

# BLOCK VS. PARR DEBATING ABORTION: A SUMMARY



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## Abstract

*The topic of abortion is undoubtedly one of the most controversial issues currently being debated. Several decades ago, philosopher and economist Walter Block developed a solution to the issue based on libertarian principles, called "evictionism." According to evictionism, which is a principled compromise between the traditional pro-life and pro-choice positions, it would not be illegal for a pregnant woman to evict a fetus at any time for any reason due to the fact that she is the one who owns her womb but it would be illegal for her to kill the fetus unnecessarily once it's viable. Despite coming up with such a brilliant compromise, very few people have actually heard of Block's solution to the abortion controversy, and of those who have heard of it, even fewer have actually been convinced by it. As a result, there have been several written debates between Block and his critics about what they perceive to be problems with the compromise he has developed. This paper summarizes one of the main debates that Block has had on the topic.*

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## BLOCK VS. PARR DEBATING ABORTION

One of the main debates that Walter Block had defending evictionism was with libertarian theorist Sean Parr starting back in 2011 and ending in 2013. In total, their debate lasted two rounds (4 papers total -- 2 from Parr and 2 from Block).<sup>1</sup>

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<sup>1</sup> To read the full debate, see Block, 2011b, 2013; Parr, 2011, 2013.

## PAPER 1 (PARR 2011)

The first paper, titled “Departurism And The Libertarian Axiom Of Gentleness,” was published by Parr in 2011 (Parr 2011).

He began the paper by summarizing Block’s argument in favor of evictionism. Parr also mentioned that unlike Wisniewski, he recognized that the fetus is the one initiating the aggression but suggested that since it lacks *mens rea* and is in a nine-month process of leaving the womb, evicting it to its death instead of waiting for it to leave would be unjustified.

Next, Parr introduced his alternative to evictionism, which he called “departurism.” Specifically, he stated:

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

that such a manner is more gentle than the property owner's lethal eviction of him (Parr, 2011, p. 4).

He then added:

When there exists, like there does in an unwanted pregnancy, a situation in which a non-criminal trespasser is ceasing his property-directed aggression (that is, when he is in the act of stopping his trespass), departurism contends that libertarian law ought to require that the owner of the property in question allow for this trespasser to complete the process of his departure from the premises just in case death is the necessary result of his eviction. Because such a case is relevantly similar to the case of a trespass within the womb (and because allowing for such a trespasser to depart in this situation is the gentlest manner possible consistent with stopping the crime) the same course of action ought to be endorsed by libertarian legal theory in either case (Parr, 2011, p. 4).

Next, Parr presented his position as a formal argument with two premises and a conclusion:

P1). The course of action that libertarian legal theory ought to endorse in S1 is A.

P2). S2 is relevantly similar to S1.

C). Therefore, the course of action that libertarian legal theory ought to endorse in S2 is A (Parr, 2011, p. 5).

In an attempt to make his argument more clear, Parr explained that "S1 represents the situation of a trespasser (a) without *mens rea* (b) in the process of departing the premises of the owner of the property in question and [the situation] where (c) eviction from said premises would necessitate the death of the trespasser, and S2 represents the situation of a fetus on the premises of the mother" (Parr, 2011, p. 5). Additionally, he noted that "A represent[s]

the continued and completed departure of the trespasser” (Parr, 2011, p. 5).

After presenting departurism as a formal argument, Parr then expanded further on the first premise in an attempt to show that his argument is not just valid but also sound. First, he asserted that A, which is letting the trespasser continue and complete their departure from the property, is more consistent with libertarian law than evictionism because it is the gentlest manner possible with stopping the crime.

To clarify, Parr stated, “allowing for the trespasser in S1 to complete the process of his departure is a course of action in which the aggression will have been stopped and the property owner will not have had to respond to the aggression against his property with lethal or, for that matter, any force whatsoever” (Parr, 2011, p. 5).

He also mentioned that if A is “to be considered a positive obligation on the part of the property owner, then it is a strict and particular one that ought to be exempted from the prevailing libertarian restriction against such” (Parr, 2011, p. 6). Basically, Parr is suggesting that if A is, indeed, a positive obligation, then an exception should be made.

Moreover, Parr argued that departurism does not require that the libertarian axiom of gentleness “be amended so as to require a time-frame outside of which the aggression cannot be stopped and be thought of as the gentlest manner possible consistent to that end)” (Parr, 2011, p. 6).

After describing the first premise in a bit more detail, Parr then anticipated several objections that Block or others may raise against his theory of departurism.

The first objection that he anticipated was from those who would dispute the role of gentleness in his theory. Specifically, he argued that when it comes to the “gentlest manner possible” principle, “it is not the trespasser, but the trespass that must be stopped” (Parr, 2011, p. 6). From here, Parr claimed that in S1, the trespasser is in the act of stopping their trespass, which means

that it would be unjustified to lethally evict them from the premises rather than allowing them to finish the process of removing themselves.

Parr also pointed out that it cannot be said that allowing the trespasser to remove themselves is not an act of stopping the trespass on the part of the property owner because human action includes both engaging in an action and refraining from an action.

The second objection that he anticipated was from those who would argue that his theory involves positive obligations, which are incompatible with libertarianism. Before addressing the departurist response to such an objection, though, Parr first pointed out that in Block's own writing about evictionism, he appeared to contradict himself by being in favor of an exemption to there not being any positive obligations when it comes to the claim that a woman would be required to notify an evictionist that she wishes to rid herself of the fetus while at the same time arguing that such a requirement "does not constitute a positive obligation." (Block, 2011a, p. 2).

Next, Parr mentioned that while notifying others of one's wish to abandon a child "stems from what it means to abandon property," Block has not shown "how the obligation to notify an evictionist, or the authorities, or whomever, stems from what it means to evict trespassers" (Parr, 2011, p. 8). Consequently, Parr reasoned that the evictionist obligation is, therefore, a positive one, regardless of how narrow and limited it is.

Parr then explained that this means the "evictionist must abandon this obligation, or else an exception for it must be made" and that "if an exception is to be made for the evictionist requirement, however, one must also be made for the departurist one because it is no less strict and particular in its application" (Parr, 2011, p. 9).

Additionally, he noted that "the only difference between the departurist and evictionist requirements is a theoretical one: the amount of time entailed in the fulfillment of each one" (Parr, 2011, p. 9).

After pointing this out, Parr then argued that Block is in a “conundrum” because he cannot claim that the “duration of notification is any less onerous a violation of the property owner’s eviction rights than is the duration of departure because he is committed to holding duration as something of an irrelevancy” (Parr, 2011, p. 9). To clarify, he quoted Block as stating that “it matters not one whit how long a duration [of trespass] we are talking about” in his debate with Wisniewski (Block, 2011a, p. 11).

Basically, by saying this, Parr suggested that Block opened the door to positive obligations by claiming that a woman would have to notify an evictionist of her desire to remove her fetus and, therefore, cannot draw the line on the duration of the positive obligation because he previously asserted that the duration of trespass does not matter. This means that if there is, indeed, a positive obligation to notify others of one’s desire to evict a fetus, then it could also be argued that there’s a positive obligation to let the trespasser finish departing from the property, even if it takes nine months to depart.

The third objection that he anticipated was from those who object to allowing the trespasser to depart on the grounds that allowing for such a departure duration would transform libertarianism “into an ideology of squatters” (Parr, 2011, p. 10).

In response to this objection, he first clarified that “the departurist position is that, in cases where eviction necessitates the death of any trespasser who is without *mens rea*, the property owner must allow for the continued departure of this trespasser when he is already in the act of stopping his aggression” (Parr, 2011, p. 10). This is because, according to Parr, doing so “corresponds with the axiom of gentleness” and ensures that “absurdities are not witnessed throughout the whole of society” (Parr, 2011, p. 10).

Parr then attempted to reduce evictionism to absurdity by suggesting that using Block’s reasoning, it would be legal for people to evict someone from their property by throwing them out of a nine-story window instead of letting them spend 9 minutes departing even though doing so would “most certainly

destroy the host-guest relationship” and may even “altogether destroy the civil society” (Parr, 2011, p. 12).

After expanding further on the first premise, Parr went into more detail about the second premise. He did so by first explaining that “all that is required to demonstrate that the situations compared in premise two are relevantly similar is to show that the conditions of S1 are to be found in S2. If the same conditions are to be found in both situations, the notion that this comparison is strong and relevant will have a firm foundation” (Parr, 2011, p. 13).

By saying this, Parr appeared to be asserting that if pregnancy can be shown to be similar to a trespasser departing from the premises of the property owner, then the theory of departurism would apply to that situation as well.

Parr then pointed out that even Block himself has acknowledged that the fetus being a morally innocent trespasser and that eviction from the mother’s womb will result in death, which means the only controversial condition is whether or not the fetus is “in the process of departing the premises of the owner of the property in question” (Parr, 2011, p. 14).

From here, Parr argued that pregnancy is, indeed, in the process of departing from the mother’s womb. To clarify, he asserted that when a woman first gets pregnant, the fetus can be thought of as someone departing from a building who starts at the ninth-story and then gets closer and closer to the exit on the bottom floor as time progresses.

Before concluding, Parr stated that after having defended the two premises in his argument as being true, then his conclusion about departurism being more consistent with libertarianism than evictionism must also be true.

#### PAPER 2 (BLOCK 2011B)

The second paper, titled “Evictionism Is Libertarian; Departurism Is Not: Critical Comment On Parr,” was published by Block in 2011 (Block, 2011b).

He began the paper by summarizing Parr's theory of departurism. After doing so, Block argued that he "blatantly contradicts" himself by saying that that the fetus is in the act of departing while at the same time saying that the fetus is not purposefully committing a trespass because it's "unable to engage in any sort of human action" (Block, 2011b, p. 3).

Block then pointed out that Parr is correct in saying that the fetus is unable to engage in human action and thus wrong in saying that the fetus is in the act of departing the womb, the latter being a "crucial element" of departurism (Block, 2011b, p. 3).

After making this point, Block mentioned that he also cannot accept Parr's claim that "allowing for such a trespasser to depart in this situation is the gentlest manner possible consistent with stopping the crime [sic]" (Parr, 2011, p. 5) because letting the fetus trespass for nine months "is hardly upholding the private property rights of the mother; it is not all stopping the tort" (Block, 2011b, p. 4).

He then attempted to reduce Parr's theory to absurdity by suggesting that under departurism, a man who is caught raping a woman would be allowed to finish up. To underscore the absurdity of departurism, Block pointed out that the rapist wouldn't be able to ask for 9 months to finish, nor would they be able to ask for 9 weeks, 9 hours, 9 minutes, or even 9 seconds.

Next, Block addressed the various objections that Parr had anticipated may be brought up.

Regarding the gentleness objection that Parr anticipated, Block first asserted that "there is nothing 'gentle' about libertarianism" (Block, 2011b, p. 4). He then reviewed the principle of gentleness and accused Parr of carrying it to "such an extreme" that property owners would be forced to allow trespassers to remove themselves from the premises and pregnant women would be forced to "tolerate the existence of the fetus on her property, the womb, for the entire nine months," which makes departurism basically identical to the traditional pro-life position (Block, 2011b, p. 5).



Next, he claimed that more babies will be saved under evictionism because departurism is basically the system we have right now and reasoned that if Parr was truly concerned with gentleness, then he should, “if only as a practical matter, give up his own thesis and embrace evictionism” (Block, 2011b, p. 4).

He then pointed out that when it comes to rape, departurism would “compel the rape victim to house the trespasser for the full nine months,” which makes departurism’s treatment of a rape victim less gentle than evictionism (Block, 2011b, p. 6).

In addition to that, Block mentioned that when it comes to situations where the mother’s life is at stake, departurism “would mandate that the mother die (or be kept alive brain dead on a life support system) so that the baby may live, and then the mother, who could otherwise have survived unhurt, would be allowed to pass away,” which also makes departurism’s treatment of the mother much less gentle than evictionism (Block, 2011b, p. 6). He also suggested that such an implication demonstrates departurism’s failure to adhere to the doctrine of private property rights, which means that it’s not just less gentle than evictionism but also incompatible with the “freedom philosophy” (Block, 2011b, p. 6).

Regarding the positive obligations objection that Parr anticipated, Block began by making it clear that such obligations “are anathema to libertarianism” (Block, 2011b, p. 6). He then addressed Parr’s assertion that there’s a positive obligation “exemption” for evictionism and that there should be a similar exemption for departurism.

First, he argued that his theory of evictionism does not make an exemption for positive obligations. Specifically, he asserted that the requirement for a mother to notify an evictionist of her desire to remove the fetus from her womb is not a positive obligation, but rather, “it is part and parcel of the homesteading requirement that one not be a forestaller” (Block, 2011b, p. 7).

To clarify, he stated:

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 is not cricket. 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 (Block, 2011b, p. 7).

After making this point, he asserted that the same analysis holds when it comes to fetuses, infant babies, and children. In an attempt to explain this further, he pointed out that while one may not own children, infants, and fetuses, “it is permissible to own the rights to be their guardian” (Block, 2011b, p. 7).

He then added that the parental right to be a child’s guardian is attained by “giving birth to them, or adopting them, and then caring for them” (Block, 2011b, p. 7). From here, he mentioned that if a person no longer wants to continue to feed and clothe their baby, they may not hide the child from others because that would make her a “forestaller” since it would be similar to homesteading in the shape of a bagel (Block, 2011b, p. 7).

Basically, by neglecting the child but keeping it hidden on her property without notifying others, she would be preventing others from homesteading the unowned parental rights of the child, which would be a rights violation because they would be using their property to prevent others from homesteading unowned land. In other words, they would effectively be excluding others from property that they no longer own.

Next, Block pushed back against Parr’s claim that evictionism requires that a property withhold eviction for the duration of time

that it takes to notify the others of one's desire to evict by arguing that "there really is no such thing as a 'duration of notification'" (Block, 2011b, p. 8).

To clarify, he pointed out that in the modern era, notifying others "takes as long as you can warm up your computer, and type in a few words" whereas "in the old days, and nowadays too, the 'duration' was as long as it took you to go to the local orphanage or church" (Block, 2011b, p. 8).

He also brought up the legal notion of *de minimus*, which is the idea that "the law does not take into account trifles," to point out that "the 'duration of notification' is so trifling that the law need take no note of it" (Block, 2011b, p. 8). From here, he argued that similarly, this particular objection of Parr's involves such an insignificant amount of time that it can be ignored.

In other words, the fact that it may take someone a few seconds to notify others of their desire to evict, according to Block, cannot be considered a positive obligation due to how trivial of an amount of time it is.

Block then objected to Parr's claim that "the only difference between the departurist and evictionist requirements is a theoretical one: the amount of time entailed in the fulfillment of each one" (Parr, 2011, p. 9). He did so by arguing that "the amount of time is crucial" and pointing out that "nine months is very different than nine minutes, or nine seconds" (Block, 2011b, p. 8).

To underscore this point, he mentioned that when a judge orders someone to evict a tenant from someone else's premises that he was renting, letting them stay for nine months would be a denial of justice but forcing them to leave instantly would be impossible, which means that the tenant would have a minimal amount of time necessary to gather their belongings and vacate. And according to Block, since the amount of time is the minimal necessary, meaning as close to instantly as possible, it cannot be considered a positive obligation.

He then clarified that there are really two separate issues being discussed, one is *duration* and the other is *positive rights*.

When it comes to duration, Block mentioned that it is his “contention that the difference between nine months and a few minutes is so great as to consist of a difference in kind, not merely degree” (Block, 2011b, p. 9). When it comes to positive rights, Block reiterated that “while departurism violates the libertarian prohibition of positive rights,” his theory of evictionism is not susceptible to the same charge because a parent who fails to notify others of their wish to give up responsibility is guilty of forestalling, which means that they’re violating the negative rights of others (Block, 2011b, p. 9).

Regarding the duration objection that Parr anticipated, Block pushed back against his critic’s attempt to reduce evictionism to absurdity with the example of evicting people out of the window of a nine-story building by pointing out that in the scenario involving the nine-story building, there is an implicit contract but in a scenario involving a mother and fetus, there is no such implicit contract because the infant did not exist at the time she voluntarily engaged in intercourse.

#### PAPER 3 (PARR 2013)

The third paper, titled “Departurism Redeemed – A Response to Walter Block’s ‘Evictionism is Libertarian; Departurism is Not: Critical Comment on Parr,’” was published by Parr in 2013 (Parr, 2013).

He began the paper by reiterating his theory of departurism and the role of gentleness in libertarianism. He then directly responded to each of the points that Block made in his response to Parr’s theory of departurism, which he suggested are mostly the result of a “mere misunderstanding, disingenuousness, or efforts to make himself into an ever-shrinking target” (Parr, 2013, p. 111).

First, Parr pushed back against Block’s view that it is justifiable for the “pregnant mother to lethally evict her unwanted fetus” by questioning how such a position could meet any standard of gentleness (Parr, 2013, p. 111).

He then speculated that Block's reply would be that it is because "it is not simply the aggression (or, in this case, the trespass), but the aggressor (or the trespasser) that 'must be stopped'" (Parr, 2013, p. 112). In response to this, however, Parr suggested that Block's amendment to the principle of gentleness skewed the concept and that it was basically done in an ad hoc way to unjustifiably bolster the evictionist view.

He then speculated Block may instead reply that it would be justifiable for the pregnant mother to lethally evict a fetus that she no longer wants in her womb because non-criminals are only due gentleness provided that the rights of the property owner to evict is upheld. In response to this, though, Parr compared it to trying to define monogamy as a relationship where either member is free to date other people. To clarify, he argued that Block's position on gentleness is one that "allows for the total effacement of the distinction between criminal and non-criminal aggressors" (Parr, 2013, p. 112).

Second, Parr rejected Block's argument that Parr's claim regarding the idea that a fetus "is not purposely committing a trespass" undermines departurism since it means that the fetus cannot be said to be departing the mother's womb (Parr, 2013, p. 112). He did so by insisting that the fetus's ability to engage in purposeful action is not a necessary aspect of departurism.

Specifically, he stated, "the entire departurist thesis does not stand or fall on this impossibility. Rather, it stands or falls on the quite realistic notion that gestation constitutes a process that works to affect the cessation of property-directed aggression" (Parr, 2013, p. 113).

Basically, this means that pregnancy itself is a natural process that works to evict a fetus from the mother's womb over the course of nine months. To clarify, Parr asserted that it doesn't matter if the baby is capable of human action because it is nature itself that is causing the fetus to depart.

Third, Parr pushed back against Block's claim that the departurist position would mean a police officer would have to let

a rapist finish raping their victim by suggesting that he “either innocently mistook departurism, or else he has disingenuously presented it” (Parr, 2013, p. 114).

He then explained that the gentleness principle under departurism is only applicable to non-criminals, which means that since the rapist is a criminal, they would not be allowed to finish their “trespass” (Parr, 2013, p. 114).

He also added that since rape and situations where the mother’s life is at stake are aggressions against a person and aggressions against property, it would be permissible for the person being aggressed against to use deadly force to in self-defense.

To clarify, he stated, “special care has been taken to offer that ‘aggressions against persons and those against property occupy different levels of moral concern’ and that, as such, any course of action supposedly appropriate for one is not necessarily appropriate for the other” (Parr, 2013, p. 114).

Fourth, Parr addressed Block’s comments about departurism involving positive obligations by arguing that “departurism does not legally oblige individuals to help others,” which means it’s immune from the criticism that if accepted, “there would be no way to contain the collectivist flood,’ or that society would be ‘logically obligated to accept a right to food, clothing, shelter, medical care, etc” (Parr, 2013, pp. 114-115).

Parr then criticized Block’s view on child abandonment. He did so by first suggesting that Block does not believe it is a positive obligation to notify others of their intention to relinquish control of their children because of what it means to abandon property and then arguing that such a belief is a contradiction because Block has made it clear that the fetus is a trespasser (and the fetus cannot be both a trespasser and a piece of property to be homesteaded at the same time).

To underscore this point, Parr argued that Block is ultimately mistaken in assuming that “the notification of others is what is (logically) required of property owners if they are to, in fact and

by definition, evict trespassers” and then attempted to reduce his assumption to absurdity by pointing out that using Block’s reasoning, a property owner who evicts a trespasser without notifying others of their intention to do so would, quite nonsensically, make them guilty of being an “absentee trespasser evictor” or an “absentee private property rights upholder” (Parr, 2013, p. 116).

After making this *reductio ad absurdum*, Parr explained that the requirement to notify others of one’s desire to evict is “not part and parcel of what proper eviction means” (Parr, 2013, p. 117). This means that, according to Parr, Block’s eviction requirement doesn’t come “from what it means to evict trespassers or even from the gentlest manner possible” but instead is derived simply from Block’s say-so, which makes it a positive obligation (Parr, 2013, p. 117).

Fifth, Parr addressed Block’s comments on duration. He did so by first suggesting that Block’s position on the matter has not remained constant throughout his defense of evictionism to different criticisms.

To clarify, Parr pointed out that Block has placed himself in a contradiction by asserting in his debate with Wisniewski that “it matters not one whit how long a duration we are talking about” because “we are talking principle here” (Block, 2011a, p. 11) and stating in his debate with Parr that “the amount of time is crucial” (Block, 2011b, p. 8).

In other words, by saying this, Parr suggested that if Block clarifies that duration doesn’t matter, which was his objection to Wisniewski, then that same reasoning can be used against him in his debate with Parr, but if he clarifies that the duration does matter, which was his objection to Parr, then that would mean that Wisniewski’s previous criticism of evictionism involving the duration of time to leave the premises still stands.

Sixth, Parr rejected Block’s claim that an implicit contract is what prevents someone from throwing an invited guest out of the ninth-story of a building and the lack of an implicit contract is

what allows a mother to evict the fetus to its death. He did so by arguing that Block's reference to implicit contracts misses the mark because "the existence or nonexistence of an implicit contract plays no role in determining whether or not an aggressor is a criminal or non-criminal or, if he, in fact, is the latter, whether or not he should be the object of gentleness" (Parr, 2013, p. 119).

He also attempted to reduce Block's position to absurdity once more by adding that if implicit contracts require a common understanding, then it would be permissible to evict those who cannot "be a partner in a contract in any case," like babies and the mentally handicapped, from the ninth-story window of a building (Block, 2011b, p. 11).

After making this point, Parr then clarified that the two issues being discussed both have to do with "whether or not the phenomenon of implicit contracts keeps intact the host-guest relationship" and "whether or not the absence of an implicit contract ought to permit a property owner to treat the non-criminal trespasser on his premises in a manner decidedly more harmful than the gentlest one" (Parr, 2013, p. 120).

From here, Parr argued that "gentleness is foundational to libertarianism" and suggested that "libertarian theory default to it in the absence of a (implicit) contract" since "gentleness is a basic axiom of this 'branch of law'" (Parr, 2013, p. 120). Basically, this means that if a non-criminal trespasser is in the process of ceasing their trespass, then it would be unjustified to employ violence against them to expedite the process.

Before concluding, Parr turned his attention to criticizing Block's comment that he cannot accept the claim that "allowing for such a trespasser to depart in this situation is the gentlest manner possible consistent with stopping the crime [sic]" (Block, 2011b, p. 4) because "allowing the fetus nine months of trespass is hardly upholding the private property rights of the mother; it is not [sic] all stopping the tort" and claimed that there are two points to clarify (Parr, 2013, p. 121).



The first point Parr clarified was that his theory of departurism does not necessarily mean that a woman's womb would be occupied for nine-months because the pregnancy may become unwanted toward the end of gestation, which means that the mother may only have to keep the fetus inside of her for nine minutes.

Parr also pushed back against Block's criticism that departurism is no different than the pro-life position by pointing out that over time, evictionism will also be no different than the pro-life position. He then added that "by attacking departurism in this manner Block confronts a dead end and displays a strange breed of theory-envy in which departurism catches his ire for achieving the pro-life end before his view" (Parr, 2013, p. 122).

The second point Parr clarified was that "the departurist requirement does not entail, simply, withholding eviction for the amount of time it takes a morally innocent trespasser to discontinue his violation of the owner's private property rights" (Parr, 2013, p. 122).

To clarify, he mentioned that one does not have to let an individual finish their trespass but rather that they simply have to give them enough time to depart. This means that if the departure is already underway, then it would be unjustified to remove them in a more harmful way.

#### PAPER 4 (BLOCK 2013)

The fourth paper, titled "Rejoinder to Parr on Evictionism and Departurism," was published by Block in 2013 (Block, 2013).

He began the paper by accusing Parr of starting off on the wrong foot "as early in his paper as the abstract" (Block, 2013, p. 127). To clarify, he pointed out that Parr's claim about departurism corresponding to "libertarian legal theory in a way that the evictionist one does not" (Parr, 2013, p. 109) elevates "gentleness" to a basic premise of libertarianism, which is a mistake because libertarianism is based "on the non-aggression principle (NAP)

coupled with private property rights based initially on homesteading” (Block, 2013, p. 127).

In an attempt to further underscore this point, he added that “the only time ‘gentleness’ becomes an issue is when it comes to the question of how to deal with criminals, trespassers,” which means that “the libertarian philosophy provides that such a person not be harmed any more than is necessary, while still fully protecting the rights of the property owner” (Block, 2013, p. 127).

He then reiterated that what matters is acting in the gentlest manner “consistent with stopping their aggression” and asserted that “without that stipulation, the backbone of libertarian law is destroyed” (Block, 2013, p. 127).

Block also mentioned that while a fetus lacks *mens rea* and cannot be considered a criminal, they are still “violating the libertarian legal code, which forbids anyone, for any reason, from trespassing on, occupying against the will of the owner, another person’s property” (Block, 2013, p. 127).

He then reasoned that the same can be said for an unconscious adult who is unknowingly stowed away on someone else’s boat or airplane but clarified that “innocence must not be allowed to prevail over private property rights, at least not for the libertarian” (Block, 2013, p. 128).

To clarify further, Block argued that lacking *mens rea* does not mean one is not technically trespassing and supported this claim by referring to Thomson’s scenario where one person gets connected to another person by a third party without their consent (Thomson, 1971). Specifically, he pointed out that while the person who was connected to the other individual may lack *mens rea*, they are still trespassing on their body.

Block then attempted to reduce Parr’s position to absurdity by claiming that using Parr’s reasoning, if the only way to disconnect the one person from the kidney of the other person resulted in the death of the person who was attached to the kidney, then the person who actually owns the kidney would be forced to let them remain attached to their body since doing so would be the most “gentle” solution (Block, 2013, p. 128).

After making this point, Block also mentioned that gentleness to the trespasser results in a lack of gentleness to the property owner, which means that while the fetus would be treated in the gentlest manner possible during pregnancy, the mother would not.

He then pointed out that Parr's analysis results in the clashing of rights and reasoned that this is due to the fact that the rights being discussed are mis-specified. He also suggested that by weighing the inconvenience of a mother against the very survival of the fetus, Parr's theory is less libertarian and more utilitarian, Coasean, or egalitarian.

To underscore his point about Parr's theory not being libertarian, Block attempted to reduce Parr's position to absurdity yet again by suggesting that Parr would favor the fetus over the mother in situations where the life of the mother is in danger due to the fact that it would be more gentle to let the baby survive since its expected to live longer.

Next, Block addressed Parr's reply to the responses he gave regarding the various objections that Parr initially anticipated.

Regarding gentleness, Block first addressed Parr's claim that his position was like trying to define monogamy as a relationship where either member is free to date other people by arguing that this would be true only if he bought into the notion that the essence of libertarianism is gentleness and not the NAP based on private property rights.

He then argued that unlike defining "'monogamy' so as to include liaisons," which would be a logical contradiction, it is not a contradiction to posit that using deadly force when necessary is the most gentle manner possible with stopping a crime (Block, 2013, p. 130).

Block then explained that by saying this, Parr was basically suggesting that there isn't any difference between evictionism and the pro-choice position. According to Block, however, "there is a world of difference between the two" (Block, 2013, p. 130). To clarify, he pointed out that if evictionism were to replace the current legislation, "not a single solitary young human being in the

seventh through the ninth month of his pre-birth life would be allowed to be purposefully killed” and as medical technology continues to improve, the cut off will be sooner and sooner (Block, 2013, p. 130). Block then added that contrary to Parr’s claim, evictionism is not the “total effacement of the distinction between criminal and non-criminal aggressors” because it would be unjustified for non-criminals such as viable fetuses in the third trimester to be unnecessarily killed during the eviction process (Block, 2013, p. 130).

Regarding unintentional action, Block reiterated that while a fetus “cannot actively, purposefully, consciously, commit a trespass,” they can passively do so (Block, 2013, p. 130). In an attempt to underscore this point, Block pointed out that the same also applies to “to the adults [sic] person who is drugged unconscious and then stowed away on a boat or plane, or attached to someone else’s kidney” (Block, 2013, p. 130). He then explained that while a fetus or unconscious adult cannot refuse or agree to do something, they can fail to do so, and if this happens, then it is “justified for the rightful owner or his or her agents to act so as to defend their property” (Block, 2013, p. 130).

Block also pointed out that while he agrees with Parr that “gestation constitutes a process that works to affect the cessation of property-directed aggression,” he does not see the relevance since the departure takes nine months (Block, 2013, p. 131). In an attempt to make this point more clear, Block asked why an owner’s property owner should be “held in abeyance for that period of time” (Block, 2013, p. 131). To clarify even further, he asked why the owner of the kidney should be forced to allow an entirely innocent trespasser remain connected to their body “for nine months or for any other lengthy period of time” (Block, 2013, p. 131).

Regarding rape, Block addressed Parr’s refutation of his *reductio ad absurdum* on the grounds that a rapist is a criminal whereas a fetus is not by slightly changing his example to be one where the rapist lacks *mens rea* due to being drugged or

hypnotized. He then argued that using Parr's reasoning in this revised scenario, the rapist "would indeed be entitled to 'just a little more time' to complete his despicable act, provided, only, that to not allow him to do so might injure him, negatively impact his health, very seriously, even leading to his death" (Block, 2013, p. 131). Block then went even further by pointing out that in a situation where a rapist fails to complete a rape will die, the implication of departurism would be that the rapist is allowed to finish out of "gentleness," even if the rape hypothetically took nine months (Block, 2013, p. 131).

Block also pointed out that Parr's analysis when it comes to situations where the lives of both the mother and the fetus are at stake is faulty as well. To clarify, he mentioned that Parr based his analysis on the "distinction between aggression against the person on the one hand and violence against mere property on the other" instead of it being an aggression against either the mother's "person" or the fetus's "person" (Block, 2013, p. 132).

Moreover, Block also argued that his distinction is spurious because in some situations, a minor assault and battery against a person is far less serious than stealing someone's horse in the old western times, which they'd die without.

On top of that, Block explained that in making such a distinction, Parr seems to forget that property rights ultimately belong to people. This means that rather than it being a matter of persons over property, it has more to do with who is the rights violator and who is the person having their rights violated.

Regarding positive obligations, Block asserted that Parr would be correct in suggesting that departurism does not "does not imply positive obligations" if gentleness was a libertarian fundamental (Block, 2013, p. 132). According to Block, however, "it is not at all fundamental to libertarianism but rather peripheral to it at best," which means that Parr's defense of departurism fails in this regard (Block, 2013, p. 132).

He then pointed out that forcing a woman who is being raped to "undergo additional exquisite torture for the sake of an

innocent (drugged or hypnotized) rapist cannot possibly be a negative obligation of hers” (Block, 2013, p. 132). Instead, he claimed that to do so would be a positive obligation to come to the aid of another person to whom she doesn’t owe anything.

Next, Block pushed back against Parr’s claim that when it comes to child abandonment, Block does not believe notifying others is a positive obligation because of what it means to abandon property by explaining that his view doesn’t stem from what it means to abandon property but rather from what it means to homestead property without violating the rights of others.

To clarify, he pointed out that someone who homesteads in the shape of a bagel or decides to no longer care for a child without first notifying others “is precluding others from homesteading either the land or the child, by homesteading land in that pattern in the former case, or abandoning the child sans notification, to the proper authorities” (Block, 2013, p. 133).

Block then pushed back against Parr’s claim that Block had contradicted himself by claiming that the fetus is like physical property while also claiming that a fetus is a trespasser by suggesting that Parr “does not understand what an analogy is” (Block, 2013, p. 133). He then clarified this by explaining that Parr does not seem to realize that he used the analogy of homesteading land in a donut to make the concept of forestalling more clear, not to literally claim that a fetus is like a plot of land.

Regarding duration, Block addressed Parr’s complaint that he changed his stance by saying first that “it matters not one whit how long a duration we are talking about” and then later that “the amount of time is crucial” by pointing out that the two quotes are not contradictions because they are in two different contexts (Block, 2013, pp. 133-134).

And regarding implicit contracts, Block basically dismissed Parr’s claim about libertarianism being “transformed into an ideology of corpses” (Parr, 2011, p. 13) by suggesting that rather than being an argument, his comment is really just a very dramatic way of restating Block’s position that “trespassers must be

evicted, if the owners of the property in question insist upon that” (Block, 2013, p. 134). He then made it clear once more that “gentleness is not foundational to libertarianism” and noted that to claim otherwise is a perversion of the libertarian philosophy (Block, 2013, p. 134).

Toward the end of his final response to Parr, Block directly addressed the second premise in Parr’s argument. He did so by first claiming that Parr’s comment about the fetus being in the process of departing is evasive because what matters is private property rights and letting a fetus take nine months to depart completely undermines private property rights.

In an attempt to underscore this point, Block attempted to reduce Parr’s position to absurdity once more by pointing out that if pregnancy was different and the fetus wasn’t on the way out of the womb, Parr’s claim that the fetus is on its way out would no longer hold, which means that, using Parr’s reasoning, the mother would be forced to let the fetus stay attached to her whereas, under evictionism, the mother would be allowed to remove the unwanted trespasser from her body.

Before concluding, Block noted that “in order to defend his ‘departurist’ theory Parr has to obliterate libertarianism” by converting it “from a thesis based on the NAP and private property rights to one of being ‘gentle’” (Block, 2013, p. 135). To clarify, he reasoned that Parr’s argument for departurism is, in effect, “an attempt to hijack libertarianism into something other than what it is” (Block, 2013, p. 136).

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