

## CONTRA ROTHBARD ON ABORTION AND THE BEGINNING OF HUMAN LIFE

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*ABSTRACT:* When human does life begin? The pro-choice Murray N. Rothbard maintains that the turning point is birth. This article takes the pro-life view that it starts at the fertilized egg stage.

Heather has two mommies (Newman 2016). The author also has two parents, daddies. Well, intellectual fathers. One of them is Murray N. Rothbard, who is very strongly pro-choice. The other is Ron Paul, who is equally powerfully pro-life.

All children hate to see their parents fight. There is a long paper trail (Block 2021a, forthcoming) of attempts by the author to reconcile the views of his two forebears, to find a compromise between their two positions.<sup>1</sup> This compromise theory is called “evictionism.” It is a true compromise between these two other positions, since it philosophically gives each perspective half a loaf. The pro-choicers maintain that the woman may rid herself of the unwanted fetus whenever she wishes and, also, when this young baby is viable outside of the womb, kill him. The pro-lifers deny both viewpoints. Evictionism “cuts the baby in half”; it gives to the pro-choicers the

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<sup>1</sup> They are both such *extremists*. In contrast, I am a moderate anarcho-capitalist libertarian.



right to evict the preborn baby based on their desires, but not, ever, to commit what the author considers murder against him. This theory also complies with half, but only half, of the desiderata of those who take the pro-life position. The woman may expel her baby from her premises whenever she wishes, but she may not kill him.

But there is one issue on the basis of which evictionism is solely congruent with the pro-life position: that the human being begins with the fertilized egg. The baby, at this very early stage of his life, is a complete human being insofar as rights are concerned. He enjoys as many negative rights as anyone else.

Why take this position? First, it seems obviously true that the alternative, that human life begins only with birth, is completely false. A young person five minutes before and after leaving the womb is as identical as any other person ten minutes apart. The only alteration due to birth is a change in address. Before, he was enclosed by a woman's body; afterward, not so.

Second, evictionism takes the position that it should be legal to eject the fetus at any time during the pregnancy. But in the first two trimesters, at least at the level of today's technology, the youngster will perish. I don't want to create a straw man for my theory. If all that is occurring is the evicting of a bunch of cells, that would be precisely what I would be doing.

No intermediate position on when life begins makes any sense. For example, in the Jewish tradition, the protoplasm becomes a person with the beating of the heart.<sup>2</sup> But what is so great about this particular organ? People can live without one under hospital conditions. Are the lungs, brains, chopped liver? Why not the development of any of them as the turning point between mere protoplasm and human life? The preborn infant five minutes before and after the heart starts beating is the same person, as is an adult thirty seconds before<sup>3</sup> and after he receives a new heart transplant. He is a rights-bearing individual all through this operation. Both are human beings, heart or no heart.

Why does human life commence at the fertilized egg stage? That is because one can go no further back in history. Neither the sperm

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<sup>2</sup> Note that this is just for the goyim. What, then, is the threshold for the cogno-scenti? The baby becomes human only when he graduates from medical school!

<sup>3</sup> When he has no heart at all.

nor the egg alone will eventuate into a human being.<sup>4</sup> The fertilized egg, if placed in the right environment, will do so.<sup>5</sup>

## ROTHBARD'S ERRONEOUS INTERPRETATION

The present paper is an attempt to defend the view that the fetus is a rights-bearing person from day one, from minute one. I do so in criticism of some very powerful arguments to the contrary launched by Rothbard (2007).

The fundamental axiom of the anti-abortionists is that abortion is murder. But murder is not the only crime against human beings. If the fetus is to have full human rights, then it must be protected against more crimes than murder. There is, for example, assault. Surely, when a pregnant woman drinks alcohol, or smokes cigarettes, this ingestion causes an assault against, an "insult to," the fetus. But, in that case, these are tort actions which must be declared illegal, and stoppable by injunction. And not just cigarettes and alcohol. If a pregnant woman eats an unbalanced diet, the fetus suffers. If a pregnant woman is overly emotional, this injures the fetus. But then all these actions become torts and crimes, and must be proceeded against by full majesty of the law.

If a woman decides to keep the preborn child, should it indeed be illegal for her to smoke cigarettes, drink alcohol, eat unhealthily, etc., given that she is pregnant?

As can be expected from Rothbard on any issue at all, this contribution of his is pithy, relevant, hard-hitting, authoritative. Indeed, this is one of the most powerful arguments against human life starting at the fertilized egg stage.

However, the author parts company from Mr. Libertarian on this point. Yes, the fetus, at any stage, is a full human being, with all the rights that anyone else has.

However, he is a trespasser (in the case of rape) or a mere temporary occupant<sup>6</sup> (a product of voluntary sexual intercourse).

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<sup>4</sup> I abstract from the future possibility that this claim will become erroneous. I am contemplating *only* the present situation.

<sup>5</sup> We all need the right environment in order to survive. Plunk any of us down on Jupiter, with or without a space suit, and we will soon perish.

<sup>6</sup> But not an invited one, to whom some responsibilities would be at least implicit. In order for an invitation to exist, there must be an inviter and an invitee. At the time of voluntary sexual intercourse, only one of them was in existence, the

He resides there only under sufferance. He is now located on (inside of) someone else's property, that of his mother.

Suppose someone invites a person to dinner at his house, whereupon the host starts smoking a cigar, which negatively impacts the guest's health. Does the host have a right to do that? Of course he does.<sup>7</sup> If the guest does not like it, he can leave.

The human fetus whose mother is smoking cigarettes, drinking alcohol, and eating unhealthily has the same right to leave. Of course, the guest above is under his own power to leave. The fetus is too immature to do any such thing. But, possibly, other people can assist him with this. What other people? His new guardians. Humans can homestead physical property or animals and then come to own them (Locke 1948). They can also "mix their labor" with children; they do not thereby own them, but they do own the guardianship rights over them. In the case of land, humans can be absentee proprietors. Once a person owns land, he can leave it and still own it. Children are different. As soon as a guardian stops guarding a child, he loses guardianship rights over the child. Well, the woman who wants to abandon her fetus, has clearly demonstrated that she has stopped guarding him. Thus, a new guardian may properly come along and take over this responsibility.

From whence is this responsibility derived? From the libertarian insight that abandoned property may properly be homesteaded by the first person to "mix his labor" with it.<sup>8</sup> This idea can be extrapolated from land to babies. Of course, the former can be owned, not the latter, but the guardianship rights to preborn infants with no guardians may surely be taken up by others. Should a woman who wants to evict be considered as having abandoned her "responsibility" to guard her fetus? She certainly should. The prime guardianship task of the pregnant mother is to support her

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former. Why? That is because it takes time for the sperm to reach the egg and penetrate it. I am here abstracting from the host mother scenario.

<sup>7</sup> I assume away the possibility that I am somehow contractually obligated not to do so.

<sup>8</sup> For the libertarian case in favor of homesteading unowned land and parts of nature, see Block (1990, 2002a, 2002b); Block and Edelstein (2012); Block and Yeatts (1999–2000); *NYU Journal of Law and Liberty* (2005); Bylund ([2005], 2012); Grotius (1814); Hoppe (1993, 2011); Kinsella (2003, 2006, 2009); Locke (1948, 17–19; 1955, chap. 5); Paul (1987); Pufendorf (1927); Rothbard (1973, 32); Rozeff (2005); and Watner (1982).

baby until birth. The mother who evicts cannot be said to have accomplished this job.

Take another case. There is a three-year-old child living in a house where his parents smoke cigarettes, drink alcohol, and feed him unhealthily. They also blow cigarette smoke into his face and otherwise undermine his health. Does someone else have the right to break into that house, seize the child, and care for him? The answer is yes, given that the abuse passes a certain point and seriously injures the child.<sup>9</sup>

There is a continuum on cases of this sort.<sup>10</sup> Just how serious does the child abuse have to be before the parents are considered criminals, and lose not only their freedom, but also the right to remain guardians of their child? Rothbard makes a good case for his position on stopping pregnant women from smoking, drinking, etc., since these are relatively minor invasions compared the hypothetical ones mentioned below. As a parallel, with regard to young children, even a vigorous spanking would be a relatively minor consideration compared to the truly vicious ways young people can be and are, unfortunately, abused.

Now, returning to the fetus, in the first six months, removing the child from the womb of a similarly abusive mother will kill him. But in the third trimester, if the abuse is serious enough, then the would-be rescuer has the right to remove the child from the womb of this abusive mother by force.

Consider real, noncontroversial fetus abuse. The mother starts poking a nail into her stomach in order to kill the fetus<sup>11</sup> but not hurt herself<sup>12</sup> or she injects into herself a chemical which will kill the fetus but will not harm her.<sup>13</sup> Then would the rescuer be entitled to save the preborn baby from her depredations? Yes, indeed. That is a real, live, little person inside of her. What she is doing is

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<sup>9</sup> See Block (2016) for a libertarian analysis of spanking children.

<sup>10</sup> See on this Block and Barnett (2008).

<sup>11</sup> A referee points out that this “is nearly identical to surgical abortion just using different tools.”

<sup>12</sup> Work with me on this one. Perhaps she is the sort of person who can walk on nails or burning coals, and not only are her feet impervious to pain and harm...

<sup>13</sup> A referee informs me that this is “an identical description to a medical abortion by way of the pill known as Mifepristone.”

attempted murder. Just as the good Samaritan would be justified in breaking down a parent's door to save that parent's three-year-old child from serious abuse, he may do the exact same thing in this case. The analogy is a definitive one. The fetus is trapped in a small "house." The young postborn child only differs in that his house is quite a bit larger. The analogy between a fetus and an infant furthers understanding of the rights of an unborn child.<sup>14</sup>

There should be no question that violating the negative rights of an infant is illegal. As Rothbard (2007) brilliantly put it, "It must therefore be illegal and a violation of the child's rights for a parent to aggress against his person by mutilating, torturing, murdering him, etc." Why this should not also apply to the preborn child is difficult to understand, given that he, too, is a human being.

Rothbard (2007) asserts: "If a pregnant woman eats an unbalanced diet, the fetus suffers." True enough. But if a mother loses her temper, and lightly smacks her ten-year-old child, he also smarts. Both fall under the *de minimus* rule: the law does not take into account trifles. The error on Rothbard's part is to equate what the careless pregnant mother does to her fetus by eating a bad diet, smoking, etc., with real child abuse.

But Rothbard is by no means finished with his argument. He further offers this very impressive challenge (Rothbard 1982):

Okay, pro-lifers, are you willing to accept the ineluctable consequences; that pregnant women are to be prevented by armed force from drinking, smoking, eating unbalanced meals, and becoming upset? And how many Gestapo members are you going to enlist in snooping on pregnant women, and how in blazes are you going to enforce the protection of these fetal "rights"? How are you going to accomplish all this except by putting every pregnant woman in a cage and making sure that all the proper substances and none of the improper substances are going to be injected by the fetus?

For that is the logic of the anti-abortionists: not just trying and convicting all pregnant women and their doctors who engage in abortions, but installing a totalitarian despotism over every pregnant

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<sup>14</sup> Is evictionism compatible with the common methods of abortion most prominently used today? It all depends upon the timing. If these methods of abortion take place in the first roughly six months of the pregnancy, when the fetus is not viable outside of the womb given current medical technology, then there is compatibility. If they occur in the last trimester, when the fetus is viable outside of the womb, then there is no compatibility; that is, utilizing them at that time during the gestation process would be a violation of evictionism.

woman. To go a step further: won't there have to be government spies in every bedroom to spot pregnancies as soon as they occur, so that the pregnant-women-in-a-cage doctrine can be put into effect the moment conception takes place?

Let me answer this objection in two ways.

One difficulty with this seemingly convincing riposte of Rothbard's is that he is really changing the subject. To adopt a God's eye view of the matter, assume that there is full knowledge of the relevant goings on.<sup>15</sup> After all, libertarians are not utilitarians. They seek just law, no matter how difficult it is to ascertain the facts in any given case. Suppose it is exceedingly difficult to identify a case of spousal murder. Does that have even the slightest relevance to the issue of whether spousal murder is justified or not? Of course not.

The second problem with this powerful Rothbardian challenge is that it overlooks the strong analogy between the fetus and the infant. The following adaptation of Rothbard's works could be presented to those who agree with him on this matter:

Okay, *opponents of child abuse*, are you willing to accept the ineluctable consequences; that *parents* are to be prevented by armed force from *engaging in child abuse*? And how many Gestapo members are you going to enlist in snooping on *parents*, and how in blazes are you going to enforce the protection of these *children's "rights"*? How are you going to accomplish all this except by putting every *parent* in a cage and making sure that *no child abuse occurs*?

For that is the logic of the *opponents of child abuse*: not just trying and convicting all *parents* who engage in *child abuse*, but installing a totalitarian despotism over every *parent*. To go a step further: won't there have to be government spies in every *house* to spot *abuses of children* as soon as they occur, so that the *parents-in-a-cage* doctrine can be put into effect the moment *children enter the house*?

Yes, of course, to ferret out each and every case of fetal abuse mass surveillance would be needed.<sup>16</sup> But the same identical consideration applies to *all* crimes. *No* crime can be stopped

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<sup>15</sup> Mainstream economists will buy into this assumption. After all, they are the unsurpassed champions of the perfectly competitive model, which assumes full information on the part of all market participants.

<sup>16</sup> But not a mass surveillance state. We are all anarcho-capitalists here; certainly, this applies to Rothbard and to Rothbardians such as me. In the fully just and free society, the "mass surveillance," to the degree justified by economic considerations, would be conducted by competing private defense agencies.

without mass surveillance, nor, even, with it. Does that mean that mass surveillance should be advocated? Of course not. From a purely economic perspective, to stop that last marginal bit of crime would cost the entire world gross domestic product, and everyone would die of starvation. However, ease of stopping a crime is totally unrelated to whether an act is a crime in the first place.

## CONCLUSION

There is a married couple who have a dog who always wants to be on the winning side. When the wife pretends to beat up her husband, the dog barks at him and nips at him. When the husband fakes beating up his wife, the dog barks at her and nips at her.

When one of the author's "parents" attacks the other, his natural inclination is the very opposite of this dog's. The author is inclined to defend not the attacker, but the one under attack. In this case, Rothbard is criticizing Paul's pro-life view. So the author inclines in the latter's direction. Were it the other way around, he would be sorely tempted to reverse field. That is, were Paul criticizing Rothbard, the author would be disposed to defend Rothbard.

Happily, the libertarian analysis is congruent with the author's inclination. Were it not, the author would stick the libertarianism he has been taught by these two eloquent articulators of this philosophy.

In the end, the author disagrees with both. The position presented in this paper is midway between Rothbard's pro-choice position and Paul's pro-life perspective. Perhaps this is the author's way of trying to follow both. Or perhaps evictionism is just the direction in which a careful consideration of the implications of libertarianism leads.

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