she risks committing the fallacy of affirming the consequent as follows: if *potentia* consists in the obligation of subjects to obey then it is invariant; sovereign *potentia* is invariant; therefore, sovereign *potentia* consists in the obligation of subjects to obey (67–8).

Here, too, he characterizes property as consisting in *de facto* possession by emphasizing the possibility of use (*possit uti solus*). The passage as a whole is intended to deduce the characteristics civil law must have if it is to be capable of safeguarding property understood as consisting in *de facto* possession. Hobbes concludes that civil law must be partly *distributive* and partly *vindicative* (OC 14.6): the law must both impose obligations on subjects and attach punishments to transgressions of these obligations (2g). The first half of that conclusion is established in (2a–d). The *distributive* part of the law must impose obligations on subjects. If a law were merely to distribute rights (which are liberties) then the law is incapable of condemning appropriation of our possessions by another: we have a natural right to all things and this right cannot be violated by misappropriation. The law must instead distribute obligations prohibiting others from interfering with our possessions. In (2d) Hobbes requires that the distributive part of the laws "prohibit" others from obstructing the use of one's own, and in (2g) he emphasizes that law "forbids wrongs." In conformity with the traditional interpretation, Hobbes thus admits that civil laws introduce exclusive rights of the kind the standard reading takes as constitutive of property.

Yet, for two reasons, passage (2) does not support the standard reading. First, in contradiction with the traditional interpretation, Hobbes denies that having an exclusive right is sufficient for having property. The establishment of *de facto* possession not only requires the prohibition of misappropriation, but also the enforcement of that prohibition. This is the second half of the conclusion, established in (2f–g). Without this *vindicative* part of the law, the law would be "useless" or without effect. The enforcement of *vindicative* laws is a necessary condition for *de facto* possession and, hence, property. This is false on the standard reading. The *distributive* part of the law in isolation establishes well enough the obligations that are, on that reading, sufficient for the existence of property, and thus would certainly not be without effect (even if the property rights so established would habitually be violated). On Hobbes's conception of property, however, distributive laws in isolation are unable to establish property since they do not guarantee that the individuals who are assigned the exclusive right to the goods in question can also exercise that right. (See also passage [1], which makes clear that secure possession requires not just the [distributive] law but also the coercive power [*potentia*] of the sovereign.)

Elsewhere Hobbes confirms the importance of the accurate and swift enforcement of distributive laws as a necessary condition for property: "it is

pointless [*frustra*] to distinguish *mine* from *another's* by law if they are confounded again by false judgement [of a judge], robbery or theft" (OC 13.17). On the standard reading this is a curious thing to say. How can what is mine and yours be "confounded" by robbery and theft if property simply consists in having an exclusive *right* to the undisturbed use and enjoyment of one's own? It is possession, not ownership, that is confounded when robbery or theft occurs. However, this description is very fitting on the alterative interpretation, which takes possession as a necessary condition for ownership.

The second reason passage (2) does not support the standard reading is that Hobbes accepts an instrumental, not a constitutive, relation between the exclusive rights introduced by distributive laws, and the existence of property. In a commonwealth the latter, as he puts it in (2e), is "achieved by" the former. Imposing a system of enforceable obligations on citizens by means of a legal system is an effective, but non-essential, method to ensure that individuals have the undisturbed possession of their goods. It may be possible to employ other means to ensure effective possession. It implies that property could in principle be had in the absence of positive law, in the Hobbesian state of license, if one were powerful enough to exercise one's natural rights in the face of hostile belligerents. When discussing Hobbes's account of *dominium* by masters of slaves and parents of children, I will suggest that Hobbes does indeed admit this possibility in practice.

I see three objections to this reading of (1) and (2). First, one may object that Hobbes in (2b) implies that ownership cannot merely consist in effective possession. He admits that though someone may take something from you, this "does not prevent it from still being yours." One may thus own something even though it ceases to be under one's effective control. This, in turn, may be thought to support the standard reading that takes property to consist in an exclusive right to possess it (since that reading allows for the possibility that one owns something even though one lacks possession of it due to illicit confiscation).[6] In response, I point out that when Hobbes maintains in (2b) that something can be "yours" even though it is in the possession of another, he speaks of the state of nature where "the same thing is both yours and another's." In the state of nature everything is "yours" in the weak sense that you have a natural right to possess it, and *this* right is not extinguished when something is in the

[6] See, e.g. Olsthoorn (2015b: 481), who takes this apparent distinction between property and possession as corroborating the standard reading.

possession of another. However, this right does not amount to full ownership on the standard reading. As Hobbes points out, in the state of nature where everyone has an abundance of liberties to "possess, use and enjoy" (OC 1.10), everything is held in common, and "where all things are *common*, nothing can be the *proper* [*proprium*] to any one man" (OC 6.15; also OC 1.11, 6.1). The standard reading accepts that property is necessarily exclusive (since it consists in an exclusive right to possess). Passage (2b), then, does not provide evidence for the standard reading.

Second and relatedly, one could suggest that the resulting reading implausibly eliminates any distinction between ownership and possession. If ownership is equivalent to possession, then theft confers ownership and it is impossible to reproach theft as illicit and a violation of the law. I note in response that, according to Hobbes, ownership consists in *both* pre-eminent power over a thing and the natural right to exercise this power. This allows him to draw a conventional conclusion from unconventional premises. In the commonwealth, where property is secured by means of the legal system, Hobbes is able to condemn the actions of the bandit who takes the fish from the fisherman's net in contravention of the distributive law: he acts without right and does not acquire ownership over the fish (OC 6.16). In this example, the only person with a right to the fish (bracketing the sovereign) is the fisherman. But as long as he does not have the fish securely in his possession it is "his" in only the weak sense that he has a natural right to possess it. Ownership, in the proper sense, requires also *de facto* possession. As Hobbes reassures us (in [1]), the "power [*potentia*] of the whole commonwealth" will be exerted to ensure the security of everyone's distinct possessions. In Hobbes's commonwealth, the fisherman will genuinely own his fish because the law prohibiting others from taking it will be enforced.

Third, my reading contradicts the main reason, commentators have thought, why Hobbes denies the existence of private property in the state of nature. Hobbes maintains that, "until a commonwealth is instated, *all things belong to all men* and there is nothing a man can call *his own*," and therefore that "*property* and commonwealths came into being together" (OC 6.15; also OC 12.7). Proponents of the standard reading suggest that property is absent from the state of nature because agreements giving rise to exclusive rights are not enforced (OC 1.10, 2.11). As Johann Sommerville (1992: 55–6) suggests, by "adopting the unusual argument that covenants are invalidated if just fear of non-performance arises, Hobbes was able to underpin his claim that property is impossible in the state of nature ... since no coercive power exists to enforce contracts." Only the

sovereign provides the conditions that make binding agreements, and therefore exclusive rights, possible (Schlatter 1951: 140; Horne 1990: 24–6; Pierson 2013: 173; Olsthoorn 2015b: 481–2). Proponents of this argument may find support in the following passage:

> [3] *Mine* and *Yours* (whose names are *dominion* and *property*) have no place there [in the state of nature], because there is as yet none of that security which we showed above was a prerequisite of the practice of the *natural laws.* (OC 6.1)[7]

This passage supports the standard reading insofar as the phrase "practice of the *natural laws*" refers to the practice of creating exclusive rights by means of agreements. It supports my alternative reading if the phrase refers to the possibility of having effective possession. It is not easy to adjudicate between these two possibilities since in the Hobbesian natural state individuals lack both exclusive rights and the capacity to effectively possess anything. My alternative reading, however, finds support in the parallel passage in *Elements*, where Hobbes expresses more clearly what feature of the state of nature thwarts the existence of property. The state of nature is "that estate in which every man hath right to everything, and consequently ... in an estate of enjoying nothing: and therefore *meum* and *tuum* hath no place amongst them" (EL 2.2). There is no property in the state of nature because it is an "estate of enjoying nothing." As he puts it in *On the Citizen*, while "one could say of anything, *this is mine*, still he could not enjoy it because of his neighbour, who claimed the same thing to be his by equal *right* and with equal force [*vis*]" (OC 1.11). In the state of nature, we have a natural right to possess anything but we lack sufficient power, given human equality, to effectively exercise this right (OC 1.6, 2.4). The "practice of the *natural laws*" is necessary for property to arise, on this interpretation, because only the practice of the natural laws – when individuals enter into and stand by their agreements – ensures that we can effectively possess anything.

The resulting conception of property may be unconventional, but it is not without precedent. In his *Institutes*, the Roman jurist Gaius presents an equivalent account when outlining the laws governing ownership under

[7] Also, OC 6.1: "each man has his own *right* and *property* [*Ius* & *proprietas*] by particular contracts, so that one may say of *one thing* and another of *another thing* that it is his own [*suum*]." This passage may support the standard reading if it concerns the state of nature (Olsthoorn 2015b: 482). This is not obvious. To read the passage as describing how individuals hold property in the state of nature is to render it inconsistent with passage (3), later in the same paragraph, where Hobbes expressly denies that possibility.

the law of nations. It appears reminiscent, as one commentator notes, of "a time when the strong man armed, and he alone, held his goods in peace" (Buckland 1921: 208). Gaius maintains that prior to the establishment of positive law, ownership is equivalent to physical seizure and continued possession. On this conception of property (which is inconsistent with much of Roman law, where long occupancy and possession may give rise to property but are not reducible to it) the things we acquire "are regarded as ours for so long as they are governed by our control [*nostra custodia coercetur*]" (*Digest* 41.1.3.2). When we lose "physical control [*naturalem possessionem*]" (*Digest* 41.2.3.13), we also lose ownership and they become available again for first taking. The examples given by Gaius suggest that these norms primarily apply to movables such as wild animals, but he also singles out ownership of slaves as similarly dependent on the continued physical control of slaveholder. Freemen are made slaves when they are in the possession of the slaveholder, and only when they escape the "power of the enemy [*hostium potestate*]" do they "regain their original freedom" (*Digest* 41.1.7). Gaius's account is contained in the *Digest* and reproduced virtually unaltered in Henry de Bracton's *On the Laws and Customs of England* (thirteenth century), on which Hobbes draws extensively in his *Dialogue between a Philosopher and a Student* (1681).[8] Hobbes may also have become familiar with his conception of property via Hugo Grotius, who quotes Gaius in his *The Freedom of the Seas* in the course of providing a conjectural history of the development of the legal institution of ownership (Grotius [1609] 1916: 25). While Grotius holds a conception of ownership in terms of exclusive rights, he accepts that "in the earliest stages of human existence," ownership could be coextensive with physical seizure; at that time "[a]ll things belonged to him who had possession of them" (Grotius [1609] 1916: 22, 24). Grotius presents this as support for his claim that initial occupation remains a necessary condition for establishing private ownership, so providing a reason why the sea (which he takes to be impervious to occupation) is held in common by the whole of mankind.[9]

[8] Bracton (1997: vol. 2, 42–3). Hobbes calls Bracton "the most authentick Author of the Common Law" (DPS 35).

[9] There is no evidence that the Hardwick library contained a copy of Grotius's *The Freedom of the Seas*, but it did contain a copy of his *The Law of War and Peace*, which includes a condensed version of the argument of the earlier work (Grotius [1625] 2005: 2.2.3). It is certain that Hobbes read *Mare Clausum*, John Selden's response to Grotius, soon after it was published in 1635 (Malcolm 2002: 63).

Sovereign Ownership of Citizens

In the previous section I have argued that ownership consists in having preeminent power over something with a natural right to exercise this power. In this section and the next, I argue that sovereigns have ownership, so understood, of citizens and all they possess. Hobbes maintains that sovereignty (*summum potestas* or *summum imperium*) "consists in the fact that each of the citizens has transferred all his own force [*vis*] and power [*potentia*] to that *man* or *Assembly*. To have done this simply means (since no one can literally transfer his force to another) that he has given up his right to resist" (OC 5.11, translation altered). This definition references the original covenant in which prospective citizens alienate their rights to the benefit of a prospective sovereign: each man "transfers to that other the *Right to his strength and resources*" (OC 5.8), which is to say that he "obligates himself" not to "withhold the use of his wealth and strength against any other men than himself" (OC 5.7; also OC 6.13). This obligation, not implausibly including the obligation to obey the commands of the sovereign,[10] constitutes the "right of *Dominion* [*jus dominium*]" that is "acquired over men's *persons*" (OC 8.1). It suggests that sovereignty in *On the Citizen* consists in jurisdictional authority, an acquired right to rule (conceived as a right to command that is correlated with an obligation to obey on the part of citizens).[11] Yet, Hobbes's claim that sovereignty "consists" in the citizens' transfer of their "force [*vis*] and power [*potentia*]" (OC 5.11), indicates that this interpretation is at a minimum incomplete. The combined power, formerly in the hands of the citizens, appears to form at least a necessary condition for having sovereignty (OC 6.6, 6.13, 6.17, 10.12).[12]

Strong support for the view that preeminent power is a necessary condition for sovereignty can be found in Hobbes's key argument for absolutism, which has been very widely misunderstood. Traditionally, the argument is taken to establish the inescapability of an absolute

[10] There is much disagreement about whether the obligation not to resist the sovereign can be conceived as (including) the obligation to obey the commands of the sovereign. Authors who deny this include Gauthier (1969: 112); Johnston (1986: 80–1); Martinich (2005: 111, 116); and Pitkin (1964: 908–9). For a helpful corrective see Orwin (1975: 29).

[11] For instance, the translators of *On the Citizen*, when referring to *summum imperium*, write that "[t]he right so described is essentially the *Ius imperandi*, and consists essentially in the citizens' having given up their right to resist" (Tuck and Silverthorne 1998: xliii).

[12] See also *Elements*, where Hobbes defines "sovereign power" as consisting "in the power and the strength that every of the members have transferred to him from themselves, by covenant" (EL 19.9; also EL 20.7).

jurisdictional authority, an unlimited acquired right to rule, based on the supposition that any alternative would lead to an infinite regress of legal authorities, each being subject to still a higher authority. M. M. Goldsmith, for instance, claims to find in *On the Citizen* the "most explicit formulation of the logic" (Goldsmith 1980: 39, referring to OC 6.13 and OC 6.18; also Hampton 1986: 98; Baumgold 1988: 56–66; Sommerville 2016: 380–4). However, if we turn to the passage in question we find a different argument:

> [4] [a] in every commonwealth there is some *one man* or *one assembly* or *council*, which has by right as much power [*potentia*] over individual citizens as each man has over himself outside of the commonwealth, that is *sovereign* or *absolute* power [*id est summam sive absolutam*], [b] which is to be limited only by the strength [*vis*] of the commonwealth and not by anything else. [c] For if its power [*potestas*] is to be limited, it has to be by a greater power [*potestas*]; [d] for the one that sets the limits must have greater power [*potentia*] than the one restrained by limits. [e] The restraining power [*potentia*] therefore is either without limit, or is restrained in its turn by a greater power [*potentia*]; [f] and so it will come down at last to a power [*potestas*] without other limit [*terminus ultimus*] than that set by the strength [*vis*] of all the citizens together in its full extent. [g] This is the so-called *sovereign power* [*imperium summum*]. (OC 6.18)

This passage attributes to the holder of sovereignty highest or absolute power (*potentia*) (*per* [4a] and [4g]). This explication of the nature of sovereignty paves the way for Hobbes's regress argument leading to the conclusion that there is necessarily in every commonwealth a person with an unrestrained and absolute *potentia* (in [4c–f]). The upshot of this argument is evidently not, as Goldsmith and others have it, that the sovereign has unlimited jurisdictional authority, understood in terms of an absolute (acquired) right to rule. The crucial premise on which the regress argument rests, namely that if power is limited it must be limited by a greater power, is articulated in terms of *potentia* (in [4d] and [4e]): sovereign power is unlimited because and insofar as it is unlimited by a greater *potentia* (also OC 7.3). Furthermore, Hobbes twice (in [4b] and [4f]) clarifies that the power of the sovereign is as great as possible, but not infinite, since dependent on the combined strength (*vis*) of the commonwealth and its citizens. This is, of course, precisely Hobbes's characterization of the nature of sovereignty as consisting of the combined "force [*vis*] and power [*potentia*]" (OC 5.11; also OC 13.2) of the citizens who submit their will to the will of the sovereign. It is absolute power and strength, not

absolute jurisdictional authority, that is the *terminus ultimus* of the regress (also OC 8.8).[13]

The conclusion must be that sovereignty consists (in part) in having preeminent power (*potentia*) over citizens in the commonwealth. This establishes one of the two conditions of the sovereign's ownership of his citizens. The second condition is easily established: the sovereign, not having alienated any rights in the original covenant nor being bound by the civil law, has an undiminished natural right to possess, use, and dispose of anything (OC 1.10, 6.20). It follows that the sovereign does not only rule over his subjects but can also count them as his own. Hobbes is particularly frank about this implication in the chapters concerning natural commonwealths and patrimonial kingdoms. Such commonwealths are "acquired by natural power and strength [*potentia et viribus naturalibus*]" (OC 8.1) when a multitude of individuals are subjected to the rule of a usurper (or father) simply because they are unable to resist his overwhelming power. The individuals are then called "slave" (*servus*) of a "lord" or "master" (*dominus*) (OC 8.1) who "may say of his slave no less than of any other thing, animate and inanimate, *This is mine* [*hoc meum est*]" (OC 8.5; also EL 22.1). Since the slave is the property of the master, the master "has the right to dispose of a man's *person* as he pleases" (OC 8.1); for instance, he may "sell his *Dominion* of the slave, or pledge it or pass it by will, at his own discretion" (OC 8.6; also OC 8.10, 9.2). Hobbes accepts that these claims apply equally to citizens in "political" commonwealths instituted by an original agreement. He denies that there are formal differences between natural and political commonwealths: they differ "in origin and manner of formation," but once formed they have "all the same properties" (OC 9.10). Accordingly, there is no appreciable difference between a "free citizen" [*civem liberum*] and a slave (OC 9.9; also OC 8.7–9, 9.9). Regardless of how a commonwealth comes into being, its members are equally the property of the sovereign.

The following passage not only presses this inflammatory conclusion, it also further supports my reading of Hobbes's conception of property:

> [5] [a] But if it happens, whether by capture or by voluntary submission, that a *Master* [*Dominus*] becomes a *slave* [*servus*] or *subject* [*subditus*] to someone else, the latter will become *Master* of the other's *slaves* as well as of

[13] Field (2014: 69) sees the passage under discussion as evidence for her view that before *Leviathan* Hobbes conflates power (*potentia*) with authority (*potestas*). It is true that Hobbes shifts back and forth between using *potentia* and *potestas*, yet the regress arguments' central premises (4d–e) are couched in terms of *potentia* which suggests that he does not simply treat the terms as equivalent.

> his person; [b] he will be the *supreme Master* [*Dominus supremus*] of the *slaves*, the *immediate Master* of their former *Master*. [c] For since a *slave's* possessions as well as his person belong to his *Master*, the *slaves* of the original owner become the new man's *slaves*; [d] the *Master in-between* can do nothing about them [*neque potest Dominus medius de iis aliter disponere*] except as the *supreme Master* directs. [e] This is the reason why whenever the *Master's* power [*potentia*] over their *slaves* in the commonwealth is absolute, it is thought to derive from a right of nature, not established by the civil law but prior to it. (OC 8.8)

In this passage Hobbes explains why a slaveholder cannot hold onto his slaves when he himself is captured or voluntarily submits to the rule of a supreme master or sovereign. The slaveholder no longer has absolute power (*potentia*) over them (5e) since the slaveholder has lost the capacity to dispose of his slaves as he pleases except in accordance with the will of his superior (5d). The supreme master, by virtue of his absolute power over the slaveholder, *can* freely dispose of the slaves. That is why the slaves of the slaveholder are now in the ownership of the supreme master (5c). Besides thus repeating the claim that masters have ownership of their slaves, it reiterates that ownership consists in having preeminent or absolute power (5d–e) and a natural right to exercise it (5e). It also implies that ownership is a necessary consequence of sovereignty by echoing the regress argument in passage (4) which Hobbes presents as an argument about the nature of sovereignty (not ownership).

Yves Charles Zarka has argued that Hobbes's attempt to make citizens the property of their sovereigns is incomplete since Hobbes is unable to bridge a vital gap between ownership and sovereignty. Zarka relies on the standard reading of property that attributes to Hobbes a conception of property as an exclusive right with correlative obligations on others not to interfere with the person's possession of what is theirs. This conception of property, Zarka maintains, can only serve as an imperfect model for political rule, since Hobbes stresses that individuals have certain inalienable rights: they cannot be obliged not to resist threats to their life and body, nor can they be required to accuse themselves, their family, or those that depend on them for survival. (OC 2.18–19, 9.9; Zarka 1995: 185). These inalienable natural rights prevent the sovereign's right in their citizens from ever being fully exclusive, since the sovereign's right never comprises rights to actions that citizens may rightfully resist. Something similar, Zarka (1995: 187) suggests, holds for workhouse slaves that are physically bound and thereby released from any contractual obligations to their master. They lack any obligations correlating to the ownership rights

of their master. Zarka therefore concludes that Hobbes's analogy between political rule and property is incomplete: "The declaration by the master: *hoc meum est*, does not fully transform the slave into a thing" (Zarka 1995: 187, my translation).

I respond that Hobbes does fully transform citizens and slaves into objects of ownership, because he rejects that ownership consists in an exclusive right. The fact that citizens have inalienable rights and workhouse slaves are at liberty to disobey their masters does not form any obstacle to attributing ownership to the sovereign. A master with the natural right to possess, use, and dispose of a slave as he pleases has ownership of the slave as long as he has the power (*potentia*) to exercise that right. Whether the slave additionally has obligations correlating to the master's natural right is simply irrelevant. This is precisely Hobbes's conclusion after distinguishing between workhouse slaves and slaves bound by obligations arising from a contract: a master "has no less right and dominion over the *unbound* slave than over the *bound*, for he has supreme dominion over both" (OC 8.5).

Sovereign Ownership of Citizens' Possessions

I am now in a position to elucidate Hobbes's argument for the sovereign's absolute ownership of the citizens' possessions. Hobbes's conception of property permits a strikingly original answer to the question of whether citizens can hold any property as their own against the sovereign. The falsehood of this "doctrine inimical to commonwealths" follows *conceptually* from the nature of sovereignty. It is shown to be fallacious, as Hobbes puts it in *Elements*, simply "by proving the absoluteness of the sovereignty" (EL 27.8). In *On the Citizen*, he expresses the conceptual implication as follows:

> [7] those who have a *Lord* [*dominus*] do not have *Dominion*, as was proved in VIII.5. (OC 12.7)

This categorical claim is more than a little puzzling if one is committed to a standard reading of property as an exclusive right. Why does being subject to the absolute rule of a sovereign (having a "*Lord*") *necessarily* preclude having any exclusive rights (including against the sovereign) to use and dispose of one's own (having "*Dominion*")? One possibility is to read passage (7) as expressing the necessary dependence of property on the existence of the civil law by means of which the sovereign exercises jurisdictional authority. Recall that Hobbes notes that the

civil law has a "distributive" function in the sense that it determines "what belongs to us and what to others, so that others may not obstruct us in the use and enjoyment of our own" (OC 14.6; also OC 14.9). We own those things that the law determines we can lay exclusive claim to. However, the sovereign, whose will is law, can at a moment's notice exercise his jurisdictional authority to change the distributive law and expropriate all one has (Goldsmith 1966: 193–4; Olsthoorn 2015b: 486; Abizadeh 2016: 405). Support for this reading can be found in the following passage:

> [8] [a] individual citizens hold *their property*, over which none of their fellow citizens has any right, because they are bound by the same laws; [b] but he does not hold any property on such terms that the holder of sovereign power [*imperium summum*] has no right over it, [c] since his commands are the laws themselves, his will comprehends the will of individuals, and individuals have appointed him their sovereign judge. (OC 6.15)

Since the sovereign has by virtue of his legislative authority the (Hohfeldian) power to determine the property rights of citizens (as suggested in [8b–c]), citizens are liable to having their property confiscated by the sovereign. If the sovereign wishes to expropriate the goods of his citizens he may do so by exercising jurisdictional authority and altering the distributive laws that contain the obligations (including, potentially, those of the sovereign) to refrain from such expropriation.

The disadvantage of this reading is that it fails to show the *necessary* impossibility of holding property against the sovereign as the apparently categorical assertion in (7) suggests. It only shows, as Abizadeh (2016: 405–6 and n. 33) puts it, the citizens' lack of "relatively secure immunity against expropriation." Another possibility is therefore to suggest that one cannot hold property against the sovereign because the sovereign is never subject to distributive laws in the first place. As Hobbes puts it in (8c), civil laws are the commands of the sovereign, and since one cannot be bound by obligations to obey oneself, the sovereign cannot be bound by civil laws (OC 6.14, 9.3). Whereas citizens may hold property against their fellow citizens, by virtue of a distributive law that prohibits them from interfering with the use and enjoyment of their property (8a), the sovereign is not subject to any civil law and may possess, use, and dispose of anything by undiminished right of nature.

While this reading indeed shows the necessary impossibility of holding property as one's own against the sovereign (in accordance with [8b]), it does not show, as (7) suggests, that this is *by virtue of* being subject to

sovereignty. On this reading, the sovereign may confiscate the property of his citizens simply on the basis of a natural right, and not, in other words, by virtue of being a *Lord*. The title to his subjects' property is indistinguishable from the title of enemies of the commonwealth who are not bound by the civil law either.

How, then, does Hobbes establish the necessary impossibility of holding property against the sovereign? OC 8.5, where Hobbes claims to have proven proposition (7), helps clarify matters:

> [9] [a] A *Master* [*dominus*] . . . may say of his slave [*servus*] no less than of any other thing, animate and inanimate, *This is mine.* [b] It follows that anything that belonged to the slave before enslavement belongs to his *Master* afterwards, and anything the *slave* may acquire is acquired for the Master. [c] For he who has the right to dispose of a man's *person* as he pleases also disposes of all the things the *person* could dispose of. [d] There is therefore nothing that the *slave* can keep as *his own* against the *Master* [*dominum*]. (OC 8.5)

Subjects cannot keep anything as their own against the sovereign (8b, 9d) because they are, in accordance with Hobbes's conception of despotic sovereignty, themselves owned by the sovereign (9a). The sovereign, by virtue of being sovereign, has preeminent power over the citizens' possessions. Hobbes's defense of this conclusion is based on a commitment to the transitivity of *potentia*, expressed in the regress argument in passage (4). As noted, the regress argument is meant to show that the sovereign has preeminent power over all citizens, the greatest power possible in the commonwealth. Hobbes takes this to imply that, if a subject has power over *x*, then the sovereign has a greater power over *x* (4e). Hobbes uses this argument to establish a conclusion about the location of ownership. As he puts it in (9c), anyone who has the right to "dispose of a man's *person* as he pleases also disposes of all the things the *person* could dispose of" (see also OC 8.8, 9.5). And elsewhere: "if a *mother* has been captured in war, her *offspring* belongs to her captor, because he who has *Dominion* over a *person* has *Dominion* over everything that is hers" (OC 9.5; also OC 8.8). The captor has sovereignty over the mother and the mother has ownership of the child. From this follows that the captor has ownership of the child because the power that is a necessary constituent of both sovereignty and property is transitive. There is nothing subjects can keep as their own against the sovereign (9d, 8b), not merely because the sovereign lacks an obligation to refrain from interfering with their use and enjoyment of their possessions, but because subjects lack the

power, in the face of the superior power of the sovereign, to stop the sovereign from interfering with their possessions if he so desires (also OC 9.5).[14]

One might object that this conclusion is contradicted by Hobbes's admission that citizens may sue their sovereign if the legality of the sovereign's expropriations is in doubt. Such a suit would be impossible if citizens did not at least have a *prima facie* property title on the basis of the civil law (Abizadeh 2016: 405 develops this point with reference to L 21.19: 342 and OC 6.15 [passage 8]). When Hobbes denies that citizens can hold property against their sovereign he means to say that citizens are subject to the sovereign's absolute jurisdictional authority that *could* be exercised in aid of expropriation, not that subjects never in fact hold property against the sovereign. (Abizadeh 2016: 404–5) In *Leviathan* Hobbes does indeed admit the possibility of legal action against the sovereign when controversy arises about "right of possession of lands or goods" that is "grounded on a precedent Law" (L 21.19: 342). In the parallel passage in *On the Citizen*, however, he plainly denies that citizens may find recourse in the civil law. He admits that "legal action may sometimes be taken against the holder of *sovereign power*; but such action is not a matter of *civil law* [*juris civilis*] but of *natural equity* [*aequitatis naturalis*]" (OC 6.15). While citizens may draw on the institutions of civil law to protect their property against fellow citizens, in relation to the sovereign they cannot appeal to the civil law and are wholly at the mercy of his equity. Hobbes's treatment of the legal proceedings that may be initiated by subjects against their sovereign, then, does nothing to weaken the plausibility of the interpretation of *On the Citizen* here developed.

Conclusion

Interpreters have tended to ignore Hobbes's argument for despotic sovereignty, emphasizing rather his defense of a constitutional order that, in many of its practical effects, is indistinguishable from a liberal regime

[14] Such exercise of *potentia* can be in the form of the exercise of jurisdictional authority: the sovereign may interfere with the possessions of citizens by commanding citizens to do with them what he desires. This is what seems to motivate the following assertion about the mother who has ownership of her child and is subject to the legislative authority of a sovereign: "if the *mother* is a citizen of a commonwealth, the holder of sovereign power in the commonwealth will have *Dominion* over her child; for he is Master also of the *mother*, and she is obliged to obey the sovereign in all things" (OC 9.5). The sovereign has ownership of the child because he can dispose of the child as he pleases by means of imposing binding law on the mother. See also (5c–d).

(e.g., Ryan 2012: 182). While perhaps fitting as an assessment of *Leviathan* (but see Tarlton 2002), those interpretations overlook Hobbes's profoundly non-liberal claim in *On the Citizen*, that the supreme magistrate, by virtue of his sovereignty, has full ownership of the citizens and their belongings. I have presented a novel interpretation of Hobbes's treatment of the concept of property, with the aim of showing that Hobbes completes a philosophically ingenious defense of despotic sovereignty. I have suggested that he draws on an archaic conception of property under the primordial law of nations, such as outlined in Gaius's *Institutes*, according to which ownership is established by physical seizure and dependent on continued possession. This conception of property permits him to conclude that the sovereign's ownership of his subjects and their possessions follows *conceptually* from his sovereignty: since the sovereign wields preeminent power over the citizens and (as power is transitive) the citizens' possessions, he necessarily owns everything in the commonwealth that can be owned.