

## DEPARTURISM AND THE LIBERTARIAN AXIOM OF GENTLENESS

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THIS PAPER WILL FIRST ENGAGE in a summation of the evictionist position and in a brief explanation of the necessity and foundation for its rejection of this position. It will next introduce *departurism*; a view strictly devised so as to provide an alternative to evictionism. The paper will proceed to organize and make clear its position by means of providing an argumentation scheme for the departurist view. The paper will present and answer possible objections to the departurist thesis. This will serve both to bolster the view's claim to libertarian justification (while detracting from evictionism's claim to the same), and to examine in greater detail the evictionist hypothesis. The paper will conclude that, when it comes to advancing "a liberty and private property rights approach to the issue of abortion" (Block & Whitehead, 2005, p. 1), it is the position of departurism, and not that of evictionism, that does so most satisfactorily.

### A Preliminary on Evictionism

Evictionism was devised as something of a compromise between, or a replacement of, "the two alternative mainstream views on [the question of abortion], pro life and pro choice" (Block, 2011, p. 1). According to Block (2011):

The evictionist hypothesis stipulates that human life begins at the fertilized egg stage, not nine months later, at birth. However, the placenta, upon which it will reside for this duration of time, is owned by an entirely different person, the mother. The womb is *her*

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property, and, in libertarian law, she, I contend, properly maintains control over it. If she wishes to house the fetus there until natural gestation is completed, well and good. But, if she does not, what rights does she have over this small human being who now resides within her body? May she kill it, and then eject it? May she remove it from her body, that is, evict it? In my view, the relation of the fetus to the mother is akin to the one that obtains between the ordinary trespasser and the owner of the property in question.<sup>1</sup> In libertarian law, the property owner is entitled to remove the trespasser in the gentlest manner possible; if this necessitates the death of the trespasser, the owner of the land is still justified in upholding the entailed property rights. (p. 2)

### The Need and Basis for the Current Rejection of Evictionism

This paper attempts to call into question the libertarianism of the above hypothesis in a manner that has not, until this point, been endeavored. Wisniewski (2010a) criticized the evictionist position on the grounds 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” (p. 3). While the position of this paper acknowledges that the mother, in evicting the fetus, is using force, it does not, however, maintain that she is the one initiating it. The mother, rather, is responding to the aggression initiated by the fetus against her property.<sup>2</sup> The question this paper addresses is whether or not a death-necessitating response to this aggression is warranted in this instance. Further, in the view of this paper, placing importance on the party who is “responsible for making someone a ‘trespasser’ in the first place” (Wisniewski, 2010a, p. 3), only confounds the issue. Because “all fetuses have equal rights” (Block, 2011, p. 8)—and because so too do trespassers who are relevantly similar to fetuses—the only matters of importance are whether or not the trespasser on topic willfully intended to trespass and whether or not

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<sup>1</sup> Rothbard (1998) claimed a similar view: “Should the mother decide that she does not *want* the fetus [in her womb] any longer, then the fetus becomes a parasitic ‘invader’ of her person” (p. 98).

<sup>2</sup> In this aggression against the mother’s property, the fetus is properly labeled a trespasser, though it is not a willful aggressor. The libertarian grounds for this claim can be found in Block (2010):

In Block, Kinsella and Whitehead (2006) we state: “[If the mother evicts the fetus from her womb], she must do so in the gentlest manner possible, for the trespasser in this case is certainly not guilty of *mens rea*.” 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.

he intends to put an end to it.<sup>3</sup> For, with regard to his trespass, if he does not possess a guilty mind, then there exists no reason why he should not be subject to the “basic axiom of libertarianism [that] non criminals are to be treated in the ‘gentlest manner possible’” (Block, 2010, p. 3).<sup>4</sup> Moreover, if this morally innocent trespasser is in the act of departing the premises (thereby affirming a respect for private property rights), then his allowance by the property owner to do so is in far better accord with the axiom of gentleness than would be the property owner’s lethal eviction of him.<sup>5</sup>

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<sup>3</sup> The libertarian basis for this claim can be gleaned from Block (2010):

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. (p. 3)

It is necessary to establish what, if anything, makes A “an innocent person.” A, no doubt, is aggressing against B’s property, but, as is pointed out, he is inadvertently doing so. Block, here, suggests that it is this inadvertence of aggression that causes A “to be guilty, merely, of a tort,” rather than of a crime. So, it seems, one of the determining factors as to whether or not an aggressor is to be treated as a non-criminal (that is, whether or not he is to be subject to gentle treatment) is whether or not his aggression is purposefully initiated. The second determining factor, it appears, is whether or not this aggressor demonstrates a respect for private property rights (that is, if, after realizing or being made aware of this aggression, he seeks to put an end to it).

<sup>4</sup> Gentleness is applicable to non-criminals—without regard for the ways in which they find themselves in situations of aggression. With this understanding, it is not correct to suggest that, depending on how they come to be aggressors, only particular non-criminal trespassers are subject to gentleness (those fetuses which are, for example, “the result of one’s [voluntary] actions” [Kinsella, 2006, para. 16]) while others are not (those fetuses which are, for example, the result of rape). Gentleness is a libertarian fundamental, and Block (2011) was correct in its assessment that it ought to be equally accessible to all fetuses because “they are all equally innocent” (p. 8).

<sup>5</sup> Block (2010)’s proposed scenario, in which “innocent person A [the trespasser] inadvertently sets foot on B’s lawn” (p. 3), has served to affirm this claim. B [the property owner] “notifies A of his misstep” (p. 3). If, after being asked by B to cease and desist, A corrects his misstep, then he is respecting private property rights and is therefore subject to gentle treatment. If, on the other hand, after being asked by B to cease and desist, A does *not* correct his misstep, then he is *not* respecting private property rights and is therefore *not* subject to gentle treatment (that is, he “becomes a purposeful criminal, replete with mens rea” [p. 3]). To suggest that a fetus (or any non-criminal trespasser who is in the act of stopping their trespass) may be forcefully dealt with (lethally evicted, say) when there exists gentler means to affect the cessation of aggression against the property owner’s premises is to suggest that A, even if he were in the act of correcting his misstep and respecting private property rights, may have violence properly employed against him in order to facilitate his respect for B’s private property rights—thereby making

Additionally, there has been no previous opposition to evictionism on the basis of the incongruity between its obligation to notify and its designation of irrelevance on the notion of trespass duration.<sup>6</sup>

### **An Introduction to Departurism**

The departurist and evictionist views are in agreement that in the event of an unwanted pregnancy, a fetus becomes to its mother what a trespasser is to the owner of the property in question. However, where evictionism holds that it is justifiable for the mother to evict this fetus from her property (that is, to abort it), departurism—on the grounds of the axiom of gentleness—holds that it is not. The departurist position affirms that all unwanted fetuses are morally innocent of their gestation-entailed trespass and that, as such, these fetuses, in their removal from the premises of the property owner, are to be treated in “the least harmful manner possible” (Block, 2011, p. 3). Departurism further affirms that such a manner is applicable to any unwanted fetus because the innately certain and temporary duration of its trespass is an attestation that private property rights are being respected (that is, it is an indication that, in the unwanted fetus’ departure from the property owner’s premises [the process of gestation], the act of trespass is in the act of being stopped).<sup>7</sup> There exists every reason, then, for departurism to affirm that the fetus’ continued and completed departure is the gentlest manner possible to affect its removal from the property owner’s premises or, at least, that such a manner is more gentle than the property owner’s lethal eviction of him.

### **The Departurist Argument**

When there exists, like there does in an unwanted pregnancy, a situation in which a non-criminal trespasser is ceasing his property-directed aggression (that is, when he is in the act of stopping his trespass), departurism contends that libertarian law ought to require that the owner of the property in question allow for this trespasser to complete the process of his departure from the premises just in case death is the necessary result of his eviction.<sup>8</sup> Because such a case is relevantly similar to the case of a trespass within the

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insignificant the boundary which serves to define and delineate the treatment of criminals and that of non-criminals.

<sup>6</sup> This will be explained in greater detail at a later point in this essay.

<sup>7</sup> As Wisniewski (2010b) has aptly pointed out, “pregnancy [nearly always] lasts for approximately 37–42 weeks” (p. 5).

<sup>8</sup> That is to say, when the eviction of such a trespasser entails not simply the possibility of his death, but the certainty of it.

womb (and because allowing for such a trespasser to depart in this situation is the gentlest manner possible consistent with stopping the crime)<sup>9</sup> the same course of action ought to be endorsed by libertarian legal theory in either case.

The departurist argumentation scheme can be represented as follows, where  $S_1$  represents the situation of a trespasser (a) without mens rea (b) in the process of departing the premises of the owner of the property in question and where (c) eviction from said premises would necessitate the death of the trespasser,<sup>10</sup> and  $S_2$  represents the situation of a fetus on the premises of the mother. Also, let  $\mathcal{A}$  represent the continued and completed departure of the trespasser.<sup>11</sup>

- P1). The course of action that libertarian legal theory ought to endorse in  $S_1$  is  $A$ .
- P2).  $S_2$  is relevantly similar to  $S_1$ .
- C). Therefore, the course of action that libertarian legal theory ought to endorse in  $S_2$  is  $A$ .

### Premise One

Departurism contends that  $\mathcal{A}$  should receive the endorsement of libertarian law, because, simply, it is the gentlest manner possible consistent with stopping the crime. Allowing for the trespasser in  $S_1$  to complete the process of his departure is a course of action in which the aggression will have been stopped and the property owner will not have had to respond to the aggression against his property with lethal or, for that matter, any force whatsoever.

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<sup>9</sup> When this paper (and, presumably, Block [2011]) puts to use the phrase “gentlest manner possible consistent with stopping the crime,” it is not suggesting that an act of aggression perpetrated by a non-criminal be thought of as a crime. Instead, in this context, it uses “crime” interchangeably with “aggression.”

<sup>10</sup> When this paper, throughout, refers to  $S_1$ , it is referring to an event of trespass in which each of these conditions, in conjunction, is represented.

<sup>11</sup> It is the view of departurism that  $\mathcal{A}$  entails that the property owner allow for—and not ensure—the continued and completed departure of the trespasser. The property owner is not obliged to facilitate this trespasser’s departure (that is, he is not obliged to protect the trespasser from the possibility of succumbing to a felled chandelier, say, or to a deadly stairwell misstep), but he must not hinder it (that is, he must not deprive of operational energy the elevator by which the trespasser must depart, say, or barricade the stairwell so that departure no farther proceeds).

Further, if allowing for *A* is to be considered a positive obligation on the part of the property owner, then it is a strict and particular one that ought to be exempted from the prevailing libertarian restriction against such. Also, departurism does not require—as does evictionism—that the libertarian axiom of gentleness be amended in any way (most specifically, it does not require that this axiom be amended so as to require a time-frame outside of which the aggression cannot be stopped *and* be thought of as the gentlest manner possible consistent to that end).

### *Objections*

This paper will now confront, and attempt to respond to, a number of possible objections to the first premise of its thesis. In these responses, it may seem, at times, as though this paper is engaging evictionism in a manner decidedly adversarial. While the below responses do, for a fact, venture to strongly defend themselves against the presented objections, they do not do so at all simply for the sake of controversy. Rather, this sort of disputation must take place because there are only two viable options available to the mother faced with an unwanted pregnancy if her actions are to be endorsed by libertarian law.<sup>12</sup> The aggression must be stopped, so the mother must either allow for the fetus' continued and completed departure or she must *not* allow for the fetus' continued and completed departure. *A* or *Not-A*.<sup>13</sup> So the only positions available to develop and debate these options are departurism and evictionism. It is clear, then, that in any conflict where there are available only two options, an argument *against* one is an argument *for* the other. And so this paper proceeds in an effort to best argue for its position.

### *From Gentleness*

The dominance of the departurist claim to gentleness is disputable only to those who, in the view of this paper, have an incorrect comprehension of

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<sup>12</sup> According to the evictionist, the fetus' death at the hands of the mother is not to be considered justifiable in the way that its death would be if it were subordinate to her eviction of the fetus. According to Block and Whitehead (2005), "RU 486... which kills and then flushes out the fetus, [should not] be legal" (p. 25). That is to say, "the mother is [not] within her rights to... kill the fetus" (Block, 2011, p. 2).

<sup>13</sup> If the mother does not allow for the fetus' continued and completed departure, then she either directly kills it, or she evicts it (there are presently no options available to the pregnant mother wishing to rid herself of the trespasser on her premises that can affect such without doing so lethally). She cannot legally kill the fetus (see preceding footnote), so, in order to not allow for its continued and completed departure, she must evict it. Eviction, thus, is the only possible action that could constitute *Not-A*, and be argued from a libertarian perspective.

the notion. Block (2011) has mistakenly offered, “If we are to accurately employ the libertarian legal nostrum, ‘gentlest manner possible consistent *with stopping the crime*,’ then [the] trespasser *must* be stopped” (p. 4). This, however, is not at all true—unless, of course, the libertarian legal nostrum “gentlest manner possible” is to be amended to its being “consistent *with stopping the criminal*.” It is not the *trespasser*, but the *trespass* that must be stopped. If one is to strictly and, in the view of this paper, rightly interpret the axiom of gentleness, then one must acknowledge that it indicates that the most urgent necessity is that the act of trespass be stopped.<sup>14</sup> And because, in  $S_1$ , the trespasser is in the act of so doing, the gentlest manner possible for the property owner to affect his removal is not to lethally evict him, but to allow for him to remove himself from the premises.

A second objection from gentleness, here, reveals itself. This one deriving from what it means to purposefully act. It may be claimed of gentleness that  $\mathcal{A}$  is not applicable to it because, in allowing for the continued and completed departure of the trespasser, the property owner is not *acting*—and action is required of the property owner if he is to “treat the perpetrator in the ‘gentlest manner possible’” (Block, 2011, pp. 3–4). This objection, however, cannot be said to be a valid one. According to Mises (2008):

Wherever the conditions for human interference are present, man acts no matter whether he interferes or refrains from interfering. He who endures what he could change acts no less than he who interferes in order to attain another result.... Action is not only doing but no less omitting to do what possibly could be done. (p. 13)

So, in allowing for  $\mathcal{A}$ , the owner of the property in question both affects the cessation of the aggression in the gentlest manner possible and exhibits his capacity for action by not evicting unto death the morally innocent trespasser on his premises.

#### *From Positive Obligations*

Departurism has affirmed that, in  $S_1$ , the gentlest manner possible requires that the property owner withhold his eviction of the trespasser on

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<sup>14</sup> Take, for instance, the case of a trespasser who “merely steps” (Block, 2011, p. 3) on one’s lawn. It is not fully correct to state that one *must* stop the trespasser (evict him, say) in order for the aggression to be stopped. As he merely steps off of the lawn, the trespasser can affect as much (and in a manner decidedly more gentle [and possibly more efficient] than would be his forceful removal).

his premises for the duration of the latter's departure.<sup>15</sup> Objections to this requirement most likely find their basis in the notion that "there are no positive obligations in the libertarian lexicon" (Block, 2004, p. 281). The question, then, concerns whether or not the entailed requirement constitutes a positive obligation and, if it does, whether or not it is possible that an exemption for this requirement be made. In order for this question to be appropriately addressed, it is necessary to establish how the evictionist hypothesis fares when this vexing question is directed at it.

According to Block and Whitehead (2005):

If [the evictionist is] indeed guilty of making an exception to the general libertarian stricture against positive obligations, it is a very narrow and limited one. All that is required is that the pregnant woman notify an evictionist that she wishes to rid herself of the fetus. (p. 36)

Block (2011) has phrased it somewhat differently: "The 'gentlest manner possible'... requires that the mother notify the authorities to see if they will take over responsibilities for keeping alive this very young human being" (p. 2).<sup>16</sup> The author went on to claim that he has strenuously argued that this obligation to notify "does not constitute a positive obligation" (p. 2). But what is the reasoning behind this claim?

In Block (2004), the author skillfully defended his libertarian view on child abandonment. This view required parents wishing to relinquish control of their children (that is, parents wishing to abandon them) "to notify others of their act" (p. 282). This requirement, argued Block, is not derived from a positive obligation to do such, rather, it "stems from what it means to abandon property" (p. 282). That is, one cannot, by definition, abandon property without, in part, adhering to this requirement.

This is very well and good for child abandoners. However, the debate on topic is concerned with *trespasser evictors*; with situations in which a property owner's premises are being aggressed against. In order for this defense to be effectively used by the evictionist, here, against charges of positive obligations *as they pertain to trespasser eviction*, he would have to demonstrate how the obligation to notify an evictionist, or the authorities, or

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<sup>15</sup> It is important to state that it is not principally *until*  $S_1$ 's trespasser stops his aggression, but *because* he does so that the departurist requires that the property owner withhold his eviction of him.

<sup>16</sup> Evictionism here claims that this obligation to notify the authorities is a requirement of the gentlest manner possible. It should go without saying, then, that the evictionist would not condone lethal eviction in the event that this obligation to notify was not met.



*whomever*, stems from what it means to evict trespassers. Is one to believe that “it is an apodictic certainty that upon pain of self contradiction” one cannot really evict trespassers “if one tells no one of it” (p. 282)? Likely not. Block’s strenuous argument, here, is insufficient. The evictionist obligation, however narrow and limited, *is* a positive one.

The implication of this reality is that the evictionist must abandon this obligation, or else an exception for it must be made. If an exception is to be made for the evictionist requirement, however, one must also be made for the departurist one because it is no less strict and particular in its application.<sup>17</sup> So it becomes necessary to exhaustively consider the requirements of the two views.

Where departurism affirms that the gentlest manner possible requires that the property owner withhold eviction for the duration of departure, evictionism affirms that it requires him to do likewise for the duration of notification. The result if either of these requirements is brought to bear on the property owner is an obligation that the trespass persist for some duration; that a property owner be prohibited from stopping it when he may see fit to do so (to wit, that a mother withhold the eviction of the fetus in her womb until such a time that these obligations are met). The only difference between the departurist and evictionist requirements is a theoretical one: the amount of time entailed in the fulfillment of each one.

The evictionist, here, is in a conundrum. He cannot claim that the duration of notification is any less onerous a violation of the property owner’s eviction rights than is the duration of departure because he is committed to holding duration as something of an irrelevancy. That is, because Block (2011) has averred that “it matters not one whit how long a duration [of trespass] we are talking about” (p. 11), the evictionist is logically obliged to maintain that if indeed the departurist obligation is positive, so too is his and, in principle, it is positive to an equivalent extent.<sup>18</sup>

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<sup>17</sup> Lest the evictionist be guilty of special pleading in favor of his position.

<sup>18</sup> According to Block (2011):

It is not an “intuition” to say that the essence of the welfare state is positive rights. It is not an “intuition” to say that if a mother is forced to house a trespasser against her will for nine months, that this amounts to the imposition of the fetus’s positive rights upon the pregnant woman who is unwilling to bear this burden. (p. 7)

Extrapolating from his views on duration, if the evictionist is to be logically consistent, he must say that this imposition of positive rights would still apply if the mother was forced to house this trespasser against her will not for nine months, but for *any duration*, including whatever amount of time it takes to fulfill the evictionist obligation to notify. This, likewise, is not an intuition.

*From Duration*

In  $S_1$ , the trespass will be stopped whether the aggressor is evicted from the property in question or whether he completes his departure from it. The question, here, concerns which of these alternatives, with regard to the trespasser, is to be viewed as the most gentle.<sup>19</sup> In order to avoid the obvious and libertarian answer to this question, the evictionist would claim that if the law allows for the trespasser to depart, then the law, essentially, is allowing for the trespasser to squat on the property owner's premises for the duration of that departure. And, because Block (2011) has proclaimed duration in this case to be a matter of principle, even if the duration of said departure were as little as nine minutes, that amount of time "could be turned to nine or even ninety years, without any change in principle whatsoever" (p. 11). According to evictionism, then, the law is to allow for the property owner to stop the trespass when he sees fit to do so, or else libertarianism is transformed into an ideology of squatters.<sup>20</sup>

The departurist position is that, in cases where eviction necessitates the death of any trespasser who is without *mens rea*, the property owner must allow for the continued departure of this trespasser when he is already in the act of stopping his aggression (a) because such corresponds with the axiom of gentleness, and (b) in order that absurdities are not witnessed throughout the whole of society. Consider the following example.

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<sup>19</sup> Dyke (2009) seemed to have lost sight of this issue:

It should be accepted that if you invite someone onto your property without explicitly contracting their rights to be present there, you are under no obligation to forfeit your absolute rights to property. You may change your mind at any time and invoke any punish (sic) to the trespasser. (para. 41)

More important than the manner by which a trespasser comes to be on one's property (a rescinded invitation, say) is whether or not this trespasser is a non-criminal; whether or not he willfully intended to aggress against the property owner's premises. For if he did not, and if, after being made aware that he is unwanted, this trespasser demonstrates a respect for the owner's private property rights, then he is to be treated as a non-criminal. A non-criminal trespasser should not be exempted from the axiom of gentleness even in the absence of an agreement explicitly (or, for that matter, implicitly) contracting his right to be on another's property.

<sup>20</sup> This would be an interesting view for the evictionist to hold, for the evictionist obligation to notify gives the trespasser "a positive right to squat on what would ordinarily be considered the [owner's] private property" (Block, 2011, p. 11) for the duration of notification. If it takes the property owner only nine minutes to notify the authorities, then these nine minutes "could be turned to nine or even ninety years, without any change in principle whatsoever" (Block, 2011, p. 11). In this, the evictionist holds a self-defeating view.

X and Y are discussing the topic of abortion in the penthouse of X's nine-story manse.<sup>21</sup> The conversation turns ugly. It is at this point that X declares Y unwanted; Y, in this declaration, becomes a trespasser and so resigns to comply with X's request to vacate the premises.<sup>22</sup> To square himself with the evictionist obligation to notify, X contacts another to inform him of his intention to evict Y.<sup>23</sup> Y is in the act of leaving the manse and it will take him nine minutes to do so. Because Y's nine minute departure could be turned to ninety or even nine *seconds*, without any change in principle whatsoever, X decides that he is justified in not bearing the burden of Y's aggression against his property for one instant longer. X wants Y gone now, and so he resolves to toss him out of the ninth-story window.<sup>24</sup>

A law enforcement officer arrives to investigate the occurrence. X brings him up to the penthouse in order to properly explain what took place there. Because libertarian legal theory has endorsed evictionism, the officer finds the whole situation to be within the limits of the law. The officer bids farewell to X and begins to leave. However, X decides that he does not want the officer on his premises any longer. Pursuant to the obligation to notify, X again contacts another to inform him of his intention to evict the officer.<sup>25</sup> Because, after this legal formality, he is under no obligation to bear the entailed burden of the officer's departure, X is within his rights

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<sup>21</sup> Y, here, might simply have mysteriously appeared in X's penthouse as a necessary condition of his existence. It does not matter how Y comes to be on X's property, so long as it is not his intention to aggress against it.

<sup>22</sup> This departure might have been in compliance with X's request to vacate, or simply incidental to Y's very nature (that is, departure from the premises might well be a necessary condition of his visit [or of his trespass]). It does not matter how Y comes to depart X's premises, so long as, in so doing, he is in the act of stopping his trespass.

<sup>23</sup> Assume, here, that X has had installed in his premises an abundance of red telephones each with a direct landline to "the hospital, the church or synagogue, the orphanage" (Block, 2011, p. 2), or to an evictionist, or to his pal Eddie, in order that these authorities may be notified so they might, if they wish, attempt to intervene on behalf of Y, or spread the word about Y's imminent eviction to all those available who might wish to prevent such from becoming fatal and who are able to affect such within the next few seconds. Go figure that X, the example's villain, should be so prepared to comply with the evictionist obligation to notify.

<sup>24</sup> Surely X is required to withhold his eviction of Y only until the authorities have been notified, and not until they have actually taken over responsibilities for keeping the latter alive (for what if it takes them nine months to nine or even ninety years to do so?). Once the proviso of notification has been met, eviction is fair game.

<sup>25</sup> After this point, this paper will forego mentioning the property owner's compliance to this obligation. It is to be assumed that all and sundry know how the game is to be played; they are aware of the burdensome red tape involved in making legal their homicides.

to immediately remove him by way of the ninth-story window. And so he does. Sometime later, another law enforcement officer arrives to investigate *this* occurrence. The events repeat themselves, seemingly ad infinitum, until the aggressors' bodies accumulate to a height commensurate with the window so that eviction from it no longer necessitates death.

In a libertarianism guided by evictionism, the actions of the above property owner do not amount to mass-murder. They represent nothing more than his justified response to aggression; the gentlest manner possible consistent with stopping the crime.<sup>26</sup> Such a libertarianism, if it did not altogether destroy the civil society, would most certainly destroy the host-guest relationship. Guests everywhere, ever suspicious of the motivations of their hosts, would be declining invitations to all events in which their host-requested removal from the premises might entail their deaths. "I've only been invited to his home because there is to be a deadly storm that night," guests would confide to their loved ones, "and the host, aware that eviction in this case proves fatal, wants some pretext to legally kill me." Sons would refuse to visit their estranged fathers for drinks at their cliff-side cottages fearing that, if the sensitive topic of "mom" were to come up, their fathers might suddenly wish them immediately evicted from the premises. This evictionist society, if it were not rife with declinations of invitations of this type, would be pervaded with the results of upheld property rights bloodily and violently strewn upon cliff-sides, and with grief-stricken daughters-in-law, once hopeful for justice, now disconsolate in the knowledge that the murderous actions of their fathers-in-law receive full approbation from the libertarian theory that guides their system of laws.

This *reductio* has not been devised in an attempt to "embarrass the libertarian philosophy" (Block, 2004, p. 281). Rather, its purpose is to inform the libertarian philosophy, if it is not already aware, of the logical consequence of adopting the evictionist view, so that it may appropriately measure this outcome, in fairness, against that of adopting the thesis for which this paper argues. No doubt the evictionist, after having considered the above *reductio*, would not balk at it. Granting its validity, he would likely concede that "it is logically possible for such a sad state of events to take place" (Block, 2004, p. 281), and nonetheless urge for its adoption. However, simply because the evictionist might consider the host-guest relationship something of a superfluity and the intentional life-taking of innocent persons

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<sup>26</sup> In the *Godfather* movies, certain members of the Corleone family often employed the phrase "I'm gonna make him an offer he can't refuse," in order to imply a particular point. Under the evictionist view, the Corleone family might as well have employed the phrase "I'm gonna make him leave my property in the gentlest manner possible."

(in extreme cases, in perpetuity) a justified response to aggression, “does not mean that this is not a telling argument against the position he has staked out. The point is, no one else would make this sort of legal judgment” (Block, 2011, p. 10).

Evictionism, if implemented in earnest, would justify murders not simply of the unborn, but of nearly every sort. According to departurism, then, the law is to allow for the trespasser, as defined by  $S_1$ , to stop his trespass in accordance with the duration of his departure, or else libertarianism is transformed into an ideology of corpses.

### **Premise Two**

All that is required to demonstrate that the situations compared in premise two are relevantly similar is to show that the conditions of  $S_1$  are to be found in  $S_2$ . If the same conditions are to be found in both situations, the notion that this comparison is strong and relevant will have a firm foundation.

*The Conditions of  $S_2$*

Both that the fetus is a morally innocent trespasser and that its eviction from its mother's womb will result in death<sup>27</sup> are seemingly uncontroversial conditions of  $S_2$ . Block (2010) has not only maintained that "the fetus is not purposefully committing a trespass" (p. 3), but also that, in the author's perspective, "if a fetus is aborted, he must *necessarily* have been killed" (p. 2).

The final condition of  $S_1$ , that the trespasser is "in the process of departing the premises of the owner of the property in question," applies to  $S_2$  in that a fetus, if deemed a trespasser, would only qualify as such for a certain and temporary duration. The very nature of pregnancy authenticates this notion. It is helpful, here, to return to the example of the nine-story manse.

It can be assumed that every pregnancy begins at the penthouse level; nine-stories up. From fertilization to parturition, the process of gestation takes the fetus from this penthouse level to the ground floor. The fetus must depart the premises of the property owner (in fact, it has no choice but to do so), and it is in the act of so doing from the moment that it first arrives there. This is true for trespassers no less than it is for welcomed guests. Suppose that the mother and the fetus (X and Y) truly enjoy each other's company. Suppose further that they were to somehow establish a contract, expressing this enjoyment, along these lines: *X consents that Y may forever remain on his premises. Y consents that he will do just that.* However, Y is, at all times, on his way

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<sup>27</sup> The evictionist view does, in fact, adopt and promote the permissibility of eviction not simply in cases in which the gentlest manner possible supposedly "necessitates the death of the trespasser" (Block, 2011, p. 2), but also in cases in which it does not; that is, in cases of so-called non-lethal eviction from the mother's premises. According to Block and Whitehead (2005): "With advanced medical technology, based on [future breakthroughs], it is extremely likely that a greater and greater number of fetuses will be able to be safely transported from the (original) mother's womb to another safe and supportive place" (p. 28). However, "safely transporting" a fetus from its mother's womb is nothing more than to forcefully remove it from there. In the event that future technological breakthroughs make possible the achievement of evicting an unwanted fetus in a non-lethal way, arguments would still be present on both sides of the issue. It is yet to be seen whether or not this achievement would, as far as concerns the axiom of gentleness, constitute an unjustified use of force—e.g., force that removes the trespasser in a manner more harmful than its alternatives (see below footnote). The notion of eviction as the gentlest means possible is not, per se, incongruous with libertarianism. The non-lethal eviction of a fetus from its mother's premises can be understood as the gentlest means of affecting its removal if, for instance, the unfettered natural course of its departure proved the more harmful alternative (such as those situations requiring a cesarean section—e.g., requiring the fetus to exit the premises not by way of the more harmful, near-hopelessly blocked front door, but by way of the less harmful, nearby first-story window).

out; Y was, so to speak, descending the manse's staircase as he signed the contract. Y's certain departure from the premises (and the temporary duration of his welcomed stay) represents a force of nature that cannot be contracted around. Further, that Y will certainly leave (and is in the act of so doing) does not represent a violation of contract. X is not kicking him out; he wants Y to stay. Y is not even reevaluating the standing order that represents his contract with X and overriding it "with better, more recent, evidence" (Kinsella, 2011, para. 8) of his desire to leave; Y wants to remain. But, alas, Y cannot remain. His welcomed stay is of a certain and temporary duration. Y is, at all times, in the process of departing X's premises.

The fetus has no control over the fact that even if it were to be deemed by the mother a trespasser, it is nonetheless respecting private property rights by vacating her premises (albeit not of its own volition, but by force of nature).<sup>28</sup> Even if this fetus were to somehow be capable of refusing to respect the private property rights of the mother—vehemently threatening to indefinitely remain on her property, squatting there ("at which point [it] ceases to be guilty, merely, of a tort, and now becomes a purposeful criminal, replete with mens rea" [Block, 2010, p. 3])—this threat would ring hollow. It cannot remain. Its trespass is of a certain and temporary duration. It is, at all times, in the process of departing the mother's premises—and so satisfactorily corresponding to  $S_1$  in this respect.

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<sup>28</sup> Take the case of Block (2011)'s trespasser, "innocent person A" (p. 3)—the inadvertent lawn-stepper. The property owner, B, advises him of his misstep. But suppose that A is in the midst of a daydream (hence his inadvertent trespass) and B's interruption of it startles him. Taken quite aback, A overcompensates in his reaction. Losing his balance, A happens to engage in the correction of his misstep (that is, as it so happens, A demonstrates a respect for B's private property rights). Gravity (force of nature) is causing A to regress off of B's lawn. While in the act of this regression (stopping the trespass), A recognizes that he did not actually intend to respect B's private property rights—A thinks that B is sort of a jerk. Come to think of it, he wishes that he had willfully intended to aggress against B's property in the first place, and he wants nothing more than to aggress further against his property now. But, alas, he cannot do so. From the very moment he was deemed a trespasser he was incidentally in the act of ceasing his aggression. The axiom of gentleness dictates that B cannot, even if he wished to do so, properly employ force against A during the duration of his regress (unless B's force constitutes a less harmful removal of A than does A's regress) because A is a non-criminal aggressor demonstrating a respect for private property rights. Aside from this, the fact that the axiom of gentleness, in this instance, prohibits B from employing force against A would become only more pronounced if it were the case that A's death would be a necessary result of this force. The concept of death-necessitating eviction, thus, would add a new and morally relevant condition to this situation, which would serve only to supply weight to the notion that, in this case, B ought not to employ force against A.

The main issue concerning comparisons of such cases as those on topic is whether or not such cases are similar to each other in ways that are relevant. For if the compared cases are similar to each other in all relevant respects, “the requirement of practical consistency [will not allow] for a case to be treated differently” (Walton, 2008, p. 306). That is, because of the extent to which  $S_2$  is similar to  $S_1$ , there exists no reason to suggest that the course of action appropriate for the latter should not also be appropriate for the former.<sup>29</sup>

### Conclusion

According to Craig and Moreland (2003):

For an argument to be a good one, it is not required that we have 100% certainty of the truth of the premises. Some of the premises in a good argument may strike us as only slightly more plausible than their denials; other premises may seem to us highly plausible in contrast to their denials. But so long as a statement is more plausible than its contradictory (that is, its negation), then one should believe it rather than its negation, and so it may serve as a premise in a good argument. (pp. 29–30)

So, if this paper has succeeded in demonstrating both that  $S_2$  is more plausibly similar to  $S_1$  in ways that are relevant than not, and that, in  $S_1$ ,  $\mathcal{A}$  conforms more plausibly with libertarian theory than does *Not-A* (that is, in this context, eviction), then the conclusion that “the course of action that libertarian legal theory ought to endorse in  $S_2$  is  $\mathcal{A}$ ” follows.

### Conclusion

The departurist position argues that, in cases where eviction would prove fatal, the gentlest manner by which a property owner may affect the removal of the non-criminal trespasser on his premises is to allow for this trespasser, if in the process of stopping his aggression, to complete this

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<sup>29</sup> One might interject that an additional condition could be included as a feature of  $S_2$ ; namely that the fetus consumes the mother’s resources as a necessary consequence of its departure. However, this condition cannot be said to be relevant because it adds nothing new to the situation. It would be correct to say that this consumption of resources is a further aggression against the mother’s property, however, it would be correct also to say that further aggression against the mother’s property is a condition already implied in the process of the fetus’ departure. This condition would only become relevant if, in its departure, the fetus were to aggress not against the mother’s property, but against her person. This would add something new to the situation (and may require that a different course of action be taken) because aggressions against person and those against property occupy different levels of moral concern.



departure. In the same way, departurism affirms that a mother ought to allow for the fetus in her womb to come to term and for its parturition.

This paper engaged in an overview of the departurist position. It next presented the argument at its foundation. It established the conformity of departurism to libertarianism and to its axiom of gentleness. It then confronted objections challenging this conformity. It concludes that the evictionist hypothesis harmonizes less satisfactorily with libertarian law than does the position advanced by this paper and, for this reason, departurism should find its way into libertarian canon.

## References

- Block, Walter, E. (2004). Libertarianism, positive obligations and property abandonment: Children's rights. [\*International Journal of Social Economics\* 31, 3.](#)
- . (2010). Rejoinder to Wisniewski on abortion. [\*Libertarian Papers\* 2, 32.](#)
- . (2011). Response to Wisniewski on abortion, round two. [\*Libertarian Papers\* 3, 4.](#)
- Block, Walter and Whitehead, Roy. (2005). Compromising the uncompromisable: A private property rights approach to resolving the abortion controversy. [\*Appalachian Law Review\* 4, 1.](#)
- Craig, William Land and Moreland, J.P. (2003). *Philosophical foundations for a Christian worldview*. Downer's Grove, Illinois: IVP Academic.
- 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. [Unpublished.](#)
- Kinsella, Stephan. (2006, September 7). How we come to own ourselves. [\*Mises Daily\*.](#)
- . (2011, October 25). Batting about voluntary slavery. Retrieved from [stephankinsella.com](#).
- Mises, Ludwig von. (2008). *Human action: A treatise on economics*. Alabama: Ludwig von Mises Institute.
- Rothbard, Murray N. (1998). *The ethics of liberty*. New York: New York University Press.

Walton, Douglas (2008). *Informal logic: A pragmatic approach*. New York: Cambridge University Press.

Wisniewski, Jakub Bozydar. (2010a). A critique of Block on abortion and child abandonment. [Libertarian Papers 2, 16](#).

———. (2010b). Rejoinder to Block's defense of evictionism. [Libertarian Papers 2, 37](#).