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Rejoinder to Wąsiak on Eviction and Negative Homesteading

Abstract: Wąsiak (2025) sharply criticizes one of my theories – that having to do with negative homesteading. He offers two sets of arguments. One, that negative homesteading is erroneous and incompatible with the libertarian philosophy we both share. Two, even if negative homesteading were valid on its own, it would still be incompatible with yet another hypothesis I have concocted, namely, evictionism, a compromise position between the pro-life and the pro-choice perspectives on abortion. In my rejoinder I maintain that although he has launched brilliant and incisive points in support of his claims, my two theories, negative homesteading and evictionism, remain valid and unscathed, albeit subject to important criticisms.

Keywords: negative homesteading, evictionism, logical consistency, libertarianism

Introduction

The thesis of Wąsiak is that my views on evictionism and negative homesteading are logically incompatible with one another, and that the latter must be rejected apart from that, since it violates libertarian law.

What is negative homesteading (NH)? We all know what positive homesteading is. The first person to mix his labor with land or other unowned resources becomes the owner of it. Under NH, you also own misery, if you are the first to have it visited upon you, and you may not pass it off to other innocent people. For example, if you have the means to transfer an otherwise killing lightning bolt onto such others, you have no right to do so.

Wąsiak¹ starts off his splendid essay with not only a very accurate² rendition of my theory of evictionism,³ but a beautifully stated rendition of it. I am envious of him on this accomplishment of his. He describes my own theory of evictionism more thoroughly, sympathetically and empathically than I have ever done.

To be brief, this theory states that human life begins with the fertilized egg, but that the unwanted fetus, even as the product of voluntary sexual intercourse, is a trespasser. Owners have the right to remove squatters from their premises, but not to kill them, certainly not if they are entirely innocent. The pregnant woman is a self-owner. Therefore, she has the right to evict, but not kill, this small person, any time during her pregnancy. If she does so during the first two trimesters, the result will be similar to that of pro-choice: the baby will die. If during the third trimester, the pro-life result will ensue: the young human being will live.

I have but two whining minor complaints about his characterization of my eviction theory. First, he uses the word “it” to describe the fetus.⁴ In my view, in contrast, human life begins with the fertilized egg; therefore, the proper pronoun⁵ is “he” or “she”. Second, Wąsiak states that evictionism is an attempt “to reconcile two extreme and mutually opposed positions, commonly referred to as *pro-life* and *pro-choice*”. This is not entirely accurate. I do not want to reconcile these two perspectives. I want to show that both are fallacious.

¹ Kacper Wąsiak, “Evictionism and Negative Homesteading”, *Studia z Historii Filozofii* 16(1): 119–127. All of my comments about him will refer only to this one paper of his.

² This is rare. All too often, it is entirely misunderstood, despite my best efforts at clarity

³ It is a principled compromise between the pro-life and pro-choice views on abortion.

⁴ I cannot be too critical of him for this since I have also, often, erred on this matter. I have to try to write more consistently with my own theory.

⁵ Hey, I have to establish my “street cred” as a woke progressive, who is adamant as they, them should be about proper pronoun use and personal descriptions of people!

Other than that, his is a splendid introduction.⁶ I follow his organizational pattern. In the next section, I address the compatibility of two theories. Then, I turn to a discussion of the argument against NH. I close with some brief concluding remarks.

The compatibility of two theories

My critic starts off in this manner:

[...] We can formulate our argument simply as follows:⁷

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.

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.⁸

There is a disanalogy here. Let us consider the hand grenade case offered by our author. Jones throws a hand grenade at Black's house. According to NH, Black may not then throw it into Smith's house. But that does not mean that he cannot get rid of this munition, if there is an alternative other than imposing on an innocent person, such as Smith. However, suppose Green is a murderer, unjustly escaping capture. Surely Black may, under libertarian law toss this explosive at Green. Or, posit that Black has the option of throw-

⁶ I cannot neglect to express my appreciation for the numerous compliments he makes about my contribution to libertarian theory.

⁷ (E) stands for evictionism, (NH) for negative homesteading, (S) for the situation in which the pregnant woman finds herself who wishes for an eviction of her baby.

⁸ Ibidem, 122–123.

ing this munition onto a completely unowned piece of property where it will do no one any harm. Does NH preclude him from so doing? Of course not.

Wąsiak has offered a highly accurate and beautifully stated summary of NH. But when push comes to shove, when he applies it to a real world (hypothetical) example, he misconstrues it. NH does not prohibit victims of misery from ridding themselves of it; this law only mandates that they may not use it to destroy innocent people or their property with it.⁹ They must only keep it to themselves if their only option is to waylay an innocent person with it. I go further. If Black kills Green with the grenade, Black is a murderer. But suppose Black throws this munition at Green's house, and only breaks the latter's window. Is Black, then, a criminal? No, a tort-feasor. He should be held legally responsible for the damages he thereby causes.

Perhaps an even more serious deficiency of my colleague's analysis is the disanalogy between this weapon, whether grenade or lightning bolt, and a preborn baby. No, the woman may not have an eviction, or an abortion, and then take the infant and throw it at innocent person, injuring the latter. If that is what is contemplated, then, yes, indeed, there is a contradiction between evictionism and NH. But evictionism, surely, has nothing to do with using fetuses as missiles and attacking innocent people with them.¹⁰

Let me try again. This is a very complicated issue, and, perhaps, approaching it from a different angle will help clarify matters. Lightning strikes a woman, unfortunately. It has a powerful enough jolt of electricity to kill her. However, happily, she has a magic wand which enables her to transfer this negative force elsewhere. According to NH theory, she may not transmit it to any other *innocent* person. She was the first homesteader of this negativity, and she must keep it to herself. In similar manner, regarding more traditional positive homesteading theory, if she were the first to "mix her labor with" land, or a wild cow, that is, find and domesticate this animal, or pick up an unowned diamond, she would be the rightful owner of it. Well, now, she

⁹ Let me rephrase that. The victim of the lightning, if he saves himself by disposing it onto his innocent neighbor's property, must pay damages to him. I see this as a tort, not a crime. It is only criminal if he kills, murders, an innocent person with this lightning bolt aimed at himself.

¹⁰ In Heinlein's *The Moon is a Harsh Mistress* (Berkley Medallion, 1966), mooniac women did just that in their war against the evil earthlings.

is the “rightful owner” of this lightning strike. Must she keep it to herself according to the NH hypothesis?

We have already seen she may not properly inflict another innocent person with this deadly force; that would be murder on her part. But is there no other option? There are three that I can think of. First, if Hitler, Stalin, Mao or Pol Pot were handy and convenient, she could kill them with “her” lightning; they all well deserve to die as mass murderers. Secondly, if her magic wand allowed this, she could kill her own cow with this lightning. Third, if there were a masochist in the neighborhood who would welcome this death ray, or a person on the verge of committing suicide and would welcome death from this source, that would be yet another proper target for this lightning with which she is burdened.

Let us now consider the next case. This woman is burdened with an unwanted baby, perhaps due to a rape having been perpetrated upon her. According to NH, just as in the case of lightning, she may not compel any other innocent person to accept this pre-born child. Wąsiak argues that, therefore, evictionism is incompatible with NH since evictionism maintains she has a right to rid herself of this very young human being. His error lies in equating ridding oneself of an infant via eviction, with passing on lightning bolts to innocent people. They are not at all the same. The analogy between them is exceedingly weak.

To be sure, there are some similarities, which have led Wąsiak to his error. In both cases, the woman is ridding herself of an unwanted entity; a baby or a lightning bolt. But there is all the world of difference between the two, so the analogy fails. True, she may not legally thrust her fetus at or onto an unwilling innocent person, so there, again, is a tiny, teeny bit of an analogy. That, however, is where it ends. She has many other options. Not so much to entrust her baby to a cow, or to the likes of a mass murderer, but the masochist or suicidal person is apropos, in that both might welcome the lightning. Well, who would welcome the unwanted young child? There are several options: a hospital, an orphanage, another woman or couple who would want to adopt this baby.

I have been writing about evictionism for years. My first publication on this topic appeared in 1977.¹¹ How has the world greeted this compromise alternative to the pro-life and pro-choice positions? With almost total silence in terms of the mainstream media. There have been numerous spread out criticisms of it, for which I am very grateful. But there has been no such concentrated focus on the top as with this special issue of the *Studia z Historii Filozofii*; matters might now change. If so, perhaps evictionism will finally garner the attention I think it deserves.

¹¹ Here is part of the list: 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) (1978): 18–25; Walter E. Block, "Stem Cell Research: The Libertarian Compromise", LewRockwell Archive, September 3, 2001, <http://archive.lewrockwell.com/block/block5.html>; Walter E. Block, "Libertarianism, Positive Obligations and Property Abandonment: Children's Rights", *International Journal of Social Economics* 31(3) (2004): 275–286; Walter E. Block, "Objections to the Libertarian Stem Cell Compromise", *Libertarian Papers* 2(34) (2010): 1–12; Walter E. Block, "Rejoinder to Wisniewski on Abortion", *Libertarian Papers* 32(2) (2010): 1–9; Walter E. Block, "Response to Wisniewski on Abortion, Round Three", *Libertarian Papers* 3 (art. 37) (2011): 1–21; Walter E. Block, "Terri Schiavo: A Libertarian Analysis", *Journal of Libertarian Studies* 22 (2011): 527–536; Walter E. Block, "Evictionism is libertarian; departurism is not: critical comment on Parr", *Libertarian Papers* 3 (art. 36) (2011): 1–15; Walter E. Block, "The Human Body Shield", *Journal of Libertarian Studies* 22(1) (2011): 625–630; Walter E. Block, "A Not So Funny Thing Happened to Me in Tampa", LewRockwell Archive, August 30, 2012, <http://archive.lewrockwell.com/block/block208.html>; Walter E. Block, "Toward a Libertarian Theory of Evictionism", *Journal of Family and Economic Issues* 35(2) (2013): 290–294; Walter E. Block, "Rejoinder to Parr on Evictionism and Departurism", *Journal of Peace, Prosperity & Freedom* 2 (2013): 125–138; Walter E. Block, "Should Abortion Be Criminalized? Rejoinder to Akers, Davies and Shaffer on Abortion", *Management Education Science Technology 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, "Toward a Libertarian Theory of Evictionism", *Journal of Family Economics* 35(2) (2014): 290–294; Walter E. Block, "Abortion Once Again; a Response to Feser, Goodwin, Mosquito, Sadowsky, Vance and Watkins", *Journal of Constitutional Research* 4(1) (2017): 11–41; Walter E. Block, *Evictionism: The Compromise Solution to the Pro-Life Pro-Choice Debate Controversy* (Springer Publishing Company, 2021); Walter E. Block, "Evictionism: the Only Compromise Solution to the Abortion Controversy", *Studia z Historii Filozofii* 15(1) (2024): 57–66; Walter E. Block, Roy Whitehead, "Compromising the Uncompromisable: A Private Property Rights Approach to Resolving the Abortion Controversy", *Appalachian Law Review* 4(2) (2005): 1–45; Robert W. McGee, Walter E. Block, "On Abortion: Utilitarianism and Deontology", *Southern University Law Review* 50 (2022): 10–24.

In order that there be absolutely no miscommunication, I take the liberty of reprinting Wąsiak's elegant way of putting the claim of my supposed logical inconsistency:

- 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.
- 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.¹²

Where do he and I diverge in this exercise of logic? I have no problem with any of the four points with the exception of P4. This woman, contrary to P4, may certainly evict her pre-born child at any time during the nine months; the only restriction I would place on her is that if she does so in the third semester, she must do so in the gentlest manner possible. Thus, she may not use this baby as a weapon, as a missile, to attack innocent people. On the other hand, she is perfectly free, insofar as my understanding of libertarian law is concerned, to evict this youngster and place him with an orphanage or in the care of another woman or couple who want to adopt him.

Our author is quite right to focus virtually all of his attention upon P4. He states:¹³

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”, while simultaneously maintaining that “human” and “person” are synonymous. Second, is the fetus in *S innocent*, as required by the definition of (NH)? “All fetuses are innocent, and

¹² Wąsiak, “Evictionism and Negative Homesteading”, 122–123.

¹³ Footnotes removed in all such quotes of this author.

equally so”, states our author, often referring to even an unwanted fetus as an “*innocent trespasser*” or “*innocent baby*” (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 misfortune 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.¹⁴

I sit back in wonder at this clever, brilliant, exquisite attempt to demonstrate a contradiction between evictionism and negative homesteading. I am in awe of it. I never before thought of this issue, and I have been involved in these two hypotheses longer than anyone else, since I created them both. However, I perceive a small flaw in this otherwise incisive thinking of Wąsiak’s. The fetus is a trespasser. It is no violation of NH to engage in self defense. The pregnant mother may not pass on her misery to any innocent person, but the fetus is not innocent. He is a trespasser.

Let us delve more fully and carefully into this innocence business. Does the fetus have any *mens rea*? Of course not. On the other hand, it cannot be denied that he is occupying someone else’s property, that of his mother. He is a trespasser, albeit, of course, an innocent one. If and when his mother evicts him during the first two semesters, and he necessarily perishes, given today’s level of medical technology, is she passing off a lightning bolt to an innocent person? That is Wąsiak’s contention. The way I see matters in sharp contrast

¹⁴ Ibidem, 123–124.

is that she is not doing any such thing. Instead, she is defending her own private property rights, her body, from attack, from an (innocent) invader.

My point is that there is a disanalogy big enough to drive a large truck through. Between what she does when she passes on the lightning bolt to a totally innocent person who is not in the slightest violating her rights, he is a total stranger to her, and what she does when she passes on her analogous misery to her son by ridding herself of him, is a gargantuan gap. In the lightning case, there is a rights violation on the part of the woman. In the eviction case, there is none; she is acting, instead, on the basis of defense against the violation of her private property rights, a squatter inside of her very body. This disanalogy undermines my learned colleague's claim of a logical contradiction between negative homesteading and evictionism.

Wąsiak continues his intriguing and very challenging analysis: "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".¹⁵

My response is that there is all the world of difference between the totally innocent recipient of the lightning bolt and the baby. Yes, the latter, is innocent, too, of any *mens rea*. However, it cannot be denied that the preborn infant is an (inadvertent, blameless) person *guilty* of trespassing. Thus, Wąsiak's otherwise insightful analogy breaks down.

This author introduces a possible objection to his own viewpoint:

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.¹⁶

¹⁵ Ibidem, 124.

¹⁶ Ibidem.

I entirely agree with the masterful manner in which he dismisses this possible objection. There is no such thing, at least not in the libertarian philosophy, as an “ordering of rights”. Where, for instance, two people each have rights, but they clash, and one of these rights is more important than of the other. In the libertarian philosophy, rights cannot clash. If they appear to do so, then one or perhaps both are invalid or mis-specified.¹⁷

I must again part company with my colleague when he asserts:

[...] 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.¹⁸

I have said it is legitimate for the initial homesteader of the misery to pawn it off onto a tree or a cow that one owns, or a mass murderer who, we stipulate, *arguendo*, deserves death. Here, Wąsiak mentions someone in a fourth category, a person who is “not welcome” on the property of the negative homesteader.

Well, exactly, to what degree is this individual not welcome? If only slightly, then it would be highly improper for her to transfer her lightning or grenade misery onto him. However, suppose he is brandishing a big stick, and is threatening her with it. May she then blast him with her miserably homesteaded lightning bolt? He is not guilty of mass murder. He is not even guilty, yet, of a single murder, of herself. Let us posit he only wants to hit her. The point I am making here is that our eminent philosopher is here treading on the dangerous shoals of the continuum problem.¹⁹ Just how serious of a threat

¹⁷ Walter E. Block, “Can rights clash? No.”, *Instituto Juan de Mariana*. <https://juandemariana.org/ijm-actualidad/analisis-diario/can-rights-clash/>

¹⁸ Wąsiak, “Evictionism and Negative Homesteading”, 125.

¹⁹ If you go to bed with a 5 year old girl, you are a statutory rapist; to do so with a 25 year old woman who agrees, then, not. But where do you draw the line? There is no specific age

on his part would justify her killing him with her miserable electricity? All I can say is that if this threat is serious enough, she may transmit her “misery” to him, thus killing him, and if not, then not.²⁰

The Argument Against NH

I could not agree more with this astute scholar when he writes: negative homesteading has largely been overlooked by critics.

And not only by critics. By supporters too. It is a long line of people who have never even heard of this viewpoint. Thanks to the very welcome efforts of my esteemed debating partner, this will be less so in future.

What, then, is his argument against NH, apart from his claim that it is logically incompatible with evictionism? He starts off with my views on 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:

- (t₁) *B*, for some unspecified reason, intends to kill *C*.
- (t₂) 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.
- (t₃) *C* has a gun but decides to flee.
- (t₄) After several throws, *B* runs out of stones.
- (t₅) *C* remains alive, but wounded and unable to flee further.
- (t₆) *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.

number that can be logically drawn from the libertarian principles of non-aggression and private property rights. For more on this see: Walter E. Block, William Barnett, “Continuums”, *Journal Etica e Politica / Ethics & Politics* 1 (2008): 151–166.

²⁰ I am extremely grateful to Kacper for pushing me around in this manner. He has compelled me to dig deeper than ever before into the logical implications of my negative homesteading theory. Without him, I would still have a far more superficial understanding of it than, I hope, is now the case.

According to (NH), in the scenario described above – more precisely: after the occurrence of (t_0) – *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?²¹

No, no, no. This is too clever by half. There are two separate acts involved here. Neither one has anything to do with the other. First *B* is throwing rocks at *C*. Second, *B* is hurling a human missile at *C*. Wąsiak's criticism depends, entirely, upon these two acts being just one. But this is clearly not the case. Our author offers no justification for considering them together, as part of one single act. He does not even realize that it is his obligation to do so, if his criticism is to succeed.

Whereupon, he tries once again. Wąsiak now avers: "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 bethen, 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)".

But this, again, fails, and for the same reason. There are two separate acts here, not one. Therefore, the criticism misses its target, once again.

One last word on NH. Is it legally permissible to duck? *A*, *B* and *C* are standing in a row.²² *A* shoots at *B*. *B* ducks. *A*'s bullet kills *C*. We know that *A* is a murderer; he killed a person at whom he was not aiming. But is *B* guilty of violating the NH stricture? No. *B* had no real misery. We won't count his pos-

²¹ Wąsiak, "Evictionism and Negative Homesteading", 126.

²² I owe this example to C. Leary.

sibly scraped knee from falling to the ground.²³ He was otherwise unharmed. So, *B* did not deflect any misery that he properly homesteaded onto *C*. However, suppose, now, that *A*'s bullet pierced *B*'s heart, and the latter was about to die from a gunshot wound. But *B* somehow has the ability, don't ask, to remove the bullet from his own heart and stick it into the heart of *C*, killing the latter. Does *B* have the right to do that? Not according to NH. What about *B* using his magic powers to transmit the killing bullet to *A*, the murderer. That would be entirely compatible with NH, since *A* is hardly an innocent person.

Conclusion

Kacper Wąsiak has taken me for a roller coaster of a ride. I am very grateful to him for pushing me around, intellectually. Thanks to him, I now have a better understanding of my own two theories. Yet, I must conclude, NH is still valid, and is not logically incompatible with evictionism, which he does not call into question. Nor is this view of abortion inconsistent with the libertarian philosophy which we both share. Well, at least, maybe, this magnificent scholar supports evictionism. One out of two isn't too bad. I'm batting .500 with him!

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²³ That is too minor an injury to count, for present purposes. If there are objections to this, we can always assume he ducked unharmed.

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