REJOINDER TO BLOCK'S DEFENSE OF EVICTIONISM

JAKUB BOZYDAR WISNIEWSKI*

I AM THANKFUL TO WALTER BLOCK (2010) for his comprehensive and perspicacious engagement with my critical remarks regarding his theory of evictionism (Wisniewski 2010). I also appreciate his kind words about what he sees as the merits and strong points of my argumentation. However, as one could easily surmise from my decision to write this rejoinder, I found his defense of evictionism unconvincing, though certainly informative and thought-provoking. Without further ado, let me now proceed to explaining why.

Block devotes the first few pages of his paper to what I would term 'semantic' or 'terminological' issues. Let me start from touching briefly upon these. First (Block 2010, 1), he is correct in assuming that the sentence "a fetus can be aborted only if it is not killed as a result" should in this context be best understood by replacing "can" with "may". In other words, he is correct in claiming that I ascribe a normative rather than a descriptive view to him.

Second (ibid., 1), he very helpfully underscores that he equates abortion with eviction plus killing, which is actually consistent with the standard medical definitions of the discussed procedure. Hence, let me reformulate the position I attribute to him: Block maintains that a fetus may be *evicted* if it is not killed as a result. Notice that this reformulation does not affect the substance, and thus the logical strength (or lack thereof), of my original arguments.

Third (ibid., 2), he emphasizes that the libertarian definition of harm does not encompass what might be termed psychological harm. I am in full

*Jakub Bozydar Wisniewski (jakub@cantab.net) is a Ph.D. student in the Department of Politics at Queen Mary, University of London.

CITE THIS ARTICLE AS: Jakub Bozydar Wisniewski, "Rejoinder to Block's Defense of Evictionism," *Libertarian Papers* 2, 37 (2010). ONLINE AT: libertarianpapers.org.

agreement with this clarification. In my original paper, I used the admittedly not fully unambiguous term "harm", since I assumed that the readers of the present journal will naturally equate it with initiatory violence (and the threat thereof) given the issue in question.

Fourth (ibid., 2), he points out that I fail to mention surrogate motherhood as—next to the existence of the fetal positive right to life – another possible (libertarian) reason to compel the mother to carry the fetus to term. Again, I have no qualms with this. I assumed that in the context under discussion surrogate motherhood cases are covered by a sufficiently broad, tacit ceteris paribus clause. Similarly, if I were to write that the only valid reason for compelling X to contribute to financing Y's unemployment benefits could be the existence of the latter's positive right to a "minimum income", I would not then hasten to add that, of course, another such reason might be the fact that X is Y's contractual debtor (or his voluntary slave, etc.).

Having addressed the abovementioned terminological issues, Block then attempts to defuse my criticism that his theory introduces an arbitrary complication into the non-aggression principle (hereafter NAP), i.e., that it exposes itself to the problem of explaining 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 (ibid., 2-3). His strategy here is to resort to what might be termed the principle of gentleness, which in the context of evicting a fetus from the mother's 'premises' means that "she must do so (evict) in the gentlest manner possible, for the trespasser in this case is certainly not guilty of mens rea" (Block, Kinsella and Whitehead 2006, 945). He claims that if the principle of gentleness were not part of the libertarian creed, libertarians would be unable to make a moral distinction between the case in which a trespasser on one's lawn is blown away with a bazooka and the case in which he is removed from one's lawn in a maximally gentle and painless manner (Block 2010, 3).

It seems to me that the morally relevant aspects of the principle of gentleness boil down to the commonsensical principle of proportionality: the severity of reactions must be proportionate to the moral turpitude of actions (Rothbard 1998, 80-1). And while I acknowledge that incorporating the principle of proportionality into his theory allows Block to avert my charge of falling back on the aforementioned arbitrary complication, I also recognize that it fatally damages his pro-choice conclusions in the cases where no non-lethal ways of evicting the fetus are available. The reason for this is simple: 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. 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.

Next, Block takes on board my airplane thought experiment, in which "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 2010, 2). He believes that there is a fatal disanalogy between abortion and the scenario in question. In this connection, he writes the following:

> In no manner, shape or form can X's kidnapping of Y, and then placing the latter on the airplane in order to subsequently throw him off, be construed as an improvement in Y's welfare. Rather, the very reverse. Further, in order 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. (Block 2010, 4)

The above quotation indicates that Block seems to have either overlooked or misunderstood some of the crucial elements of my argument. First, dragging Y onboard the plane by X cannot be interpreted as kidnapping. In my original paper, I explicitly say with respect to the interactions between X and Y (up to the point where Y is threatened with being thrown out of the plane) that "there is no contract involved, and for the sake of the argument we can even suppose there is no *implicit* contract involved (we might assume that X and Y disclaim any reliance on standard hospitality customs)" (Wisniewski 2010, 2). Think of X and Y as drinking buddies who accept the rule whereby the one who stays conscious longer can play pranks on the other. Hence, waking up onboard the plane not only does not in any sense decrease Y's welfare, but 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. In sum, in terms of changes in welfare and the presence or absence of the NAP violations my thought experiment and the case of pregnancy are at worst strictly parallel, and at best my scenario is morally safer insofar as it leaves place for enjoyment on the part of Y (which cannot possibly be said with regard to the fetus, an unconscious being, by definition unable to derive enjoyment from anything).

Second, notice that in my scenario there is no necessary causal connection between dragging Y onboard the plane and deciding to throw him out. Similarly, there is no necessary causal connection between getting pregnant and deciding to abort. The future is as uncertain for Y as it is for the fetus. The mother is a prospective death dealer just as much (or as little)

as X is. Thus, it is not only the case that "not every woman who gets pregnant terminates it before the nine month period" (Block 2010, 5). It is also the case that not in every possible world X intends to throw Y out of the plane, let alone executes this intention. Again, in this regard there is no disanalogy between the two cases.

Next, Block attempts to refute my 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 2010, 3). He describes a scenario in which A invites B into his house in order to allow the latter to escape a deadly storm. He then contends it is unlibertarian to refuse A the right to remove B from his property if the storm persists for years. Furthermore, he writes of the theory implying such a refusal that:

> It is one that can open the Pandora's box our friends on the left, and the right too, are so anxious to open. It is one that can justify welfare rights. It is one that can justify healthcare rights. It is one that can justify rights to be protected from criminals. It is one that can justify rights to be protected from terrorists, etc. (Block 2010, 6)

Unfortunately, the above paragraph is just an expression of an intuition. It offers no logical justification for the contention that welfare or healthcare 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. Such an equation could be made only if A were under a positive obligation to invite B to his house in the first place. But in my text I never asserted the existence of any such obligation.

My theory is in full agreement with the libertarian principle of *pacta sunt servanda*. Of course, the exact details of what extending the invitation in question obliges A to do has to be thought of as context-dependent, i.e., conditioned by the specific customs of time and place—here I have no qualms subscribing to Block's own views on the matter (Block and Barnett II 2008). If it were customary in the society under consideration to remember that one is not allowed to overstay one's welcome no matter the external circumstances, then B would not be allowed to remain on A's property indefinitely, even if the storm were to persist for an indefinite amount of time. If, on the other hand, the opposite custom were in force, and if A did not make it explicit to his prospective guest that he is not an observant member of the local tradition, then, yes, A would be under a positive obligation to be B's host for as long as the storm persists (sponsored, in the Longian (1993) fashion, by the corresponding negative obligation of *pacta sunt servanda*).

Perhaps one might want to reply that in view of the above the permissibility of abortion too is ultimately a matter of custom, but I think Block would agree with me that it would not be a libertarian answer. As far as my understanding of their role goes, customs and conventions can help specify the ambit of applicability of the NAP, but their prescriptions apply only to those who can in the first place choose whether to accept or reject any given set of tradition-based rules (such as B, who can choose whether to accept or reject A's invitation). The fetus, on the other hand, cannot make such a choice. Its situation could be likened to that of B if the latter were forcibly dragged into A's house. As a result, the type of the NAP that applies to the moral assessment of its handling by the mother is independent of any customs and conventions that the mother might subscribe to. Thus, notwithstanding the ingenuity of Block's defensive counterargument, evicting the fetus to its death still counts as murder (barring the cases in which carrying the fetus to term threatens the life of the mother, due to the principle of proportionality).[1]

Next, Block states that my theory is vulnerable to the objection that a mother who dies through suicide while pregnant should be considered a murderer (Block 2010, 6). To be honest, I fail to see why this should be an objection to my theory. Yes, I would consider such a person a murderer, just as I would consider X from the airplane story a murderer if, having dragged Y onboard, he would decide to crash the plane in an act of suicide. In both of these cases the mother and X, respectively, are the ultimate cause of their "guests'" death.

I should perhaps add in this context that I obviously do not regard as a murderer anyone who causes someone else's death unintentionally or unknowingly. Hence, I certainly would not want to apply this appellation either to a mother who dies during the pregnancy of natural causes or to parents who predecease their handicapped child, thus leaving him with no means of survival. None of the characters just mentioned intend to perform an act of eviction of those whom they invited onto their property—on the contrary, they demonstrate through their lives that they intend to entertain their invitees for as long as necessary in order to allow the latter to survive without the help of their hosts. Unfortunately, it just so happens that their plans are frustrated by events outside their control. Consequently, I disagree

[1] Yet another reason why Block's counterargument is defective (in the sense of not being a valid analogy to the pregnancy case) is that he seems to emphasize that it would be particularly unlibertarian to oblige A to entertain B in his house if the storm lasted for years (which may or may not happen), whereas pregnancy lasts for approximately 37–42 weeks (which nearly always happens). Thus, the two cases are very unlike each other: both in terms of duration and uncertainty.

with Block's assertion that his example of parents predeceasing a handicapped child provides a valid reductio of my position.

Finally, I contend that Block's theory of child abandonment fails to meet my criticisms, since the only defense he mounts against them is based on the putative disanalogy between the fate of an abandoned child and the fate of Y from my airplane example, which I have already shown not to be a disanalogy at all.

In sum, I claim that, despite raising a number of astute and stimulating points, Block does not succeed in defending the ostensibly libertarian character of evictionism. Hence, I believe I am justified in continuing to regard intentional abortion and child abandonment as irreconcilable with the NAP[2] without having to subscribe to the existence of any positive rights other than those sponsored by the corresponding negative rights. Let me thus end by reiterating my original conclusion: if one voluntarily initiates the causal chain which leads to someone else ending up on his property, the latter person cannot be considered a trespasser, and consequently, ceteris paribus, cannot be evicted and physically harmed as a result without making the owner of the property in question violate the libertarian ethic.

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[2] Provided that the principle of proportionality is satisfied.

Wisniewski, Jakub Bozydar 2010. "A Critique of Block on Abortion and Child Abandonment." *Libertarian Papers* 2, 16;

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