

RESPONSE TO JAKOBSSON ON HUMAN BODY SHIELDS

WALTER E. BLOCK*

I AM DELIGHTED to be able to reply to Jakobsson (2010), which is a rejoinder to my publication (Block, forthcoming).¹ One reason for my joy is because that author does me honor in thinking that my own article is worthy of a rejoinder. Another, is because there will be no “passing of the ships in the night” in this exchange. Jakobsson understands my viewpoint precisely, and thus attacks what I have said, not what I have not said, an occurrence that, unhappily, is all too rare in scholarly publishing. I hate to admit this, and, if anyone dares bring this up in future I shall vociferously deny it, but Jakobsson’s (2010, 99–100) summary of my case is so superlative on the first two pages of his excellent essay² that I would go so far as to say that in terms of eloquence, succinctness and completeness, he makes the case for my perspective far better than I have done in my own (forthcoming) attempt to explain this viewpoint.

Especially valuable are his (2010, 99–100) treatment of the “three topics ... to be addressed: what is misery and how can one come to own it, how does one forward the misery onto others, and why it can only be the

*Walter E. Block (www.WalterBlock.com; wblock@loyno.edu) is Harold E. Wirth Eminent Scholar Endowed Chair and Prof. of Economics, College of Business, Loyola University New Orleans and a Senior Fellow of the Ludwig von Mises Institute. I owe a great debt of gratitude to my friend Michael Edelstein, for putting up with the endless discussions I imposed upon him on the topic of human shields and human missiles (A throws B against C). Any remaining errors are mine and mine alone, of course.

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¹ It must be unusual in the annals of academic publishing, or, indeed, any other variety, to find a rejoinder published before the article under criticism sees the light of day, particularly when they both appear (are scheduled to appear) in the same journal. One wonders how Jakobsson even got hold of my article, given that he subjects it to a critique before it was even published. Chalk this down to a vast compliment to me: Jakobsson is so anxious to set me straight, that he does so before I can even lay out my arguments in published format.

² Well, excellent apart from the fact that it criticizes my article (Block, forthcoming), and I am still convinced of the correctness of the latter.

forwarding of misery that can be defended against.” My only reaction to his setting out of the premises is, if he understands my thesis so well, if he can put my case in so excellent a manner, why oh why does he not *agree* with me? Permit me to quote widely from him (Jakobsson, 2010, 100), for, as I say, he does put the matter very clearly:

Suppose that A kidnaps B, and uses B as a shield from any retaliation from C, whom A is trying to murder. C’s only way of saving himself is to use his gun and shoot A, through B. Also, B has a guardian angel that will defend B from any aggression from C, unfortunately not from A. So, if C tries to shoot B, B’s guardian angel will use his gun and shoot C.

It turns out that he has some important and some not so important reasons for rejecting my thesis. Let us start with the latter first (Jakobsson, 2010, 100):

In this scenario, either C or B must die, and since libertarianism is a way to resolve conflicts over property rights, only one of the two has the right to defend himself from the other (we’re leaving A out of the picture). The classical libertarian position is that, since B does not aggress against C, it would constitute aggression for C to shoot B. But, what if B is forwarding misery onto C? Then, it would be permissible for C to shoot B. How then, does B forward his misery onto C? Simply put, ‘B is indeed attempting to pass on his role of first victim onto C by in effect acquiescing in his guardian angel’s shooting of C’ (Block 2006, p. 4).³ This reasoning has some minor problems—what if A attacked C first?

My response is as follows. If A attacked C first the example changes not by one iota. Thus, I hardly acquiesce in the notion that it is a “minor problem” that I posited that A attacked B first. Surely, I could have had A attack C first. If I had, then it would be equivalent to substituting B and C for each other. To make this scenario coherent, A has to attack *someone* first. Since I think along alphabetical lines (ok, ok, alphabetical ruts) it seemed simplest to have the action occur, radiating out from A to B to C. However, if Jakobsson is more comfortable with A to C to B, he can invert B and C with each other.

This author’s (Jakobsson, 2010, 100) next “minor problem” with me (Block, unpublished) is: “what if B didn’t have a guardian angel?” But the guardian angel is not absolutely needed. I stuck him in there merely to clarify the issue; well, at least, such was my goal. I see that in the present case the guardian angel spreads more confusion than clarification. So, allow me to set

³ Block 2006, p. 4 would appear to be a typographical error. Surely, he is referring, here, to Block, unpublished.

out the scenario without him. A grabs B and holds him by the scruff of his neck, in front of A. Whereupon A starts shooting at C, his ultimate victim (A has nothing against B; B will be set free by A after his use as a shield against C is no longer needed, with C's death.) All three actors in this little drama have pistols, and are excellent shots. However, for some reason, hey, to make this scenario work, B may not turn around and aim his revolver at A, the only clear bad guy in this example. By the assumptions I am setting up, A is able to shoot C, B is able, only, to shoot C, and C, for his part, is able to shoot A, his real target, only by going through B's body with his bullet, in order to reach A, his ultimate target.⁴ There is no guardian angel here, whatsoever, in this modified morality play. But, the question still remains, according to libertarian theory, who may properly shoot whom? B against C, or C against B?⁵ Rothbard (1984) says only B may properly kill C; in my (Block, forthcoming) view, only C may properly kill B. We both, Rothbard and I, reject the answer that both B and C may shoot at each other, and may the best man win. This is unacceptable, in that when there is a seeming conflict in rights (as between B and C in this case), libertarian theory must determine *which* of the contending parties actually has justice on his side. To answer "both" would be a complete abnegation of libertarian analysis.⁶

Rothbard (1984) maintains that it would be righteous shoot if and only if B engaged in it. Why? Because in the view of that scholar B is entirely innocent, and C is shooting (or threatening to shoot, same thing as far as we are concerned) at him, B. So, it is a pure matter of self defense, in Rothbard's (1984) support of B as the innocent party. In my view, in contrast, B and C are *equally* innocent. A is entirely at fault. A is committing aggression against *both* B and C. So, there is *nothing* to choose between B and C in terms of innocence. B and C are *each* victimized by A. If it is true that B shoots at C in self defense, as Rothbard (1984) would have it,⁷ it is *equally* the case that C aims lead in B's direction *also* in self defense. After all, A is firing at C. How *else* can C defend against this aggression apart from returning the favor to A; of course in our example, this necessarily requires C's going right through B with his bullets. If B and C are on an even position with regard to *self defense*, there is, however, one dimension in which the case in behalf of C completely overwhelms that for B: homesteading. B was the *first* to homestead the misery put out there by A. A seized the body of B *before* he began shooting at C. It would not have been *safe* for A to throw bullets at C before he utilized B's

⁴ See? I told you so. Jakobsson is better able to set out these scenarios than am I.

⁵ As Jakobsson quite properly puts matters, "we're leaving A out of the picture."

⁶ For an instance of that error, see Borer (2010). For a criticism of that publication, see Block (unpublished).

⁷ And, I agree with Rothbard (1984) on this point; I have never disputed it.

body as a shield. As can be seen, all of this can be said without the aid of any guardian angel, so Jakobsson's objection can be incorporated into this analysis.

But Jakobsson (2010, 100–101) demurs:

There are two points in time when B can let his guardian angel shoot C: (1) when C is about to shoot B or threaten to shoot B, or (2) before C is about to shoot/threaten to shoot B. If B were to shoot C in the second case it would be the same as murder; C is currently not aggressing against B. If this indeed counts as forwarding of misery, then both classical libertarianism and negative homesteading agree on this issue.

With regard to case (2) there's no forwarding of misery *yet*. This doesn't occur until C starts shooting at or threatening B. We are agreed on this point.

Continues Jakobsson (2010, 101):

But, what about the first case? If we accept that C can only shoot B if B is trying to pass on his misery to C, then C is, in effect, never allowed to shoot B. This is so because the only thing that justifies C to 'be about' to shoot B is either an aggression from B, or him passing on his misery. But B will only be able to pass on his misery after C tries to shoot him."⁸

No, here I cannot agree. B will be passing on his misery to C as soon as *A* starts to shoot at C, while hiding behind B's back. Let me attempt to be more clear on precisely what it means for B to attempt to "pass on his misery" to C. It means nothing more and nothing less than that B *shoots* C⁹ when C fires at, or threatens to gun down, B. Let me try this again, in other words. The conundrum we are facing is, it cannot be true that C has a right to kill B, and, also, B has a right to kill C. Only *one* of them can have this right, otherwise there is a conflict of rights, anathema to libertarianism.¹⁰ Rothbard (1984),

⁸ Why so niggardly with words, here? This is practically all this author says in criticism of my thesis. Why not explain more elaborately? Jakobsson (2010) uses relatively all too many words to explain my (Block, forthcoming) theory, and way too few to criticize it. I find that more than passing curious to spend so much of his allotted space to explaining what he is about to criticize, and so little on the actual criticism. In these calculations, I count Jakobsson's (2010) mention of my minor errors as part of his explanation of my theory. For his crucially important attempt to seriously undermine my thesis, he only uses 335 words, or 31.2% of the total of 1075 words. For his explication of what he is criticizing, he devotes 740 words, or 68.8% of the total verbiage. Surely, this is backwards?

⁹ Or when B threatens to gun down C.

¹⁰ Or, indeed, to *any* rationally coherent system of law. That is precisely the function of law: to determine, when there is a conflict, which of the contending parties is in the

representing the “classical” libertarian analysis, gives the nod to B. In his view, B is the innocent victim. B has done nothing to C. And, yet, here we find C throwing bullets at B. (C, of course, has no animosity toward B; he is only attempting to kill B as a means of getting at A, who is the ultimate “bad guy” of the piece.)

In contrast, in *sharp* contrast, my claim is that B is in the wrong, and C in the right, in this gunplay scenario.¹¹ Why? Because A, the ultimate villain, *first* grabbed up B, making B his shield. Only *then*, after capturing B, did the evil A turn his malevolent attention upon C, his real target. So, why does correct libertarian theory mandate that C may shoot B, but B may not return the favor against C? This is because B was the *first* homesteader of the misery; he was the first negative homesteader. Just as in the case of positive homesteading¹² it is the first person on the scene who mixes his labor, or body, with the occurrence, who gets the goods. Only, in negative homesteading, there are no goods, only bads.

My debating partner says “But B will only be able to pass on his misery after C tries to shoot him.” This is simply not so. B passes on his misery to C *before* C tries to shoot him, B. When? When A grabs onto B, and starts hailing lead at C, which necessarily occurs before C shoots B.

Jakobsson (2010, 101) offers two scenarios concerning the timing of the various occurrences in our scenario:

Suppose that events unfold this way:

- (1) B, or his guardian angel, does nothing.
- (2) C threatens to shoot B/C is about to shoot B.
- (3) B acquiesces in letting his guardian angel shoot C

We can contrast this with the second situation, where B begins by forwarding his misery onto C:

- (1) C does nothing.
- (2) B acquiesces in letting his guardian angel shoot C.

It cannot be argued that the negative homesteading theory says that it is legitimate for C, in situation (1), to attack B, since B hasn’t tried

right, and which is in the wrong (assuming away partial blame and responsibility, arguendo).

¹¹ Note, we no longer resort to guardian angels. I accept Jakobsson’s (2010) criticism that this ploy only confuses matters. I am grateful to him for pointing this out to me.

¹² See Block, 1990, 2002A, 2002B; Block and Yeatts, 1999-2000; Block vs Epstein, 2005; Bylund, n.d.; Hoppe, 1993; Kinsella, 2003, 2006; Locke, 1948; Paul, 1987; Rothbard, 1973, 32; Rozeff, 2005.

to forward his misery. At least not on the ground that B has done anything to C.

But this is false. B most certainly *has* forwarded his misery to C. He has in effect allowed himself to be captured by A, rather, he has been victimized by A, and this occurred *before* any confrontation between B and C came to the fore. Let us not forget that the very first chapter in this little story was A's capture of B. Second, was A's shooting in the direction of C. Only third in time, perhaps even a long way third, did the seeming rights conflict between B and C take place. That occurred when C began targeting A/B, and B had the choice to fire back or not. Jakobsson's (2010) error is in forgetting all about A, and his shenanigans. Yes, the conflict is between B and C, but the *reason* for this discord is A's hostile takeover of B.

Yes, if we forget all about A, it would appear, with Rothbard, "that C is indeed, in the first case, aggressing against B" (Jakobsson, 2010, 101). But this is to put the cart before the horse. To reiterate: *first* comes A's capture of B; *second* there is A's shooting at C. Only then, *third* does C begin to shoot back at A (necessarily targeting B, docilely standing right in front of A). Long before this, the forwarding of misery from B to C occurs, at the *second* stage when A is shooting at C, hiding behind B. How so? B is the initial recipient of the misery, by being made the shield of A at the outset. *This* is why C is now in trouble; it is due to the fact that B was captured, *before* C's troubles (being shot at by A) began.

Jakobsson (2010, 101) gives this one last try: "To reiterate, in the first case B doesn't aggress or try to forward his misery, so when C tries to shoot him, he's aggressing against B. Thus the negative homesteading theory does not, contrary to Block's claim, conclude that it is permissible to attack against innocent shields."

Perhaps matters may be clarified if we leave off discussion of the shield, for the moment, and take up, instead, the analogous case of the missile. Here, X picks up Y, bodily, and then X throws Y against Z with such force that both Y and Z will die when the two of them collide. Again, all three members of this little drama come armed with pistols,¹³ disintegrating weapons in this case, such that when they hit their target, he will simply disappear. Again, we stipulate that everyone is an excellent shot, and never misses. For some reason, don't ask, no one can shoot X; if X were vulnerable, this entire example could not get off the ground. So, Y is now en route to Z, sailing through the air, maybe not with the greatest of ease, but at a tremendous clip. When contact occurs, both Y and Z will perish. In this case, who has the right to employ the disintegration ray gun, Y or Z?

¹³ To satisfy Jakobsson, there are no guardian angels lurking about.

The classical libertarian position would be that Z is in the right: Y is moving in Z's direction (we posit through no fault of his own, but, still, Y is now performing the role of a missile, directed at Z, thanks to X), and therefore Z may properly use his gun to make Y disappear, in self defense.¹⁴ In contrast, in my negative homesteading analysis, Y is the first inheritor of misery (when he is picked up by X and thrown in Z's direction.) For Y to now shoot Z, en route, so as to save his own (Y's) life, would be as improper as Y directing lightening to Z that was originally aimed at Y.

How would Jakobsson analyze the missile case? If he does so along the lines of his discussion of the shield, he would say the following:

If we accept that Z can only shoot Y if Y is trying to pass on his misery to Z, then Z is, in effect, never allowed to shoot Y. This is so because the only thing that justifies Z to 'be about' to shoot Y is either an aggression from Y, or him passing on his misery. But Y will only be able to pass on his misery after Z tries to shoot him.¹⁵

Note the complete absence of X (A) in this passage. It is one thing to focus on Y and Z. The conflict, after all, involves them, and only them. It is one thing to say "we're leaving A (or X, in the missile case) out of the picture" so as to concentrate on the conundrum offered us by B and C (or Y and Z, in the missile case). But to ignore A (X) entirely, as Jakobsson appears to do, cannot help us explicate matters. A (X) is the moving force behind the entire scenario. It is "thanks" to him that we have a philosophical puzzle in the first place.

Thus, it is completely unwarranted to maintain that "Z is, in effect, never allowed to shoot Y. This is so because the only thing that justifies Z to 'be about' to shoot Y is either an aggression from Y, or him passing on his misery. But Y will only be able to pass on his misery after Z tries to shoot him." I do not at all see why "Y will only be able to pass on his misery after Z tries to shoot him." This is simply untrue. Y is passing on his misery to Z, unjustifiably, the *instant* that X launches Y into space, in the direction of Z. Or, to return back to the shield scenario, B is passing on the misery of which he is the rightful owner, since he was the *first* victim of A, to C, as soon as one, A grabs B to hide behind, and, two, A starts shooting or threatening to shoot, at C. Only later on does C shoot at A/B, and our conundrum begin.

¹⁴ How would Coase (1960) resolve this issue? He would maintain that we first find out who is likely in future to make a greater contribution to GDP, and give the nod to that person. In other words, if Y can make a greater economic contribution to society than Z, then Y may shoot Z; if Z can do so, then Z gets to live, not Y. For a critique of this preposterous and grotesque (from a libertarian perspective) suggestion, see Block (2000).

¹⁵ This quote was generated by substituting X for A, Y for B and Z for C.

To conclude. I am extremely grateful to Jakobsson (2010). His essay has forced me to look more carefully at his challenge to what I see as correct libertarian theory. If we are one day as a movement make an impact on law as it is actually practiced, we must first have our ducks in a row. Jakobsson has helped us all to that end, and me in particular.

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