# RESPONSE TO BLOCK ON ABORTION, ROUND THREE

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SINCE I REMAIN UNCONVINCED by the arguments used by Walter Block (2010, 2011) to defend the compatibility of his theory of evictionism with libertarianism, I feel obliged to continue our debate. Without further ado, let me proceed to addressing the substantive points he raises in his latest rejoinder to my criticisms (Wisniewski 2010a, 2010b).

First, Block contends that I am "lead into (an) erroneous interpretation of libertarian law because of (my) confusion between proper punishment after the fact, and, proper defense, during the time the crime is being perpetrated" (Block 2011, 4). He levels this criticism against my invocation of the principle of proportionality to argue 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, 3)

In response, while I may concede 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, I would have to say that I still regard them as similar with respect to their substantive, moral essence. Block justifiably qualifies the principle of gentleness with the claim that "the victim is supposed to treat the perpetrator in the 'gentlest manner possible' possible, alright, but only when it is fully compatible *with stopping the crime*!" (Block 2011, 3–4). Let me qualify it further: yes, we need not act as gently as possible if gentleness will get us nowhere with respect to stopping the crime, but this

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applies only to the cases where, by not being gentle, we do not commit an even greater crime. Understandably enough, Block agrees that

> 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. (ibid., 3)

However, he also believes that if gentle steps turn out to be futile, the owner is justified in killing the trespasser. I fail to see why this should be the case. 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 land.

Imagine a scenario in which 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 absolutely immobile and immovable (unless killed) for the period of 9 months. As I read him, if Block were Y, he would find himself justified in saying "tough luck!" and plugging the wretch. I, on the other hand, believe 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. What he could do instead, if he were to find the 9 months presence of X on his premises absolutely insufferable, would be to collect a requisite amount of money from his insurance company and rent another property of comparable market value for that period.

In sum, it is important to realize clearly 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.

Second, Block claims that in the latter of my papers I "radically changed" the scenario of my airplane thought experiment (Wisniewski 2010a, 2), used as an analogy to abortion. The original formulation of this story includes the following fragment: "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" (ibid., 2). Block says that this still sounds to him "like a (coercive) kidnapping, not at all analogous to a voluntary pregnancy" (Block 2011, 6). Then, he claims that the way in which I describe this scenario in my second paper is not only altogether different,

but actually contradictory to the original version. I dispute that. I fail to see which part of the abovementioned sentence is suggestive of coercion. X getting Y drunk certainly does not mean X forcibly pouring alcohol into Y's mouth, and I do not think that any elaborate explanations or qualifications are needed here. Likewise, "dragging" an unconscious person somewhere by definition precludes being interpreted as a coercive activity, since speaking of an unconscious person as being forced to do anything is a category mistake.

Think about a scenario in which X escorts a benumbed Y out of a party, "drags" him into his car and takes him to his (X's) home. Could such a series of events possibly be interpreted as a coercive kidnapping? And if a deadly storm started to rage outside at the moment of Y's awakening, would X be justified in ordering him to move out? I maintain that he would not, since he is the ultimate and necessary cause of Y ending up on his property—consequently, Y cannot be considered a trespasser, and X can be considered responsible for whatever happens to Y as a direct and immediate result of forcing him out of X' premises. This sort of causal analysis is the crux of practically all of my anti-evictionist arguments, and yet I fail to see Block addressing it at any point in his responses.

Likewise, Block contends that I maintain "a rather unusual version of positive obligations. If you save someone (or give him life) once, you are legally required to do so a second time" (ibid., 7). I am not. The kind of causal analysis that I employed in the preceding paragraph is perfectly applicable to Block's scenario of saving someone from an incoming train only to push him into a lake (ibid., 6), and yields clear answers to the moral questions that could be raised in this context. If I refuse to try to be a good Samaritan and do not help B escape from the impending doom, I remain perfectly innocent according to the libertarian ethic—I believe this is uncontroversial among us. But 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.[1] Block tries to present this relatively straightforward case of moral causation as implying a commitment to positive obligations, but I remain puzzled as to how such an implication is supposed to work.

[1]The question whether B can or cannot swim is of central importance here—if he can, then I am not exposing him to a deadly hazard, and if he decides not to exercise his life-saving ability, his drowning must be interpreted as a voluntary decision. If, on the other hand, he cannot swim, then the situation is as presented above in the main text.

Next, Block—referring to the commonplace phrase that the mother invites the fetus into her womb—suggests that my "mistake lies in thinking that a mere invitation constitutes an open ended obligation" (ibid., 8). But if there is a morally serious difference between the two, then what libertarian commitments go together with a "mere" invitation? Can I kill an invitee on a whim, since he occupies *my* property? No, says Block, since that would constitute a violation of the NAP and the principle of gentleness. So far so good. But, since, as I indicated in the previous paragraph, there is no 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, it 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.

Block attempts to bolster his argument by relying on Rothbard's (1998) distinction between promises and contracts. I must confess that I am unconvinced by Rothbard on this point. Calling an agreement a "mere promise" whenever fulfilling it becomes problematic seems like a copout to me. Can it be replied that it is sufficiently clear from the outset what constitutes a proper contract, since contracts are written documents prepared with the assistance of an appropriate legal expert? The problem with this definition is that it excludes implicit contracts, whose existence and validity Block (in my opinion rightly) accepts and endorses.

Next, Block tries to show the supposed untenability of my reliance on the principle of *pacta sunt servanda* on the grounds that "at the time of intercourse (…) there is no one for the voluntarily pregnant woman to have a contract *with*!" (ibid., 8). True, but why should we treat intercourse rather than conception as the moment at which the relevant, binding decisions take place? Since, obviously enough, no contract (even an implicit one) can be made with the fetus before it comes into existence, it seems only natural to think of the moment at which it comes into existence—i.e., conception—as the moment at which the mother, who voluntarily invites[2] a new potential human being into her womb (i.e., voluntarily allows it to appear there), makes an implicit contract with it. Block's attempt to portray intercourse as the relevant point of focus appears to involve a significant mischaracterization of the situation.

Block also claims that "the logical implication of (my) emphasis on custom is that suttee would be justified on NAP grounds, surely an inference

[2]Block admits that he is willing to accept this expression as a sufficiently accurate description of the mother's decision.

to be avoided" (ibid., 9). This is not true. In my previous response to Block I wrote that

> 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. (Wisniewski 2010b, 5)

Hence, the logical implication of my remarks about the role of custom in a libertarian society is that one could be obliged to observe the practice of suttee only if, having been confronted with the choice of either joining or refusing to join a private community which requires its members to observe the practice of suttee, one decided to opt for the former. This, as I see it, in no way resembles or implies the contention that "custom trumps the libertarian legal code" (Block 2011, 9). Block is known to defend voluntary slave contracts. Why should voluntary suttee contracts be treated any different? After all, they are equally based on the foundation of respect for the NAP.

Finally, in connection with my observation that, unlike the person from the abovementioned example, the fetus cannot make any similar choice and thus can be likened to a person forcibly dragged into someone else's house, Block writes: "The difficulty here is that Wisniewski likens the situation of the fetus as a *worsening* of his welfare when he is conceived. It is as if the fetus is kidnapped" (ibid., 9-10). First, in the context at hand the fetus can be regarded as kidnapped only if Y from my drinking scenario, whom X forcibly (though not involuntarily) escorts to his home, can also be thought of as a victim of kidnapping, which I already disputed earlier. Second, it is not the case that existence is necessarily better than nonexistence, since deciding to abort the fetus often indicates nonchalance and disregard for human life on the part of the mother, and, arguably, having an unconscious existence that is treated in so contemptuous a manner is worse than having no existence at all.

In view of all the above points, I conclude that no matter how well-informed and ingenious, Block's counterarguments failed to address adequately my original criticisms of his position. Hence, I continue to regard the theory of evictionism as indefensible on libertarian grounds.

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