




DOES TRESPASSING REQUIRE HUMAN ACTION? REJOINDER TO KINSELLA AND ARMOUTIDIS ON EVICTIONISM

Walter E. Block 

Harold E. Wirth Eminent Scholar Endowed Chair and Professor of Economics, Loyola University New Orleans, New Orleans, USA
<https://orcid.org/0000-0003-2215-4791>

ARTICLE INFO



 Open access

JEL Category:
D63, K10, Z13

Keywords:

Abortion
Pro-life, Pro-choice
Trespass
Evictionism
Property rights
Abortion debate.

RESPONSE TO KINSELLA AND ARMOUTIDIS

There are three possible viewpoints on evictionism: pro-life, pro-choice, and evictionism. Together, they are exhaustive explications of this very complicated and challenging issue. Advocates of the first option take the position that human life starts with the fertilized egg, and that the fetus may not be evicted from the mother's body before the usual nine months.* The second

* Assuming away premature births and the mother's health

Address of the author:
Walter E. Block
wblock@loyno.edu

ABSTRACT

Libertarian scholars Kinsella and Armoutidis criticize the libertarian theory of evictionism. This is a principled compromise between the pro-life and the pro-choice positions. Its conclusion overlaps with the former in the last trimester of pregnancy and with the latter in the first two trimesters. That is, the pregnant mother may expel the fetus from her body whenever she wishes but may not ever kill this pre-born baby. This theory is predicated upon the notion that the unwanted fetus is a trespasser; an innocent one, to be sure. Thus, he may be expelled from her body, her private property, but not treated as a criminal, since he is innocent of any crime. Evictionism stands or falls on this one claim. If the fetus is not a trespasser, this solution to the abortion controversy is a failure. Kinsella (2023) and Armoutidis (2024) maintain, to the contrary, that trespassing is a human action, and that the fertilized egg, the beginning of human life, is capable of nothing such thing. This essay aims to refute their position.

entry in these sweepstakes posits that human life begins with birth. Before that, the fetus is merely a bunch of living cells, with "rights" compatible with those of the appendix. That is, the pre-born baby has no rights at all, and if its life is ended, there is no crime whatsoever involved. Evictionists agree with the pro-lifers that rights-bearing human beings begin life with conception. They have as many rights as anyone else. But they are occupying space owned by someone else, their mother. Thus, they are trespassers. Innocent as the driven snow, to be sure, but still, squatters,

Received: 10.09.2025
Revised: 13.09.2025
Accepted: 14.09.2025
Available online: 16.09.2025

occupying property owned by another rights-bearing person. Thus, they may be evicted from her property but not killed. Unhappily, with today's medical technology, they will die if removed from the womb in the first two trimesters but can survive if evicted in the last three months of pregnancy.

I am an advocate of evictionism. My two critics, Kinsella (2023) and Armoutidis (2024), reject the notion that the fetus can be a trespasser and thus a violator of the private property rights of his¹ mother.²

With this introduction, let us consider the claim as to whether or not the fetus can be an intruder.

Alan hypnotizes Bob and places the latter in Charley's house. Is Bob a trespasser? Is it difficult to see why this contention should be rejected? What should we call Bob? An interloper? A person taking up space to which he has no right? A squatter? But these are only synonyms for "trespasser." To be sure, Bob is an innocent trespasser. He lacks any and all mens rea. Is Alan the trespasser? Not at all. After doing this evil deed, he exits from the scene, and, also, from our little scenario. He may well be guilty of assault and battery, or kidnapping, but not surely of trespassing. It is not Alan who is now residing in Charley's house. It is Bob!

Ditto for rape. David drugs both Ed and Frances. He pumps enough Viagra down the throat of Ed to give him an erection. David places Ed's penis inside Frances's vagina. What is going on here? Rape is going on here. Who is raping whom? Obviously, Ed is raping Frances. David is not engaging in this evil deed. His penis is safely locked up inside his own pants. Is Ed guilty of rape? Certainly not. He is a totally innocent

person. He has no mens rea. He does not even realize he is raping Frances. Is Ed a criminal? No, he is entirely innocent of committing any crime. Of what crime is David guilty, besides being a weirdo? Kidnapping, assault and battery, etc., but not rape.

We could extend this type of scenario to fit virtually all crimes: theft, murder, arson, etc. But we have made the point. People can engage in any and all sorts of crimes, without being in the slightest guilt of any of them. Let me rephrase that: People can *be made to* engage in any and all sorts of crimes, without being in the slightest guilt of any of them. For example, they can be hypnotized into so doing. They can be drugged to this effect. They can be forced to drink large amounts of alcohol in this regard. Sleepwalkers can commit crimes. To be sure, if the person knows he is a sleepwalker, he can be legally blamed for not doing something such as tying himself to his bed. But if he has no idea that he suffers from this malady and engages in the debility during which he commits a crime, he totally lacks all mens rea. Suppose he slips on the proverbial banana peel, and in an attempt to maintain his balance thrusts his arms out and about. During this process, he interdicts someone else's nose. He has engaged in something akin to assault and battery, but proper law would consider this only a tort,³ not a crime.⁴

Now consider this possible objection to the foregoing. Oddly, and inconsistently, the author allows that a rapist remains a rapist even after the rape is complete, so why can't a trespasser remain a trespasser even after the act is finished? This does not mean that the zygote cannot possibly count as "a" trespasser. Rather, the

¹ I use this description rather than "its" to indicate that the pre-born infant is a person.

² Unless otherwise specified, all mention of these two authors will be limited to these two essays of theirs.

³ To be sure he could then turn around and sue the owner of the sidewalk which left banana peels lying around, but that is a different story.

⁴ Consider the following pushback: "... it is common in prison movies for a powerful inmate (often a gang leader) to tell a vulnerable new inmate that he must stab someone else or get stabbed himself. But can an inmate who is faced with that 'choice' really go stab someone else with impunity because he was 'made to do it'? I think that is highly questionable; it is not just self-evident. Again, it appears that the author comes to

that conclusion, in part, because he assumes there can be only one guilty party, rather than shared blame. But why?" I plead not guilty to this charge. In my view, both the gang leader and the new inmate are both guilty of criminal behavior. The former for the threat, the latter for the stabbing. I have a paper trail discussing this very issue. See on this Block 2010, 2011, 2019, 2025A, 2025B. This constitutes an objection to me holding only David guilty of the crime of rape, even though he did not rape anyone, but not Ed, the actual rapist, who did so, but entirely innocently. However just because I did not "share blame" in this rape case, does not mean I cannot logically do so in this referee's prison example. The two are not analogous.



author mistakenly assumes there can be only one, and that mistaken assumption is what then leads him to “nominate” the zygote as “the” trespasser. Here is my response to the critique: Yes, the rapist “trespassed” upon the body of the woman during the actual rape. Afterward, after he leaves her body, he stops being a trespasser. He is no longer an uninvited guest within her body. But he is still a rapist. The resulting baby is a trespasser for nine months.

Armoutidis (2024) disagrees with this analysis. He asserts: “... a zygote is not—and in fact can’t possibly be—a trespasser, because a trespasser is an aggressor and aggression is a type of action. Implicit in this argument is that to even be capable of committing aggression—trespassing, in this case—one must first be an actor. But a zygote—or even a born baby, for that matter—is not an actor, because it has not yet developed the ability to act, and it’s therefore impossible for it to commit aggression.”

Assume that this zygote is the product of rape. Where, pray tell, is this preborn baby now located? I’ll tell you where. He is now situated inside the body of his mother. And precisely who is the rightful owner of that particular real estate? It is the unwilling parent. Did she invite her child to reside within her? Of course not.⁵ She is now the unwilling host of an uninvited person. If that fetus is not a trespasser, there is no such thing as trespassing. True, he, just as in the previous made-up cases, is entirely lacking in mens rea. Is the father a trespasser? Well, sort of, in the sense that rape is also a trespass upon the body of the woman and he was indeed guilty of that crime. But he has long departed the scene. He is still a rapist, but he is no longer a trespasser. Someone else must be a trespasser in this scenario. For there is a very small young person residing inside the body of another person without the permission of the latter. I nominate the fertilized egg as the trespasser.⁶

Kinsella (2023) also objects. He asserts, “But libertarians don’t say humans have rights because they ‘are humans’; if we encountered some other intelligent, sapient animals, or aliens from outer space, surely libertarians would say they also have rights, even though they are not ‘human.’ Or as I said in response to Doris, an intelligent cow would have rights. So, it is not ‘being human’ that gives humans rights, but something about the nature of humans. Most libertarians would say this has to do with our intelligence, conscience, self-awareness, or other characteristics such as reciprocity, language, discourse, reason, social nature or social setting, and so on. But it is not clear that all humans qualify for rights, depending on whatever criteria are adopted as relevant for rights. As a crude example, most of us believe a murderer has forfeited some, or all, of his rights; this is why he may be punished, perhaps capitally. Yet he is still ‘a human.’ So obviously, rights do not stem solely from ‘being human.’”

The implication, here, is that since the fetus lacks “...intelligence, conscience, self-awareness, or other characteristics such as reciprocity, language, discourse, reason, social nature or social setting,” he⁷ also lacks rights. But this argument is far too good. It proves far too much. For example, the comatose person is without reason. The sleeping person has no language. The last thing on the mind of the two-week-old baby is reciprocity; rather, for him, it is me, me, me. The person running a marathon in the last few miles is so winded, he cannot engage in any discourse; he can barely breathe. Given that this logically implies that these folk have no rights, it would not be murder to put a bullet in their heads. This conclusion is obviously highly problematic.

I conclude that the case for evictionism is untouched by these two authors. To be brief, this viewpoint regards the zygote as an innocent trespasser who may be evicted but not murdered. It is a compromise between the pro-life and the

⁵ Pay attention, she was raped.

⁶ When does human life begin? There are only three choices. One, with birth. But that is only a very slight change of address from inside of the mother to directly outside of her. Two, sometime during the pregnancy. According to the Talmud, it begins with the heartbeat. But this, too, must be rejected. The patient undergoing

a heart transplant for a time has no heartbeat at all. Yet, he is still a person. (A better Jewish interpretation is that life begins with graduation from medical school). Obviously, the only correct position is the third, it begins with the fertilized egg.

⁷ I refuse to refer to the pre-born child as an “it.” This is a precious human being we are talking about.

pro-choice positions. Assuming present medical technology, in the first two trimesters, the results of evictionism and pro-choice overlap. The evicted pre-born baby cannot survive outside of the womb and will perish. In the third trimester, there is a congruency between evictionism and pro-life. The baby may be evicted but not killed and thus will survive.⁸

I am fully aware that this abortion issue is a highly contentious, debatable, complicated, and challenging issue. It is not for nothing that two leaders of our libertarian movement diverge on it. Murray Rothbard was pro-choice; Ron Paul is pro-life. Happily, no one has accused either of “not really being a libertarian” and attempted to banish one or the other from the libertarian movement.

WORKS CITED

- Armoutidis, C. (2024). Preargumentation ethics and the issue of abortion. *Journal of Libertarian Studies*, 28(1), 67–75. <https://doi.org/10.35297/001c.117156>
- Block, W. E. (1977a). Toward a libertarian theory of abortion. *The Libertarian Forum*, 10(9), 6–8. http://www.mises.org/journals/lf/1977/1977_09.pdf
- Block, W. E. (1977b). L’aborto: Una legittima difesa. *Claustrofobia*, 1(3), 16–22.
- Block, W. E. (1978). Abortion, woman and fetus: Rights in conflict? *Reason*, 9(12), 18–25.
- Block, W. E. (2001, September 3). Stem cell research: The libertarian compromise. *LewRockwell.com*. <http://archive.lewrockwell.com/block/block5.html>
- Block, W. E. (2004). Libertarianism, positive obligations and property abandonment: Children’s rights. *International Journal of Social Economics*, 31(3), 275–286. <https://doi.org/10.1108/03068290410518256>
- Block, W. E. (2005). Compromising the uncompromisable: A private property rights approach to resolving the abortion controversy. *Appalachian Law Review*, 4(2), 1–45. https://www.researchgate.net/publication/228125532_Compromising_the_Uncompromisable_A_Private_Property_Rights_Approach_to_Resolving_the_Abortion_Controversy
- Block, W. E. (2010a). A libertarian perspective on the stem cell debate: Compromising the uncompromisable. *Journal of Medicine and Philosophy*, 35(4), 429–448. <https://academic.oup.com/jmp/article/35/4/429/945646>
- Block, W. E. (2010b). Response to Jakobsson on human body shields. *Libertarian Papers*. <http://libertarianpapers.org/2010/25-block-response-to-jakobsson-on-human-body-shields/>
- Block, W. E. (2011a). The human body shield. *Journal of Libertarian Studies*, 22(1), 625–630. http://mises.org/journals/jls/22_1/22_1_30.pdf
- Block, W. E. (2011b). Response to Wisniewski on abortion, round three [Peer commentary]. *Libertarian Papers*, 3, Article 37. <http://libertarianpapers.org/articles/2011/lp-3-37.pdf>
- Block, W. E. (2011c). Terri Schiavo: A libertarian analysis. *Journal of Libertarian Studies*, 22(1), 527–536. http://mises.org/journals/jls/22_1/22_1_26.pdf
- Block, W. E. (2012, August 30). A not so funny thing happened to me in Tampa. *LewRockwell.com*. <http://archive.lewrockwell.com/block/block208.html>

⁸ The present essay is limited to a refutation of Kinsella and Armoutidis. There is much more of course to be said about the libertarian position on abortion. For example, rape, happily, accounts for a very small percentage of pregnancies. For an evictionist oriented

examination of that issue and many, many more, see Block, 1977A, 1977B, 1978, 2001, 2004, 2008, 2010A, 2011A, 2011B, 2012, 2014A, 2014B, 2014C, 2018, 2021; Block and Whitehead, 2005; Dyke and Block, 2011; McGee and Block, 2022.



- Block, W. E. (2014a). Should abortion be criminalized? Rejoinder to Akers, Davies and Shaffer on abortion. *MEST Journal*, 2(1), 33–44. http://fbim.meste.org/FBIM_1_2014/_04.pdf
- Block, W. E. (2014b). Evictionism and libertarianism. *Journal of Medicine and Philosophy*, 35(2), 290–294. <https://doi.org/10.1093/jmp/jhu012>
- Block, W. E. (2014c). Toward a libertarian theory of evictionism. *Journal of Family and Economic Issues*, 35(2), 290–294. <https://doi.org/10.1007/s10834-013-9361-4>
- Block, W. E. (2018). Judith Jarvis Thomson on abortion; a libertarian critique. *DePaul Journal of Health Care Law*, 19(1), Article 3, 48-53. <http://via.library.depaul.edu/jhcl/vol19/iss1/3>
- Block, W. E. (2019). Human shields, missiles, negative homesteading and libertarianism. *Ekonomia Wroclaw Economic Review*, 25(1), 9–22. <http://ekon.wuwr.pl/catalog/-38>
- Block, W. E. (2021). *Evictionism: The compromise solution to the pro-life pro-choice debate controversy*. Springer. <https://link.springer.com/book/10.1007/978-981-16-5014-7>
- Block, W. E. (2025a). Rejoinder to Wasiak on eviction and negative homesteading. *Studia z Historii Filozofii*, 1(16). <https://doi.org/10.12775/szhf.2025.009>
- Block, W. E. (2025b). To my critics on evictionism: Response to Dominiak and Wysocki on redundancy, Wasiak on negative homesteading, Wisniewski on praxeology, Wójtowicz on peril. *Studia z Historii Filozofii*, 1(16). <https://doi.org/10.12775/szhf.2025.010>
- Block, W. E., & Whitehead, R. (2005). Compromising the uncompromisable: A private property rights approach to resolving the abortion controversy. *Appalachian Law Review*, 4(2), 1–45. https://www.researchgate.net/publication/228125532_Compromising_the_Uncompromisable_A_Private_Property_Rights_Approach_to_Resolving_the_Abortion_Controversy
- Dyke, J., & Block, W. E. (2011). Explorations in property rights: Conjoined twins. *Libertarian Papers*, 3, Article 38. <http://libertarianpapers.org/2011/38-dyke-block-conjoined-twins/>
- Kinsella, S. (2023, June 14). Abortion correspondence with Doris Gordon, Libertarians for Life (1996). StephanKinsella.com. <https://www.stephankinsella.com/2023/06/abortion-correspondence-with-doris-gordon-1996/>
- Kinsella, S., & Tinsley, P. (2023). Causation and aggression. In *Legal foundations of a free society* (pp. xx–xx). Papinian Press.
- McGee, R. W., & Block, W. E. (2022). On abortion: Utilitarianism and deontology. *Southern University Law Review*, 50, 10–24. https://www.researchgate.net/publication/361732682_On_Abortion_Utilitarianism_and_Deontology

How to cite this article?

Style – APA Seventh Edition:

Block, W. E. (2026, January 15). Does trespassing require human action? Rejoinder to Kinsella and Armoutidis on evictionism. *MEST Journal*, 14(1), 48-53. <https://doi.org/10.12709/mest.14.14.01.04>

Style – Chicago 17th Edition:

Block, Walter E. "Does trespassing require human action? Rejoinder to Kinsella and Armoutidis on evictionism." *MEST Journal (MESTE)* 14, no. 1 (January 2026): 48-53. <https://doi.org/10.12709/mest.14.14.01.04>.

Style – **GOST R 7.0.100-2018, Name Sort:**

Block W. E. Does trespassing require human action? Rejoinder to Kinsella and Armoutidis on evictionism // *MEST Journal* / ed. Čekerevac Zoran. – Belgrade – Toronto : MESTE, 15 January 2026. – Vol. 14, No. 1. – pp. 48-53. – DOI: <https://doi.org/10.12709/mest.14.14.01.04>.

Style – **Harvard Anglia Ruskin:**

Block, W. E., 2026. Does trespassing require human action? Rejoinder to Kinsella and Armoutidis on evictionism. *MEST Journal*, 14(1), pp. 48-53. Available at: <https://doi.org/10.12709/mest.14.14.01.04> [Accessed dd Month yyyy].

Style – **ISO 690 Numerical Reference:**

Block, Walter E. Does trespassing require human action? Rejoinder to Kinsella and Armoutidis on evictionism. *MEST Journal*. 2026 Jan 15; 14(1): 48-53. DOI: 10.12709/mest.14.14.01.04