# Argue Like (or With) a Libertarian About Abortion


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# Introduction

Libertarianism is a political doctrine that strongly favors laissez-faire capitalism, unrestricted private property rights, freedom – both personal and entrepreneurial, international peace, and at the most minimal government. It comes in many flavors and has various intellectual foundations and defenses.

The classical enunciation of the proper status of abortion in libertarian law is found in Murray Rothbard's *Ethics of Liberty* which takes a robust pro-choice stance and in Walter Block's doctrine of *evictionism* which he deems a compromise between the pro-life and pro-choice camps. These will be our primary sources.

This eBook will take a philosophical natural-law property rights-based rather than utilitarian or political approach. As a result, libertarian reasoning will seem relentlessly rigorous, logical, deductive, and uncompromising. Abortion is an emotional subject, but we will try our best to stay cold-blooded and surgically precise.

The discussion will depend on the self-ownership thesis: each person justly owns his own body. This, too, is a legal notion, distinct from the primordial fact that each person naturally *controls* his own – yet no one else's – body via an intimate link. I believe that self-ownership can be *proven*, but for our purposes we can assume it as uncontroversial or even axiomatic.

There is a bit of a complication here as to exactly what owns what: e.g., does the soul own the body? Under materialism, for example, it is unclear how "matter" can own anything, least of all "itself."

If dualism is true, then how far can it be pushed? After all, as Gene Callahan points out correctly, "there is no ghost in the machine. Rather, the machine itself is an aspect of the ghost."

In other words, the body is not an external tool – the hand in not like a wrench – nor a costume but an aspect of our human nature as *power* as much as the *intellect* and *will*. In Callahan's formulation, the "machine" becomes a way of looking at the whole man that emphasizes the spirit's mechanical properties. We are not then "spiritual machines," as Ray Kurzweil would have it, *but machine-like spirits* or spirits whose operation depends to an extent

upon laws of physics, chemistry, biology, and the rest, even though, more fundamentally, the spirits have wills and intellects and control rather than are controlled by their bodies.

The proof that man can own external property is more involved, but again I will not present any such in this book. I will take it as given that it is possible lawfully to homestead unowned material goods including non-human animals – and we'll look at some subtleties concerning the legitimate ways of doing so; and acquire goods via production and voluntary exchange. We will also discuss the nature of parental custody rights.

In the literature, you will find references to the non-aggression principle (NAP). It can be understood in two ways.

First, as a principle of personal morality which argues that it is unlawful for anyone to initiate violent physical force against another's person or justly owned property. In this version, the principle comes to be susceptible to the objection that it changes libertarianism from a political theory or speculative ideological system into a kind of cult which demands certain behavior from its adherents, as though laying down a commandment, "You shall not initiate violence."

This objection is solved by replying that the NAP's main purpose is to prohibit the *state* or government from being an aggressor. Libertarians are sensitive to the double standard that is often ascribed to civil society vs. the state:

> … the ideologists must explain that, while theft by one or more persons or groups is bad and criminal, that when the State engages in such acts, it is *not* theft but the legitimate and even sanctified act called "taxation."
>
> The ideologists must explain that murder by one or more persons or groups is bad and must be punished, but that when the *State* kills it is not murder but an exalted act known as "war" or "repression of internal subversion."
>
> They must explain that while kidnapping or slavery is bad and must be outlawed when done by private individuals or groups, that when

> the State commits such acts it is not kidnapping or slavery but "conscription" – an act necessary to the public weal and even to the requirements of morality itself. (*EL*: 168)

A problem with the NAP thus conceived is that it has anarchistic implications and is too strong, leaving non-anarchist libertarians out of the tent. If the "state" has no unique powers, such as to tax or regulate the economy or issue subpoenas or search warrants or punish criminals, then there is no state at all. A reply may be that natural-law justice indeed demands anarcho-capitalism, but there is more to politics than *it*. What if the state is after all (a) inevitable / necessary for any kind civilized existence and (b) beneficial? We might need to accept the (minimal) state *reluctantly*, perhaps precisely as a concession to the fact that our human nature is far from pure but actually corrupt, necessitating, as it were, that we fight fire with fire.

A second version of the NAP is more formal and both requires and complements a correct theory of property. For example, suppose that instead of "first to mix labor with" or "finders keepers," we propose that the principle of just initial appropriation is the right of *government* possession. Regardless of who was the first comer, the "government," whatever it may be, has the right to despoil him and take his land or goods away. It will be objected that this theory of property is altogether wrong. And I agree. But the point is that one must first propound a correct theory, and then say that within its confines one ought not to initiate force.

In other words, under socialism, say, non-initiation of force may be exceedingly perverse – a slave principle. In fact, in *that* system, in order to survive, a person usually cannot avoid stealing from the state, i.e., privatizing some property. This kind of theft may well be judged perfectly salutary from the libertarian perspective; and, on the contrary, non-initiation of force may be likened to a principle of "surrendering your birthright to a self-appointed elite of supermen" and to "abandonment of self-determination and to yielding to other people's domination," as Mises put it (in a somewhat different context.)

In any case, violent physical aggression or threat thereof against one's body, such as murder or assault, or against justly owned property, such as theft or extortion, is proscribed by natural law.

Natural law is not limited exclusively to matters of rights to property, in that man, e.g., is divided into male and female sexes, and women bear children inside their bodies. These facts, too, are aspects of natural law which make the libertarian view of abortion decidedly non-trivial. Yet it is precisely ignoring property relations that has stymied the non-libertarians.

## Clearing the Air

Before proceeding to the distinctly libertarian take on our subject, it will pay briefly to dispel some philosophical fog regarding abortion more generally.

**1. The unborn child or fetus is "part of the mother's body."**

This idea is easily disposed of via an argument made by Peter Kreeft. Your toe is part of your foot. And your foot, a part of your body. Further, your toe is part of your body. There's then the following obvious transitive relation: if A is a material part of B, and B is part of C, then A is part of C.

Now a fetus has two feet (once they develop). And the mother also appears to have two feet. But if the fetus were a part of the mother's body, then, by transitivity, its feet would be part of her body, too, and she would have four feet.

Which makes no sense and so is a *reductio ad absurdum*.

When presented with this proof on a public forum, my interlocutor pressed the issue by saying, "Yes, and a tree has many branches."

I replied: So then, when a woman becomes pregnant, she grows two extra feet, a second brain, two extra lungs; in fact, almost every organ in her body is duplicated. But she has no use for those organs, as she does for her own two feet, say. In fact, these organs are a veritable drain on her bodily resources. If the child is male, then she even develops male reproductive organs, thereby evidently becoming a hermaphrodite.

What an implausible transformation according to this logic!

In addition, of course, the child's body is a union of both the mother's and the father's essences. It has a unique set of chromosomes. Biologically, it cannot have developed from the mother's body alone as if some cancerous

mass. It is its own organism with its own structure, life, and purposes.

It is said that in erotic love, two become one. But for motherly love, it's the reverse: the mother's proper task is to help the child become a fully separate from her being.

And that task begins pretty much at conception.

No, the argument in defense of abortion that claims that a fetus is as much a part of the mother's body as a branch is part of the tree does not work.

**2. The fetus is a separate being but is "only" a "clump of cells."**

The fetus is some of kind of *object*, isn't it? It's separate from the mother, even if attached to and dependent on her. It's information-rich, complex, and specified, and growing more so with every passing hour. We might even say it's "fearfully and wonderfully made," as per Ps 139:14. Even if we assume, falsely and contrary to what we have just established, that it is a "part of the mother's body," perhaps some kind of bizarre organ, a kidney is a different organ from the liver. A kidney works in complex, precise, and unique ways. It's integrated tightly with the rest of the body. Some people have devoted their entire careers to studying it. Is it fair to call *that* a mere "clump of cells"?

The proposition that a fetus is a "clump of cells" is a contemptible reduction of a remarkable object to its material cause. It's exactly like saying that a human being "is only" a cloud of atoms or only meat or whatever. Well, yes, he is, but isn't there a little more to it than that? In the movie *Devil's Advocate*, Kevin Lomax asks his devil (or incubus?) father, "What about love?" to which John Milton replies, "Overrated. Biochemically no different than eating large quantities of chocolate." This is really a beautifully depressing sophism, isn't it? For *biochemically*, spiritual love may well be implemented *in the body* in the same or similar way as mere sensual pleasure. But there is more to love than biochemistry. (There is more even to the pleasure of eating chocolate which is a *human subjective experience* than biochemistry.) The "fetus is just a clump of cells" is a similarly demonic half-truth.

In short, there are three other Aristotelian causes that are responsible for an object's existing right now besides the *material* cause, as in "What is it made of?":

2. *efficient* which answers the question, "How does it work?";
3. *final* which resolves "What purpose does it serve?"; and
4. *formal*, supplying information as regards "What is it?"

These four causes are arranged in a hierarchy, with material cause as most primitive and constrained and formal cause as most sophisticated and fluid. E.g., in logic, it is surely true that A = A. But not in metaphysics: perhaps A is precisely not "A" but whatever I want it to be. This is especially obvious when considering the final causes of capital goods: the same good can serve multiple purposes and figure differently into different entrepreneurial plans.

For instance, the same manual on car repair may be a capital good to a mechanic who uses to diagnose car problems, a consumer good to someone who uses it as a doorstop at his home, a completely different capital good to a recycling business that manufactures something out of old paper, and an entirely uninteresting item to a person who can neither read nor imagine any other use for the manual. Furthermore, what is a capital good today may not be one tomorrow, and alternatively, a thing which today is looked over with indifference may tomorrow turn out to be the hottest thing since sliced bread.

"What a human being is" as his formal cause is not at all the same as "what a human being is made of" as his material cause. A house *is made of* bricks, but a house is not a brick; it *is* a place where human beings live; etc. This elementary confusion or cynical nonsense (like, again, "a human being is 'really' 'just' a fungus colony / waste processing factory / slow computer / etc.") is uncalled for.

Perhaps what the pro-choicers mean is that a fetus is as *morally irrelevant* as sliced ham in the supermarket sold for $5.99 / lb. – maybe less relevant if the aborted "meat" is burned as biological waste, maybe more if it can be sold for parts.[1] But they should then come out and say it explicitly and *prove it*. We don't need more bad philosophy in this already emotional debate.

*What* then is a fetus? How about this: genus: animal; difference: rational; the

[1] In the latter case it's not after all a "clump" of cells any more than a car engine is a clump of metal; it has differentiated parts that are valuable on the market precisely because of their complex unity.

resulting species: *Homo sapiens*. We can debate whether it is a "person," but it is much more difficult to deny that it is *human*. If it's not human and, as I have shown, is not *merely* a clump of cells, then what is it? Pro-choicers owe it to us to classify this mysterious object scientifically, and they have not done so. In the absence of any effort toward that goal from them, I will use the definition proposed.

Again, Judith Jarvis Thomson argues as follows:

> We are asked to notice that the development of a human being from conception through birth into childhood is continuous; then it is said that to draw a line, to choose a point in this development and say "before this point the thing is not a person, after this point it is a person" is to make an arbitrary choice, a choice for which in the nature of things no good reason can be given.
>
> It is concluded that the fetus is, or anyway that we had better say it is, a person from the moment of conception. But this conclusion does not follow.
>
> Similar things might be said about the development of an acorn into an oak tree, and it does not follow that acorns are oak trees, or that we had better say they are. (1971: 47)

This is a bad analogy. Acorn stands in the same relation to oak tree as child to adult. An acorn indeed "is not" an oak tree, just as a child is not an adult. But both the acorn and the oak are of the same *species*, such as *Quercus ajoensis*, and likewise both the child / fetus and the adult are members of the human race.

(Toward the end of the book, I will consider some theories of *ensoulment* which may posit that a sufficiently early fetus is non-human, because it does not yet have a rational soul. However, I fully admit that any such theory is speculative and difficult to prove definitively.)

But if the fetus is human, then that's his nature, and so he is endowed with a full set of natural libertarian rights, including the right not to be killed or harmed by another man.

**3. A fetus is human but not a "person."**

Person here presumably means "legal person," i.e., one entitled to government protection. More precisely, to aggress against a "person" is naturally unlawful or would make one liable for just punishment by the state. But to deny that a fetus is a person in this sense is most obviously to beg the question.

Thus, a pro-choicer will argue:

1. Unprovoked killing of X is unlawful if and only if X is a person.
2. But a fetus is not a person.
   Therefore,
3. It is lawful to kill it.

But a pro-lifer will counter with:

2. But abortion is murder and unlawful.
   Therefore,
3. A fetus is a person.

One man's ponens is another man's tollens.

In order to make an argument from personhood non-trivial, one would have to specify objective criteria for who is and who is not entitled to the protection of the law. One would have to say, for example: only those who contribute to society are persons; old people, i.e., *geezers*, are useless; therefore, it's permissible to murder them. Or: marijuana smokers or *druggies* are depraved subhumans who do not deserve to live; therefore, they are not persons and may lawfully be shot on sight. Or again: the Japanese, far from being persons, are in fact worthless *gooks*. Nuclear bombs away! But any such dehumanizing definition is bound to be arbitrary and command no common assent. This is futile; this controversy cannot be resolved in this manner.

**4. The fetus may have rights, but it is sometimes "natural" to want it dead.**

Most pro-choicers unfortunately reason very simply: unborn children (and newborns) die quietly; their families are happy to see them die; they have no names; and are forgotten. In other words, abortion is lawful, because when

you are being aborted, in the womb or even outside, no one can hear you scream.

They think: A woman might not want to ruin her future career or marriage prospects by having a child and caring for him for the next 18 years. She might not want to live with the guilty conscience that she had a baby and gave him up for adoption. (She'd still want to sleep around, of course. No trivial irritating obstacle like pregnancy shall ever come between a woman and her sacred right to prostitute herself.) Far easier and convenient is to kill him when she pleases. To imitate Stalin, when there is an unborn child, there is a problem; when there is no unborn child, there is no problem. And aren't convenience and pleasure what our civilization is all about?

This is really the full extent of the philosophical foundation for the mainstream pro-choice doctrine. Block makes a wonderful point regarding this matter. He quotes Steven Ross:

> What [women] want is not to be saved from the "inconvenience of pregnancy" or "the task of raising a certain (existing) child"; what they want is *not to be parents*, that is, they do not want there to *be* a child they fail or succeed in raising.
>
> Are these people monsters? Hardly. Certainly anyone who wants the violinist they unplug themselves from, or a full-grown child they abandon, dead *is* incomprehensibly malicious.
>
> But it is precisely because our relationship to the fetus is not like either of these that the desire it be dead makes sense.

This preference, Ross proposes, is "intelligible to all." I agree that it is; people generally don't want just to make babies as though they were a factory mass-producing metal hinges or whatever, and then shove them into institutions or foster families; they feel that *if* they are to have a baby, then they need to develop a proper personal loving relationship with it. Of course, giving a baby up for adoption is hardly a virtuous or normal act (though it beats killing it). Block, however, penetrates to the heart of the problem:

> Well, it may be intelligible to most of us, at least to all those who have ever wished someone else dead.

> But mere intelligibility is hardly sufficient to establish a just legal code. If it were, we would have to repeal the law against murder.
>
> Overall provides a good antidote to the excesses of Ross. She maintains, "This kind of feeling does not justify killing the embryo/fetus." (2005: 43)

The fact that I can *understand* that Elmer wanted his grandfather's inheritance and so desired that he died ASAP does not mean that Elmer may legally *murder* his grandfather. I'd even understand that Elmer wanted not to be a grandson; he did not want there to be a grandfather to whom he'd be related. Is Elmer a monster? Assuredly, he is. Thomson reasons similarly:

> A woman may be utterly devastated by the thought of a child, a bit of herself, put out for adoption and never seen or heard of again. She may therefore want not merely that the child be detached from her, but more, that it die.
>
> Some opponents of abortion are inclined to regard this as beneath contempt – thereby showing insensitivity to what is surely a powerful source of despair.
>
> All the same, I agree that the desire for the child's death is not one which anybody may gratify, should it turn out to be possible to detach the child alive. (1971: 66)

Again, if I were an adopted child and later told that my unknown biological mother was artificially inseminated by an even less known father and then sold me to the highest bidder among foster parents, because that's how she made her living, I'd understandably be depressed. I am not after all a mere metal hinge. But I'd presumably be even more depressed if I had never been born – perhaps still standing in line in heaven waiting to be incarnated or in the country of Storkovia waiting to be delivered by a stork – or aborted in the womb.

We will consider the issue of motivation further later on in the context of evictionism.

**5. A fetus, as only a potential human, is not *fully* a person.**

There is some truth to the idea that a fetus or even child is a potential human being only. But there are obviously multiple criteria that have the power to separate potential from actual humans. There are, after all, all kinds of natural and man-made rites of passage in life that mark important events. (In a primitive tribe, one might "become a man" only upon slaying a lion. My aunt once opined that a person comes into his own only when his parents die. Catholics have the sacrament of confirmation. Etc.)

For our purposes, we'll use 3 such criteria. I already mentioned ensoulment but will postpone my own thoughts on this topic until later.

Second is viability or ability of the fetus to survive with proper care outside the womb, which will be key to understanding evictionism.

Finally, there is the strikingly clever and refreshing Rothbardian definition that a child becomes an adult essentially when he "runs away from home":

> But when are we to say that this parental trustee jurisdiction over children shall come to an end? Surely any particular age (21, 18, or whatever) can only be completely arbitrary.
>
> The clue to the solution of this thorny question lies in the parental property rights in their home.
>
> For the child has his *full* rights of self-ownership *when he demonstrates that he has them in nature* – in short, when he leaves or "runs away" from home.
>
> Regardless of his age, we must grant to every child the absolute right to run away and to find new foster parents who will voluntarily adopt him, or to try to exist on his own. Parents may try to persuade the runaway child to return, but it is totally impermissible enslavement and an aggression upon his right of self-ownership for them to use force to compel him to return.
>
> The absolute right to run away is the child's ultimate expression of his right of self-ownership, regardless of age. (*EL*: 103)

For Rothbard, the key to the parents' *custody over the child* is their *ownership over*

*their house.* As long as the child chooses to remain with them, he is subject to the rules of the house and hence to his parents' authority. If the child wants to be taken care of, he must honor the parents' commands and wishes, and that's the implicit contract undergirding all parent-child relations. According to natural law, ultimately, the parents exact obedience under threat of eviction; the child asserts his rights under threat of running away.

Be sure to understand this rightly: such property rights relations scarcely exhaust the whole of parent-child interactions but constitute the outer legal foundations for them. Mises puts it this way:

> Beyond the sphere of private property and the market lies the sphere of compulsion and coercion; here are the dams which organized society has built for the protection of private property and the market against violence, malice, and fraud.
>
> This is the realm of constraint as distinguished from the realm of freedom. Here are rules discriminating between what is legal and what is illegal, what is permitted and what is prohibited.
>
> And here is a grim machine of arms, prisons, and gallows and the men operating it, ready to crush those who dare to disobey. (*HA*: 725)

Both disowning or evicting a child by the parents and the child's actually running away at an early age are the absolute last resorts when the familial relationship has unfortunately broken down completely. Yet here they are, nonetheless.

Yet whether one is an "actual" or "potential" human according to some criterion, he is human *essentially* and hence enjoys the full complement of human natural rights.

**6. Abortion is a grave sin; how can it possibly be lawful?**

We may plausibly suppose that many or even all abortions are morally vicious. But political philosophy which is our subject is a subset of morality, dealing with the proper scope of violence in life. Not all vices are crimes; not all sins are to be punished by the state. Gluttony is a sin; but gluttons are not threatened with prison terms.

Further, abortion may be an especially great sin in Christian understanding. But whether abortion ought to be *criminalized by the state* is an issue of secular political philosophy and perhaps economic calculation of costs and benefits of particular laws, areas in which Christians have no inherently greater authority than non-Christians.

The Christians' unique divine *grace* confers upon them no special expertise in any *natural* science.

Nor should their hatred of sin cloud their judgment in regard to what should be considered to be violent crimes to be punished by the authorities and how. Unjust or unfitting *government* violence is itself a grievous sin.

Consider the following argument by Peter Kreeft:

> *Socrates*: The statement of mine that seemed offensive to you was that women already have what you call reproductive freedom unless they are raped.
>
> They can freely choose among five alternatives: chastity, contraception, abortion, adoption, or motherhood. All I say is that the third alternative, abortion, is evil, and that one of the other four is always available and always preferable.
>
> *Syke*: Always preferable? But it may involve great suffering. Why is it always preferable?
>
> *Socrates*: Because it is always preferable to suffer evil than to commit it. (1983: 140)

But this completely misses the point. It may be true that it is better for a woman to suffer being a mother than to abort. But in this discussion, we are not dealing with the *mother's* choice but with the *state's* or the governing authorities'.

The question is not, "Is abortion a sin?" which I with some qualifications agree it is; it is rather, "Ought the sin of abortion to be criminalized?"

For an anti-abortion law, in being enforced, precisely inflicts suffering. It should be asked instead, "Is it *always* worse for *us* to suffer sinners than, by empowering the state to punish offenders, to make sinners suffer? Who

exactly do we condemn and to what extent?"

In other words, is it always better to punish one for a sin than to forgive the sin; or less radically, let it go; or even less so, at least not involve the government into it?

And *that* question is far from obvious.

## Core Argument

Let us begin by distinguishing between the basic *natural* and the more rigorous *Christian* morality. Natural morality does not impose any positive obligations. To a person in the state of grace, Christianity does – by justice – impose positive obligations, as is obvious from considering the 14 traditional Catholic works of mercy, such as feeding the hungry and instructing the ignorant. Where natural morality commands, "You shall not kill"; Christian morality says, "You shall give life."

The aim of Christian justice is to foster charity in one's heart; even if charity can only be increased by an infusion of divine grace, performing works of mercy (1) clears away any obstacles in the soul to grace and (2) fulfills the potential that previously given grace has increased in a man. The aim of natural morality, on the other hand, is merely to eliminate violent hatred. You *do not* kill or steal or harm your fellow man. Ideally, you remain disinterested and gladly participate in mutually beneficial social cooperation with other members of society, with neither charity nor malice toward anyone.

Natural morality then is a sturdy if austere foundation for the beautiful castle of Christian morality, as grace requires and builds upon nature. It is impossible to build love on nature corrupted by hatred; only on healthy "natural sentiment" of general benevolence in Hume's words or on "nurseries of virtue" as per St. Thomas.[2] A good start might be, as Richard Weaver puts it, to "separate [man] out from other beings and regard his destiny as something no member of human kind should be indifferent to."

[2] "… without grace man cannot merit everlasting life; yet he can perform works conducing to a good which is natural to man, as 'to toil in the fields, to drink, to eat, or to have friends,' and the like, as Augustine says…" (*ST*: II-I, 109, 5)

Regardless, here we are concerned with human nature only.

Libertarianism picks up on this important distinction and affirms that natural law enjoins upon man only negative duties of bourgeois non-interference with other people's natural rights, and *no* positive duties.

Therefore, we surmise, there is no such thing as a "right to life" understood as the right to have one's life sustained or nurtured forcibly at another man's expense or effort that he is unwilling to supply. Even in Christian morality, there need not be a duty to save everyone; *whom* to bless with charity, when, and how are one's right to determine. Natural duties are perfect in the Kantian sense: one may never take a break from not stealing; Christian duties are imperfect: one is permitted to quit burying the dead for a while and watch some TV instead. There is a natural right to life only in the sense of the right not to be murdered or assaulted by another man.

Pair this insight with self-ownership; specifically, the mother's ownership of her own body. Rothbard concludes:

> Most fetuses are in the mother's womb because the mother consents to this situation, but the fetus is there by the mother's freely-granted consent.
>
> But should the mother decide that she does not want the fetus there any longer, then the fetus becomes a parasitic "invader" of her person, and the mother has the perfect right to expel this invader from her domain.
>
> Abortion should be looked upon, not as "murder" of a living person, but as the expulsion of an unwanted invader from the mother's body. Any laws restricting or prohibiting abortion are therefore invasions of the rights of mothers.

This understanding cannot be impugned even by allowing that a fetus is a "person":

> … let us concede, for purposes of the discussion, that fetuses… are… entitled to full human rights. But what *humans*, we may ask, have the right to be coercive parasites within the body of an unwilling human host? Clearly no *born* humans have such a right, and therefore,

> *a fortiori*, the fetus can have no such right either. (*EL*: 98)

Block feels necessary to add:

> "Parasite" has such a "bad press" in our common lexicon that we hesitate to imply this word to describe the fetus or kidney dependent person. Yet, the appellation fits, fully. We use it in the hope and expectation that the reader can uncouple the negative pejoratives usually associated with this phase, and concentrate solely on the property rights relationships. (2005: 38n186)

Thomas Johnson rejects the view that the fetus is a parasite, and he is right from the standpoint of biology. But the relevant kind of parasitism in this case is not biological but social and economic, in the same way that a person on welfare is a parasite on the body politic. A tax-consumer is a parasite on the tax-payers despite not being "an organism of *one* species living in or on an organism of *another* species," etc. A fetus who consumes the mother's bodily resources against her will has the same moral status as a subsidy-taking farmer.

The situation, however, is a bit murkier than Rothbard makes it seem.

First, a real parasite like a tapeworm is a "natural enemy" of humans. The interests of a biological parasite and its human host are always opposed by nature and its law. It is entirely praiseworthy for us to kill our natural enemies like tapeworms or mosquitoes en masse and with ruthless efficiency. But a fetus, far from being the mother's natural enemy, is rather a natural friend, in fact, by nature a treasured and loved creature.

For a fetus to go from a precious gift to a disgusting invader-worm is to travel a very long distance solely on his mother's whim. One of the striking features of the portrayals of the Mafiosi in the arts is their fiery unpredictable, unmanageable, and psychotic arbitrariness. They will go from generosity to hatred in two seconds: one moment the guy pats you on the shoulder, the next he pumps you full of lead. Is that, for lack of a better term, "natural"? In *StarCraft II*, Zurvan says, "No allegiance but to self. Kill or be killed… you know this!" But humans are by nature precisely not zerg. Natural law then suggests that the mother cannot *hate* the fetus, even if she might want it gone for reasons of "property rights relationships." This is

evidence for the importance of evictionism, to be considered later, since blithely to kill the fetus when it can be evicted alive and reasonably well and then adopted by another person is malicious and would be forbidden by libertarian law.

This view stresses that natural law extends to feelings as well as actions; in fact, the entire point of the negative duty of non-aggression is step by step to purify oneself of savage hatred for fellow man; to squeeze by righteous living every drop of malice from one's heart. At that point the *duty* as an objective command of natural law will become otiose, since one will abstain from unlawful actions adequately by *desire* alone. Such a consistent desire is the naturally "holy will." Rothbard would probably not have taken it this far; e.g., James Sadowsky makes an eminently plausible point:

> What is wanted in most cases is precisely the death of the child. Most of those seeking abortions would be horrified at the thought that the child might survive his expulsion. Just ask your friends if all they are after is simply a premature birth.

Rothbard replies:

> Here I don't think the intention of the parent makes any difference. If the objective act itself – the ejection of the fetus – is licit and not an act of aggression, then the subjective intentions of the parent make no difference. (1978)

Second, *all* humans are friends by nature; Mises puts it this way:

> What makes the existence and the evolution of society possible is precisely the fact that peaceful cooperation under the social division of labor in the long run best serves the selfish concerns of all individuals. The eminence of the market society is that its whole functioning and operation is the consummation of this principle. (*HA*: 845)

> The greater productivity of work under the division of labor is a unifying influence. It leads men to regard each other as comrades in a joint struggle for welfare, rather than as competitors in a struggle for existence. It makes friends out of enemies, peace out of war, society

> out of individuals. …
>
> Because I can get what I want only if my fellow citizen gets what he wants, his will and action become the means by which I can attain my own end. Because my willing necessarily includes his willing, my intention cannot be to frustrate his will. On this fundamental fact all social life is built up. (1962: 294ff)

But they can become enemies by will. Thus, a robber becomes his victim's enemy, incidentally by committing a sin and through that *corrupting* his nature.[3] The victim has the right to defend himself up to and including killing the aggressor. But the fetus is entirely innocent. In coming to inhabit the womb, it commits no injustice and no sin, *even if* the conception was due to a rape. On several occasions, for example, Block calls the fetus' trespassing a *crime* which makes little sense, since a crime is a human action marked by malicious intentional contempt for the victim's property rights. But a fetus can neither act purposively nor feel malice in his heart. Nor does it make sense to call his eviction a *punishment* which genuine crimes would *deserve* – the fetus is not an evildoer whom to condemn would be to strike a satisfying blow for righteousness and justice. The fetus does not *choose* a life of "parasitism." Hence his trespass is in no wise a crime. Just as it is wrong to kill an inconvenient person like a business competitor, it's also *prima facie* wrong to kill a fetus.

Rothbard, however, will again counter than this distinction makes no difference. It's a matter of property rights. The mother has every right to expel an unwanted fetus (who is leisurely using her body for his own ends) on grounds of self-defense or indeed for any reason whatsoever. After all, even if Smith invites Jones to his house for a party, Smith is free at any time to end the event and command Jones to leave. Smith is not Jones' keeper.

Contra the first point, then, the mother and fetus *can* be natural enemies, as they both contend for the same scarce resource: the mother's body. This

[3] E.g., "parasitic predation and robbery violate *not only* the nature of the victim whose self and product are violated, but also the nature of the aggressor himself, who abandons the natural way of production – of using his mind to transform nature and exchange with other producers – for the way of parasitic expropriation of the work and product of others." (*EL*: 50)

resource is unfortunately *perfectly* scarce, i.e., it cannot be produced; its supply cannot be increased. *Someone* must suffer the deprivation as a result.

Contra the second point, after gaining much from massive sacrifices from his parents, the child will ultimately repay them by putting them in a nursing home. Children are flowers on their parents' graves, as it were. The situation of mother and her child is not as clearly mutually beneficial as that of participants in the free-market economy in general.

Besides, it's not really killing, it's *letting die*, as the fetus, even if he survives the expulsion, will then die from lack of life support; but, since the mother has no positive obligations toward him, that's no skin off her nose.

A consequence of this, however, is that a Proper Rothbardian Abortion would proceed as follows: (a) the child is carefully extracted from the womb, alive and well, placed near the mother, and then more or less slowly dies from exposure and lack of nutrients if he is non-viable or if no one is willing to care for him.

But don't actual abortions occur in a different way, viz., (b) the child is killed inside the womb, and the remains are sucked out? Rothbard himself writes that "a parent does not have the right to aggress against his children" (*EL*: 100), but do not most abortions do exactly that?

Block's answer, on which evictionism depends in a crucial way, is that this is another distinction without a difference. If (a) is permissible on grounds of property rights, then so is (b): the difference is merely that the evicted child lingers in agony outside the womb for a few hours or days. For all we can say, (b) is more humane than (a), inflicting less suffering.

By taking this line, however, Block opens himself up to an objection of the sort we've already seen. A pro-lifer will propose a tollens instead: (b), he will say, is unlawful, citing precisely Rothbard in support, and since (a) is almost indistinguishable from (b), it, too, is unjust.

The way to resolve this impasse is to ask which is more plausible considered independently, the justice of (a) or the injustice of (b). Rothbard would say the former: "For the crime of trespassing within a person's body, any means necessary to evict the trespasser should be legitimate" (1978), he writes,

including apparently a death sentence. We will see that Block prefers to affirm the legal permissibility of (a) also, though for more sophisticated reasons.

Sadowsky proposes another objection. We have seen that the fetus is innocent of any "crime." What's more,

> to say that *x* is trespassing is to say that he is somewhere where he ought not to be. But where should a fetus be if not in its mother's womb? This is its *natural* habitat. Surely people have a right to the means of life that nature gives them? (1978)

This rhetorical question fails to have its intended effect. To use Sadowsky's own terms, as soon as the fetus is no longer desired, he "ought to be" *anywhere but* in his mother's womb. Maybe he ought to be in another person's custody. Maybe he ought to be dead and buried. But it's no longer any of the mother's concern. (Remember that we are discussing legal issues, not the morally lamentable failure of mother love in this case.)

The mother is not a parcel of land that the fetus is homesteading; she is a human being, and no homesteading or mixing labor by the fetus with her takes place. On the contrary, it is the mother who partially homesteads the fetus. In addition, this proves too much, because there is no rigorous distinction between natural and artificial means to life. If a premature baby is being kept alive in an expensive incubator, the parents surely have a right to refuse to pay for his upkeep. If no other guardian chooses to pick up custody, the baby will die. But there is no politico-ethical injustice in that. Neither therefore is there an inherent injustice in an expulsion.

To illustrate this further, consider a somewhat fanciful scenario, namely, the Biblical story of the Garden of Eden literally taken. Since God expelled the first couple from the Garden, the Garden must've "belonged" to God as a sort of "pleasure park" for Himself.[4] Adam did not homestead the Garden. He was like the *Gladiator* giraffe, walking around eating ("from any of the trees of the garden") and not mating. But suppose that Adam had not fallen

[4] "… the garden was not intended as a paradise for the human race, but as a pleasure park for God; the man tended it for God. The story is not about 'paradise lost.'" (Gen 2:8 NABRE, [f])

but remained in the state of innocence and eventually had children with Eve.[5] If some of his descendants conspired to throw him out of the Garden, would that not have been unjust? If Adam had a right to stay in the Garden and enjoy its amenities despite mixing no labor with it, then why doesn't the fetus have a right to use the bodily resources of his mother?

This example, however, proves only that a fetus' *evil twin* has no right to push his brother out, not that the *mother* has no such right. Quite the contrary. God created both Adam and the Garden. The mother creates both the child and her own body (almost literally – she has built up her body by herself being born and growing up). But God had few compunctions about evicting Adam and committed no injustice in so doing. Yet the Garden was indeed man's "natural habitat,"[6] while the outside world was cursed with toil and death. Neither then does the mother commit an injustice by evicting a fetus.

At least God *contracted* with Adam in a manner of speaking to let him stay in exchange for his obedience. There is no contract of any kind between the mother and fetus.[7] It may be that God is *better* than an abortion-seeking woman and would never have expelled Adam but on account of the latter's transgression – or not, for who knows such things?; the point, however, is that God surely always had a "right" to expel him for any reason and upon His own counsel. It may be illogical, foolish, and vicious to conceive a child

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[5] "In the state of innocence there would have been generation of offspring for the multiplication of the human race; otherwise man's sin would have been very necessary, for such a great blessing to be its result." (*ST*: I, 98, 1)

[6] "… as Damascene says…: 'Paradise was permeated with the all-pervading brightness of a temperate, pure, and exquisite atmosphere, and decked with ever-flowering plants.' Whence it is clear that paradise was most fit to be a dwelling-place for man, and in keeping with his original state of immortality." (*ST*: I, 102, 2)

[7] Jakub Wisniewski writes:

> It seems only natural to think of the moment at which it comes into existence – i.e., conception – as the moment at which the mother, who voluntarily invites a new potential human being into her womb (i.e., voluntarily allows it to appear there), makes an implicit contract with it. (2011: 4)

But what are the *terms* of this implicit contract? According to Wisniewski, the woman immediately acquires a duty to take adequate care of the fetus; but what is the fetus obligated to do in return? Grow up to be a good person who will make his parents proud, perhaps a libertarian? I find that implausible if not ridiculous. Since a contract requires a mutual *quid pro quo*, there is no contract here at all, implicit or anything else.

only to kill it, but as always here we are concerned with rights, not with the morality or even rationality of exercising those rights.

Sadowsky's final objection is far more interesting, and it is that which gives rise to evictionism.

> Let us grant for the moment that the child is indeed a trespasser. Does this *of itself* justify the draconian response that Murray and Walter permit?
>
> Does the mere fact that a man is a stowaway justify our throwing him out of the aircraft? Ought we not in the absence of overriding reasons to wait until the aircraft lands?
>
> Both traditional natural law theory and the common law have it that our response to aggression should be proportionate to our need to resist and the nature of the attack. Suppose that the inflicting of a lethal wound is the only way to recover a stolen nickel. Is that enough to justify such an act? …
>
> Does mere annoyance, the loss of comfort justify such an attack on a trespasser? I think not.

Rothbard replies:

> Jim Sadowsky is worried about ejecting a stowaway on an airplane. Yes, I suppose that that would be "overkill," to coin a pun.
>
> But the point here is that, just as an assault on someone's body is a more heinous crime than the theft of his property, so the trespassing on or within a person's body is a far more heinous trespass that merely strolling on his land or stowing away on an aircraft.
>
> For the crime of trespassing within a person's body, any means necessary to evict the trespasser should be legitimate. (1978)

Block is dissatisfied with the crude bluntness of such a reply. Let us see what he's come up with to soften Rothbard's intransigence.

## Evictionism

We will define *abortion* to require the death of the fetus; and *eviction* as the expulsion of the fetus from the mother's body. If the fetus is non-viable, then there is no distinction between the two. In that case, Block says, abortion, whether consisting of expulsion followed by (inevitable) death, or death followed by expulsion, is permissible. (Again, I agree that there is scarcely any real difference between these two *methods* of abortion.) If the fetus is viable, the issue will depend on whether there is a prospective foster guardian willing to pick up custody. If there is such an adoptive parent, then the evicted baby must be delivered to his care without delay. If there is not, then the fetus will still die, but that, too, is Ok even if unfortunate:

> … a parent does not have the right to aggress against his children, *but also* the parent should not have a *legal obligation* to feed, clothe, or educate his children, since such obligations would entail positive acts coerced upon the parent and depriving the parent of his rights.
>
> The parent therefore may not murder or mutilate his child, and the law properly outlaws a parent from doing so. But the parent should have the legal right *not* to feed the child, i.e., to allow it to die. (*EL*: 100)

Block makes an important refinement to Rothbard on this subject in general as regards child abandonment. He asks, "does the mother who abandons her baby have the positive obligation to at least place it 'on the church steps,' e.g., notify all other potential care givers of the fact that unless one of them comes forward with an offer to take in the infant, it will die?" (2004: 276)

In other words, if parents have no positive obligations to their small children, may the parents lead a kid into a dark forest and leave him there to be devoured by wild beasts? Or even hide him in the house until he starves to death? Block does not think so, because abandoning custody is at least as labor-intensive an affair as abandoning any property whatsoever.

In general, "abandonment" is a human action, not merely a mental state; to succeed, there must be a physical execution of the plan to abandon. It is a clear absurdity for Smith to abandon ownership of a parcel of land, say, without notifying the whole world of this through some established means. The property would be objectively up for grabs, but if people falsely thought

that Smith still owned it, then no one would be able to homestead it. A useful to society resource would then for all intents and purposes be destroyed.

We do not step beyond the bounds of logic when we say that abandoning property *by its very meaning* entails following some customary formal procedure according to which the world at large is reliably apprised of the fact that the property is now unowned and can be once more homesteaded appropriately.

Similarly, abandoning a child entails the duty to notify a willing new guardian, an established charity, or if all else fails, at least the local authorities, so that the parents will not be accused of murder. The point is to *let everyone know* that the guardianship rights have indeed been relinquished and to grant other people some time and opportunity to "homestead" the now unguarded child. Since a small child is a "perishable good," it is unclear how long the parents must wait before throwing a child out while the parental rights are being sorted out, but the solution to this problem, too, can be left to custom.

Block goes on:

> Would it ever be possible, under libertarian law, for a baby to be abandoned by its parents, for there to be no other adult willing to care and feed it, and the baby be relegated to death? Yes.
>
> However, this could occur only under the condition where the entire world in effect was notified of this homesteading opportunity, no roadblocks were placed against new adoptive parents taking over, but not a single solitary adult stepped forward to take on this responsibility. (281)

In other words, suppose that no replacement guardian has been found yet all the legal formalities pertaining to abandonment, fulfilled. Then it is permissible to let the baby die. It would certainly be a savage society in which something like this were allowed to happen; but no natural law would still have been broken.

Is notifying the world of a pending abandonment / eviction a positive obligation? If it is, then one argument is that it is so reasonable and undemanding that libertarianism can be at peace with it. But perhaps *it is not*

*even that.*

First, on general grounds: an obligation or duty is a command of natural law, but the thing doing the commanding in this case is the desire to abandon to satisfying which notifying is an essential means. It's a *hypothetical* imperative conditional on an end to be attained; not a *categorical* one that every man *has to* do whether he likes it or not.

Second:

> With regard to children, the intermediate case, one may not own them outright…; but here, all one owns is the right to continue this process.
>
> Once the support of children (whether in the womb or not) ceases, however, any rights of parenthood cease. One may abandon a child, but if so, gives up all rights pertaining thereto.
>
> There is no such thing as an absentee parent; once parental duties are relinquished, parental rights vanish. (2005: 37)

The moment the parents in their own minds make a decision not to care for the child (*unlike* a landlord who decides to neglect his property), they lose their custody. At that point the guardianship rights over the child are unowned and for the taking. Then:

> One of the key elements of libertarian homesteading theory is that no square inch of terrain remain unowned, as long as people wish to claim it. To wit, the pattern of settlement *must* be such that no one is allowed to lay claim to land in a bagel or donut format, for to do so would leave the inner bit of land (the hole in the bagel) unowned, but under the control of the forestalling homesteader.
>
> Would-be settlers on this land would be precluded from entering, since the forestaller owns all the surrounding land. …
>
> This pattern of land ownership is illicit, according to libertarian theory. It would not be a *positive obligation* on the part of the forestaller to allow others access to, and egress from, this inner lying land, so that they could homestead it. Rather, this is part and parcel of what

> proper homesteading *means*, at least in the libertarian version thereof. …
>
> But, suppose a person comes to own these guardianship rights, legitimately, but then no longer wants to continue to feed and clothe her baby. May she hide this child from others, who would be glad to be its guardian? No more than may anyone homestead land in the bagel format. For, to do so would be to forestall others from adopting that child. Just as nature abhors a vacuum, and land homesteading disallows the donut format, so, too, does libertarian theory reject the person who kills a fetus, when there are others who would gladly have adopted it. (2011B: 7)

Now the difference between Rothbard and Block becomes clearer. Block argues that the mother never has the right to destroy a viable fetus but only to "abandon" it or at least try to. These have different consequences when it comes to abortion. As far as Block is concerned, the ejection of the fetus is licit only when every effort is made to allow the fetus to be picked up by any willing step-parent (even if no such picking up actually occurs and the fetus will die from lack of care). It's not only the deliberate hiding that is unjust; since a fetus is very perishable, failure to take active steps *not* to hide and to *reveal* instead by explicitly notifying the neighbors, etc. is wrong, too.

Thus, if the parents fail to advertise the impending abortion publicly (some weeks ahead of time, perhaps?), even take some "reasonable" steps to finding a new guardian, and follow through all the formalities laid down by their community regarding legal abandonment of property titles or, in our case, guardianship rights over children or fetuses, then the parents, in aborting, are, as per Block's logic, committing murder.

The secret "subjective intentions" of the parent may make no difference, if by that we mean that the parent may in the privacy of her mind want the fetus to die, but her behavior will be very different for Block than for Rothbard. Rothbard would permit all abortions on grounds of self-defense; Block would permit only evictions that are self-consciously styled as abandonments of the parent's guardianship over the fetus, and as long as the parents jump through all the legal hoops to impart their neighbors with a genuine opportunity "easily" to "homestead" the fetus.

Let me comment on a few subtleties pertaining to this. Block asks the question, "Suppose eviction costs more than abortion; who pays?" and answers: "If it costs more to engage in this technology, there is no positive obligation for the mother to pay the extra amount. This should be done by the Church or a group called the Friends of Babies or some pro-life type of group specifically set up for, and devoted to, this very purpose." What's the logic behind this? If it costs more to escort a trespasser onto a public road than to blow him up with a bazooka, must some charity really compensate the owner? There can be costs to avoiding murder, but surely, ethics demands that these costs be borne by each of us, including the mother. Only if she literally has no money to pay for eviction will there be a need for charitable relief.

Similar reasoning applies to the next question considered in the paper, "Suppose eviction is more dangerous than abortion, should the mother be forced to undergo the former procedure?" Ending the guy may well be safer than leading him out, as there is always a chance that he will put up a fight. But the mere possibility of this is not enough to justify reaching for the bazooka right away. Regarding abortion, I'm sure there a point at which changes in degree can translate into changes in kind: if there is a 99% chance of death for the woman in eviction but only 1% in abortion (this is empirically false), then the law should probably be adjusted to reflect the difference. So, the answer to Block's question is "a definite maybe."

Then there is the following point: promoting natural births, defending natural families, and desiring to save lives of unborn babies may all be legitimate good causes, but they are entirely separate and if good, then good for different reasons:

> There is simply no reason why pro-lifers should prefer the traditional means of giving birth. They must of course oppose abortion, but for them eviction should be a perfect substitute even for normal births. All that should matter is that the fetus be safely born.
>
> If this is done the natural way, well and good. But if this goal is achieved in *any other* way (e.g., surrogacy, etc.), it should be a matter of complete indifference to advocates of the pro-life position. Life is life is life; where it occurs is only a matter of housing. (2005: 31)

It is entirely reasonable for a person to choose which of the numerous good causes to champion. He is not required by logic to support all of these; he can focus on one at the cost of neglecting the others.

We have seen that Rothbard treats abortion as pure self-defense; so drastic is the aggression in his opinion that if death of the fetus results regardless of the circumstances, all is still just. But now we are bound to ask, what if the fetus is viable and can be, upon a more gentle removal (such as via a C-section), nursed to full health willingly by the hospital and later also willingly adopted by a step-parent? What if there is a great demand for babies in this manner; might not a woman find it worth her while to be paid by the prospective adopters to evict without aborting?

If that is eminently reasonable, might not a woman be *required by natural law* to evict the baby without aborting, provided that two conditions are met: (1) the baby is viable and (2) someone is willing to care for it, *even if* she is not paid at all?

This subtle limitation, that the eviction must be in the "gentlest manner possible," is Block's commendable innovation in the libertarian abortion debate.

What justifies it? Proportionality in self-defense. I note in passing that even Block does not fully distinguish between self-defense and punishment. Rothbard may have originated this lamentable confusion in libertarian circles by writing carelessly that "*all* rights of punishment derive from the victim's right of self-defense." (*EL*: 90) For example, regarding "government protection," he asks, "*how* is the government to decide *how much* protection to provide and how much taxes to levy? … Indeed, 'protection' could conceivably imply anything from one policeman for an entire country, to supplying an armed bodyguard and a tank for every citizen – a proposition which would bankrupt the society posthaste." (*EL*: 180-1)

But the government does not provide "protection" at all. There is no economic case whatsoever for supplying locks, password encryption, and indeed bodyguards and tanks by the state. In fact, the courts have ruled many times – and *correctly so* – that cops have no legal duty to protect anyone. The police are not one's *protectors* while a violent crime is taking place, such as

while a store owner is being robbed; they are only *agents of punishment* of condemned criminals much later, viz., when a trial has concluded and a sentence for the crime, issued by a judge. Cops, therefore, far from being "first responders," are in fact precisely last responders. They "respond" possibly months after you are shot dead by forcibly taking possession of the murderer and carting him off to prison. They are glorified delivery boys. Their social role is to act only as a general deterrent to crime by having the fear of punishment for evildoing permeate society as a whole. Self-defense is entirely in the hands of private citizens and the market; punishment must most plausibly be administered by the state.

Consider that when you shoot a mugger while he is robbing you with a gun pointed at you, that's self-defense and justified or even laudable, but when he's running away with your money, then shooting him in the back is considered punishment (because the danger to your life has passed) and is (1) disproportionate – it is too much to kill for stealing, and (2) not your job, anyway – only the state is authorized to punish with violence.

Cops are not heroic defenders who will take a bullet for you; quite the contrary, they are the most cowardly of all people, feeling safe only in large groups, in full armor, and staying back until they are completely sure they can overpower a criminal with sheer numbers. They'll happily shoot an innocent man or let a school massacre continue unimpeded and be excused simply because they "feared for their safety." Yet they are indispensable for all that.

(The answer to Rothbard's query is now evident: the taxes should be in the amount both necessary and sufficient to finance the minimal overwhelming police force, i.e., the weakest enforcement agency that is nonetheless capable of crushing any individual or private organization in a city.)

This distinction is what makes "gun control," so that "only the police shall have guns," a particularly idiotic statist policy. The police do need guns to force submission during *punishment*; but each citizen also needs guns – and possibly lots of them – for *self-defense*. These are two entirely non-overlapping magisteria, as it were.

Since we have established that the fetus is innocent and therefore does not deserve to be punished (without trial, by the mother acting as judge, jury, and

executioner to boot), when talking about proportionality we mean as regards self-defense.

Thus, Block writes: "If a trespasser is on your lawn and you have a bazooka, you are not entitled to blow him away – not as a first step in any case." (2005: 21-2) Further:

> In Wisniewski's view, allowing the mother to evict the fetus when this results in the death of the latter "is tantamount precisely to blowing the trespasser away with a bazooka when there exists no other ways of removing him from one's lawn." Well, yes, it is.
>
> Where W and I part company is that he thinks that under these circumstances it would *not* be justified for the property owner to kill the trespasser, while I maintain that it would.
>
> After all, if we are to accurately employ the libertarian legal nostrum, "gentlest manner possible consistent *with stopping the crime*," then that trespasser *must* be stopped. (2011A: 4)

After taking some pains to distinguish between punishment and self-defense, let me draw a similarity: both can be *ratcheted up*, though in different ways.

First, for illustration purposes, punishment. Consider a basic civil dispute. Unlike a criminal case, there is a genuine uncertainty as to which party is in the right. Smith the tenant claims that Jones the landlord owes him his security deposit. Jones disagrees. They go before a judge who rules in Smith's favor. Yet Jones refuses to pay. The civil case has now transmogrified into a criminal case, where Jones with a malicious intent has stolen Smith's money. Another judge orders that Jones be fined. Jones ignores it. Judge #3 issues a warrant for Jones' arrest. And so on the sanctions are ratcheted up, until the cops physically restrain Jones and *punish* him somehow for his increasingly perverse defiance. (Hence there must be a single communal authority endowed with an irresistible power to punish offenders, and that is what all men call the "state.")

Second, self-defense. Suppose you are trying to remove the trespasser. You tell him to leave. He refuses. You put your hand on his shoulder firmly to escort him out. He throws it off roughly. You punch him in the gut. He goes

for his gun. You grab yours quicker and shoot him. Nothing un-libertarian on your part has occurred.

Of course, aborting a non-viable or viable but unadopted fetus does not involve any such ratcheting; it's instakill. Block will argue that it *is* the gentlest possible way to deal with the situation in *this* case; for example, the fetus can be killed but humanely, as it were, or cannot be tortured in addition. To that Wisniewski replies (note the continued mistake of speaking of "crimes"):

> Yes, we need not act as gently as possible if gentleness will get us nowhere with respect to stopping the crime, but this applies only to the cases where, by not being gentle, we do not commit an even greater crime. …
>
> It is one thing to be decisive or even brutal in evicting a recalcitrant trespasser from one's premises, but it is quite a different thing to deprive him of life. Violating the property rights in one's life is always a greater contravention of the NAP than violating one's property rights in land. (2011: 1-2)

I'd say *not so* if we are permitted to ratchet up. The rule "trespassers will be shot" is eminently reasonable, if we interpret it as "incorrigible, recalcitrant trespassers" who refuse to leave even after being "brutally" treated.

But such a fetus is precisely that, even if vacuously, i.e., because it *cannot* listen to reason, and the only way to evict him is to kill him.

## Challenges to Evictionism

Now we enter more complex territory. Let's begin by considering causality in the act of abortion. Doris Gordon, taking a pro-life position, argues:

> Let's compare unwanted pregnancy to a case of a car crash in which one car crashes into a second car, propelling it into a third.
>
> As it turns out, the owner of the third car also owns and drove the car that started the chain reaction. Being the owner of both cars, she can fault only herself. Of course, the owner of the car in the middle can fault her, too.

> Now, let's call a pregnant woman A (or one-half A, the father being the other half), the child B, and the mother's body C. A conceives B, thus causing B to inhabit C.
>
> Plainly, C is A, the mother. The child, B, the one caught in the middle (no pun intended), is innocent. The mother has no just reason to evict, let alone kill, her child. (1993)

Suppose Smith is standing outside a building smoking. I am on the roof holding a heavy anvil on a contraption which I then let go. After Smith goes squish, and I am charged with murder, I counter: "As soon as I dropped the anvil, it was no longer 'me' who killed Smith but 'gravity.' It was not killing, it was letting die, and libertarianism permits the latter." Clearly, this defense will not fly in any court, because my choice physically caused a necessary chain reaction.

However, abortion differs from such a case in two ways.

First, conceiving a child is a good thing for the child, and the fetus demonstrates its preference for existing in action by refusing to die and in fact by its eagerness to survive and grow. "In every living being there works an inexplicable and nonanalyzable *Id*," writes Mises. "This *Id* is the impulsion of all impulses, the force that drives man into life and action, the original and ineradicable craving for a fuller and happier existence." (*HA*: 882) It can be found even in a fetus – and even in a sperm and egg about to unite.

On the other hand, dropping the anvil is altogether evil in all three of intent (malicious willing of harm), essence (murder), and consequences (death suffered).

Second, abortion is not a necessary consequence of conception. It's a separate human action, powered by free choice. Abortion need not follow conception; it may or may not.

Consider therefore what is probably the most damning scenario, call it Crazy Mother: a woman agrees to conceive *knowing* that the child is inevitably going to die according to *physical* causation, such as because her body is bound soon by some illness to reject the fetus, i.e., naturally to miscarry, or because the fetus would ineluctably have genetic defects that would kill it. There is no

doubt that this would be insane beyond measure. This nullifies the second difference. As regards the first, the question is whether the good of bringing a child to life is outweighed by the evil of its necessarily foreordained death soon after. It's unclear what the fetus would say about this matter, but my feeling is that in such an exercise in futility, the evil beats the good such that the stork need not have bothered, and the conception is unlawful. As part of punishment, a judge could justly order that the madwoman be sterilized.

In anything other than such a contrived situation, however, abortion does not happen by physical causation but by *teleological* causation: it's a choice to perform an action for the sake of an end or future expected utility. There is no necessity (I leave aside the question of whether or how free will is compatible with determinism) either in aborting the baby or in keeping it.

Here is the next most awful case, Evil Mother: Suppose (in the actual world) there existed witches who conceived children with the express purpose of sacrificing them to a demon. At week 10, say, the fetus is removed and let die on the Baal's altar.[8] Perhaps the wicked witch desired power or to prolong her life, and that was the price. Is that lawful? Religious freedom permits demon worship; evictionism permits abortions of non-viable fetuses; what then is the problem? The connection now is not physical, but the overall plan makes sense only with both conception and abortion taking place together. (The evil presumably still outweighs the good.) This is a (literally) diabolical conspiracy and I'd say is also criminal by libertarian law.

Put the filthy quisling, to imitate C.S. Lewis in his *Mere Christianity*, to death.

Attend now to the final most down-to-earth nightmare, Irresponsible Mother: a woman is having sex and out of a very high time preference thinks, "If I now get pregnant, which I probably will, I'll just abort." This, too, is a sick and callous attitude. But here I suggest that the distinction remains and makes a difference. She may reconsider later, for example.

Most generally, a plan from the beginning to conceive and then kill is illogical, but not necessarily a plan to conceive followed by a change of mind

[8] For a fictional example, see R.A. Salvatore, *Homeland*. This particular dark fantasy world was explicitly ruled by a bloodthirsty spider goddess. Perhaps there the practice of human sacrifice would be the only way for humanity to survive.

later that the fetus is no longer wanted, or an honest mistake. Human beings are not omni-prudent. To be sure, legal abortion encourages foolhardiness and "irresponsibility," but if abortion is naturally lawful, then this unfortunate side effect is in itself irrelevant to the problem. Again, general prosperity may encourage gluttony among the populace; that does not mean that wealth and progressing economy are bad. We'll briefly discuss for the sake of completeness some utilitarian aspects of legalized vs. outlawed abortion later.

Aborting a child is a *bad* thing for the child, but in cases less depraved than the first two, which are the sorts of abortion under discussion, since it does not follow conception automatically, conception cannot be considered a first step in a crime inevitably set in motion. Therefore, Gordon's analogy fails.

Gordon's other argument is that parents must not put the child in danger. "To withhold their support is to endanger the child. Parents owe support because they have no right to use their control to cause danger and then let the harm happen." This world is indeed a dangerous place. Now the parents did not cause the danger; the hostile natural environment did. The question is whether "Smith exists, and Jones creates danger for Smith" is relevantly the same as "danger exists, and Jones creates Smith." In both cases, the overall state of affairs Smith-is-in-danger is caused by Jones. A reply might be to ask why, given that my parents endangered me by giving me life, and the universe continues to threaten me, they aren't obligated to support me *even now*. Further, Gordon herself writes: "Conception is not, in itself, endangerment or a threat of harm; it is a normal, natural fact of life. Pregnancy automatically protects the child against the possible dangers of an unsupportive environment." It is only withdrawal of life support that endangers; but pro-choicers fully admit not only that but also that eviction often results in the death of the fetus. Yet they argue that such death is not unlawful; neither therefore is mere endangerment.

Now we turn to the main challenge to libertarian evictionism: the cases of Judith Jarvis Thomson's violinist, the airplane stowaway, and suchlike.

Suppose then you've been kidnapped by the Society of Music Lovers as a last resort measure to save a famous violinist whose kidneys have failed and who is lying unconscious in a hospital bed. You wake up next to him, your body

hooked up to his, such that your own kidneys are keeping him alive. Is it lawful for you to unplug yourself and run away?

I imagine you lie in some *Matrix*-like cradle with wires coming out of your body to sustain the violinist. In this situation, I'll be damned if I let this continue. To hell with the violinist; I'm ripping the wires off and getting out of there!

Let's strengthen the case: suppose that it's not a single violinist who is hooked up to your kidneys but 1,000,000 children who will surely die if you detach yourself. We have already made the crucial distinction between natural and Christian morality. But as per natural morality I'm not required to keep these million children alive. For who are they to me? Did I give them birth? They have no claims on me; I'm just a stranger minding my own business. What is it to me whether they live or die? I wash my hands of this entire affair. Up I get, cut the wires, and walk out into my own independent life. I leave these people to their fate, whatever it is. Yes, nature can be cruel, but it is what it is.

Block, however, in light of evictionism bites the bullet on this:

> Are there any positive obligations incumbent upon the kidney host person in the Thompson example? He cannot stab the kidney dependent violinist, but can he unhook the connection without so much as a by your leave? …
>
> Would he be guilty of murder if he did so (without giving even so much as a five minute warning to the violinist)? Our answer is that he would be guilty of murder. He would be doing far more than acting in mere self-defense. He would not be removing the (innocent) predator in the gentlest manner possible. (38)

Instead, you would be required to make a good-faith effort to find a new host or dialysis machine. Only if no other solution is available would it be permissible to disconnect yourself.

There is, however, a disanalogy between the cases of the violinist and abortion. The mother has the *natural custody* over the fetus; while I have no custody over the violinist. This legalism is conferred on her literally on

conception.[9] If the mother wants to get rid of her custody, this action must be self-consciously styled as an explicit abandonment (if it is at all possible) which logically entails notifying others and waiting a bit of time for her guardianship rights to be duly transferred. I, on the other hand, am burdened with neither special rights nor obligations toward the violinist and so can simply tear out the wires and go home, leaving him to fend for himself or die, without fault.

If so, then evictionism is needed for abortion but not for the violinist, and Block's concession is unnecessary.

We have seen that the mother cannot abort a viable fetus for whom adoption or care is a distinct possibility; nay, she must strive to *arrange* for such care or be guilty of murder according to natural law. Eviction must be followed by a formal abandonment. But what of non-viable fetuses or viable ones for whom no stepparent has been located? Block argues that abortion *then* is permissible.

After viability, if reasonably safe for the mother eviction is possible, abortion is permitted only if no one *actually* is willing to pick up custody of the fetus that could be expelled and even then only if every good-faith effort has been made to find, though unsuccessfully, a new guardian for the unborn child.

Before viability, abortion is permitted at all times, since it is almost entirely identical to eviction in that the fetus reliably dies either way. Thus, a Proper Blockian Abortion can have three outcomes:

(a) the aborted fetus is non-viable, cannot be saved, and dies;
(b) the evicted fetus is viable, someone chooses to adopt it, and it lives;
(c) the evicted / aborted fetus is viable, but no one wants to care for it, and it dies.

Block argues "progressively," i.e., by appealing to future improvement in economic conditions to generate consensus, that all of these are inherently lawful, but –

- as *society* advances *technologically*, cases like (a) will become increasingly

[9] "… even from birth, the parental ownership is not absolute but of a 'trustee' or guardianship kind." (*EL*: 100)

less frequent, and

- as *individuals* advance *morally*, cases like (c) will become increasingly less frequent.

Hence, "in 100 years, libertarians will be considered to be 100% pro-life."

The question now becomes whether eviction as such is never an injustice.

Recall the Sadowsky's point that it seems too much to throw a stowaway off your airplane. Let's strengthen the Stowaway case. You are flying a medium-sized plane while participating in a race which is important for your career. You're pretty confident you can win. For some reason, the plane feels sluggish. You turn around and see a stowaway, a fat guy just sitting there staring at you. You realize that with this bastard on board, you're going to lose. Worse, when you question him, it turns out that the guy was maliciously sneaked into your airplane by a competitor upon a deliberate design of sabotage. Yet it seems that despite both the high costs that the stowaway imposes on you and his legal culpability (an actual crime not just an accidental trespass), you still can't get rid of him.

(To go back to a distinction already drawn, maybe an appropriate *punishment* to him for ruining your career unjustly is a year in prison long after the fact. The question, however, is what are you allowed to do to him in *self-defense* during the commission of the crime?)

Suppose the flight will last for 9 hours. What if lasted for 9 years? Or until the pilot died of old age? Could the answer be different? Suppose that instead of 9 hours on a plane, the stowaway hid on a futuristic spaceship flying to a nearby star indeed over a period of 9 years. If the captain did throw the guy out of the airlock, I as a judge might well not object. Block points out bitterly in a similar scenario:

> 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. (2010: 6)

Yet Block does *not* consider the duration or cost to be relevant:

> However, we are talking *principle* here. It matters not one whit how long a duration we are talking about.
>
> If the fetus has a positive right to squat on what would ordinarily be considered the mother's private property (her womb), then the nine months could be turned to nine or even ninety years, without any change in principle whatsoever. (2011A: 11)

Suppose finally that I can call upon another airplane which can hook up with my own, and the stowaway can be transferred onto it. I do just that and go on to win the race. Surely, this is not only permissible but praiseworthy as ingenious problem-solving. If such a maneuver is possible, then I am duty-bound to utilize it, according to the "principle of gentleness," i.e., that if you want to remove a trespasser, then you must use the least unpleasant means (though you can ratchet up the force in case of resistance). But what if it's not possible? It is not immediately obvious to me that I may kill the stowaway.

Yet I may by Block's logic, because the stowaway is "non-viable"; hence his own argument applies perfectly: "aborting," i.e., killing him on the airplane has the same consequences as "evicting" him, i.e., throwing him out alive. He dies either way; only the methods of execution differ. Moreover, if it is lawful to kill the stowaway and throw out his dead body, it is surely lawful to kill him and *not* throw out the body. But eviction is justified on grounds of libertarian property rights. Therefore, so is outright murder.

Consider now case #2, Perimeter Defense. Smith was shipwrecked on a small desert island which over the years he has thoroughly homesteaded. Then Jones gets shipwrecked near the island, swims ashore, and is greeted by

Smith who tells him: "This is my island. You are trespassing on private property. Go back where you came from. Go swim in the ocean." Does Smith have the right to do that, or is it murder?

This is not, by the way, a "lifeboat situation," in which a wooden plank can support only one man in the water, such that if two try to hold on to it, both will drown. Again, it is permissible for the lucky people in an overfilled lifeboat to stop another survivor from climbing on board if as a result the entire boat will sink under the extra weight. So, if the island resources are so scarce as to be able to support only one man, then Smith may be justified in keeping Jones out. But in Perimeter Defense we'll assume that Smith might be at the most inconvenienced but will not perish due to Jones' presence.

Case #3, Blue Lagoon. A couple gets shipwrecked on a desert island; they fall in love (or not), have sex, and have a child who reaches the age of 2. Can they, upon a change of heart, lawfully stop feeding and caring for the child, even (and especially) if there is no one else to homestead him? If so, then a fortiori, they can expel and let die a fetus or even, owing to identical consequences, kill it in the womb and then expel.

Rothbard may have had the clue to solving these conundrums all along. Recall his reply to Sadowsky:

> … just as an assault on someone's body is a more heinous crime than the theft of his property, so the trespassing on or within a person's body is a far more heinous trespass that merely strolling on his land or stowing away on an aircraft.
>
> For the crime of trespassing within a person's body, any means necessary to evict the trespasser should be legitimate. (1978)

He thereby postulates a difference in degree which in the particular case of abortion becomes a difference in kind.

This move permits us to argue that in Stowaway, you must endure the fat guy and lose the race; and in Perimeter Defense, Smith must allow Jones on the island; yet a woman is allowed by natural law to abort, consistent with evictionism. Yet if we take this route, then we are also permitted to *disagree* with Rothbard and say that the fetus' trespass is precisely *not* heinous enough.

So, which is it? For example, if Smith, instead of walking on Jones' land, was a demon who tried to possess Jones' body, then Jones would surely be justified in killing the demon. But is pregnancy really to be likened to demon possession? I have not seen any libertarian supply an actual proof of Rothbard's claim, in which case we must find the argument inconclusive.

Let us now look at one more challenge to evictionism proposed by Sean Parr which he dubs "departurism." It's an ingenious argument.

If abandoning custody entails notifying the authorities, then the length of the waiting period is arbitrary: the custom may call for a 1 day wait, 9 day wait, or 18 day wait, whatever is "reasonable." But allowing time for *departure* is also arbitrary and a positive custom. Suppose A sleeps with B in a one-night stand, and upon waking up in the morning, demands that she, B, get out ASAP. Call this case "Casual Sex." What is the "reasonable" amount of time for A to wait for B to get dressed, pick up her stuff, and leave? 90 minutes? 9 minutes? What if A gets impatient and decides that 9 seconds is the most he can stand B's presence in his apartment? After the 9 seconds expire, he then throws B (and her stuff – A is no thief) out the window. Isn't that murder? Parr then considers the maturing fetus to be perpetually *in the state of departing*, except the time it takes for him (inevitably and reliably) to leave his mother's body happens to be 9 months. Call this case "Birth." If in Casual Sex, 9 seconds of the time allotted for departure is unreasonably short, and 90 minutes seems plenty, then why can't we state by fiat that in Birth, 9 days departure time is unreasonable, while 9 months is just right? If the custom in Casual Sex is somewhat arbitrary, why isn't it arbitrary in Birth, in which case we qua libertarians should be indifferent as to the exact rules the custom, having been perhaps diligently contemplated and discussed to yield some happily utilitarian results, specifies in any particular community?

Since the fetus will inevitably exit, and at an almost perfectly well-defined time, it seems that he is respecting the mother's property rights; it's just that he needs some extra time to execute the departure properly. Why rip him out of the womb while he is already trying to leave? Surely, every unborn child is eager to be born at least by instinct if not conscious desire; he has not occupied his mother's body indefinitely, proclaiming himself overlord and her a slave bound to serve him in a permanent unjust relationship. If he

could get out early, he gladly would; but natural law sets strict constraints on how new human beings come to be. Block might parry that the costs to the mother are too great; but that's not a deontological or rights-based argument.

To illustrate, let's say you find a guy standing in the middle of your lawn. You tell him to leave. He proceeds to do just that. However, he *walks* instead of runs toward a public street. "Impudent dog," you think. "How dare he fail to exhibit the requisite zeal at respecting my property rights?" Getting impatient, you reach for the bazooka and blow him away, anyway. Surely, that's unlawful.

Gentleness seems to require an adequate or reasonable amount of time given to the trespasser to leave the property. In Birth, that time may well be 9 months.

We might say that in Casual Sex, B should make a good-faith effort to leave quickly. But the fetus is also trying as hard as he can. He cannot be blamed for tarrying or overstaying his welcome which is set by natural law.

If the fetus is viable, then perhaps it is permissible to speed up his departure, just as the parents might throw out a 14-yo kid out of the house to fend for himself *even without* notifying anyone of the abandonment of their custody. But in the case of a non-viable fetus, the departurist argument provides a reason for the natural unlawfulness of such an early abortion.

Departure requires time to be executed, since people cannot move at infinite speed. Allowing a trespasser enough time is no more a positive obligation than notifying willing stepparents of abandonment. In saying that the trespasser ought to be given a reasonable amount of time to cease and desist in his offense, all we do is pay respects to logic, or physics perhaps.

There is a parity then: for a small child or viable fetus, abandonment logically requires notification with the resulting imposition of waiting time (due to the child's perishability in the meantime) before an eviction. For a non-viable fetus, eviction coupled with the gentleness principle logically requires enduring the period of departure with the resulting imposition of waiting time for the fetus to mature until it can be safely expelled. Therefore, neither abortion nor eviction are permissible for a non-viable fetus, unless it is somehow foreseen that homesteading will not happen later in any case.

Thus, for a Proper Parrian Abortion to take place, a non-viable fetus must first be allowed to become viable outside the womb. This will take some time. Then (or earlier) the mother will notify the authorities of a pending abandonment. She will wait some more time to give some new guardian an opportunity to come forward and homestead the baby to be evicted. Finally, if no such guardian has volunteered, she may lawfully abort.

Block replies that this makes departurism identical to the extreme pro-life position, but this isn't right, because it obliges the mother to keep the fetus not until birth but merely until viability at which point it becomes permissible to evict him. Moreover, abortion remains just even before viability if it is reasonably guaranteed that no new caretaker is or will be forthcoming, anyway.

He goes on to argue that the fetus is not "trying to leave," because he is incapable of forming a conscious intention to leave. True, but we can impute respect for the mother's property rights to the fetus based on his unconscious biological disposition. He's doing everything he can to get out as fast as fetusly possible.

Block finally suggests that there is a big difference between 9 minutes allotted for departure and 9 months from conception until birth (or let's say 6 months until viability). The general principle is certainly correct: where there is a continuum, there are hard cases; but that does not mean there are no easy cases. 9 minutes in Casual Sex seems like an easy case, in which the law need not "take into account trifles"; is 6 months in Birth an easy case on the other side of the continuum? I'll let you judge this matter for yourself.

## A Theory of Ensoulment

In our shallowly irreligious age, theorizing about such problems as how a developing fetus acquires a soul is deemed hopelessly passé. I beg to differ; it may make a key difference in understanding abortion. As I pointed out earlier, it seems indubitable that a fetus belongs to the species *Homo sapiens*. Its nature is "rational animal." But perhaps this view can be challenged after all.

I want to stay philosophical and assume as little of special revelation as

possible, though I will use it for the sake of illustration. Hence, we'll allow, as Christian theological tradition has generally refused to do, such things as pre-existence of the soul and even metempsychosis / reincarnation.

In addition, there is a problem in Christianity concerning the status on the one hand, of the souls of the righteous who died before Christ, and on the other, of the souls of departed infants and indeed fetuses. As regards the first, we can resort to postulating the *Limbo of the Fathers*; presumably both Abraham and Socrates slept there (e.g., Lk 16:22). Prophet Samuel was certainly not in hell, as 1 Sam 28 attests. Moses and Elijah appeared with Jesus during the Transfiguration (Mt 17). Etc.

The pagan Greek underworld and Jewish Sheol had the right view of things *at the time*: the insubstantial shadows drifting in the Hades' dark kingdom are simply the dreaming souls in the Limbo of the Fathers in an unredeemed world. (In *Odyssey*, Achilles' shade tells Odysseus: "I would rather be a paid servant in a poor man's house and be above ground than king of kings among the dead." And Ps 6:6 reports, "For in death there is no remembrance of you. Who praises you in Sheol?") One of the changes in the cosmic order of things wrought by the Incarnation was precisely that these souls were awakened and brought into a conscious afterlife, and the Limbo was closed forever: those who die now in the state of grace go to heaven.

But there is a similar difficult problem with respect to young children. They are born innocent and must become good as they grow up. Good men go to heaven; wicked men, to hell; but what of the innocents? In an attempt at a solution, Catholic theologians have hypothesized the *Limbo of the Children* as a kind of highest level of hell, an eternal celestial nursery, a place not of union with God in supernatural glory but of simple natural happiness, where the souls of infants and small children who are innocent but who have not proven themselves worthy in spiritual combat go upon death.

There is also the fact that large numbers of people are neither exceptionally good nor particularly evil; hence, they *cannot* go to heaven yet *will* not go to hell. Yet as the Catholic Encyclopedia informs us, "in the present economy exclusion from heaven means for adults practically the same thing as damnation. A middle state, a merely natural happiness, does not exist." This is a serious issue, because no man whose nature is pure can be lawfully

condemned. There are *indeed* three states: corrupted nature; pure nature; and state of grace with its theological virtues that is built on top of pure nature. A man who has scrupulously obeyed the natural law in life but who received no grace and is without charity cannot reasonably be made to suffer eternal horror.

We must then postulate two kinds of hell: one is for the corrupt where there will be weeping (inconceivable pain) and gnashing of teeth (absolute hatred) as Jesus taught; the other is for the pure yet ungraced which is simply separation from God and indeed some sort of natural happiness.

If, however, natural happiness is not permitted – every man *must* somehow make a final and irreversible choice between true heaven and true hell, then reincarnation follows naturally. For if this choice is very often not made in a single lifetime, then more than one lifetime will be required.

The problem is not well-solved by positing purgatory. A saint who is 90% good and 10% evil can have the cancer of evil burned out of him in the purgatory fire (which St. Thomas teaches is the exact same fire with which the damned are tormented in hell) and remain reasonably human. A sinner, even if forgiven and spared hell, who has rather 10% good and 90% evil in him will, upon purification, lose his entire identity. At best, he'll become a simple child running around underfoot, whom the better saints will treat will benign indifference. At worst, his intellect will be destroyed, and he'll end up literally a dumb plant, a flower growing somewhere in paradise. Given that the vast majority are sinners, God ends up ruling a kingdom of half-wits, pitiful hollow subhumans. And this is grotesque.

Noah Millman tells the following parable:

> The dead approach the Garden, housed in the body of their life, their deeds made flesh, and face the angel and the sword.
>
> And with a burning stroke, he cuts out the blemishes of their transgressions, and leaves their flesh gaping. For we are told, that none with a blemish may approach the Lord…, and none with a blemish may be offered…
>
> But their flesh gapes, for there is no Experience in the Garden, no

> way for souls to heal the gashes made by holy flame.
>
> And this, perhaps, is what the four saw there: the maimed and crippled souls stumbling in Paradise.
>
> The tongues that gossiped, the lips that spoke falsely, the eyes that coveted – cut out.
>
> The hands that struck in anger, the fingers that stole, the legs that ran to do evil – lopped off.
>
> And the poor souls who huddled in the dark, who buried themselves in their caves, so fearful of evil that they hesitated to do good; pale souls who pass almost unnoticed through the byways of the Garden, they live in the poor houses that their deeds built while they lived.
>
> One in four? There is not one in a thousand who would not die, go mad, or lose his faith, gazing on the cauterized stumps of the saved.

C.S. Lewis argued:

> Your soul has a curious shape because it is a hollow made to fit a particular swelling in the infinite contours of the divine substance, or a key to unlock one of the doors in the house with many mansions.
>
> Your place in heaven will seem to be made for you and you alone, because you were made for it – made for it stitch by stitch as a glove is made for a hand. (*The Problem of Pain*)

The body, as it ages, becomes disgusting, but where is the guarantee that our souls become beautiful during the same process?

In reality, in battling ourselves, and the flesh, the world, and the devil, as it were, do we not become irreparably weird, freaks? Of what use to God are these twisted pathetic excuses for rational animals? Is heaven a menagerie of curious oddities, fantastic aberrations? If the key is so misshapen, what of the lock?

In his account of a near-death experience, Arthur Yensen asked his heavenly friends: "Then what becomes of the old grouches?" They replied:

> If they are too bad, they go to a realm of lower vibrations where their

> kind of thoughts can live. If they came here, the Master-Vibration would annihilate them. After death people gravitate into homogeneous groups according to the rate of their soul's vibrations. If the percent of discord in a person is small, it can be eliminated by the Master-Vibration; then the remaining good can live on here.
>
> For example, if a person were 70% good and 30% bad, the bad could be eliminated by the Master-Vibration and the remaining good welcomed into heaven. However, if the percentage of bad were too high, this couldn't be done, and the person would have to gravitate to a lower level and live with people of his own kind.
>
> In the hereafter each person lives in the kind of a heaven or hell that he prepared for himself while on Earth.

Again, if progress and improvement belong to this life only, and all the realms between heaven and hell are ultimately impermanent, then reincarnation seems inevitable.

As a result, I find Limbo of the Fathers eminently plausible, but Limbo of the Children a problematic doctrine.

Returning to our main interest, following St. Thomas, we can construct a fast and loose hierarchy of life-forms.

At the bottom are single-celled organisms that merely "live."

On the next level are plants who possess only the "nutritive" or "vegetative" soul; they "grow." Moreover, such organisms are multicellular and sport different organs.

Then there are animals like oysters that have senses but are immobile.

Then we have higher animals who "transcend space," i.e., who can move about, like parrots and lions.

Up at the very top, we have humans who as rational animals transcend both space and time, i.e., are 4-dimensional, operating in all 4 periods, past, present, future, and timelessness.

I will call these souls in this order living, vegetative, sensitive, self-moving,

and rational. It's a Tower of Hanoi sort of setup, whereby each more sophisticated part of soul rests upon all the more primitive ones.

Lower creatures have some but not all of these. There are at this point several possibilities.

First, a full-featured soul may be created by God or descend from heaven immediately upon conception. The body's stage of development determines how severely the soul is handicapped in its powers. This opinion has problems. For one, if a miscarriage occurs sufficiently early during gestation, a frequent enough affair, then the soul would have to go back to heaven empty-handed, or without useful experiences, in vain. The idea of such objectionably masturbatory trips back and forth seems sufficiently comical not to be taken seriously. In addition, it makes especially embarrassing the problem of the Limbo of the Children by causing it to be populated mostly with embryos.

The second possibility is that God uploads *each* faculty into the body as it gestates step by step. This, too, is unsatisfactory. Now the fertilized egg is alive and so has a living soul at the outset. If all further faculties, vegetative, sensitive, etc., are forged and infused by God, then God would also have to control the prenatal growth of all plants and animals. A plant produces a seed, and suddenly God must supervise the seed's "spiritual" development. Two porcupines have sex, and God immediately has to concern Himself with their offspring, timing their soul developments perfectly. And this is absurd.

Third, perhaps the entire soul of any creature develops naturally, including through the stages described, along with the body. This has some attraction, but still is no cigar, because the rational faculty is far too mighty a power simply to up and arise. One and one's soul either are rational or not; the gulf between the two is unbridgeable. And there is another major difference in kind: a rational soul is naturally immortal (once it exists) and is slated for heaven, while a non-rational soul is naturally corruptible and is indeed like a "puff of smoke that appears briefly and then disappears" (Jm 4:14).

In addition, this solution is incompatible with reincarnation; hence, it depends on the fairly controversial premise that reincarnation is not a thing.

Therefore, we must assert that the vegetative, sensitive, and self-moving

spiritual human faculties develop on their own accord along with the body of the embryo / fetus, while the rational faculty is either created by God or comes down from heaven, snapping securely into place in the fullness of time. The rational part completes the human soul's development as though a crown were placed on the king's head. (Again, this does not entail that the fetus can now think; rather, it *would be able* to think but for the primitiveness of the body which at this point shuts off most of the soul's powers.)

For example, only a few days after fertilization, cellular differentiation begins, thus endowing the embryo with the dignity of a plant and its vegetative "growing" soul. Unlike the conferring of the rational soul, this seems to require no divine action.

The benefits of this understanding are many.

First, it neither precludes nor requires reincarnation.

Second, it postpones the creation of the rational faculty considerably, into the 2nd trimester, thus preventing numerous apparently superfluous and frustrating journeys of a soul from heaven to earth and back; even without admitting reincarnation, it makes somewhat less offensive the ugly artifice of the Limbo. Before its acquisition of the rational soul, the embryo's soul is not at all immortal and simply corrupts if the embryo dies, e.g., it is somehow absorbed into God or dissipated with no consequences.

Third, it suggests reasonably that early abortions are not immoral, with 21 weeks at *quickening* being the upper limit on permissible abortion. The correct cutoff age could of course be even earlier; thus, during weeks 13 to 16, the fetus makes active movements and sucking motions are made with the mouth; and even during weeks 10 to 12, the fetus can make a fist with his fingers. It appears that the power of self-motion develops fairly early during pregnancy, at which point the rational soul can be finally infused. Once the soul is completed, aborting the unborn child is a major sin.

Quickening then is a sign that the rational soul is about to be infused into the fetus, at which point the child becomes fully human and immortal.

It is probable, however, that outlawing abortions after quickening yet no sooner than that would upset both the pro-life and pro-choice factions.

The former, because the overwhelming majority of abortions occur long before quickening; in fact, in the first few days after conception. Setting the legal limit to abortion at 15-20 weeks would make over 95% of all abortions legal.

The latter, because pro-choicers are committed to defending the right of the woman to kill her unborn child up until the very hour of its birth. They are not interested in philosophical arguments or compromise.

If the fetus is non-human before quickening, then abortion *then* is unproblematic – it is not immoral and a fortiori, ought not to be illegal, and libertarians have nothing to add to the discussion. But our arguments still become relevant with respect to fetuses after quickening. This is because quickening and viability are separate events that can occur at different times.

## Some Utilitarian Considerations

If I am right, and libertarians have not proven beyond reasonable doubt that abortion is a natural right, then perhaps we can look at the consequences of legally prohibiting it.

The result will surely be (1) aborting fewer and (2) conceiving fewer.

Now first, the pro-choicers argue that prohibiting abortions will lead to women self-inducing abortions in the back alley using dangerous methods ("coat hangers"). This is definitely a social *cost*. But it is also very likely that the number of illegal abortions committed in this way will be smaller than the number of *legal* abortions committed now. Isn't that a desirable social goal? How much smaller, no one can tell, so why not experiment to find out? Let's repeal *Roe v. Wade*, let states handle abortion decisions, and do a thorough study a few years afterward to see by how much abortions have declined.

Second, it will encourage more responsible sexual behavior. People will be more careful if they know that the cost of conceiving is having to bring the baby to term and be a parent or at least, if the baby is given for adoption, bear the burden of knowing that you have a child whom you were meant to rear and whom you will, however, never see. Again it is very hard to say by how much the number of abortions will drop, but drop it surely will.

For example, suppose that when abortion is legal, every year 10 million children are conceived, and of those 10 million, 5 million are deliberately aborted. After the prohibition is in place, we should expect something like the following: 2 million children are never conceived in the first place due to the new incentives, so only 8 million are conceived; furthermore, of those 8 million, not 4 million but only 1 million are aborted.

A cost associated with this consequence is less sexual fun for the people, but then again perhaps free love is neither in the first place.

A further benefit might be that some abortion doctors will find a less disreputable occupation.

These considerations should be weighed against two things:

i. the harm to undeterred women and doctors from the punishments inflicted by the authorities; and
ii. the extra costs to the taxpayers of additional law enforcement.

(Again, from the deontological standpoint we don't care about such economic matters. That business advertisement is legal *might* channel some resources into apparently wasteful arms races between firms; that possible effect does not justify government prohibition of advertisement. If abortion is lawful and a natural right, then any individual abortion is at the most a sin, and vices are not crimes and ought not to be suppressed by government violence.)

In short, the most notable consequence of prohibition will be to promote female chastity by raising the costs of promiscuity and premarital sex to women, *not* to "save lives." This is because ideally, the children who under liberty are aborted will under prohibition never be conceived in the first place, as women, facing the new incentives, abstain from whoring themselves. It may be true that young women eager to jump into any guy's bed are "stupid," but then so are criminals, but that does not mean there is no deterrence effect of threats of punishment. Some of this effect will consist in greater parental guidance for young women, such that the girls' "stupidity" is counteracted by greater parental strictness toward them.

The upshot will be to make women somewhat more chaste and hence better

marriage partners rather than the semi-prostitutes who have ruined their own capacity to fall in love. No man really wants to have a wedding where the bride has slept with most of the guests.

The obvious *cost* of the prohibition is the suffering of the women who still have abortions and are caught and punished. In addition, the situation resembles the drug war in that even though, *unlike* drugs, there is a victim, the fetus; *like* drugs, the victim will not complain. Disrupting the "mutually beneficial" in the narrow economic sense illegal abortions between women and doctors will be a serious pain to all concerned. Society will still further become infested with rats and informers; police corruption will assuredly rise; some women are bound to die or be physically harmed from incompetently performed black market abortions; and so on. If there is empirically much defiance of the law, punishments will have to be ratcheted up, and I am not sure juries will be prepared to send a woman to prison for 15 years for an abortion.

## Conclusion

The libertarian analysis of the legality of abortion has much to teach us and has important practical policy implications. Regarding evictionism, Block writes:

> Even on a pragmatic basis, the frontal attack on abortion simply does not work. Anti-abortionists have long pleaded with the political process to stop this unconscionable slaughter – all to virtually no avail. The popularity of the present law, as revealed by numerous public opinion polls, indicates, moreover, that this state of affairs is likely to continue for the foreseeable future. …
>
> Right now, despite the best efforts of all concerned, like it or not, the pro-choice movement has won out. Legal abortions may now be obtained with about as much difficulty as prescription drugs. …
>
> Millions of dollars have been raised and spent. The courts have pretty much concluded, at least since *Roe v. Wade*, that a woman has the right to abort. Thousands of protests at abortion centers have been held. A few abortionists have even been killed. But at least so far, it is

> safe to say, the conscience of the nation has not been changed. On the contrary, the protesters who hold the vigils are widely seen as "extremists," something that does not bode well for the prospect of saving these helpless young lives. (2005: 28ff)

The insights of Rothbard, Block, et al. deserve a far wider hearing.

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