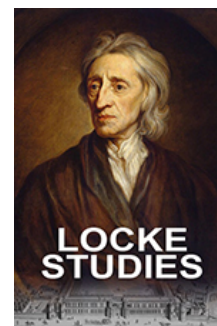


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# Slavery and Absolutism in Locke's Two Treatises A Response to Olsthoorn and van Apeldoorn

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Résumé de l'article

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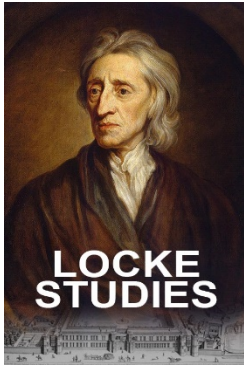
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## **Slavery and Absolutism in Locke's *Two Treatises*: A Response to Olsthoorn and van Apeldoorn**

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*Abstract:*

The following Note responds to a recent article by Johan Olsthoorn and Laurens van Apeldoorn on slavery and political absolutism in Locke's *Two Treatises of Government*. The Note engages with Olsthoorn and Apeldoorn's important article but queries its principal contentions.

*Keywords:* John Locke, slavery, absolutism, *Two Treatises of Government*.

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## 1. Introduction

The following is a response to a recent article by Johan Olsthoorn and Laurens van Apeldoorn.<sup>1</sup> Their article is presented with characteristic incisiveness: it deserves the serious attention of scholars in early modern political thought, in general, and John Locke's political thought, in particular. The thesis of the article consists of two propositions. The first is that Locke's *Two Treatises of Government* "work[ed] with idiosyncratic conceptions of slavery and absolute rule repudiated by prominent early modern contractarian thinkers defending political absolutism." The second is that Locke's argument for "the moral impossibility of self-enslavement" is "considerably less powerful than commonly believed": "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."<sup>2</sup> This response focuses on both propositions.

## 2. Olsthoorn and Apeldoorn's Thesis

The thesis advanced by Olsthoorn and Apeldoorn is presented in the following order:

1. Locke argues that "the moral impossibility of self-enslavement precludes contractually setting up absolute rule over oneself."
2. "This argument, linking political absolutism with slavery, rests on a theological premise: divine ownership of human life."
3. "Citizens cannot consensually institute arbitrary government over themselves since it amounts to giving away something that belongs not to them, but to God."
4. "Classical contract theorists could coherently endorse the theological premise . . . without accepting Locke's anti-absolutist conclusions."
5. "Grotius and Pufendorf held that individuals and even entire peoples can lawfully enslave themselves."
6. "Locke is working with idiosyncratic conceptions of slavery and absolute rule repudiated by prominent early modern contractarian thinkers defending political absolutism."
7. "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."
8. "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)."
9. "Our reconstruction of this unsavoury set of arguments . . . allows us to evaluate the strength of Locke's argument for the moral impossibility of self-enslavement."

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<sup>1</sup> Johan Olsthoorn and Laurens van Apeldoorn, "'This Man is my Property': Slavery and Political Absolutism in Locke and the Classical Social Contract Tradition," *European Journal of Political Theory*, 0 (0): 1–23, published ahead of print March 30, 2020, <https://doi.org/10.1177/1474885120911309>.

<sup>2</sup> Olsthoorn and van Apeldoorn, "Slavery," 3.

We conclude that this argument is considerably less powerful than commonly believed.”<sup>3</sup>

Statements 1, 2, 3, 4, 5, and 8 are either unobjectionable or extraneous to this response. The difficulty lies with statements 6, 7, and 9.

### 3. Locke’s Idiosyncrasy

Our limited knowledge of the compositional history of Locke’s *Two Treatises* should encourage skepticism against a peremptory characterization of the work’s purposes. Nonetheless, thanks to Peter Laslett’s ground-breaking scholarship in the 1950s—culminating with his critical edition of the *Two Treatises* in 1960—it is now uncontroversial that the *Two Treatises* were composed to answer the royalist defenders of Charles II’s prorogations of Parliament during the Exclusion Crisis of 1678–81, and particularly to confute the writings of Sir Robert Filmer (1588?–1653), which were issued posthumously by the royalist defenders of Charles II and James, Duke of York in 1679–80. The eventual publication of the *Two Treatises* in 1689, coinciding with the deposition of James II by William of Orange, detached the work from the context of its composition. The preface to the work situated its argument within the “Allegiance Controversy” entrained by William’s invasion. But the work was produced in a different context, when the publication of Filmer was fresher in the minds of Locke’s contemporaries.

According to James Daly, readers of the *Two Treatises* in 1689 would have found its references to Filmer irrelevant, when set against the substance of non-juror argumentation in the wake of the Oaths of Allegiance and Supremacy Act of 1688.<sup>4</sup> Moreover, the same quizzical response to Locke’s attack on Filmer might have greeted the *Treatises* had they been published in 1680, given that *Patriarcha* and the other writings published under Filmer’s name were in no way characteristic of the mainstream of royalism during the period 1678–81. Daly’s work was the subject of pointed criticism by Mark Goldie in 1983, who responded that Filmer’s argument epitomized Restoration royalism, where Daly had presented it as an exception to a prevailing orthodoxy.<sup>5</sup>

Whether one accepts Goldie’s position or Daly’s, it is important to recognize that Locke’s success in argument need not have depended on the accuracy of his statement that Filmer’s work had become the favored doctrine of the “drum ecclesiastic,” that is, the phalanx of royalist clergymen who defended the incontestable authority of Charles II against the pretensions of Parliament to a co-equal share in the exercise of sovereignty. Locke’s purpose was to suggest that the royalist position was indistinguishable from the absurdities voiced by Filmer. The conceit of statement 6 is that Locke’s “conceptions of

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<sup>3</sup> Olsthoorn and van Apeldoorn, “Slavery,” 2–3 passim.

<sup>4</sup> James Daly, *Sir Robert Filmer and English Political Thought* (Toronto: University of Toronto Press, 1979).

<sup>5</sup> Mark Goldie, “John Locke and Anglican Royalism,” *Political Studies* 31, no. 1 (March 1983): 61–85, <https://www.doi.org/10.1111/j.1467-9248.1983.tb01335.x>.

slavery and absolute rule” were his own. But they were not. They were Locke’s ventriloquism of Filmer’s conceptions, presented tendentiously as the “conceptions” of royalism *pur sang*.

When Olsthoorn and Apeldoorn describe Locke’s position as “idiosyncratic” they are mistaking its purposes. Locke’s task was not to provide readers with a compendium of justifications for political absolutism nor was it to formulate a theory of absolutism and slavery, susceptible of use by proponents of either. It was to advance the proposition that Filmer’s theory of absolutism and slavery had become the “*ipsissima verba*” of Restoration royalism, as Laslett rightly observed in 1960.<sup>6</sup> Olsthoorn and Apeldoorn write that “the form of slavery which Locke so strongly objected to was not even recognized as such by Grotius and Pufendorf.”<sup>7</sup> This may be true, but Locke was not responding to Grotius or Pufendorf; he was responding to Filmer. Olsthoorn and Apeldoorn’s observation that Locke “was attacking a harsh form of despotism that few of his contemporaries endorsed”<sup>8</sup> neglects a basic datum of scholarship on Locke’s purposes. This datum is grounded in Locke’s insistently reiterated claim that Filmer endorsed the harsh form of despotism which the *Two Treatises* exasperatedly denounce. In this respect, it is Filmer’s argument—or Locke’s polemicized recension of it—that is idiosyncratic.<sup>9</sup>

The most serious example of this difficulty occurs in the closing passages of Olsthoorn and Apeldoorn’s article. They quote Pufendorf’s critique of Filmer-esque absolutism—“For who ever maintain’d, that Princes had a Right of destroying their People?”—before adding: “While Pufendorf cannot have been referring to Locke here . . . his criticism does strike home.” Pufendorf’s intention in this passage is to suggest that a theory like Filmer’s is highly unusual. Locke’s intention in the *Two Treatises* is to suggest that Filmer’s theory is contemptible. It is difficult to understand how Pufendorf’s statement could be a “critique” of *Locke*. Olsthoorn and Apeldoorn’s observation that “the *Second Treatise*

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<sup>6</sup> Peter Laslett, introduction to *Two Treatises of Government* by John Locke, student edition. (Cambridge: Cambridge University Press, 1988), 67.

<sup>7</sup> Olsthoorn and Apeldoorn, “Slavery,” 10.

<sup>8</sup> Olsthoorn and Apeldoorn, “Slavery,” 16.

<sup>9</sup> Indeed, if one accepts Goldie’s counter-thesis, Filmer is not idiosyncratic at all. Olsthoorn and Apeldoorn neglect to engage with this problem, although they cite Goldie’s “John Locke and Anglican Royalism” in passing and rightly note that the re-publication of Filmer’s *Patriarcha* in 1685 by Edmund Bohun (1645–99) “denied that Filmer had equated political absolutism with slavery.” The difficulty is whether one should accept Bohun’s characterization of Filmer’s argument, particularly when one can assess its accuracy against the wording of *Patriarcha* itself. For a discussion of Bohun’s thought see Mark Goldie, “Edmund Bohun and *ius gentium* in the Revolution Debate, 1689–1693,” *Historical Journal* 20, no. 3 (September 1977): 569–86, <https://www.jstor.org/stable/2638430> and Cesare Cuttica, *Sir Robert Filmer (1588–1653) and the Patriotic Monarch: Patriarchalism in Seventeenth-Century Political Thought* (Manchester: Manchester University Press, 2012), 212–24.

attacked a Filmerian conception of arbitrary sovereignty which few countenanced”<sup>10</sup> is the *reductio ad absurdum* of this tendency. The Second Treatise is an attack on a conception of arbitrary sovereignty which *Filmer* had countenanced.<sup>11</sup>

The wording of statement 7—“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”—magnifies this curious feature of Olsthoorn and Apeldoorn’s portrayal of Locke’s argument. Locke is not attempting to justify absolute rule. He is attempting to summarize the implications of Filmer’s argument. The verb “maintains” can only intimate that Locke is prepared to defend absolutism. But the intention of the *Two Treatises* is to equate absolutism with a form of authority indistinguishable from a relationship of slavery, in which a monarch possesses the power of life and death over his subjects. Locke is seeking to establish a rigid dichotomy between two available forms of rule. One can either favor the form of absolutism defended by Filmer and his revivalists, which entails the monarch’s right to kill his subjects. Or one can favor the form of government that Locke exults as preferable, in which the revocable consent of the governed ensures the security of their “life, liberty, and estate.” To suggest that Locke’s conception of absolutism was “unusual” neglects to comprehend its polemical objective, which is designedly to present Locke’s opponents as extremists.

#### 4. Locke’s Purposes

Olsthoorn and Apeldoorn plainly show that Grotius’s and Pufendorf’s justifications of slavery and absolutism were different from Filmer’s. This is an important point to acknowledge when contrasting the *Two Treatises* with Grotius’s and Pufendorf’s principal publications on natural law, and it reinforces Daly’s claim that Filmerism was not within the mainstream of absolutist argument in the later seventeenth century. The *Two Treatises* were limited in their usefulness to any seventeenth-century reader wishing to respond to Grotius’s and Pufendorf’s defences of absolutism and slavery.

In this respect, one can concede that Locke’s argument is “of limited force against mainstream (i.e. non-Filmerian) forms of political absolutism,”<sup>12</sup> if “force” is treated restrictedly as a synonym of “pertinence.” But such a concession in no way entails that “challenging Grotius” was Locke’s “aim” in the *Two Treatises*, as Olsthoorn and Apeldoorn propose.<sup>13</sup> The evidence for this proposition is absent from the article. Indeed,

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<sup>10</sup> Olsthoorn and Apeldoorn, “Slavery,” 16.

<sup>11</sup> This point is clearer when one recalls that Locke’s chapter “Of Slavery” is the only place in the Second Treatise when he expressly identifies Filmer as the object of his argument. Locke, *Two Treatises*, ed. Laslett, *Second Treatise*, section 22. As Laslett noted in his commentary at this *locus*, “it is one of the many signs that this work, as well as the *First Treatise*, was written with the object of refuting Filmer.”

<sup>12</sup> Olsthoorn and Apeldoorn, “Slavery,” 16

<sup>13</sup> Olsthoorn and Apeldoorn, “Slavery,” 17: “If challenging Grotius was indeed Locke’s aim, we have suggested, he failed quite spectacularly.”

it is not obviously susceptible of substantiation. But this is where Olsthoorn and Apeldoorn shift focus in their reconstruction of Locke's intentions.

Olsthoorn and Apeldoorn ask "who could have been the polemical target of Locke's argument in the *Second Treatise* against the possibility of contractually instituting absolute rule?"<sup>14</sup> When discussing the possibility of consensual self-enslavement, Locke is adamant that his purpose is to confute the principle that an individual can voluntarily submit themselves into slavery. This is because slavery, in Locke's terms, is an "estate" in which a master can licitly murder his slaves. Locke rejects the possibility of voluntary self-enslavement on the ground that no individual has property in their lives, since their lives remain the property of God. Locke does not rule out that a relationship of slavery may permissibly exist between two individuals. Entering into a state of war places one's life in the hands of one's conqueror. This generates a contradiction. Forfeiture of one's life in war is not obviously different from the act of self-enslavement, since one may enter voluntarily into a state of war in the hope that it will eventuate in enslavement by one's opponent. However, this difficulty is neglected by Locke, whose purpose is to provide a safeguard against any prospective defence of absolutism by contract, since the only available route through which one can become enslaved is by conquest, and it was extremely unlikely that a royalist would contend that monarchs possess their authority by dint of conquering their subjects in a state of war.

Filmer shows no interest in consensual self-enslavement. Consent is redundant in his theory of divine right absolutism. If Filmer is outside the scope of Locke's argument, Olsthoorn and Apeldoorn nonetheless provide no clear evidence that Locke's "polemical target" is Grotius. One difficulty is that Locke shows no recoverable interest in Grotius's propositions on this matter within any of his manuscripts, published writings, or correspondence.<sup>15</sup> Another difficulty is that Olsthoorn and Apeldoorn concede almost immediately that Hobbes is a stronger candidate as the relevant "target."

This is an understandable concession. Jeffrey Collins has recently attempted to demonstrate at considerable length that Locke's intention in the *Two Treatises* was to argue against a form of Hobbesianism.<sup>16</sup> Olsthoorn and Apeldoorn argue that Locke's prohibition against self-enslavement was premised on "a despotic conception of absolutism disavowed by all major seventeenth-century social contract theorists, Hobbes excepted." But "Hobbes excepted" is the crux of Collins's intervention—and the crux of a sizeable corpus of scholarly literature on Locke's argument prior to Collins's

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<sup>14</sup> Olsthoorn and Apeldoorn, "Slavery," 16.

<sup>15</sup> This is not an insuperable barrier to Olsthoorn and Apeldoorn's hypothesis. Laslett identified several instances in which the wording or substance of the *Two Treatises* reflect Locke's familiarity with a discussion in Grotius's *De Jure Belli ac Pacis* (1625) or in Filmer's or Pufendorf's or James Tyrrell's examinations of Grotius's work: Locke, *Two Treatises*, II.24–25, 28, 45, 52, 58, 65–66, 96, 175–76, and 239. But Olsthoorn and Apeldoorn neglect to test their hypothesis against this evidence.

<sup>16</sup> Jeffrey Collins, *In the Shadow of Leviathan: John Locke and the Politics of Conscience* (Cambridge: Cambridge University Press, 2020).

intervention.<sup>17</sup> Locke's purpose was to confute the proposition that absolutism may arise by consent and this proposition was associated by his contemporaries with Hobbes, either pre-eminently or uniquely.

This is where statement 9 must falter: "Locke's argument for the moral impossibility of self-enslavement . . . is considerably less powerful than commonly believed." It is not particularly clear what "powerful" means in this context. Olsthoorn and Apeldoorn identify G. D. Glenn as an example of a scholar who has identified Locke's argument as "powerful."<sup>18</sup> But they decline to excerpt or paraphrase Glenn's stance. Instead, they clarify their statement by noting that Locke's argument, "though coherent, . . . has little bite against the main contractarian defences of absolutism in the period, as they were premised on alternative understandings of slavery and absolutism."<sup>19</sup>

The examination of a past author's "power" in argument is usually pursued in two ways: either against canons of coherence that the author would acknowledge or against canons of coherence that the author would refuse. Locke is not immune to the atheistic retort that divine ownership of our lives is meaningless. But the retort is uninteresting. Locke believes in the existence of God; to claim that the predicates of this supposition are inane is not an especially productive task for a political theorist. Olsthoorn and Apeldoorn acknowledge that Locke's argument is "coherent," which must either mean that they are theists or that they are referring to the internal consistency of Locke's argument, or both. Their claim that Locke's argument is not "powerful" cannot, at least, refer to its *incoherence*. Presumably it must refer to its effectualness in realizing its aims, that is, in its success in criticizing political absolutism and consensual self-enslavement. The difficulty is whether we can reasonably state that Locke's argument is diminished in its "power" by ignoring the premises of arguments—Grotius's and Pufendorf's—which it did not intend to address or by rejecting the premises of arguments—Hobbes's—which it *did* intend to address. Perhaps Olsthoorn and Apeldoorn are arguing that Locke's first readers would have deprecated the "power" of his argument, given its failure to respond to the most prevalent contemporary defences of voluntary self-enslavement, "Hobbes excepted." But this is not obviously their argument. First, it would require a different approach to that which they have adopted, comprising the elaboration of a methodology that would allow scholars to assess the "power" of an argument by constrained reference to the recoverable expectations of its contemporary audience. Second, it would ask readers to accept that Locke's argument is less "powerful" because its contemporary audience would have expected it to address Grotius or Pufendorf instead of Hobbes, or

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<sup>17</sup> For this literature see Felix Waldmann, "John Locke as a Reader of Hobbes's *Leviathan*: A New Manuscript," *Journal of Modern History* 93, no. 2 (June 2021): 1–38.

<sup>18</sup> Olsthoorn and Apeldoorn, "Slavery," 3, citing G. D. Glenn, "Inalienable Rights and Locke's Argument for Limited Government: Political Implications of a Right to Suicide," *The Journal of Politics* 46, no. 1 (February 1984): 80–105, <https://www.doi.org/10.2307/2130435>.

<sup>19</sup> Olsthoorn and Apeldoorn, "Slavery," 3.



even Filmer. In an article that otherwise repays careful attention, this emphasis on “power”—where the latter is not a function of coherence—seems misplaced.

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