

‘This man is my property’: Slavery and political absolutism in Locke and the classical social contract tradition

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Abstract

It is morally impossible, Locke argued, for individuals to consensually establish absolute rule over themselves. That would be to transfer to rulers a power that is not ours, but God’s alone: ownership of our lives. This article analyses the conceptual presuppositions of Locke’s argument for the moral impossibility of self-enslavement through a comparison with other classical social contract theorists, including Grotius, Hobbes and Pufendorf. Despite notoriously defending the permissibility of voluntary enslavement of individuals and even entire peoples, Grotius similarly endorsed divine ownership of human life. He could do so coherently, we show, because he denied that despotic power gives rulers rights in the lives of their subjects. Masters do not own slaves in the way we own material things (which we may destroy at will). Reworking received Roman law categories, Grotius maintained that ‘perfect slavery’ consists in masters having a personal right to the slave’s perpetual service; a condition equivalent to what Locke called ‘drudgery’ and deemed permissible. Our analysis of this unpalatable set of ideas reveals that Locke’s argument is premised upon idiosyncratic conceptions of slavery and absolutism, disavowed by prominent defenders of absolutism in the classical social contract tradition. It is hence less powerful than commonly believed.

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The primary objective of John Locke's *Two Treatises of Government* (1689) is to show that no commonwealth can possibly be governed by an 'Absolute, Arbitrary, Unlimited, and Unlimitable Power' (Locke, 1988a [hereafter FT]: §9). Political power is necessarily restricted and fiduciary; the people cannot but retain the right to hold government accountable. Locke's (1632–1704) main negative argument for the moral necessity of limited government is two-pronged. Each prong rejects a way in which absolute and arbitrary power can arise. The *First Treatise* challenges the contention of Sir Robert Filmer (1588–1653) that sovereigns have such extensive powers by divine right. The *Second Treatise* contends that absolute rule cannot possibly have been established by agreement either.

The *Two Treatises* put forth myriad moral and prudential arguments in defence of limited government. This article confines itself to scrutinizing one of Locke's main arguments: that the moral impossibility of self-enslavement precludes contractually setting up absolute rule over oneself. This argument, linking political absolutism with slavery, rests on a theological premise: divine ownership of human life. Political absolutism, Locke contends, gives rulers ownership rights in their subjects' lives (as well as in their liberties and estates). Citizens cannot consensually institute arbitrary government over themselves since it amounts to giving away something that belongs not to them, but to God. 'No Man can, by agreement, pass over to another that which he hath not in himself, a Power over his own Life' (Locke, 1988b [hereafter ST]: §24). Modern Lockean philosophers generally discard the idea of divine ownership, replacing it with a less parochial explanation for why the consensual establishment of absolute rule is illegitimate (e.g. Simmons, 1993: 137–145).

This article reveals that classical contract theorists could coherently endorse the theological premise, already found in Plato's (1997) *Phaedo* (62b–e), without accepting Locke's anti-absolutist conclusions. Hugo Grotius (1583–1645) backed contractual political absolutism despite similarly holding that 'the Right over our own Lives is not in ourselves, but in GOD' (Grotius, 2005 [hereafter DJBP]: 2.19.5.4).¹ While natural reason suggests that the right to life may like any other property title be transferred voluntarily to another party, the Gospel teaches us that we have no such *dominium* over our life. Suicide is therefore impermissible: 'no Man's Life is so entirely at his own Disposal, as that he may take it away himself, or authorize another so to do' (DJBP 2.21.11.2). Samuel Pufendorf (1632–1694) concurred: 'life... must be regarded as a gift of God... man certainly does not have power over his own life to the extent that he may terminate it at his pleasure'

(Pufendorf, 1991 [hereafter DO]: 1.5.4). Yet while Locke infers from this that individuals cannot submit themselves to ‘the Absolute Will and arbitrary Dominion of another’ (ST §149), Grotius and Pufendorf held that individuals and even entire peoples can lawfully enslave themselves. How did they reconcile the validity of self-enslavement contracts with the lack of full ownership in one’s life? And what does a reconsideration of their views tell us about the character of Locke’s arguments?

Our analysis shows that Locke is working with idiosyncratic conceptions of slavery and absolute rule repudiated by prominent early modern contractarian thinkers defending political absolutism. Like Filmer, Locke maintains that absolute rulers may arbitrarily kill and maim their subjects at will, by dint of having *dominium* in the latter’s lives. (Legitimate despotic rule, Locke insists, can only stem from conquest in just war.) Early modern natural lawyers from Grotius onwards conceptualized slavery rather differently, insisting that enslaved people are not owned in the way we own things (which may be destroyed at will). Grotius and Pufendorf depicted ‘perfect slavery’ as the condition in which a master has a personal right to the slave’s perpetual service. Self-enslavement to such a condition is compatible with the theological premise and the prohibition against suicide.

Our reconstruction of this unsavoury set of arguments sheds new light on rival conceptualizations of absolutism and slavery in the classical social contract tradition. It also allows us to evaluate the strength of Locke’s argument for the moral impossibility of self-enslavement. We conclude that this argument is considerably less powerful than commonly believed (e.g. Glenn, 1984): though coherent, it has little bite against the main contractarian defences of absolutism in the period, as they were premised on alternative understandings of slavery and absolutism.

The nature of political government

The *Two Treatises* defend limited government against the crude form of political absolutism advocated by Filmer. In *Patriarcha* and various smaller writings, Filmer presented an original defence of the divine right of kings. The right to rule, he argued, is nothing else than the absolute and arbitrary right that fathers putatively have over their offspring. The biblical donation of *dominium* over non-human animals was interpreted by him as proof that Adam had ‘by right of fatherhood, royal authority over his children’ (Filmer, 1991: 6). This right, ‘as large and as ample as the absolutest dominion of any monarch’, had subsequently been passed on to successor patriarch kings (Filmer, 1991: 7). The unbounded right of fathers was further attested to by the life-long power Roman *paterfamilias* exercised over all family members and servants (*Gaius* 1.55; compare DJBP 2.5.2.1; ST §§55-67). This power included *ius vitae necisque* as well as complete ownership over all the goods possessed by the family. Filmer supported his patriarchalist divine right doctrine with a rejection of social contract theories of government. Chapter II of *Patriarcha* is entitled: ‘It is unnatural for the people to govern or choose governors’. Legitimate government, Filmer proclaimed boldly,

is necessarily despotic and entails ownership of the lives of subjects and all their belongings. Filmerian sovereignty is akin to what Jean Bodin had called 'lordly' or despotic sovereignty: individuals subject to absolute rule are not accorded the advantage of private property – not even in their own persons (Bodin, 1606: 200).² Indeed, 'a son, a subject, and a servant or a slave, were one and the same thing at first' (Filmer, 1991: 237).

Locke balked at this. He chided Filmer for granting to rulers:

a Divine unalterable Right of Sovereignty, whereby a Father or a Prince hath an Absolute, Arbitrary, Unlimited, and Unlimitable Power, over the Lives, Liberties, and Estates of his Children and Subjects; so that he may take or alienate their Estates, sell, castrate, or use their Persons as he pleases, they being all his Slaves, and he Lord or Proprietor of every Thing, and his unbounded Will their Law. (FT §9)

Filmer's theory of sovereignty, Locke objects, involves a category mistake. Despotic rule is not a form of political rule at all. Operative here is Aristotle's (1984) distinction in *Politics* (1255b16-20) between the political government of a statesman (*politikos*) over free citizens and the domestic rule of the master (*despotes*) over slaves (Maloy, 2009; Schochet, 1975: 1–15, 115–158). Following Aristotle, Locke characterizes political rule as the power of 'Governours' who govern by public consent and 'for the Benefit of their Subjects, to secure them in the Possession and Use of their Properties' (ST §173). Power is properly called 'political' only because and insofar as it is exercised in order to 'preserve the Members of that Society in their Lives, Liberties, and Possessions' (ST §171). Despotic power, conversely, is the power of 'Lords' who rule 'for their own Benefit, over those who are stripp'd of all property' (ST §173). Filmer, Locke contends, failed to see that despotic and political power are fundamentally distinct in character and origin. Indeed, '*Absolute Monarchy*... can be no Form of Civil Government at all' (ST §90).

In line with 17th-century usage, Locke employs the term 'property' in a wide sense as including rights both in oneself and in external resources (e.g. ST §173; Locke, 1979: 4.3.18; Olivecrona, 1975). Those entirely without property no longer have any rights in their own life, and hence are not wronged when killed at will. The rule over 'such as have no property at all' is called '*Despotical*' (ST §174). '*Despotical Power*', Locke writes, 'is an Absolute, Arbitrary Power one Man has over another, to take away his Life, whenever he pleases' (ST §172). Despotic power over humans is equivalent to a complete property right in a physical thing insofar as those subjected to this power have no rights against their *dominus* and may be used and disposed of at pleasure.

Locke did not categorically reject the legitimacy of despotic rule. Those guilty of a capital crime forfeit their life and may be rightfully enslaved in lieu of being killed:

This is a Power, which neither Nature gives...nor Compact can convey, for Man not having such an Arbitrary Power over his own Life, cannot given

another Man such a Power over it; but it is *the effect only of Forfeiture*, which the Aggressor makes of his own Life, when he puts himself into the state of War with another. (ST §172)

Only someone who has ‘by his fault, forfeited his own Life, by some Act that deserves Death’ can be lawfully enslaved (ST §23). Despotic power is essentially judicial: a right to punish unjust aggressors by enslaving them (Zuckert, 1994: 241). As ‘Captives taken in a just War’, slaves are ‘by the Right of Nature subjected to the Absolute Dominion and Arbitrary Power of their Masters’ (ST §85). Masters and slaves remain in a state of war. Indeed, Locke defines ‘the perfect condition of *Slavery*’ as ‘nothing else, but *the State of War continued, between a lawful Conqueror, and a Captive*’ (ST §24). The justification of slavery as punishment for unjust war was of old pedigree and in part etymological: *servi* (slaves) would come from *servare* (save) (*Digest* 1.5.4; *DJBP* 3.7.5.1; Watson, 1992–1993: 1350–1354). Lockean perfect slaves are not really saved, though: execution is merely postponed. Lawful conquerors ‘may... delay to take’ the aggressor’s life forfeited to him ‘and make use of him to his own Service, and does him no injury by it’ (ST §23). This ‘just war’ conception of perfect slavery fits badly with the contemporary institutions of slave trade and heritable slavery – questions Locke studiously ignores (Farr, 1989). This makes his legitimation of slavery in the *Fundamental Constitutions of Carolina* especially distressing: ‘Every freeman of Carolina shall have absolute power and authority over his negro slaves’.³

While Locke accepts the legitimacy of punitive slavery and shares Filmer’s conception of despotism as entailing unlimited ‘power of life and death’, he strenuously denies the latter’s contention that despotic rule constitutes a valid form of political government (Filmer, 1991: 7). This follows straightforwardly from Locke’s definition of political power as rule over right-bearing citizens. Slaves are ‘not capable of any Property’, and therefore, ‘cannot in that State be considered as any part of *Civil Society*; the chief end whereof is the preservation of Property’ (ST §85). Indeed, despotic power, slavery and war are logically connected such that each ceases the moment slaves make a contract with their master and acquire rights and duties anew: ‘*as soon as Compact enters, Slavery ceases*, and he so far quits his Absolute Power, and puts an end to the state of War, who enters into Conditions with his Captive’ (ST §172).

For further support, Locke invokes the moral impossibility of voluntarily submitting to despotic rule. That would amount to transferring to another something that we lack – absolute *dominium* over our own life:

For a Man, not having the Power of his own Life, *cannot*, by Compact, or his own Consent, *enslave himself* to any one, nor put himself under the Absolute, Arbitrary Power of another, to take away his Life, when he pleases. No body can give more Power than he has himself; and he that cannot take away his own Life, cannot give another power over it. (ST §23)

Individuals cannot sell or otherwise contract themselves into slavery since ‘no Body has an absolute Arbitrary Power over himself’ (ST §135). And as the Roman law maxim has it, ‘no one can transfer to another a right which he himself does not possess’ (*Digest* 50.17.54). Only God, who has created us, owns us so completely that he can relinquish us at will. ‘Men being all the Workmanship of one Omnipotent, and infinitely wise Maker...they are his Property, whose Workmanship they are, made to last during his, not one anothers Pleasure’ (ST §6). Locke maintains that ‘every Man has a *Property* in his own *Person*’ (ST §27) and is the ‘absolute Lord of his own Person and Possessions’ (ST §123; also ST §44). However, our property rights in our *life* are limited to use and usufruct. We have no license to destroy ourselves or to dispose of our persons in defiance of the law of nature (ST §7; Olsthoorn, 2019).

Similar arguments were advanced during the English Civil War by Leveller pamphleteers such as John Lilburne (1614–1657) and Richard Overton (fl. 1640–1664). They likewise argued that duties of self-preservation prohibit the consensual institution of arbitrary government: ‘for as by nature, no man may abuse, beat, torment, or afflict himselfe; so by nature, no man may give that power to another, seeing he may not doe it himselfe’ (Overton, 1646: 3; also Overton, 1647: 6–7; Lilburne, 1647: 11). All citizens equally have a duty to violently resist tyranny since to ‘murther himselfe or give power to another to be his Butcher...in regard by the Law of God in nature and in his word both the one and the other is verily unlawfull’ (Overton, 1647: 21).⁴ These radicals were not the only early modern thinkers to ground prohibitions against suicide in divine ownership of human life (Heydt, 2016: 223–228). Even supporters of absolutism like Grotius, Pufendorf and Leibniz agreed. In what follows, we will evaluate the strength of Locke’s argument for the moral impossibility of instituting absolute rule through a comparison with contemporary social contract theorists.

Grotius on personal slavery

Like Locke, Grotius was adamant that our life is ultimately owned by God:

As it was formerly believed every one had the same Right over his own Life, as over other Things wherein he had a Propriety; and that this Right, by the Consent, either express, or tacit, of the Individuals, was transferred to the State... But since a truer Wisdom has informed us, that God has reserved to himself the Power of our Lives, so that no Man can solely by his own Consent bestow upon another a Power either over his own Life, or that of his Subjects. (DJBP 3.11.18.1; also 2.19.5.4, 3.2.6)

Revelation, the Dutchman proclaimed, teaches us that God ‘has an absolute and unlimited Dominion as well over our Lives as our Effects, as Things he has lent us, and which therefore without assigning any Reason and at any Time he may deprive us of’ (DJBP 2.21.14.1; also 2.21.14.3). The same line of reasoning forbids self-mutilation (DJBP 2.21.11.2). At the same time, Grotius maintained that

individuals, and even entire peoples, could lawfully sell themselves into slavery. This section shows that these two Grotian doctrines are coherent because he conceptualized the legal condition of slavery differently to Locke. Grotian self-enslavement does not involve the renunciation of the right to life. It consists at most in consenting to perpetually serve a master. Grotius legitimated more radical forms of self-subjection than his successors in the natural law tradition. Yet his ‘perfect and utter Slavery’ remains far less vile and miserable a condition than Lockean slavery.

Early modern thinkers subsumed a wide variety of social relations under ‘servitude’, from wage labour to chattel slavery (Pesante, 2009). All forms of servitude involved subjection to a superior, who holds *potestas* over the servant. *Potestas* is essentially a right to govern a person. (Grotius even defined personal liberty as having *potestas* over yourself [DJBP 1.1.5].) Non-mature children and wives were not seen as *sui juris* either. Their father/spouse had acquired *potestas* over them through generation/marriage (DJBP 2.5.1.1, 2.5.8.1). Yet while *potestas* over children and wives should be directed at their good, masters rule servants for their own personal benefit. Rule over servants was thus seen as despotic – after all, Aristotle (1984: 3.7 [1279b]) had said that tyrants differ from kings in ruling for their personal gain only.

To agree to enter a condition of servitude is thus to grant another the right to govern you for their personal benefit, e.g. in exchange for a wage or victuals. Servants and masters have mutual duties: servants are obliged to perform services, while masters must feed, house and clothe servants. The *potestas* of the master over slaves need not be perpetual or unconditional. Grotius distinguished perfect (i.e. complete) from imperfect servitude. The latter ‘are either for a certain Term of Time, or upon such and such Conditions, or only to do such and such particular Things’ (DJBP 2.5.30). By contrast, ‘perfect and utter Slavery, is that which obliges a Man to serve his Master all his Life long, for Diet and other common Necessities’ (DJBP 2.5.27.2). Crucially, even such perpetual servitude does not grant masters ‘the Power of Life and Death over their Slaves: Nor can one Man have any Right to kill another, unless he has committed some capital Crime’ (DJBP 2.5.28). That some countries grant impunity to such killings does not render them morally permissible. This suggests that masters do not own their subjects’ lives.

To confirm that Grotian self-enslavement is compatible with divine ownership of human life, we need to know more about what kind of rights exactly masters acquire over servants. Do they have property rights in their subjects’ life, liberty, labour and/or person? If so, how extensive are these rights? *De Jure Belli ac Pacis*, Grotius’s 1625 *magnum opus*, does not elaborate on the juridical condition of servitude. Important resources to reconstruct Grotius’s views on slavery are however found in the earlier *Introduction to the Jurisprudence of Holland* (compare Van Nifterik, 2001: 237). First published in 1631, this highly influential contribution to Roman-Dutch law was composed by Grotius during his imprisonment in Loevestein Castle in 1619–1620. The *Introduction* sought to systematize Dutch

legal practice, much influenced by Germanic feudal law, by means of Roman law concepts and classifications (Stein, 1999: 97–101).

Richard Tuck (1979: 77) has claimed that the doctrine of contractual self-enslavement was ‘completely new’ to *DJBP*. In support, he cites a passage from the *Introduction*: ‘Inalienable things are things which belong so essentially to one man that they could not belong to another, as a man’s life, body, freedom, honour’ (Grotius, 1926 [hereafter, JH]: 2.1.42). Our life and liberty are so inseparably tied to us that no other human being can acquire ownership of them. What does it mean for a thing to be inalienable? Not that it is unconditionally ours. Persons can forfeit inalienable things through felony: ‘a man’s life is so far his own that he may . . . forfeit it for crime’ (JH 2.1.43). Alienation and forfeiture are conceptually distinct, as Locke recognized as well (FT §100; compare McConnell, 2000: 3–23). While we cannot transfer our life or liberty to another human being, we can involuntarily lose (i.e. forfeit) our rights to them by committing a capital crime.

In Grotius’s view, however, the inalienability of life, body, freedom and honour does not mean that other human beings cannot through agreement *indirectly* acquire rights to them. Grotius held that persons may permissibly renounce control over their freedom to masters and enter conditions of servitude: ‘a man may transfer to another who accepts the same, a portion, or rather a consequence, of his own freedom, so that the other acquires a right over it’ (JH 3.1.12). Moreover, like Kant, Grotius averred that in the marriage contract, spouses mutually grant each other rights to glory in particularly intimate parts of their body: ‘no one may bind his body by contract except through marriage’ (JH 2.1.46). Nuptial rights are admittedly restricted to use-rights. Spouses do not obtain the right to prostitute their partner. Still, how can contracts give others a right over our body or liberty – things inalienably our own? What kind of rights do spouses and masters acquire over us?

The *Introduction* contains an elaborate and original legal classification of property rights. Grotius distinguished between two kinds of property rights (toe-behooren). The first (beheering) are rights *in* external goods (*jus in rem*) – whether of possession or of ownership (JH 2.1.60). Grotius conceived of *jus in rem* as juridical relations between a person and a thing (JH 2.1.58). *Dominium* (ownership) and quasi-*dominium* are both types of *jus in rem*. The second kind of property right are personal rights (inschuld): ‘a right of property which one man has against another entitling the first to receive from the second some thing or some act’ (*jus in personam sive creditum*) (JH 2.1.59). Personal rights do not concern possession or ownership of things: ‘not that personal right gives ownership, complete or incomplete, or possession, but it gives the right to demand from a person the ownership or free possession; and in that case the duty is termed an obligation to give’ (JH 3.1.13).

Grotius’s distinction between two irreducibly distinct kinds of property rights – *in* things vs *against* persons – constituted a departure from Roman law. From at least Gaius onwards, Roman jurists categorized law under three headings: persons, things and actions (*Institutes* 1.2.12; *Digest* 1.5.1 [=Gaius 1.8]).⁵ The category of

things included both property (corporeal things) and obligations (subsumed under incorporeal things) (*Institutes* 2.2). Obligations are legal ties created by contract or wrongdoing whereby one person is bound to another person (not) to do something (*Institutes* 3.13; Evans-Jones and MacCormack, 1998; Ibbetson, 2016). Slaves were legally classified as corporeal things (*Institutes* 2.2.1; *Digest* 1.8.1.1). The division between property and obligations was reflected in the law of actions (i.e. titles for legal proceeding). ‘Actio in rem’ provide plaintiffs with legal standing to sue to protect their property; ‘actio in personam’ to secure obligations.

Grotius systematized the *in rem/in personam* division through the notion of rights (*jura*). The Dutchman sidelined the contrast between corporeal and incorporeal things, central to Roman property law, dividing property instead by the kind of rights persons have to what belongs to them. The titles in virtue of which we can call things, whether corporeal or incorporeal, our own are two: rights *in* things vs rights *against* other persons. Obligations are subsumed under the new category of personal rights (*jus in personam*): ‘the other sort of property is obligation, which we have described as being the right of property which one man has over another to obtain from him some thing or some act’ (JH 3.1.1). The *Introduction*, it bears noting, is incomplete: missing is the chapter on actions (i.e. on public law). Whatever explains this omission, the legal category of actions is less vital for Grotius than it was for Roman jurists. For him, persons acquire actionable claims against others (now understood as just grounds for legal proceedings and war [DJBP 2.1.2.1]) whenever their strict rights are violated. And all strict rights are property rights of some kind – whether *jus in rem* or *jus in personam* (DJBP 1.1.5).

How does this help us understand self-enslavement? According to Grotius, masters have a stake in their servant’s personal freedom. Liberty itself being an inalienable thing, Grotius maintained that an individual can transfer only ‘a portion, or rather a consequence, of his own freedom, so that the other acquires a right over it, which right is termed a personal right’ (JH 3.1.12). Rather than having ownership rights in a slave’s liberty and labour, masters possess personal rights against their slaves to perform services for them. Self-enslavement thus creates an obligation to make available one’s services to a master. Selling your personal freedom in exchange for provisions is to grant another authority to govern you for their personal benefit. By contrast, trading external resources does not create status differences: creditors do not acquire *potestas* over their debtors.

Tuck’s reading must thus be jettisoned. Grotius’s views on the permissibility of self-enslavement did not alter between the *Introduction* and *DJBP*. What the Dutch jurist dismissed as inconceivable in the earlier text is one juridical form of self-enslavement: acquiring rights *in* another person’s life, labour or liberty (*jus in rem*). Yet he accepted another form of self-enslavement, grounded in a different kind of property title: obligations. Voluntary servitude gives masters a personal right against the slave to his service precisely because no one can alienate freedom itself. Grotius emphasized that ‘*with us* no one may *entirely* dispose of his freedom

by contract, though a man may well bind himself to certain defined acts' (JH 2.1.47, emphasis added). Regardless of whether 'with us' refers to the Dutch Republic or to Christian nations generally, the passage implies that any prohibition of complete self-enslavement is a matter of positive, not of natural law. Dutch positive law presumably only permitted what *DJBP* calls 'imperfect servitude' contracts, while the Romans and Hebrews had allowed people to sell themselves into 'perfect and utter Slavery'.

In short, Grotius conceptualized slavery not in terms of rights *in things*, but in terms of rights *against persons*. Legally speaking, slaves remain persons.⁶ They are not, as Aristotle (1984: 1.4 [1253b]) had it, 'a living possession . . . an instrument for instruments'. Grotius arrived at this view precisely because life and liberty are inalienable (i.e. non-transferable). While others cannot contractually acquire ownership of things that are inalienably ours, they can obtain personal rights to our life-long service for their personal use and benefit. However extensive masters' despotic authority, it does not amount to *in rem* ownership: 'that which entitles a man to do with a thing and for his advantage anything he pleases which is not forbidden by law' (JH 2.3.10). Even perfect slavery does not give masters 'the Power of Life and Death over their Slaves' (*DJBP* 2.5.28). Grotius can thus coherently accept Locke's theological doctrine about divine *dominium* while insisting on the permissibility of self-enslavement contracts because masters do not acquire *dominium* in the slave's life.

Grotius was not unique in this respect. Pufendorf followed him in accepting the permissibility of individual and collective self-enslavement (*DO* 2.4.3; Pufendorf, 1729 [hereafter *JNG*]: 6.3.4-5, 7.8.6) while also denying that 'a Man hath absolute Power over his own Life' (*JNG* 2.4.19). G.W. Leibniz (1646–1716) was an outspoken proponent of absolute monarchy unburdened by institutional constraints and delimited by natural law alone (Leibniz, 1988: 185–186, 194). Yet he, too, claimed that divine rights in humans determine the legitimate form and scope of human subjection. He made this point, interestingly, while countering Filmer's view that children and servants are the property of their lords. Even if 'the bodies of slaves and of their children are under the power of their masters, it will always be true that another stronger right is opposed to the abuse of this right' – namely 'the right of God, who is the sovereign master of bodies and of souls'. Hence, masters can at most have 'what is called a servitude to another, or like a species of usufruct' (Leibniz, 1988: 62–63; see also Jorati, 2019).

Perfect and imperfect slavery

The previous section unearthed an alternative conception of slavery to Locke's, to which humans can voluntarily submit without contravening divine ownership in human life. This section argues that the form of slavery which Locke so strongly objected to was not even recognized as such by Grotius and Pufendorf.

Locke's phrase 'the perfect condition of slavery' brings to mind the received distinction between perfect and imperfect slavery. Philosophers and jurists

disagreed about how to understand that distinction. Yet Lockean perfect slavery – ‘*the State of War continued, between a lawful Conquerour, and a Captive*’ – lay well outside accepted classifications of slavery. What Grotius and Pufendorf called ‘perfect’ and ‘imperfect slavery’ falls squarely under the juridical condition Locke dubs ‘drudgery’ – a form of subjection he concurs people can lawfully agree to (ST §24; compare FT §43). Deriving from a contract between ruler and ruled, drudgery does not preclude the governed having property. Contracts giving rise to drudgery are necessarily time-bound and essentially a matter of exchanging labour for wages. A person becomes a servant of another ‘by selling him for a certain time, the Service he undertakes to do, in exchange for Wages he is to receive’ (ST §85). Servants who have sold themselves into drudgery are ‘not under an Absolute, Arbitrary, Despotical Power. For the Master could not have power to kill them, at any time, whom, at a certain time, he was obliged to let go free out of his Service’ (ST §24).

For Grotius, perfect and imperfect slavery can arise both consensually and by compulsion. Involuntary subjection arises ‘from some Crime or other’, namely ‘when he who has deserved to lose his Liberty, is forced to submit himself to him who has a Right to punish him’ (DJBP 2.5.32; compare 2.20.2.3). War slavery Grotius subsumed under involuntary subjection (DJBP 3.7.1). Such punitive slavery ‘may be perfect or imperfect, according to the Degree of the Fault and Punishment’ (DJBP 2.5.32).

Pufendorf transformed Grotius’s classification by equating war slavery with perfect slavery, and voluntary servitude (whether perpetual or time-bound) with imperfect slavery (JNG 6.3.4, 9). Rights over perfect slaves are more extensive. A voluntary servant may not be sold against his will, having ‘voluntarily chose[n] this master, not another man’, while war slaves may (DO 2.4.3). And only ‘Children, born to *perfect* Slaves, such as were Captives in War’ are born enslaved. For in case of perfect slaves, ‘not only the Works but the Persons belong to the Master’ (JNG 6.3.9). And whoever owns the bodies of slaves comes to own their offspring (DO 2.4.6). Voluntary servitude involves only the transfer of one’s labour, not one’s body, in exchange for victuals (JNG 6.3.10). Pufendorf’s revised characterization of perfect slavery, as alone being heritable and for purchase, proved influential, as was his claim that all imperfect servitude, even if perpetual, is founded on labour contracts (Heineccius, 2008: 2.4.75–88; Hutcheson, 2007: 3.3). Dispute existed over whether voluntary perfect slavery was permissible if death awaited otherwise.⁷

Crucially, in Pufendorf’s view, neither form of servitude gives the master power of life and death: ‘the highest Degree of Sovereign Rule or Dominion, doth not directly include a Right over the Life of the Subject, except on a criminal Account’ (JNG 6.3.6; also DO 2.4.4, 2.13; JNG 8.2-3). True, slave-owners may justly kill servants guilty of ‘any heinous Practice against the Master himself, and his Family’. But they possess this right not as masters by contract, but ‘as *Enemies*, by the Right of War’ (JNG 6.3.4). Pufendorf roundly rejected the Grotian view, also endorsed by Locke, that lawful conquerors can exercise rights of punishment.

The right to punish presupposes political authority over the criminal. While lawful conquerors ‘may by the Right of War, dispose how he pleaseth of his Prisoner, either kill him or save him, but this was never before term’d the *Power of Life and Death*, which denotes a Lawful Authority of inflicting Capital Punishment, in case of an antecedent Crime’ (JNG 6.3.3).

Pufendorf made one further significant alteration to Grotius’s view of slavery. He insisted that slavery, whatever its form, ‘was not founded on War, but on voluntary Consent’ (JNG 6.3.5). The master-servant relation involves mutual rights and duties. While defeat in war may compel people to accept enslavement, their consent, however reluctantly given, is required for the ‘*Moral Bonds and Engagements*’ that constitute the master-servant relation to arise. Without such bonds, ‘the State of War would still continue’ (JNG 6.3.6). This is the condition of imprisoned and chained persons, who owe nothing to their overseers and are hence beyond the master-servant relation.

We conclude that Locke’s argument for the impossibility of self-enslavement presupposes controversial accounts of perfect slavery as a warlike condition of absolute rightlessness, and of despotic power as the rule of just conquerors over unjust aggressors. ‘Self-enslavement *contracts*’ are an oxymoron only insofar as masters acquire ‘an Arbitrary Power over his Life’ (ST §24). Grotius and Pufendorf neither shared Locke’s just war conception of despotic power (involving rights *in* the slave’s life), nor his bellicose account of perfect slavery. Far from being a form of punishment through just war, legitimate despotic rule presupposes for Pufendorf consent of the subjected – and consent delimits the kind of rights masters can have over servants. The common belief that ‘Locke . . . differs from Grotius in denying that human beings can make themselves slaves’ (Zuckert, 1994: 241) requires qualification: the kinds of voluntary slavery Grotius countenanced more closely resemble Lockean drudgery than perfect slavery. Indeed, as Brian Tierney (2006: 193) has suggested, Locke argued against a form of self-enslavement that few had endorsed:

none of [Locke’s] predecessors who discussed the issue had envisaged such a condition; they treated slavery as simply a contract of life-long service in which master and slave had mutual rights and duties . . . Most of Locke’s predecessors would have agreed that a man could not sell himself into the kind of slavery that Locke envisaged.

The next section reveals that Grotian collective self-enslavement does not generate despotic power over the lives of subjects either.

Collective self-enslavement

Grotius highlighted two aspects of slavery: the nature and extent of the master’s rights vs the manner in which these rights are held. Having hitherto focused on the former aspect, we now turn to the latter. The question of *how* sovereign rule is

possessed is key to understanding Grotius's defence of the legitimacy of collective self-enslavement and its compatibility with divine ownership of human life:

It is lawful for any Man to engage himself as a Slave to whom he pleases . . . Why should it not therefore be as lawful for a People that are at their own Disposal, to deliver up themselves to any one or more Persons, and transfer the Right of governing them upon him or them, without reserving any Share of that Right to themselves? (DJBP 1.3.8.1; also JNG 7.8.6)

'Publick Subjection', the Dutchman wrote, 'is that of a whole Nation, who put themselves under the Power and Jurisdiction, either of one Person or of several, or even of another Nation' (DJBP 2.5.31). To 'transfer the Right of governing them' to another diminishes civil, not personal, liberty (DJBP 1.3.8.1). Civil liberty is defined as 'a Right of governing themselves by their own Laws' (DJBP 2.24.6.1). 'As then personal Liberty excludes the Dominion of a Master, so does civil Liberty exclude Royalty, and all manner of Sovereignty properly so called' (DJBP 1.3.12). A people that 'gives itself up entirely' to a ruler neither alienates personal liberty, nor ownership of their lives. All they hand over is the perpetual rule to govern themselves: 'when a people is alienated, it is not the Men themselves, but the perpetual Right of governing them, as they are a People' (DJBP 1.3.12; also JNG 6.3.7).

Influenced by Locke's conceptual scheme, one might think that Grotius's doctrine of collective self-enslavement purports to prove the legal validity of 'Absolute Arbitrary Power' (FT §150). That would be a mistake. The distinction between absolute and non-absolute sovereignty is in fact irrelevant for collective enslavement. For Grotius, sovereignty is by definition absolute. Every supreme ruler possesses the same thing: 'sovereignty'. But princes possess this thing in diverging ways. The right *in* sovereignty may vary in extent and duration, and may or may not include the power to alienate it at will (DJBP 1.3.11). Collective enslavement affects the manner in which sovereignty is held: whether by 'a full Right of Property' or by an incomplete right. Full ownership is captured by the trivium *usus, usufructus, abusus* – the latter being the right to alienate the thing.

Grotius invoked the distinction between patrimonial and usufructuary kingdoms to bring this point home (DJBP 1.3.11-15, 2.6.7). Patrimonial rulers have full ownership rights in sovereignty, such that they may transfer sovereignty to another as they please, without the people's consent (DJBP 2.6.3). Patrimonial kings 'so enjoy a Government over some People in his own proper Right, that it may be in his Power even to alienate it' (DJBP 1.3.12). Other rulers have usufructuary rights in sovereignty only – the right to enjoy its fruits but not of disposal: 'in Kingdoms not Patrimonial, the Regency belongs to those, to whom the publick Laws, or upon their Deficiency, the Consent of the People shall consign it' (DJBP 1.3.15). In a time when kingdoms changed hands as easily as wedding rings were put on fingers, this constitutional distinction was of considerable practical

importance. Both patrimonial and usufructuary princes, it bears stressing, possess absolute sovereignty (compare Lee, 2011).

This makes Grotius's attempt to justify collective self-enslavement through an analogy with personal contracts of servitude somewhat misleading (DJBP 1.3.8.1). In his discussion of personal servitude, Grotius focused on the extent of the authority granted to the master, as witnessed by the distinction between perfect vs imperfect slavery. The question of collective enslavement, however, turns not on the nature of the right in question ('sovereignty'), but on the way in which it is held. Do rulers fully own this thing called sovereignty, or do they merely have rights of use and usufruct in it?

Private masters can have full ownership in their personal rights against their servants. If they do, then the personal obligation of subjection in which slavery consists can itself be bought and sold by slave-owners without the slave's consent. Strictly speaking, what is being bartered away is no *jus in rem* (right in the slave herself) but rather the personal right to her life-long service. At stake is the fullness of the 'second-order' property right in that personal right. The idea that every person stands 'in a relation of *dominium* to his own *dominium*', i.e. 'has property in his rights' and can hence sell and otherwise alienate them, was a scholastic commonplace (Brett, 1999: 163). By explicitly portraying personal rights as forms of property, Grotius rendered salient the possibility of trading first-order rights and obligations – provided the right-holder has rights of disposal in them. When he wrote that 'with us no one may entirely dispose of his freedom by contract' (JH 2.1.47), he may have meant that the Dutch Republic disallowed full ownership in the personal obligation of subjection, such that rights over servants cannot legally be bought and sold.

A free people choose their sovereign; an enslaved people are assigned their next ruler. Similarly, a free wage-labourer chooses his own master, while the right to govern a slave is bought and sold without her consent. Irrevocable public subjection, however deplorable a condition, does not grant the ruler a right to dispose of her subjects' lives as she pleases. It only grants her the right to hand over sovereignty at pleasure, without popular consent. We conclude that Grotius's theological commitments do not contradict his doctrine of voluntary collective enslavement either: the latter concerns the kind of rights rulers have *in* this thing called sovereignty, not the nature *of* sovereignty.

Locke stresses the essentially fiduciary character of all political power. The limited legislative authority entrusted to governors by the people is but a 'Fiduciary Power' (ST §149). This claim can be unpacked into two closely related but distinct contentions – one concerning the way political authority is possessed, the other pertaining to its extent. First, legislative power is necessarily held in usufruct. Rulers cannot lawfully '*transfer the Power of Making Laws* to any other hands' (ST §141). Doing so would immediately dissolve government (ST §212, §217). Second, whenever 'the Legislative, or the Prince...act contrary to their Trust', political power reverts back to the community (ST §221; also ST §240). The people always have the right to 'remove or *alter the Legislative*, when

they find the *Legislative* act contrary to the trust reposed in them'. In this respect, 'the *Community* may be said . . . to be always the *Supream Power*' (ST §149).

Locke defends the necessity of fiduciary government by appeal to divine ownership of human life. Governments cannot possibly have:

absolute *Arbitrary* [power] over the Lives and Fortunes of the People. For it being but the joynt power of every Member of the Society given up to that Person, or Assembly, which is Legislator, it can be no more than those persons had in a State of Nature. . . . For no Body can transfer to another more power than he has in himself; and no Body has an Absolute Arbitrary Power over himself, or over any other, to destroy his own Life, or take away the Life or Property of Another. (ST §135)

Divine ownership of human life delimits which powers humans naturally have and hence which rights they can transfer to government. Yet it is unclear why duly limited government power must hence be held in usufruct. Locke is adamant that legislative power is 'but a delegated Power from the People, they, who have it, cannot pass it over to others' (ST §141). But why can't citizens grant rulers full possession (i.e. including the right to alienate it) of limited political powers on condition that sovereignty is forfeited upon abuse? Locke offers no good argument in support.

Amplifying confusion, Locke accepts the legitimacy of hereditary rulers. A people may lawfully establish a hereditary monarchy or oligarchy – though not of an absolute kind – by placing legislative power 'into the hands of a few select Men, and their Heirs' (ST §132; also ST §213). While legislative power in hereditary regimes does not change hands according to the *arbitrary* will of the ruler, neither does legislative power quite remain 'unalterable in the hands where the Community have once placed it' (ST §134). Hereditary succession is governed by the natural law of property. 'Every man', Locke notes, is born with a right 'to *inherit*, with his Brethren, his Fathers Goods' (ST §190). Commentators therefore sometimes speak of the 'proprietary character' of early modern dynastic monarchies (Rowen, 1980: 8). Perhaps Locke's point is that the people always determine the foundational laws establishing political offices, but don't necessarily appoint the individuals occupying them. Yet since transferability concerns the manner in which sovereignty is held rather than its extent, we fail to see how divine ownership of human life can necessitate usufructuary government. Our suspicion is that Locke conflates *forfeitability* of government power with its *non-transferability*. All Locke is entitled to say is that rulers forfeit the power entrusted to them the moment they exceed their authority. The moral impossibility of self-enslavement determines when legislative powers are forfeited: as political authority cannot possibly extend to *dominium* over the lives of subjects, a ruler usurping such powers *ipso facto* 'dethrones' himself.

The limits of Locke's argument

Few early modern proponents of absolutism followed Filmer in granting rulers rights in the lives of their subjects. Supporters of James II generally glossed over

the most uncompromising passages in Filmer, presenting a rather more moderate form of divine right absolutism (Pincus, 2009: 125–129). Jacques-Benigne Bossuet (1627–1704), for instance, distinguished sharply between absolute and arbitrary government. Only under arbitrary government has the prince ‘the right to dispose as he wishes, not only of the goods, but also of the lives of his subjects, as one would do with slaves’ (Bossuet, 1990: 263). Bossuet rejected arbitrary government as ‘barbarous and odious’, while advocating absolutism: lacking a legal superior, the sovereign cannot be held accountable. Edmund Bohun (1645–1699), the editor of the 1685 edition of *Patriarcha*, likewise denied that Filmer had equated political absolutism with slavery. His ‘Preface to the Reader’ attacked Algernon Sidney (1623–1683) and James Tyrrell (1642–1718) for conflating absolutism with tyranny. On Bohun’s interpretation, Filmer had accepted that by law the sovereign should guarantee citizens’ freedom and property, even if subjects may never forcibly hold the king accountable.

This suggests that Locke was attacking a harsh form of despotism that few of his contemporaries endorsed. As Pufendorf wrote, mockingly:

Alike senseless and trifling it is to argue, that in as much as the People have not a Right of destroying themselves, or of practicing any grievous Cruelty on their own Body, therefore they can transfer no such Right on the King. For who ever maintain’d, that Princes had a Right of destroying their People?... Absolute Government is by no means so formidable a thing, as these Men are willing to fancy. (JNG 7.6.6)

While Pufendorf cannot have been referring to Locke here – his *Two Treatises* were published years later – his criticism does strike home.⁸

We conclude that Locke’s argument is of limited force against mainstream (i.e. non-Filmerian) forms of political absolutism such as those of Grotius, Pufendorf and Leibniz. While he has effectively countered the view that a *political* ruler can have rights *in* his subjects’ lives, civil sovereigns may still have extensive personal rights against their subjects. While servants cannot give up their lives (never fully theirs to begin with) they may lawfully agree to receive little, if anything, in return for virtually unlimited obedience. Locke’s prohibition of self-enslavement is compatible with a political society of servants – ‘political drudgery’ in Simmons’ (1993: 117) apt phrase. The impossibility of self-enslavement, as Locke understood it, does not preclude voluntarily submission to masters that rule ‘for their own Benefit’ (ST §173); therefore, this argument alone cannot establish his Aristotelian contrast between political rule and despotism.

Who could have been the polemical target of Locke’s argument in the *Second Treatise* against the possibility of contractually instituting absolute rule? Filmer had endorsed despotic sovereignty yet rejected the social contract. The forms of political absolutism defended by his followers in Locke’s time were more moderate but equally non-contractarian. The *Second Treatise* attacked a Filmerian conception of arbitrary sovereignty which few countenanced, by denying that it can arise

consensually, i.e. in a non-Filmerian way.⁹ Were there any social contract theorists who defended this harsh conception of absolutism?

It has been suggested that ‘the fixed destination’ of Locke’s argument ‘is the rejection not only of the Filmerian notion of absolute government by nature, but also of the Hobbesian (and even the Grotian possibility of) absolutism by compact’ (Zuckert, 1994: 244). If challenging Grotius was indeed Locke’s aim, we have suggested, he failed quite spectacularly. Thomas Hobbes (1588–1679) is a more plausible target. He held, provocatively, that any ‘right... over the person of another’ is a form of ‘property or dominion’ – and not, as was usually claimed, of *potestas* (Hobbes, 1994 [hereafter EL]: 22.1). Servants are:

the property of the master, and every man may dispose of his own, and transfer the same at his pleasure, the master may therefore alienate his dominion over them, or give the same, by his last will, to whom he list. (EL 22.5; also Hobbes, 1998 [hereafter DCv]: 8.5)

Hobbes argued that ‘Dominion, or Sovereignty’ by conquest equals despotic rule (Hobbes, 2012 [hereafter L]: 20.2, 10). Despotic rulers have dominium over all the servant has and may with impunity ‘kill him, or cast him into bonds’ upon the least disobedience (L 20.13). After equating sovereignty by conquest with despotic rule, Hobbes proceeded to argue, provocatively, that ‘the Rights and Consequences of... *Despotically* Dominion, are the very same with those of a Sovereign by Institution’ (L 20.14). The two differ only ‘in origin and manner of formation’, not in essence (DCv 9.10; also EL 23.10; L 20.3). Like Filmer, Hobbes thus portrayed all political rule as essentially despotic (Lee, 2020).

Moreover, for Hobbes, slavery *could* be an extra-judicial condition of war. The English philosopher distinguished slaves ‘held in prison, workhouses, or bonds’ from slaves entrusted with physical liberty (EL 22.3; DCv 8.4; L 20.10, 12; compare L 45.13; Baumgold, 2010; Luban, 2018). Workhouse slaves, held in corporeal bondage, inhabit a state of war and may flee or kill their master if they can. No bond of trust, and hence no obligations, exist between such captives and their masters. War ends once the vanquished are entrusted with life and liberty in return for an obligation to henceforth serve their master: ‘so long as his life, and the liberty of his body is allowed him, the Victor shall have the use thereof, at his pleasure’ (L 20.10; also L 21.22; L R&C.7). Pufendorf insisted that masters have no authority over bounded slaves, subjecting them instead as enemies by the right of war: ‘that kind of Hostile Privilege which the Victor reserves to himself over his Prisoner, is a different thing from his proper Sovereignty’ (JNG 6.3.6). Only in the covenant of subjection do masters acquire a right to rule the defeated. Not so for Hobbes: ‘A *Master*... has no less right and dominion over the *unbound* slave than over the *bound*, for he has supreme dominion over both’ (DCv 8.5; also EL 22.4). Hobbes not only modelled dominion over others on despotic power, he also denied that such dominion presupposes trust and obligations of non-resistance on the part of the subjected.

These structural similarities between their conceptions of slavery and despotism notwithstanding, Locke's argument for the impossibility of self-enslavement holds no sway against Hobbes. For no rights are handed over to the sovereign in Hobbes's original covenant – as each person already has the right to everything by nature (EL 15.3; DCv 2.4; L 14.6). (A victor can hence *entrust* the vanquished with their lives and liberty – the rights to which he, too, had by nature.) The sovereign has, like everyone else, *ab initio* 'a right, as old as nature itself, to rule over all men' (DCv 15.5; also L 31.5). Hobbesian rights to rule are thus conceptually independent from, and prior to, the obligations individuals incur by promising simple obedience to the sovereign. Consent merely serves to create obligations on the part of citizens, allowing the sovereign to exercise their natural right to rule more effectively. Lockean concerns about the limited rights citizens can transfer to government are not pertinent to those grounding the right to rule in the natural right to everything. Hobbes could hence insist on the despotic and absolute nature of sovereignty while acknowledging that there are some natural rights individuals do not renounce, including rights to resist violent threats to their life (L 21.10-17; compare Hyde, 1676: 40–41).

In any case, Hobbes's despotic conception of absolute sovereignty (*dominium*) was far outside the mainstream. Witness Pufendorf:

Every Sovereign may indeed, as Mr *Hobbes* remarks, say of his subject . . . *this Man is my Property*, yet 'tis in a quite different Sense that we call a *Thing our own*. For, by the former Expression, I mean no more, than that I and none else have the Right of governing such a Person . . . But, on the other side, the Property I claim over a *Thing*, implies a Right of using, spoiling, and consuming it, to procure my Advantage, or to satisfy my Pleasure; so that what way soever I dispose of it, to say it was *my own*, shall be a sufficient Excuse. (JNG 6.3.7, citing DCv 8.5; paraphrased by Tyrrell, 1681: 106–107)¹⁰

While masters often treat their slaves as cruelly 'as their Cattle', such 'arbitrary Violence' does not reflect the juridical status of slavery (JNG 6.3.7). Human beings are never mere things. Later protestant natural lawyers agreed. Christian Thomasius (1655-1728), for instance, conceded that *jus gentium* permits trading slaves captured in war 'like goods'. Yet he was adamant that 'we should never treat [slaves] as we do our other possessions, which we can use and abuse at whim, and destroy' (Thomasius, 2011: 3.5.23-24; also e.g. Leibniz, 1988: 63).

Conclusion

Only a nation of fools would sell itself into slavery, Rousseau (1987: 1.4.2) exclaimed, 'and madness does not confer rights'. Locke derives the moral impossibility of collective self-enslavement not from a *non compos mentis* clause, but from divine ownership of human life. We have argued that this argument, found in the *Second Treatise*, is premised on: (1) a despotic conception of absolutism

disavowed by all major 17th-century social contract theorists, Hobbes excepted; (2) a highly unusual, if not unique, account of perfect slavery as a state of war between a just conqueror and an unjust aggressor who has forfeited his life. Divine *dominium* renders it impossible to hand over rights in our lives to rulers. Yet as our analysis of Grotius's views has shown, individual and collective self-enslavement are not necessarily antithetical to divine ownership of human life.

Some readers may conclude that Locke's arguments against consensually established absolutism, though rhetorically impressive, stake out little unclaimed liberal land. This inference is unwarranted. This article has focused on just one of Locke's battery of arguments for the necessity of limited government: the moral impossibility of self-enslavement. In an accompanying article, we analyse his more successful constructive arguments against government overstretch, based on natural law. Importantly, these arguments also invoke divine ownership of human life – to canvas limits to our natural powers *over others*, rather than *over ourselves*. To anticipate, we argue there that Locke emphasizes, much more than Grotius or Pufendorf, that killing or harming innocent fellow humans also violates God's ownership of human life (ST §6). Lacking by nature this right themselves, citizens cannot authorize the government to harm innocent subjects. Limited government is thus morally necessitated by the 'Fundamental Law of Nature and Government', prescribing the preservation of all (ST §159). Whatever the merits of that argument, it remains the case that few early modern proponents of political absolutism needed to worry about Locke's argument for the moral impossibility of *self-enslavement*.

Author's note

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Notes

1. This philosophical concurrence is regularly overlooked (e.g. Mancilla, 2015: 72).
2. For Bodin, not Adam but Nimrod was the first lord. Filmer was heavily influenced by Bodin (Smith, 1963). Indeed, his *Necessity of the Absolute Power of all Kings* (1648) consists entirely of quotations from *The Six Bookes*. On the mixed reception to Bodin's political theory, as culminating in Locke, see Salmon (1996).
3. Locke (1997: 180). Locke's co-authorship of the *Fundamental Constitutions*, and of their 1680s revisions, has been amply documented by Armitage (2013: 96–113). The vast literature exploring the coherence of Locke's justification of war slavery with his business interests and philosophical beliefs includes Brewer (2017); Farr (2008); Grant (1987: 66–83); Welchman (1995).
4. On Locke's relation to Leveller political thought, see Ashcraft (1986); Macpherson (1962: 140–142).
5. All citations to the Digest are, for all practical purposes, citations to Watson (1985) and all citations to Institutes are, for all practical purposes, citations to Birks/McLeod (1987).
6. As pointed out by an anonymous referee for this journal, Grotius's reconceptualization of slavery, as involving personhood, marked a major shift from traditional Roman law views. A fuller analysis of early modern transformations of ideas of slavery will have to await another occasion. On the position of slaves in Roman law, see Buckland (1970); Gamauf (2016).
7. Heineccius (2008: 2.4.77-78). On self-enslavement in dire necessity, see Buckle (1991).
8. Pufendorf might have had in mind the somewhat similar argument of John Milton in *Pro Populo Anglicano Defensio* (Milton, 1991: 108).
9. This point has been overlooked by those contending that Filmer is the polemical target of the *Second Treatise* (e.g. Goldie, 1983; Laslett, 1988: 67–79).
10. Cf. Kant (1996: 6:323): 'The people, the multitude of subjects, also belong to him (they are his people). But they belong to him not as if he owned them (by a right to things); they instead belong to him as their supreme commander (by a right against persons)'.

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