Hugo Grotius on 'slavery'

In his paper *Stoicism, Slavery, and Law: Grotian Jurisprudence and its Reception* John W. Cairns deals with the reception of the Grotian justification of slavery in Scottish legal practice. Having explained what Grotius (and Pufendorf) actually had written on 'slavery', Cairns describes two Scottish slavery-cases, thereby focussing on the way Grotius was used -- or not used but could have been used -- by the lawyers. In this commentary I query Cairns’ explanation of Grotius on 'slavery'.

1 Grotius on *servitus* in his *De iure belli ac pacis*

Grotius in several paragraphs of his *De iure belli ac pacis* (1625) discusses *servitus* (especially in chapter II.5.27-30 and chapters III.7 and 14). The most obvious translation of *servitus* would be slavery, and this is indeed how it is translated by Kelsey in his translation of *De iure belli* and by John Cairns in his paper. The words *servitus* and slavery, however, cover a wide scope of historical varieties of bondage and serfdom, including kinds of unfreedom in a philosophical way. There is the natural slavery of Aristotle and there is the slavery of the Stoa; there is the ancient slavery, Muslim slavery, Latin-American slavery and North-American slavery; there is the old house-hold slavery and there is the plantation slavery.

For modern readers, I want to thank the participants in the discussion following my lecture on this subject in Utrecht for the ‘Rechtshistorisch dispuut Salvius Julianus’ on November 12, 2001. I especially want to thank professor J.E. Spruit for his comments. The text of this paper originally was written as commentary on the lecture of John W. Cairns at the symposion ‘Grotius and the Stoa’ (Gorinchem, april 5 and 6, 2001).

2 I have used the edition Hugo Grotius, *De iure belli ac pacis libri tres*, (curavit B.J.A. de Kanters-van Hettinga Tromp, annotationes novas addiderunt R. Feenstra et C.E. Persenaire, adiuvante E. Arps-de Wilde), Aalen 1993 and the English translation by Kelsey (note 3). The *De iure belli ac pacis* is the only work of Grotius refered to by John Cairns in his paper.


the word ‘slavery’ is above all connected to the North-American slavery, characterised by its racial basis and a brutal exploitation of black slaves, deprived for the most part of the hope of manumission, who found their lives ‘regimented in a highly organized system that was geared to maximum production for a market economy’. In my view, Grotius did not (always) have something similar to this North-American slavery in mind when he used the term *servitus*, but rather, as I will try to show, a form of unfreedom that I would translate as perpetual service. I therefore prefer not to translate the term *servitus*.

That the use of terms can give rise to confusions is demonstrated by one of the Scottish slavery-cases, *Knight v. Wedderburn*, that John Cairns deals with in his paper. John Wedderburn took John Knight, who was sold to him by a Captain Knight, with him to Scotland as his servant. In Scotland Knight decided to leave Wedderburn’s service in order to gain a paid job. However, Knight was seized by the justices of peace of Perthshire, who determined he should be returned to Wedderburn as a ‘perpetual servant’. Knight claimed that perpetual service was simply slavery and that it was repugnant to natural liberty, whereupon the counsel of Wedderburn argued that it was unfair to use the term ‘slavery’ against Wedderburn, as what he sought was his right to the services of his perpetual servant only. What would Grotius have to say on this case?

Grotius distinguishes between two types of *servitus*: *servitus* according to the *ius naturale* and *servitus* based upon the *ius gentium* (or *ius voluntarium*). *Servitus* according to the *ius naturale* can either exist on the basis of consent or as a punishment for a crime committed, while the *servitus* of those captured in a just war originates in the *ius gentium*. Most interesting for my argument are the types of *servitus* according to the *ius naturale*, as treated by Grotius in chapter five of the second book of *De iure belli ac pacis* (IBP II.5), dealing with the original acquisition of a right over persons (*De acquisitione originaria iuris in personas*). The other *iura in personas* to be found in IBP II.5 are those of parents over their children, of a man over his wife, of a (private or public) society (*societas* or *consociatio*) over those participating in it, of a father over an adopted child, of a ruler over his subjects and of a private person or government over a criminal who has forfeited his freedom. These *iura in personas* can originate by birth (*ex generatione*), by consent (*ex con-