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Reaction to Dominiak and Wysocki on Evictionism and Abortion

Abstract: Dominiak and Wysocki are willing to stipulate, *arguendo* only, that the unwanted fetus is a trespasser. That is a major claim of mine in this intellectual battle I have been having with these two authors. So I greatly appreciate their attempt to show that my evictionist thesis should "still be rejected as either unlibertarian or redundant" even under conditions very favorable to my own view. Nonetheless, I persist in my proposition despite the very thorough, intelligent, reasonable, well thought out criticism they make of it.

Keywords: abortion, evictionism, trespass, libertarianism

Introduction

I am delighted to once again be able to take up the cudgels, intellectually speaking of course, against these two friends of mine, colleagues, several times co-authors, and often opponents on this as well as several other important issues in political economic philosophy. All three of us start off

with the same basic libertarian premises: the non-aggression principle and private property rights based upon homesteading. That we reach different conclusions on the present issue only attests to how complicated and challenging it is.[1]

Dominiak and Wysocki (hence, DW) are willing to stipulate for argument's sake that the unwanted fetus is a trespasser. I greatly appreciate this stipulation on their part. I am cognizant of the fact that this greatly enhances my side of the argument vis-à-vis theirs. They are to be congratulated for thus taking on an even more difficult challenge than would otherwise have been the case.

I am extremely grateful to DW for their kind comments about my scholarship and contributions to the libertarian edifice. I am honored that they consider me to be a mentor of theirs of sorts. All I can say in response is that when I get into a debate with either or, even more so, both of them, I know I am in for a tussle. I have debated people far more (presently!) prestigious than them, and felt that not a glove was ever laid upon me in those other cases.[2] Not so with these two brilliant scholars, who argue so carefully, thoughtfully, creatively, and ferociously. It is an honor to have them as friends and colleagues. If these two are any indication of the future of the libertarian movement, it will be in good hands for the foreseeable future.

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[1] Two of the greatest libertarians who ever lived also diverged on abortion. Murray Rothbard was pro-choice, and Ron Paul is pro-life. If these leaders of our movement can disagree, and both be considered rational, then this, surely, should apply to the three lesser beings who are now amiably disagreeing with one another on this matter.

[2] Walter E. Block, "Coase and Demsetz on Private Property Rights, *The Journal of Libertarian Studies* 1(2) (1977): 111–115; Walter E. Block, "Ethics, Efficiency, Coasean Property Rights and Psychic Income: A Reply to Demsetz", *Review of Austrian Economics* 8(2) (1995): 61–125; Walter E. Block, "Private Property Rights, Erroneous Interpretations, Morality and Economics: Reply to Demsetz", *Quarterly Journal of Austrian Economics* 3(1) (2000): 63–78; Walter E. Block, "A Response to Brooks' Support of Demsetz on the Coase Theorem", *Dialogue* 2 (2010): 65–80 – regarding Harold Demsetz; Walter E. Block, "Roads, Bridges, Sunlight and Private Property: Reply to Gordon Tullock", *Journal des Economisteset des Etudes Humaines* 8(2–3) (1998): 315–326 – pertaining to Gordon Tullock; Walter E. Block, Milton Friedman, "Fanatical, Not Reasonable: A Short Correspondence Between Walter Block and Milton Friedman (on Friedrich Hayek's Road to Serfdom)", *Journal of Libertarian Studies* 20(3) (2006): 61–80 – relating to Milton Friedman.

They aver that even with this concession made to my evictionist thesis, it still fails, as "either unlibertarian or redundant".[3]

DW are kind enough to offer me two options. They state: "According to evictionism, is eviction identical with letting the fetus die or not?"[4]

I hereby choose the latter. Whereupon they continue: "If it is not identical, then *Eviction As Life Preserving Thesis* contradicts *No Positive Duties Thesis* and evictionism loses its libertarian character by entailing the existence of primary positive duties on the part of the woman. Thus, evictionism contradicts libertarianism".[5]

That is a serious charge. How do they demonstrate that evictionism logically implies positive obligations, the latter of which is anathema to libertarianism, as they correctly assert? They do so by invoking these two principles of theirs. It is clear what is the *No Positive Duties Thesis*; the only obligations are negative ones: do not murder, do not rape, do not kidnap, etc. What, in turn, is their *Eviction As Life Preserving Thesis*? It is defined as "eviction is understood as removing the fetus from the woman's body 'in a manner that preserves the life of the baby'".[6] But why does this imply positive rights with regard to the baby?

Here matters become a bit convoluted, and I am not sure I fully follow the thinking of these authors on this matter.[7] But, as best I can discern, is it due to "letting the fetus die by omitting to prevent its death from pathologies as when, for example, the fetus suffers from some disease and the medical treatment is withheld from it […]".[8] This, in turn, they call their "Eviction As Life Preserving Thesis".[9] If this be the case, I can assure readers of this Journal

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[3] Łukasz Dominiak, Igor Wysocki, "Evictionism Is Either Redundant or Contradicts Libertarianism. Response to Walter Block on Abortion", *Studies in the History of Philosophy* 16(1): 9–39.

[4] Ibidem, 16.

[5] Ibidem, 17.

[6] Ibidem, 15.

[7] I rely on them correcting any misconceptions I may have on this matter in subsequent iterations of this long-standing debate we are having.

[8] Ibidem, 16.

[9] I wish these authors would stop coming up with all of these new theses, and speak more in plain English, or Polish as the case may be. This is elder abuse: it is hard for old dogs to learn new tricks.

that there is no logical incompatibility with libertarianism in my evictionist hypothesis. Keeping the fetus alive after birth by evictionism in, say, the 8th month of pregnancy in no way implies positive obligations.

In order to make this clear, I must now introduce a thesis of my own bagel or donut theory.[10] Assume a land mass shaped in the form of one of those edibles. The hole in the middle, label *A*. The actual foodstuff, label *B*. *C* is the land lying outside of this object. Should it be legally permissible to homestead area *B*, alone, not *A*, assuming no helicopters, bridges, tunnels, or any other way for a person to travel from *C* to *A* without trespassing on territory *B*? No, it is not. For were this the case, the person homesteading *B* would also control area *A* without so much as having ever even having set foot on that land, let alone homesteading it. This is due to the fact that the only way to establish ownership rights over virgin land, according to basic libertarian doctrine, is to homestead[11] it, which the owner of *B* has not done for *A*.

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[10] See Walter E. Block, "Rejoinder to Dominiak on the Necessity of Easements", *Ekonomia – Wroclaw Economic Review*; 27(1) (2021): 9–25; Walter E. Block, "Rejoinder to Dominiak on Bagels and Donuts", *Ekonomia – Wroclaw Economic Review* 28(1) (2022): 97–109.

[11] See, e.g., Walter E. Block, "Earning Happiness Through Homesteading Unowned Land: a comment on 'Buying Misery with Federal Land' by Richard Stroup", *Journal of Social Political and Economic Studies* 15(2) (1990): 237–253; Walter E. Block, "Homesteading City Streets; An Exercise in Managerial Theory", *Planning and Markets* 5(1) (2002): 18–23; Walter E. Block, "On Reparations to Blacks for Slavery", *Human Rights Review* 3(4) (2002): 53–73; Walter E. Block, Michael R. Edelstein, "Popsicle Sticks and Homesteading Land for Nature Preserves", *Romanian Economic and Business Review* 7(1) (2012): 7–13; Walter E. Block, Peter Lothian Nelson, *Water Capitalism: The Case for Privatizing Oceans, Rivers, Lakes, and Aquifers* (New York: Lexington Books; Rowman and Littlefield, 2015); Walter E. Block, Guillermo Yeatts, "The Economics and Ethics of Land Reform: A Critique of the Pontifical Council for Justice and Peace's 'Toward a Better Distribution of Land: The Challenge of Agrarian Reform'", *Journal of Natural Resources and Environmental Law* 15(1) (1999–2000): 37–69; Walter E. Block, Richard Epstein, "Debate on Eminent Domain", NYU *Journal of Law & Liberty* 1(3) (2005): 1144–1169; Per Bylund, "Man and Matter: A Philosophical Inquiry into the Justification of Ownership in Land from the Basis of Self-Ownership" (Master's thesis, Lund University, 2005); Per Bylund, "Man and matter: how the former gains ownership of the latter", *Libertarian Papers* 4(1) (2012): 73–118; David Gordon, "Locke vs. Cohen vs. Rothbard on Homesteading", *Mises Wire*, November 8, 2019, https://mises.org/wire/locke-vs-cohen-vs-rothbard-homesteading; David Gordon, "Violence, Homesteading, and the Origins of Private Property", *Mises Wire*, December 13, 2019, https://mises.org/wire/violence-homesteading-and-origins-private-property; Hugo Grotius, *Law of War and Peace* (*De Jure Belli ac Pacis*), 3 vols. (London: A.C. Campbell, 1814 [1625]); Hans-Hermann Hoppe, *The Economics*

Suppose *B* engages in this act anyway. He then becomes guilty of the crime of withholding, forestalling or precluding. He is criminally preventing other would-be homesteaders from accessing land *A*. It is not at all true that he has a positive obligation to either cease and desist from that particular pattern of homesteading, nor to allow others to walk through his territory, *B*. Rather, he is a criminal. He must refrain from so doing not because of any positive obligation, only to refute the charge of criminality.

What does any of this have to do with the question at hand? Simply this. Suppose a woman evicts a healthy baby in her third trimester, and then al-

and Ethics of Private Property: Studies in Political Economy and Philosophy (Boston: Kluwer, 1993); Hans-Hermann Hoppe, "Of Private, Common, and Public Property and the Rationale for Total Privatization", *Libertarian Papers* 3(1) (2011): 1–13; Stephan N. Kinsella, "A Libertarian Theory of Contract: Title Transfer, Binding Promises, and Inalienability", *Journal of Libertarian Studies* 17(2) (2003): 11–37; Stephan N. Kinsella, "Thoughts on Intellectual Property, Scarcity, Labor-ownership, Metaphors, and Lockean Homesteading", *Mises Wire*, May 26, 2006, https://mises.org/wire/thoughts-intellectual-property-scarcity-labor-ownership-metaphors-and-lockean-homesteading; Stephan N. Kinsella, "How We Come to Own Ourselves", *Mises Wire*, September 7, 2006, http://www.mises.org/story/2291; Stephan N. Kinsella, "Thoughts on the Latecomer and Homesteading Ideas; or, why the very idea of 'ownership' implies that only libertarian principles are justifiable", *Mises Wire*, August 15, 2007, https://mises.org/wire/thoughts-latecomer-and-homesteading-ideas-or-why-very-idea-ownership-implies-only-libertarian; Stephan N. Kinsella, "What Libertarianism Is", *Mises Library*, August 21, 2009, https://mises.org/library/what-libertarianism; Stephan N. Kinsella, "What Libertarianism Is", in: *Property, Freedom, and Society: Essays in Honor of Hans-Hermann Hoppe*, ed. Jörg Guido Hülsmann, Stephan N. Kinsella (Auburn, AL: Mises Institute, 2009); Stephan N. Kinsella, "Homesteading, Abandonment, and Unowned Land in the Civil Law", *Mises Blog*, May 22, 2009, http://blog.mises.org/10004/homesteading-abandonment-and-unowned-land-in-the-civil-law; John Locke, "An Essay Concerning the True Origin, Extent and End of Civil Government", in: *Social Contract*, ed. E. Barker (New York: Oxford University Press, 1948), 17–19; Ryan McMaken, "How the Feds Botched the Frontier Homestead Acts", *Mises Wire*, October 19, 2016, https://mises.org/wire/how-feds-botched-frontier-homestead-acts; Ellen Frankel Paul, *Property Rights and Eminent Domain* (Livingston, NJ: Transaction Publishers, 1987); Samuel Pufendorf, *Natural Law and the Law of Nations* (*De officio hominis et civis*, 2 vols.; Buffalo, NJ: Hein, 1673; reprint, New York: Oxford University Press, 1927); Murray N. Rothbard, "Confiscation and the Homestead Principle", *The Libertarian Forum* 1(6) (1969): 3–4; Murray N. Rothbard, *For a New Liberty* (New York: Macmillan, 1973); Murray N. Rothbard, *The Ethics of Liberty* (New York: New York University Press, 1998 [1982]), 32; Michael S. Rozeff, "Original Appropriation and Its Critics", LewRockwell.com, September 1, 2005, http://www.lewrockwell.com/rozeff/rozeff18.html; Carl Watner, "The Proprietary Theory of Justice in the Libertarian Tradition", *Journal of Libertarian Studies* 6(3–4) (1982): 289–316.

lows him to die. Without milk, warmth, etc., the baby will perish. The only way this child can be kept alive is for her to provide these benefits to the newborn. DW interpret this as a positive obligation on her part to keep the baby alive. I, in sharp contrast, see her as engaging in the crime of precluding or forestalling, if she does not herself feed and care for the baby, or, bring him to a hospital, or shelter, or orphanage, where others can do so. To compel her to take such actions, contrary to DW, is not at all to invoke a positive obligation. Rather, she must be compelled to do this; otherwise, she will be guilty of the crime of precluding, or withholding, as in the case of *B* in the donut example.

Is there a perfect analogy between *B* in the bagel situation and this mother who has just delivered, evicted, her baby? Of course there is not. No analogy can be perfect; if so, it is not an analogy, but an equivalence. Where is the disanalogy here? It is that people can own land, but not babies. Instead, in the latter case, they can own guardianship rights. A necessary condition of the latter is to continually care for and feed the baby. But this woman has adamantly refused to engage in such acts. If she keeps the infant, and does not deliver him to others who will guard him, she is maintaining unjust, improper, criminal control of the baby without being his guardian, just as the owner of *B* is wrongly controlling area *A*.

DW quite pertinently quote Rothbard on this matter: "[…] the parent should not have a *legal obligation* to feed, clothe, or educate his children, since such obligations would entail positive acts coerced upon the parent and depriving the parent of his rights".[12] However, this does not apply if the woman keeps the baby under her control, and refuses to care for him. Then, she is criminally asserting guardianship while refusing to be a guardian.

My learned friends continue their critique of evictionism by combining it with what have called the "gentleness principle".[13] Since abortion is "defined

[12] Dominiak, Wysocki, "Evictionism Is Either Redundant or Contradicts Libertarianism", 13–14.

[13] See on the gentleness theory: Walter E. Block, "Evictionism is Libertarian; Departurism Is Not: Critical Comment on Parr", *Libertarian Papers* 3 (2011): 1–15; Walter E. Block, "Rejoinder to Parr on Evictionism and Departurism" *Journal of Peace, Prosperity & Freedom* 2 (2013); Walter E. Block, "Rejoinder to Ayres on Defense, Punishment and Gentleness", *Revista de Investigações Constitucionais* 9(3) (2022): 495–513; Walter E. Block, Stephan N. Kinsella, Roy Whitehead, "The Duty to Defend Advertising Injuries Caused by Junk Faxes: An Analysis

as 'removal plus killing',[14] it can be the gentlest and thus permissible method of expelling the fetus only in cases in which it is impossible to remove it in a way that preserves its life".[15]

I have two objections to the foregoing; both are merely verbal disputes but I think not totally unimportant. First of all, in my view, abortion constitutes murder and that is incompatible with libertarian strictures. Yes, some murders can be more "gentle" than others. For example, mixing many sleeping pills into someone's drink. This is surely more gentle than hacking someone to pieces. But both constitute murder, and each is to be vociferously condemned.[16] Abortion, too, could be rough or gentle, and both should be condemned in no uncertain terms. Eviction, however, is an entirely different matter. It, too, can be undertaken either gently or not; I maintain that the former should be legal, and the latter should not.

Secondly, I object to the word "it" as in their "remove it". Why? In my view, human life begins with the fertilized egg. Neither the egg nor the sperm alone will eventuate in an adult; only the two-celled being – the person – will. So, this young human being should not be referred to as an "it".[17] Rather, "he", or "she", will do just fine.[18]

DW continue their analysis: "Block actually embraces – at least in the innocent threats scenarios under which he subsumes unwanted pregnancies – the Thomsonian technical liability account, according to which not only

of Privacy, Spam, Detection and Blackmail", *Whittier Law Review* 27(4) (2006): 925–949; For a critique, see: Sean Parr, "Departurism and the Libertarian Axiom of Gentleness", *Libertarian Papers* 3(34) (2011): 1–18; Sean Parr, "Departurism Redeemed – A Response to Walter Block's 'Evictionism Is Libertarian; Departurism Is Not: Critical Comment on Parr'", *Journal of Peace, Prosperity, and Freedom* 2 (2013): 109–123.

[14] Walter E. Block, "Evictionism: The Only Compromise Solution to the Abortion Controversy", *Studia z Historii Filozofii* 15(1) (2024): 60.

[15] Dominiak, Wysocki, "Evictionism Is Either Redundant or Contradicts Libertarianism", 10.

[16] Ok, ok, we can oppose the latter with even greater moral force since it is so vicious, but both are still to be condemned as murder.

[17] True confession, on numerous occasions I too am guilty of this error in nomenclate, so I can hardly be too harsh with these two young but nevertheless eminent scholars for this mistake.

[18] I prefer the former to the latter since the former includes the latter but the reverse is not true.

mens rea, but also action is not required for being liable to defensive killing (cf. Thomson 1973, 154–155; Thomson 1991, 300–302)".[19]

I also depart from DW when they too closely equate my own views on this issue with those of Thomson. There is a strong parallel between the two, to be sure, but she is not an evictionist, I am.[20]

The organization of the present paper follows that of DW. The next part discusses the section they titled "Killing, Evicting, and Letting Die". The third focuses on their remarks about positive duties and property abandonment. In the fourth part, I conclude..

Killing, Evicting, and Letting Die

My intellectual adversaries start off this section of their paper with this quote:

> As argued by Murray Rothbard (1998: 100), "the parent should not have a *legal obligation* to feed, clothe, or educate his children, since such obligations would entail positive acts coerced upon the parent and depriving the parent of his rights". *A fortiori*, under libertarianism – and so under evictionism – the woman does not have any primary positive duties to the fetus either. In this regard, she has only negative obligations. For example, the woman has a duty not to remove the fetus from her body, even if the fetus were to survive such a procedure, because doing so would amount to causing an unauthorized bodily contact with the fetus, that is, battery and so would violate the fetus's rights. Of course, under the evictionist assumption that the unwanted fetus is a trespasser, these negative duties of the woman are to some extent extinguished as the unwanted fetus forfeits some of its correlative rights by committing the trespass.[21]

[19] Dominiak, Wysocki, "Evictionism Is Either Redundant or Contradicts Libertarianism", 11.

[20] For evidence of this claim see, Walter E. Block, "Judith Jarvis Thomson on Abortion; a Libertarian Critique", *DePaul Journal of Health Care Law* 19(1) (2018): 1–17.

[21] Dominiak, Wysocki, "Evictionism Is Either Redundant or Contradicts Libertarianism", 13–14.

I go along, almost entirely, with this statement. My one reservation concerns "are to some extent extinguished". In my view, the evictionist hypothesis[22] maintains that the duties of the woman are completely extinguished, apart from the gentleness principle. That is, she has no positive obligations, none at all, under this viewpoint.

But DW are not mollified. They continue:[23]

> This forfeiture in turn creates room for permissible defense of the woman's rights. Now the crucial question is how much room. Evictionism says that only so much room as is necessary for stopping the trespass in the gentlest possible way, the requirement labeled the Gentleness Principle. Thus, if it is *possible* to remove the fetus from the woman's body "in a manner that preserves the life of the baby" (Block 2024, 60), aborting it – where abortion is "defined as removal plus killing" (Block 2024, 60) – certainly fails to be the gentlest possible way of stopping the trespass. In such a case, abortion is impermissible.[24]

My problem with the foregoing is that DW are improperly elevating the gentleness principle to a basic foundational status, similar to the NAP itself. Worse, they are on the verge of making it primary, even above the NAP. They are in effect placing the cart before the horse. Given stipulated trespass status for the fetus, this youngster has no right, none at all, to remain inside the property of his mother. If she wishes to evict him, she is legally entitled to do just that. Given today's medical technology, in the first two trimesters this baby is not viable outside of the womb, and gentleness does not even come into the picture.[25] It is only in the third trimester when these pre-born infants can survive on their own that gentleness comes into play. But it does not in the slightest vitiate the legal right of the mother to engage in an eviction. I also take issue this this statement: "In such a case, abortion is impermissible". In my view as an evictionist, abortion is always legally impermissible.

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[22] That is all it is, a hypothesis, to the effect that this is the proper application of basic libertarian theory to this issue.

[23] I have removed all of the footnotes they employ in my quotations from their paper.

[24] Ibidem, 14–15.

[25] Assuming these early humans cannot feel pain

However, saith DW: "[…] since the unwanted fetus is a trespasser who forfeits some of its rights by residing in the woman's body without her consent […]".[26]

I must object to this. In my view, the fetus qua fetus as a trespasser loses *all* of his rights, not just some of them. However, he retains the right of all lawbreakers to be treated in the gentlest manner possible compatible with full support for the rights of the victim, the mother in this case.[27]

Next in the batter's box is this statement: "[…] if it is impossible to evict the fetus, then abortion might indeed constitute the gentlest possible way of stopping the trespass and therefore become permissible. Or so argues evictionism".[28]

I find this statement to be problematic. If it is *impossible* to evict the fetus, then, by the laws of logic, it would also be impossible to engage in an abortion, since the latter consists, only, of eviction plus killing. A red ball has two characteristics: color and shape. If it is impossible to remove anything red from a house, then it is also, by that token, impossible to remove that particular ball from that domicile. DW to the contrary notwithstanding, the evictionist theory says that abortion is always legally illicit, since it consists of evictionism plus outright murder. I sometimes think that I have not been as clear as I should have been in articulating just what constitutes the evictionist thesis. If scholars as bright as this can misconstrue it…

Next they argue as follows: "First of all, it is highly unlibertarian and ad hoc to say that the woman who mixed her labor with the fetus – who actually created it – all of a sudden ceases to be its owner only because she stopped to care for it for a brief moment of the (letting die) abortion procedure. What happened with all this labor of hers which she joined to the fetus throughout the pregnancy? It could not have dissipated in the blink of an eye".[29]

I strongly reject this claim of DW's. First of all, if she allowed an "abortion procedure" she is a murderer, and the doctor who enabled her to do so is also

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[26] Ibidem, 15.

[27] Yes, the mother is the victim in this case of trespass and the pre-born baby is the (innocent, to be sure) guilty trespasser.

[28] Ibidem.

[29] Ibidem, 22.

a criminal.[30] Second, and more important, I do not say that guardians must guard every second. Even guardians need to sleep, and take care of themselves. But when they sleep, if they are good guardians of newborns, they either have a nanny or do not engage in so many sleeping pills while alone that the baby's cries will not awaken them. Well, maybe that is a bit too extreme, but only a bit. However, the woman we are contemplating is not merely taking off her guardian duties for a few moments. She is explicitly refusing to sustain the baby, and preventing others (orphanages, etc.) from so doing. She is an out and out murderess. It matters not one fig that she did indeed put in quite a bit of labor in initially homesteading the guardianship rights. In order to maintain these rights, she must *continue* to be a guardian, and this she is absolutely refusing to do. There is all the difference between homesteading land and doing so with guardianship rights over children. Once the former is done, it is done. This does not at all apply in the latter case.

What is the response of DW to this? They state: "And we know otherwise that she 'hath by this *labour* something annexed to it, that excludes the common right of other Men. For this *Labour* being the unquestionable Property of the Labourer, no man but [s]he can have a right to what that is once joyned to' (Locke 2003: 288). Thus, it is unlibertarian to say that the woman who joined her labor to the fetus lost her ownership there of just by stopping to continue to mix her labor with it".[31]

All I can say in response is that on this point DW and I diverge widely as to what is and is not "unlibertarian". I think they have painted themselves into the proverbial corner. They are maintaining that a woman who was once the proper guardian of a very young child is still the guardian of that very young child even though she at present outright refuses to continue to guard; worse, she is now willing to see that baby die of neglect; even more worse, she will not even notify those who would be willing to take on the role of guardian. She is no longer a guardian. She is now a murderess and should be treated as such.

[30] Remember, abortion is not a mere eviction; it is eviction plus outright murder.
[31] Ibidem.

Returning to the bagel case, DW aver:

> Second, it is true that if *A* prevents *B* from homesteading an unowned land, *A* violates *B*'s rights. However, it is a stretch to say that *A*'s actions are "equivalent to land theft" (Block 2004: 282). How could that possibly be? After all, *B* has not yet mixed his labor with the said land and so under libertarianism he could not have appropriated it. Consequently, the land stays in the state of nature and cannot be the object of land theft. The only right of *B* that *A* could possibly violate by forestalling *B* from homesteading the unowned land is *B*'s right of way, not *B*'s property right to the land. By the same token, even if the woman lost her title to the once homesteaded fetus by undergoing the (letting die) abortion procedure, the fetus reverted to the state of nature and so forestalling others from appropriating it could at most violate *their right of way*, not *the fetus's rights*, and so could hardly be equivalent to murder (unless evictionism again entails, to its own detriment, that the fetus has a positive right to have its life preserved). Now violating potential homesteaders' right of way is a minor infringement that can proportionately be taken care of by compensation. It is not a serious offense that could justify depriving the woman of her fundamental right to self-defense against the unwanted fetus, the trespasser. Hence, Block's forestalling point does not invalidate the woman's right to defend herself against the fetus's trespass by way of letting the fetus die.[32]

I wish DW would use the *A*s and *B*s as I do in my bagel theory, sometimes called the Block Proviso, instead of inverting them. That makes it difficult for an old codger like me to follow the argument. But I'll try to persist. I wrote "equivalent to land theft" not "equal to land theft" and that still seems reasonable to me. After all *A* (now following DW's usage) prevented *B* from accessing this land, which would have belonged to *B* if *A* would not have forestalled, or precluded. *A* did prevent *B* from homesteading this land; it does not exactly constitute land theft, but it comes mighty close.

Our astute authors state that "forestalling others from appropriating it (guardianship rights) could at most violate *their right of way*, not *the fetus's rights*". Yes, to be sure, these others, orphanages, etc., also have their rights violated. But the fetus too has rights, and not positive ones either. What is

[32] Ibidem, 22–23.

his right in this context? It is to not have anyone interfere with "these others'" rights to adopt him, care for him, keep him alive. *X* wants to donate charity to *Y*. *Z* prevents it. Yes, certainly *X*'s rights are violated. Here, DW and I agree. But they maintain that *Y*'s rights to receive donations are not violated, and I cannot see my way clear to acquiescing in this determination. *Y* and the fetus in the analogous case are certainly harmed by the agreed upon criminal act of *Z* and the mother. That sounds like a rights violation to me, yes, certainly, also, against *Y* and the baby.

Here is a fascinating challenge against my views offered by DW:

> Suppose *A* is about to murder *B* and the only way in which *B* can defend himself is to duck his assailant so that *A* falls down the stairs. But if *B* ducks *A* and *A* falls down the stairs, then *A* will block *C*'s way and *C* will be late for his only train to an important business meeting. May *C* prevent *B* from ducking *A* so that *A* murders *B* but *C* catches his train? We submit that the answer is an emphatic 'No!' and hope that Block agrees. What *C* might at most do in this case is to try to get some compensation for his unused ticket and lost business opportunities. A separate question is from whom ultimately should *C* seek this compensation, from *B* or from *A*? Since *B* forestalled *C* from getting into the train in the process of defending himself against *A*, the offender, then there are good reasons to think that it is ultimately *A* from whom *C* should seek the compensation. But then, by parity of reasoning, it should be the fetus, not the woman, who should compensate the would-be homesteaders for being forestalled in our abortion case. Thus, we have one more reason for which Block's forestalling reply does not work against our argument.[33]

I fail to see the analogy. In the case of the murder and the staircase, *A* is clearly the "bad guy" preying upon *B* directly, and on *C* indirectly and more slightly. *A* is guilty of attempted murder against *B*, but only inconvenience vis-à-vis *C*. But in the case of the mother who will not allow the orphanage to take her baby and sustain it, it is she, who is the *A* in the analogous case. Worse, this is not mere attempted murder, it is actual murder, if she gets away with it. DW appear to invert cause and effect here.

[33] Ibidem, 23.

Positive Duties and Property Abandonment

Next is an attempt to demonstrate that my views on abandonment are logically incompatible with those of mine on eviction.[34] In the former case, they demonstrate, correctly, that I require some sort of notice. In the second case, that holds true, too.[35] From whence, then, springs my supposed contradiction? It stems from child abuse: "[…] by merely abusing the child or failing to properly care for it the parents 'cannot (logically) abandon [it unless they] notify others of its availability for their ownership'. These two views cannot be squared". But they themselves then point the way to do exactly that in their attempted reconciliation. They aver: "One […] can abandon something by merely abusing it".[36] This of course cannot apply to land or animals. One can set fire to one's house without abandoning it. One can slaughter a barnyard animal without losing the rights to the carcass. But it cannot be relevant to children. To engage in child abuse is to per se abandon the child. Now, we are not talking about a mild spanking, or even a serious one. Here, the "abuse" consists of the mother sitting idly by and allowing the child to actually die, while preventing others from "homesteading" the guardianship rights she is in the process of renouncing through her own inaction. If that is not abandonment, then nothing is abandonment.

Next in the on deck circle is this: "Now, having established that Block himself willy-nilly buys into the doing/allowing distinction understood in causal terms, let us restate the dilemma this author is (and must be) facing. First, if evicting the fetus is metaphysically on a par with letting it die, then evictionism has no work to do over and above the doctrine of doing and allowing, as construed by libertarians. After all, with eviction understood as letting die, the mother by evicting the fetus does not cause its death. And it is – as estab-

[34] Who do these young whippersnappers think they are, dredging up obscure publications of mine just to show incompatibilities of mine? They have a lot of nerve. Hey, it's late in the evening as I write this, and I'm getting giddy. Of course they have every (negative) right to do so, but I think I can wriggle out of this objection too.

[35] The pregnant woman who desires an eviction in the third trimester, and does not want to care for him afterward, must notify others of this fact, so that they can take on this role if they wish to do so.

[36] Ibidem, 24.

lished above – only causings (*via* physical routes) of physical harms that are found impermissible by libertarians".[37]

I think that the logical difficulty that DW ascribe to me can be met by the realization that, contrary to them, the major premise of their syllogism is incorrect. They put it thusly: "[…] evicting the fetus is metaphysically on a par with letting it die […]".[38] But no. The entire point, well, one of the major elements in the defense of evictionism, is that the fetus lives! Remember abortion equals eviction plus the murder of the fetus. Without the latter, there is no requirement, none at all, that the preborn baby perishes. There is every presumption, expectation, the he lives, not dies.

Here is one more bite at the apple on the part of DW: "But what if eviction is metaphysically distinct from letting die? More specifically, what if eviction is something over and above letting the fetus die? As it seems, under this scenario eviction would involve the mother being duty-bound to take up some additional action, something clearly incompatible with libertarianism, given the working assumption that the fetus is a trespasser. So, in the end, whatever eviction is, Block is facing an insuperable dilemma anyway. Or still in other words, evictionism has no moral work to do at best or it makes false predictions at worst".[39]

I fail to see any logical difficulty here, let alone any "insuperable dilemma". Eviction is perfectly compatible with the safeguarding of the fetus; this is the very opposite of his demolition. I fear that DW are conflating this evictionist theory with that of the pro-choice movement, which looks benignly upon the death of this young child.

As for doing nothing and allowing to die consider the following scenario. A, a tightrope walker who works 100 feet above the floor, hires B to catch him if he falls. B agrees to do so. But when A descends to his death, B stands idly by, doing nothing. B is a contract breaker. He is also a murderer, even though he did nothing; he just stood there.

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[37] Ibidem, 36.
[38] Ibidem.
[39] Ibidem, 36–37.

Conclusion

I have been hauled through the coals by DW. I think my evictionist theory is safe from their criticisms and does not in any way, manner, shape or form contradict my other contributions to the libertarian theory, whether this is abandonment, or gentleness or bagel theory. Nevertheless, I unreservedly acknowledge that if there were any such lacuna in my perspective, the probing, examining, dissecting of it by such as DW would have found them. They have been thorough, clever, inspired, even, in their scrutiny. My thought is that if evictionism can stand up to criticisms such as theirs, it can stand up to anything and everything anyone could launch against it.

Let us stipulate, *arguendo* of course, that DW have landed if not a fatal blow against evictionism, then, at least, several very serious ones. Does that mean we must reject this theory? No. For the perfect is the enemy of the good. An imperfect evictionism[40] is still vastly superior to its two alternative theories about abortion, pro-life and pro-choice. Take the former first: a twelve year old girl is raped and impregnated. Then, she is raped once again by a law compelling her to keep within her body an alien person; an innocent young person, to be sure, but one who is occupying her body against her will. For shame on pro-life.

What about pro-choice? Equally shameful if not worse. This theory regards the beginning of human life as birth. Before that, the fetus is merely a bunch of cells; nothing human here, move along. But I put it to the pro-choicers that the youngster in his early ninth month of pregnancy looks just like a baby; acts just like a baby; for all intents and purposes, is a baby, a young human being. And, yet, according to this despicable theory, he may be killed with impunity since he has no rights.

If I had to choose between the two, I would favor the pro-life position. Advocates are "only" guilty of imposing nine months of kidnapping upon unwilling women. Pro-choice supports out and out murder. But I do not have to choose. Evictionism takes what is best from both of these misbegotten theories. From pro-life, it safeguards the lives of all pre-born infants, at least in the

[40] If that be the case, which I doubt.

third trimester. From pro-choice it offers the pregnant woman the right to rid herself of the unwanted child at any time, just not to kill him when he could have lived, again in the third semester.

Evictionism is closer to libertarianism than either of these other two. Let us posit that DW, for example, have established that this theory is incompatible with the no positive obligations principle of libertarianism. I give a bit "So what!" to that. All I am trying to demonstrate, now, is that evictionism is *closer* to our beloved theory of liberty than these other two. So, which deviates more from the freedom philosophy: one that violates the only negative obligations rule, one that upholds kidnapping, or one that rejoices in out and out murder. Case closed.

Let us contemplate the fact that these authors may have put a few holes into evictionism. But at least there is still some cheese in this theory. The other two have such great holes that they are virtually bereft of cheese.

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