

The Problem of Penal Slavery in Quobna Ottobah Cugoano's Abolitionism

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www.philosophersimprint.org/025006/

DOI: 10.3998/phimp.4009

Introduction

Efforts to diversify the history of philosophy — in terms of both themes and thinkers studied — have directed philosophers to *Thoughts and Sentiments on the Evil of Slavery* [1787/1791], written by the Black antislavery theorist Quobna Ottobah Cugoano (c.1757–c.1791).¹ Philosophical analyses of this short and powerful treatise — Cugoano's only one — remain so far in short supply. This article provides a comprehensive reconstruction of Cugoano's moral and legal philosophy in order to analyse an apparent tension in his abolitionism. In this work dedicated to the "total abolition of slavery", Cugoano defends on principled grounds the legitimacy of enslaving human beings in punishment (98).²

Born in what is today Ghana, Cugoano was enslaved at the age of 13 and trafficked to Grenada, before being taken onwards to England, where the 1772 *Somerset* court ruling in effect freed him.³ His *Thoughts and Sentiments* is considered "radical even by abolitionist standards" (Gunn 2010: 630; also Caretta 1999: xx–xxi; Brown 2006: 297; Shanafelt 2021: 25–26). Cugoano broke new ground by calling for an immediate abolition of the slave trade and of slavery itself, without any compensation to slaveholders (Dahl 2021: 286). Though denouncing all modern colonial slavery as profoundly unjust, Cugoano insists that political communities can rightfully enslave, brand, and sell convicts. "[E]very free community might keep slaves, or criminal

1. Excerpts of Cugoano's treatise have been included in a recent anthology of primary texts in the history of philosophy (Marshall and Sreedhar 2019). On Cugoano's place in the history of philosophy, see Bernasconi (2019).
2. All in-text citations by page number alone are to *Thoughts and Sentiments* (Cugoano 1999). Cugoano published two versions of this work. The abridged 1791 edition republished, mostly verbatim, only those sections from the 1787 edition that quash any biblical warrant for modern colonial slavery. Its new title reflects its limited polemical focus. The abridged text differs only marginally from that of the 1787 edition. For ease, I discuss *Thoughts and Sentiments* as if it were a single work.
3. For a self-narration of his early life, see Cugoano 1999: 12–16. On Cugoano's political activities in 1780s London, see Hanley 2019: 171–202. Hochschild 2005 provides a lively history of the British abolitionist movement, albeit with scarce a glimpse of Cugoano.

prisoners in bondage”, provided such “criminal slavery and bondage [is] according to the nature of their crimes” (58–59).

Belief in the legitimacy of penal bondage was surprisingly widespread among abolitionist thinkers writing in late eighteenth-century Britain. Even Black political philosophers once enslaved themselves generally accepted the doctrine. In *The Interesting Narrative*, Olaudah Equiano (c.1745–c.1797) justified traditional forms of slavery and slave-trading practised among West African nations by appealing to principles of just punishment. “Sometimes indeed we sold slaves to [neighbouring peoples], but they were only prisoners of war, or such among us as had been convicted of ... crimes, which we esteemed heinous” (Equiano 2018: 22; also Benezet 1772: 105, 109). More fiercely, the English abolitionist Granville Sharp (1735–1813) applauded penally enslaving European enslavers in retaliation for their atrocities. “Here is a just *Retaliation* for *Tyranny*; — *Slavery* for *Slavery*!” (1776: 83n, also 58, 177). Cugoano — the most radical antislavery theorist in the period — regarded penal enslavement of both ordinary criminals and colonial enslavers as justifiable in principle, as I will show.

Amid the growing literature exploring Cugoano’s abolitionism (e.g. Ward 1998; Peters 2017; Dahl 2020; Cardon 2023; Hasan-Birdwell 2024; Jorati 2024b: 180–187), his paradoxical justification of penal slavery has bewildered the few commentators attentive to it. Anthony Bogue (2003: 41) calls it “a contradiction in Cugoano’s thought”. “His embrace of penal slavery was certainly unusual”, writes Jeffrey Glover (2017: 526). Robert Bernasconi (2019: 35) notes circumspectly that “Cugoano seem[s] to allow for the possibility that some forms of slavery might be legitimate”. Explaining away initial surprise, Bernasconi argues that this legitimization serves to justify equal retaliation against colonial slaveholders and slave traders: “if one enslaves someone unjustly, then one should oneself be enslaved” (2019: 35). Carrie Shanafelt (2021: 35) sees such retaliatory enslavement as “a satisfying fantasy” (emotionally, presumably) — albeit a futile one. “Cugoano concludes that the retributive justice of enslaving slaveholders will not put an end to the cycle of violence and oppression.”

This article offers the first full reconstruction of the nature, grounds, and theoretical implications of Cugoano’s justification of penal bondage. The problem of penal slavery, I contend, runs much deeper in his abolitionism than has been previously recognised. *Pace* Bogue, I argue that this justification is an integral part of his moral and legal theory. *Pace* Bernasconi and Shanafelt, I contend that Cugoano’s defence of penal slavery goes beyond retaliation against European enslavers. It targets ordinary lawbreakers as well. People held in penal bondage, Cugoano maintains, may under some conditions be rightfully bought and sold (58–59). To block a partial justification of the transatlantic slave trade, he therefore had to reinterpret the conditions for legitimately trafficking enslaved convicts. Comparisons of his justification of penal bondage with the rival ones of Locke and Kant indicate just how deeply theories of punishment shaped philosophical thinking on penal bondage in the period.

The paper unfolds as follows. Section 1 provides a brief overview of early modern philosophical theories of penal bondage, to better position Cugoano’s thinking on the subject. Section 2 analyses his theory of law and morality. Sections 3 and 4 explore how his twin principles of just punishment — retaliation and mercy — transform the condition and duration of justified penal bondage. Section 5 shows how Cugoano could coherently condemn the colonial slave trade despite his endorsement of the legitimacy of domestic penal enslavement. Section 6 concludes.

1. Penal Slavery in Early Modern Philosophy

Punishment for crime was the most widely accepted apologetic ground for enslavement of human beings among early modern philosophers. Even supposedly liberal thinkers condoned permanent penal bondage, including Locke (1988: II.23–24), Beccaria (1995: 68–69), and Kant (1996: 471–472).⁴ Penal slavery was not so much a different

4. Compare the condemnation of penal slavery in Montesquieu (1989: 3.15.2). Little has been written on early modern philosophical ideas of *penal* slavery. Article-length overviews of ideas of *slavery* in early modern philosophy

kind of slavery as a distinct apologetic *ground*. Like all forms of human bondage, penal slavery came in many forms and degrees of atrocity, in both theory and practice. Penal enslavement could be temporary or perpetual. It could be applied to individuals or to entire nations, guilty of starting an unjust war. Some philosophers argued that the penally enslaved retain basic natural rights; others conceived of the condition as a substitute for capital punishment, exercised over humans who had forfeited all rights. Some maintained that people publicly enslaved for crime can be rightfully bought and sold; others denied this. Some even proclaimed the condition heritable, on the ground that “successors ought also to join in bearing the evils that are due” (Gentili 1933: 120–121).

Early modern philosophers writing on penal enslavement need not have had racialised colonial realities in sight (only, or even primarily). Penal slavery was a widespread practice both beyond and within early modern Europe. Convicts powered Mediterranean galleys and toiled in North European workhouses (Spierenburg 2015). Branding felons was not uncommon in Europe, nor was selling them to the colonies as convict servants (Dressler 2019; Heinsen 2021). According to Orlando Patterson (2018: 44), penal slavery in public works and galley slavery qualify as “slavery in every sense of the term” (despite being non-inheritable); “a severe form of enslavement of Europeans by Europeans” which flourished for centuries. Astonishingly, scholars “have either neglected” European penal slavery “or defined it as something other than slavery when they have recognized it” (2018: 45). This article can remain non-committal on whether the term ‘slavery’ indeed accurately describes forms of convict labour *practised* within and beyond early modern Europe. What matters for my argument is that early modern philosophers generally *theorised* penal bondage as a form of enslavement proper — and as in principle legitimate. That conceptualisation, I

contend, had significant normative and theoretical implications even within late eighteenth-century abolitionist thinking.

Many early modern philosophers reconciled universal natural rights with penal enslavement by conceptualising those rights as wholly forfeitable through grave wrongdoing. For Hugo Grotius (1583–1645), penal enslavement is legitimate “when he who has deserved to lose his Liberty, is forced to submit himself to him who has a Right to punish him” (2005: 2.5.32). The severity of the crime determines the form and hardship of penal subjection. Samuel Pufendorf (1632–1694) followed Grotius (2005: 3.7.1) in arguing that individuals as well as entire peoples may “by way of Punishment, made *Slaves*” (1729: 8.3.28). In Thomas More’s *Utopia* (2002: 81), “the gravest crimes are punished with slavery” (adultery included). The Utopians reason that “convict labour is more beneficial to the commonwealth” than capital punishment, and equally deterrent. By contrast, Cesare Beccaria (1995: 67–69) regarded permanent penal servitude “in manacles and chains” as the greater deterrent, rendering the death penalty unnecessary and unjust.

Despite deeming self-enslavement morally impossible, John Locke (1632–1704) notoriously permitted enslaving those who had forfeited their lives by engaging in unjust aggression. Anyone who “by his fault, forfeited his own Life, by some Act that deserves Death”, may rightfully be enslaved in lieu of capital punishment (1988: II.23). Slavery is the rightful condition of those who, having lost all rights, may be killed at will (II.85; II.172). Grounded in personal guilt, slavery is not heritable (II.182; II.189). Locke assimilated penal slavery to just war slavery (i.e. to prisoners captured in a just war) by arguing that unjust aggression creates a state of war, even within the commonwealth (II.19–20; II.155; II.181; II.232). This allowed him to claim, startlingly, that “*Slavery ... is nothing else, but the State of War continued, between a lawful Conqueror, and a Captive*” (II.24). Penal slavery could be invoked to justify colonial slavery even without being reduced to just war slavery, insofar

include Hunting 1978; Pesante 2009; Watkins 2017. Book-length studies include Sala-Molins 2006; Franke 2009; Nyquist 2013; Brace 2018; Jorati 2024a, 2024b.

as rights over enslaved convicts were conceived as tradeable across national borders.⁵

For Immanuel Kant (1724–1804), dignity (*Würde*) is that exalted status humans have in virtue of their capacity to abide by the moral law (Sensen 2011). Criminals forfeit their dignity through grave wrongdoing.

Certainly no human being in a state can be without any dignity, since he at least has the dignity of a citizen. The exception is someone who has lost it by his own *crime*, because of which, though he is kept alive, he is made a mere tool of another's choice (either of the state or of another citizen). (Kant 1996: 471, also 494)

Their (civic) dignity lost, felons may be “reduced to the status of a slave [*Skla venstand*] for a certain time, or permanently” (1996: 474).⁶ Anyone in such conditions of bondage (*servus in sensu stricto*) is rightfully “the property of another, who is accordingly not merely his *master* but also his *owner* and can therefore alienate him as a thing [and] use him as he pleases” (1996: 471). Only crime can justify enslavement. Therefore, “hereditary bondage as such is absurd since guilt from someone's crime cannot be inherited” (1996: 486, also 432, 472).

Some early moderns distinguished two kinds of enslavement legitimately imposed for wrongdoing. What we may call ‘penal slavery proper’ is punishment inflicted for grave crime. So-called ‘reparation slavery’ consists in forced labour imposed to compensate for wrongful damage done which the culprit cannot pay back otherwise (e.g.

Hutcheson 2007: 3.3.2; Rutherford 1754: 1.20.4).⁷ Reparation slavery was seen as essentially time-bound. Once the damage has been repaid through forced labour, the wrongdoer must regain their freedom. Reparation slavery is in this respect akin to indentured servitude and debt slavery, where people are coerced to work until their loans or debts have been paid off (e.g. Carmichael 2002: 139; Paley 2002: 136). Both forms of penal bondage were theorised as forms of slavery, if only because those so enslaved could be legitimately bought and sold. As Thomas Rutherford (1712–1771) reasoned: “the creditors damage may, at least in part, be repared, though not by using the debtor as his own slave, yet by selling him for a slave to the person, who wants him” (1754: 1.20.4). Francis Hutcheson (1694–1746) argued that because slavery for crime and for damage-reparation are “constituted solely for the behoof of others”, people enslaved on either ground are tradeable (2007: 3.3.2). By contrast, the British abolitionist Thomas Clarkson (1760–1846) maintained that states are entitled to publicly enslave criminals but not to sell them (1786: 105–106).

For Cugoano, the sole legitimate ground for enslavement is grave wrongdoing. “Those that break the laws of civilization, in any flagrant manner, are the only species of men that others have a right to enslave” (58; also 19). In what follows, I argue that Cugoano's theory of just punishment determines what form penal enslavement may take, as well as its permissible duration. Conditions of justified penal bondage differ greatly from the dehumanising horrors innocent Black people faced at colonial plantations.

2. Human and Divine Law

To grasp the character and limits of justified penal bondage in Cugoano, we have to explore his views on morality, law, and punishment. *Thoughts and Sentiments* offers no systematic moral theory. The

5. Locke is silent on whether aggressors rightfully enslaved by just conquerors may be bought and sold. The *First Treatise* does refer to “Slaves bought with Money” in the Caribbean (1988: I.131). For discussion, see Farr 1989.

6. Kant scholars dispute what form of dignity is forfeitable through grave wrongdoing. Schönecker (2021) argues that felons only forgo their civic dignity; their human dignity is kept intact. Whatever view we take, for Kant human dignity does not categorically forbid penal enslavement. Why it does not is a question beyond the scope of this article.

7. Locke (1988: II.11) depicts deterrence and reparation as distinct grounds of punishment. This permitted him to subsume reparation slavery under penal slavery.

following reconstruction imparts coherence on remarks on the subject found across the book.

Cugoano's theory of law and punishment, I maintain, rests squarely upon a divine law theory of ethics. Divine lawgiving has created morality. Without God, there would have been no moral right and wrong. "If this law of God had not been given to men, murder itself would not have been any crime" (54).⁸ The law of God is a revealed one, laid down in the Bible. Above all, it dictates love and charity. Love God, and love your neighbours as you love yourself – regardless of race, ethnicity, creed, or nationality (50, 139). Besides this universal law of love, the Bible contains a basic law of punishment, consisting of two parts. *Justice* states that wrongdoers deserve punishment equal to their crime – eye for eye, tooth for tooth.⁹ Yet *mercy* is morally required when inflicting like-for-like punishment on deserving offenders serves no social good. Gratuitous punishment is impermissible, notwithstanding the criminal's desert (determined by justice). Love and punishment are two sides of the Golden Rule: treat others as you would want to be treated yourself (52, 141, citing Matt. 7:12). The two divine laws serve separate purposes. The law of love determines which actions are crimes. The dual law of punishment determines when specific crimes should be punished, as well as which punishments are due.

Cugoano sometimes invokes the law of love to denounce modern colonial slavery. "[T]here is no slave-holder would like to have himself enslaved, and to be treated as a dog, and sold like a beast; and therefore the slave-holders, and merchandizers of men, transgress this plain law" (52, 141). More frequently, he condemns slavery as a violation of

natural rights, in particular of freedom ("the common right and privilege of all") (22). Throughout *Thoughts and Sentiments*, Cugoano accuses slaveholders and slave traders of robbery: "every man who keeps a slave, is a robber, whenever he compels him to his service without giving him a just reward" (125).¹⁰ Their robbery consists in "taking away the natural liberties of men, and compelling them to any involuntary slavery or compulsory service" which "is an injury and robbery contrary to all law, civilization, reason, justice, equity, and humanity" (51; also 35, 125). Indeed, "the ensnarings of others, and taking away their liberty by slavery and oppression, is the worst kind of robbery" (11).

The relation between natural rights and the divine law is somewhat obscure.¹¹ Cugoano insists that the injustice of slavery can be known without revelation, through natural reason alone (28). Yet his voluntarism about morality implies that violations of natural rights are wrong, not of themselves, but in virtue of contravening divine law. In other words, God made kidnapping and other forms of robbery morally wrong by forbidding them. In fact, for God to forbid kidnapping *is* to give people natural rights of liberty. Voluntarists commonly theorised natural rights as grounded in and derived from the moral duties God imposes through natural or revealed law upon everyone else. This renders natural law duties normatively prior to natural rights (Haakonsen 1998: 1337–1338). Supporting the same reading, Cugoano portrays natural rights as a divine gift. "God ... gave to all equally a natural right to liberty" (97).¹²

8. The sentence continues, confusingly: "and those who punished [murder] with death would just have been as guilty as the other". Absent a divine prohibition of murder, Cugoano appears to suggest, capital punishment equals killing an innocent person. Then again, killing the innocent is itself not wrong unless God had previously forbidden it. On the long and checkered history of voluntarism about morality in the scholastic and natural law traditions, see Schneewind 1998.

9. Cf. Equiano 2018: 29; Sharp 1776: 75: "This is God's *Law of Retribution, Evil for Evil, Measure for Measure*".

10. Dahl (2021: 287–289) highlights the centrality of robbery (instead of domination) in Cugoano's analysis of the wrongfulness of slavery. Few passages in *Thoughts and Sentiments* zoom in on the specific horrors and injustices suffered by Black enslaved women (but see 74–75).

11. In her analysis of Cugoano's abolitionism, Ward (1998: 84) treats the two as informing separate arguments. Bogues (2003: 26, 32) and Jeffers (2017: 136–138) consider Cugoano a natural rights theorist.

12. On the natural equality of all races as vouchsafed by scripture, see Cugoano 1999: 29–45, 118–135. On his valuation of Black skin colour, see Wheeler 2015: 28–34.

Rights of civil punishment likewise originate in divine dictates. “All the criminal laws of civilization seem to be founded upon that law of God which was published to Noah and his sons ... *Whoso sheddeth man’s blood, by man shall his blood be shed*” (54, citing Gen. 9:6).¹³ Civil punishment is permissible in virtue of this biblical command. The Bible expounds which crimes are punishable and in what ways. Its two principles of just punishment — justice and mercy — jointly determine what punishments are due. *Lex talionis* calls for retribution equal to the crime, while the law of mercy permits infliction of punishment only if it serves some good. Punishment, in short, must follow *lex talionis* as tempered by mercy (57). Humans have hence limited moral discretion in determining what punishments to mete out for which crimes (55). Excessive punishment is unjust. Anyone punishing “beyond the bounds of a just retaliation” falls “into the same crimes of the oppressors” (60). Any civil law sanctioning punishment of innocents is unjust, as is punishment inflicted by those who lack the right to punish.

Crime warrants punishment. Yet not so much because it breaks civil law (‘laws of civilization’), but because it flouts divine law:

The reason why a man suffers death for breaking the laws of his country is, because he transgresseth the law of God in that community he belongs to; and the laws of civilization are binding to put that law in force. (55)

Civil law must implement and enforce the divine law. European and colonial laws at the time shockingly failed to do so. They left heinous crimes of enslavers unpunished. “When the Divine law ... tells us, that he who stealeth or maketh merchandize of men, that such a thief shall surely die, the laws of civilization say, in many cases, that it is no crime” (57). What’s more, European laws legally sanctioned what the divine law of love prohibits: slavery and the slave trade (57, 71, 87). Morals are thus “screwed up” (57). Any country implicated in such iniquitous practices, Cugoano laments, “have left their own laws of civilization

to adopt those of barbarians and robbers” (87). Robbers may keep justice among themselves — but do not practise it towards the rest of humanity.¹⁴

The need for civil law to match divine law underpins Cugoano’s rhetorically most powerful appeal for immediate and total abolition. Mend your ways, British people, or face divine wrath! Like Benezet (1772: 82) and Sharp (1776) before him, Cugoano fulminates that the British government’s sanctioning of colonial slavery and of the slave trade risked incurring “awful visitations of God for this inhuman violation of his laws” (77). The Bible teaches that war, famine, pestilence, and earthquakes are “inflicted for the sins of nations” (78). *Thoughts and Sentiments* develops a striking theory of national complicity for structural injustice (76–84; see Bernasconi 2019: 34–35; Dahl 2020). All British inhabitants have a responsibility to speak out against the terrible injustices backed by their government (79). They should do so, curiously, less for the sake of cruelly enslaved Africans, than “for their own good and safety ... lest they provoke the vengeance of the Almighty against them” (84). By arguing that modern slavery is not simply immoral but a transgression of God’s law, Cugoano bolsters his warning of looming divine retribution.

3. Retaliation

The *lex talionis* is rather unpopular among legal philosophers today.¹⁵ The ancient principle calling for punishment equal to the crime is liable to seemingly fatal objections. “The simple equivalencies of an eye for an eye or a death for a death”, H. L. A. Hart (2008: 233) wrote, “seem either repugnant or inapplicable to most offences”. A principle

14. Cf. Sharp 1773: 23. On justice among robbers, the *locus classicus* is Cicero 1991: 2.40.

15. For canonical statements of the principle, see Exod. 21:23–25; Lev. 24:17–21. J. S. Mill (1969: 253 [5.29]) could still sense its pre-theoretical appeal: “No rule on this subject recommends itself so strongly to the primitive and spontaneous sentiment of justice, as the *lex talionis*, an eye for an eye and a tooth for a tooth”. For criticism of the *lex talionis*, see Lacey 1988: 17–18; for defences, see Waldron 1992; Fish 2008.

13. Locke (1988: II.11) cited the same verse to justify natural rights of punishment.

of appropriate punishment, the *lex talionis* purports to spell out how much punishment should be inflicted for particular offences. Yet for many crimes, the principle gives no clear guidance. Should we punish perjury with perjury? Blackmail with blackmail? For others, like-for-like punishment is intuitively repulsive. “Should we punish a rapist by raping him?”, Bedau (1978: 611) asks rhetorically. Enslave those guilty of enslaving others? Rather than a simple equivalence between penalty and crime, modern theories of punishment call for proportionality between penalties imposed for different crimes.

Repugnant as applying the *lex talionis* to monstrosities such as slavery is, it is surprising that this retaliatory principle figures prominently in the British Enlightenment’s most radical abolitionist treatise, written by someone once enslaved himself. This may explain why some have read Cugoano’s call for like-for-like punishment of European enslavers as either rhetoric or reverie (Shanafelt 2021: 35); the sheer unlikelihood of the downtrodden enslaving their colonial masters neutered by adopting the moral high-ground of mercy, with the pleasing assurance of divine vengeance to come. *Thoughts and Sentiments* can indeed be so read. Yet doing so risks overlooking how deeply embedded penal slavery is within Cugoano’s biblical theory of law, morality, and punishment; and how profoundly it shapes his antislavery arguments.

For both Shanafelt and Bernasconi, Cugoano’s justification of penal enslavement serves retaliatory purposes alone: “if one enslaves someone unjustly, then one should oneself be enslaved” (Bernasconi 2019: 35; also Carretta 1999: xxi). Their retaliatory reading falls short on three accounts. First, many enslavers deserve death rather than enslavement. Paraphrasing Deut. 24:7, Cugoano declares: “he that stealeth a man ... and selleth him, or that maketh merchandize of him ... that thief shall die” (53, 142). Of those who oppress, enslave, and kill their fellow humans, “the laws of God and man require that they should be suppressed, and deprived of their liberty, or perhaps their lives” (51, 140; also 54). Enslaving innocents is so much worse than other crimes that “when a man is robbed of himself, and sold into

captivity and cruel slavery”, the punishment truly “ought to be double death, if it was possible” (53, 142).

Second, Cugoano endorses penal enslavement for a much wider set of crimes than enslavement of innocents alone. “Those that break the laws of civilization, in any flagrant manner, are the only species of men that others have a right to enslave” (58). Enslavers are not the only ones readily breaking the laws of civilisation. Ordinary thieves, robbers, defrauders, and counterfeiters do so too — thereby becoming potentially liable to penal enslavement (also Beccaria 1995: 53; Equiano 2018: 22). Cugoano glosses Exod. 22:2–3 as follows: “when the property of others is taken away, either by stealth, fraud, or violence, the aggressors should be subjected to such bondage and hard labour ... as would be requisite to make restitution to the injured”. Caught thieves should make full restitution for their larceny; “and if he had nothing, then he should be sold for his theft” (56). Not all wrongs punishable with penal bondage are equally grave. Robbing innocents of their freedom is vastly worse than stealing their goods (11, 45–46, 71, 86–87). Nor does penal enslavement befit the worst crimes. *Lex talionis* demands a life for a life: “murder is irreversibly to be punished with death” (55). Forging counterfeit money and violent robbery of sizeable possessions sometimes merits capital punishment too (57). Penal enslavement is the appropriate punishment only for damage which “admits of a possible restoration”, such as theft or robbery (56). Such punishment is permissible because God declared it so. “*He who leadeth into captivity, shall be carried captive, and be bound in the cords of his own iniquity*” (82, citing Rev. 13:10).

Wherefore, if the law of God does not so clearly warrant, that they should die for their theft, it, at least, fully warrants that they should be sold into slavery for their crimes; and the laws of civilization may justly bind them, and hold them in perpetual bondage, because they have sold themselves to work iniquity. (58)

Third, the retaliatory reading overlooks that Cugoano advances a dual principle of just punishment: combining justice (the *lex talionis*) and mercy. Enslavers are deserving of like-for-like punishment, as per the *lex talionis*: “for he who leadeth into captivity, should be carried captive” (59). Yet the divine law of mercy tempers just retaliation: inflicting the punishment malefactors deserve is morally permissible only if it promotes some social good. Retribution — giving wrongdoers their due desert — is not itself a good of punishment. What punishments are due is hence not determined by the *lex talionis* alone. Though *Thoughts and Sentiments* indeed cries out for just retaliation against colonial enslavers, equal to their crimes, merciful moderation is sometimes morally mandatory.

The upshot is twofold. First, anyone guilty of robbery can be deserving of penal bondage — not only ‘robbers of men’. Second, slave traders and slaveholders should be penally enslaved for restitutive purposes: in order to provide due compensation to their victims (and only insofar as it does so) (Glover 2017: 525). Like his contemporaries, Cugoano regarded convict labour as productive: it creates material value, suitable to repay victims. As enslavers are “liable to every damage” caused to their victims, an inability to repay warrants imposition of hard labour in criminal bondage (54). Unjustly enslaved people, violently torn from their native communities, are owed restitution even if *full* compensation for the wrongs they have suffered is impossible (Dahl 2021: 290). Cugoano insists upon “a just commutation for what cannot be fully restored, in order to make restoration, as far as could be, for the injuries already done to [enslaved Africans]” (102). Remarkably, retaliatory enslavement of enslavers is thus part of his bold demand for slavery reparations.

Invoking *lex talionis* to justify penally enslaving thieves seems odd. How is enslavement a punishment equal to the crime of theft? Incidentally, Cugoano is not the only Enlightenment philosopher defending this counterintuitive position. The “arch-talon Kant” did so too (Waldron 1992: 40). For Kant (1996: 473), punishing according to “*ius*

talionis” is a categorical imperative.¹⁶ While both Kant and Cugoano invoked *lex talionis* to justify penally enslaving thieves, their arguments differ. Kant’s reasoning is tortuous. As thieves act contrary to the possibility of private property, like-for-like punishment requires depriving them of all property in turn.

Whoever steals makes the property of everyone else insecure and therefore deprives himself (by the principle of retribution) of security in any possible property. He has nothing and can also acquire nothing; but he still wants to live, and this is now possible only if others provide for him. (Kant 1996: 474)¹⁷

All property withheld, condemned thieves become entirely dependent on state support. In exchange for provisions, Kant asserts (without argument), the convict should be penally enslaved. “But since the state will not provide for him free of charge, he must let it have his powers for any kind of work it pleases (in convict or prison labor) and is reduced to the status of a slave [*Sklavenstand*] for a certain time, or permanently” (1996: 474). By contrast, Cugoano justifies penally enslaving thieves consequentially, via the effects it assorts: the fruits of forced labour serve to make restitution for the injury done. Where restitution is impossible, the divine law of mercy forbids imposition of penal bondage (56). On this point, Cugoano again departs from the Prussian philosopher.

16. Kant’s theory of punishment is both retributivist and retaliatory. Retributivist theories make criminal desert central to their accounts of what justifies state punishment: the state either may or should punish malefactors to give them what they deserve. Not all retributivist theories include a principle of retaliation, calling for repayment in kind. On the place of retributivism and the *lex talionis* in Kant’s ethical and legal theory, see Wood 2010; Pickering 2022.
17. See also Kant’s 1784 lectures on natural right: “in accordance with *jus talionis*, e.g. a thief robs someone of his whole property, one must accordingly also take his property from him and, because he frustrates the other’s endeavors to acquire property, one must also place the thief outside of the condition where he can acquire his own property. Thus he will be exiled into labor and will be provided for like an animal” (Kant 2016: 175).

4. Mercy, Restitution, and Deterrence

Kant was adamant that justice must be done. “[E]very murderer ... must suffer death” (Kant 1996: 475). No exceptions. Indeed, a people cannot justly dissolve itself unless it first executes “the last murderer remaining in prison ... so that each has done to him what his deeds deserve” (1996: 474). Cugoano strongly disagreed. For him, mercy must temper justice.

The just law of God requires an equal retaliation and restoration for every injury that men may do to others but the law of forbearance, righteousness and forgiveness, forbids the retaliation to be sought after, when it would be doing as great an injury to them, without any reparation or benefit to ourselves. (52, 142)

Mercy in no way lessens the crime. Forbearance merely remits the punishment. It does not exculpate (54). As Cugoano stresses, “this law of forbearance is no alteration of the law itself” (53). The law of forbearance plays a dual role in Cugoano’s philosophy. As a principle of permissible punishment, it forbids pointless retaliatory justice. And as a principle of appropriate punishment, it determines when leniency in punishment is called for (i.e. when punishment should be less harsh than the *lex talionis* demands).

Jeremy Waldron (1992) has argued that the *lex talionis* does not presuppose a particular theory about either the point or the justification of punishment. That is, the principle tells us neither what the just goals of punishment are, nor what makes punishment permissible. All it does is indicate, roughly, which punishments are due for which crimes (‘like-for-like’). Waldron hence denies that the *lex talionis* is a principle of retribution (to wit, that justice requires that wrongdoers get what they deserve). Cugoano’s theory of law and punishment supports Waldron’s thesis. Cugoano is a consequentialist about punishment, not a retributivist (as Kant was).¹⁸ Having committed a crime

¹⁸ Cugoano’s theory of just punishment contains an interesting mix of

deserving of punishment is for him a necessary but not a sufficient condition for permissible punishment. As giving offenders the hardship they deserve is not itself a good of punishment, the law of forbearance forbids purely retaliatory punishment, done for the sake of vengeance alone. To be morally permissible, punishment must bring some “reparation or benefit to ourselves”. This holds true even if the punishment is justified by *lex talionis*:

when a man is carried captive and enslaved, and maimed and cruelly treated, that would make no adequate reparation and restitution for the injuries he had received, if he was even to get the person who had ensnared him to be taken captive and treated in the same manner. (52, 142)

When punishment produces no social benefits whatsoever, it should be forgone — however much the wrongdoer deserves chastisement. “Wherefore the honest and upright ... cannot think of doing evil, nor require an equal retaliation for such injuries done to them, so as to revenge themselves upon others, for that which would do them no manner of good” (52–53, 142).¹⁹

Thoughts and Sentiments cites several potential benefits of civil punishment in general, and of penal enslavement in particular: (1) reparation and compensation to victims; (2) societal deterrence of crime; (3)

retributivist and consequentialist elements. Offenders deserve to be punished in accordance with their deeds (a retributivist tenet). Yet punishing offenders in line with their deserts is impermissible unless it serves some social good (a consequentialist one). In the end, consequentialist just goals of punishment (reparation, deterrence, etc.) determine if and how much punishment should be inflicted upon deserving offenders. His account is therefore closest, I believe, to what legal philosophers today call ‘side-constraint consequentialism’ (Duff 2001: 11–12; Hart 2008: 236–237).

¹⁹ A few lines earlier, Cugoano had glossed the law of mercy more strictly: “Wherefore it is better, and more our duty, to suffer ourselves to be lashed and cruelly treated, than to take up the task of their barbarity” (52). That claim contradicts the duty to forcibly resist wrongful enslavement that Cugoano posits later (59). Bernasconi (2019: 36) remarks: “there was perhaps even a duty to enslave the enslavers”. True, provided that such retaliatory enslavement serves some social good.

moral reformation of the offender; and, perhaps, (4) personal liberation; and (5) moral education of the community. I briefly discuss each in turn.

First, imposing penal bondage is warranted to compel wrongdoers to make material restitution to the victims for the injuries they have done (if they lack other means of repayment). For guidelines on how much compensation is due for specific injuries, Cugoano turns to Exod. 22. Anyone unable to recompensate for injury done “should be subjected to such bondage and hard labour ... as would be requisite to make restitution to the injured” (56, also 52). The penally enslaved are “to be sold to the community”, together with all their belongings, “to make a commutation of restitution as far as could be” (58).²⁰ The profits of this sale supposedly accrue to the victims (or their kin). Criminals sold to the community “should be kept at some useful and laborious employment” for public profit, such as recovering wastelands (58). The reparation rationale makes penal slavery in principle time-limited.

The second just goal of punishment is societal deterrence of crime. In general, by the law of forbearance, civil laws should “seek out such rules of punishment as are best calculated to prevent injuries of every kind”. If possible, one should “punish with a less degree of severity than their crimes deserve” (57). Wrongdoers deserve like-for-like punishment, even when the divine law of forbearance prescribes leniency.²¹ Deterrence justifies marking and branding those condemned to perpetual bondage, so that “the very sight of one of them might deter others from committing their crimes” (58). Cugoano does not mention incapacitation of criminals as a just goal of punishment (cf. Grotius 2005: 2.20.9.1).

Third, punishment and penal bondage should aim to make offenders repentant, “to bring about a reformation to themselves” (56). The

duration of penal bondage should match both the gravity of the crime as well as any “good behaviour” of the convict during bondage. Good behaviour is contrasted with “stubbornness” and “obduracy” — i.e. with lack of repentance (56). Where forbearance is permitted, punishments should be tailored to help “reclaim the transgressors” (57). No mercy is due to the unrepentant. Only those unrepentant of violent crimes may be branded and subjected to corporeal punishments (56–58). All this indicates that reformation of the offender is a just goal of punishment, calling for mercy accordingly.

Two other apparent just goals of punishment are more unusual — and my reconstructions of them more speculative. The unjustly enslaved, Cugoano writes, may enslave their aggressors as a last resort, to reclaim their freedom by right of self-defence.

if there was no other way to deliver a man from slavery, but by enslaving his master, it would be lawful for him to do so if he was able, for this would be doing justice to himself, and be justice as the law requires, to chastise his master for enslaving of him wrongfully. (59)

It is unclear whether Cugoano regards just defensive enslavement as a form of punishment proper, involving the exercise of rights of punishment. The provided rationale is cursory, running together rights of self-defence and of punishment (‘justice as the law requires’). *Thoughts and Sentiments* nowhere else mentions individual rights of punishment, popularised by Grotius (2005: 2.20.7–9) and Locke (1988: II.7–9). Cugoano’s interpretation of Mosaic slavery suggests that moral education of the community may be another just goal of penal enslavement — at least for God. The deity instituted human bondage among the Israelites to “prefigure and point out, that spiritual subjection and bondage to sin” to which depraved humanity would succumb; providing instructive analogies to the eventual deliverance and emancipation through Christ (131; also 37–47, 127–136).²² Bracketing the last two

20. According to Locke (1988: II.183–184), only damage suffered can give just conquerors a right to the possessions of the conquered; and then only to as much as compensation requires.

21. Cugoano does not argue for leniency in punishment on retributivist grounds (cf. Duus-Otterström 2013).

22. On Cugoano’s hermeneutical strategy dealing with biblical slavery, see Stewart 2021: 642–646.

more dubious grounds, we can conclude that penal enslavement is morally permissible only insofar as it produces amends to victims, deters crime, or morally corrects the offender.

The divine law of forbearance not only delimits when penal enslavement is morally permissible. It also attenuates the condition of penal bondage. Its hardship and duration should match both the gravity of the crime as well as the convict's repentance, on pain of the punishment lacking divine authorisation (58). These moderating principles render penal enslavement essentially corrective in orientation and time-bound in character. Redemption is built into it. However, justified penal slavery is not *necessarily* less harsh to offenders than modern colonial slavery (an atrocity made unspeakably worse through its racialisation and heritability). For those unrepentant of violent crimes, Cugoano advocates hard treatment akin to colonial slavery: "all such [bodily] punishments as are necessary should be inflicted upon them without pitying or sparing them, though perhaps not to be continued forever in the brutal manner that the West-India slaves suffer for almost no crimes" (56–57). The divine law of punishment permits remorseless violent offenders to be mercilessly tortured — though "perhaps" not perpetually so.

These passages conditionally justify a form of penal bondage more severe than that practised, by his own description, among his Fante people. "[T]hose which they keep [as slaves] are well fed ... and treated well" (16; cf. 35). Equiano (2018: 25) likewise downplayed the brutality of West African slavery. "Those prisoners which were not sold or redeemed we kept as slaves: but how different was their condition from that of the slaves in the West Indies!"²³ Cugoano's retaliatory agenda — not shared by Equiano — may explain why he endorsed in principle harsher forms of penal slavery than those long practised in West Africa. Throughout *Thoughts and Sentiments*, he depicts colonial

slaveholders and slave traders as beasts and devilish monsters.²⁴ By treating Black people as animals, White enslavers dehumanise themselves, becoming "the most abandoned slaves of infernal wickedness" (83). Here, as elsewhere, Cugoano adopts a rhetoric of inversion, morally attributing the very inhumanity to enslavers with which they treat enslaved Black people (e.g. 22, 66–67). Their abominable crimes render colonial enslavers deserving of the harshest punishments, including enslavement.

5. Penal Bondage and the Slave Trade

Thoughts and Sentiments powerfully advocates the immediate end of "the African Slave Trade, and the West-India Slavery" (117). Cugoano's abolitionist arguments are complicated, however, by his principled endorsement of the legitimacy of penal slavery. Not only because the institution of slavery evidently persists in some form as long as penal bondage does. But also because Cugoano accepts that those justly held in penal bondage may be sold and trafficked (58–59, 156n). On what grounds, then, does he preclude continuation of penal slavery on colonial plantations with purchased convicts?

Cugoano develops two facially contradictory lines of argument to ensure that justified penal bondage does not undercut his abolitionism. The first restricts rights to buy and sell penally enslaved persons to co-nationals. The penally enslaved "ought to be sold to the community" (58). Ownership over them may be traded, but only to co-nationals and only with the felon's consent: "every free community might keep slaves, or criminal prisoners in bondage; and should they be sold to any other, it should not be to strangers, nor without their own consent" (58–59).²⁵ In ethnically homogenous societies, the prohibition to sell enslaved criminals to outsiders prevents racialisation

23. Paley (2002: 136) called colonial plantation slavery "a dominion and system of laws, the most merciless and tyrannical that ever were tolerated upon the face of the earth".

24. Throughout the *Second Treatise*, Locke permitted treating unjust aggressors as "wild Savage Beasts, with whom Men can have no Society nor Security" (1988: II.11, II.16, II.172, II.181; see Kingston 2008).

25. Oddly, Glover (2017: 525–526) glosses this passage as banning sale of the penally enslaved altogether: "Cugoano removes slavery from the market".

of slavery. More importantly for present purposes, it forestalls a then-common apologetic ground for colonial slavery; to wit, that European slave-trading is just since the Africans who were bought and sold were all criminals previously condemned to slavery.

Sharp had advanced a similar rebuttal. European slaveholders, he reasoned, can have no legal certainty that trafficked Africans had in their country of origin been justly condemned for grave wrongdoing. And even if they had such certainty, colonial slaveholders altogether lack due authority to punish those criminally enslaved abroad. Suppose someone “was a *convicted Criminal* in his native country; yet this Criminal never offended the Planter, nor the Laws of the Planter’s Nation ... so that neither the Planter nor any of his Abettors can have any just right to continue the punishment of an offence committed in another country” (Sharp 1776: 150n). Significantly, Sharp tacitly accepts here the legitimacy of domestic penal enslavement. What he denounces is the slave trade: convicts may be held in bondage only within their own communities.

The same troublesome position was held by another prominent White British abolitionist. In a prize-winning essay, Clarkson (1786: 45) acknowledged that those “justly convicted of crimes, or taken in a just war” can rightly be “sentenced to the severities of servitude”. He countered that enslaving African convicts in overseas colonies is entirely disproportionate: “the African servitude comprehends *banishment*, a *deprivation of liberty*, and many *corporal sufferings* ... what crime can we possibly imagine to be so enormous, as to be worthy of so great a punishment?” (1786: 77, 81). Besides, penally enslaving African convicts in colonies abroad is unjust because it neither promotes deterrence of crime, nor offenders’ moral reform, nor any other just goal of punishment (1786: 82–83). Arguments like these may have ideologically shored up otherwise contradictory contemporary pleas for abolition of the slave trade alone, leaving other practices of slavery in place.²⁶

26. For instance, the founding manifesto of the *Société des Amis des Noirs* (1788), penned by Condorcet (2012: 148–155), targeted the slave trade alone; the manifesto took pride in having the support of some planters. The British

Early on in *Thoughts and Sentiments*, Cugoano develops a second, reformist line of argument to challenge any transatlantic trade in enslaved convicts.

It may be true, that some of the slaves transported from Africa, may have committed crimes in their own country, that require some slavery as a punishment; but, according to the laws of equity and justice, they ought to become free, as soon as their labour has paid for their purchase in the West-Indies or elsewhere. (156n)²⁷

Constrained by his principled justification of penal bondage, Cugoano could not flatly insist on the impermissibility of selling enslaved convicts (on pain of inconsistency). Rather, like Sharp and Clarkson before him, he denies that Europeans are entitled to *punish* people criminally enslaved in Africa.²⁸ Unlike his abolitionist predecessors, however, Cugoano here affirms that slaveholders can legitimately *buy* persons so enslaved (cf. Clarkson 1786: 104).

That contention seemingly jars with the passage cited above, which forbids the sale of “slaves, or criminal prisoners in bondage” to foreigners (58–59). The two passages can, however, be harmonised. Cugoano, I contend, bans the sale of enslaved convicts *as slaves* to foreigners. Both passages convey his attempt to turn the legal condition

government outlawed the slave trade in 1807; a ban on slavery followed only in 1833.

27. Cugoano (26–27) laments how some West African nations have started taking prisoners of war from their neighbours in order to sell them to “the European market”. Cugoano himself was kidnapped and enslaved by African slave traders; “but if there were no buyers there would be no sellers” (16; also 73). On Europeans diabolically instigating African peoples to enslave each other, including innocents, see also Benezet 1772: 97–98; Clarkson 1786: 45–50; Equiano 2018: 24. Clarkson (1786: 46) laments that the slave trade incentivized African rulers to create “new crimes” punishable by enslavement, an accusation validated by modern historical research (Ferreira 2011: 121–122).

28. A co-authored letter to Sharp, co-signed by Cugoano, makes a similar point: “surely the trader cannot believe ... that it belongs to him, more enlightened than we [West Africans practising slavery], to execute so horrid a doom” (189–190).

of convicts sold abroad to one akin to indentured servitude (a widespread practice at the time). Indentured servitude is a form of bondage distinct from slavery. It arises through a contract in which the subject-ed [1] voluntarily engages a debt (e.g. for transport to the colonies); [2] to be paid off by granting the creditor for limited time full disposal of their labour (Tomlins 2010: 31–32).

Both elements of indentured servitude crop up in the conditions for legitimate sale of enslaved convicts to foreigners. A consent clause brings out the contractual element: “if any man should buy another man without his own consent”, compelling them to toil “without any agreement”, then “the enslaver is a robber” (59). These lines indicate that for the sale of enslaved convicts to non-nationals to be permissible, convicts will at least need to have personally consented to it. Next, any bondage abroad is essentially time-limited: “they ought to become free, as soon as their labour has paid for their purchase” (156n). Equity demands that criminals sold to outsiders “naturally become free as soon as their purchase could be paid” (59). The community pockets the proceeds of the sale, in lieu of reaping the fruits of the criminal’s hard labour directly. If penal enslavement had been imposed upon the felon to forcibly secure material compensation to their victims for the injuries they had suffered, the funds procured through the sale may discharge the very ‘debt’ punishment sought to exact.

For Cugoano, I have argued, enslaved convicts can be legitimately sold to outsiders — yet not as slaves, but as indentured servants (for a limited duration and with their personal consent).²⁹ Trading humans as if they were “chattels and goods ... without their own consent” is never justified (36, 125). Even aside from the non-hereditary status of penal bondage, these conditions are plainly incompatible with modern colonial slavery and the slave trade. If my reconstruction is correct,

29. Cugoano presumably adopted this position because he believed it had biblical warrant (Olsthoorn 2025: 13–20). Moses had imposed similar conditions on the debt slavery of bond-servants — “a state of equity and justice” (35). “There was no harm in buying a man who was in a state of captivity and bondage by others, and keeping him in servitude till such time as his purchase was redeemed by his labour and service” (36, 125).

then all that colonial buyers are entitled to is to hold bought criminals in bondage until their hard labour has redeemed their purchase price. Foreign buyers’ status is that of a creditor, not an owner. Lacking the authority to punish, their rights of control over the bound criminal are much curtailed. I conclude that Cugoano could coherently permit the sale of enslaved convicts while denouncing the injustice of colonial slavery and the slave trade, by transforming the legal condition of convicts sold to outsiders into something like indentured servitude.

6. Conclusion

The full eradication of human bondage was not just a practical but also a theoretical struggle for Enlightenment abolitionists. Even the most radical antislavery treatises in late Enlightenment Britain assumed — or had to assume — the legitimacy of penal slavery. What was objected to, above all, was enslavement of innocents.³⁰ My analysis has shown that these assumptions severely constrain Cugoano’s arguments for abolitionism while simultaneously serving retaliatory aims. Justice sometimes requires penally enslaving the enslavers in turn — life for life, bondage for bondage. That retaliatory doctrine, I have argued, is no mere rhetoric but a foundational feature of Cugoano’s moral and legal philosophy. Indeed, the problem of penal slavery runs deeper than mentioned still: *not* punishing enslavers with bondage can cross divine law. The biblical laws of retaliation and forbearance jointly set a universal standard for due punishment, determining when and how to punish crimes. Any departure from that biblical measure (i.e. ‘over’- and ‘under’-punishment) is morally prohibited and risks incurring God’s wrath. A refusal to penally enslave wrongdoers where such punishment is mandatory makes people liable to divine punishment. What’s more, *all* nations have a “duty to chastize and suppress such unjust and tyrannical oppressors and enslavers of men” (89). As Dahl (2020) shows, Cugoano posits a cosmopolitan duty incumbent upon

30. Davis 1999: 453: “The early antislavery literature shows less concern over arbitrary power per se than over arbitrary power divorced from traditional sanction”.

all of humanity to end forthwith the diabolical colonial slave trade and slavery itself. And, I submit, a cosmopolitan duty to hold colonial enslavers criminally accountable.

Minding Bogue's plea (2003: 32) to place *Thoughts and Sentiments* alongside other major philosophical works of the period, I will close by contrasting Cugoano's conception of justified penal bondage with those of Locke and Kant. All three theorists permit enslavement only on grounds of grave wrongdoing (thereby outlawing heritable slavery). Cugoano's account is nonetheless notably less dehumanising than those of Locke and Kant (however problematic it remains to readers today). Moderating *lex talionis*, the law of mercy requires penal enslavement to serve some social good and to morally reform offenders by instilling remorse. The possibility of redemption is built into penal bondage through repentance and restitution. Justified penal bondage is in principle time-limited for Cugoano. Not only because it may be imposed only for crimes which admit material restoration — the convict going free once full restitution is made (56). But also because convicts sold by the political community to outsiders may be kept in bondage only until their labour has paid off their purchase price. By contrast, Kant's retributivist theory of penal enslavement lacks any such redemptive dimensions: the criminal must get what they deserve, come what may. For Locke, anyone justly enslaved had previously forfeited their lives by committing some capital crime, rendering them "liable to be destroyed" by all "in the execution of Justice" (1988: II.172). The bellicose condition of slavery endures until the just conqueror enters an agreement of peace with their enslaved captive, restoring the latter's rights (II.85; II.172); or until the captive himself ends "the hardship of his Slavery" through suicide (II.23). For Locke and Kant, emancipation is never promised or required by any principle of just punishment.

This admittedly brief comparison indicates, first, that Enlightenment theories on the nature and conditions of justified penal bondage vary considerably; and, second, that they are normatively underpinned by rival theories of just punishment. The prevalence of philosophical

justifications of penal slavery evinces, furthermore, that Enlightenment conceptions of natural rights differ considerably from modern human rights. Human rights, which purportedly express inherent human dignity, are widely seen as unconditional. Natural rights, by contrast, were commonly conceptualised as fully forfeitable through wrongdoing. Even staunch defenders of universal natural rights could therefore coherently endorse the legitimacy of penal slavery. To understand why and how natural rights (and perhaps human dignity itself) were theorised as forfeitable, we need to look at the underlying theories of just punishment. Those theories were invoked to justify stripping malefactors of basic rights, reducing them to slavery. The main takeaway is that early modern philosophical writings on penal slavery should be studied, not as unsavoury historical curiosities, but rather as potentially significant elements of past theories of punishment, human dignity, and natural rights.³¹

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31. For feedback and encouragement, thanks are due to two anonymous reviewers for this journal; Enrique Chávez-Arviso; Thomas Fossen; Lauren Kopajtic; Mads Langballe Jensen; Eric Schliesser; Susanne Sreedhar; and audiences at the Universities of Copenhagen, Utrecht, and John Jay College, CUNY. Research on this article was supported by a Theme Group Fellowship of the Netherlands Institute for Advanced Study.

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