

Walter E. Block

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The compromise solution to the pro-life  
pro-choice debate controversy

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**Part I**  
**Introduction**



# Chapter 1

## Introduction



The present book is a presentation of how a libertarian, me, analyzes the controversial issue of abortion. Not only is this a contentious issue on the part of members of the general public, this applies to libertarians as well. Libertarians are a particularly contentious lot on many issues; on this one, even more so. Our opinions on this vital issue ranges all the way from Murray Rothbard, on the “left” who favors the pro-choice position, to Ron Paul on the “right” who is an ardent pro-lifer. Nor are these two gentlemen fringe members of this movement. Rothbard has been rightly characterized as “Mr. Libertarian” and Ron Paul’s libertarian credentials would be difficult to equal.

Why is this? Why is it that so much heat, and not as much light, has been spent on this issue, both within the libertarian community and in the general public? Why is this, perhaps, an issue upon which our nation may fracture?<sup>1</sup> Why is it that this is perhaps the most divisive issue threatening to rend our social fabric since the unpleasantness of 1861?

I suggest it is due to the fact that we, all of us, scholars and the man in the street, have been talking past one another. It is as if an automobile in an accident were painted red on one side and blue on the other<sup>2</sup> and the witnesses were vociferous in contradicting one another.

It is also as if two people were arguing about the proper legal status of a labor strike, and one thought it consisted of employees laying down their tools and

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<sup>1</sup>The Supreme Court hearings on Brett Kavanaugh were in one sense concerned about his fitness as a judge. But, lurking in the undergrowth, it cannot be denied, were fears and hopes that he would cast the deciding vote in some upcoming case concerning *Roe v. Wade*.

<sup>2</sup>These illustrative colors were not chosen purposefully, but now that I mention them, it is beyond me why red states are categorized as the preserve of the Republicans and blue is reserved for the Democrats. Should it not be the other way around? Who started this color scheme anyway?

engaging in a mass quit, while the other opined it also encompassed engaging in physical violence against “scabs.”<sup>3</sup>

What are the specifics in the abortion case? This appellation, too, akin to a labor “strike” commonly refers to two very, very different acts. On the one hand, it signifies a woman expelling, emitting, evicting or in some other way ridding herself of the fetus – in which case it is unclear as to whether the embryo will live or not.<sup>4</sup> On the other hand, there is an entirely different act, also seen as an aspect of this act: killing, murdering, the pre-born child, as in the case of partial birth abortion. Here, the youngster’s brains are sucked out of him while still in the womb, and he is pulled out, dead.

The present book will make, hopefully, two contributions. For one thing, it will offer a libertarian analysis of the matter based on private property rights. For another, it will tirelessly, endlessly, boringly, repetitively, insist upon the distinction between transferring the baby out of the mother’s body, and outright murder of the infant.<sup>5</sup> I will strongly defend the right of the woman to engage in the former act, even if the young child dies<sup>6</sup> but bitterly oppose the latter, except when it is medically necessary to save the mother’s life or health. This book makes the case for evictionism, and refutes numerous objections to it, emanating from both sides of this dispute.

The evictionist position advanced based on these libertarian premises constitutes a compromise between the pro-life and pro-choice philosophy. The former allows neither eviction nor killing; the latter justifies both. The position defended herein allows eviction, but not abortion (eviction plus murder). Hopefully, this compromise will be accepted by both sides of this controversy, and thus lead in the direction of a resolution of this highly contentious issue.

So, before advancing to the case in point, a few words about this philosophy may not be out of order.<sup>7</sup> Libertarianism is a theory of just law. It is predicated upon two pillars. One is the non-aggression principle (NAP): people may act in any manner they wish, except they may not initiate, or threaten, violence against anyone else, or their legitimately owned property. And how do we determine the latter? This is

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<sup>3</sup>I think I know why this word is not considered an example of “hate speech” as is the “N” word for blacks, the “K” word for Jews or the “C” or “P” words for women. The powers that be who rule on these sorts of things take the position that African-Americans and females (matters seem to be changing for members of the Jewish faith) are victim groups, alongside unionized workers, but not those, mainly black and Puerto Rican, who compete for these jobs as replacement workers. Go figure.

<sup>4</sup>He will survive, given present medical technology, in the last trimester but not the first two.

<sup>5</sup>The unwanted baby is seen as a trespasser. If an abortion is needed in both these senses, eviction plus killing, in order to save the mother’s life, this can be interpreted as an act of self-defense on her part.

<sup>6</sup>As he will in the first two trimesters but not the third.

<sup>7</sup>Organizing libertarians is akin to herding cats. Most supporters of this viewpoint are wildly individualistic. If there are 10 libertarians who are asked a question, there are likely to be 11 or more responses. Thus, I cannot speak for all libertarians; only one; viz., your present author.

based upon the other foundation: homesteading of virgin territory, and any licit title transfer, such as barter, sale, lending, renting, etc.<sup>8</sup>

Pretty much everyone has a strong opinion on this issue, but I must concede, the minds of most people are irrevocably made up, and will not even consider an alternative opinion, even one they have never heard of before, evictionism. Hopefully, there will be at least some individuals with an open mind on this matter; they are the target for this book.

This publication is a real “man bites dog” operation. No one, apart from a few libertarians (most of whom have rejected its thesis) have so much as even heard of the possibility of a third option in this debate. Once this becomes publicized, there is an outside chance that this will break through and become a non-fiction best seller.

One last word in this introduction; I am a male; the overwhelming proportion of the scholars mentioned in this book, and others who have written on this subject, share the same type of chromosomes. And yet, obviously, the subject of this discussion, abortion, disproportionately affects members of the female persuasion. This has led some critics to cry “foul,” and even to insist that the analysis of this issue should be left to members of the distaff side. Stuff and nonsense. This objection is part and parcel of what Mises (1998) has called “polylogism”: the doctrine that there are separate logics for men and women, and that never the two shall overlap. I reject this notion in its entirety.

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<sup>8</sup>For further elaboration, see Rothbard 1973a, b, 1998a, b.

**Part II**  
**What Is Evictionism? The Background**

## Chapter 2

# What Is Evictionism?



The abortion controversy is tearing our society apart. Some people are pro-choice, others are pro-life, and never the twain, seemingly, will meet, let alone calmly discuss this issue with each other. This is perhaps the most important controversy to beset our society since the one taking place until 1865. And, it is far less philosophically clear, with cogent arguments made by both sides, unlike that earlier debate.

I offer a compromise position between the pro-life and pro-choice positions, called evictionism. Philosophically, this is a principled compromise. (If A says that  $2 + 2 = 4$ , and B opines that  $2 + 2 = 6$ , then  $2 + 2 = 5$  is a compromise, but not a principled one, since there is no case to be made in behalf of that assertion other than it splits the other two claims down the middle). The pro-life view will not permit the woman to kill the fetus, nor evict it (before its nine month term);<sup>1</sup> the pro-choice perspective allows both. Evictionism cuts “this baby in half” so to speak, allowing the latter, but not the former. That is, the mother may legally evict her baby at any time, but may not kill the infant, ever.<sup>2</sup> Of course, given present medical technology, the pre-born child is viable outside the womb only in the third trimester. If evicted before that time, the baby will perish.

How is this principled? I rely on the John Lockean homesteading theory of private property rights. The fetus, we posit, is a human being, beginning from the fertilized egg stage; but the mother owns the womb. Therefore, as in the case of any other private property owner, she has the right to evict an unwanted trespasser (think of the case where this young human being is the product of rape), but not to kill him, since that would be murder as he is entirely innocent of any crime, in contrast to his evil rapist father. The pro-life side protects the fetus for nine months; it is illegal for him to be put to death at any time. The pro-life position does not protect the infant at any time during pregnancy; he may legally be killed for the entire gestation

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<sup>1</sup>Ideally, I should not refer to the fetus as an “it.” More properly, the preborn child should be referred to as a person. However, this appellation is so heavily ingrained in our language that I have not made efforts to avoid such usage. Perhaps I should have.

<sup>2</sup>Except when she does so out of defense: when her life or health are at stake.

period. Evictionism safeguards the baby for the last trimester, but not the first six months, given present medical technology.

Most people are totally and completely familiar with both the pro-life and pro-choice positions. Virtually no one is cognizant of evictionism. Thus, I risk repetition in saying that the pro-choice philosophy maintains, in effect, that the pregnant woman may evict the fetus, and, also, kill that young person. The pro-life viewpoint takes the position that she may do neither. Evictionism is a compromise perspective. Here, this woman may evict her baby from her “premises” but may not kill him.

This insight constitutes the application of libertarian property rights theory to a vexing controversy, abortion. This compromise solution will not fully please either of the two sides of this debate, but is the only possible reconciliation between the two. Nor are its benefits limited to the fact that the opposing forces in this debate may be brought together. Evictionism, also, is the only philosophical position fully compatible with human rights – our ownership of our own bodies; neither of the other two can make this claim.

There are many, many books and learned articles supporting the pro-life position. There are numerous other publications defending the pro-choice viewpoint. Evictionism is the *only* one that offers a perspective on abortion that is radically different than both. This book is the only one to apply the private property rights theories we all agree upon when referred to issues such as real estate, crime, torts, etc., to abortion. The underlying philosophical contribution of evictionism is that these basic legal premises can be utilized in this controversial case as well as practically everywhere else in law.

With Brett Kavanaugh replacing retiring Justice Anthony Kennedy – who was the main bulwark against the repeal of *Roe v. Wade* – that Supreme Court ruling will now become an important focus of attention. It might thus be timely at present to consider a compromise between the pro-life and the pro-choice philosophies. Evictionism constitutes a principled compromise, not merely adding up the two positions and dividing by two.

“Abortion” really is a misnomer. It consists of two separate acts, not just one. First, evicting the fetus from the womb. Second, killing the pre-born baby. The two are conceptually distinct, since even with present medical technology, it is entirely possible to evict the fetus without killing him, in the third trimester. (This is similar to “labor strike;” it too consists of two separate acts: downing tools, on the one hand, and preventing “scabs” from taking over the jobs, temporarily abandoned).

When does human life begin? I posit, *arguendo*, it is with the fertilized egg. (In the Jewish tradition, it is when the fetus graduates from medical school!) Why? Two reasons. First, the baby one hour before birth, and one hour afterwards, looks as much alike as all of us reading this book, two hours apart. Birth is merely a change of address. Second, so as to avoid a strawman argument. Evictionism calls for the killing of innocent human beings (e.g. fertilized eggs), and I want to make the case for this conclusion as difficult as possible for me.

So, what is evictionism? The pro-life side maintains that the pregnant woman may not evict the baby (of course until the nine-month period has elapsed) and certainly not kill it, while the pro-choicers take the position that she may both evict the

young child at any moment of her choosing, and, she may also kill it, even if it is viable outside of the womb (partial birth abortion in the third trimester). The evictionist compromise is that she may evict the pre-birth infant whenever she wishes, but may never kill it. That would be murder. Yes, the fetus will die if evicted in the first six months, but she will not be guilty of killing it, only of expelling it from her body and allowing it to die, a completely distinct matter.

Consider, first, the case of rape. The woman now has, inside her body, a small human being. A very much unwanted one. This youngster is akin to an innocent stowaway on an airplane. If we adhere to strict private property rights, this rape victim has the right to evict, but not kill, the fetus. Now, it might well be nice, and moral, for the woman to keep this tiny trespasser in her body, and for the airplane owner to land the innocent stowaway, but the doctrine of strict private property rights does not require it.

Now, take the case of voluntary sexual intercourse. One objection to evictionism is that the woman, in effect, agreed to carry the baby to term; she, in effect, signed a contract with the preborn infant. In the case of the host mother, she did indeed legally obligate herself to a nine-month stint; no eviction would be allowed in that scenario, let alone, abortion, which consists of ejection plus killing. Set aside the possibility of making binding contracts with under-aged persons. At the time of voluntary sexual intercourse, there was not even a fertilized egg with whom to make a contract of any sort. This is because it takes a period of time for the sperm to reach the egg. It does so only several long minutes after ejaculation. Even if we posit that “contracts” can be made with such an entity, voluntary sexual intercourse will still not qualify.

If *Roe v. Wade* is overturned, this will not constitute the death knell for the pro-choice position. Rather, one possibility is that each state will have to decide this matter for itself. Presumably, those on either coast will tend in the direction of pro-choice, the ones in flyover country, pro-life. Some states might hit upon yet another compromise: abortions up to the 20-week mark, but not afterward. This time period roughly demarcates when the fetus is viable outside of the womb – at present. However, as medical technology improves, this dividing line will come earlier and earlier. Better to adopt evictionism, which is philosophically sound, than to choose a time demarcation which will have to change with every alteration in medical technology. The point is, that would not be a principled compromise. It is not based upon the ownership rights women have over their own bodies, as is evictionism.

The “states’ rights compromise” cuts the cake somewhere near the middle, and, on a pragmatic basis, it might well satisfy both sides more than the present situation. But as a reconciliation based upon philosophical principle, it is a non-starter. Only evictionism attains that goal. It is important to attain deontological clarity, since there are reasonable arguments on both sides of this debate. It is perhaps the most vexing, and complicated issue our society now faces.

**Part III**  
**Response to Libertarian Critics of**  
**Evictionism**