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## Evictionism: The Only Compromise Solution to the Abortion Controversy

**Abstract:** One of the most important philosophical debates now tearing our nation apart is the one concerning abortion. In this matter, there can be little controversy. The present paper is an attempt to patch up this matter by offering a compromise solution, that gives each side, pro-choice and pro-life, half a loaf. Moreover, it is a principled compromise, not merely adding up the two sides and dividing them equally. No cutting babies in half, here.

**Keywords:** abortion, pro-life, pro-choice, evictionism, private property rights

Both sides in the abortion debate, the pro-choice,<sup>1</sup> and the pro-life,<sup>2</sup> are erroneous, from a deontological point of view. This contention goes sharply against the modern *Weltanschauung*, since if there is anything that advocates of both of the contending viewpoints agree to, it is that there is no viable third option. There is. It is called evictionism.<sup>3</sup>

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<sup>1</sup> David Boonin, *A Defense of Abortion* (Cambridge: Cambridge University Press, 2003); Roderick Long, "Abortion, Abandonment, and Positive Rights: The Limits of Compulsory Altruism", *Social Philosophy and Policy* 10(1) (1993): 166–191; Eileen L. McDonagh, *Breaking the Abortion Deadlock: From Choice to Consent* (New York: Oxford University Press, 1996); Judith J. Thomson, "A Defense of Abortion", *Philosophy and Public Affairs* 1(1) (1971): 47–66.

<sup>2</sup> Brian Beutler, "Rand Paul: I Have Less Choice In Toilets Than Women Have In Abortions". *Talking Points Memo*, 10.03.2011. Access 14.01.2024. <https://talkingpointsmemo.com/dc/rand-paul-i-have-less-choice-in-toilets-than-women-have-in-abortions-video>; Donald R. McClarey, "Rand Paul, Abortion and Toilets". *The American Catholic*, 11.03.2011. Access 14.01.2024. <https://the-american-catholic.com/2011/03/11/rand-paul-abortion-and-toilets/>; Rand Paul, "Advocating for the sanctity of life", undated, access 14.01.2024, <https://www.paul.senate.gov/issues/advocating-for-sanctity-of-life/>.

<sup>3</sup> Walter E. Block, "Toward a Libertarian Theory of Abortion", *The Libertarian Forum* 10(9) (1977): 6–8; Walter E. Block, "Abortion, Woman and Fetus: Rights in Conflict?", *Reason* 9(12) (1987): 18–25; Walter E. Block, "Rejoinder to Wisniewski on Abortion", *Libertarian Papers* 32(2) (2010): 1–9; Walter E. Block, "Response to Wisniewski on Abortion, Round Two", *Libertarian Papers* 3(4) (2011): 1–13; Walter E. Block, "Response to Wisniewski on Abortion, Round Three", *Libertarian Papers* 3(6) (2011): 1–21; Walter E. Block, "Evictionism is libertarian; departurism is not: critical comment on Parr", *Libertarian Papers* 3(36) (2011): 1–15; Walter E. Block, "Rejoinder to Parr on Evictionism and Departurism", *Journal of Peace, Prosperity & Freedom* 2 (2013): 125–138; Walter E. Block, "Response to Wisniewski on Abortion, Round Four", *Management Education Science Technology Journal (MEST)* 2(2) (2014): 1–14; Walter E. Block, "Toward a libertarian theory of evictionism", *Journal of Family and Economic Issues* 35(2) (2014): 290–294; Walter E. Block, "Should abortion be criminalized? Rejoinder to Akers, Davies and Shaffer on Abortion", *Management Education Science Technology (MEST) Journal* 2(1) (2014): 33–44; Walter E. Block, "Evictionism and Libertarianism", *Journal of Medicine and Philosophy* 35(2) (2014): 290–294; Walter E. Block, "Question and response on rape and evictionism theory", *LewRockwell.com*, 21.6.2015, access 14.01.2024, <https://www.lewrockwell.com/lrc-blog/question-and-response-on-rape-and-evictionism-theory/>; Walter E. Block, "Abortion Once Again; a response to Feser, Goodwin, Mosquito, Sadowsky, Vance and Watkins", *Journal of Constitutional Research (Brazil)* 4(1) (2017): 11–41; Walter E. Block, "Judith Jarvis Thomson on abortion; a libertarian critique", *DePaul Journal of Health Care Law* 19(1) (2018): 1–17; Walter E. Block, *Evictionism: The compromise solution to the pro-life pro-choice debate controversy* (Singapore: Springer Publishing Company, 2021); Walter E. Block, Roy Whitehead, "Compromising the Uncompromisable: A Private Property Rights Approach to Resolving the Abortion Controversy", *Appalachian Law Review* 4(1) (2005): 1–45.

Before we can develop that position, we need to establish three principles. First, human life begins with the fertilized egg. It certainly does not start with birth, as many believe. The baby, ten minutes before and after this event as is similar before and after as are you and I twenty minutes apart. No, birth is merely a change in address. What of the beating of the heart at about 15 weeks or so? This is entirely irrelevant. When a patient has an operation on this part of the body, or receives a new heart from a donor, for a time this muscle of his has stopped beating. Is he now dead, later on to be brought back to life? Of course not. If someone were to break into the hospital and shoot him in the head six times, he would be guilty of murder, not of shooting a dead body. In the Jewish tradition, human life does not start until the person graduates from medical school.<sup>4</sup>

The second principle is that women own their own bodies. They own them at least as much as people own houses, cars, boats, airplanes. The feminists give superficial agreement to this contention<sup>5</sup> but do not carry through rigidly, consistently, rabidly, on this crucial belief. If they did, they would all embrace evictionism. What does this assumption mean in this context? It is as if the woman's body is indistinguishable from a house, or automobile, and she is the sole owner of it.

The third principle is that the unwanted fetus is for all intents and purposes, certainly legal ones, an innocent trespasser into a woman's private property, her "house". He<sup>6</sup> is an innocent trespasser. This is easy to see in the case of rape. The woman is walking down the street. She is grabbed, kidnapped, raped. What does this mean? It means that there is now an innocent trespasser who is occupying her "house", invading it. Of course the baby is innocent. He has not committed any crime. His father, in sharp contrast, is a criminal rapist.

What, now, is evictionism? It is the view that the woman in these circumstances has the right to evict, eject, expel, emit, this innocent trespasser, in the gentlest manner possible, but not to murder the baby. Suppose that evil A drugs adult B, and sticks him into C's home, whereupon A disappears from our scenario. What does C have the right to do regarding B? She has the right

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<sup>4</sup> Hey, lighten up! I couldn't help myself.

<sup>5</sup> "Our bodies, ourselves".

<sup>6</sup> Not "it".

to evict B. To call the police, or the hospital, and get them to remove B from her home. If she killed B, she would be a murderer. This is precisely the rights that the pregnant woman has to do with regard to her unwanted, trespassing fetus.<sup>7</sup> She has no right to abort him, since abortion is defined as removal plus killing. The latter would be murder; only the former is ever justified.

If evictionism is adopted as the law of the land, as it should be because it is the only just position, it would truly be a compromise between the pro-life and the pro-choice positions. The former maintains she must give birth to the baby after a nine-month pregnancy, the latter that she may evict the fetus from her body and, also, kill him, at any time of her choosing right up to one minute before birth.

If evictionism is adopted, one third of all babies will be immediately safeguarded. This is because they are viable outside this “house” only in the third trimester; the woman may evict her baby at any time of her choosing, but in a manner that preserves the life of the baby in the last trimester. Here, evictionism is compatible with the conclusion favored by the pro-lifers. What of the first two trimesters? Then, evictionism is compatible with the position favored by the pro choicers. If she evicts, given present medical technology, the baby will die. But she has every right to do so, since her body is her “home” and the infant is a trespasser. No matter how innocent, he simply has no right to occupy someone else’s territory.

Let me consider but two objections to the foregoing. First, very few abortions occur, thank goodness, as the result of rape. Most are based upon voluntary sexual intercourse. Given that we are now exploring a libertarian analysis which places great weight upon contract and private property rights, does not the mother<sup>8</sup> have at least an implicit contract with the baby to safeguard him for nine months, the usual procedure? After all, you do not invite someone onto your boat, and then ask him to leave when to do so would spell his certain death. And, thus, is not the pro-life position correct?

No. For there to be an implicit contract between two parties, both of them must at least exist. However, we have said that human life does not start until

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<sup>7</sup> We are still assuming he is the product of rape.

<sup>8</sup> The father too.

the fertilized egg stage. But at the time of intercourse, it takes anywhere from 30 minutes to several hours for the sperm to reach the egg. Thus any contract, implicit or not, cannot possibly occur.

There is but one exception to this rule: the host mother. X and Y are an infertile couple; they are unwilling or unable to give birth to a baby in the usual manner. They pay Z to do so for them. She is then contractually obligated to carry this baby for the full nine-month term. She may certainly not kill the infant, nor may she even evict him, since she has been paid to do no such thing.

Second, what about abortions to save the mother's life? No, no, no, that is murder. However, the pregnant woman may have an eviction at any time during her pregnancy, for any reason whatsoever, right up to one minute for birth would have otherwise taken place. Private property rights are sacrosanct, including the ones she has to evict trespassers. Of course, the baby has rights too, not to be murdered, as we all have. Given present medical technology, he, too, will live, if he can survive until the third trimester.

Under evictionism, the pro-choicers get half a loaf. Women can rid themselves of their fetus at any time, but the baby's life must be saved if at all possible. They cannot say "I don't want that man's child to live" and have it stick. Pro-lifers also get half a loaf. No baby in the third trimester can be allowed to die if medical technology can save him. And, as it improves, more and more young human beings will be protected.

Adopting this compromise position might well save not only baby's lives, but adults as well, if protestors take to the streets. In the extreme, it may stave off a civil war.

I cannot end this essay without commenting upon a recently published critique of evictionism. According to Dominiak and Wysocki:

For a fetus to be a trespasser, the fetus has to violate the woman's rights; but to violate the woman's rights, the fetus has to breach the fetus's correlative duty; however, since it is untenable to suppose that the fetus can have any duties whatsoever, then, via *modus tollens*, it is equally untenable to suppose that the fetus can be a trespasser, even an innocent one.<sup>9</sup>

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<sup>9</sup> This is a summary of an argument from: Łukasz Dominiak, Igor Wysocki, "Evictionism, Libertarianism, and Duties of the Fetus", *Journal of Medicine and Philosophy* 48(6) (2023): 527–540.

This is a very powerful critique of my evictionist theory, and I am very grateful to these learned scholars for offering it. Before responding to it, I must first acknowledge its uniqueness. Evictionism is a compromise between the pro-life and the pro-choice viewpoints, and, so far, apart from Dominiak and Wysocki (DW, henceforth), the criticisms of it have come mainly from both quarters, each merely complaining that this moderate theory deviates from their own perspective. DW's critique is not at all limited in any such manner. It is brilliant, creative, incisive and deserves a full response.

It is this: their theory is far too "good". It proves far too much. It is hence open to several reductios. The reason DW's analysis is so potent is that it invites us to picture a newborn baby, no, an entity even less legally responsible than that, a veritable fetus, maybe four inches long and weighing in at only several ounces or so, and then asking ourselves, can such a person<sup>10</sup> have any legal responsibilities, any such duties at all? And the answer that initially emanates from all of us, me too, is a loud, heartfelt and vociferous "NO!" But a moments reflection will undo that first assessment.

Consider the following. A good pitcher can toss the baseball at around 95 miles an hour. If it hits the batter, it can do serious damage. Suppose someone were able to throw a baby, or better yet a fetus at a helpless tied up man at 200 miles per hour. On impact, both would die. The target has a gun, but due to the speed at which this human missile<sup>11</sup> is travelling, cannot evade the impact. According to the principles laid out by DW, it would be wrong for this man to shoot the tiny human being; he must stand there and die. But libertarianism is not a suicide pact. It makes no such demands of the victim as would the DW principle require of him. To be sure, this is a horrendous scenario. I offer it, only, to demonstrate that if the target shot the human missile, he would not be guilty of murder; it would be a clear case of self-defense. If that is the case, and it is, then it can no longer be said, as DW aver, that the baby or fetus is entirely innocent.

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<sup>10</sup> I use that description purposefully, since I maintain that human life begins with a mere fertilized egg, and the fetus who can be seen with the naked eye is far more developed than that.

<sup>11</sup> Walter E. Block, "Human shields, missiles, negative homesteading and libertarianism", *Ekonomia – Wroclaw Economic Review* 25(1).

Under libertarianism, and evictionism is certainly a libertarian theory, everyone, with absolutely no exceptions, does indeed have a duty: not to violate the non-aggression principle (NAP). This is the very foundation principle of libertarianism. To deny this, to lessen its impact, is to remove oneself from libertarianism, as do DW in this case.

Babies, fetuses, are not the only helpless people who can be used for evil purposes. There are also the unconscious; the drunkards; those who are drugged against their will. Consider someone who is powerfully hypnotized. He is coming at you with a loaded gun, intent upon shooting you. According to DW, it is untenable to suppose that this victim of hypnosis can have any duties whatsoever. He is totally helpless to withstand not the suggestions of the hypnotist that he kill you, but in effect his orders. If the fetus has no “duties whatsoever”, then neither does this victim of hypnosis. Then, the claim that it is, via *modus tollens*, equally untenable to suppose that the man under the irresistible influence of hypnosis can be a criminal, even an innocent one, would be the conclusion DW are logically obligated to deduce. But this is untenable. If the only way you can stop this hypnosis victim (or drugged or drunk person) from killing you is to shoot him first, you have every right to engage in self-defense against him, even given, stipulated, that he is entirely innocent.

A twelve year old girl is raped and impregnated. She is barely more than a child herself. According to DW, she should be compelled by law to carry her fetus to term. She may not take that 24 hour abortion pill, because to do so would be to treat the fetus as a trespasser, and thus she would be entitled to evict him from her body. Why? Because this child of a child can have no “duty” to refrain from trespassing. I find this difficult to reconcile with the private property rights libertarianism grants to all people, including twelve year old girls.

Sometime in the far future, medical technology in this realm will likely progress to a great degree. It will then be possible to transfer the fetus from the mother’s womb to a super duper text tube, where this young person can develop for the next nine months, with no subsequent harm at all. On that happy day, raped pregnant twelve-year-old girls, all mothers indeed, will have this option.

But not if the DW thesis is incorporated into the law of the land. For if that occurs, this eviction and placement in the test tube will be illegal. Why? This is because the fetus does not “violate the woman’s rights” staying right where he now is, inside of the woman’s body. She will have no warrant to remove him; he has a right to remain right there. Fetus rights organizations, dedicated to promulgating the DW position, will successfully object to any such transfer. The fetus is entirely innocent of any rights violations; he simply cannot be: he is too young and innocent. Therefore, this eviction would not be justified. Oh, unhappy day...

There is one other consideration that may be employed against the DW critique of evictionism: negative homesteading.<sup>12</sup> If lightning strikes you, you have no right to pawn it off onto someone else, if you are able to do so. You should be legally obligated to grin and bear the negative repercussions yourself. In the present case, the fetus is the first bearer of the misery. He is about to be evicted. If this occurs in the first six months of the pregnancy, given present medical ability, he will die. To defend him against such a departure from his only known home, as DW would do on the ground that he has no legal obligations, is to violate this stricture of negative homesteading. It is to allow him to pass on his very bad situation to someone else, his mother, by denying her the rights to her own bodily integrity.

The unwanted fetus is a trespasser, DW to the contrary notwithstanding. It is easy to see this when he is the product of rape. If so, the claim that he has no legal obligations cannot be sustained.

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<sup>12</sup> Block, “Human shields, missiles, negative homesteading and libertarianism”.

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