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ARTICLES

Evictionism and Duties of the Fetus: Seeking Common Ground with Walter Block on Abortion

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In the present article we argue that Walter E. Block's (2025) recent rejoinder to our critique (DW 2023a) of evictionism—Block's well-known libertarian solution to the abortion dilemma—does not succeed. However, instead of limiting ourselves merely to addressing Block's latest objections, we seek to identify possible common ground between evictionism and our charge that it entails an untenable position according to which the fetus is a duty-bearer. We do so by pinpointing the theses that a friend of evictionism would have to modify in order to defend this doctrine against our criticism and by trying to gauge the cost of doing so. The argument we put forth suggests that possible common ground could be found in relaxing the evictionist thesis that the unwanted fetus forfeits its rights and instead accepting the view that the woman's right to her body vests her with a particularly strong prerogative to defend it against the unwanted fetus—a prerogative that justifies infringing upon the fetus's unforfeited rights.

Walter E. Block (2025) recently offered a rejoinder to our critique (DW 2023a) of evictionism, his well-known libertarian solution to the abortion dilemma.[1] Besides disputing several aspects of our interpretation, Block clarified his position on a number of important points and made various philosophical commitments. In what follows, we aim both to address his

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1 There are countless papers in which Block presents, develops, and defends his theory of evictionism—actually, so many that citing them all would make this already long article almost twice as long. Let us then mention only a few of them and refer the curious reader to Block's Google Scholar page. Thus, on evictionism see, inter alia, Block (1977, 1978, 2014, 2017).

objections and to use these clarifications and commitments as a springboard for identifying possible common ground between Block's evictionism and our recent criticisms thereof. Put differently, we seek to pinpoint the theses that a friend of evictionism would need to accept—or abandon—in order to defend this view against our main challenge that evictionism entails the untenable position that the fetus is a duty-bearer. At the same time, we examine which of these theoretical adjustments would be an acceptable price to pay for a friend of evictionism bent on immunizing this doctrine against our objection. By so doing, we explore the extent to which a principled compromise between Block's and our position can be found.

More precisely, we identify five theses that figure crucially in the evictionist argument and that could be modified—albeit at different costs—in order to buttress evictionism against our critique: fetus's original rights, fetus's forfeiture of rights, fetus's strict liability, correlativity, and duties of the fetus. Beginning with the fetus's strict liability thesis, we argue that supplanting it—as Block does in his recent rejoinder to DW (2023a)—with a less demanding standard of liability, such as, for example, Judith Jarvis Thomson's rights-based account, might be a promising move as far as it goes, but it does not go far enough to affect our criticism. On the other hand, modifying the fetus's original rights thesis or, especially, the correlativity thesis incurs too great a cost to be seriously considered. The libertarian moral generalism about rights presupposed by the fetus's original rights thesis and the Hohfeldian logic of rights assumed by the correlativity thesis are each individually much more credible than evictionism, and thus if any of them must go, it should clearly be evictionism. In turn, biting the bullet and embracing the duties of the fetus thesis, although logically flawless, would discredit evictionism on a substantive plane, putting it on a par with doctrines supporting medieval trials of animals (Kramer 2001, 41). Hence, the only modification left to seriously consider is adjusting the fetus's forfeiture of rights thesis. Indeed, as we argue, evictionism could be salvaged from our critique if its premise that the unwanted fetus forfeits its rights is abandoned and replaced either with some version of the doctrine of doing and allowing (DDA) or with the claim that the woman's right to defend herself against the unwanted fetus is a particularly weighty act-specific agent-relative prerogative (Steinhoff 2020). However, there are still some costs to this solution. Although less radical libertarians such as ourselves would be willing to accept them, the question is whether Block would.

The present article is organized in the following way. The first section responds to Block's objections, showing how and where they misfire. In the process of doing so, it gathers some evidence concerning Block's philosophical commitments and the clarifications he is willing to make in order to defend evictionism. Thus, this section constitutes a critical or negative part of our article. In turn, the second section examines the specific theses and premises of the evictionist argument that could be modified—and the price of

modifying them—in order to carve out common ground between Block and ourselves regarding a libertarian theory of abortion. Accordingly, this section constitutes the constructive, or positive, part of our article.

Where Block's Objections Misfire

This section offers a critique of Block's (2025) response to DW (2023a). Its burden is twofold. First, we point to some *major* problems with Block's reply and group them into broader categories, such as his defining impermissibility into the concept of abortion or his wavering stance on the moral status of the fetus. Second, we take the sting out of this author's *minor* statements in which he believes that we are "mistaken" or that we "err" regarding his evictionism or libertarianism at large.

Let us now identify the first thematic domain in which Block's responses to DW's (2023a) position misfire. Time and time again Block takes issue with our assertions that abortion or feticidal abortion is permissible under evictionism (DW 2023a, 528–30). However, we submit that Block's own position on abortion is shaky, as evidenced even by his recent rejoinder. Let us now illuminate the conceptual and deontic predicament Block is caught in regarding his stance on abortion. Block (2025, 192) says, "Abortion is a two-staged act, one which is licit, the other not. The legitimate aspect of abortion is eviction: the woman has the right to eject the fetus from her body. But the other phase of abortion is not: downright killing or murder." What matters for the current context is Block's descriptive standard of abortion—as a two-staged act comprising eviction and killing of the fetus—coupled with his assessment that it is an illicit procedure. Accepting Block's nomenclature for the sake of argument, it is nonetheless worth pointing out that this take on abortion can hardly be squared with his other pronouncements in the same paper. For example, Block writes:

> Given present medical technology, preborn babies are viable outside of the womb only after 24 weeks. Before that, they cannot survive after being ejected from the woman's body, no matter how gently. So it makes no never mind whether the very young baby is ejected from the womb in a "gentle" manner and then perishes, or, is dismembered while still in the woman's body and then evicted in several pieces. The latter, I assume, is sometimes medically necessary to save the woman's life. I regard neither course of action as murder, since, if the bodily integrity rights of the mother are to be respected, the baby is doomed in either case. (194)

However, it is easy to see that "the very young baby" getting "dismembered . . . and then evicted" satisfies Block's own descriptive standard of abortion. For, descriptively speaking, what we deal with here is both the act of eviction and that of killing. And yet in the above quotation Block holds that said

"dismembering" coupled with eviction is permissible. Hence, it follows that Block is logically forced to accept the conclusion that at least some feticidal abortions are permissible. However, as we pointed out earlier, according to Block (192), "Abortion is a two-staged act, one which is licit, the other not. The legitimate aspect of abortion is eviction: the woman has the right to eject the fetus from her body. But the other phase of abortion is not: downright killing or murder." Moreover, at various other places Block repeats this condemnation of procedures which he himself finds of "no never mind" (194), as when he says that "eviction is certainly 'permissible' for the eviction theory, but 'feticidal abortion' is, of course, not." This looks like an outright contradiction, and it seems that there is no easy way out of it for Block.

For if Block wished to deny that dismembering the fetus and then evicting it instantiates abortion, he would then have to modify his two-staged descriptive account of abortion. After all, if abortion is indeed a two-staged act comprising eviction and killing, then unless dismembering the fetus and evicting it in several pieces qualifies as abortion, nothing does. More specifically, it is hard to deny that causing the death of the fetus by dismembering it qualifies, descriptively speaking, as killing it—regardless of what one's moral assessment of such a killing might be. Thus, it seems that there is no sensible way for Block to deny that dismembering the fetus and then evicting it qualifies as abortion without at the same time abandoning his own two-staged descriptive account.

Alternatively, Block might argue—as he seems to be doing by saying that he regards "neither course of action as murder, since, if the bodily integrity rights of the mother are to be respected, the baby is doomed in either case" (194)—that since dismembering the inviable fetus and then evicting it is permissible, doing so does not qualify as abortion because all abortions are impermissible. However, the price to pay for this maneuver is that it establishes the impermissibility of abortion by definitional fiat. And indeed, there are other passages wherein Block somewhat dogmatically deems abortions impermissible. For example, Block (192–93) declares that he is "a bitter opponent of the murder involved in abortions." Elsewhere, he maintains that abortion "is never ever legally permissible, in that it always constitutes criminal behavior" (193). In the light of the fact that Block does not reason into the above conclusion, it is probably best to take it as a stipulative, moralized definition of abortion. But then again, since in our critique (DW 2023a) we argued for the permissibility of feticidal abortions, it will not do for Block to establish the impermissibility of abortion by definition. For this would assume the problem away at best or beg the question against our position at worst, with neither option being palatable.

Hence, Block seems to be in the unenviable position of having to choose between dropping his own descriptive account of abortion as a two-staged act or resorting to a question-begging and stipulative move that settles the

issue without an argument. We therefore conclude that Block has neither shown that feticidal abortions are always impermissible under evictionism nor demonstrated that we err on this matter in any way. On the contrary, everything points to evictionism entailing permissibility of early feticidal abortions, and thus we stand by our earlier pronouncements.[2]

The second sort of problem permeating Block's rejoinder is that this author exhibits inconsistent beliefs as to whether the fetus is a duty-bearer. Recall that we argued that the fetus, being an entity unable to respond to reason, does not count as a moral agent just yet (DW 2023a, 533). Given this, the fetus is not an entity eligible to be a duty-bearer. A fortiori, the fetus does not owe a duty to its mother—the duty correlative with the mother's property right to her womb. Critically, it was on the assumption that the fetus is not a duty-bearer that our original response to Block relied. Thus, if Block concedes, as he does in some places in his recent rejoinder, that the fetus is not a duty-bearer, then his evictionist conclusion may well not follow. After all, if the fetus is simply residing in the mother's womb without violating her right, while itself being at the same time protected by rights, the mother may not even be permitted to evict the fetus, as this would usually constitute battery. The problem is that Block must first concede that the fetus is a duty-bearer for his rights-forfeiture-and-liability argument to kick in. However, Block seems to be uneasy with the fetus having the status of a moral agent bestowed upon it, and rightly so.

Let us now cite the relevant fragments from Block's (2025) recent response to us to substantiate our view that he holds inconsistent beliefs pertaining to the moral status of the fetus. As mentioned, there are passages in which Block acknowledges that the fetus is a duty-bearer. For instance, Block (193) maintains that "the comatose person . . . and . . . the fetus, are all innocently, non-criminally, violating rights." But one's violating somebody's right of certain content standardly—that is, given the correlativity of rights and duties—presupposes that one owes to somebody a duty of this particular content in the first place. In another place, Block (194) even more explicitly holds that "the fetus is a duty bearer, legally required, not to park himself

2 An anonymous referee of this journal pointed out to us that Block's position can somehow be salvaged by taking his distinction between eviction (which is permissible) and feticidal abortion (which is impermissible) to be conceptual rather than (also) practical. Then Block could argue that although the two actions corresponding to the two concepts—that is, to eviction and to feticidal abortion, respectively—are mutually inconsistent, the two concepts are not. If we understand the referee's point correctly, it amounts to saying that although an act that corresponds to both concepts at the same time can only be either permissible or impermissible, *tertium non datur*, it is still consistent to say about this act that it is both permissible qua eviction and impermissible qua abortion. Under this interpretation Block could sustain his claim that all abortions are impermissible while all evictions are permissible and still criticize us for holding the view that some abortions qua abortions are permissible. Moreover, Block could also claim that the procedure in which the fetus is "dismembered while still in the woman's body and then evicted in several pieces" (Block 2025, 194) is permissible qua eviction while avoiding making any conceptual mistake—even if the action corresponding to the concept invoked in his claim is impermissible. However, even if this stratagem could defend evictionism against some of our charges, it would not defend it against the most important of them; namely, that Block does consider—as evidenced by the above quotation—the action of dismembering the fetus and then evicting it in several pieces from the woman's body morally equivalent to ejecting the fetus in the gentlest possible manner and then letting it perish. Since he does subscribe to this view, he either considers some act tokens that instantiate abortions—even if they also instantiate evictions—permissible or misapplies the concept of abortion.

on the property, inside the body." However, in other spots he makes certain remarks to the opposite effect. For example, says Block (193) most emphatically: "Of course, the baby cannot be a duty bearer." This clearly testifies to the fact that Block holds contradictory views regarding whether the fetus is a duty-bearer.

Turning now to Block's stance on the correlativity of rights and duties, we see that his recent response to DW (2023a) carries a hint of his not buying into said correlativity, although correlativity is clearly a received view on the logical relations between particular jural positions (Hohfeld 1913). For, says Block (2025, 193), "The fetus [would] not need to be a 'duty-bearer' to be a trespasser. . . . The fetus, of course, absent mens rea, is entirely innocent. He is not at all a 'duty-bearer.' Yet to deny on this basis that he is a trespasser is obviously false." However, trespass is not a purely descriptive concept; trespass is a *right-violating* intrusion. But then again, a non-duty-bearing fetus trespassing on the mother's womb is nothing short of violating a right without having a concomitant duty, a scenario which clearly does not obey the restriction set by the correlativity of rights and duties. That Block entertains the possibility of the fetus being a rights violator without bearing any duty toward the mother in the first place can additionally be seen in the following passage: "According to our position, then, it follows that this poor woman may take no defensive action whatsoever against her preborn baby, since he lacks mens rea, since he has no duty whatsoever to refrain from trespassing upon her, since she has no specific rights against *him*, per se. . . . If she is the proper owner of her own body, . . . she certainly has this right" (196).

Now, it is most likely that the above assertion by Block makes the best sense when we interpret him as relaxing the assumption of the correlativity of rights and duties. As we saw, Block avers many a time in his response to DW (2023a) that the fetus has no duties. And he apparently does so in the above quote. Nevertheless, Block (196) still claims that the mother indeed has a right "against him," apparently by virtue of being "the proper owner of her own body." However, if rights are correlative with duties, the mother having a right of whatever content against the fetus would logically imply the fetus having a duty of the same content owed to the mother. Hence, if Block is ready to admit the mother having a right against the fetus without the fetus having a concomitant duty, then he is clearly willing to drop the correlativity of rights and duties.

And yet a couple of pages later we witness a passage which is indicative of Block embracing the correlativity of rights and duties. For he holds that "babies, fetuses, wild animals, storms, tornadoes, earthquakes, none of them has a duty to cease and desist from violating the rights of innocent people. Innocent people have no rights against any of them" (Block 2025, 195). But the mother in all evictionist scenarios is presumed to be innocent, and Block

earlier remarked that the mother has a "right against *everyone*" (195) and thus a right against the fetus in particular, while the fetus has no concomitant duty. Now, Block reverses his previous view to aver that innocent people hold no rights against dutyless fetuses. So why does he suddenly recognize no right of the mother, given his belief that the fetus is not a duty-bearer? Did he change his mind about the correlativity of rights and duties over two pages? If so, then Block has mutually exclusive beliefs about the correlativity of rights and duties as well. In short, denying the correlativity of rights and duties is repudiating the prevalent logic governing rights talk, quite a price to pay already. However, having contradictory beliefs about correlativity is even worse, as this effectively makes the evictionist framework explode.

Having illuminated the three groups of major problems pervading Block's recent rejoinder to DW (2023a), we now turn to pinpointing some minor inaccuracies scattered throughout his otherwise fascinating essay. First, there is clearly something wanting in the table in which Block represents how evictionism cuts the middle ground between pro-life and pro-choice attitudes toward abortion (table 1).

Table 1. Permissibility of eviction and killing of the fetus per Block (2025)

	Pro-life	**Pro-choice**	**Evictionism**
May the fetus be evicted at any time during the pregnancy	No	Yes	Yes
May the fetus be killed at any time during the pregnancy	No	Yes	No

Source: Block (2025, 192).

We believe that the vulnerable point of the above table is Block's contention that evictionism says no to the question of whether the fetus may be killed at any time during the pregnancy. As we pointed out above, this verdict does not cohere with Block's (194) contention that "it makes no never mind whether the very young baby is ejected from the womb in a 'gentle' manner and then perishes, or, is dismembered while still in the woman's body and then evicted in several pieces." Since there is no denying that dismembering the fetus counts as killing rather than evicting it, then it is hard to resist the conclusion that in his table Block again provides us with contradictory deontic verdicts pertaining to killing the fetus at early stages of pregnancy.

Second, Block (193) charges that we "run into philosophical trouble" when we "maintain 'the idea that the fetus is a strictly liable trespasser entails . . . that the fetus can act.'" However, we ran into no trouble at all with the above-quoted assertion, let alone "philosophical trouble." Rather, what we did was to spell out the standard of strict liability. Our point was, if anything, merely definitional rather than philosophical. For, according to the standard of strict liability, to cause a prohibited state of affairs by one's *action*, regardless of whether one does so with a guilty mind, is a necessary and sufficient condition for one to be found liable. But causing prohibited states of affairs by action presupposes an ability to act in the first place. Hence,

one's ability to act is also a necessary condition for finding one strictly liable. This is basically the equivalent of saying that "a strictly liable trespasser entails . . . that the fetus can act" (DW 2023a, 537) Hence, our statement is flawless.

Later on in his paper, Block accuses us of a plain contradiction. The fragment Block subjects to critical scrutiny is the following: "If it were found, analogously to the above example, that it was the fetus who came into physical contact with the woman without her consent or 'entered' her 'premise' against her will, then regardless of the undeniable fact that no mental state can be ascribed to the fetus and that no reasonable man standard can be meaningfully applied, under the doctrine of strict liability we could still conclude that the fetus is liable for committing a trespass against the pregnant woman" (DW 2023a, 535). Regarding this statement Block says that we "now allow that the fetus who is the product of rape is indeed a trespasser" (Block 2025, 197). He adds that "this contradicts their numerous claims to the effect that the fetus cannot be considered guilty of the crime of trespass because he is not 'responsible' for so doing" (197). But our position is free of any such contradiction. What we are envisaging with this case is a counterfactual scenario in which the fetus enters the mother's premises, a movement which could count as action. And we rightly conclude that "under the doctrine of strict liability" (DW 2023a, 535) the thus-behaving (and even acting) fetus would be found liable because it would, in accordance with the Epsteinian formula (Epstein 1980), cause the mother harm via its action. But the fetus is able to do no such thing. It is for this reason that we correctly maintain that "the fetus cannot be considered guilty of the crime of trespass" (Block 2025, 197). The gist of this part of our criticism of Block's evictionism hinges on the recognition that the fetus does not act as yet and thus cannot be found liable even on the relatively undemanding standard of strict liability.[3]

Block's next indictment is that we misuse the term "harm," as he maintains that we are "mistaken in that libertarian theory, indeed, all sensible theories in political economy, allow us to do 'harm' to each other in various and sundry ways. For example, men A and B compete for the affections of woman C. She chooses A. A and C can be said to have 'harmed' B. Or X and Y compete for customer Z. One of them is as a result harmed" (200n10).

We gather from the above quote that Block believes that the idea of harm does no moral work under libertarianism or even that the very reference to harm is idle, as libertarianism is about rights violations or aggression rather than mere harms, and thus that we made a misstep by devoting

3 At this point—and perhaps even at earlier points in the article—a perceptive reader might feel some uneasiness about our reckless jumping between categories typical of different branches of law. For we talk about mens rea, guilt, tortfeasors, strict liability, culpability, and so on as if they all were parts of the same story. To defend ourselves we can only say that for the present purposes they in a sense *are* parts of the same story—not so much, of course, insofar as law is concerned, but insofar as they are similarly mixed in Block's own writings; are often discussed together in the libertarian literature; should be merged according to Murray Rothbard's (2011, 409–12) postulate of collapsing crimes into torts; and are—as we believe—reflective of one and the same moral reality.

any attention to doing harm. However, Murray Rothbard himself points out that under libertarianism there are two types of aggression or property rights violations: "visible and tangible or 'sensible' invasion, which interferes with possession and use of the property, and invisible, 'insensible' boundary crossings that do not and therefore should be outlawed only on proof of harm" (Rothbard 2011, 398). Accordingly, if an intangible boundary crossing of another's property takes place, the question of whether such a crossing constitutes aggression or rights violation depends solely on whether it caused physical harm. For example, the reason why we should not "outlaw all radio transmission" under libertarianism is that "these boundary crossings do not interfere with anyone's exclusive possession, use or enjoyment of their property. They are invisible, cannot be detected by man's senses, and do no harm." However, if it were discovered that "radio waves are harmful, that they cause cancer or some other illness," then they should be outlawed (Rothbard 2011, 398). Thus, the notion of harm is not only part and parcel of the libertarian theory of justice but a crucial element thereof. It carries so much moral and juridical weight that the very distinction between aggressive and nonaggressive intangible boundary crossings depends on it. Therefore, Block clearly belittles the role of harm in libertarianism, and his accusation against our view seems rather unfounded.

Having addressed Block's multiple particular objections to our position, let us now go on to consider which conceptual and moral compromises one could strike with Block to make the best case for his evictionism in light of our criticism.

Toward Common Ground

In this section we aim to approach evictionism in a much more constructive way than we did in the previous one. Specifically, we would like to investigate which theses a friend of evictionism would have to accept—or reject—in order to salvage this doctrine from the criticism advanced in our paper. In other words, we seek to determine the philosophical price one would have to pay to immunize evictionism against this criticism, and to ask whether that price is something both sides of the debate would be willing to pay. In framing our inquiry in this way, we especially hope to invite Block himself to clarify which of these theses he would like to accept or reject in order to defend his evictionism. For we sincerely believe that by doing so, he might finally persuade us (and many others) to embrace evictionism. Let us then have a closer look at the assumptions that might be at issue.

Beginning with the theses that function as explicit premises in the evictionist argument, we can note that evictionism gets off the ground with the premise that the fetus acquires self-ownership status at the moment of conception. This status bestows on the fetus regular self-ownership rights such as a right against being killed and other negative rights protecting its bodily integrity. Let us call this premise the *fetus's original rights thesis*. Since the fetus

has original rights that protect its bodily integrity, then for the woman to have a right to evict the fetus, the fetus has to somehow lose its juridical protection. Otherwise, evicting it would encroach on its original rights. Now, under libertarianism there are two and only two ways of losing one's rights—voluntary waiver and forfeiture by way of aggression. Because in Block's writings there is no mention, and rightly so, of the fetus waiving its rights by voluntary transfer or abandonment, the only option is forfeiture. Thus, for the woman to have a right to evict the fetus, the fetus has to forfeit some of its original rights by aggressing against the woman. Indeed, Block's contention that the unwanted fetus is a trespasser on the woman's property—that is, her body—seems to serve exactly this purpose. Let us call this premise the *fetus's forfeiture of rights thesis*.

However, as we argued in DW (2023a), for the fetus's behavior to result in rights forfeiture, it has to fall under a behavior type covered by the recognized liability standard. For example, if the recognized liability standard were specified by the culpability account, according to which culpability of the aggressor is necessary for liability (Ferzan 2005), the fetus's structural incapability of culpable action—or, as Block (2010, 3) puts it, incapability of mens rea—would render it immune to any rights forfeiture. Now, since Block has made it explicit on many occasions that he subscribes to strict liability (Block and Block 2000, 297; O'Neill and Block 2013, 241), we held him to his word and reasoned that for the fetus's behavior to result in rights forfeiture, the fetus's behavior has to fall under the strict liability standard. Although we are going to concede to Block that this liability standard should be dropped, let us nonetheless call the claim we identified the *fetus's strict liability thesis*.

Yet, as we further argued in our paper, falling under the recognized liability standard is merely one necessary condition for a behavior to encroach upon the rights of another ((DW 2023a, 533–37). Another necessary condition is that the party in question be under a duty not to behave in the specified way. Since rights and duties are jural correlatives (Hohfeld 1913)—"each is the other from a different perspective, in much the same way that an upward slope viewed from below is a downward slope viewed from above" (Kramer 2000, 24)—for a behavior to encroach on a right of another, it has to also be proscribed by a duty correlative with the right in question. In other words, it is impossible for an actor *A* to encroach upon *B*'s right by *x*-ing unless *A* is under a duty to *B* to abstain from *x*-ing. Let us call this the *correlativity thesis*. As one can readily see, when combined with the aforementioned theses, the correlativity thesis entails that for the fetus to encroach on the woman's rights, it has to have duties correlative with these rights. This can in turn be called the *duties of the fetus thesis* (while its negation is the *no duties of the fetus thesis*). Now, jumping across the intermediary steps of our argument, we can then conclude—as we did in DW (2023a)—that evictionism entails the untenable thesis that the fetus is a duty-bearer.

Of these five theses at work in our criticism of evictionism, two—fetus's original rights and fetus's forfeiture of rights—are explicit premises in the evictionist argument itself. Another—fetus's strict liability—is a premise we reconstructed on the basis of Block's explicit pronouncements. Still another—correlativity—is an axiom of a commonly accepted logic of rights (Kramer 2000, 24). And the final one—duties of the fetus—is the undesirable conclusion derived from the other four. It is because of fetus's original rights that evictionism needs fetus's forfeiture of rights, and it is because of fetus's forfeiture of rights that evictionism needs fetus's strict liability (or some other similar thesis). But it is also because of fetus's forfeiture of rights that evictionism needs correlativity—for the fetus's behavior cannot encroach on the woman's rights unless it is a behavior proscribed by duties correlative with these rights. And it is because of correlativity that evictionism entails the untenable duties of the fetus. Thus, to salvage evictionism, some of these theses must be revised. Let us then see what would be the cost of doing so.

The first modification to consider pertains to the fetus's strict liability, for in his recent rejoinder Block (2025, 197) explicitly rejects our contention that he subscribes to this thesis. Although Block is himself partially to blame for inviting us to ascribe to him this thesis because he has made numerous pronouncements to the effect that "regarding innocence or guilt, he . . . follows Rothbard in eschewing the 'reasonable man' standard in favor of strict liability" (Block and Block 2000, 297), it is at any rate pretty clear in 2025 that he is willing to reject it in favor of some less demanding standard of liability. Perhaps something resembling Judith Jarvis Thomson's rights-based account (Thomson 1991), or her concept of technical liability (Thomson 1973, 155), which in contradistinction to the strict liability standard does not require that an action be performed (Epstein 1980, 22). We are willing to concede this point to Block. The philosophical cost of dropping the strict liability standard in favor of a less demanding criterion as applied to the question of self-defense seems negligible. The scholarly discussion is still on insofar as the proper theory of self-defense is concerned, and Jeff McMahan's responsibility account, which is the strict liability standard as applied to defensive killing (McMahan 2005, 395), and Thomson's rights-based account, which resembles Block's current position, are both heavyweight contenders in this competition. Thus, we concede that the fetus's behavior, even though it does not amount to an action, can nonetheless fall under the behavior type covered by the libertarian liability standard.

This, however, does not change much insofar as the tenability of evictionism is concerned, because falling under the behavior type covered by the liability standard is, as we argued above, merely one necessary condition for the fetus's behavior to encroach on the woman's rights and thus to result in the fetus's rights forfeiture. The other condition is that the fetus's behavior be proscribed by a duty correlative to the woman's right. For since rights

correlate with duties, it is impossible to encroach on a right without breaching its correlative duty, and it is in turn impossible to breach its correlative duty without having this duty in the first place. Thus, in order to sustain the claim that the unwanted fetus encroaches on the woman's rights, evictionism has to either reject correlativity—a move that would allow it to argue that the unwanted fetus can encroach on the woman's rights without being a duty-bearer—or bite the bullet of duties of the fetus and claim that the fetus is a duty-bearer who under the adjusted technical liability standard does encroach on the woman's rights.

However, rejecting correlativity would be a very high price to pay. The correlativity of rights and duties is an axiom of a commonly accepted Hohfeldian logic of rights (Kramer 2000, 24). It explicates what having a right amounts to—that for a person *A* to have a right against a person *B* that *B* do *x* or abstain from doing *x* is for *B* to have a duty to *A* to do *x* or abstain from doing *x*, and vice versa—and so provides the most fundamental building block for our very thinking and talking about rights. Rejecting correlativity would then cascade through the entire libertarian theory of justice and have disturbing effects for many well-established principles and arguments. It would also require providing—or at least pointing toward—an alternative logic of rights with a different set of axioms—not a small thing to do, to be sure. Moreover, it would expose evictionism to the criticism that was originally directed against Thomson's rights-based account (Otsuka 1994, 79–80), although this time without a possible recourse to the claim that the difference between an innocent threat and a falling stone is that the former, but not the latter, is a duty-bearer (Frowe 2016, 15–20). For upon rejecting correlativity and thus denying that the fetus is a duty-bearer, one could indeed "not see how the rights-violating power of such a human object could be any greater than the rights-violating power of a chunk of granite. But talk of rights violations has . . . gone too far if it is based on a theory that implies that a falling stone can violate a human right" (Otsuka 1994, 80). Thus, as for ourselves, we would much rather jettison evictionism than correlativity. And if Block were ready to do the opposite, then we would most likely part ways with evictionism for good. Of course, the question is whether Block would be willing to reject correlativity.

In sharp contradistinction to rejecting correlativity, biting the bullet and accepting duties of the fetus involves no logical blunder. There is nothing in the Hohfeldian logic of rights that would preclude ascribing duties to fetuses, animals, or even inanimate objects.[4] The only thing ruled out by this logic

4 Thus, the above argument by Michael Otsuka (1994, 80) can be interpreted in two ways: either (1) as assuming that inanimate objects have no duties and then concluding that "talk of rights violations . . . has gone too far" because it contravenes the correlativity of rights and duties by implying that objects which have no duties can yet violate rights or (2) as assuming that inanimate objects have no duties and then concluding that "talk of rights violations . . . has gone too far" because it contravenes this assumption by implying, via the correlativity of rights and duties, that inanimate objects have duties. The evictionist rejection of correlativity would run into the first problem, whereas the evictionist biting of the bullet of duties of the fetus would run into the second one.

insofar as such an ascription is concerned is violating the correlativity of rights and duties. That is, once a right against *B* is ascribed to *A*, requiring *B* to abstain from *x*-ing, it is now invalid to claim that *B* has no duty to *A* to abstain from *x*-ing. But the question of which kinds of entities can stand in *A*'s and *B*'s positions is a separate question of a substantive moral theory. As such, the question can be answered in a tenable or untenable way, but the ascription itself cannot be faulted for logical invalidity. As Matthew H. Kramer points out, "The addressing of legal demands to creatures who are incapable of grasping and following them might be cruel and perhaps silly. Medieval trials of animals for crimes do strike the modern observer as strange. All the same, cruelty and silliness do not add up to impossibility" (Kramer 2001, 41). Accordingly, our original charge against evictionism was not that it commits a logical error, but that it entails an untenable conclusion (that is, duties of the fetus). Still, entailing an untenable conclusion is only marginally better—if better at all—than committing a formal mistake. Thus, although we approach the acceptance of this thesis with a slightly smaller reservation than that with which we approach the rejection of correlativity, we would still much rather jettison evictionism than embrace a conclusion that stands on a par with medieval trials of animals. Again, the question is whether Block would follow suit.

If correlativity and no duties of the fetus have higher credence than evictionism itself and if adjusting fetus's strict liability does not change much, then perhaps revising evictionism's own premises is something to consider. In this regard, let us begin with a modification of fetus's original rights.[5] The idea behind it could be the following. Perhaps the fetus does not have a general right against being killed (or maimed, or physically injured, or touched, or what have you) to begin with. Perhaps what it has is only a specific right against being killed (or maimed, etc.) *unjustly* (Thomson 1971). And since killing it in order to free the woman from the intruder occupying her body against her will is not killing it unjustly, the unwanted fetus has no right against being evicted in the first place. Accordingly, there is no need for the fetus to forfeit its original rights for eviction to be permissible. Eviction is permissible simply because the fetus has never had a right against being evicted from the body that is the woman's body and not its own. Alternatively, if the fetus ever acquired such a right, it could only be later in the pregnancy when it had already been occupying the woman's body for quite some time without her objection. Hence, aborting it at a later stage

5 Of course, we are speaking here only of minor modifications to fetus's original rights, not of abandoning it entirely, for doing so would prevent evictionism from even getting off the ground. Thus, together with Block, we assume arguendo that the fetus possesses at least some self-ownership rights from the moment of conception. However, it is worth pointing out that there are, in fact, no strong libertarian arguments in support of this assumption.

of pregnancy would constitute an unjust killing and thus violate the fetus's rights;[6] on the other hand, aborting it at an early stage would not constitute such a killing and would thus be fully permissible.

As we can learn from John Oberdiek's (2004, 338) incisive analysis of the evolution of Thomson's account of rights, the idea of having a right only against a conduct that is otherwise unjust or wrong—such as the above modification of the evictionist fetus's original rights—represents what can be called moral specificationism about rights. According to moral specificationism (rejected by Thomson in her later writings), whether *A* has a right against *B*'s doing *x* depends on whether *B*'s doing *x* is impermissible, unjust, or wrong.[7] For example, in Joel Feinberg's (1978, 102) famous cabin case, since it is impermissible for the backpacker to break into the cabin on a sunny day to relax, "the cabin owner surely has a right against the backpacker that she not break into the cabin on a sunny day to relax" (Oberdiek 2004, 342). However, since it is permissible for the backpacker to break into the cabin in order to escape a deadly storm, moral specificationism would conclude that the cabin owner "has no right whatsoever against her that she not break in during a life-threatening blizzard. It is not that the backpacker justifiably breaks into the cabin but still infringes the cabin owner's property right that she not do so, but rather that the backpacker breaks-in justifiably, full stop" (Oberdiek 2004, 342).

Whether Thomson's arguments against moral specificationism work or not,[8] it should be clear from the get-go that Rothbardian libertarians cannot afford moral specificationism, because the question of what primary rights a right-holder has under libertarianism is, as correctly pointed out by Oberdiek (2004, 326), "determined exclusively by facts about the right-holder," and not by external circumstances. A good case in point can be *A*'s original property rights. What original property rights *A* has under libertarianism is solely a function of what unowned resources he mixes with his labor. In principle, it does not matter whether by doing so *A* renders *B* worse off, decreases overall social utility, increases social inequality, or what not. Accordingly, modeling the fetus's self-ownership rights on what is otherwise permissible for the woman to do conflicts with this generalist libertarian theory of rights and thus should not be seriously considered in the pertinent context unless one is willing to offer an across-the-board modification of the libertarian account of rights.

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6 Accordingly, evicting the fetus could constitute some other offense, such as mayhem, common assault, or battery—a consequence that speaks against adopting this solution, for evictionism would like late evictions to be permissible.

7 Thus, moral specificationism can be viewed as a way of moralizing the concept of a right—whether one has a right depends on some broader and independent moral considerations, whereas under moral generalism it is rights themselves that constrain and delineate what is morally permissible.

8 These arguments concern the explanatory role of rights (Thomson 1986, 37–39) and moral residue (Thomson 1990, 84–96). On their merits, see the debate between John Oberdiek (2004, 2008) and Andrew Botterell (2007).

Thus, the last option to consider is fetus's forfeiture of rights, for if this thesis were abandoned or circumvented, then there would be no need to even mention its problematic implications concerning the fetus's correlative duties and liability for their breach. Of course, dropping fetus's forfeiture of rights would mean that the unwanted fetus would not lose its original rights and thus that evicting it would potentially violate these rights—a consequence that Block would clearly like to avoid. Nevertheless, there are at least two ways of dealing with this consequence that might be worth considering.

The first way is applying the doctrine of doing and allowing (DDA) to evictionism.[9] According to this solution, if eviction were performed in a manner that merely allows the fetus to die rather than causes its death,[10] it would not infringe upon the fetus's unforfeited rights,[11] for under libertarianism these rights are negative and thus can be infringed upon only by doing and never by allowing.[12] Just as an adult person's self-ownership

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9 At this point one might wonder—especially in light of what follows—why we do not reach for the famous doctrine of double effect (DDE) as a way of explaining the permissibility of eviction without resorting to fetus's forfeiture of rights. The answer is that in contradistinction to the DDA, which focuses squarely on wrongdoing, the DDE double-clicks—no pun intended—on the intention with which one commits a wrongful action and postulates that if the wrong is merely foreseen as a side effect of one's action rather than intended as a means to one's goal, then—provided other conditions such as balancing of evils are also present—it is permissible to do the wrong. However, we subscribe to Thomson's irrelevance-of-intention-to-permissibility thesis (Thomson 1991, 295), and so do many libertarians, Block included—after all, Block has explicitly embraced strict liability, which is blind to intentions, and goes even further with this strictness when he claims that the fetus is liable to eviction even though it does not act at all, let alone act with some specific intention or knowledge. Thus, we believe that invoking a Catholic doctrine that is so centered on intentions would be too alien to both sides of the debate to merit anything other than a footnote.

10 We subscribe to Michael S. Moore's (2010, 51–77) causal rendition of the DDA. According to this rendition, doing *x* can essentially be understood as strongly causing *x*, where causation is in turn accounted for by a singularist (primitivist or physicalist) theory of causation. Moore's rendition is particularly pertinent to Rothbardian libertarianism, which also subscribes (Rothbard 2011, 367–419) to Richard A. Epstein's (1980) physicalist theory of causation. Of course, Block is a major representative of Rothbardian libertarianism.

11 We might need a finer-grained distinction here than merely causing the fetus's death versus allowing it to die, for if the fetus's original rights were unforfeited, then even touching the fetus could constitute an infringement on its rights. And a finer-grained distinction could of course be offered—if eviction were performed in a way that did not cause a physical contact with the fetus, it would not infringe upon its unforfeited rights. However, it is debatable whether such a finer-grained distinction would be needed. For if allowing the fetus to die involved only a minor infringement upon its rights—for example, a battery—the wrongness of abortion would be too negligible to forbid it across the board while it is the woman's very important self-ownership right that is at stake.

12 That omissive allowings cannot breach the nonaggression principle or, what comes to the same thing, infringe upon negative libertarian rights is a well-established libertarian truth. As Murray Rothbard (2011, 259) pertinently points out, referring to a famous quotation from Ludwig von Mises (Mises 1998, 13), "Nonaction also being a form of 'action' is praxeologically correct, but is irrelevant to the law. For the law is trying to discover who, if anyone, in a given situation has aggressed against the person or property of another—in short, who has been a tortfeasor against the property of another and is therefore liable for penalty. A nonaction may be an 'action' in a praxeological sense, but it sets no positive chain of consequences into motion, and therefore cannot be an act of aggression. Hence, the wisdom of the common law's stress on the crucial distinction between misfeasance and nonfeasance, between a wrongful aggression against someone's rights, and leaving that person alone."

It is not so clear that nonomissive allowings are also incapable of violating the nonaggression principle. After all, they are actions rather than nonactions, and they can in themselves constitute misfeasance or malfeasance. Nevertheless, we believe that there are good reasons to think that insofar as libertarianism is concerned, nonomissive allowings are morally on a par with omissive ones. To see that, consider, for example, a person *A* opening the door to *B*'s house without permission, allowing thereby an angry tiger to enter the dwelling and kill *B*. Although *A*'s conduct does not set a "positive chain of consequences into motion" (Rothbard 2011, 259) that results in *B*'s death, it is an action rather than a nonaction, it is trespass to real property (malfeasance), and it allows the tiger to kill *B*. It is yet an open question whether under libertarianism *A* should be responsible for homicide or only for trespass (remember that Rothbardian libertarianism assumes the strict liability standard; if you feel uneasy about this assumption, think about the case in which *A* did not know and could not have known about the tiger lurking outside the house). For suppose that *A* had permission to open the door. From the causal point of view—or from the point of view of setting a "positive chain of consequences into motion" (259) that results in *B*'s death—this fact would make no difference whatsoever. So why should it make any legal difference? And since it seems uncontroversial to say that under libertarianism *A* would not be responsible for homicide in the second scenario (opening the door with permission), it should also be uncontroversial to say that *A* would not be responsible for homicide in the first scenario either. Or to strengthen this argument even further, let us think about ducking harm (Boorse and Sorensen 1988). We submit that it is *entirely* uncontroversial to say that under libertarianism *A* has a right to duck the charging tiger so that it kills his camping companion, *B*, rather than *A* himself, even though ducking is an action rather than a nonaction and can be

right against being killed can be infringed upon only by causing this person's death and not by allowing him to die from other causes, so the fetus's original right against being killed can be infringed upon only by causing the fetus's death and not by allowing it to die from other causes. Thus, even if the fetus did not forfeit its original rights, evicting it in a manner that merely allows it to die rather than causes its death would still be permissible under libertarianism.

However, it is important to note that if one resorted to the DDA, the distinction between permissible and impermissible procedures could no longer be drawn along the evictionist lines of, on the one hand, early procedures, in which "it makes no never mind whether the very young baby is ejected from the womb in a 'gentle' manner and then perishes, or, is dismembered while still in the woman's body and then evicted in several pieces" (Block 2025, 194) and, on the other hand, late procedures, in which it is only permissible to eject the viable fetus from the woman's body, but not to dismember it or kill it in any other way. Rather, it would make all the difference "whether the very young baby is ejected from the womb in a 'gentle' manner and then perishes, or, is dismembered while still in the woman's body and then evicted in several pieces" (194). For the former procedure, as involving allowing the fetus to die, would be permissible at all stages of pregnancy, whereas the latter, as involving causing the fetus's death, would be impermissible even in early pregnancies.

We would be fully willing to accept this revision of evictionism. Nevertheless, we are aware that doing so would deprive evictionism of its two hallmark arguments. First, the argument that in early pregnancies—in contradistinction to late ones—not only expulsion of the unviable fetus but also feticidal abortion is permissible.[13] And second, the argument that in late pregnancies the woman may not simply allow the unwanted fetus to die but must notify potential adoptive agencies that she wants to abandon it (Block 2004). However, as we argued in DW (2025), once these arguments are dropped, the risk of evictionism becoming redundant vis-à-vis the DDA increases. Hence, although we find this solution very attractive, we expect that it might not be so for Block.

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viewed as *A* nonomissively allowing—by actively removing the obstacle (that is, himself) from between the threat and the victim—the tiger to kill *B*. By the same token, some abortions could be viewed as the woman removing herself from between the fetus and the natural processes that lead to the fetus's death.

13 Again, despite his explicit declarations to the contrary, Block makes it clear even in his last rejoinder to us that early feticidal abortions are permissible under evictionism. As he explains, "It makes no never mind whether the very young baby is ejected from the womb in a 'gentle' manner and then perishes, or, is dismembered while still in the woman's body and then evicted in several pieces" (Block 2025, 194). Yet the latter procedure is clearly a case of feticidal abortion. Thus, evictionism allows both letting the early fetus die (the procedure in which "the very young baby is ejected from the womb in a 'gentle' manner and then perishes") and killing it (dismembering it while it is "still in the woman's body").

The second way of dealing with the consequence that resigning from fetus's forfeiture of rights would leave the fetus with its original rights, which would be violated by its eviction, is to interpret the woman's right to free herself from the unwanted fetus not as a Hohfeldian liberty correlative with the fetus's nonright against eviction but as something resembling an act-specific agent-relative prerogative, which makes it the case that "a defender is allowed to give particularly grave weight to his or her interest in engaging in self-defense, which distinguishes self-defense from most other acts" (Steinhoff 2020, 54). Since self-ownership is exceptionally important under libertarianism and since it is the pregnant woman who defends her self-ownership against the unwanted fetus and not the other way around, an argument can be made that the woman might indeed assign so grave a weight to her self-ownership that despite the fact that defending herself would infringe upon the fetus's unforfeited rights, she would nonetheless possess—possibly under some additional conditions—an act-specific agent-relative prerogative to abort the unwanted fetus. By doing so, she would find herself in a position analogous to that of bystanders at the switch who redirect runaway trolleys into workmen on the sidelines (Thomson 1985, 1405–6) or wanderers who break into cabins in the woods during blizzards (Feinberg 1978, 102)—cases in which agents justifiably infringe upon the rights of others. In other words, due to the moral weight of her self-ownership, the pregnant woman would be permitted to infringe upon the unwanted fetus's unforfeited rights by evicting it from her body.

Now, the main problem with this solution insofar as Rothbardian libertarianism is concerned is that it attenuates the peremptoriness of libertarian rights by permitting the woman to encroach on the fetus's unforfeited rights. And as we know otherwise, under libertarianism "having a right allows one to legitimately punish the violator of the right, or to legitimately use force to prevent another from violating the right" (Kinsella 1996, 317); or, what comes to the same thing, "to say that someone has the absolute right to a certain property but lacks the right to defend it against attack or invasion is also to say that he does not have total right to that property" (Rothbard 1998, 88). Thus, it is very likely that Block would reject this amendment to evictionism as undermining the absoluteness of libertarian rights. After all, it would straightforwardly deny the fetus—at least in some circumstances—the crucial right to defend its unforfeited rights and to punish their violator.

However, as we argued in DW (2023b), adopting and adapting Kramer's (2014, 2–11) instructive distinction between strong and weak absoluteness, the Rothbardian requirement that libertarian rights be strongly absolute so that their invasion may always be met with punishment and defense is neither well-motivated (for it is not the case that if a right fails to be strongly absolute it turns out never to have been a genuine right in the first place) nor coherent (for it conflicts with other libertarian principles such as the

homestead principle and the proportionality principle) nor morally appealing (for it can lead to grossly disproportionate and morally abhorrent results). Thus, we would very much welcome an amendment to evictionism that views the unwanted fetus's unforfeited rights as only weakly absolute vis-à-vis the woman's self-ownership and thus protected by some other kind of remedy than across-the-board prohibition of abortion. In fact, the result of this emendation might even turn out to be in agreement with the current prediction of evictionism. For an argument can be made that, barring some extraordinary circumstances, the longer the woman waits, the weaker her prerogative of self-defense becomes and the stronger the fetus's right against being killed grows—with the effect that prohibiting late abortions would merely infringe upon the woman's rights, whereas allowing them would amount to a downright violation of the fetus's stronger interests. Accordingly, the availability of late evictions—accompanied by the aforementioned concomitant duty to notify potential adoption agencies—could in turn be seen as a remedy available to the woman for said infringement.

Concluding the present section, we can therefore point to fetus's forfeiture of rights as the most promising candidate for a revision that could carve out some common ground between Block and us insofar as evictionism is concerned. More specifically, construing the woman's right to eviction as something resembling an act-specific agent-relative prerogative—which makes it the case that "a defender is allowed to give particularly grave weight to his or her interest in engaging in self-defense, which distinguishes self-defense from most other acts" (Steinhoff 2020, 54)—could account for several crucial evictionist premises: that the unwanted fetus is a kind of trespasser (a de facto attacker or intruder who yet does not forfeit its rights), that the woman has a particularly strong right to her own body, that early abortions are permissible, that late abortions are impermissible, and that late evictions are permissible. Importantly, this reinterpretation would not incur the high costs of rejecting correlativity, biting the bullet of duties of the fetus, or manipulating fetus's original rights. The only cost it would incur would consist in weakening the peremptoriness of the fetus's rights, allowing for their infringement under very specific circumstances. That we would welcome in order to salvage evictionism. But would Block?

Conclusion

In the present article we tried to accomplish two things. First, we aimed to show that Block's (2025) objections to our recent criticism of his evictionism misfire. Instead of us erring or being mistaken about such important features of evictionism as eviction involving killing, abortion being sometimes permissible, or fetuses having duties, it is Block himself who wavers on these tenets of his own doctrine and thereby invites misunderstanding. Second, and on a more constructive note, we sought to identify the theses that a friend of evictionism would have to reconsider in order to successfully defend evictionism against our criticism. As we argued, unless he wants to jettison

the correlativity of rights and duties, discredit evictionism on a substantive plane, or reject the libertarian theory of rights, a friend of evictionism would do better to rethink the thesis that the unwanted fetus forfeits its rights. In this regard, two reformulations of the evictionist position come to the fore. One could embrace the DDA and claim that what accounts for the permissibility of eviction and the impermissibility of abortion is that the former merely allows the unwanted fetus to die whereas the latter kills it. However, going this way would have its own costs for evictionism—the main one involving compromising the evictionist distinctiveness vis-à-vis the DDA. Hence, the most attractive reformulation seems to consist in admitting that eviction infringes upon the fetus's unforfeited rights, but arguing that it is nonetheless justified because the woman's right to defend herself against a de facto attacker is a weighty enough prerogative to render eviction—that is, the gentlest possible way of stopping the attack—permissible.

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