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## Evictionism and Negative Homesteading

**Abstract:** In “Evictionism: The Only Compromise Solution to the Abortion Controversy”, Walter Block defends a position in the abortion debate known as “evictionism”. According to this view, a woman has the right to evict a fetus from her body for whatever reason at any time she wishes during the pregnancy, provided it is done in the gentlest manner possible. In the present article, I analyze the relationship between evictionism and negative homesteading – another well-known theory proposed by Block. I argue that these two views are incompatible, i.e., that holding both simultaneously leads to contradiction. I also suggest a way to resolve this contradiction by presenting an argument against negative homesteading.

**Keywords:** evictionism, negative homesteading, abortion, libertarianism

### Introduction

In his article, published in this journal, Walter Block presents a unique solution to the abortion debate.<sup>1</sup> He advocates a position called “evictionism”,

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<sup>1</sup> Walter E. Block, “Evictionism: the only compromise solution to the abortion controversy”, *Studia z Historii Filozofii* 1(15) (2023): 55–66. Earlier formulation of evictionism can be

according to which a pregnant woman has the right to evict the fetus from her body for any reason and at any time during the pregnancy – provided it is done in the gentlest manner possible – but not to kill it.<sup>2</sup> This view rests on another, namely that the concept of abortion ought to be defined as “removal plus killing”, and we should distinguish between these two. The justification for this is as follows. Since a woman owns her body, she has the right to remove (or evict) the fetus from it, much like a homeowner has the right to evict an unwanted guest from their property. If the pregnancy is unwanted, the fetus is treated as an innocent, yet still trespassing, occupant of the woman’s body. Despite its innocence, however, the fetus has no right to remain there, and the woman may evict the unwanted guest from her “house” at any time she wishes. On the other hand, Block argues that a fetus is considered a person with a full catalogue of rights. Killing it would therefore be tantamount to murder.

The aim of this paper is to consider Block’s evictionism in the context of another well-known theory of his: *negative homesteading*. In Section 2, I will formulate the definition of negative homesteading and argue that it is incompatible with evictionism. I will do this by showing a simple scenario where applying both theories leads to contradiction, making it necessary to reject one of them. In Section 3, I will propose a way to resolve this contradiction by presenting an argument against negative homesteading. Finally, in section 4, I conclude.

Before offering my critique, however, I need to address two points. First, I must point out that I am highly sympathetic towards Block’s initiative to reconcile two extreme and mutually opposed positions, commonly referred to as *pro-life* and *pro-choice*. His theory, from my point of view, has two major strengths. It adopts the core theses of both sides of the debate: it takes the assumption of fetal personhood from pro-lifers, and the assumption of a woman’s absolute right over her body from pro-choicers. Block shows that these seemingly contradictory principles can, in fact, be brought together. Further-

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found in his book: *Evictionism: The compromise solution to the pro-life pro-choice debate controversy* (Singapore: Springer Publishing Company).

<sup>2</sup> See Block, “Evictionism: the only compromise solution to the abortion controversy”, 59.

more, by grounding his theory in private property rights, and using the analogy of an owner and her house as a parallel to, respectively, woman and her body, he makes it highly intuitive. All of this is certainly worthy of approval.

Second, I want to emphasize that my work here is strictly “technical” or, if one prefers, “analytical”. I do not consider myself obligated to accept the truth (or falsity) of any of the theories discussed here, nor of their assumptions or conclusions. While I will, of course, assume the truth of certain claims, these will only be assumptions, and all of them will be taken from Block’s own framework. My aim is solely to demonstrate a specific inconsistency between evictionism and negative homesteading, which, I believe, exists within Block’s view, not to determine whether either theory is true or not “in general”.

## The Compatibility of Two Theories

Let us begin our discussion by briefly setting out the idea of negative homesteading – a theory originally presented by Block in his “The Human Body Shield” and later developed in “Human shields, missiles, negative homesteading and libertarianisms”.<sup>3</sup> According to this theory, agents are able to “own” – or, perhaps more accurately, “retain” – negative states of affairs, such as miseries, harms, wrongs, bads, etc. The key point is, however, that if they are the first victims of these states, they cannot legitimately pass them onto someone else, without their permission. As Block puts it: “the first victim of the tragedy [...] must retain it, may only keep it to himself, may not transfer it to someone else”.<sup>4</sup> In general, this idea can be formulated as follows:

- (NH) If a person  $X$  is (or is about to be) in some misery  $m$ , he has no right to either transfer  $m$ , or cause some other misery  $m$ , which allows him to avoid  $m$ , to another (innocent) person  $Y$ , without his permission.

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<sup>3</sup> Walter E. Block, “The Human Body Shield”, *Journal of Libertarian Studies* 22(1) (2011): 625–630; Walter E. Block, “Human shields, missiles, negative homesteading and libertarianisms”, *Ekonomia – Wrocław Economic Review* 25(1) (2019): 9–22.

<sup>4</sup> *Ibidem*, 13.

Example: If Jones throws a grenade at Black's house, and there is no empty space around, but only the houses of other innocent people, then Black has no right to throw the grenade away at one of those houses; instead, according to (NH), he must retain it and bear the misfortune by himself. In this scenario, he is the first "owner" or "bearer" of the misery and, therefore, may not transfer it onto someone else (we assume, of course, that no one gave him permission to do so). To use Block's formula, he is thus "first in time, first in wrong".<sup>5</sup>

With negative homesteading now defined, we can move on to our argument against its compatibility with evictionism. Let us start by considering the following situation. A pregnant woman suffers a personal tragedy. Her immediate family is involved in a fatal car accident, in which no one survives. She is now left completely alone. Due to her precarious financial situation and lack of support in raising a child (her family previously helped her with both of these), she decides to end her pregnancy and evict the baby. Since the pregnancy is at the 4-month stage, evicting the fetus is equivalent to causing its death.<sup>6</sup> Let us refer further in the text to this situation as S. Let us also give evictionism the following reading:

- (E) A pregnant woman may evict the fetus from her body at any time and for any reason during her pregnancy, but may not kill it.

Now we can formulate our argument simply as follows:

- P1. (E) is true.
- P2. (NH) is true.
- P3. If (E) is true, the pregnant woman in S may evict the fetus in order to avoid personal misfortune.
- P4. If (NH) is true, the pregnant woman in S may not evict the fetus in order to avoid personal misfortune.

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<sup>5</sup> Ibidem.

<sup>6</sup> As Block rightly notes, contemporary medical technology allows only fetuses at least 7 months old to survive outside the mother's body.

- C. Therefore, the pregnant woman in *S* may evict the fetus in order to avoid personal misfortune (according to P1, P3, and *modus ponens*) and, at the same time, she may not evict the fetus in order to avoid personal misfortune (according to P2, P4, and *modus ponens*). Contradiction.

Let us now clarify. P1 and P2 are simply assumptions of the truth of (E) and (NH). There is nothing to discuss here. The next premise, P3, involves applying the general principle of evictionism to the specific case: *S*. If (E) is true, then the pregnant woman in *S* may evict the fetus for whatever reason and at any time she wishes during her pregnancy (provided it is done in the gentlest manner possible). In particular, then, she may evict the fetus in order to avoid personal misfortune, such as living in economically difficult conditions. (Note that the “gentlest manner possible rule” is fulfilled here, since the woman cannot do anything further to ensure the survival of the fetus outside her body). Thus, P3 seems uncontroversial.

What about P4? Is it true according to Block’s framework? To determine this, we need to establish a few points. First, are both individuals in *S* – the woman and the fetus – persons? Surely they are, or at least that is what Block himself claims, stating that “human life begins with the fertilized egg”,<sup>7</sup> while simultaneously maintaining that ‘human’ and ‘person’ are synonymous.<sup>8</sup> Second, is the fetus in *S* *innocent*, as required by the definition of (NH)? “All fetuses are innocent, and equally so”,<sup>9</sup> states our author, often referring to even an unwanted fetus as an “*innocent trespasser*”<sup>10</sup> or “*innocent baby*”<sup>11</sup> (italics added). Thus, as we can see, Block agrees with this point as well. However, one more question must be answered for P4 to be true: Does the pregnant woman in *S* avoid, or try to avoid, her very difficult situation – the misfor-

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<sup>7</sup> Block, “Evictionism: the only compromise solution to the abortion controversy”, op. cit., 59.

<sup>8</sup> “A referee of this journal [*Journal of Family and Economic Issues*] points out that there is a debate over whether or not ‘humans’ and ‘persons’ are synonyms. I regard them as such” (Walter E. Block, “Toward a Libertarian Theory of Evictionism”, *Journal of Family and Economic Issues* 35(2) (2013): 291, footnote 5).

<sup>9</sup> Block, “Toward a Libertarian Theory of Evictionism”, op. cit., 293.

<sup>10</sup> Block, “Evictionism: the only compromise solution to the abortion controversy”, op. cit., 59.

<sup>11</sup> Ibidem.

tune or misery that awaits her – by transferring it onto the fetus? Since Block does not discuss this specific type of situation, we cannot refer directly to his words as we did before. Still, I am convinced that the answer to this question is positive. Employing the language of (NH), it becomes evident that the woman in S is (or is about to be) the initial bearer of the upcoming misfortune. It is she who first finds herself in a difficult position, it is she who first owns it, and is now attempting to escape it at the cost of her child, eventually causing its death. On what basis, then, could (NH) justify such an action? The answer seems simple: there is no such basis. The fetus is a person, an innocent person, and yet a great misery will be imposed on it because another individual – its mother – wanted to free herself from her personal tragedy. According to (NH), this is clearly unacceptable. And if that is the case, P4 is true and, by simple logic, we reach the conclusion, C, which is a contradiction.

The problem we are considering arises when we ask whether a pregnant woman can evict a fetus in order to avoid a certain misfortune. Our analysis shows that evictionism gives her every right to do so, but from the perspective of negative homesteading, this must be seen as an intentional attempt to escape her desperate situation by transferring the misery to another innocent person. If the argument presented above is correct, it means that one of its assumptions is false. But all we assumed – without arguing for – was the truth of (E) and (NH). Therefore, either (E) or (NH) must be false.

Before we go further, let us briefly address a potential objection to our argument. Someone might argue: “Well, it seems that, according to (NH), the pregnant woman indeed does not have the right to evict the fetus to avoid her own misfortune. However, we are also assuming that the fetus does not have the right to remain in the woman’s body if she does not wish it. Perhaps we should, then, solve this conflict by introducing a certain *ordering of rights* and ensuring that the woman’s rights take precedence? After all, “all of this” is in the end happening within the woman’s body”. I find this objection unconvincing. To see why, let us refer to Block’s own example:

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.<sup>12</sup>

I completely agree. But would our verdict change if I, along with my potential victim, were on the grounds of my property, and they were not welcome there? Would I have the right to direct lightning at them simply because “all of this” was happening on my land? I believe Block would agree with me here as well that I am obligated *not* to do that. And if so, then my property rights do not take precedence over my potential victim’s rights not to be unjustly harmed. Therefore, by analogy, the rights of the pregnant woman should also not have priority over the rights of the fetus. And if that is the case, the objection fails.

## The Argument Against (NH)

In this section, I will present a way to avoid the contradiction by rejecting (NH), although this is not the only possible approach. However, I have two reasons for choosing this particular route. First, while there are already excellent arguments against evictionism in the relevant literature, negative homesteading has largely been overlooked by critics.<sup>13</sup> Therefore, I would like to address this asymmetry to some extent. Second, and more importantly, the argument against (NH) that I will provide is entirely formulated “from within” the framework in which Block operates. By contrast, I am not aware of any (new) argument of this type against evictionism.

In “Evictionism: The Only Compromise Solution to the Abortion Controversy”, our author, while responding to critique stated recently by Dominiak and Wysocki,<sup>14</sup> asks us to consider a highly hypothetical situation:

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<sup>12</sup> Ibidem, 64.

<sup>13</sup> See especially: Łukasz Dominiak, Igor Wysocki, “Evictionism, Libertarianism, and Duties of the Fetus”, *Journal of Medicine and Philosophy* 48(6) (2023): 527–540, as well as: Jakub B. Wiśniewski, “A Critique of Block on Abortion and Child Abandonment”, *Libertarian Papers* 2(16) (2010): 1–4.

<sup>14</sup> Dominiak, Wysocki, “Evictionism, Libertarianism, and Duties of the Fetus”.

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 is travelling, cannot evade the impact.<sup>15</sup>

His conclusion from the story is this: since “libertarianism is not a suicide pact [...] if the target shot the human missile, he would not be guilty of murder; it would be a clear case of self-defense”.<sup>16</sup> Let us keep this in mind.

Now, to formulate our argument against (NH), let us slightly modify Block’s story about the human missile. For brevity, let *A* be the innocent human missile, *B* – the baddie pitcher, and *C* – the innocent *B*’s target. Suppose that events go this way:

- (t<sub>1</sub>) *B*, for some unspecified reason, intends to kill *C*.
- (t<sub>2</sub>) In order to do that, *B* picks up stones one by one from the ground and throws them at high speed in *C*’s direction.
- (t<sub>3</sub>) *C* has a gun but decides to flee.
- (t<sub>4</sub>) After several throws, *B* runs out of stones.
- (t<sub>5</sub>) *C* remains alive, but wounded and unable to flee further.
- (t<sub>6</sub>) *B* notices *A*, the human missile, grabs him, and now is about to throw him with all his might at *C* to murder him. *C* is unable to evade the impact.

According to (NH), in the scenario described above – more precisely: after the occurrence of (t<sub>6</sub>) – *C* has no right to use his gun. Instead, because he is the first bearer of the misery (as being the first target of *B*’s aggression), he has to do nothing but stay there, watch and wait for his death. But how can this be? “Libertarianism is not a suicide pact”, one might say. And would it not also be a “clear case of self-defense” if *C* were to use his gun in order to shoot *A*, as in Block’s example? Yet, (NH) rejects this possibility. Should it not be abandoned, then?

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<sup>15</sup> Block, “Evictionism: the only compromise solution to the abortion controversy”, op. cit., 62.

<sup>16</sup> Ibidem.



But it is even worse. What if we add to our scenario that *B* used *A* not only as a missile, but also, previously, as a shield? To uphold (NH) would be then, in the context of this situation, tantamount to sending the following message to criminals like *B*: “Remember! Before capturing *A*, throw some stones at *C* first! This is because by doing this, you will make him “first in time, first in wrong”, and, thus, unable to fight back. He won’t shoot you through *A*, (NH) condemns it!”. This is, however, again, hard to accept. I conclude, therefore, that for the two reasons mentioned, it would be better to reject (NH).

## Conclusion

Two libertarian theories – evictionism and negative homesteading – cannot both be true simultaneously: this is the main thesis of this article. The second is that negative homesteading faces internal problems, as demonstrated by the argument above. We can use this latter fact to resolve the previously mentioned contradiction. However, if Block wants to defend both of his theories instead of one, he must not only demonstrate that no contradiction exists there at all, but also counter the independent argument against (NH).

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