



WALTER BLOCK vs JAKUB BOZYDAR WISNIEWSKI DEBATING ABORTION: A SUMMARY

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Abstract

Without a doubt, one of the most controversial issues currently being debated is abortion. Several decades ago, philosopher and economist Walter Block offered a compromise of the seemingly uncompromisable problem based on libertarian principles, which he called “evictionism.” Evictionism is based on the theory of self-ownership and the implications that follow, which are the “non-aggression principle” and private property rights. It is a principled compromise between the traditional pro-life and pro-choice positions. According to evictionism, it would not be illegal for a pregnant woman to evict a fetus at any time for any reason because she is the one who owns her womb, but it would be illegal for her to kill the fetus unnecessarily once it’s viable. This means that before viability, an eviction that necessarily results in the death of the fetus would be legal. After viability, however, an eviction that unnecessarily results in the death of a fetus would be considered murder and consequently illegal. Unfortunately, though, very few people have heard of this compromise. What’s worse of those who have heard of it, even fewer have been convinced by it. Consequently, there have been several written debates between Block and his critics about their perceived problems with his proposed compromise. The purpose of this paper is to provide a detailed summary of one of the first main debates that Block has had on the topic.

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

1 INTRODUCTION

One of the first debates that Walter Block had defending evictionism was with libertarian theorist Jakub Bozydar Wisniewski starting back in 2010 and ending in 2014. In total, their debate lasted

four rounds (eight papers total -- four from Wisniewski and four from Block).¹

2 PAPER 1 (WISNIEWSKI, 2010A)

The first paper, titled “A Critique of Block on Abortion and Child Abandonment,” was published by Wisniewski (2010a). He began the paper by attempting to summarize Block’s position on the matter. First, he claimed that Block believes “a

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¹ See Block, 2010, 2011a, 2011b, 2014; Wisniewski, 2010a, 2010b, 2011, 2013.

fetus can be aborted only if it is not killed as a result” (Wisniewski, 2010a, p. 1). Second, he asserted that Block “claims to derive such a conclusion from the libertarian axiom of non-aggression, which prohibits harming other human beings” (Wisniewski, 2010a, p. 1). Third, he stated that Block “contends that the only valid reason for obliging the mother to carry out the pregnancy could stem from the existence of a relevant positive right (e.g., fetus’s right to life), which is a notion incompatible with libertarian ethics” (Wisniewski, 2010a, p. 1). And finally, he added that Block thinks “one should not be thought of as responsible for what happens to the trespasser after he is evicted” (Wisniewski, 2010a, p. 1).

After attempting to summarize Block’s position, he asked, “why (then) should the moral evaluation of the act of eviction depend on what eviction options are available and on which of them is applied to the trespasser?” (Wisniewski, 2010a, p. 1). Instead of stopping here, however, Wisniewski set this question aside and focused on the harder pro-life case against evictionism, which is that “even in those cases where there are no non-lethal eviction options available, aborting the fetus should count as murder” (Wisniewski, 2010a, p. 2).

To explain why evicting when there are no non-lethal options should still be considered murder, he referenced a thought experiment involving an invitation onto an airplane that Block proposed in his paper “Toward a Libertarian Theory of Abortion” (Block, 1977). Wisniewski argued that a mother “inviting” a fetus into her womb and then expelling it out into certain death before it being viable is similar to a scenario where “X gets Y drunk to the point of the latter’s passing out and drags him onboard the plane, and then, as soon as Y regains consciousness, asks him to jump out” (Wisniewski, 2010a, p. 2).

Wisniewski then concluded that in cases of voluntary intercourse, the mother would be “guilty of violating the libertarian axiom of non-aggression” if she evicted the fetus inside her womb because that “the libertarian principle of the non-initiation of force trumps the right to evict trespassers from our property if it is us who are responsible for making someone a ‘trespasser’ in the first place” (Wisniewski, 2010a, pp. 2-3). He

also added that the same reasoning would apply to Block’s theory of child abandonment.

3 PAPER 2 (BLOCK, 2010)

The second paper, titled “Rejoinder to Wisniewski on Abortion,” was published by Block (2010). He began the paper by addressing Wisniewski’s multiple mischaracterizations of his position. Regarding the first claim about believing “a fetus can be aborted only if it is not killed as a result” (Wisniewski, 2010a, p. 1), Block mentioned that the word “can” should be replaced with “may” (so that it reads, “a fetus *may* be aborted only if it is not killed as a result”) to move the conversation into the realm of ethics and legality rather than science (Block, 2010, p. 1).

According to Block, though, the statement would still be problematic even if “can” was replaced with “may” because abortion is “eviction plus killing,” which means that if a fetus is aborted, it must necessarily have been killed (Block, 2010, p. 1). Basically, by saying this, Block was pointing out that Wisniewski did not apparently understand his distinction between “abortion,” which is the removal of a fetus (eviction) plus killing, and “eviction,” which is just the removal of the fetus. Consequently, Wisniewski essentially claimed that Block believes that a fetus can be removed and killed only if it is not killed as a result, which is clearly contradictory and nonsensical. A better paraphrasing of Block’s position would have been “a fetus can be aborted only if it is not viable” or “a fetus can be *evicted* at any time but cannot be evicted and then killed once it’s viable.”

Regarding the second claim about deriving such a claim from the “libertarian axiom of non-aggression, which prohibits harming other human beings” (Wisniewski, 2010a, p. 1), Block argued that this was also problematic because “harm” is not prohibited by the non-aggression principle (NAP) (Block, 2010, p. 2). To clarify why harm isn’t necessarily prohibited by the NAP, he gave two examples. In one example, he brought up a situation where someone opens a store next to another person and “steals” half of someone else’s business, thus “harming” that person in the process (Block, 2010, p. 2). In the second example, he mentioned a situation where someone “steals” the fiancé of another person, which again, could be considered harm against

the person who lost his fiancé (Block, 2010, p. 2). As explained by Block, though, neither of these things are initiations of aggression and, therefore, not illicit under libertarian law (Block, 2010, p. 2). This means that only certain types of harm, specifically the initiation of physical violence or the imminent threat thereof, are prohibited by the NAP.

Regarding the third claim about contending that “the only valid reason for obliging the mother to carry out the pregnancy could stem from the existence of a relevant positive right (e.g., fetus’s right to life), which is a notion incompatible with libertarian ethics” (Wisniewski, 2010a, p. 1), Block pointed out that there could be another possibility that doesn’t involve positive rights (Block, 2010, p. 2). Specifically, Block mentioned that a woman could sign a contract to become a surrogate mother, which would mean that she’d have a contractual obligation to carry out the pregnancy (Block, 2010, p. 2).

Regarding the fourth and final claim about thinking that “one should not be thought of as responsible for what happens to the trespasser after he is evicted” (Wisniewski, 2010a, p. 1). Block argued that he never said any such thing (Block, 2010, p. 3). After addressing these four mischaracterizations, Block then focused on Wisniewski’s question about why the moral evaluation of the act of eviction should depend on what eviction options are available and on which of them is applied to the trespasser. According to Block, it is because of “a basic axiom of libertarianism” recognizing that “non-criminals are to be treated in the ‘gentlest manner possible” (Block, 2010, p. 3). To clarify, Block used the example of someone inadvertently setting foot on another person’s lawn and claimed that the response consistent with libertarianism would be notifying them of their misstep and then asking them to cease and desist, at which point if they don’t it would be justified to escalate violence up to, and including deadly force, if necessary (Block, 2010, pp. 3-4).

It would be inconsistent with libertarianism (murder), however, for someone to just blow the trespasser away with a bazooka without any warning, according to Block (Block, 2010, p. 4). Similarly, it would be inconsistent with

libertarianism (murder) for someone to kill a fetus during the removal process if doing so is not necessary. Although Block didn’t seem to make this clear in his response, it should also be noted that evictionism has to do with legality, not morality. So, properly understood, Block’s answer has to do with why the *legal*, not moral, evaluation of an act of eviction should depend on what eviction options are available and on which of them is applied to the trespasser. Morally speaking, Block has made it clear that he is a pro-life person and believes that abortion is immoral and abominable (Block, 2005, pp. 14-15; 2014, pp. 3-4). Just because something is immoral, however, doesn’t mean it should also be illegal, which is a point he has made repeatedly.

Block then addressed Wisniewski’s claim that “even in those cases where there are no non-lethal eviction options available, aborting the fetus should count as murder” (Wisniewski, 2010a, p. 2). and his example with X getting Y drunk to the point of passing out and then taking that person on a plane only to later kick out while in mid-flight (Block, 2010, p. 4). According to Block, there is “a fatal disanalogy” (Block, 2010, p. 4). Specifically, he argued that “in no manner, shape or form can X’s kidnapping of Y, and then placing the latter on the airplane to subsequently throw him off, be construed as an improvement in Y’s welfare. Rather, the very reverse” (Block, 2010, p. 4).

He then added, “further, to carry out this despicable deed, X had to violate the libertarian non-aggression principle (NAP). In contrast, in very sharp contrast indeed, merely becoming pregnant does not at all constitute a per se violation of the NAP. And, as well, a pregnant woman improves the fetus’ position, certainly not Y’s” (Block, 2010, pp. 4-5). Basically, by saying this, Block clarified two things. First, he made it clear that conceiving a child is not in and of itself a rights violation (if it were, then getting pregnant would be a criminal act). Second, he pointed out that taking someone onto an airplane is a “worsening” of their condition (compared to when they were on land) while conceiving a child and bringing them into existence is an “improvement” of their condition (compared to not existing at all).

Next, Block attempted to reduce Wisniewski’s claim that “the libertarian principle of the non-

initiation of force trumps the right to evict trespassers from our property if it is us who are responsible for making someone a ‘trespasser’ in the first place” (Wisniewski, 2010a, p. 2) to absurdity. He did so by bringing up a scenario involving a deadly storm (Block, 2010a, p. 6). Specifically, he mentioned that using Wisniewski’s reasoning, if he invited Wisniewski into his home to feed him and protect him from a deadly storm, thus making him a trespasser, he would be guilty of murder if he decided to disinvite Wisniewski (ask him to leave) before the storm (which could last one day, month, nine months, one year, five years, ten years, etc.) passed (Block, 2010a, p. 6). He pointed out that this would be although he helped extend his life during the time that he let Wisniewski stay in his home when he would have otherwise died (Block, 2010a, p. 6).

Consequently, Block argued that Wisniewski’s theory “is not a libertarian one” because it “imposes positive obligations” upon others (Block, 2010a, p. 6). He also mentioned that it “can open Pandora’s box our friends on the left, and the right too, are so anxious to open” and be used to justify things like welfare rights and healthcare rights (Block, 2010a, p. 6).

Toward the end of his response, he made sure to also point out the absurdity of Wisniewski’s theory by stating that using his reasoning, a mother who commits suicide while pregnant would be considered a murderer (Block, 2010a, pp. 6-7). Before concluding, Block addressed Wisniewski’s similar criticism regarding his theory of child abandonment (which has to do with parents taking care of their progeny until they can survive on their own outside of the household to be morally upstanding) by attempting to reduce it to absurdity as well (Block, 2010a, p. 7). He did so by pointing out that in a hypothetical situation where parents give birth to a mentally handicapped son and then predecease the child before successfully making provisions for him to be cared for after death (resulting in the handicapped child’s death), Wisniewski’s position would view the parents as immoral murders. According to Block, however, such a view is absurd because the parents’ failure to find someone to care for the child cannot possibly be a violation of the NAP (Block, 2010a, p. 7).

4 PAPER 3 (WISNIEWSKI, 2010B)

The third paper, titled “Rejoinder to Block’s Defense of Evictionism,” was published by Wisniewski in 2010 as well (Wisniewski, 2010b). He began the paper by acknowledging and conceding to each of the “semantic” and “terminological” issues that Block brought up at the start of his first reply (Wisniewski, 2010b, p. 1). He then focused on Block’s “principle of gentleness” and claimed that it seems to boil down to the “commonsensical principle of proportionality” (Wisniewski, 2010b, p. 2) which is the idea, according to philosopher Murray Rothbard, that “the severity of reactions must be proportionate to the moral turpitude of actions” (Rothbard, 1998, pp. 80-81).

Wisniewski, however, argued that while the principle of proportionality may explain why it would be inconsistent with libertarian principles to evict and kill (abort) a fetus when non-lethal eviction options exist, the principle also “fatally damages” the pro-choice aspects of evictionism when it comes to removing a fetus from the womb when there are not any non-lethal ways of evicting the fetus available (Wisniewski, 2010b, p. 2). Specifically, Wisniewski mentioned that “barring the scenarios in which carrying the fetus to term threatens the life of the mother, abortion (i.e., lethal eviction) involves the amount of physical harm done to the fetus that is grossly disproportionate to the amount of physical harm that the fetus can possibly do to the mother” (Wisniewski, 2010b, p. 2). To clarify, he added, “it is tantamount precisely to blowing the trespasser away with a bazooka when there exist no other ways of removing him from one’s lawn. Hence, invoking the principle of gentleness allows Block to avoid one problem only to be confronted with an even more serious one” (Wisniewski, 2010b, pp. 2-3).

Next, Wisniewski accused Block of either overlooking or misunderstanding some of the “crucial elements” of the airplane example he brought up earlier and offered two reasons why it was not disanalogous (Wisniewski, 2010b, p. 3). Regarding the first reason why the airplane example is not disanalogous to the termination of a pregnancy, Wisniewski claimed that X dragging person Y onboard cannot be interpreted as a kidnapping because they never had an explicit or

implicit contract with each other. To make his point clearer, he said that X and Y could be thought of as “drinking buddies who accept the rule whereby the one who stays conscious longer can play pranks on the other” (Wisniewski, 2010b, p. 3). In this sense, argued Wisniewski, waking up “onboard the plane not only does not in any sense decrease Y’s welfare” (Wisniewski, 2010b, p. 3). He also added that it “might even improve it to the extent that he might enjoy being a ‘victim’ in a game of pranks that he voluntarily decided to take part in” (Wisniewski, 2010b, p. 3). Regarding the second reason why the airplane example is not disanalogous to the termination of a pregnancy, Wisniewski asserted that there is “no necessary causal connection between dragging Y onboard the plane and deciding to throw him out” just like there is “no necessary causal connection between getting pregnant and deciding to abort” (Wisniewski, 2010b, p. 3). He then clarified this by pointing out that “the future is as uncertain for Y as it is for the fetus” (Wisniewski, 2010b, p. 3).

After insisting that his airplane example was not disanalogous to pregnancy, Wisniewski then addressed Block’s deadly storm example that he used as a refutation of the idea that “the libertarian principle of the non-initiation of force trumps the right to evict trespassers from our property if it is us who are responsible for making someone a ‘trespasser’ in the first place” (Wisniewski, 2010a, pp. 2-3). He did so by claiming that Block failed to offer a logical justification for his “contention that welfare or health care rights can be equated with the right not to be evicted from one’s property if one did not break the pre-agreed rules of hospitality” (Wisniewski, 2010b, p. 4). Wisniewski added that such an equation could only really be made “if A were under a positive obligation to invite B to his house in the first place” but that he “never asserted the existence of any such obligation” in his previous paper (Wisniewski, 2010b, p. 4).

He then pointed out that his pro-life theory is “in full agreement with the libertarian principle of *pacta sunt servanda*, which is the idea that agreements must be kept but mentioned that the exact details of what kinds of obligations an individual takes on when they invite someone else into their home depends on the context and local customs of society (Wisniewski, 2010b, p. 4). According to Wisniewski, if it were customary for

someone to not overstay their welcome no matter the external circumstances, then it would be permissible to remove someone who they invited inside without having to wait for the deadly storm to pass (Wisniewski, 2010b, p. 4). If, however, the opposite was true, then such an invitation into one’s home to escape a deadly storm, if accepted, would burden the person making the invitation with the positive obligation to be the other person’s host for as long as the storm persists (Wisniewski, 2010b, p. 4).

Wisniewski then pointed out that while some may argue that abortion, then, is just a matter of custom, this is not the case because a fetus cannot make a choice to be involved in any kind of customs (Wisniewski, 2010b, p. 5). To clarify, he mentioned that getting pregnant and then evicting the fetus would be more like someone forcibly dragging another person into their home rather than inviting them inside, which means that the mother’s treatment of the fetus must be assessed “independent of any customs and conventions that the mother might subscribe to” (Wisniewski, 2010b, p. 5). After clearing this up, he then reiterated that “evicting the fetus to its death still counts as murder” except for “cases in which carrying the fetus to term threatens the life of the mother, due to the principle of proportionality” (Wisniewski, 2010b, p. 5).

Toward the end of his response, Wisniewski accepted that his theory would mean a mother who commits suicide while pregnant should be considered a murderer because she would have been the ultimate cause of their “guests” death and claimed that he failed to see “why this should be an objection” to his theory (Wisniewski, 2010b, p. 5). He objected, however, to Block’s claim that parents dying before taking care of provisions for their handicapped son demonstrated the absurdity of his position because he argued that people who unintentionally cause the death of another person cannot be considered murderers (Wisniewski, 2010b, pp. 5-6). According to Wisniewski, the parents had every intention to care for the person (they weren’t trying to evict them) but their plans ended up being “frustrated by events outside their control”, which means they aren’t murderers if their child dies as a result of them dying first (if they tried and failed to ensure that their child would be cared for before their death) (Wisniewski, 2010b, p. 5). Before

concluding, Wisniewski turned his attention to Block's defense of his theory of child abandonment and argued that he failed to meet any of his criticisms (Wisniewski, 2010b, p. 6).

5 PAPER 4 (BLOCK, 2011A)

The fourth paper, titled "Response to Wisniewski on Abortion, Round Two," was published by Block (2011). He began the paper by noting that both he and Wisniewski were now in full agreement regarding the "semantic" and "terminological" issues that he had brought up (Block, 2011a, p. 2). Block then reviewed the role of gentleness in libertarian theory and pushed back against Wisniewski's attempt to use gentleness to object to evictionism (Block, 2011a, pp. 2-4). Specifically, he first clarified that gentleness and proportionality are technically different aspects of the law, which means that Wisniewski's apparent conflation of the two is a category mistake (Block, 2011a, p. 3).

Block then pointed out that if someone is charging at him with a knife, he would be justified in shooting him dead, but if the attacker is captured alive, it would be unjust to use the same amount of deadly force after the fact to punish the "attempted murderer" (Block, 2011a, p. 3). In other words, there's a difference between the amount of force that's justified when a rights violation is occurring (the gentlest necessary to stop the violation of the rights) and the amount of force that's justified after the fact (proportionate to the violation of the rights).

According to Block, the gentleness and proportionality principles are included in the law "so as to preclude the victim from acting so strongly against the perpetrator that the victim, too, violates the libertarian code" (Block, 2011a, p. 3). To clarify, he added, "if someone merely steps on my lawn and I kill him for that minor violation of property rights, I am violating the NAP, and, indeed, violating the NAP to a far greater extent than is the trespasser. Gentleness, here, precludes me from engaging in so monstrous a violation of the NAP. Similarly, to punish a rapist by putting him to death would also be a crime on the part of the court that leveled so draconian a penalty" (Block, 2011a, p. 3).

Block then reiterated that the victim is supposed to treat the perpetrator in the "gentlest manner

possible" only to the extent that it's fully compatible with stopping the crime (Block, 2011a, pp. 3-4). This means that if the gentlest force necessary to stop a crime is deadly force, then it would be justified to use such force. After making this point, he explained that Wisniewski "is not justified in claiming" (Block, 2011a, p. 4) that he "avoids one problem only to be confronted with an even more serious one" (Wisniewski, 2010b, p. 2-3). To underscore this, he clarified that while evicting a fetus before it's viable or blowing a trespasser away "with a bazooka when there exist no other ways of removing him from one's lawn" (Wisniewski, 2010b, p. 2-3) may be grossly disproportionate, it would still be justified if the eviction procedure/bazooka was the gentlest manner available to actually stop the violation of the rights (Block, 2011a, p. 4).

Next, Block turned his attention to the airplane analogy and the assertion by Wisniewski that he "either overlooked or misunderstood some of the crucial elements" (Wisniewski, 2010b, p. 3) of the example by pointing out that what actually happened was that Wisniewski "radically changed the scenario" because there was no mention in his previous response that the two individuals were drinking buddies who both accept the rule that whoever stays conscious the longest can then play pranks on the other person while they're passed out (Block, 2011a, p. 6). Block then clarified that regardless of whether they're drinking buddies or whether one person kidnapped the other, both are still not analogous to pregnancy because conceiving of a child is neither a voluntary rule between drinking buddies nor is it a rights violation (kidnapping) (Block, 2011a, p. 6).

After discussing the airplane example, Block proceeded to discuss welfare rights (Block, 2011a, p. 6-7). Specifically, he used an example of someone pushing someone from railroad tracks to save them from an oncoming train only to have them fall into a lake and start drowning and argued that just because he saved him once does not mean he's obligated to then save his life a second time (Block, 2011a, p. 6-7). He then pointed out how when it comes to pregnancy, a woman giving life to a fetus is like saving them from the train, which means that much like saving someone from a train only to push them in a lake doesn't obligate the rescuer to further action, the mother also does

not have an additional obligation placed on her to save the fetus a second time by allowing it to stay in her womb (Block, 2011a, p. 6-7).

Block then reduced Wisniewski's view to absurdity by pointing out that using such reasoning would essentially obligate someone who saves the life of another person to then follow them around and act as a sort of guardian angel (Block, 2011a, p. 6-7). Similarly, he pointed out that to be consistent, this reasoning would mean that a mother would not be obligated to care for the child in the womb, but for the entirety of its life, which means that predeceasing the child would mean she failed to live up to the positive obligations placed upon her (Block, 2011a, p. 6-7).

Following this, Block addressed Wisniewski's reliance on "the libertarian principle of *pacta sunt servanda*" by pointing out that while contractual agreements certainly must be kept (i.e., a woman who signs a contract to be a surrogate mother), the fetus did not exist during the time of intercourse and therefore could not have entered into any kind of contractual agreement (Block, 2011a, p. 8). He also reduced Wisniewski's attempt to use local customs to defend his claim about what kind of obligations one must follow through on to be consistent with the NAP to absurdity by referring to "suttee," which is a custom practiced in India where a widow would throw herself onto her husband's funeral pyre (Block, 2011a, pp. 9-10). Specifically, he pointed out that a woman who refuses to commit suicide by leaping into the fire would, quite absurdly, be considered a rights violator (acting inconsistent with the NAP) using Wisniewski's reasoning (Block, 2011a, pp. 9-10). He then pointed out that Wisniewski's claim about getting pregnant and then evicting the fetus being comparable to a person forcibly dragging someone else into their home is a "logical howler" because it would mean that a mother is worsening the welfare of her child when she gets pregnant rather than improving the child's welfare (Block, 2011a, pp. 9-10). In other words, Wisniewski basically equated conceiving a child with kidnapping.

Toward the end of his response, Block addressed Wisniewski's acknowledgment that his theory would mean a pregnant woman who commits suicide is a murderer by explaining that "it is simply incorrect to regard the pregnant woman

who commits suicide as a murderer" because she had no positive obligation to keep the fetus alive (Block, 2011a, p. 10). To clarify, he mentioned that she doesn't owe it anything, never made a contract with it, and during intercourse couldn't even make a promise anything because the fetus had yet to come into existence (Block, 2011a, pp. 10-11). Since the fetus had yet to come into existence during intercourse, Block also reiterated that the mother cannot even be said to have "invited" the fetus into her womb because, for there to be an invitation, there need to be two parties (Block, 2011a, pp. 10-11). Before concluding, Block emphasized that when it comes to evictionism, what matters is the principle, not the amount of time a fetus will be in the woman's womb. Specifically, he stated, "it matters not one whit how long a duration we are talking about" (Block, 2011a, p. 11). This is because "if the fetus [has] a positive right to squat on what would ordinarily be considered the mother's private property (her womb), then the nine months could be turned to nine or even ninety years, without any change in principle whatsoever," which would, as noted by Block earlier, open the door to all kinds of other welfare rights (Block, 2011a, p. 11).

6 PAPER 5 (WISNIEWSKI, 2011)

The fifth paper, titled "Response to Block on Abortion, Round Three," was published by Wisniewski in 2011 as well (Wisniewski, 2011). He began the paper by agreeing with Block that "for the purpose of theoretical tidiness it might be desirable to keep the distinction between the *ex-ante* principle of gentleness and the *ex-post* principle of punitive proportionality maximally clear and unambiguous" but then added that he would still regard them as similar "with respect to their substantive, moral essence" (Wisniewski, 2011, p. 1).

Wisniewski then addressed Block's claim about treating perpetrators in the "gentlest manner possible" only to the extent that it's fully compatible with stopping the crime by adding on another qualification about it only applying to cases where people do not commit an even greater crime by not being gentle (Wisniewski, 2011, pp. 1-2). To clarify, he stated, "it is one thing to be decisive or even brutal in evicting a recalcitrant trespasser from one's premises, but it is quite a different thing to deprive him of life.

Violating the property rights in one's life is always a greater contravention of the NAP than violating one's property rights in the land" (Wisniewski, 2011, p. 2).

To make his point even more clear, Wisniewski brought up a scenario where "X, while fleeing a gang of thugs, inadvertently wanders onto Y's property. As it happens, a mysterious force petrifies him there and makes him immobile and immovable (unless killed) for the period of 9 months" (Wisniewski, 2011, p. 2). According to Wisniewski, while Block would say someone would be justified in saying "tough luck!" and then "plugging the wretch," he would argue that "whilst X would certainly be liable for paying some form of compensation to Y for trespassing on the latter's property, Y could not possibly kill the unfortunate trespasser without grossly violating the element of proportionality built into the NAP" (Wisniewski, 2011, p. 2). He then mentioned that collecting compensation and renting another property of comparable market value would be the most the property owner would be justified in really doing (Wisniewski, 2011, p. 2).

Next, Wisniewski pushed back against Block's accusation that he "radically changed" (Block, 2011a, p. 6) the airplane example and claimed that dragging an unconscious person onto a plane only to then tell them to jump out when they regain consciousness is not coercive because the person did not force the other person to drink (Wisniewski, 2011, pp. 2-3). He also mentioned that an unconscious person cannot be "forced" to do anything, which means it's a category mistake to speak of an unconscious person as being forced to do something (Wisniewski, 2011, p. 3).

To underscore his point, Wisniewski brought up yet another scenario where "X escorts a benumbed Y out of a party, 'drags' him into his car and takes him to his (X's) home" (Wisniewski, 2011, p. 3). According to Wisniewski, such actions cannot be considered to be coercive kidnapping (Wisniewski, 2011, p. 3). Moreover, Wisniewski argued that if a deadly storm began when Y awoke in the other person's house, it would be unjustified for X to order Y to leave the premises because he is the "ultimate and necessary cause of Y ending up on his property" (Wisniewski, 2011, p. 3). For this reason, Wisniewski insisted that "Y cannot be considered a trespasser" and that "X

can be considered responsible for whatever happens to Y as a direct and immediate result of forcing him out of X' premises" (Wisniewski, 2011, p. 3).

Wisniewski then focused on Block's example of pushing someone out of the way of a train and into a pond where they start drowning and claimed that while Block wouldn't have a positive obligation to save the person from the train, once he voluntarily involved himself in the situation, he would then be responsible for what happens immediately afterward (Wisniewski, 2011, p. 3). To clarify, Wisniewski stated, "if I voluntarily decide to involve myself in the causal chain comprising myself, B and any potential threats to which my actions can immediately and directly expose the latter, then if my actions do, in fact, immediately and directly expose B to a lethal hazard, then I am as responsible for the resultant harm he sustains as I would be if I myself were the said hazard" (Wisniewski, 2011, p. 3).

Next, Wisniewski pushed back against Block's suggestion that a mere invitation does not constitute an open-ended obligation by asking where Block would draw the line (Wisniewski, 2011, p. 4). He then added that there isn't a "relevant moral difference between being an ultimate cause of one's harm and being a proximate cause of one's harm as long as one is a necessary cause of one's harm" (Wisniewski, 2011, p. 4). After making this point, he argued that it consequently "has to be concluded that evicting an invitee to his death is just as much a contravention of the NAP and the principle of gentleness as killing him on the spot is" (Wisniewski, 2011, p. 4). Wisniewski then brought up Block's discussion of Rothbard's understanding of contracts and mentioned that he disagreed with Rothbard's distinction (Wisniewski, 2011, p. 4). Although he didn't explain why, he mentioned that "calling an agreement a 'mere promise' whenever fulfilling it becomes problematic seems like a cop-out" (Wisniewski, 2011, p. 4).

Toward the end of his response, Wisniewski rejected Block's objection to his use of the principle of *pacta sunt servanda*, which Block claimed was invalid because the fetus didn't exist at the time of intercourse, by arguing that the invitation in question wasn't extended during

intercourse but rather at the moment of conception (Wisniewski, 2011, p. 4). Basically, he claimed that the moment of conception is the moment when the mother extends the voluntary invitation to the fetus. Wisniewski also rejected Block's claim that the implications of his position would mean forcing a widow to participate in suttee is not a violation of the NAP. He did so by reiterating that such customs can only apply to people who can voluntarily accept or reject "a given set of tradition-based rules," which was the reasoning he used to explain why the permissibility of evictionism, and abortion does not just depend on the customs of society (Wisniewski, 2010b, p. 5). This means that for Wisniewski, the only time this would be permissible would be if the woman agreed to such a thing beforehand, like a slave contract, which is something that Block has made clear is consistent with libertarian principles.

Before concluding, Wisniewski pushed back against Block's claim that he was comparing conception to the worsening of a fetus by pointing out that it can only be thought of as worsening the condition if one believes that someone who escorts another person to their home can also be thought of as a kidnapper, which he disputed (Wisniewski, 2011, p. 5). He also argued that "it is not the case that existence is necessarily better than non-existence" because "deciding to abort the fetus often indicates nonchalance and disregard for human life on the part of the mother" (Wisniewski, 2011, p. 5). To justify this, he asserted that "having an unconscious existence that is treated in so contemptuous a manner is [arguably] worse than having no existence at all" (Wisniewski, 2011, p. 5).

7 PAPER 6 (BLOCK, 2011B)

The sixth paper, titled "Response to Wisniewski on Abortion, Round Three," was published by Block (2011b). He began the paper by first complimenting Wisniewski on his "brilliant and creative" scenario involving someone being frozen on the property of another by some "mysterious force" (Block, 2011b, p. 2). He also mentioned that he regarded it "as an important challenge to the evictionist philosophy" but claimed it was one the viewpoint could ultimately withstand (Block, 2011b, p. 3).

To clarify, he firstly reiterated that "there is certainly 'proportionality built into' libertarian punishment theory, but it is not at all 'built into' the NAP" (Block, 2011b, p. 3). This means that, according to Block, "the punishment must be proportional to the crime, but there is no such requirement that rests on the victim for his self-defense during the commission of the crime" (Block, 2011b, p. 3). Block also pointed out that if there were such a requirement, then there would be no justification for killing the Person X who is frozen by the mysterious force, and then he proceeded to argue for a situation in which it would be justified to kill such a person (Block, 2011b, p. 3).

Specifically, he brought up a scenario where X crashes into a "pure Austrian snow tree" (PAST), which is an example borrowed from philosopher Harold Demsetz (1979), and unless X is forcibly removed from the premises, 50 innocent people will die because they depend upon the PAST that X inadvertently crashed into (Block, 2011b, p. 3). In this case, Block argued it's clear that it would be justified to remove the one person who trespassed onto the property and crashed into the PAST, even if doing so will lead to their death, to save the 50 innocent people, which means that there are some cases where it would be justified for the force to stop a crime to be greater than the crime itself (Block, 2011b, p. 3).

Block then went even further and claimed that even if Wisniewski was correct in suggesting that "it would be impermissible under libertarian law for Y to evict X from his land," it would still not "lay a glove on evictionist theory" because there is a disanalogy between trespassing onto someone's property and trespassing within the body of another person (Block, 2011b, p. 4). To underscore this point, he stated, "surely, rape and murder and kidnapping, offenses against the person are more serious, much more serious, than those against mere property, such as car theft, fraud, pickpocketing" (Block, 2011b, p. 4).

Next, Block rephrased Wisniewski's "mysterious force" example to be someone trespassing into the stomach of another person rather than on their land and pointed out how when viewed in this way, his example "loses virtually all of its emotional force" (Block, 2011b, p. 4). He also pointed out how this new example is like Judith Jarvis

Thomson's scenario involving a violinist being attached to another person's body without their consent (Block, 2011b, pp. 4-5).

In anticipation of the objection that the mother doesn't have sole ownership over her womb, Block pointed out that in situations where the mother's life is at risk, it would be justified to evict a fetus to its death even though both of their lives are equally valuable (Block, 2011b, p. 5). To clarify, he explained that this is because while their lives are, indeed, both equally valuable, the mother is the one who owns the womb, not the fetus (Block, 2011b, p. 5).

He then reiterated that the mother has no positive obligation to her child and pointed out that even in a case where someone is starving, it would not be a violation of the NAP to deny food to that person, who then dies shortly after from starvation (Block, 2011b, p. 5). Block also added that while the property owner certainly *could* charge the other person rent/compensation, they would not be *required* to do so (Block, 2011b, pp. 5-6). According to Block, if a person didn't want the other person to be on their land, they would be justified in using deadly force, if necessary, to evict them and asserted that "any other conclusion makes a mockery of private property rights, [which is] the mainstay of libertarianism" (Block, 2011b, pp. 5-6). He then clarified that he is not saying that people should be allowed to "kill" another person but rather that people should be allowed to "evict" people from their property, even if doing so necessarily results in the death of that person (Block, 2011b, p. 6). Block also mentioned that as medical technology improves, the eviction process will result in fewer and fewer deaths (Block, 2011b, p. 6).

Block then argued against Wisniewski's claim that "in any given 'confrontation' between the owner and the trespasser, it is not just the former's property rights that are at stake, but the latter's as well, and even though in such cases the latter is obviously the original violator of the NAP, the former cannot retaliate with disproportionate severity" (Wisniewski, 2011, p. 2). He did so by first pointing out that rights cannot clash, which means that if they appear to then the rights have been misspecified, and second by suggesting that Wisniewski's position eschews "strict support for property rights" and consequently appears to be

more of a "Coasean analysis" of property rights" based on utilitarianism rather than principle (Block, 2011b, pp. 6-7).

Next, he focused on Wisniewski's claims regarding the airplane analogy. He did so by first clarifying that if someone drags someone out of the path of an oncoming truck, they are improving their condition but if they drag the person into the path of an oncoming truck that they are worsening their condition and thus in violation of the NAP (Block, 2011b, pp. 7-9). He then explained that even this, though, is still only a "first approximation" because "the 'dragging' of an unconscious person anywhere, for any reason, constitutes at least presumptively an assault and battery" (Block, 2011b, p. 8). This is because such an act is "a placing of hands upon an individual without his consent" (Block, 2011b, p. 8).

Block also clarified that he was not suggesting that the dragging of an unconscious person is forcing them to do anything against their will. Rather, he reiterated that it is the person who is doing the dragging that is violating the NAP because they are laying their hands on the body of another person without their permission and then placing them into a position of mortal danger. Because of this, Block pointed out that it would not be justified to remove someone who was dragged into a house while unconscious out into a deadly storm but made it clear that such a situation is disanalogous to evicting a fetus because the fetus wasn't forced into the womb but was instead created there (Block, 2011b, pp. 8-9). After making this clear, Block then focused on the scenario where someone pushes another person off of railroad tracks to save them being run over by a train only to push them so hard that they then fall into a lake and start to drown and questioned Wisniewski's assertion that failing to save the person from drowning would make the person who pushed them out of the way of the train a murderer (Block, 2011b, pp. 9-11).

Specifically, Block asked why it would be incumbent on someone to jump into the water to save the person who he had moments ago saved from being crushed by a train. He also questioned why such action imposes an obligation onto the person who pushed the other person out of the path of the train to save them once more. Block suggested that one way of answering these

questions would be to invoke positive obligations but pointed out that this is absurd because it would mean feeding someone for one day would then obligate that person to continue feeding them indefinitely and if they refuse, then they're a rights violator (Block, 2011b, pp. 9-11).

In anticipation of the objection that pushing another person out of the path of a train and into a lake where they then drowned would make that person a murderer because it was their action that led to that person ending up in the lake where they then drowned, Block pointed out that he would agree only when someone pushes another out of the path of a train and then pushes them once more into a lake right after. This is because, according to Block, these are two different acts whereas pushing someone so hard that they avoid being hit by a train only to drown in a lake is a single act. In the former case, Block claimed that the person would be a murderer but in the latter case, the person would be considered a hero because where there's life, there's hope (a third person could show up and rescue the other person from the lake yet they wouldn't have been able to do so if the person was run over by a train) (Block, 2011b, p. 10). Block also made it clear that getting pregnant and then evicting a fetus is not at all like pushing someone first off of the train tracks and then pushing them again into the lake. Rather, it's more like having a trespasser removed from the property of another (Block, 2011b, pp. 10-11).

Next, Block turned to Wisniewski's claim that there is no "moral difference" between being the ultimate cause of one's harm and being the proximate cause and pointed out that he may be correct when it comes to morality (Wisniewski, 2011, p. 4). He clarified, however, that what matters is the legality of evictionism, not the morality of it (Block, 2011b, p. 11). After making this point, Block acknowledged that he does support the idea of implicit contracts but argued that getting conception doesn't involve an implicit contract for three main reasons. First, he pointed out that when a woman is impregnated because of rape, it cannot be said that she has any kind of implicit contract with the fetus now residing in her womb. Second, he mentioned that for most of history people had no clue that sexual intercourse itself was what led to pregnancy, which means that there could not have possibly been any kind of implicit contract at that time. Third, he argued

that there can't even be an implicit contract because there weren't two parties in existence at the time of intercourse (Block, 2011b, pp. 11-13).

He then focused on Wisniewski's question about why the focus should be on intercourse rather than the moment of conception when it comes to determining whether or not the mother and fetus have an implicit contract with each other by explaining that sex outside of rape is a voluntary action that the woman has control over but conception is something that happens wholly outside of her control (it happens whether she wants it to or not) (Block, 2011b, p. 12). Block, however, then set this point aside and claimed that even if the focus was on conception instead of sex and even if it could be said that the woman invited the fetus into her womb, it would be unwarranted to stretch say that such an invitation was for nine months (Block, 2011b, p. 12).

Block also pointed out that Wisniewski failed to explain why he rejected Rothbard's distinction between implicit contracts and promises and noted that simply calling it a "cop-out" will not do (Block, 2011b, p. 12). Moreover, he added that a contract with a fertilized egg is also problematic because children aren't capable of rationally entering into contracts and they're even more developed than a fertilized egg, which means that if they aren't capable of entering into contracts, then fertilized eggs aren't capable of entering into contracts (Block, 2011b, pp. 12-13).

Toward the end of his response, Block mentioned that he agreed with Wisniewski's point about suttee being permissible if everyone involved voluntarily agrees to it but pointed out that what it means to have agreed to such a practice is not so clear. As an example, he brought up a scenario where a twelve-year-old girl in India could be subjected to the death penalty after her family arranged for her to marry her 50-year-old cousin, who then died shortly after (Block, 2011b, p. 13). To underscore this point, Block offered a second example involving young girls in Africa who live in a culture where performing clitorectomies is a part of the local custom/tradition, and a third example involving honor killings of women who disobey their parents' choice of husband or lifestyle (Block, 2011b, p. 13).

Block also added that voluntary slave contracts are not like the practice of suttee because slave

contracts are not “customary” and because, unlike slave contracts, there is not necessarily a mutual benefit in the *ex-ante* sense regarding the practice of suttee, clitorectomies, or honor killings (Block, 2011b, p. 14). Before concluding, he addressed Wisniewski’s claim that someone who brings an unconscious person to their home without their permission is not the “very paradigm case of kidnapping” (Block, 2011b, p. 14). To reduce his position to absurdity, Block asserted that using Wisniewski’s reasoning, a man who slips a date rape drug into the drink of a woman and then takes her home and then has sex with her would not be a rapist (Block, 2011b, p. 14).

Block also pushed back against Wisniewski’s argument that existence is not necessarily better than non-existence by accusing him of committing a performative contradiction. Basically, he pointed out that since Wisniewski exists and has not committed suicide, his actions demonstrate that he prefers existence to non-existence. In other words, Wisniewski’s actions speak louder than words and undermine the very claim he made about it not necessarily being the case that existence is better than non-existence (Block, 2011b, p. 14-15). In addition to that, Block suggested that at the very least, Wisniewski adopt evictionism for utilitarian-legal grounds by highlighting the fact that if evictionism were adopted tomorrow, then one-third of all fetuses would be protected, and as medical technology progresses, more will continue to be saved earlier and earlier as opposed to the status quo which would permit the killing of a fetus even if medical technology exists to evict it in a way that won’t result in its death (Block, 2011b, p. 15-16).

8 PAPER 7 (WISNIEWSKI, 2013)

The seventh paper, titled “Abortion, Libertarianism, And Evictionism: A Last Word,” was published by Wisniewski (2013). He began the paper by making it clear that this would be his last response to Block regarding evictionism (Wisniewski, 2013, p. 154). He then addressed Block’s example involving the PAST by claiming that it “actually provides an illustration of its validity” because the act of removing the person from the PAST would be a situation of self-defense (Wisniewski, 2013, pp. 154-155). He also dismissed Block’s claim that his analysis is based on utilitarianism by pointing out that making

interpersonal comparisons of utility is not required when engaging in self-defense due to the fact that “it involves no more than a simple recognition that Y can justifiably deprive X of his life only if X threatens Y’s life (as in the situation where carrying the fetus to term threatens the mother’s life)” (Wisniewski, 2013, pp. 154-155). Basically, this means that the situation where someone threatens the life of another, like in a situation where the mother would die if the fetus isn’t evicted to its death, it would not be a rights violation to use force, up to and including deadly force, for the mother to defend herself and evict the fetus.

Next, Wisniewski turned his attention to Block’s assertion that the fetus is committing an offense against a person rather than that person’s property as well as his claim that “offenses against the person are more serious, much more serious, than those against mere property” and the violinist example put forward by Thomson (Block, 2011b, p. 4-5). He did so by first arguing that “if it is Y who is causally responsible for having X connected to his body, then there is no way in which X can be considered a trespasser” (Wisniewski, 2013, p. 155). From here, Wisniewski concluded that “in the event of the latter’s death via disconnection, Y would have to bear the whole responsibility for it, hence becoming guilty of an instance of lethal aggression” (Wisniewski, 2013, p. 155).

He then mentioned that “if we are to think of X as connected to Y’s body against the latter’s will,” then things become a bit more complicated (Wisniewski, 2013, p. 155). Despite this, he tried to reduce Block’s position to absurdity by bringing up a situation where someone has another person attached to them and must keep them connected for only one minute and then suggesting that disconnecting in this scenario would seem to count as an unacceptable violation of the principle of proportionality. If so, though, he claimed that the validity of the principle would be purely a matter of contextual judgment instead of some objective standard (Wisniewski, 2013, p. 155). However, after making this point, Wisniewski reasoned that Block concerns may have more to do with a situation where a “particularly perverse government (or any other coercive entity operating on a sufficiently large scale) puts millions of people in a situation exactly similar to that of X in Thomson’s original thought

experiment” (Wisniewski, 2013, p. 155). He then went further and stated that in such a situation, Block would likely make the point that “if all of Ys in my story are forcibly prevented from getting rid of their unwanted companions, [then] the government in question has established a de facto welfare state, while I [Wisniewski], a supposed libertarian, am suggesting that an attempt to dismantle it in the most immediate and straightforward manner should be considered un-libertarian” (Wisniewski, 2013, pp. 155-156).

From here, Wisniewski made what he thought Block would consider a major concession. Specifically, he stated, “while I regard using disproportionately severe retaliatory violence against harmful non-aggressors, as inconsistent with the libertarian ethic, and while I certainly regard not using such violence as a strictly negative libertarian duty, I also regard it as, to use a Kantian term, an imperfect duty” (Wisniewski, 2013, p. 156). To clarify, he added, “in other words, it is a duty that cannot be physically enforced, and which therefore occupies a middle ground between perfect (i.e., physically enforceable) duties and supererogatory actions” (Wisniewski, 2013, p. 156). By saying this, Wisniewski basically admitted that while there may be some “moral” duty to not evict a fetus that resulted from rape, it would not be justified to use violence against someone who does so (Wisniewski, 2013, p. 156). He noted, however, that his concession “does not at all apply” to situations where “fetuses [are] brought into existence because of consensual intercourse.” This means that a woman who is raped and becomes pregnant could evict a fetus but a woman who has voluntary intercourse and gets pregnant cannot (Wisniewski, 2013, p. 156).

“In other words, in view of the fact that a raped woman and Y from Thomson’s story were aggressed against in the first place, and assuming there exists no method whereby they can non-violently sever the connection between themselves and the entities whose lives depend on their continued support, I can find no justification for applying further (punitive) violence to them if they refuse to keep these entities alive,” explained Wisniewski in an attempt to make his “imperfect duty” concession even more clear (Wisniewski, 2013, p. 156).

“However, in view of the fact that the dependants are entirely innocent, and that depriving them of their lives deprives them of the crucial precondition for enjoying any of their liberties to any degree whatsoever, I must nonetheless consider not killing those dependants as an imperfect duty of their involuntary supporters,” he continued, adding, “this, it seems to me, makes the view I espouse markedly different from that of the pro-life welfare statist, but also more appreciative of the value of liberty—i.e., more libertarian—than Block’s evictionism” (Wisniewski, 2013, p. 156).

Following his concession, Wisniewski mentioned that he agrees with Block about favoring the life of the mother over the fetus on the grounds of property rights but added that he also believes it “has to be circumscribed by the principle of proportionality” (Wisniewski, 2013, pp. 156-157). This means that a mother could evict a fetus to its death if her life is threatened because doing so would be proportional to the threat against her own life. Wisniewski then went on to reject Block’s claim that he was suggesting rights can clash by pointing out that his view actually has to do with “determining whether, in any given case, the appeal to property rights allows for expelling someone from one’s property, or whether such an appeal is inadmissible due to one’s pre-existing (implicitly) contractual obligations” as well as “determining whether an act of expulsion is morally warranted in light of the principle of proportionality” (Wisniewski, 2013, p. 157). To clarify, Wisniewski asserted that his view “identifies prima facie conflicts of rights, and then logically resolves them by appealing to the morally relevant elements of each specific case of putative conflict” (Wisniewski, 2013, p. 157). He then reiterated that his view is in no way utilitarian or close to Coasean wealth maximization because all it involves is the “simple recognition” that someone can justifiably deprive the life of another person only if they threaten their life (Wisniewski, 2013, p. 157). To underscore his point, Wisniewski made it clear that it doesn’t matter if one person is threatening the life of the other person of 50 people because “a lethal threat from one X is sufficient to meet the criterion of proportionality” (Wisniewski, 2013, p. 157).

Next, Wisniewski pushed back against Block’s claim that his airplane analogy is not like getting

pregnant and then aborting the fetus to its death by arguing that the mere act of bringing someone onto a plane is like getting pregnant in that doesn't put them in any kind of danger. According to Wisniewski, their lives are only placed in danger when they're asked to leave, much like how their lives are only in danger when the mother decides to evict, which means that simply bringing someone onto an airplane cannot be said to be jeopardizing, or worsening, the well-being of another person (Wisniewski, 2013, p. 157). He also pushed back against Block's claim that there's a disanalogy between dragging someone into one's home just before a deadly storm and creating someone inside the home. He did so by claiming that he failed to see the "moral relevance" of the fetus being created in the womb rather than being forcibly placed there (Wisniewski, 2013, pp. 157-158). He then brought up an example where a person is created in a flying laboratory and suggested that evicting such a person after the fact would not be justified (Wisniewski, 2013, p. 158).

After making this point, Wisniewski focused on the case where someone pushes another person out of the way of an oncoming train and into a lake where they start drowning and insisted that "it is surely better to be no hero than to be a would-be hero whose interferences ultimately result in the death of those whom he tries to save" (Wisniewski, 2013, p. 158). To clarify, he stated, "if A did not push B off the track, anticipating that he is unable to calculate the force of the push to avoid throwing B into the lake, then A would clearly be blameless according to the libertarian ethic since no causal connection could be established between his actions and B's death. However, the requisite causal connection clearly exists in the case of B ending up in the lake as a direct result of A's actions, even if the result in question is unintended" (Wisniewski, 2013, p. 158). Basically, this means that had the person not done anything and just let the other individual die, they would be blameless, but if they intervened and ended up causing their death in some other way, then they would be to blame, even if their death was unintentional.

Wisniewski then dismissed Block's suggestion that his own position would mean that feeding someone for a day would then obligate that person to become their guardian angel for the rest

of their life by pointing out that, unlike the situation where someone is pushed out of the way of a train and into a lake, the person who gave the other individual food did not cause that person to be starving (Wisniewski, 2013, pp. 158-159). After dismissing the *reductio ad absurdum*, Wisniewski went on to reject Block's claim that the fetus is a trespasser by emphasizing that when someone "voluntarily initiates the causal chain which leads to someone else ending up on her property, the latter person cannot be considered a trespasser," which means that "barring scenarios of rape, an *ex post* unwanted fetus is not a trespasser and cannot be evicted to its death if the evictor is to act consistently with the libertarian ethic" (Wisniewski, 2013, p. 159).

Next, Wisniewski turned to Block's points about implicit contracts. First, he agreed with Block that it cannot be said that there's an implicit contract in cases of rape. Second, he pushed back against Block's claim about people not knowing that sex will lead to pregnancy by pointing out that "ignorance does not annul responsibility." Third, he then suggested that in the context of pregnancy, nine months would seem like the appropriate duration of an invitation, much like how 9 hours would be the appropriate duration of an invitation onto a 9-hour flight (Wisniewski, 2013, pp. 159-160). To underscore this point, Wisniewski asked what kind of person would agree to an invitation shorter than what would be necessary to develop fully enough to survive outside of the womb (Wisniewski, 2013, pp. 159-160).

Toward the end of his response, Wisniewski pushed back against Block's claim about a contract with a child or fetus being problematic by arguing that an implicit contract does not need to be signed or even understood, such an implicit non-aggression contract between a child and an adult (Wisniewski, 2013, p. 160). Wisniewski then addressed Block's claim that the example of getting someone drunk and then dragging them home is equivalent to kidnapping. He did so by first clarifying that the drinking was voluntary and not one where one person "plied" the other with drinks and mentioned that slipping in a date rape drug would be an example of malicious fraud and unjustified for that reason. He then asked how someone who escorts a person from a drinking party to their home could possibly be considered

a kidnapper rather than a hero (like someone pushing someone out of the way of a train and into a lake) (Wisniewski, 2013, pp. 160-161).

Next, Wisniewski criticized Block for arguing that he engaged in a performative contradiction by existing while also arguing that existence isn't necessarily better than not existing by claiming that such a statement was a non sequitur because while he may be enjoying his own existence, that doesn't mean there aren't any kinds of existences so miserable that non-existence would be preferable. He also pointed out that Block himself pointed this out when he mentioned that someone suffering from continual excruciating pain may prefer to commit suicide (Wisniewski, 2013, p. 161).

Before concluding, Wisniewski took a parting shot at Block's suggestion that he adopt evictionism on utilitarian-legal grounds by pointing out while it may be true that Block's position would save one-third of all fetuses if adopted tomorrow, his own position would save all the fetuses. Consequently, he argued that what really matters is "the principled question of whether aborting a voluntarily conceived fetus constitutes a violation of the non-aggression axiom" and mentioned that he cannot imagine Block approving the circumvention of this question by "appealing to the practical consequences of the current legal consensus" (Wisniewski, 2013, p. 161).

9 PAPER 8 (BLOCK, 2014)

The eighth paper, titled "Response to Wisniewski on Evictionism, Round Four," was published by Block (2014). He began the paper by clarifying that he does not maintain that "the mother is morally allowed to expel the fetus from her womb provided that no non-lethal methods of its eviction are available" but rather "that the mother is legally allowed to expel the fetus from her womb provided that no non-lethal methods of its eviction are available" (Block, 2014, p. 3). The difference, according to Block, is that he was not discussing morality and ethics but rather what the law should assert be the issue. He then reiterated, though, that when it comes to morality, he is on the pro-life side and considers it to be immoral for a woman whose own life is not in danger to not bring her baby to term. To underscore this point, he

stated, "to evict a viable fetus is a moral horror, in my view" (Block, 2014, p. 4).

Block then clarified that proportionality only applies to the punishment of a crime, not to the stopping of a crime, which permits any use of necessary force, proportionate or not, to evict a trespasser from one's property. To make his own position clearer, Block mentioned that if someone planned to severely beat another person, then it would be justified to use deadly force to stop the attack. Similarly, a mother would be justified in evicting the fetus to its death not only when her life is threatened but also for lesser rights violations such as trespassing in her body against her will.

He also reduced Wisniewski's position to absurdity once more by pointing out that using Wisniewski's reasoning, the victim would not be justified in using deadly force to defend themselves from such an attack. Next, Block reiterated that "offenses against the person are more serious, much more serious, than those against mere property" but mentioned that in some cases, an offense against a person's property could be considered to also be an offense against the person, such as stealing the horse of another person in the old west since a person would likely die without their horse in such hostile territory (Block, 2014, p. 5).

After pointing this out, Block pushed back against Wisniewski's claim that if someone is responsible for causing someone to become attached to another person, then they cannot rescind such an invitation later and disconnect themselves from the other individual by pointing out that his such a position is "difficult to reconcile" with both libertarian theory and common sense (Block, 2014, p. 5). Block then addressed Wisniewski's alteration to Thomson's violinist example by arguing that it's "not a very powerful counter-argument" because it is undermined by the legal concept of "de minimus," which is the idea that "the law cannot and may not take into account trifles." Basically, this means that minor harms are ignored because they are so insignificant (Block, 2014, p. 5).

To clarify, Block explained that if this was not the case, then everyone would be prohibited from exhaling and contaminating the atmosphere with carbon dioxide. He then made a concession of his own by acknowledging that if the amount attached

to another person to stay alive was one minute or even a few short minutes, then the “mother would be legally obligated to wait those few moments before eviction” (Block, 2014, pp. 5-6). Following this concession, Block then clarified that a few minutes is much different than nine months and pointed out that using Wisniewski’s reasoning, if the pregnancy was a nine-year process or a ninety-year process, then the mother would be legally obligated to keep the other person in her womb for that amount of time. For Block, however, the concept of *de minimus* would only make it okay to defer the eviction by a day or so as opposed to the whole nine months, and to say otherwise would obliterate the very concept of *de minimus*.

Next, Block turned his attention to Wisniewski’s claim that “a fetus cannot be regarded as an aggressor since aggression presupposes intention” and mentioned that he agreed with Wisniewski that a fetus cannot be regarded as an aggressor because it lacks a guilty conscious, otherwise known as “*mens rea*.” He then argued, though, that while they may be innocent in the sense that they lack intent to trespass, “it cannot be denied that objectively they are trespassers” (Block, 2014, p. 6).

After pointing this out, Block pushed back against Wisniewski’s claim that his “major concession” only applies to cases of rape (Block, 2014, p. 6). First, he pointed out that since all babies are equally innocent regardless of if they were conceived in rape or consensual intercourse, if he makes a concession to babies that result from rape then it would follow that the concession would also apply to babies that do not result from rape. To clarify, Block pointed out that Wisniewski’s concession is incompatible with the rest of his pro-life stance because he’s essentially “condemning a perfectly innocent human being, the product of coercive sexual intercourse, to death, when with just a few months of suffering, this life could be preserved” (Block, 2014, p. 6). Second, he claimed that Wisniewski did not go far enough because there are other cases of non-rape where a mother didn’t “invite” a fetus into her womb, such as situations where she may have been ignorant of the laws of biology (Block, 2014, p. 6). Third, he questioned Wisniewski’s distinction between rape and voluntary intercourse and why she would not be allowed to

change her mind about the supposed invitation. He also added that there can hardly be an invitation if it’s only probable that someone will “later will later become a person to take advantage of it” (Block, 2014, p. 6). To make this clearer, he explained that “the formation of the baby, the fertilized egg, does not occur until some hours later,” which means that “the mother, logically, cannot invite a small person into her body via intercourse, because at that time there was no one to invite” (Block, 2014, pp. 6-7). He also mentioned that in the scenario involving Thomson’s violinist, both parties exist at the time of the invitation whereas “in the case of voluntary intercourse, this requirement is not fulfilled” (Block, 2014, p. 7).

He then summarized Wisniewski’s concession as being “too much” and “too little” at the same time. To clarify, he stated, “too much insofar as it contradicts his underlying pro-life position by throwing some innocent fetuses overboard to the wolves, and too little in that it errs in its interpretation of invitations; they are not forever nor for nine months and can be rescinded at will” (Block, 2014, p. 7). Next, Block mentioned that while he and Wisniewski are both in agreement that the life of the mother would be favored over the life of a fetus in cases where a woman’s life is jeopardized during pregnancy, Wisniewski’s reasoning, which has to do with weighing the property rights of the mother against the property rights of the fetus, is “very much incompatible with the libertarian philosophy” (Block, 2014, p. 7). The first reason for this, according to Block, is that proportionality only applies to punishment, and since the case in question is one where either the woman or the fetus will die, there isn’t an actual crime occurring. The second reason for this is that it implies that rights can clash, which, for Block, is evidence that the rights are misspecified.

After making this clear, Block reiterated that he is not concerned with “whether an act of expulsion is morally warranted” (Block, 2014, p. 7). Instead, he’s solely concerned with the law “and the libertarian analysis of the pro-life and pro-choice positions” (Block, 2014, p. 7). He repeated, though, that when it comes to morality, he would personally consider it to be immoral to evict a fetus to its death. Block then pushed back against Wisniewski’s assertion that killing someone would only be acceptable when someone threatens the

life of another person by pointing out that using Wisniewski's reasoning, people who are threatened with serious bodily injury would not be justified in using deadly force to defend themselves. In response to such an implication, Block stated, "I applaud Wisniewski's stance in favor of human life but am not at all willing to jettison the private property rights of the mother, and the freedom philosophy that supports them, to this end" (Block, 2014, p. 8). He then made it clear that his position was not "anti-life" because "surely, the best way to promote human life and well-being is by supporting these private properties right and libertarian perspectives, not undermining them" (Block, 2014, p. 8).

Next, Block argued that Wisniewski made several errors in his reply about whether dragging someone onto an airplane and then forcing them out is "akin to a mother 'dragging' her baby into her womb (by engaging in sexual intercourse) and then evicting it to its death" (Block, 2014, p. 8). First, Block explained that dragging an unconscious person onto a plane except in cases where the person is being rescued is an act of kidnapping and that it has nothing to do with whether or not the victim was endangered. Basically, this means that it would still be kidnapping even if the unconscious person was dragged to a place where he wasn't endangered. Second, Block addressed Wisniewski's comment about failing to see "the moral relevance of the fact that the fetus was created in the womb rather than forcibly placed there" (Wisniewski, 2013, pp. 157-158) by clarifying once more that he's concerned with the legality of evictionism, not its morality, due to the fact that "not everything that is immoral should be prohibited by law" (Block, 2014, p. 8). And third, Block focused on Wisniewski's scenario where someone biologically engineers someone in a flying laboratory. He did so by claiming that while he would consider such an act to be extremely immoral to evict the person from the plane mid-flight, the person who owns the plane would technically be legally justified in doing so.

He clarified, though, that since the eviction must be done in the gentlest manner possible, forcing them out at 40,000 would only be justified if it were not possible to land, remove the person from the plane, and then take off again. He also mentioned that if the created person was too young to survive on their own, "then and only then is it legally

permissible to protect your private property rights and act in a manner such that he dies" (Block, 2014, pp. 8-9).

Block then pushed back against Wisniewski's assertion that pushing someone out of the way of a train and into a lake where that person then drowned would make the pusher a murderer rather than a hero by reiterating the pusher does not have any positive obligation to extend the person's life longer than they already had. After pointing this out, Block argued that Wisniewski's claim that a person who feeds someone for a day would not be obligated to continue feeding them because they didn't expose them to a lethal hazard by pointing out that while this may be true, the example was merely to counteract Wisniewski's statement that "exposing someone to a lethal hazard is necessarily a violation of libertarian law" (Block, 2014, p. 9). He also attempted to reduce Wisniewski's position to absurdity yet again by mentioning that using his reasoning, someone who gets invited onto another person's property "cannot be considered a trespasser" even if they outstay their welcome (Block, 2014, p. 9). He then insisted that contrary to the apparent implications of Wisniewski's position, "the woman has a right to ask the man to leave whenever she wishes, even if it is in the middle of the meal" (Block, 2014, p. 9).

Next, Block criticized Wisniewski's comments on implicit contracts. First, he pointed out that contrary to what Wisniewski claimed, ignorance of the effects of stabbing someone in the chest with a knife could be excused by law. To clarify, he explained that a two-year-old baby who engages in such an act would obviously lack *mens rea* and could not be found guilty of a crime. He added, though, that the guardian or custodian of the child would be guilty of aiding and abetting a crime. From here, he argued that a person ignorant of the effects of intercourse would be in the same position as the fetus and therefore cannot be considered a criminal. Block then responded to Wisniewski's question about who would agree to a chance at life if the conditions were that the person could be evicted at any time by arguing that between total non-existence and life for a few weeks before eviction, most people would choose the chance at life. To underscore this point, he added, "when there is life, there is always a chance it will be extended. Where there's a will,

there's a way. Seize life. Better alive than dead" (Block, 2014, p. 10).

After making this point, Block argued that while Wisniewski's "clever attempt" to claim that there is an implicit contract stemming from biology that the invitation extended to a fetus would be for nine months, is problematic because an invitation requires two people, but during sexual intercourse one of the parties doesn't yet exist (Block, 2014, p. 10). On top of that, Block asserted that while implicit contracts do not require signing, they do need to be understood because a contract is a "meeting of the minds" (Block, 2014, p. 10).

Block then focused on Wisniewski's claim that bringing another person to their home is not necessarily kidnapping but added that if he had sex with her under these conditions, it would be considered rape. Toward the end of his final response to Wisniewski, Block addressed the allegation that it's a non sequitur to assert that Wisniewski's own existence "demonstrates that he prefers that state of affairs to his own non-existence" by pointing out that while those who do

commit suicide demonstrate the opposite since most people don't, it can be deduced that most prefer to stay alive (Block, 2014, p. 11).

Before concluding, Block touched on the suggestion he gave to Wisniewski to adopt evictionism on utilitarian grounds if for no other reason. He did so by emphasizing that while all fetuses would be saved under pro-life, Wisniewski's position has not been adopted despite being widely publicized and that in the west, pro-choice is basically the consensus. In addition to that, he mentioned that since evictionism is a compromise between the two, it's more likely to be adopted than the all-or-nothing pro-life position that is currently known and out of favor. To clarify, Block asserted, "if this author were truly concerned with saving lives, with morality, he would not be so opposed to evictionism. If he accurately applied libertarian theory to this case, he would not only favor evictionism on utilitarian grounds, but he would also do so for deontological reasons as well" (Block, 2014, p. 11).

WORKS CITED

- Block, W. E. (1977). Toward a Libertarian Theory of Abortion. *The Libertarian Forum*, 10(9), 6–8.
- Block, W. E., & Whitehead, R. (2005). Compromising the Uncompromisable: A Private Property Rights Approach to Resolving the Abortion Controversy. *Appalachian Journal of Law, Grundy*, 4(1), 1–45.
- Block, W. E. (2010). Rejoinder to Wisniewski on Abortion. *Libertarian Papers*, 2(32), 1–9.
- Block, W. E. (2011a). Response to Wisniewski on Abortion, Round Two. *Libertarian Papers*, 3(4), 1–13.
- Block, W. E. (2011b). Response To Wisniewski on Abortion, Round Three. *Libertarian Papers*, 3(37), 1–21.
- Block, W. E. (2014). Rejoinder to Wisniewski on evictionism, round four. (Z. Čekerevac, Ed.) *FBIM Transactions*, 2(2), 1-14.
- Demsetz, H. (1979.) Ethics and Efficiency in Property Rights Systems. (M. Rizzo, Ed). *Time, Uncertainty, and Disequilibrium: Exploration of Austrian Themes*. (pp. 97-116). Lexington, MA: Lexington Books.
- Rothbard, M. N. (1998). *The Ethics of Liberty*. New York, NY: New York University Press.
- Wisniewski, J. B. (2010a). A Critique of Block on Abortion and Child Abandonment. *Libertarian Papers*, 2(16), 1–4.
- Wisniewski, J. B. (2010b). Rejoinder to Block's Defense of Evictionism. *Libertarian Papers*, 2(37), 1–7.
- Wisniewski, J. B. (2011). Response to Block on Abortion, Round Three. *Libertarian Papers*, 3(6), 1–6.
- Wisniewski, J. B. (2013). Abortion, Libertarianism, and Evictionism: A Last Word. *Libertarian Papers*, 5(1), 153–162.

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