

The Ethics of Abortion  
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## Introduction

There are, perhaps, more serious problems than abortion facing our society. But there are none which raise such grave philosophical problems-nor which so greatly threaten to tear our society apart.

In all other cases-war, inflation, unemployment, nuclear proliferation, pollution-we all agree at least to the extent of opposing the threat. There may be little agreement as to the best means of eliminating the danger, or of the proper trade off between one evil and another, but at least there is no support for the menace itself. Where are the proponents of war, sickness, disaster?

The situation with respect to abortion is different. Here, two groups are arrayed against each other, with irreconcilable positions on ends, not just means. Each takes an explicitly ethical stand and holds the other guilty of severe criminality.

On one hand are those who would legalize abortion, on the ground that women have the right to control what grows in their bodies. On the other hand are the anti-abortionists, who consider the practice to be first degree, premeditated murder. One would have to go back to the days of the pro and anti-slavery moments in the first half of the 19th century to find a public issue even remotely as vexing. And we all know the result of that controversy. It therefore behooves us to search mightily for ways to reconcile these seemingly irreconcilable positions.<sup>1</sup>

-Walter Block, 1977

On a topic as uncomfortable and divisive as abortion, no better introduction to the issue can be given than that of Walter Block. Published in 1977 in the September issue of *Libertarian Forum* under the title "Toward a Libertarian Theory of Abortion," Block proves to be in his element when addressing any issue, no matter how difficult and controversial. Block succinctly summarizes the ethical positions of both sides of the debate as well as the strong antagonisms and emotions behind them. Block then sets out to deduce the libertarian theory of abortion from the non-aggression principle.

Libertarian Ethical Theory has advanced by leaps and bounds over the past few decades. In the introduction to Murray Rothbard's *The Ethics of Liberty* Hans Hoppe writes, "In an age of intellectual hyperspecialization, Murray N. Rothbard was a grand system builder. Rothbard's unique contribution is the rediscovery of property and property rights as the common foundation of both economics and political philosophy, and the systematic reconstruction and conceptual integration of modern marginalist economics and natural law political philosophy into a unified moral science: libertarianism"<sup>2</sup>

Despite these extensive expositions of a liberal ethical system, much disagreement exists on a variety of issues. These are for the most part "life boat" cases, instances of extreme hypothetical circumstances which, though difficult, with time can be answered in ways consistent with the private property ethic.

Walter Block says himself, "I suggest that the abortion question gives our society so much

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1 Walter Block, "Toward a Libertarian Theory of Abortion," *The Libertarian Forum*, Vol. 10, No. 9, September 1977, 6.

2 Murray N. Rothbard *The Ethics of Liberty* New York and London: New York University Press, 1998, xi.

trouble because it has not been recognized as a classical "life boat" situation"<sup>3</sup> However, the ethical status of children and the particular issue of abortion sits at the center of what can today be called the Libertarian Paradox. The existence of a child is not a lifeboat situation. "Children happen" all the time. At this very moment, millions of individuals are engaging in the act of sex. By the millions still, children are conceived, the impregnated women carry these children to term and give birth to them. The children are cared for and raised in a loving family, and they grow into rational adults who engage in the division of labor.

One would think that such a vast and extensive ethical system such as the libertarian one would have by now more than adequately dealt with the ethical implications of something nearly as common and essential to human existence as breathing and eating. In fact, one could make the case that it does. In his chapter "Children and Rights," Rothbard lays out what he believes to be the logical implications of his natural rights approach to children and the unborn.<sup>4</sup> Yet while much of Rothbard's views on child's rights is essentially undisputed by libertarian intellectuals, the religious wing of the movement, personified in the Pro-Life Ron Paul, cannot accept Rothbard's essentially Pro-Choice position.

So why tackle this issue now? Aren't there "more serious problems than abortion" to be concerned about? Perhaps, but no issue holds more of a vital strategic importance for the Liberty Movement than this issue does now. Regardless of what the true libertarian position on abortion happens to be, the reality is that the longtime goal of a political alliance with the Religious Right will forever remain nothing more than a naive pipe dream so long as libertarianism is viewed as being "Pro-Choice."

I know this from over ten years of experience in the Pro-Life movement. They view abortion as the overriding issue, and will disregard all other policies of a candidate. It doesn't matter how right Rothbard seems to be on everything else. If he's for "killing babies," then there must be something inherently wrong with libertarianism. Pro-Lifers, the hard core subset of the religious right, are immediatists, abolitionists, sympathetic to theories of limited government, and they never give in on principle. They are exactly the kind of people we need in our movement, but the view of libertarianism's intellectual figurehead on abortion remains a perpetual stumbling block to their full embrace of our philosophy.

What's more, the split within the libertarianism on this issue, especially now with the end of Ron Paul's 2012 campaign, and the perceived lack of a uniting central figure, could result in a still-birth for the burgeoning liberty movement. Even if this is not the case, it will remain a deadly weakness. Just as the split in the Democratic Party in the mid-nineteenth century on the issue of slavery gave the enemies of *laissez faire* an opportunity to greatly increase the power of the state during the Lincoln administration,<sup>5</sup> so too any future "party of *laissez faire*" will be susceptible to fracture at a critical time. Trickier still, given the divisiveness of the issue, a libertarian position must be agreeable to the moral predispositions of both pro-choice and pro-life if the movement truly hopes to be appealing to both the political left and right.

To go even further, unless the libertarian movement resolves the abortion issue within its own ranks, attaining the end goal of a completely free society will become by definition impossible. For let's consider the an outcome where we do win against the state, where all government control is abolished, and non-aggression principle is applied by the vast consensus in all interpersonal matters. There still remains the issue of whether or not abortion is murder. If we cannot determine and agree upon whether or not a certain act is murder, then we can never know if we have really arrived to a true libertarian society or not. As Block so presciently stated, "It therefore behooves us to search mightily for ways to reconcile these seemingly irreconcilable positions."

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3 Block, 7.

4 Rothbard, 97-112.

5 Murray N. Rothbard, *For a New Liberty: The Libertarian Manifesto*, Auburn: Ludwig von Mises Institute, 1972, 9-10.

The purpose of this paper is to establish the ethical status of children in general and of the unborn in particular through the use of argumentation ethics. Beginning with the Argumentation Axiom, it will be demonstrated through rational deduction that the ethical status of a child is in no way different from that of an adult. This will establish the full property rights of the unborn in such a way that does not require implied contracts for its justification, but also eliminates from consideration certain problematic concepts such as “partial person-hood” and the homesteading of children. It will address the position of Murray Rothbard and Walter Block. Finally, it will expound the basic principles of a unified ethical theory which unites the two great ethical cathedrals of both argumentation ethics and natural rights theory

## **Overview of Argumentation Ethics**

In order for any rational person to act, one must accept the principle of first user. The first one to make use of anything previously unowned becomes the exclusive owner of that thing. This includes not only our bodies but also the space our bodies occupy. Any attempt to argue the contrary would bring the arguer into immediate self-contradiction. In the very act of arguing, the arguer not only acknowledges his own right to exclusive use over his body and the space it occupies but also that the person he is arguing with has the same right. The act of trying to convince someone of anything acknowledges not only the other person's ability to agree or disagree, but his right to exclusive self-ownership, because the person must have ownership over his own mind and body to even engage in the act of agreement or disagreement. The very attempt to refute the right to self-ownership refutes itself. For whatever reason, it is inherent in the structure of man's thought process that he cannot disprove this point.

Just as any action is a demonstration of preference, the choosing of one thing over all other possibilities, so arguments is a demonstration of the preference for non-violence. Were that not the case, the arguers would not bother arguing at all, but proceed to kill each other. Since it is impossible to rationally justify an ethic that allows for an initiation of force, it is inherent in rationality itself to seek non-aggressive solutions to problems. It therefore follows that all rational beings, human or otherwise, prefer non-violent methods of interaction, since all thoughts and actions by such reason-possessing beings, violent actions or not, are governed by the same logical structure that forces one to come to the non-aggression principle.

## **Dialogical Estoppel**

Stephan Kinsella in “Punishment and Proportionality: The Estoppel Approach,” seeks to extend the insights of Hoppe's Dialogical or Argumentative Ethics into the theory of punishment for crime.

The basic insight behind this theory of rights is that a person cannot consistently object to being punished if he himself initiated force. He is (dialogically) “estopped” from asserting the impropriety of the force used to punish him, because of his own coercive behavior. This theory also establishes the validity of the libertarian conception of rights as being strictly negative rights against aggression, the initiation of force.<sup>6</sup>

Just as a person who is engaging in the act of argument cannot consistently argue against the non-aggression principle, neither can someone who has actually engages in an aggressive act consistently

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<sup>6</sup> Stephan Kinsella, “Punishment and Proportionality: The Estoppel Approach” *Journal of Libertarian Studies* 12:1 (Spring 1996) Center for Libertarian Studies, 55.

object to having violence committed against them. However, an aggressor does not “estop” the use of all violence against him or herself by any form of aggression, but only up to the extent that they themselves committed the aggression.

By sanctioning slapping, *A* does not necessarily claim that killing is proper, because usually (and in this example) there is nothing about slapping that rises to the level of killing... Thus *B* would be justified in slapping *A* back, but not in murdering *A*. I do not mean that *B* is justified *only* in slapping *A* and no more, but certainly *B* is justified at least in slapping *A*, and is not justified in killing him.<sup>7</sup>

## Objections to Argumentation Ethics

Since one of the stated goals of this paper is greater unity in Libertarian Ethical thought, it is necessary to briefly answer some objections to Argumentation Ethics within libertarianism, particularly those of Robert Murphy and Gene Callahan.

At best, Hoppe has proven that it would be contradictory to argue that someone does not rightfully own his mouth, ears, eyes, heart, brain, and any other bodily parts essential for engaging in debate. But that clearly would not include, say, a person’s legs; after all, it is certainly possible for someone to engage in debate without having any legs at all.<sup>8</sup>

But this misses the point entirely. The right to self-ownership is not demonstrated in the act of argument itself, it is demonstrated in the fact that a person *can* argue at all. His rights come from his rational nature, not any single instance of action, argument or not. While argument, particularly the position of argumentation ethics, can rationally prove or disprove this or that right, argumentation itself does not demonstrate the non-aggression ethic. Rather, both parties must actually be following that ethic, regardless of their acknowledgment of it, in order to argue at all.

A similar objection is made in an example where a noisy man is dragged out of a private theater with a “No Talking” notice, and is shocked when security refuses to debate him. According to Murphy and Callahan, “one of his errors is the notion that a rule is indefensible if its application would make debate *at that particular moment* impossible (or difficult).”<sup>9</sup> Here there is the issue of appropriation of scarce resources. Again, argument itself cannot confer a right to anything. Self-ownership comes from *being* a rational creature. The right to other scarce goods outside our body comes from the physical, objective *act* of homesteading, which is necessary to live, and the actual respecting of that right to live a prerequisite to the act of arguing.

Murphy and Callahan then challenge the alleged demonstration of self-contradiction in arguing for a non-libertarian ethic with the example of one who gives exception of national emergencies and the public good. “The collectivist is not using force *during the debate*; he is merely arguing that under certain conditions the use of force is appropriate to compel military service, thus denying the libertarian ethic. While we *disagree* with our hypothetical collectivist, we don’t see how his claims are self-contradictory.”<sup>10</sup>

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7 Kinsella, 65.

8 Robert P. Murphy and Gene Callahan, “Hans-Herman Hoppe's Argumentation Ethics: A Critique,” *Journal of Libertarian Studies*, Volume 20, No 2 Spring 2006, 56.

9 Ibid, 58.

10 Ibid, 56.

First, use force during the debate would cease it being a debate at all. Secondly, the self contradiction is not apparent only if we stop our thinking there. His claims can easily be seen as contradictory when following them to their rational conclusions. For example, who determines the “public interest”? I can certainly know what my own interests are, but how can I possibly know what interests of everyone else are? What if the interests of two people are mutually exclusive. Which one is the “public” one? Also, if the draft is justified, who is to do the drafting, and who is to be drafted, and on what grounds? On what general principles can be base such a policy on other than “some are more equal than others”?

I won't belabor what has already been thoroughly refuted by other libertarian thinkers.<sup>11</sup> My point is that just because a self-contradictory argument is not immediately apparent does not mean the contradiction isn't present. The contradiction within the statement “there is no truth” is immediately apparent when one asks “is that true?” Whether it be a single step or a hundred, a self-contradictory argument can be easily demonstrated once all it's logical implications have been brought out.

Let us end with a final objection, that of Aristotle's claim that barbarians were natural slaves.

For example, so long as Aristotle only argued *with other Greeks* about the inferiority of barbarians and their natural status as slaves, then he would not be engaging in a performative contradiction. He could quite consistently grant self-ownership to his Greek debating opponent, while denying it to those whom he deems naturally inferior (Aristotle 1905, Book I, sections 4–6).<sup>12</sup>

Murphy and Callahan then go into the example of animals. How is the assertion of animal rights an example of inherent contradiction?<sup>13</sup> A simple answer is that one does not and cannot engage in discourse of any kind with chickens, flowers, rocks, nor any other non-rational thing.

This does, however, bring up an important question, and will serve as a segue into the next section of our paper: How do we know whether or not something or someone is reasonable? When we encounter another race of humans and there is both a language and a cultural barrier, as well as some dissimilarities in appearance, how can we know for sure they are rational? The same goes for animals. We cannot speak with them, so how can ever calibrate their cognitive abilities?

## **Personhood *in Potentia***

While we have established the ethical status of fully rational beings, ie, adult humans, we come to the question of things that may be considered “less than fully rational.” The case of animals, for instance, is addressed by Hans-Herman Hoppe in *The Ethics and Economics of Private Property*:

...if the gorilla were the sort of entity that we know gorillas to be, there would be no rational solution to their conflict. Either the gorilla would push aside, crush, or devour Crusoe - that would be the gorilla's solution to the problem - or Crusoe would tame, chase, beat, or kill the gorilla - that would be Crusoe's solution...The existence of Friday the gorilla would pose a technical, not a moral, problem for Crusoe. He would have no other choice than to learn how to successfully manage and control the movements of the gorilla just as he would have to learn to manage and control other inanimate objects of

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11 Rothbard, 136-137.

12 Ibid, 58.

13 Ibid, 59.

his environment.<sup>14</sup>

Hoppe's approach is different, yet complimentary to Rothbard's *reductio ad absurdum* approach, which points out that animals kill and eat each other with impunity. Should lions then be charged with murder for killing an antelope? Rothbard's quip "we will recognize the rights of animals whenever they petition for them"<sup>15</sup> intuitively anticipates Hoppe's rationalist approach, "Only if Friday, regardless of his physical appearance, is capable of argumentation (even if he has shown himself to be capable only once), can he be deemed rational and does the question whether or not a correct solution to the problem of social order exists make sense."<sup>16</sup>

In the above statement lies the answer to another question, what are the rights of human beings with less than full possession of their reason? What about the mentally handicapped, the comatose, and vary young children? What of the unborn, who have yet to develop even the physical organs required for reason? What of those who are merely asleep and are not currently engaged in mental activity? As stated by Hoppe, a creature need only to demonstrate it's ability to reason only once, and it is demonstrated once and for all for the entire species. A man gazing at another man down a sniper's scope can clearly see that he is a human like himself, and is therefore imbued with a right to not be murdered. Likewise for the man sleeping in bed. A man need not be using his reason in order to possess rights of any kind. He merely need to have the *potential* use of that reason.

If we say that human being must be actively using his reason to have rights, that only begs the question, "to what degree?" Throughout our daily activity, human beings tend to use their capacity to think to greater or lesser extents. What then is the cut off? How much of your reason do you need to be using, and how on earth can such a thing be quantified? The answer is that is cannot be quantified, and even if it could, the selection of any amount would merely be an arbitrary place on a continuum. Even the brightest among us can nonetheless improve in our cognitive abilities. Therefore, a creature need only possess reason *in potentia* in order to be an actual self-owner. In this sense the ethical status of both *persons* and mere *potential persons* are in fact one and the same.

## The Personhood of the Embryo

Having established that only potential personhood is needed in order for a organism to have any sort of rights against aggression. We then must ask, does a single celled zygote poses this status as a potential person, or is it s mere cell, and any further developed unborn a mere "clump of cells/tissue," similar to skin cells and muscle tissue, which have no rights at all, but are merely parts of, say, the mother;s body, and she had full right to do with it as she wishes? Robert P. George states the case clearly. "Biologically, it is a separate organism...It produces, as the gametes do not, specifically human enzymes and proteins. It possesses, as they do not, the active capacity or potency to develop itself into a human embryo, fetus, infant, child, adolescent, adult."<sup>17</sup> No other cell, skin cell, brain cell, heart cell, sperm or egg, left alone under ideal conditions, will ever on its own develop into a full human. Only zygotes have the potential for personhood, and therefore, have the full rights of any human adult.

## Block vs Wisniewski

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14 Hans-Herman Hoppe, "The Ethics and Economics of Private Property," *Companion to the Economics of Private Property*, edited by Enrico Colombatto, London: Edward Elgar, 2004, 4-5

15 Rothbard, 156.

16 Hoppe, 5.

17 Robert P. George, "God's Reasons" *Taking Sides: Clashing Views on Political Issues*, edited by George McKenna and Stanley Feingold, Dubuque: McGraw Hill, 194.

We have now established, through argumentation ethics, and the mere empirical observation of the substantial nature of the unborn, that both human life and the full rights of personhood are present from the moment of gestation. However, we have only established the groundwork, and have only yet begin to address the moral conundrum that libertarianism now finds itself in. It is true that the unborn child has a right to his own body and it is not to be aggressed against, but so does the mother. Just as the child is not property of his or her parents, and cannot be abused, tortured, or killed at the parent's whim, so also the parents are not the property and slaves of the child, and cannot be compelled to provide any minimal material assistance to any person, their biological offspring or otherwise.

It is here that we enter into the debate that took place between Walter Block and Jakub Bozydar Wisniewski. Wisniewski argues that the true libertarian position is the “Pro-Life” one, and that abortion should be considered no less than murder under a libertarian ethic<sup>18</sup>. Block presents an alleged compromise between pro-life and pro-choice with his “evictionism”, and holds that abortion is permissible only in some circumstances. Block first expounded Evictionism in “Toward a Libertarian Theory of Abortion”, published in the *Libertarian Forum* in 1977.<sup>19</sup> The piece then remained relatively unaddressed, even, it seems, by Murray Rothbard, who disagrees only slightly with Block. No substantial attempt to refute Block was made until Wisniewski published in *Libertarian Papers* “A Critique of Block on Abortion and Child Abandonment” in 2010. The timing of Wisniewski's challenge can only be speculated on, but it was likely helped by the added publicity gained by evictionism by the publishing of Walter Block and Roy Whitehead's “Compromising the Uncompromisable: A Private Property Rights Approach to Resolving the Abortion Controversy” in the *Appalachian Journal of Law* in 2005. Block then responded in *Libertarian Papers* to Wisniewski with “Rejoinder to Wisniewski on Abortion.” Wisniewski responded in kind with “Rejoinder to Block's Defense of Evictionism. The debate wound down in 2011 with the publishing of “Response to Wisniewski on Abortion, Round Two.” and “Response to Block on Abortion, Round Three”.

While some pro-life libertarians view Wisniewski as having trounced Block<sup>20</sup>, it is the belief of this author, an admitted pro-life libertarian, than Block's argument does indeed hold against Wisniewski's, but only just barely. It is clear from the text in both debates that Wisniewski had the opportunity to completely destroy Block's position, but for reasons that only can (and will) be speculated upon, chose not to. This paper, however, will not hesitate to do so. As we shall see, while Block's case for limited abortion fails to make its case, neither does Wisniewski's argument succeed in vanquishing Block. For the sake of brevity, this paper will not address every elaboration presented by both Block and Wisniewski, in an exchange that spans six papers. Rather, the matter can be settled by focusing on the key points upon which which both arguments rest.

Beginning with Evictionism, Walter Block concedes that the fetus is indeed a human life. “ If cut, it bleeds. If bludgeoned it dies. If left unmolested, it takes in oxygen, imbibes food, defecates, urinates, and performs all other bodily functions. It satisfies every existing criteria for 'life!'” However, when the unborn child is unwanted by the mother, it becomes a trespasser. As the owner of her own body, the mother has the right to “evict” the child just as anyone has a right to evict an unwanted guest from their home. To the objection that the child was there because of the act of intercourse engaged in by both parents, and therefore there is an inherent responsibility for the mother to care for the child, Block responds that no contract, implicit or explicit, can be made between one party that exists and another party which does either does not yet exist, or lacks nonetheless the ability to contract at all. Block adds

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

19 Walter Block, “Toward a Libertarian Theory of Abortion,” *The Libertarian Forum*, September 1977.

20 The name of a certain high-profile libertarian will remain anonymous.

that this especially true in the case of rape, where intercourse was not even voluntarily entered into on the part of the mother. To the counter that it's not the fault of the unborn child that he was conceived in rape, and that he should not be punished for it, Walter Block would agree, but that misses the point that in libertarian ethics there can be no positive obligations. The mother cannot be enslaved into bearing the child. So, here we can sum up the second significant point of Block's position, that an unwanted fetus is a trespasser, and that abortion is permissible, though this is qualified in his third point.

### **-The Gentlest Manner**

Block's third pillar is that an unwanted intruder must be evicted in the “gentlest manner possible.” In Block's definition of abortion, the consists of two parts: the killing of the child and the mere evicting of the child. Whether or not the killing of the fetus is justified is based on the progress of technology. Before modern times, the only way to remove the baby from the womb was to kill it, or at least it's removal could only result in it's death. With modern technology, however, the further along in a pregnancy one gets, the more viable the fetus becomes. That is, the more likely medical technology would be able to keep the baby alive. So, in the future, as technology advances, we will be able to keep the baby alive outside the mother throughout all 9 months of development, and it would be unjustified to directly kill the fetus. Killing the fetus, according to Block, is only justified if it is the only way for the mother to evict the child and retain full ownership over her body.<sup>21</sup>

It is this “gentlest manner possible” proviso where Block's argument has it's most glaring weakness, one which Wisniewski clearly perceives.

This in itself seems to me to undermine Block's proposal, since it appears to introduce an arbitrary complication into the principle of non-aggression—after all, if evicting a trespasser is a right of every human being, and one should not be thought of as responsible for what happens to the trespasser after he is evicted, then why should the moral evaluation of the act of eviction depend on what eviction options are available and on which of them is applied to the trespasser?<sup>22</sup>

Block is also keenly aware of this weakness. In his first response he says, “I must acknowledge that Wisniewski has launched an attack that if successful, would go a long way in the direction of undermining my entire position on this issue.” Unfortunately, Wisniewski makes several missteps. As Block points out, “The minor difficulty with his sally is that I nowhere state 'one should not be thought of as responsible for what happens to the trespasser after he is evicted.'”<sup>23</sup> It is correct that basing the morality of killing an unborn child on the present state of current technology is an arbitrary criteria, but the reason as to why it is arbitrary Wisniewski fails nail precisely.

If an ethical norm can change based on the ever fluctuating state of technology, can it even seriously be called a norm? Murder was in the first century just as egregious and murder will be in the thirty first century. No technological advancement, stagnation, or retrogression can have any bearing on whether or not a violation of property rights has taken place. If we assume that technology does have a bearing on the justification of murder, how could we ever know if it was right or wrong. Technology, like all knowledge, is imperfect. How would a pregnant woman know exactly what is medically feasible and what is not? Must she read up on all the latest breakthroughs in medical journals before she can seek to acquire an abortion?

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21 Block, 6-7.

22 Wisniewski, 1.

23 Walter E. Block, “Rejoinder to Wisniewski on Abortion,” *Libertarian Papers*, Vol 2, Art. No. 32 (2010), 3.



What if she gets an abortion right after a new medical breakthrough is made, but before it is made public? Can she then be prosecuted for being “too rough?” What if a breakthrough is published in another language, or an obscure journal, or for whatever reason exists, yet does not become part of the common knowledge within the scientific community at large? Must she seek out every possible medical technique for preserving pre-born children? If so, for how long and to what extent, and regardless of how much, how could she or anyone else for matter really know for sure? In short, it is impossible for Walter Block's “gentlest manner possible” principle to be followed.

What's more, the obligation to retain one's rights in “the gentlest manner possible” is incompatible with libertarian theory of crime retribution. Take Block's example of an assailant with a knife

Let us return to the scenario where the knifeman is making a frontal attack on me. If I have two guns, one with a rubber bullet which will stop the knifing by rendering the assailant unconscious, and the other with a lead bullet which will kill him, then, the libertarian legal code requires that I use the rubber bullet. If I, instead, avail myself of the lead bullet, then I, too, am guilty of a crime, that of not abiding by the “gentlest manner possible” principle.<sup>24</sup>

Here the attacker's intent is obvious. He wishes to stab Block. If the principle of “eye for an eye” or “two eyes for an eye” would justify after a conviction the victim stabbing the attacker twice, or shooting him once, or whatever the equivalent, why is it not justified when the attacker is in the midst of the attack itself? What is the option is rather a rubber bullet vs a real knife? The rubber bullet is gentler, but would it be unjustified if the victim stabbed the attacker first instead of using the bullet? The use of deadly force clearly estops the attacker in his right to object to having deadly force used against him. “Genteelness” doesn't enter into it.

## **-Forestalling**

This position of “gentlest manner possible” is closely tied to Block's Theory on “forestalling.” In “Libertarianism, positive obligations and property abandonment: children's rights”, Block presents a scenario where a person homesteads a doughnut shaped parcel of land, with a circular parcel in the center remaining unhomesteaded. Should the person be made to allow others to cross his property in order to homestead that doughnut-hole shaped piece of land? According to Block, yes, because “for him to able to do so means that the land inside of this area can remain forever unowned. Just as physical reality abhors a vacuum, so libertarian homesteading theory abhor land which cannot (be) claimed nor owned because of the land ownership pattern of the forestaller.”<sup>25</sup> Does it really? Does libertarian theory really abhor the absence of ownership, or, as Block seems to qualify, the inability to acquire ownership?

As we speak, there are many resources and potential resources that exist on this earth that, for various reasons, are either not reachable or not work the expense in obtaining. It is conceivable than some may forever be unreachable. Why should it not be the case that they stay that way forever, if doing so would incur a loss that is not worth the payoff, and if we are to concede that libertarian ethical theory is neutral in regards to land and resources that cannot be homesteaded due to physical constraint, then why must it be so up in arms about constraints imposed by patterns of private property?

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24 Walter E. Block, “Response to Wisniewski on Abortion, Round 2,” *Libertarian Papers*, Vol. 3 Art. No. 4 (2011), 4.

25 Walter Block, “Libertarianism, positive obligations and property abandonment: child's rights,” *Internal Journal of Social Economics*, New Orleans: Loyola University, 2004, 278.

Lets say, for example, that a vast area of land is completely homesteaded by farmers. Oil is discovered under that area, and the only way to get to it, get to it economically at least, is to drill on one of their farms. Suppose none of the farms wish to cut a deal with any potential oil drillers, and the oil is doomed to remain unhomesteaded, at least for the foreseeable future. Must the farmers be made to allow drilling, and if so, which farmer? The most profitable one? The least? Property “vacuum” or not, the fact is that these farmers are merely refusing to cooperate, and are in no way aggressing against the oil drillers. If they are not aggressing, how can they justifiably be forced to comply with anything?

How is this different from the doughnut-hole shaped piece of land? Blocks example merely shows that the land is not worth the expense (tunneling under to, bridging over to, or buying out the obstructing owner) of acquiring it. Forcing the doughnut shaped landowner to allow free pass would a violation of his property rights, just as it would be a violation of the farmers rights to force them to allow drilling on their land.

But does the owner of the donut shaped area have to notify others of the fact that there is a parcel of unowned land lying right in the middle of his own holdings? No. For to place this requirement upon the donut shaped land owner would be to **impose** upon him a positive obligation, and this, as libertarians, we are prohibited from doing.<sup>26</sup>

On this point, Block is sound, but then contrasts this with his position on doughnut-hole shaped pieces of property that are abandoned. Not only is the owner obliged to allow passage, but is also required to notify others that it is abandoned. “...this follows not from any positive obligation whatsoever, but rather from the logical implication of what it means to abandon something. You cannot (logically) abandon something if you do not notify others of its availability for their own ownership.”<sup>27</sup> True, but what then is the problem? If he hasn't informed anyone, then it hasn't been abandoned, and according to Block's logic, it is impossible for it to have been abandoned. So, how can it ever be possible then for someone to be a forestaller in the case of property he has already homesteaded?

This problem carries over and compounds into the application of “forestalling” to children.

In effect, the mother “homesteads” the baby within her body, with a little initial help from the father. Babies, of course, cannot be owned in the same manner as applies to land, or to domesticated animals. Instead, what *can* be “owned” is merely the right to continue to homestead the baby, e.g. feed and care for it and raise it...Would it ever be possible, under libertarian law, for a baby to be abandoned by its parents, for there to be no other adult willing to care and feed it, and the baby be relegated to death? Yes. However, this could occur only under the condition where the entire world in effect was notified of this homesteading opportunity, no roadblocks were placed against new adoptive parents taking over, but not a single solitary adult stepped forward to take on this responsibility.<sup>28</sup>

It is here that Block digs himself into an inescapable hole. The mother must notify the “entire world”<sup>29</sup> Really? Even with the internet, not everyone in the world has access to it. And even if they did, not everyone would see the notification. How could she know, after informing billions of people, that she didn't miss one? How many hours, day, years of her life must be committed to this endeavor. Once again, Block proposes a creed that is not only incompatible with libertarianism, but is physically impossible to abide by.

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26 Walter Block, “Libertarianism, positive obligations...”, 279.

27 Ibid.

28 Ibid, 280-281.

29 Block, “Rejoinder...”, 7.

Block's requirements for notification of abandoned property and stopping crimes in the gentlest manner possible are the most glaring weaknesses in his position, yet Wisniewski fails to hammer away at them. In fact, in the first sentence of the paragraph after his brief criticism of Block's technology complication, he writes the following sentence: "In any event, I shall not pursue this objection any further."<sup>30</sup> Why not, when perusing the objection, by Block near own admission, "would go a long way in the direction of undermining my entire position on this issue", as demonstrated above?

My speculation is that doing so would eliminate the only reprieves that Block gives to unwanted children. Without those provisos, we are left with what is essentially a carbon copy of Rothbard's position on abortion.

### **Rothbard: Trespassers and Parasites**

It passes through the grapevine of Pro-Life libertarian circles that Rothbard moderated his Pro-Choice position later in life, and became more sympathetic to the position of the Catholic Church, that the unborn child was indeed a person and possessed rights like all others. To the best of this author's knowledge, however, there is no evidence in the literature to support this speculation. In fact, the evidence strongly points to the contrary. Rothbard makes this clear in his response to James A Sedowsky's "Abortion and the Rights of Children."

...if I had to "vote" on the issue, I would probably say that the foetus only acquires the status of human upon the act of birth...As for the womb being the foetus's natural habitat, no doubt, but so is the body of the host the natural habitat of the parasite. Their two natures conflict and so it would be impossible, even if the two beings could understand language and abstract thought, for either to agree to the natural rights of the other. If vampires existed, theirs and our natures would be in irreconcilable conflict, and we could not grant vampires any natural rights status. Similarly, when unwanted, the foetus simply becomes a parasite whose needs and interests are irreconcilable conflict with the mother.<sup>31</sup>

Again, Rothbard's position could not be clearer. From his natural right's justification of the libertarian ethic, Rothbard not only concludes that the fetus is not a person, but that when it is unwanted, it is comparable blood sucking vampire, and the nature of both mother and child are inherently in conflict. Thus, the necessity for establishing a hardcore approach for the rights of the unborn via argumentation ethics. In regards to his granting of personhood to the unborn, he "simply made the assumption for the sake of argument, in order to grant the anti-abortionists their best case".<sup>32</sup> There is no evidence that a change in Rothbard's position on abortion, much less a conversion to Roman Catholicism, was ever forthcoming.

What's more, even when Rothbard grants personhood to the unborn, this does not take down his Pro-Abortion position. Even if we say that a baby is not "parasite," as Rothbard maintains, he and Block both hold on their assertion that the child is a trespasser, and the mother is the owner of her body as if it were a house. The owner of the house can invite in or kick out whomever they wish, and to force them otherwise is a violation of their rights.<sup>33</sup>

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30 Wisniewski, 2.

31 Murray N. Rothbard, editor, *The Libertarian Forum*, July-August 1978, 3.

32 Ibid.

33 Ibid.; Rothbard, *Ethics*, 98. Rothbard, *For a New Liberty*, 1972, 131-132

The obvious retort is that an unborn child is in no way a conscious actor, and cannot possibly be considered a trespasser, but Wisniewski not only fails to make this key point in his first paper, but veers wildly of course when he equates the mother with a kidnapper who brings an unconscious person onto a plan then forcibly evicts them for trespassing.<sup>34</sup> Block thoroughly refutes this<sup>35</sup>, and both he and Rothbard have retained their positions with a simple question: If an unwanted fetus is not the moral equivalent to a trespasser, what else can it possibly be?

### **The Praxeology of Pregnancy**

In the opening pages to his *magnum opus*, *Human Action*, Ludwig von Mises addresses the nature of unborn children.

Beings of human descent who either from birth or from acquired defects are unchangeably unfit for any action (in the strict sense of the term and not only in the legal sense) are practically not human. Although the statutes and biology consider them to be men, they lack the essential feature of humanity. The newborn child too is not an acting being. It has not yet gone the whole way from conception to the full development of its human qualities. But at the end of this evolution it becomes an acting being.<sup>36</sup>

In light of how much Rothbard was influenced by Mises, this passage may shed some light as to why Rothbard took such a strong stance against the personhood of the unborn. Still, this is more speculation on the part of myself, and a far more scholarly approach is to place more weight on Rothbard's own words.

It seems to me that the problem with the Block-Sadowsky thesis of asserting the fetus to be human is that that act of birth, which I had always naively assumed to be an event of considerable importance in everyone's life, now takes on hardly more status than the onset of adolescence or of one's "mid-life crisis." Does birth really confer no rights?<sup>37</sup>

Did Rothbard, with his brilliant mind, really place so much weight of such an important ethical issue on such a petty concern, the cultural importance of birthdays? Regardless of the true basis of Rothbard's view, the statement made by von Mises is not irreconcilable with the rights of the unborn established through argumentation ethics.

Praxeology deals with human action, and a zygote performs no action. While this has bearing on the economic status of the unborn, it has no bearing whatsoever on their ethical status. From the standpoint of economics, the unborn child is effectively a nonperson, since it does not interact with the world around it in order to achieve goals. From the standpoint of ethics, however, the rights of the unborn, just as the rights of all other humans, must be established through means other than praxeology.

The key insight from Mises necessary to solving the abortion question lies in his exposition on unconscious behavior.

Conscious or purposeful behavior is in sharp contrast to unconscious behavior, i.e., the reflexes and the involuntary responses of the body's cells and nerves to stimuli. People are sometimes prepared to believe that the boundaries between conscious behavior and

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34 Wisniewski, 2.

35 Block, "Rejoinder," 4.

36 Ludwig von Mises, *Human Action: A Treatise on Economics*, Auburn: Ludwig von Mises Institute, 1998, 14.

37 Rothbard, *Libertarian Forum*, 3.

the involuntary reaction of the forces operating within man's body are more or less indefinite. This is correct only as far as it is sometimes not easy to establish whether concrete behavior is to be considered voluntary or involuntary. But the distinction between consciousness and unconsciousness is nonetheless sharp and can be clearly determined. The unconscious behavior of the bodily organs and cells is for the acting ego no less a datum than any other fact of the external world.<sup>38</sup>

Just as unconscious behavior cannot be classified as “action” in economics, it cannot be classified as either “right or wrong” in the field of ethics. So, is the unwanted fetus an intruder or has it been kidnapped? The answer is clearly, *neither!*

Everything that happens within body of the mother and the cellular wall of the zygote is unconscious and automatic. No real action is taking place. Only purposeful action can be judged according to right or wrong. There is nothing moral or immoral about the workings of a digestive system. Pregnancy is similar to any other “act of God,” like an earthquake or a hurricane. No one is at fault. It just happens. It is true that a person may take certain courses of action to avoid or encounter pregnancy, just as one may take precautions in avoiding hurricane prone areas, or habits that may give you cancer or gas, but the events themselves are outside of one's conscious control, and there is no aggressor nor victim in it.

The child is not a trespasser, nor the mother a kidnapper. They just *are*, mother and child, together. It is, nonetheless, an odd scenario from an ethical standpoint, in that a previously nonexistent person now exists in the domain of another. What's more, the individual who existed before now performs regular, involuntary care for the new person.

## **The Ethics of Abortion**

Lets say we have particular person who's name is Rabbit, and one morning, he finds a large yellow bear named Winnie the Pooh logged in his door way. How he got there matters little. Perhaps Rabbit was under the habit of regularly inviting bears in for breakfast, or perhaps Pooh was shoved in there by a third party, Tigger. Regardless, he is stuck, and he will only be able to leave on his own accord after he has lost some weight. Nine months, to be exact. Now, to better equate the analogy with pregnancy, suppose that Rabbit find himself under the uncontrollable compulsion to care for Pooh so long as he is logged in hos doorway? Suppose he dislikes this involuntary kindness and the horrible inconvenience it all imposes. He wants Pooh gone and gone now, but there are only two ways to get rid of him. If Rabbit does not want to wait the nine months, the only other way would be to chop Pooh up into smaller bits and remove him that way. Would this make Rabbit guilty of murder?

It depends. If it were Pooh's intentions to murder Rabbit himself, then killing Pooh as retribution would certainly be justified. If his intentions were to steal honey, or merely to trespass, then dismemberment would not be justified from the point of “eye for an eye.” Pooh has not estopped his rights up to the point of killing. In all other cases, Pooh is innocent, and did nothing, and any forcible change to his bodily integrity would be an act of aggression.

But what about poor Rabbit? He did nothing wrong, yet he is forced to suffer a subjective loss in value to his house. True, but this is no different from there being a bolder rolling down the hill and logging itself in his doorway. So long as no acting being was responsible for his loss, there can be no

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38 Mises, 11.

justification for violating the integrity of another person's property. Now, if Pooh was shoved in the door by Tigger, that it would be Tigger who should be made to pay for all damages incurred over nine months, not Pooh, just as it should be a rapist who has pay for any damages to the woman who becomes pregnant by that rape, not the child.

Another analogy: suppose a mad surgeon stole a watch from A, then placed it inside the body of B. The only way for the A to retrieve the watch immediately is for him to cut open B, killing him. Suppose A had caught the mad surgeon in the act, and began chasing him, shooting wildly and hitting innocent bystanders in an attempts to retrieve his stolen property. No one is justified in harming others in retrieving stolen property or preserving the value thereof.

So, in the case of abortion, is the mother always obligated to carry the child to term? No, and for reasons similar to those presented by Block. Suppose that, in the case of Pooh, a forth party, Owl, develops a machine that can remove Pooh without physically harming him. There would be no reason under a libertarian ethic why this should not be the permissible. Likewise with the case of the watch, and the case of the unwanted fetus as well.

The mother may not contract a surgeon to dice the child into bits as in abortion, but there is no reason why it can't merely be removed unharmed if possible. Pro-Lifers who object to this on the grounds that the mere removal of the baby may nonetheless result in death, should consider the ethical status of a cesarean section. The baby is not born naturally, but is merely surgically removed from the mother. Often this is done to save the life of the baby, and perhaps even the mother herself. Certainly this cannot be interpreted as an act of aggression against the baby. Moreover, the motive of the mother in having a baby surgically removed from her body is irrelevant. Whether it is to save the life of the baby, or to remove it as a burden, she has the right to full control over her body and can do with it whatever she likes so long as she is not infringing upon the rights of others.

This brings us to the Pro-Lifer's concern over the fate, then of unwanted children. If the mother is not obligated to care for a child, what recourse does she have? Can she keep an infant secretly in her home, refusing to feed it and allow it to die. No, but not for the reasons that Block, presents. There is no obligation for the mother to inform anyone about the child. However, while it is true that no doughnut-hole shaped pieces of land ever "cries out to be homesteaded," a baby does. By it's very nature, it performs a whole series of involuntary actions to gain the attention anyone who will care for it. This is the case even for zygote, which attaches itself to uterine wall and releases chemical into the mothers body, informing it that is indeed the mother's child, and the mother's body responds accordingly to begin caring for that child. A baby wants to be cared for, and is constantly seeking that care. What then is the mother required to do?

Lets first consider a fully functioning adult in your house who wants to leave. You must allow him to leave. Yes, in order to do so, you must allow him to walk over your floor and out the door. While this may harm whatever psychic value you have for your home, to forcible keep him there would be tantamount to imprisonment. What then if the door is locked, or the person is in a wheel chair, and you must open the door for him. Again, while you are utilizing property you may not wish to utilize, failure to do so would place you in violation of the other person's freedom.

Now, lets suppose it was you who wanted the other person to leave, but the door was locked, or they were otherwise physically incapable of leaving on their own, and you refused to open the door. By demanding they leave, but refusing to [provide the minimum materiel assistance necessary for them to leave, you are acting out a performative contradiction. You may say you want them to leave, but your action, even the choice to not use physical exertion to open the door, says otherwise.

So, in the case of the mother who does not want the baby, and the baby wants to be in a scenario where it is cared for, the mother is only obliged to remove the child physically from her property. An

abjection could be made that such a society would be barbaric, and allowing this would lead to women leaving babies on sidewalks and in dumpsters. This objection does not take into account, however, that in a true libertarian society, there is no public property. All property is privately owned, including sidewalks and dumpsters. Leaving the baby there would, at least, be punishable for illegal dumping on another person's property. What's more, the baby is once again placed in a scenario where it cannot find care.

It is here that come to a nearly identical conclusion with Walter Block, that is, the mother must leave the baby on the proverbial "church step" or with some other institution that cares for the unwanted, not because of any positive obligation to inform others, but to avoid violating another person's property rights.

This safeguards the baby's welfare perhaps in a largely populated area such as a city or suburb, but what of the country, where there is little people, and plenty of unowned land. Can the baby be simply left out in a forest somewhere or must that person travel across unowned territory in order to seek out a place that will take the child in? What if none is to be found? For how long and how far must this person travel? According to a strict rule of private property, and it would be unjustified to physically compel them to do this.

Now it should be pointed out that this nonetheless eliminates not only the great majority of baby killing and abandonment, but the practical point must also be made as to how a person in the middle of nowhere can be caught and effectively prosecuted for anything. Also, what if the person in the middle of nowhere has not the means to care for the child? Is it his or her fault that this is the case, and that one of them must starve to death? There is no arbitrary minimum or maximum amount of care any one person can be obliged to give someone else, and any such obligation can only be tantamount to slavery.

Still, while making exceptions for extreme cases, a pro-lifer may still insist, on a matter of principle, that someone who does something as terrible as abandon a child when they had the clear means to take care of it should be severely punished. Okay, let's grant this and say that as a matter of justice, someone who abandons a baby in the woods must be punished. What sort of punishment would be fitting of such an act? Simple. Just as they refused to provide material aid to the baby, so everyone else in that rural community could refuse the same to that person. They could refuse to help him, trade with him, hire him for even the most menial and demeaning of tasks, and treat him with greatest hostility, or, perhaps worse, simply ignore him. Left to himself, cut off from the division of labor, abandoned by all, what would be his fate? Perhaps he would starve, unable to get food from the local farmer, or freeze to death, unable to get wood from the woodsman. A fitting fate, but notice how this does not contradict libertarian ethics. The abandoner inflicted no physical harm on the baby, so no physical harm is inflicted on him. He is simply "left alone to die" by the rest of society.

## **Parenthood**

If Argumentation Ethics forces us to conclude that a child, regardless of his age of cognitive ability, has the full rights of any adult, what then becomes the status of parenthood? Is there such a thing as guardianship rights? That is, can a parent make decisions for the child and exercise authority over them under this ethics, as parents have traditionally been able to do? Yes.

First, the act of caring for the child. How do we know, really, if a child wants to be cared for, or *would* consent to any type of care, if it had the full use of its reason. How do we know that the parent is not really committing aggression? For example, say Dr. Block lifts up his child to prevent him from running out into the road and being hit by a vehicle? Isn't he clearly infringing on the child's rights and

free action? Well, let's assume that saving a child from oncoming traffic is indeed aggression. What would be the just punishment for Dr. Block? Well, what could be more poetic justice than to wait, and have Dr. Block cower in fear of the day when he is old, lost his wits, and begins meandering out onto a freeway only to have his now grown son leap out, sweep him up, and carry him to safety! At this point it becomes highly questionable whether or not this is really punishment at all. Hence, through *reductio ad absurdum*, if we can determine that a truly proportional punishment for a crime is in fact not a punishment at all, then we can conclude that the crime in question is not even a crime.

Still, what of the status of Parenthood? It is the same as any act of giving. Voluntarily caring for a child is ethically no different than caring for an adult. An adult may be injured and unable to perform certain functions, but that does not imply that anyone who helps them now has any special "title of guardianship" over them. But doesn't that present another problem? An adult can refuse care, but what of a child? Well, if later down the line the child feels that, say, the pepto bismol he was given for a stomach ache was aggression, then the parent has only "etopped" his rights to not have the child spoon feed him pepto bismol for his own stomach ache. "Guardianship" is just as applicable to adults as children. Just as an adult can aid another adult as a body guard or house servant, so too can they do so with children.

What of parental authority? The authority comes from the parent's own property rights. Any parent may say, "so long as you live in my house, you must do such and such." However, a child must always be free to run away from a scenario he feels to be oppressive.

Can a child be rightfully taken from his parents on the grounds that they are being neglectful? Only if the parent is aggressing against the child. Otherwise, it would be at least a form of trespass, since they are entering to the parents domain, whether it be their home, or the arms of the mother herself. Neither can a child who is simply wandering about in playground be simply snatched up by some passer by who now wishes to be the child's new parent, because while the child itself is not being homesteaded, the space the child is occupying is, not just by the child, but jointly with the parent. Just as space is being homesteaded, albeit temporarily, when one places down a suitcase or any other object, so space can be homesteaded by parents when they place their child down to play within an area. Thus also, the defensive instinct of a parent is completely justified when they say to a stranger, "Do not come near my child!"

What about adoption? Can a child, or rather, the title of legal guardianship, be bought or sold? The moral instinct of many would be put off by the idea of buying and selling children, and they are right. Really, "sale" is not the proper term at all to describe what takes place in adoption. As demonstrated above, children are not half-way between ownable animals and unownable adult humans. They are human, period, and cannot be owned in any sense of the term. Still, it is common for prospective parents to pay an adoption agency in return for custody of a child. In this case, the new parents are compensating the adoption agency for the cost incurred of caring for the child in the interim. In a truly free market, the middle man of the adoption agency could be cut out completely, and the new parents pay money directly to the old. It would also be possible for the party who receives the child to also receive a net payment to compensate them for their future costs, like in an apprenticeship. In the case of God parents, guardianship may change with no exchange of money at all.

## **Toward a Unification of Axiomatic Reasoning with Natural Law**

In regards to Hoppe's Theory of Argumentation Ethics, Rothbard wrote that,

Hans Hoppe has managed to establish the case for anarchocapitalist, Lockean rights in an unprecedentedly hard-core manner, one that makes my own natural-law/natural-rights position seem almost wimpy in comparison.... remarkably and extraordinarily, Hans Hoppe has proven me wrong. He has done it: he has deduced an anarcho-Lockean



rights ethic from self-evident axioms...A future research program for Hoppe and other libertarian philosophers would be (a) to see how far axiomatics can be extended into other spheres of ethics, or (b) to see if and how this axiomatic could be integrated into the standard natural-law approach.<sup>39</sup>

This paper, in the view of the author, successfully accomplishes the first objective of extending axiomatics into new areas. The second objective would be another and likely far more extensive work that is well beyond the immediate objective of this paper. However, this new extension of the logical implications of argumentation ethics brings us further to that goal.

"The law of nature or natural law . . . is the law, the body of rights, which we deduce from the essential nature of man....which, by fair deduction from the present physical, moral, social, religious characteristics of man, he must be invested with . . . in order to fulfill the ends to which his nature calls him."<sup>40</sup>

Notice the similarity to Hoppe's point that, "it would be equally impossible to engage in argumentation and rely on the propositional force of one's arguments if one were not allowed to own (exclusively control) other scarce means (besides one's body and its standing room)." Not only are the non-aggression and first-use principles presupposed in the act of argumentation, but they are also necessary for man's physical survival. They are implied in the very "nature" of man and how he pursues his ends.

This unified approach cannot only used to determine what is legal or illegal, (that is, what *ought* to be legal, legal according to the natural law, what is rightful and just), but moral or immoral, and good or bad.

Aquinas, then, realized that men always act purposively, but also went beyond this to argue that ends can also be apprehended by reason as either objectively good or bad for man. For Aquinas, then, in the words of Copleston, "there is therefore room for the concept of 'right reason,' reason directing man's acts to the attainment of the objective good for man." Moral conduct is therefore conduct in accord with right reason: "If it is said that moral conduct is rational conduct, what is meant is that it is conduct in accordance with right reason, reason apprehending the objective good for man and dictating the means to its attainment."<sup>41</sup>

Just as argumentation ethics relies upon performative contradiction to determine rights and justifiable retribution, so too with morality. Take the case of self-mutilation. While the person in question is not aggressing against another person, he is acting contrary to his own nature. The performative contradiction enters in when we see that while he is injuring himself, he is still breathing, metabolizing, and while these are all subconscious actions, he is still consciously *living*, and the physical harming of one's own physical integrity acts counter to that end which he is still pursuing. Just as even the "doing of nothing" is an act, because in order to do so it requires the intentional giving up of all other possible actions, so too the mere passive act of living. Even during an attempted suicide, the person is still living, and the contradiction exists up until point of the death. However, death does not see the end of the self-contradictory nature of his actions, for in death, there is no action at all. We can therefore conclude, objectively, outside any imposition of subjective value, religious or

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39 Rothbard, "Beyond Is and Ought," *Mises Daily*, August 24, 2010, <http://mises.org/daily/4629>

40 Rothbard, *Ethics*, 23.

41 Ibid. 6-7

otherwise, that things such as self-mutilation and suicide are morally wrong.

## **Conclusion**

Through the extension of argumentation ethics with dialogical etoppel into the area of abortion, we have determined that human life begins at conception and lasts until natural death, throughout which there is a human person fully endowed with the right to self-ownership. There mere removal of the fetus from the mother's womb is not aggression, and fully within the mother's rights. Any harm done to the physical integrity of the unborn child, however, is an act of aggression, and any such harm that results in the death of the child is murder.

This presents a position which is not so much a compromise as it is opportunity for unity between the Pro-Life and Pro-Choice sides. The fundamental right of a woman to terminate the pregnancy is preserved, and the opportunity to do so will not diminish, but increase with advances in technology. This puts on it's head the common view that abortion increasingly less justified the more "viable" an unborn child becomes outside the womb. Rather, removal of the baby becomes more acceptable the further along a pregnancy becomes as it becomes more possible to remove the child without harming it and keeping it alive. This also satisfies the Pro-Life demand than babies not be actively killed.

With this, the libertarian movement can find unity on the issue of about while not breaking with principle. Not only does it make libertarianism far more attractive from the point of view from the Religious Right, the distinction between removal and killing does not fundamentally interfere with a woman's control over her own body, so long as that control does not interfere with any one else' right.

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