

## REJOINDER TO WISNIEWSKI ON ABORTION

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I AM EXTREMELY GRATEFUL to Wisniewski (2010) for his critique of my published views on the ethics of abortion. One of the worst fates for one's intellectual children (one's publications) is that they be ignored. Far better to have them criticized than to meet that fate. Wisniewski (2010) demonstrates, at least, that my perspective on this vitally important issue does not go unrecognized. But more. This author has written a splendid essay on this issue, forcing me to delve deeper into the libertarian perspective on it, deeper than I would have otherwise delved had it not been for his excellent contribution.

Although I appreciate the care and intellectual heft that has gone into Wisniewski (2010), I, however, remain unconvinced by it. In what follows I shall subject this paper to a critical evaluation from what I take to be a libertarian point of view. Let me list the errors I think he makes in his order of presentation.

Wisniewski (2010, 1) ascribes to me the view that: "a fetus can be aborted only if it is not killed as a result." That is hardly my own theory. Indeed, it can scarcely be denied that this *can* happen. Perhaps what this author *meant* to attribute to me was "a fetus *may*<sup>1</sup> be aborted only if it is not killed as a result." This is an improvement, in that we are now in the realm of ethics, not science, and, certainly, the propriety, or legality, of abortion rests with the former, not the latter. However, this, too, is problematic, in that I am clearly on record<sup>2</sup> as stating that abortion equals eviction plus killing. If that is so,

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<sup>1</sup> On the other hand, I cannot afford to be too snarky about this error of Wisniewski's for I once made the same mistake (Block and Whitehead, 2005, 25).

<sup>2</sup> "... the pregnant mother ... may evict, but not evict and then murder, e.g., abort..." (Block and Whitehead, 2003, 27, fn. 164)

then it would be *impossible* for an abortion to take place without the fetus being killed. Thus, it is false that subscribe to the view that “a fetus can be aborted only if it is not killed as a result.” In my perspective, if a fetus is aborted, it must *necessarily* have been killed.<sup>3</sup>

Next, Wisniewski (2010, 1) maintains “Block claims to derive such a conclusion from the libertarian axiom of non-aggression, which prohibits harming other human beings.” This, too, is problematic. Libertarianism does not at all prohibit *harming* other human beings. Very much to the contrary, there are all sorts of ways in which it is entirely legitimate, under the libertarian legal code, for one of us to “harm” another of us. For example, Bob may open up a grocery store adjacent to Pete’s emporium, and “steal” half of his customers from him. Surely, Bob has “harmed” Pete. Or, Pete may marry seduce Bob’s fiancé away from him, much to the latter’s chagrin. Surely, Bob has been “harmed” in this case, and, yet, there is not a bit he can do about it, at least not under libertarian law.<sup>4</sup>

Our author also states (2010, 1): “Thus, he (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.” Again, not quite so. To the contrary, there is yet another libertarian reason to compel the mother: surrogate motherhood contracts. If the women agrees, and is paid to do so, to carry the baby to the full nine month term, then she is contractually prohibited from renegeing.<sup>5</sup>

Wisniewski (2010, 1) characterizes it as “curious” that “that lethally aborting the fetus counts as a murder only given the existence of non-lethal ways of performing abortion, but does not so count if no such methods are available.” He criticizes this on the ground that “it appears to introduce an arbitrary complication into the principle of non-aggression—after all, if evicting a trespasser is a right of every human being, and one should not be thought of as responsible for what happens to the trespasser after he is evicted, then why 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?”

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<sup>3</sup> I note that Wisniewski cites me at only (1977, 1978); that is, he offers no page numbers or direct quotes for this attribution. Perhaps had he done so, he would have realized that this is not at all my viewpoint.

<sup>4</sup> For more on this see Hoppe and Block, 2002.

<sup>5</sup> This amounts to a specific performance compulsion. See on this Block, 1999, 2001B, 2003, 2004B.

There are several fallacies here, but, before considering them, I must acknowledge that Wisniewski has launched an attack that if successful, would go a long way in the direction of undermining my entire position on this issue. The minor difficulty with his sally is that I nowhere state “one should not be thought of as responsible for what happens to the trespasser after he is evicted.” If Wisniewski wishes to get to the root of my position on abortion, he might consider citing what I actually say, rather than attributing views to me that do not accurately reflect it.

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?

Because of a basic axiom of libertarianism: non criminals are to be treated in the “gentlest manner possible.” In Block, Kinsella and Whitehead (2006) we state: “She may evict this interloper from her ‘premises.’ She must do so in the gentlest manner possible, for the trespasser in this case is certainly not guilty of mens rea.”<sup>6</sup> The point is, the fetus is not purposefully committing a trespass. It is unable to engage in any sort of human action at this stage of its development. Moreover, if mine is a “curious” doctrine, it means that the libertarian would be indifferent between these following two scenarios. One: an innocent person A, inadvertently sets foot on B’s lawn; B forthwith blows A away with a bazooka. Two: an innocent person A, inadvertently sets foot on B’s lawn; B notifies A of his misstep, and asks him, politely, to please cease and desist, and to avoid such action in future. Only if A refuses to respect private property rights (at which point he ceases to be guilty, merely, of a tort, and now becomes a purposeful criminal, replete with mens rea) may B properly employ violence against A. And, even then, the bazooka would not be the first option. If B could remove A from his property in a more gentle manner, say, with a bear hug, or with ropes, or by calling on the private police (Tinsley, 1999-2000) who could do so by frog-marching A off of B’s property, other things equal, B is obliged to do just

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<sup>6</sup> Another critic of my views on this subject, Dyke (2009, 10) has picked up on this point. For a large bibliography regarding the establishment of the “in the gentlest manner possible” doctrine in libertarian theory, see [http://www.google.ca/#hl=en&source=hp&q=%E2%80%9Cgentlest+manner+possible.%E2%80%9D+Walter+Block&btnG=Google+Search&aq=f&aqi=&aql=&oq=%E2%80%9Cgentlest+manner+possible.%E2%80%9D+Walter+Block&gs\\_rfai=&fp=f2fef70e73ab78f](http://www.google.ca/#hl=en&source=hp&q=%E2%80%9Cgentlest+manner+possible.%E2%80%9D+Walter+Block&btnG=Google+Search&aq=f&aqi=&aql=&oq=%E2%80%9Cgentlest+manner+possible.%E2%80%9D+Walter+Block&gs_rfai=&fp=f2fef70e73ab78f); [http://www.google.ca/#hl=en&q=%E2%80%9Cgentlest+manner+possible.%E2%80%9D+libertarianism&aq=f&aqi=&aql=&oq=%E2%80%9Cgentlest+manner+possible.%E2%80%9D+libertarianism&gs\\_rfai=&fp=bd78763db8992e99](http://www.google.ca/#hl=en&q=%E2%80%9Cgentlest+manner+possible.%E2%80%9D+libertarianism&aq=f&aqi=&aql=&oq=%E2%80%9Cgentlest+manner+possible.%E2%80%9D+libertarianism&gs_rfai=&fp=bd78763db8992e99)

that, by the libertarian legal code. If B, instead, utilizes the bazooka immediately, he is guilty of murder.<sup>7</sup>

Wisniewski (2001, 2) defends the pure pro life position: “even in those cases where there are no non-lethal eviction options available, aborting the fetus should count as murder” and offers the following scenario to buttress his viewpoint (2010, 2): “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.” Say what you will about my critic, it cannot be denied that he has a fertile imagination, and is not behind hand by one whit in creativity. Wisniewski (2010, 2) relies on an analogy between this case of high jacking and abortion which necessarily leads to death of the fetus:

... it is X who is responsible for bringing Y onto his property and ... it is X who is responsible for then removing Y from his property, when it is known that the outside circumstances are lethal, implies that X is responsible for Y’s death and hence is a murderer.... But these types of situations are strictly parallel to the case of abortion (again, let us remember that we are talking about the scenarios in which there are no methods of removing the fetus from the womb without killing it). To the fetus, the outside world is a lethal place, and if it is the mother who is responsible for bringing it into the safe haven of the womb (analogous to the airplane from one of our previous examples) and it is the mother who now wants to expel it from that safe haven, it is also the mother who is taking upon herself the direct responsibility for the fetus’s death (the mother is the crucial and indispensable element of every link of the causal chain in question).<sup>8</sup>

While I appreciate the cleverness of this attempt, I cannot think that it succeeds. For, there is a fatal disanalogy. 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.<sup>8</sup> And, as well, a pregnant woman

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<sup>7</sup> Well, murder with an asterisk. That is, B is guilty only of a lesser crime, perhaps manslaughter, since he is not the initiator of the violence, A is. B is guilty of an over reaction, or imposing disproportionate punishment.

<sup>8</sup> I am extremely puzzled by Wisniewski’s footnote 8. In it he says: “Perhaps it is worthwhile to stress once again that lack of consent need not imply acting *against* one’s will—it might imply acting *independently of* one’s will. Dragging an unconscious person onboard a plane might be done neither in accordance with nor against that person’s

*improves* the fetus' position, certainly not Y's. In another context (Block, 2010) I state the following:

If B is willing to bring the fertilized egg to term, and then to raise the resultant child, well and good. As we have seen, the law would force A to hand over this bit of protoplasm to B under such conditions. But suppose B is unwilling or unable to bring up the child in the normal manner; however, he contractually obligates himself to *keep this fetus alive*, perhaps under the self same laboratory (refrigerated) conditions it is now being kept viable, for research, by the scientific creators of it. Would *this* count as a "substantial improvement" in the fetus's welfare? Certainly it would! How so? In making this determination, I reject the doctrine of reincarnation, wherein souls percolate into different bodies in different lives. In this view, the fetus might well be better off dead, so that it could later enter into a "better" body and live an entirely different life. Instead, I am assuming in making this claim that this is the one and only chance the fetus will have to live. Alive, the fetus has a *chance* to reach maturity; dead, no chance at all."

I now make a similar claim with regard to the pregnant woman. Does she improve or worsen the condition of the fetus she is now "housing," compared to the situation in which she is not pregnant at all? Clearly, she *improves* it, since were she not expecting, the fetus would not exist at all. Pregnant, at least the fetus lives for a little while, which, if we hold life as better than death, or, in this case, non existence, must be counted as an enhancement, not a deterioration. Well, I admit, this is not *much* of an improvement, particularly if the mother carries through her determination to expel the fetus before its term. However, "where there's life, there's hope." Not *every* woman who gets pregnant terminates it before the nine month period; most do not. Possibly, this one will not. Merely by becoming pregnant, moreover, she has not at all violated the NAP.

But, the same cannot at all be said of poor Y, the victim of X. It would be totally impossible to even contemplate the possibility that Y was made better off by being kidnapped by X. And then to be tossed out of the plane? That is a horrendous worsening of his welfare. Certainly, the initial high-jacking, alone, was a violation of the NAP. This does not at all apply to the initial situation in the supposedly analogous scenario.

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wishes." But this really will not do. Surely, first getting someone drunk unto unconsciousness, and then dragging him onto a plane, with the intention of dumping him off to his death when in the air, should count as being *against* the victim's will. Without a doubt, this should be interpreted as contrary to the NAP. That Wisniewski does not see matters in this way leads me to believe that try as I might, I am still misunderstanding him. But, where is my error?

Let us put this in other words. In both cases, there are two stages. In one case, X first kidnaps Y, and then, second, the former throws the latter to his death from high up in the air. In the second case, first the mother gets pregnant, and then, second, we may assume, she aborts the fetus. According to Wisniewski, the second part of each of these two stage events constitutes a violation of the NAP. But, even he must admit, I think, that while X's first stage act also violates the NAP, the mother's does not.

Wisniewski's (2001, 3) next attempt to refute my view on abortion is this:

Thus, my conclusion is that in such cases the mother is guilty of violating the libertarian axiom of non-aggression.... 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.

So, there is a storm. It is a deadly one. If you stay outside, you will die. I invite you inside my house. I thus make you a "trespasser." A month goes by. A year goes by. Ten years goes by. The storm persists. If ever I disinvite you, if ever I ask you to leave my abode (I have been feeding and clothing you all this time), I will be guilty of murder, according to Wisniewski, because I have made you "a 'trespasser' in the first place." Suppose I board, house and feed you for five years, whereupon I turn you out into the storm, and to your death. I am a murderer. I get no credit for keeping you alive for five years, according to Wisniewski.

Say what you will about this theory of his, it is not a libertarian one. It is one that imposes positive obligations upon me. 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.

An important merit of Wisniewski's stance is that it is robust enough to distinguish between the pregnant woman who voluntarily engaged in sexual intercourse, and the one who was placed in that state as the result of rape. Only the former "invited" in the fetus. The latter did not. However, his theory is vulnerable to the following objection. Consider the case where the mother dies while pregnant, through suicide. Wisniewski would have to consider her a murderer as well, since she had invited in the fetus, and now leaves it in the lurch, unjustifiably killing it, too. In contrast, I am not logically forced into that conclusion. On the other hand, my views impel me to consider the surrogate mother who commits suicide if not a murderer, at least

a criminal of some sort, as she is a contract violator, and the people who paid her to bear their child are the victims.<sup>9</sup>

Wisniewski's (2010, 3) parting shot concerns child abandonment. He duly notes my (Block, 2001, 2004A) invocation of "the non-existence of positive rights in the libertarian moral framework to argue that a child can be legitimately abandoned by its parents provided that the latter meet all the relevant criteria of the proper abandonment procedure. One of such criteria is that they have to make sure that there is no one else in the world willing to take up the role of the guardian of their offspring." So far, so good. This is an accurate portrayal of my position. But then he rejects this on the ground that

As in the case of pregnancy ... it is the parents who are directly responsible for bringing their offspring into the world (without its consent). And the world is a place much too harsh for a newborn child to survive in without any help and care from others. Therefore, if the parents first bring it into the safe haven of their care and then decide to expel it into the lethal environment outside, they are acting analogously to a person who drags his unconscious companion onboard a plane and then, when the plane is up in the air, orders him to jump out.

As I have already given reasons for rejecting this analogy, I will move on to a related point. Suppose the parents give birth to a mentally handicapped son, who will need help his entire life, which will, we may posit, end long after theirs. That is, the parents will predecease the child. That being the case, they will be guilty of malfeasance. Wisniewski (2010, 4) states: "the morally upstanding parents need to do is to take care of their progeny until it can survive on its own outside the parental household." In such a case, the progeny cannot "survive on its own outside the parental household." So, in Wisniewski's view, the parents are not "morally upstanding," by which I take him to mean they are acting incompatibly with the NAP of libertarianism. Not so, not so. Indeed, this example constitute a *reductio* of his position. Parents who predecease a handicapped child, without succeeding in making provisions for him after his death (we may suppose that they have tried to do so) should not be considered murderers, as Wisniewski's theory would suggest.

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<sup>9</sup> Suppose the surrogate mother merely dies of natural causes. She is still a contract violator. She must offer compensation to her victims. At least they have first lien on her estate, ahead of her heirs. The logical implication of Wisniewski's view is that this would apply to *all pregnant* women who die during the nine month incubation period, a curious conclusion. Why? Because in his analysis, the woman has a positive obligation toward the fetus, just as, in my view, has the surrogate mother. This demonstrates how out of step is his thesis not only from libertarian theory, but from common sense as well.

## Conclusion

No, “one need not postulate the existence of positive rights” (Wisniewski, 2010, 3) but it is my claim that this author cannot reach his conclusion without them. Merely inviting someone in to one’s property, whether womb or home, does not give the invitee the right to stay there for one second longer than the property owner in question, the household or the pregnant woman, wishes to entertain the guest. It certainly does not justify a nine month stay, or a visit for ten years, or, responsibility for the entire remainder of one’s life, and more.

## References

- Block, Walter E. 1977. “Toward a Libertarian Theory of Abortion.” *The Libertarian Forum*. Vol. 10, No. 9, September, pp. 6-8;
- . 1978. “Abortion, Woman and Fetus: Rights in Conflict?” *Reason*, April, pp. 18-25.
- . 1999. “Market Inalienability Once Again: Reply to Radin,” *Thomas Jefferson Law Journal*, Vol. 22, No. 1, Fall, pp. 37-88; [http://www.walterblock.com/publications/market\\_inalienability.pdf](http://www.walterblock.com/publications/market_inalienability.pdf)
- . 2001A. “Stem Cell Research: The Libertarian Compromise”; September 3; <http://www.lewrockwell.com/block/block5.html>
- . 2001B. "Alienability, Inalienability, Paternalism and the Law: Reply to Kronman," *American Journal of Criminal Law*, Vol. 28, No. 3, Summer, pp. 351-371; [http://www.walterblock.com/publications/reply\\_to\\_kronman.pdf](http://www.walterblock.com/publications/reply_to_kronman.pdf)
- . 2003. “Toward a Libertarian Theory of Inalienability: A Critique of Rothbard, Barnett, Gordon, Smith, Kinsella and Epstein,” *Journal of Libertarian Studies*, Vol.17, No. 2, Spring, pp. 39-85; [http://www.mises.org/journals/jls/17\\_2/17\\_2\\_3.pdf](http://www.mises.org/journals/jls/17_2/17_2_3.pdf)
- . 2004A. “Libertarianism, Positive Obligations and Property Abandonment: Children’s Rights,” *International Journal of Social Economics*; Vol. 31, No. 3, pp 275-286
- . 2004B. “Are Alienability and the Apriori of Argument Logically Incompatible?” *Dialogue*, Vol. 1, No. 1. <http://www.univshstov.bg/dialog/2004/256gord6.pdf>
- . 2008. “Homesteading, ad coelum, owning views and forestalling.” *The Social Sciences*. Vol. 3, No. 2, pp. 96-103;

- . 2010. “A libertarian perspective on the stem cell debate: compromising the uncompromisable,” *Journal of Medicine and Philosophy*. Vol. 35: 429-448;
- Block, Walter and Roy Whitehead. 2005. “Compromising the Uncompromisable: A Private Property Rights Approach to Resolving the Abortion Controversy,” *Appalachian Law Review*, 4 (2) 1-45; [http://www.walterblock.com/publications/block-whitehead\\_abortion-2005.pdf](http://www.walterblock.com/publications/block-whitehead_abortion-2005.pdf); [http://www.walterblock.com/wp-content/uploads/publications/block-whitehead\\_abortion-2005.pdf](http://www.walterblock.com/wp-content/uploads/publications/block-whitehead_abortion-2005.pdf)
- Block, Walter, Stephan Kinsella and Roy Whitehead. 2006. “The duty to defend advertising injuries caused by junk faxes: an analysis of privacy, spam, detection and blackmail.” *Whittier Law Review*, Vol. 27, No. 4, pp. 925-949
- Dyke, Jeremiah. 2009. “No Compromise: A Rejoinder to Block and Whiteheads’ (sic) Compromising the Uncompromisable: A Private Property Rights Approach to Resolving the Abortion Controversy.” *Libertarian Papers*, Vol. 1, pp. 1-17
- Hoppe, Hans-Hermann and Walter Block. 2002. "Property and Exploitation," *International Journal of Value-Based Management*, Vol. 15, No. 3, pp. 225-236; <http://www.mises.org/etexts/propertyexploitation.pdf>
- Tinsley, Patrick. 1998-1999. "With Liberty and Justice for All: A Case for Private Police," *Journal of Libertarian Studies*, Vol. 14, No. 1, Winter, pp. 95-100; [http://www.mises.org/journals/jls/14\\_1/14\\_1\\_5.pdf](http://www.mises.org/journals/jls/14_1/14_1_5.pdf)
- Wisniewski, Jakub Bozydar. “A Critique of Block on Abortion and Child Abandonment.” *Libertarian Papers* Vol. 2, No. 16; <http://libertarianpapers.org/2010/16-wisniewski-block-on-abortion/>.