

# *The Journal Of* Peace, Prosperity & Freedom

SEAN PARR

## Departurism Redeemed — A Response to Walter Block’s ‘Evictionism is Libertarian; Departurism is Not: Critical Comment on Parr’

**ABSTRACT:** I will make the case that the departurist view corresponds to libertarian legal theory in a way that Walter Block’s evictionist theory on abortion does not. By allowing for an unwanted fetus to continue and complete its departure from its mother’s womb, departurism is a manner gentler than would be its eviction from the womb. The departurist theory therefore satisfactorily adheres to the libertarian axiom of gentleness and imposes no positive obligation on the part of the mother in so doing.

**AUTHOR:** Sean Parr (Parrfection@bellsouth.net) is a libertarian writer and theorist.

In this paper I will respond to Walter Block’s contribution to the abortion debate entitled ‘Evictionism is Libertarian; Departurism is Not: Critical Comment on Parr’ in an attempt to come to terms with the philosophical issues in this area.<sup>1</sup> Block’s evictionist view argues that the mother may evict, but not kill, a trespassing fetus on her property. However if this eviction happens to necessitate the death of the fetus — which, given the current state of medicine, it almost certainly does — then according to evictionism ‘the owner of the land is still justified in upholding the entailed property rights.’<sup>2</sup> In an unwanted pregnancy, then, the mother is within her rights to evict the fetus from her womb because, and despite the fact that, in this case, the alleged “gentlest manner possible’ implies the death of this very young human being.”<sup>3</sup>

- 
- 1 Walter Block, “Evictionism is Libertarian; Departurism is Not: Critical Comment on Parr,” *Libertarian Papers* 3, No. 36 (2011).
  - 2 Walter Block, “Response to Wisniewski on Abortion, Round Two,” *Libertarian Papers* 3, No. 4 (2011), p. 2.
  - 3 Ibid.

The departurist view on the other hand argues that if once a property owner has deemed a non-criminal occupying his premises a trespasser and the process of the trespasser's departure initiates or else continues (i.e. "a respect for the owner's private property rights"<sup>4</sup> is demonstrated), then this trespasser's continued and completed departure, rather than his death-necessitating eviction at the hands of the property owner, is to be allowed for — as this (and this alone) is what, in this instance, constitutes the gentlest manner possible.

Departurism is perhaps best explained by means of the following argumentation scheme where  $S^1$  represents the situation of a trespasser (a) without guilty mind (*mens rea*) (b) in the process of departing the premises of the owner of the property in question and where (c) eviction from said premises would necessitate the death of the trespasser, and  $S^2$  represents the situation of a fetus on the premises of the mother. Also, let  $A$  represent the continued and completed departure of the trespasser.

Premise 1: The course of action that libertarian legal theory ought to endorse in  $S^1$  is  $A$ .

Premise 2:  $S^2$  is relevantly similar to  $S^1$ .

Conclusion: Therefore, the course of action that libertarian legal theory ought to endorse in  $S^2$  is  $A$ .

This departurist argumentation scheme has been included in order to systematically respond to each of the relevant criticisms put forth by Block in his article. An organized approach, it is hoped, will afford 'an almost line by line, certainly paragraph by paragraph, critical commentary and refutation.'<sup>5</sup> The paper will then conclude.

## I. LIBERTARIANISM AND GENTLENESS

Gentleness — the 'basic axiom of libertarianism [that] non-criminals are to be treated in the gentlest manner possible [consistent with stopping their aggression]<sup>6</sup> — has been placed into law 'so as to preclude the victim from acting so strongly against the perpetrator that the victim, too, violates the libertarian code.'<sup>7</sup>

---

4 Sean Parr, "Departurism and the Libertarian Axiom of Gentleness," p. 10. All that is meant here and throughout this paper by the notion of "respecting private property rights" is that proper deference is, in some manner, being displayed with regard to them as evidenced by a marked discontinuation of their violation (e.g., an inadvertent trespass in the process of being corrected).

5 Walter Block, "Critical Comment on Klein and Clark on Direct and Overall Liberty," *Reason Papers* 33 (2011), p. 112.

6 Walter Block, "Rejoinder to Wisniewski on Abortion," *Libertarian Papers* 2, No. 32 (2010), p. 3.

7 Block, "Response to Wisniewski on Abortion, Round Two," p. 3.

From this notion there have spawned two opposing ‘liberty and private property rights approach[es] to the issue of abortion.’<sup>8</sup> evictionism and departurism. Each of these approaches acknowledge the personhood of the fetus and make the case that if the occupation of a fetus in its mother’s womb is to be viewed as a trespass (and the fetus, a trespasser), then this fetus is to be treated by the mother in ‘the gentlest manner possible, for the trespasser in this case is certainly not guilty of mens rea.’<sup>9</sup> That is, the unwanted fetus is to be so treated because it is not a criminal. The feud between these competing views owes to a disagreement concerning the constitution of the principle of gentleness, or, rather, of what this principle ought to consist. Where Block offers addendum after addendum to the axiom of gentleness in order to have it conform to his theory, departurism stands firm in its pure comprehension of the concept as ‘the least harmful manner possible’<sup>10</sup> wholly consonant with putting an end to the aggression.

## II. REJOINDER TO BLOCK’S CRITIQUE OF DEPARTURISM

Block, the most formidable of critics on this issue, has claimed to have set out with the purpose of ‘pulverizing the departurist theory.’<sup>11</sup> Although, as will be shown, he does not quite succeed in his task, his effort has allowed for both a clearer explanation and a more thorough defense of those aspects of the departurist thesis that have drawn his criticism. Now, in the past, Block’s mode in debate has been ‘to kick, claw and scratch, aiming for the crotch and the neck.’<sup>12</sup> And his spirited style is certainly on display here. He does offer genuine points against departurism for consideration, however, most often, Block’s barbs against the view stem from mere misunderstanding, disingenuousness, or efforts to make himself into an ever-shrinking target.

### A. *Premise One*

#### 1. *Gentleness*

Block finds it justifiable for the pregnant mother to lethally evict her unwanted fetus. But why does *this* meet any standard of gentleness?

---

8 Walter Block and Roy Whitehead, “Compromising the Uncompromisable: A Private Property Rights Approach to Resolving the Abortion Controversy,” *Appalachian Law Review* 4, No. 1 (2005), p. 1.

9 Block, “Rejoinder to Wisniewski on Abortion,” p. 3.

10 Block, “Response to Wisniewski on Abortion, Round Two,” p. 3.

11 Block, “Evictionism is Libertarian; Departurism is Not: Critical Comment on Parr,” p. 2.

12 Walter Block, “Arguing with a Leftist,” *Lewrockwell.com* (2011, January 5), paragraph 4.

Perhaps it is because Block contends that it is not simply the aggression (or, in this case, the trespass), but the *aggressor* (or the *trespasser*) that ‘*must be stopped*’<sup>13</sup> — a take on the matter which conveniently amends “the libertarian legal nostrum ‘gentlest manner possible’”<sup>14</sup> in a way that serves to bolster the evictionist view. The gentlest manner possible, then, certainly would entail the mother’s death-necessitating ousting of the fetus from her womb. Under this skewed conception of the principle, *of course* it would.

Or perhaps it has something to do with the fact that, to Block, the non-criminal perpetrator is due gentleness, sure, but ‘provided, only, that the rights (sic) of the property owner to evict trespassers is upheld’.<sup>15</sup> This is something like saying, ‘I’m all for monogamous relationships. Provided, only, that either member of them is free to date other people.’ Such would be defining monogamy in a way that absolutely precludes a relationship with only one person at a time. In like manner, Block attempts to preempt departurism from the jump by insisting that the only licit gentleness is the one that allows for the total effacement of the distinction between criminal and non-criminal aggressors.

Block’s view is well understood. He never supports the gentlest manner possible in an unwanted pregnancy because allowing for the fetus to continue and complete its departure would prevent the property owner from evicting it. The view discussed in this paper, on the other hand, indeed supports the eviction rights of property owners provided, only, that the libertarian axiom of gentleness is not violated.

## 2. *Unintentional Action?*

Block is vehement in his refutation of what he incorrectly takes to be ‘a crucial aspect of departurism.’<sup>16</sup> He has brought to attention my contention that ‘the fetus is not purposefully committing a trespass. It is unable to engage in any sort of human action at this stage of its development.’<sup>17</sup> If this is true, Block has further pointed out, it cannot also be true that this fetus be engaged ‘in the act of stopping his trespass,’<sup>18</sup> for ‘if this infant person cannot *commit* a trespass, he cannot *act* so as to *stop* his trespass either.’<sup>19</sup> This is very true. What is very false is Block’s

---

13 Block, “Response to Wisniewski on Abortion, Round Two,” p. 4.

14 Ibid.

15 Block, “Evictionism is Libertarian; Departurism is Not: Critical Comment on Parr,” p. 2.

16 Ibid, p.4.

17 Parr, “Departurism and the Libertarian Axiom of Gentleness,” p. 2.

18 Block, “Evictionism is Libertarian; Departurism is Not: Critical Comment on Parr,” p. 4.

19 Ibid.

claim that the ability of a fetus to act in order to depart the mother's premises is some sort of genuine contention of departurism.<sup>20</sup>

The entire departurist thesis does not stand or fall on this impossibility. Rather, it stands or falls<sup>21</sup> on the quite realistic notion that gestation constitutes a process that works to affect the cessation of property-directed aggression. Because of this, then, the mother may not properly employ violence against the fetus — and this by Block's own admission: 'only if [a non-criminal trespasser] refuses<sup>22</sup> to respect private property rights ... may [the owner of the property in question] properly employ violence against [him]'.<sup>23</sup>

What's more is that the departurist paper on topic has expressly enumerated throughout<sup>24</sup> the fact that a non-criminal aggressor need not be capable of human action in order to be the object of a departure-eliciting process — his departure may be the result of something outside of his sphere of control. It is only necessary to peruse the departurist argumentation scheme, the principal function of which is to 'organize and make clear [the departurist] position,<sup>25</sup> for where it might indicate that the trespasser's departure must be the result of

20 Where the term "action" was used by me to refer to purposeful behavior on the part of actors (e.g., mothers or property owners evicting fetuses or trespassers, or else allowing for them to continue and complete their departure), the term "act" was (perhaps inappropriately) used to refer to a process (think: "in the midst of") — one argued throughout the paper as being engaged in either unwillfully by the fetus or others, or willfully and in compliance with a property owner's request to vacate by the various non-criminal trespassers used in the paper's examples.

21 Well, stands.

22 If, as both evictionism and departurism maintain, a fetus is incapable of human action, then it most certainly cannot *refuse* to respect private property rights. It cannot refuse to do anything *at all*. So, even if the departurist position — that the process of gestation constitutes a respect for the mother's private property rights — were to somehow be proven false, according to Block the mother would *still* not be in a position to employ violence against it because she may properly do so *only* if it *refuses* to depart her womb, something that the fetus is incapable of doing. It, perhaps, would be unfair to state that Block's entire thesis falls on the basis of this contention of his — but such is a crotch-aiming digression.

23 Block, "Rejoinder to Wisniewski on Abortion," p. 3.

24 Parr, "Departurism and the Libertarian Axiom of Gentleness," p. 11: "[Rather than being in compliance with a request to vacate] departure might simply [be] incidental to Y's very nature (that is, departure from the premises might well be a necessary condition of his visit [or of his trespass]);" p. 15: "Y's certain departure from the premises ... represents a force of nature;" p. 15: "Even if [a fetus] were to be deemed by the mother a trespasser, it is nonetheless respecting private property rights by vacating her premises (albeit not of its own volition, but by force of nature);" p. 15: "A overcompensates in his reaction. Losing his balance, A happens to engage in the correction of his misstep (that is, as it so happens, A demonstrates a respect for B's private property rights). Gravity (force of nature) is causing A to regress off of B's lawn."

25 *Ibid*, p. 1.

human action. One may peruse to their heart's content and never come across this stipulation. Block's attacking of this position and his describing it as foundational to departurism, rather than ascribable to a terminological error on the part of the author, is just one example of his aiming for the crotch.

### 3. *Rape*

In an effort to represent what he understands to be a departurist position, Block has constructed a clever, though flawed, scenario in which a rapist pleads with the police officers ordering him to immediately stop for 'a little time to finish up.'<sup>26</sup> Block concludes, then, that it is the departurist position that the cops ought to allow the rapist's request. When coming to this conclusion, Block has either innocently mistook departurism, or else he has disingenuously presented it.

Firstly, rape is a crime — and the rapist in Block's example, a *criminal*. Because 'gentleness is applicable to non-criminals,'<sup>27</sup> the departurist would not proceed as though this principle was applicable to the rapist on topic. Secondly, rape is an aggression against person, and not one against property, and, for that matter, so is any consideration of pregnancy in which 'the mother's life is at stake.'<sup>28</sup> Block, here, demonstrates both that he places no importance on this morally relevant distinction and that he does not correctly understand the departurist view: 'Parr's theory ... would mandate that the mother die ... so that the baby may live, and then the mother, who could otherwise have survived unhurt, would be allowed to pass away.'<sup>29</sup> To borrow a turn-of-phrase from this author's debating partner, 'not so, not so.'<sup>30</sup> In light of the following explanation, 'not so a thousand times.'<sup>31</sup> Special care has been taken to offer that 'aggressions against person and those against property occupy different levels of moral concern'<sup>32</sup> and that, as such, any course of action supposedly appropriate for one is not necessarily appropriate for the other.

### 4. *Positive Obligations*

Departurism does not legally oblige individuals to help others. Because its requirement makes no appeal to any notion of 'extreme need,' 'extreme cases,'

---

26 Block, "Evictionism is Libertarian; Departurism is Not: Critical Comment on Parr," p. 4.

27 Parr, "Departurism and the Libertarian Axiom of Gentleness," p. 3.

28 Block, "Evictionism is Libertarian; Departurism is Not: Critical Comment on Parr," p. 6.

29 Ibid.

30 Block, "Rejoinder to Wisniewski on Abortion," p. 7.

31 Block, "Evictionism is Libertarian; Departurism is Not: Critical Comment on Parr," p. 7.

32 Parr, "Departurism and the Libertarian Axiom of Gentleness," p. 16.

or “the common good” (and because it originates not from these notions, but from the narrow and limited principle of gentleness, as applicable to non-criminal aggressors), departurism is immune to any objection that would claim that, if it were to be broadly adopted, ‘there would be no way to contain the collectivist flood,’<sup>33</sup> or that society would be ‘logically obligated to accept a right to food, clothing, shelter, medical care, etc.’<sup>34</sup>

The departurist view acknowledges and agrees with Block’s libertarian analysis in support of the doctrine of negative obligations: ‘people are obligated, *only*, to refrain from initiating, or threatening, physical violence against innocent people or their property. They are not at all legally obliged to . . . be a Good Samaritan.’<sup>35</sup>

But what serves to distinguish whether or not a requirement regarding trespasser eviction is a positive or a negative one? On what factor is the onus to be placed? This paper argues that this factor is gentleness.<sup>36</sup> Because ‘gentleness is a libertarian fundamental,’<sup>37</sup> any requirement beholden to it must also be libertarian and, thus, a negative requirement because ‘there are no positive obligations in the libertarian lexicon.’<sup>38</sup> And when Block acknowledged that the evictionist “obligation to notify the authorities is a requirement of the gentlest manner possible”<sup>39</sup> he seemed to have agreed that such is the case.

But what exactly is this evictionist notification requirement? As Block has put it, it is the obligation ‘that the mother notify the authorities to see if they will take over responsibilities’<sup>40</sup> for keeping the unwanted fetus alive. It would, no doubt, be gentler to notify others of one’s intent to lethally oust a non-criminal trespasser from one’s property than to simply evict this trespasser unto death without first engaging in said notification. But this does not constitute the *gentlest manner possible* of affecting this trespasser’s removal. That honor goes to departurism’s means, for they do not employ force or violence against the non-criminal trespasser. They do not entail the death of any innocent person. This is clear. That

33 Alejandro A. Chafuen, *Faith and Liberty: The Economic Thought of the Late Scholastics* (USA: Lexington Books, 2003), p. 42.

34 Block, “Evictionism is Libertarian; Departurism is Not: Critical Comment on Parr,” p. 6.

35 Ibid.

36 To clarify, I no more asked for an exemption from the rejection of positive obligations on behalf of departurism than Block and Whitehead did an exception on behalf of evictionism when they cautioned, “if [the evictionist is] indeed guilty of making an exception to the general libertarian stricture against positive obligations, it is a very narrow and limited one” (Block and Whitehead, “Compromising the Uncompromisable: A Private Property Rights Approach to Resolving the Abortion Controversy,” p. 36).

37 Parr, “Departurism and the Libertarian Axiom of Gentleness,” p. 3.

38 Walter Block, “Libertarianism, Positive Obligations and Property Abandonment: Children’s Rights,” *International Journal of Social Economics* 31, No. 3 (2004), p. 281.

39 Parr, “Departurism and the Libertarian Axiom of Gentleness,” p. 8.

40 Block, “Response to Wisniewski on Abortion, Round Two,” p. 2.

being said, does Block's notification requirement regarding trespasser eviction even qualify as libertarian? To qualify as such, it must be a negative requirement. But is it? It flatly does not adhere to gentleness as satisfactorily as does departurism's requirement, but is there some fall-back position, some contingency, that Block could use to square his theory with the libertarian stricture against positive obligations? To determine this, it is necessary to investigate Block's view on, of all things, child abandonment.

It is Block's position that child-abandoners be required to notify others of their intention to relinquish control of their children (abandon them). Why does this requirement of his not constitute a positive obligation on the part of the parents? Because, claims Block, property owners are required to do the same if it is their intention to abandon their property. To explain, if said property owners do 'abandon' their property, without first fulfilling this obligation to notify, then they are not, in fact and by definition, 'abandoning' this property, they are behaving as absentee owners over it. The notification of others is what is (logically) required of property owners if they are to licitly abandon their property (and not simply 'temporarily, for the moment, even for the rest of [their] life'<sup>41</sup> put it to disuse). In the same way, it is what is (logically) required of parents if they are to licitly abandon their children. It is a definitional justification of the notification requirement in that, in the absence of it, the term 'abandonment' loses its meaning. This is fine and there is nothing to say against it. It is an alright theory on the subject of child abandonment.

But how does it apply or even relate to trespasser eviction? Well, here Block seems to muddle things up a bit. He would have it that even pre-birth children (fetuses) fall prey to this analogy of his. They, too, are to parents what land or property is to property owners. Claims Block, 'the exact same analysis holds'.<sup>42</sup> So, requiring parents to 'notify the orphanage, church, monastery, etc., of an (sic) no longer-wanted infant'<sup>43</sup> is not, in Block's view, a positive obligation.

But wait a tick, were not pre-birth children (fetuses) to be viewed as *trespassers*? Did not Block state that 'the relation of the fetus to the mother is akin to the one that obtains between the ordinary trespasser and the owner of the property in question'?<sup>44</sup> Is it not *this* analogy that is the thrust of the entire evictionist thesis? Are fetuses non-criminal trespassers? If so, it is only the gentlest manner possible that would prevent any requirement pertaining to them from being un-libertarian. Or are they property? If this is the case, it is only the notification of others that could avoid this dark result. Now, if most

---

41 Block, "Libertarianism, Positive Obligations and Property Abandonment: Children's Rights," p. 279.

42 Block, "Evictionism is Libertarian; Departurism is Not: Critical Comment on Parr," p. 9.

43 Ibid.

44 Block, "Response to Wisniewski on Abortion, Round Two," p. 2.



analogies limp, then this must be doubly true when one analogy dances around another to the point where even its author dizzyingly confounds what it is that is being likened. If a suggestion may be offered, perhaps Block ought to decide in what way he would have pre-birth children dealt with — as property or as non-criminal trespassers *on* property. This might clear up some confusion, as only one of these things, the former, can be abandoned and, thus, subjected to any notification requirement.

Where Block is ultimately mistaken is in this: he assumes that the notification of others is what is (logically) required of property owners if they are to, in fact and by definition, evict trespassers. This, however, raises questions. If a property owner does not notify others of his intention to evict trespassers, does he relegate himself, somehow, to becoming merely an ‘absentee trespasser evictor’ or an ‘absentee private property rights upholder’? Do such notions even make sense? It is, with all respect to Block, ridiculous to claim that a property owner has ‘not yet succeeded’<sup>45</sup> in evicting a trespasser whom he has just ousted from his premises simply because this property owner has notified no one of his deed. There is no definitional justification of Block’s notification requirement in which, in the absence of it, the term ‘eviction’ would lose its meaning. This means that notification is not a requirement for eviction in the same way that it is for abandonment — and it *must* be if Block’s thesis is to be a coherent one.

The objective of this subsection is to sort of corral Block into dealing with this issue: the notification of others is not part and parcel of what proper eviction *means*. That is, a property owner can evict a trespasser without notifying anyone and his action, the eviction, *remains what it is and nothing less*. Block’s eviction requirement to notify derives not ‘from what it means to evict trespassers,’<sup>46</sup> or even from the gentlest manner possible. Rather, this eviction requirement to notify derives simply from Block’s say-so and, as such, it is a positive obligation. It truly ‘tis.

##### 5. *Duration*

It is difficult to assail the position of one’s opponent when this position cannot be relied upon to remain constant throughout defenses to different criticisms. In this way, Block’s take on the relevance of trespass duration is something like *ACME*’s pen ink — disappearing, and then reappearing. So it is necessary, before this paper responds to Block’s most recent comments on duration, to briefly engage in a history of the subject and his recorded take on it.

In response to Wisniewski’s position that the NAP “trumps the right to evict trespassers from our property if it is us who are responsible for making someone

---

45 Block, “Libertarianism, Positive Obligations and Property Abandonment: Children’s Rights,” p. 279.

46 Parr, “Departurism and the Libertarian Axiom of Gentleness,” p. 9.

a ‘trespasser’ in the first place,<sup>47</sup> Block advanced a thought-experiment, involving a deadly storm: “I invite you inside my house . . . Ten years go by. The storm persists. If ever I disinvite you . . . I will be guilty of murder . . . because I have made you ‘a trespasser in the first place.’<sup>48</sup>

Wisniewski responded well to Block’s thought-experiment by leveling against it the charge that it was a disanalogous criticism ‘in terms of duration’<sup>49</sup> because, while Block’s storm is indefinite, pregnancy only lasts somewhere between 0 and ‘approximately 37–42 weeks.’<sup>50</sup> But Block ‘is not without a fall-back position.’<sup>51</sup> He stated, ‘we are talking *principle* here. It matters not one whit how long a duration we are talking about.’<sup>52</sup>

I have addressed the embedded incongruity within this position. The problem with maintaining that the duration of a trespass is a matter of principle *and* arguing for a requirement of a property owner to notify others of his intention to evict trespassers is that it is self-defeating:

[F]or the evictionist obligation to notify gives the trespasser ‘a positive right to squat on what would ordinarily be considered the [owner’s] private property’ for the duration of notification. If it takes the property owner only nine minutes to notify the authorities, then these nine minutes ‘could be turned to nine or even ninety years, without any change in principle whatsoever.’<sup>53</sup>

But Block ‘is not without a rejoinder to this sally of mine,’<sup>54</sup> and it is here that he runs into trouble. ‘No, the amount of time is crucial,’<sup>55</sup> that author confusingly states. So, embarrassingly, Block’s now rescinded statement, immediately above, that ‘it matters not one whit how long a duration we are talking about,’<sup>56</sup> ‘cannot be true, and, by that author’s own admission.’<sup>57</sup> In order to avoid the implications of the reductio leveled against his view (detailed in the below subsection), Block, caught between Wisniewski’s rock and Parr’s hard place, bites the bullet,

---

47 Jakub Bozydar Wisniewski, “A Critique of Block on Abortion and Child Abandonment,” *Libertarian Papers* 2, No. 16 (2010), p. 3.

48 Block, “Rejoinder to Wisniewski on Abortion,” p. 6.

49 Jakub Bozydar Wisniewski, “Rejoinder to Block’s Defense of Evictionism,” *Libertarian Papers* 2, No. 27 (2010), p. 5.

50 *Ibid.*

51 Parr, “Departurism and the Libertarian Axiom of Gentleness,” p. 8.

52 Block, “Response to Wisniewski on Abortion, Round Two,” p. 11.

53 Parr, “Departurism and the Libertarian Axiom of Gentleness,” p. 10.

54 Block, “Response to Wisniewski on Abortion, Round Two,” p. 5.

55 Block, “Evictionism is Libertarian; Departurism is Not: Critical Comment on Parr,” p. 8.

56 Block, “Response to Wisniewski on Abortion, Round Two,” p. 11.

57 Block, “Evictionism is Libertarian; Departurism is Not: Critical Comment on Parr,” p. 4.

so to speak, and opts, at the risk of being labeled unprincipled or inconsistent, to defend himself against the 'self-defeating' hard place at the expense of getting smashed by the 'disanalogous' rock.

#### 6. *Implicit Contracts*

Parr's reductio of the evictionist position, based on Block's *original* position that the duration of a trespass is a matter of principle, goes as follows: Y is in the penthouse of X's nine-story manse when X declares him unwanted. As Y is departing, X notifies another of his intention evict Y, and then does so on the basis of not wanting to bear the burden of Y's nine-minute departure, of which Y is in the midst. The nine-story fall, of course, kills poor Y.

"On the basis of this example," claims Block, "Parr concludes that evictionism is open to the ... charge [that evictionist] 'libertarianism, if it did not altogether destroy the civil society, would most certainly destroy the host-guest relationship.'"<sup>58</sup>

Block, however, states that the above criticism 'misses its mark.'<sup>59</sup> Because Y (and libertarian law) would be properly aggrieved if he were to be tossed to his doom for burdening X with only a nine minute departure, Block's position is that the ninth-story window-tossing of Y ought to be viewed as a condemnable act. This on the basis of the phenomenon of implicit contract between host and guest, which, Block argues, is not applicable to the mother-fetus relationship 'because a necessary condition for a contract ... is that there be *two* contracting parties. But ... at the time of ejaculation, there is only *one* person alive, the mother.'<sup>60</sup>

However, this criticism misses *its* mark. Departurism does not make the argument that it is because of the phenomenon of implicit contracts that fetuses must not be aborted. Its conclusions are not drawn on the basis of how non-criminal trespassers come to be such. 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. This paper is simply not concerned with the above objection of Block's.<sup>61</sup>

It does, in fact, seem the case that, under evictionism, those non-criminal trespassers whose duration of departure is not in violation of the implicit

---

58 Ibid, p. 10.

59 Ibid.

60 Ibid, pp. 10–11.

61 For a discussion on the topic of implicit contracts as they pertain to abortion, it is recommended that one read Block, "Rejoinder to Wisniewski on Abortion;" Block, "Response to Wisniewski on Abortion, Round Two;" Block, "Response to Wisniewski on Abortion, Round Three," *Libertarian Papers* 3, No. 37 (2011); Wisniewski, "A Critique of Block on Abortion and Child Abandonment;" Wisniewski, "Rejoinder to Block's Defense of Evictionism;" and Jakub Bozydar Wisniewski, "Response to Block on Abortion, Round Three," *Libertarian Papers* 3, No. 6 (2011).

contract between them and the evicting property owner receive, courtesy of this phenomenon, a sort of stay of execution. But what of non-criminal trespassers to whom this phenomenon is not applicable? Those without the capacity for human action — those who cannot ‘be a partner in a contract in any case.’<sup>62</sup> Those persons who have not the capacity to ‘understand and agree to a contract’<sup>63</sup> (a category of persons to which much more than simply very young human beings belong)? ‘How could there be a *contract* of any type or variety’<sup>64</sup> with these type folk? What is to become of *them* under evictionism? Well, out of the ninth-story window with them! So, while evictionism may not obliterate the host-guest relationship, it seems it is not “a bit of hyperbole to assert that under evictionism: ‘libertarianism is transformed into an ideology of corpses.’”<sup>65</sup>

“There are really two separate issues under discussion here, and we do well to distinguish between them.”<sup>66</sup> On the one hand, there is the question (addressed directly above) of whether or not the phenomenon of implicit contracts keeps intact the host-guest relationship. On the other hand, there is the question of 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. But gentleness is *foundational* to libertarianism. On what grounds ought not libertarian theory default to it in the absence of a (implicit) contract? After all, gentleness is a basic axiom of this ‘branch of law’.<sup>67</sup>

If non-criminal trespassers happen to be in the process of ceasing their property-directed aggression, what madness could move one to maintain that employing violence against them, which proves fatal in mother’s wombs or in the penthouses of nine-story manses, is a less harmful means of stopping the tort than allowing for this departure-eliciting process to play out? Because an implicit contract cannot obtain? So. So what? Is it not *the gentlest manner possible*, and not the manner subject to implicit contract that is being discussed?

### B. *Premise Two*

Because Professor Block “has not only maintained that ‘the fetus is not purposefully committing a trespass,’ but also that, in the author’s perspective, ‘if a fetus

---

62 Ibid, p. 11.

63 Block, “Response to Wisniewski on Abortion, Round Three,” p. 12.

64 Ibid., p.11.

65 Block, “Evictionism is Libertarian; Departurism is Not: Critical Comment on Parr,” p. 10.

66 Ibid, p. 9.

67 Walter Block, “David Friedman and Libertarianism: A Critique,” *Libertarian Papers* 3, No. 35 (2011), p. 3.

is aborted, he must *necessarily* have been killed,”<sup>68</sup> he concedes that these conditions of  $S^1$  are present in  $S^2$ . And, because he has not leveled any charges against the claim that gestation ensures that the fetus is in the process of departing the mother’s premises, there is every reason to think that Block would contend that this final condition of  $S^1$  is also present in  $S^2$ . The closest he comes to disputing premise two is to state that

[I 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).’ 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.<sup>69</sup>

There are two points to clarify here. Firstly, in no way does the departurist requirement that the property owner ‘withhold eviction for the duration of departure’<sup>70</sup> necessitate a nine month unwanted occupation of the fetus in the mother’s womb. A nine month occupation is *possible*, assuming that the pregnancy is unwanted from the outset. But the duration of departure might be as little as nine minutes, assuming that the pregnancy becomes unwanted only toward the very end of gestation.

What seems to stick in Block’s craw, here, is that he sees departurism as a view different in theory, but not in practice from the pure pro-life stance, which he describes as the take on abortion in which ‘the woman must carry the fetus for nine months.’<sup>71</sup> States Block: ‘While departurism might differ from the extreme pro-life position in its theory, in the law it espouses there is no difference between the two of them whatsoever.’<sup>72</sup> But if Block’s observation, here, currently counts as a mark against departurism, it is only a matter of time, then, before it condemns his view as well. For Block, who is pro-life at heart,<sup>73</sup> is on record as stating that the pro-life position is the inevitable fate of evictionism: ‘Fifty years ago, the evictionist theory was then pro-choice. Five [or possibly one] hundred years from now... we’ll be pro-life.’<sup>74</sup> That is, as medical technology advances and evictionism matures toward its ultimate ideal, ‘the law it

---

68 Parr, “Departurism and the Libertarian Axiom of Gentleness,” p. 14.

69 Block, “Evictionism is Libertarian; Departurism is Not: Critical Comment on Parr,” p. 4.

70 Parr, “Departurism and the Libertarian Axiom of Gentleness,” p. 9

71 Evictionism: Abortion and Libertarianism (Walter Block) [Videofile]. Retrieved from <http://www.youtube.com/watch?v=QNTAmwUHcLM>

72 Block, “Evictionism is Libertarian; Departurism is Not: Critical Comment on Parr,” p. 5.

73 Walter Block, “A Not So Funny Thing Happened to Me in Tampa,” [Lewrockwell.com](http://Lewrockwell.com) (2012, August 30), paragraph 3.

74 Evictionism: Abortion and Libertarianism (Walter Block) [Videofile]. Retrieved from <http://www.youtube.com/watch?v=QNTAmwUHcLM>

espouses' will be identical to that espoused by departurism. In practice, there will be 'no difference between the two of them whatsoever.' 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.

Secondly, 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 — for such would allow for absurdities something along the lines of Block's (poor) rapist example. Rather, it entails the amount of time it takes this non-criminal to *continue and complete* the process of ceasing the aggression which constitutes his trespass. This implies that the effect (the occupant's departure) exist simultaneously with the cause (the property owner's declaration of the occupant as unwanted), or that this non-criminal trespasser, upon his declaration as unwanted, *already be* 'in the process of departing the premises of the owner of the property in question'<sup>75</sup> — for one cannot continue and complete something that has not already begun. Block ignores the fact that the trespasser's departure in  $S^2$  is already underway. The tort is being stopped. But this is not adequate for Block. He would have libertarian law endorse a theory, his, that ensures that the tort's stoppage be stopped in order to stop the tort — and in a separate, more harmful way.

In any event, the relevant similarity of the situations compared in premise two is not, it seems, under contention.

### C. Conclusion

Because Block took no issue with the overall soundness of the departurist argumentation scheme in its original context, there is every reason to think that he would agree to the notion that *if* both premises of it are more plausible than their negations, then its conclusion follows. This paper, of course, maintains that these premises indeed are more plausible than their contradictories.

### III. CONCLUSION

Evictionism does not subscribe to any libertarian axiom which affords non-criminals treatment in the gentlest manner possible consistent with stopping their aggression. It subscribes to an axiom quite outside of this and quite outside of libertarianism; one which affords non-criminals treatment in the most expedient

---

75 Parr, "Departurism and the Libertarian Axiom of Gentleness," p. 5.

manner, or in the manner that most satisfactorily upholds eviction rights, or in the manner that best adheres to the phenomenon of implicit contracts. Block's comprehension of the evictionist theory seeks, unnecessarily and to the injury of the innocent, to be fully compatible with stopping the aggressor, rather than with stopping the aggression. 'Say what you will about this theory of his, it is not a libertarian one.'<sup>76</sup>

---

76 Block, "Rejoinder to Wisniewski on Abortion," p. 6.