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## EVICTIONISM, PRO-LIFE AND PRO-CHOICE: A RESPONSE

### INTRODUCTION

The history of debate over the nature and limits of reproductive freedom in contemporary liberal democracies, particularly in the United States, is a veritable scrapyard of ill-used, ill-fitting metaphors. The most well-known are employed in controversies over abortion, where women have been described, among other things, as (mere) “vessels” and even “spaceships” (cf. FRANKFORT 1972). Embryonic and fetal lives have been described, correlatively, as “material,” the “products of conception,” “parasites,” and “astronauts,” to mention only a few examples. Some metaphors have achieved canonical status, none more so than Judith Thomson’s “kidnap victim,” i.e., a woman unwillingly pregnant, forced by desperate members of the Society of Music Lovers to provide life support, as a sort of living kidney dialysis machine, for an unwitting terminally ill “world-famous violinist” (THOMSON 1971). To this stock of images, Walter Block’s libertarian argument for “evictionism,” which he has been making in one form or another since the late 1970s (BLOCK 1977), gives us a few more: the woman as “landlord,”<sup>1</sup> embryonic/fetal life as “intruders,” “squatters,” even “trespassers” (though, oddly enough, never “renters”), and of course, the act of abortion as itself an “eviction.” At one point Block even repurposes the old “spaceship” metaphor, now as a more modest “airplane,” but sticks with Thomson’s “kidnap victim” as its helpless cargo.<sup>2</sup> Given the

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<sup>1</sup> Block doesn’t use the term itself, but it functions well as a shorter version of a phrase he does use, “the owner of her own body,” itself a metaphor.

<sup>2</sup> A footnote proposes yet another image, that of striking workers, to explain the “two stages” involved in “eviction.” More on this below.

interminable debates over abortion in the United States, even post-*Dobbs* (2022), we might well ask how helpful any of these images really are.

We can hardly do without metaphors, of course. They are the lifeblood of analogical argument. However, while none is perfect, some are better than others.

Love is a smoke rais'd with the fume of sighs;  
Being purg'd, a fire sparkling in a lover's eyes;  
Being vex'd, a sea nourish'd with lovers' tears:  
What is it else? a madness most discreet,  
A choking gall and a preserving sweet.<sup>3</sup>

A long tradition holds that the best metaphors are those that broaden our horizons, illuminate important if not foundational dimensions of human experience, and in so doing enable rather than constrict possibilities of reasoned communication and action, both individual and conjoint.<sup>4</sup> How do the various images conjured by Block's argument for "evictionism" fare on these counts? Not very well, I'm afraid. In fact, despite Block's salutary desire to move past the "pro-life" and "pro-choice" stalemate on abortion, and to thereby "save the next generation of very young (pre-birth) human beings" (BLOCK 2011), "evictionism" has all the appearances of an effort to rescue, not human life, but libertarianism from perishing on the messy shoals of human experience.

While it wouldn't be the first theory to be so vanquished, given its presuppositions, libertarianism seems particularly ill-suited to address, much less resolve, contemporary debates about abortion. Dennis O'Brien, summarizing the work of Margaret Little, explains why: as a form of human relationship, pregnancy is *sui generis*. "Gestation is a factual situation for which our ordinary moral and legal categories of fully independent beings are ill-suited" (O'BRIEN 2011). In other words, as helpful as the image of ourselves as "owners" of our bodies may be in some instances (e.g., resisting arbitrary governance, whether public or private), when it comes to pregnancy and childbirth, the libertarian picture is seriously flawed. In sum, if "evictionism" is the best that libertarians can offer on the disputed question of abortion, then, like many other theories before it, it may be time to admit defeat and move on.

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<sup>3</sup> *Romeo and Juliet*, Act 1, scene 1, lines 197–201.

<sup>4</sup> See, *inter alia*, McKEON (1964) AND OAKESHOTT (1962).

### 1. BLOCK'S ARGUMENT

But let us examine the argument for evictionism on its own merits. Block's proposal is that evictionism can serve as a compromise between the "pro-life" and "pro-choice" positions on abortion, both of which, he writes, "we all know." Block may be presuming too much here, as we will note shortly. However, for Block, the core premise of the "pro-life" position is that, from the moment of fertilization, the embryonic and fetal human being is a rights-bearing person, equal to all other persons. There is, accordingly, an almost absolute duty to promote and protect its life. The only exception is when the mother's life is in imminent danger. Only then is it permissible to terminate the pregnancy. Otherwise, a woman is obliged to carry her child to term. Even in cases of rape. According to Block, given its core premise, the pro-life position is logically committed to refusing abortions to rape victims, even twelve-year old ones (the example he offers in his final paragraph). Should the young victim take the morning-after pill, writes Block, consistency requires that pro-lifers charge her with murder.<sup>5</sup>

As described, the problems with the pro-life position, argues Block, are multiple, but they boil down to three. First, the pro-life position is "counter-intuitive" in that it equates all abortions, particularly those prior to fetal viability,<sup>6</sup> with murder. Even pro-lifers, he avers, recoil from this conclusion. For why he thinks this, we must wait for his description of evictionism, below. Second, abortion in the so-called exceptional case of saving the mother's life is "legally and philosophically unwarranted." How so? Because if both mother and child are equally rights-bearing individuals, then the choice to save the mother's life, even in cases where only she could live (e.g., Block does not specify, but presumably he is speaking of situations prior to viability) is arbitrary. In defending this criticism, he resorts to yet another image: two ex-

<sup>5</sup> It's unclear whether Block grasps the mechanism of the "morning-after" pill (levonorgestrel), also known as "emergency contraception," which is regularly offered to victims of sexual assault in Catholic hospitals, following a pregnancy test, to *prevent* conception. Perhaps he meant to write RU-486 (mifepristone), the widely used method of medical abortion (in combination with misoprostol) in the United States today.

<sup>6</sup> Block's portrayal of the basic facts of human gestation can be confusing. He seems to rely on the trimester model popularized by *Roe* (1973) but abandoned, at least in abortion jurisprudence, by *Casey* (1992). His statement that the fetus is viable outside of the womb "only in the third trimester" (i.e., weeks 28–40) is simply wrong. Current estimates of fetal viability place it well within the second trimester, the earliest being 21 weeks, with 23–24 weeks more commonly recognized as the early limit. In many jurisdictions, fetal demise prior to twenty weeks is considered a "miscarriage," after twenty-weeks, "stillbirth." Hospitals treat fetal remains differently in each case.

hausted swimmers contending over a plank of wood big enough for only one of them. No contingent fact about these two swimmers, he claims, could justify our choosing one over the other. (Oddly, we are supposed to imagine ourselves as sea-captains with the power to shove one person off the wood, but not ourselves also struggling to survive.) The only rational thing to do, therefore, is to draw straws. (Short straw drowns.) Third, and most fatally, the pro-life position, claims Block, is logically committed to the self-evidently repugnant view that not even rape constitutes an exception.

What about the “pro-choice” position? Here Block is more succinct. The pro-choice philosophy holds that the fetus is not a rights-bearing individual (a “person”), at least not before birth. Until then, its moral status is no greater than that of a “blob of protoplasm,” or an unwanted appendix. The fetus may, therefore, be killed. No crime is thereby committed. Block clearly finds this position abhorrent, its most serious flaw being its inability to condemn as either immoral or illegal the “butchering” of a fetus ten-minutes before birth.

Evictionism is superior to both these positions, argues Block, because it shares their best features while avoiding their worst. With the pro-life position, evictionism affirms the moral/legal status of embryonic and fetal human beings as rights-bearing individuals and thus holds that the fetus may never be killed. However, and here is the crux of the evictionist position, it takes abortion to be an act with two distinct stages. In the first stage, the fetus is removed from the womb, or “evicted” (hence “evictionism”). In the second stage, the fetus is killed. For the evictionist, the first act—removing the fetus—can be morally justified at any stage of pregnancy. But because Block presumes that “eviction” is something the pro-life position always prohibits (at least before viability, though see below), evictionism differs from the pro-life position. Indeed, precisely because eviction is *not* killing, Block contends, it is able to address the three fatal flaws in the pro-life position, i.e., if evicting is not killing, then it can’t be murder; and if a fetus is threatening the mother’s life, or is present as the result of rape or incest, then it can simply be evicted, also without killing).

With respect to the pro-choice position, evictionism grants that a woman may “evict” an unwanted fetus at any time and for any reason, on the grounds that she is fully the owner of her own body (the key libertarian premise), which she has been “homesteading” for many years prior to becoming pregnant. Like any landlord, a woman has the right to remove unwanted tenants from the premises. But she doesn’t have the right in either morality or law to *kill* those tenants, even if they are “trespassers.” Thus, against the pro-choice position,

evictionism prohibits the killing of the embryo/fetus. Accordingly, evictionism avoids what Block takes to be the worst of the pro-choice position, namely, its inability to avoid condoning the “butchering” of a child minutes before birth.

## 2. RESPONSE

On a superficial level, “evictionism” seems an appealing alternative to both the “pro-life” and the “pro-choice” positions, but only in the versions of those two positions that Block offers. Upon closer inspection, it is not clear that his description of both the “pro-life” and “pro-choice” positions hasn’t given us straw men, in this case two extreme versions, neither of which would be acknowledged as fair representations of those positions by the many of those who profess to hold them.

Let’s begin with the pro-choice position. Not all those who describe themselves as such deny that abortion is the taking of a human life. Camille Paglia, perhaps most famously (notoriously?), has long argued that, when it comes to the morality of abortion, the pro-life viewpoint “has the moral high ground.” However, she considers that viewpoint to be, at its core, a religious one, one she does not share. “I recognize the superior moral beauty of religious doctrine that defends the sanctity of life” (PAGLIA 2016; see also PAGLIA 1994). In a secular liberal democracy, though, the state must remain neutral with respect to religion, and thus this “superior moral viewpoint” cannot be imposed on everyone. Her own position, interestingly, is libertarian. “As a libertarian,” she writes, “I support unrestricted access to abortion because I have reasoned that my absolute right to my body takes precedence over the brute claims of mother nature, who wants to reduce women to their animal function as breeders” (PAGLIA 1994, 41). If Paglia seems uninterested in the evictionist compromise, and there’s little evidence she finds it helpful, much less coherent, then that may be because it is really no compromise at all. Call it by whatever name, abortion is violent: it is the taking of a human life—“Abortion pits the stronger against the weaker, and only one survives” (41).

For this reason, Paglia commends Naomi Wolf’s call for a greater honesty among pro-choice advocates in her much-anthologized 1995 *apologia*, “Our Bodies, Our Souls.” According to Paglia, Wolf is willing to say what too many liberal feminists have been unwilling to say: that abortion is an evil, even if a necessary one. “Sometimes the mother must be able to decide that the fetus,

in its full humanity, must die" (WOLF 1995). But how, one might ask—and Wolf does ask—can one both recognize the humanity of the fetus *and* intend its destruction? Like Paglia, Wolf turns to the religious. "The answer can only be found in the context of a paradigm abandoned by the left and misused by the right: the paradigm of sin and redemption" (WOLF 1995). She cites approvingly references made by Laurence Tribe (1990) to some Eastern (e.g., Shinto, Buddhist) practices that allow for the memorialization of aborted fetuses. In fact, all great religious traditions (including many ancient pagan ones, she might have added) recognize the reality of sin, the necessity of atonement, and the possibility of forgiveness. In so doing, they affirm the value of justice and, paradoxically, the reclamation or restoration of individual moral agency. A return to this ancient wisdom, concludes Wolf, would be far better than continuing what she takes to be the half-hearted, and ultimately dishonest strategy of "dehumanizing" the fetus.

Again, like Paglia, Wolf betrays no awareness of "evictionism" as a possible alternative. Could it be she has never encountered the argument? Perhaps. But it's more likely that the actual experience of women who have had abortions, including her own experience, is what was and is finally determinative for her. The "first commandment of real feminism," she writes, is "When in doubt, listen to women." What she hears is the same struggle many experience when faced with similar, agonizing choices of whether to choose self over another. It's not unlike evading the draft, she offers:

There are good and altruistic reasons to evade the draft, and then there are self-preserving reasons. In that moment [her decision to abort], feminism came to one of its logical if less-than-inspiring moments of fruition: I chose to sidestep biology. I acted—and was free to act—as if I were in control of my destiny, the way men more often than women have let themselves act. I chose myself on my own terms over a possible someone else, for self-absorbed reasons. But "to be a better mother"; "Dulce et decorum est...?" Nonsense. (WOLF 1995)

Since Wolf doesn't explicitly address the evictionist argument, it's difficult to say with certainty, but one suspects that, like the above appeal to good intentions (motives), she would find it likewise evasive.

While only hinted at by Wolf (other prochoice *and* prolife activists, e.g., *Feminists for Life*, are more explicit on this count), evictionism's metaphors are themselves troubling. "Evictionism" itself may well be the most problematic. For given the real world in which women (and men) struggle with decisions about unplanned pregnancies, those who tend to struggle the most are

often those contending with precarious economic circumstances, being evicted—actual eviction—from their homes and apartments foremost among them (DESMOND 2017, 2023). Thus, “evictionism” has the paradoxical effect of both emphasizing a woman’s agency (“rights”) and at the same time reminding us of how diminished, in practice, that agency so often is.

But if the shortcomings of evictionism’s account of the pro-choice position are significant, they pale in comparison with its description of the “pro-life” position, which it must be stated border on parody. Are there pro-life voices that take the moral worth of embryonic and fetal human life to be absolute? That hold the “sanctity of fetal life” to be such that it overrides all other goods and imposes on us—on pregnant women and medical professionals—a perfect duty to respect it regardless of the cost? To be sure, there are. Are these voices the pro-life majority? Hardly. There is a popular (mis)conception that this view is in fact the one promoted by official Catholic Church teaching. Those who hold this view—including many Catholics—frequently point to the examples of St. Gianna Molla (JORGENSEN 2024) or to the testimony of victims of sexual assault (REARDON ET AL. 2022) as evidence. The truth, however, is more complicated.

For example, it is simply not the case that respect for the dignity of the embryonic/fetal human being logically commits one to describing every abortion, without qualification, as “murder,” or that decisions to save the life of the mother in cases of what are typically called “maternal-fetal conflict” are irrational, or even that rape (and incest) do not qualify as exceptions to the prohibition against taking innocent human life. Anyone familiar with the long casuistry around abortion among Catholic moral theologians (ectopic pregnancies, craniotomy, etc.) would be surprised to read otherwise. And it is nothing short of astounding that Block’s argument gives hardly any attention to this tradition or any religious tradition, for that matter.

It’s a shame he doesn’t, for there is at hand in these traditions—the Catholic tradition above all—a vocabulary and set of distinctions that are still used today to address difficult moral questions related to abortion. In fact, Charles Camosy, a Catholic moral theologian, has recently argued, not unlike Block, that the vocabulary and distinctions of his tradition might provide some sort of common ground in our polarized public debate over abortion (CAMOSY 2015). Or that, at the very least, they might help turn sterile controversy into more productive dialogue. The full breadth of Camosy’s argument is beyond the scope of this brief response; however, there are several points where comparison with Block’s argument is instructive.

First, unlike Block's case for evictionism, Camosy avoids the simplified descriptions of the "pro-life" and "pro-choice" positions. He cites a 2011 poll conducted by the Public Religion Research Institute showing a significant overlap in identity between those describing themselves as "pro-choice" and those describing themselves as "pro-life."<sup>7</sup> Additionally, while over ninety percent of "pro-choicers" support abortion in the cases of rape and the life of the mother (not surprisingly), so do almost *seventy percent* of "pro-lifers" (CAMOSY 2015, 13). We would be wise, he concludes, to avoid using these "lazy and imprecise binaries" altogether.

Second, and most instructively, Camosy proposes that participants in abortion debates (and not *only* abortion debates) would do well to recall the longstanding moral distinction between "aiming at death" and "ceasing to aid." In other contexts, e.g., end-of life-decision making, the distinction is sometimes expressed as between "killing" versus "allowing to die." Whichever form one chooses, the distinction is born of a foundational good that Block also acknowledges: the good of human life. To respect that good, whether in myself or others, requires, at the very least, never directly acting against it, i.e., never *aiming* at death. Of course, it also requires that we protect and promote life, i.e., "aid"; however, because human life is neither the *highest* good nor the *only* good, there are times when we are not obliged to protect or promote it. To think otherwise is to make an idol of human life.

Evictionism, as Block emphasizes, also rests on a distinction, though one drawn on the level of "act," or what, phenomenologically, we might call "material performance" (SOKOLOWSKI 1985): on the one hand, the material performance of delivering or removing a fetal human being from its "home" (typically the uterus), and on the other hand, the material performance of killing it, (where, by "killing" we mean some action *x*, the immediate result of which is the fetal human being's death). As crucial as this distinction is to Block's argument, it is readily apparent that the *moral* case for evictionism—as a compromise between "pro-life" and "pro-choice" positions—rests on the more traditional distinction between "aiming at death" and "ceasing to aid" as described by Camosy (and many others). Block himself recognizes this in his admission that, prior to viability, any removal ("eviction") of the fetal human being from its domicile will result in its death. If such removal is justified, as

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<sup>7</sup> "Seven-in-ten Americans say the term "pro-choice" describes them somewhat or very well, and nearly two-thirds simultaneously say the term "pro-life" describes them somewhat or very well. This overlapping identity is present in virtually every demographic group" (CAMOSY 2015, 12).

Block argues it is at *any* stage of the pregnancy, then it can only be under the description of “ceasing to aid,” as he takes “killing” to be always wrong.<sup>8</sup>

Here Camosy’s argument is far clearer and more helpful. Importantly, Camosy discusses the different ways in which one might “evict” an embryonic/fetal human being from the womb. The most common surgical method of abortion in the first trimester is suction dilation and evacuation. It would be difficult, if not impossible, to describe such a procedure as a “ceasing to aid” the embryonic/fetal human being. But is such a procedure always to be described as “aiming at death,” i.e., always a morally unjustifiable taking of a human life. To this question the Catholic tradition, drawing most famously on Aquinas’ argument in the *Summa Theologiae* (II-II.64.7) about the permissibility of killing in self-defense, has relied on the distinction between “direct” versus “indirect” killing. While all direct killing (“aiming at death”) is prohibited, “indirect” killing can be justified as a last resort or for proportionate reasons. The classic discussions of the removal of a cancerous uterus, ectopic pregnancies, and even craniotomies—all situations involving threats to the mother’s life—have employed the distinction between direct and indirect.<sup>9</sup> Such discussions are clearly evidence against Block’s claim that “life of the mother” exceptions commit pro-life advocates to philosophical and legal absurdity.

What about rape? In the most controversial sections of his book, Camosy argues that a case can be made, a case that ought to be persuasive to Catholic pro-life advocates, for the justification of “indirect abortion” in such instances. (I’ve already noted in a footnote, above, that Catholic moral doctrine affirms the right of a woman to defend herself against sexual assault, including a potential pregnancy because of that assault. Accordingly, the administration of emergency contraception is standard procedure in all Catholic hospitals.) What is Camosy’s case for indirect abortion? He argues that the abortion drug RU-486, whose mechanism of action does not involve a direct attack on the fetus but rather cuts off the pregnancy hormone (thus detaching the fetus from the woman’s body), could be described as a “ceasing to aid,” justified in this case by a proportionate reason. That reason? Nothing less than the burden such

<sup>8</sup> It’s worth noting here that, despite Block’s contention that “evictionism” is “less known” than either the pro-life or pro-choice positions, a version of his argument, i.e., abortion as “ceasing to aid” rather than “killing,” has been well-known for many years. It’s fundamental to Thomson’s famous analogy, of course. But see also LITTLE (2008).

<sup>9</sup> A robust debate has been underway recently about whether this distinction makes sense in such cases, particularly in those instances when the death of the embryonic/fetal human being is imminent or otherwise unavoidable. See RHONHEIMER (2009).

pregnancies impose on women, an often horrific experience that few men are capable of appreciating. Even if some women “have found pregnancy in the case of rape to be a blessing,” Camosy concludes, “we should also accept the experiences of women who are burdened by such pregnancies at least as much as someone forced to remain attached to the violinist [referring to Thomson’s analogy]” (Camosy 2015, 83).

Camosy’s arguments are not unassailable. Not by a long shot. But as his remarks about attending to the lived experiences of women attest, his proposal (the final portion of his book presents model legislation, “The Mother and Prenatal Child Protection Act”) seems far more likely to advance reasonable public dialogue about abortion than “evictionism” does. All of which returns us to the observations about the use and misuse of metaphor and analogy with which we began. When it comes to debates about morality, the best literary tropes are those that emancipate, that is, enable us to envision possibilities of action, both individual and communal, that liberate us to pursue and enjoy the goods of human life together. The constricted view of human flourishing on display in most libertarian theory—barely disguised under evictionism’s tortured metaphors and analogies, will certainly not help us. We’ve moved beyond women as (mere) “vessels.” Let us put paid to them as “homesteaders” too.

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## EVICTIONISM, PRO-LIFE AND PRO-CHOICE: A RESPONSE

## Summary

This short essay is a response to Walter Block's "evictionist" alternative to the "pro-life" and "pro-choice" arguments over abortion. It addresses Block's use of metaphors in the ongoing debate surrounding reproductive freedom and abortion in contemporary liberal democracies. It focuses specifically on Block's libertarian framing of the pregnant woman as a "landlord" and the fetus as an "intruder" or "squatter". The essay argues that these images are problematic and unlikely to help advance debate on reproductive liberty, abortion in particular, beyond its current impasse.

**Keywords:** Walter Block; evictionism; abortion debate; libertarianism; metaphors

## EWIKCJONIZM, PRO-LIFE I PRO-CHOICE: ODPOWIEDŹ

## Streszczenie

Niniejszy krótki esej jest odpowiedzią na ewikcjonizm Waltera Blocka, czyli na stanowisko będące alternatywą wobec argumentów „pro-life” (za życiem) i „pro-choice” (za wyborem) w sprawie aborcji. Tekst odnosi się do metafor, których Block używa w toczącej się debacie na temat wolności reprodukcyjnej i aborcji we współczesnych demokracjach liberalnych. Artykuł skupia się na koncepcji Blocka, w której traktuje kobietę ciężarną jako „właściciela mieszkania”, a płód jako intruza

lub dzikiego lokatora. Autor argumentuje w eseju, że te obrazy są problematyczne i że jest wątpliwym, by pomogły one wyprowadzić debatę na temat wolności reprodukcyjnej – i aborcji w szczególności – z bieżącego impasu.

**Slowa kluczowe:** ewikcjonizm; debata na temat aborcji; libertarianizm; metafory