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Libertarianism, Property and Rights: Rejoinder to Dominiak and Wysocki

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Abstract

Dominiak and Wysocki (2023), henceforth (DW), offer a critique of the views on punishment and self-defense of Rothbard, Kinsella, and Block. DW maintain that not only should the punishment fit the crime, but that proportionality should also be applied to self-defense. The present paper is a critique of the DW thesis and constitutes support for the views of Rothbard, Kinsella, and Block.

I am very grateful to Dominiak and Wysocki (2023)¹ for their splendid essay. It compels all political economy philosophers to think more deeply about this field of specialization, crime, defense, and punishment. It profoundly helps all of us to get that one millionth of an inch closer to the Truth

¹ Unless otherwise indicated, all quotes from DW refer to this one article of theirs. The author is grateful to Renata Ziemińska and Zuzanna Zawadka for their excellent editorial assistance. Any remaining errors and infelicities are solely the responsibility of the author.

with a capital T on these issues. However, the present paper is devoted not to their positive contributions, many and impressive as they are, but rather to a few of their failings and constitutes an attempt to correct them.

DW begin their analysis in this way: “Some libertarian scholars (Rothbard, 1998; Kinsella, 1996; Block, 2010, 2011a, 2011b, 2019a) embrace the view that to have a right to private property is to have a right to defend it against invasion. On the other hand, the same scholars support some version of the principle of proportionality, according to which the offender is exposed to *defensive or punitive* measures to the extent to which he violated the rights of another.”²

Defense and punishment are not synonyms. To be sure, they are not polar opposites either, but they are very different. What the property rights owner is entitled to do to protect his property while under attack is very different, not to say spectacularly divergent, from what he is entitled to do after the crime is completed, and the miscreant is captured and now liable to punishment.

Let us consider rape first. Is the woman about to be sexually assaulted legally permitted to shoot her rapist to death? This is almost a “gimme” question. Of course she is. She most certainly is. There can be no doubt about this.³ However, is the death penalty justified in the case of rape? Not even the Godfather, no sissy that he was, would agree to any such harsh punishment. When the baker asked for this retribution for his daughter’s rapist, the Godfather would only agree to a severe beating for the miscreant.⁴ What about shooting looters, if that is the only way to protect your property from theft? This is questionable in the minds of many. But very few people indeed would support the death penalty for robbers.

² Emphasis added by present author.

³ We are not talking here about a “he said, she said” kind of rape, where the facts of the matter are unclear. Yes, she agreed but had a few too many drinks. Or she agreed to sexual intercourse, but while in the act sort of changed her mind, but not clearly so. No, we are now discussing a blatant rape, where there can be no question about the fact that the woman never even came close to agreeing to participate in this act.

⁴ The intended target of the rape might justifiably gun him down if she thought he was going to murder her too, after sexually assaulting her. But suppose, *arguendo*, we remove this scenario from consideration. That is, we posit that she knows full well that only forced sexual congress is intended, nothing else. Would she still have the right to shoot him? I cannot see how this can be denied. She is, after all, the absolute owner of her body, and has the full right to repel a trespasser upon it, of any variety.

DW aver as follows: “In the present paper we argue that these two views do not square well, for if the only way to defend a right to private property against invasion is to use disproportionate force, then the principle of proportionality forbids such a defense, and having a private property right does not come with a right to defend it. Hence, either the principle of proportionality or the view that to have a right to private property is to have a right to defend it should be rejected. Since jettisoning the proportionality principle would be too big a cost to incur for the libertarian theory of justice, we conclude that it is the view that to have a right to private property is to have a right to defend it that should be rejected.”

This is problematic. The difficulty stems from the failure to accurately and fully distinguish between defense and punishment. Yes, the latter must indeed be “proportionate” although precisely what this entails is not always pellucidly clear and is therefore subject to debate. However, proportionality simply does not arise in defense, as we have made clear in our analysis of the rape and robbery cases.

Now consider a third example: attempted murder. A man rushes at you brandishing a hatchet and screaming, “I’m going to kill you.” He is now five feet away from you, almost within striking distance. Do you or do you not have a right to shoot him in the chest, instantly killing him? There can be no doubt that you do. However, before you can do so, he trips and falls unconscious, incapacitating himself. You call the cops, who take him away and put him in jail.⁵ He is now in the dock, ready to be sentenced. Proportionality would not imply the death sentence. After all, he did not even touch you. Yes, he scared you, but in terms of actual physical violence against you, there was none. At least some versions of proportionality would not contemplate any such punishment as the death penalty. Again, we have separated defense and punishment with a gap big enough to drive a truck through.

DW now introduce their “Property Defense Dilemma” (henceforth PDD), that is, a logical predicament consisting in the fact that if the only available property defense happens to be excessive, then the ownership right in question – contrary to what the libertarian view on property rights declares – is not accompanied by a right to defend it. To the contrary, it is accompanied by a duty not to defend it. We submit that the main way

⁵ The entire episode is taped, so there can be no question of his guilt.

in which the aforementioned libertarians can avoid the PDD is to attenuate their account of property rights, that is, to conceive of these rights not as strongly absolute but instead as absolute only in a weak sense. As we contend, the same applies, *mutatis mutandis*, to those libertarians who would rather follow Walter Block's footsteps and, instead of attenuating the stringency of property rights, replace the proportionality standard with the gentleness principle, for although doing so would indeed allow them to escape the PDD, it would nonetheless compromise the overall coherence of their theory and commit them to morally grotesque predictions.

DW thus throw down the gauntlet. Their problem, as I shall have to say over and over again, is that while proportionality does indeed properly pertain to punishment, it does not at all apply to defense, and these authors insufficiently distinguish between these two very different states of affairs.

Our authors now quote Rothbard: "If every man has the absolute right to his justly-held property, it then follows that he has the right to keep that property – to defend it by violence against violent invasion... To say that someone has the absolute right to a certain property but lacks the right to defend it against attack or invasion is also to say that he does not have a total right to that property" (Rothbard, 1998, p. 88). DW continue, mentioning the views of Mr. Libertarian: "every man has an absolute right to the control and ownership of his own body, and to unused land resources that he finds and transforms" (Rothbard, 1998, p. 60).

Here is their critique of this father of libertarianism (footnotes deleted): "Rothbard subscribes to the proportionality principle in the use of defensive force. As he points out, 'We have advanced the view that the criminal loses his rights to the extent that he deprives another of his rights: the theory of proportionality' (Rothbard, 1998, p. 85). The principle of proportionality in the use of defensive force applies both to attacks against self-ownership rights and to invasions of private property rights. As explained by Rothbard (1998, p. 80), 'If a man deprives another man of some of his self-ownership or its extension in physical property, to that extent does he lose his own rights.' It is worth noting that the Rothbardian proportionality requirement applies across the board, that is, both in self-defense and in punishment. Specifically, for Rothbard, the proportionality that applies to just punishment is derivable from the proportionality of self-defense, as evidenced by his contention that "all rights of punishment derive from the victim's right of self-defense" (Rothbard, 1998, p. 90).

Yes, it cannot be denied that proportionality applies to punishment. “Let the punishment fit the crime” might well be a motto to which Rothbard could enthusiastically subscribe. However, as we have seen in our rape, theft, and attempted murder scenarios, it is highly problematic for this principle to also apply to defense. It implies that if your assailant comes at you merely with fists and feet, punching and kicking at you, you may not use a knife, since that would be disproportionate. If he threatens you with a blade, you must limit yourself to that kind of weapon and may not employ a gun. How DW dredge anything of the sort out of Rothbard’s writings is unclear, to say the least. They attempt to ascribe this view to Rothbard on the basis of this statement of his: “all rights of punishment derive from the victim’s right of self-defense” (Rothbard, 1998, p. 90). Well, yes, punishment does indeed “derive” from self-defense. If Jones has no right to a car in the first place, that is, if the automobile belongs to Smith, then the former may not prevent the latter from using it, selling it, bequeathing it, etc. Jones may not defend the vehicle against Smith, since the latter is the rightful owner. Jones certainly may not punish Smith after the fact of his use of the car, either, and this directly “derives” from Smith’s ownership of it. However, to deduce from these statements that *if* it were Jones’ car, and Smith stole it, that since the punishment for this lawbreaking must be proportionate to the crime, then so must the defense of it be, strains all credulity. The one simply does not logically follow from the other.

Nothing loth, DW continue in this vein: “And the proportionality of self-defense seems to be a corollary of the Rothbardian claim that the criminal loses his rights ‘to the same extent as he has taken away’ from his victim. The principle of proportionality, thus understood, also determines that if the use of defensive force exceeds the extent to which the offender has forfeited his rights, then it becomes a violation of the offender’s remaining rights. As Rothbard writes: How extensive is a man’s right of self-defense of person and property? The basic answer must be: up to the point at which he begins to infringe on the property rights of someone else. For, in that case, his “defense” would in itself constitute a criminal invasion of the just property of *some other man*, which the latter could properly defend himself against. (Rothbard, 1998, p. 77)⁶ At the same time, it should be clear that regardless of where exactly lies the point at which the defender

⁶ Emphasis added by the present author.

begins to infringe on the offender's rights or, to put it another way, where exactly is the limit up to which the offender forfeits his rights, if defensive measures exceed this limit, they *ex hypothesi* become disproportionate and "themselves constitute a criminal invasion."

This is an ingenious attempt on the part of DW to ascribe to Rothbard the view that since punishment must be proportionate, then so must defense. The key element here is "some other man." Consider the following scenario. Smith owns the car. Jones is in the process of stealing it. Smith, in "defending" his property, shoots Green, an innocent bystander. Then, yes, to be sure, Smith's "...defense' would in itself constitute a criminal invasion of the just property of *some other man*, which the latter could properly defend himself against." The "some other man" here is clearly Green. Thus, this attempt of DW's also fails to establish that Rothbard acquiesces in the notion that just because punishment must be proportional to, and must "fit," the crime, then so too must be defense. Nothing of the sort logically follows.

DW then assert: "Similar views are held by Stephan Kinsella, one of Rothbard's renowned followers.... Moreover, he submits that 'the aggressor is 'estopped,' or precluded, from denying the victim's right to use (proportional) responsive force.'" And, as we remember, what Kinsella's doctrine of dialogical estoppel infers from the invalidity of a denial of a given right is indeed its existence. This in turn conclusively establishes that Kinsella does believe in the "right to use (proportional) responsive force."

DW herein try to paint Kinsella into a corner, but the corner is a very big one. They correctly demonstrate that he "does believe in the 'right to use (proportional) responsive force.'" However, what is required on the part of DW is not that. Rather, it is to show that Kinsella's principles, or basic premises, logically require that *only* proportional responsive force is justified. This DW do not at all succeed in demonstrating. This is so far from their ken that they do not even *try* to establish any such thing. Rather, these scholars content themselves with showing that the aggrieved party *may* so limit himself; that if the victim wishes to limit himself in such a manner, he violates no law, a libertarian is obligated to respect. This is certainly true, but it paints Kinsella into no "corner" at all.

At this point in their essay, DW turn their attention to the writings of yours truly. They state, "... the connection between a right in a scarce resource and a right to defend it surfaces in Walter Block's writings (2010, 2011a,

2011b, 2019a). For example, in this exposition of evictionism, Block (2011a) submits that “[i]n libertarian law, the property owner is entitled to remove the trespasser in the gentlest manner possible; if this necessitates the death of the trespasser, the owner of the land is still justified in upholding the entailed property rights.”

But “gentlest” is not a synonym for “proportionate.” If I am attacked by a would-be murderer, and I have a lead bullet in one gun, and a rubber bullet in the other, both of which will stop the attack equally so, then I am obligated to use the latter.⁷ If I have a net that will merely tie him up, and also a sword which can also suffice to ward off⁸ the attack equally, again, ditto. Why? From a utilitarian point of view, this is because every life is precious, even those of murderers.⁹ From a deontological point of view, the victim is entitled to do only so much as is necessary to safeguard his person and his property. If he can do so with no risk at all equally with a gentle and a harsh means, where the latter inflicts more damage on the criminal, then if he chooses the latter, he is criminally responsible for the excess.

I said above at the outset of this essay that I was inspired to think more deeply about these matters thanks to the brilliance of DW. Here is an instance of that very phenomenon. In the publications of mine cited by these two authors (Block, 2010, 2011a, 2011b), the “criminal” I was writing about was an innocent trespasser: the fetus who resulted from a rape. Surely, no one, no one at all, would think it legal to carry out an eviction that harmed the baby more than necessary. For example, the pre-birth baby is viable outside of the womb in the third trimester. He could be evicted with no harm to himself or with great harm. Anyone choosing the latter

⁷ This assumes that I have time and am not too frightened to make a deliberate decision. If not, and I kill the assailant, I am guilty of no crime at all. It is only if I purposefully kill him, when I could have refrained and merely subdued him with the same degree of certainty, that I am guilty of a crime. Surely, a lesser one than that of the initial rights violator, but still a crime.

⁸ When I say equally ward off, I mean equally ward off. This means right now, during the attack, and forever afterward. For example, stipulate that the lead bullet and the sword will kill the marauder, and he will never again molest me, nor will his family or friends; then the same exact situation must also ensue with the use of these other defenses. If not, then there is no equality in the warding off.

⁹ Assuming again that if they are treated “gently” they will in the future wreak no more havoc than they would otherwise have done.

would certainly be a criminal. But DW have compelled me to think about criminals who are not at all innocent and to react to that challenge. I am very grateful to them for that.

They now pose their critique: “Although Block indeed invokes a different principle constraining legitimate self-defense (i.e. gentleness rather than the Rothbardian proportionality requirement), it is incontrovertible that Block also subscribes to the proportionality principle as far as the libertarian theory of punishment is concerned. Even more, Block seems to recognize proportionality – with minor adjustments to the standard aside – as a more or less universal feature of libertarian punishment theory, which is evidenced by the following quote: Libertarian punishment theory is predicated on the notion that the punishment should be proportionate to the crime. Specifically, this translates into the formula that whatever the miscreant does to his victim is done to him, only twice over. Sometimes called the ‘two teeth for a tooth’ theory” (Block, 2003, pp. 76–77).

This is indeed an accurate portrayal of my own views. See below for a further elaboration of them by DW and my response.

But at this point in their essay DW take off after Rothbard because he “... claims that the homesteading of an unowned resource vests its appropriator with an absolute right to the resource. In turn, by the concept of absolute right to private property Rothbard understands a right that is accompanied by a right to defend this private property against attack or invasion. At the same time, Rothbard subscribes to the proportionality principle, according to which the defender has a right to use defensive force only to the extent to which the offender forfeited his rights by invading the rights of another.”

These authors then follow up their negative assessment with a convoluted scenario involving B attacking A, different “extents” of guilt labelled e1 and e2, and PDD. But all of this is predicated upon a misunderstanding of Rothbard. Mr. Libertarian, as he is widely and justly known, does not at all “subscribe to the proportionality principle” when it comes to defense,¹⁰ an entirely different matter. DW’s failure to take cognizance of this primordial fact renders their criticism of Rothbard null and void.

¹⁰ At least he has not yet been cited as doing so. However, see below: When the “urchin” is mentioned, he does, as DW brilliantly point out.

DW continue with their analysis: “Rothbard considers a case of bubble gum theft. An urchin enters a shop and steals a piece of bubble gum. Rothbard investigates the question of whether the storekeeper has a right to kill the urchin. About the affirmative answer to this question Rothbard concludes the following: I propose that this position suffers from a grotesque lack of proportion. By concentrating on the storekeeper’s right to his bubble gum, it totally ignores another highly precious property-right: every man’s – including the urchin’s – right of self-ownership. On what basis must we hold that a minuscule invasion of another’s property lays one forfeit to the total loss of one’s own? ... We conclude that the shopkeeper’s shooting of the erring lad went beyond this proportionate loss of rights, to wounding or killing the criminal; this going beyond is in itself an invasion of the property right in his own person of the bubble gum thief. In fact, the storekeeper has become a far greater criminal than the thief, for he has killed or wounded his victim – a far graver invasion of another’s rights than the original shoplifting. (Rothbard, 1998, pp. 80–81) ... But then, what if the only way to prevent the urchin from stealing the bubble gum is by killing him?”

It is time for me to eat a bit of crow. I have been defending Rothbard against the critique of DW. I was wrong. Their bubble gum example is definitive.¹¹ DW have Rothbard dead to rights. Here is an example of defense, not punishment, and yet Rothbard fails the test of upholding absolute rights over property, no matter how picayune in terms of the former. Of course there are ways of deprecating this example. First of all, it is a shot below the belt to mention children. According to that old adage, “Patriotism is the last refuge of the scoundrel.” What, then, is the last refuge of the political philosopher? Children, of course.¹² Whenever faced with a losing argument, such as that property cannot be defended totally radically, they bring in these youngsters. The only proper answer is: Yes, it would be justified to kill a child stealing bubble gum if that were the only way to ensure property rights. If there were an adult doing this type of robbery, analysts would not give in quite so easily in their support for private property rights.

¹¹ I had completely forgotten about this rare deviation of Rothbard’s from pure libertarianism. DW are entirely justified in correcting this oversight of mine.

¹² What is the last refuge of the leftist, wokist, socialist? “What about the poor?!”

Secondly, let us now forget about bubble gum. We must get serious. Consider Jean Valjean who stole a loaf of bread from the baker in order to feed his starving child. The hearts of leftists everywhere would go out to this thief. However, if the bakers cannot protect their private property rights, they will no longer be able to provide bread for anyone, and everyone, adult and child alike, will starve.

Third is the fact that if Jean Valjean gets away with his trashing of civilized values, the baker's child will perish without this food. Better yet, let us suppose that it was not the adult Jean Valjean who stole this food-stuff, but rather, his otherwise starving child. Then, people who are willing to compromise with strict libertarian principles, such as Rothbard and DW, will focus on the child-thief. Their hearts will go out to this "urchin." They will have forgotten all about Hazlitt's (1946) and Bastiat's (1850) insights concerning the seen and the unseen. They will not reckon with the fact that if this urchin can get away with his robbery, there will be no more bakers, and there will be mass starvation.

The proper libertarian answer is not the one offered by Rothbard. It is rather, to stand firm, to grasp the bull by the horns, and to insist that the shopkeeper who shot any thief, child or adult, in order to protect his private property, is not himself a criminal. There would indeed be, in this case, in Rothbard's (1998) words, "a grotesque lack of proportion," but proportion applies only to punishment, not to defense of property which is an absolute right.

Fourth, let us tackle this from yet another angle. Consider, again, not bubble gum theft, but a very slight assault and battery against a person himself. I have in mind here the merest touching. We are now talking about something done on purpose, not an accident, like stepping on someone else's shoes by mistake or grabbing them while slipping or falling.¹³ Perhaps a very slight slap. Does the victim have the right, yes or no, to prevent such an effrontery to his person by shooting to death the perpetrator, if that is the only way he can defend himself? DW, and perhaps even Rothbard, who do not take sufficiently seriously fully absolute rights to defend person and property, might well call this a criminal act. Those of us who take personal and private

¹³ These would be torts, not crimes.

property rights seriously, absolutely, would not characterize this killing in self-defense as criminal.¹⁴

On a practical level, in a wealthy economy, it would be a rare case indeed in which anyone shot a child over bubble gum or bread. At the very least, there would be not only a financial boycott set up against such an entrepreneur, but he would likely suffer personally as well.

DW further target my thoughts on this matter: “As mentioned before, Block envisages constraints on legitimate self-defense as stemming from a principle which is different from Rothbard’s proportionality requirement. Actually, Block embraces the so-called gentleness principle. Block illustrates the principle in question as follows: [I]f A sees B stepping on his lawn, as a first step A may not blow B away with a bazooka. Rather, A must notify B of his trespass, and if B immediately ceases and desists, perhaps even with an apology thrown in, that is the end of the matter. It is only if B turns surly, hostile, and aggressive, and refuses to budge, that A may properly escalate. Not immediately, to the bazooka stage, but a threat to call the police would not be considered at all inappropriate; even a physical push would not be untoward. If B at this point initiates physical aggression against A, say by pushing him back, throwing a punch at him, or pulling a gun or knife on him, then all bets are off, and A may appropriately escalate the violence sufficiently to protect himself and his property from invasion. That is the sum and sole element of ‘gentleness’ in libertarianism. (Block, 2011b, p. 5) In other words, the defender of a property right in question is obligated to resort to the mildest possible means of defense out of all the means available.”

I think it is possible to defend this “gentleness principle.” They accurately sum it up as follows: “... the defender of a property right in question is obligated to resort to the mildest possible means of defense out of all the means available.” I would add one friendly amendment: this mild defense will suffice. If not, harsher methods may be undertaken.

¹⁴ On what physical property would such a slight slap take place? Not on a public sidewalk, because there would be no such thing in a fully libertarian society. On a private sidewalk then. Or in a store, or a mall, or a private park. Well, then, if cases of this sort ever arose, the proprietors of each and every place would make their own rules concerning such behavior.

DW continue: "If, conversely, the defender defends his rights by excessive means, it is he that starts behaving impermissibly. Note that Block's gentleness principle makes a different prediction as to legitimate defense from Rothbard's proportionality requirement. The critical difference is that Block's gentleness principle implies that there are always, that is, regardless of circumstances, means of permissible defense, provided there are some means of defense in the first place."

These authors further elaborate on this principle, and here get it exactly right: "... specify all available means of defense and pick up the mildest, and the latter is guaranteed to constitute a permissible way of defending one's rights." That is to say, the mildest defense will prove satisfactory in attaining the ends in question.

These incisive scholars herein articulate this principle in a manner superior to my own rendition of it: "... Block would allow for even grossly disproportionate self-defensive force, providing the force still constitutes the mildest defensive means available..."

DW are kind enough to write: "At first glance, it appears as though Block – unlike Rothbard – does not run into the contradiction. That is, it seems that Block can consistently hold his view about rights and maintain his gentleness standard in property defense. For, on the face of it, it looks plausible that once a right in property *x* is granted, it must inevitably be accompanied by a right to defend *x*. After all, however scant and inadequate the means of defense might happen to be at the defender's disposal, there is always the gentlest one among them, and that is the one the defender seems to have a right to employ. Generally speaking, as long as there are any defensive means available to a defender, the defender equipped with a property right in *x* unproblematically enjoys a concomitant right to defend *x*."

After this build-up, for which I am extremely grateful, what criticism do they launch against this principle of mine?

"Therefore, it seems that Block's account avoids the above contradiction. However, it should be obvious that Block's gentleness principle, if unsupported by the principle of proportionality, leads to morally counterintuitive predictions. To prove that, let us consider what Block's gentleness standard predicts in the above-adduced scenario of the bubble gum thief. And again, for the sake of argument, assume that killing the thief is the only means of defending the bubble gum. Now, what follows trivially from the fact that killing the urchin constitutes the only

defensive recourse is that killing him is also the gentlest defensive means. But remember, in Block's account of self-defense, the defender is permitted to employ the gentlest defensive measures. Consequently, in the scenario under consideration, the Blockian theory predicts that the storekeeper is permitted to kill the urchin. Still, the moral verdict reached on Block's grounds is most definitely implausible. After all, it is hard to deny that killing the bubble gum thief suffers from "a grotesque lack of proportion." And we contend that since this implication of the Blockian theory of legitimate self-defense is highly unpalatable, this in itself casts doubt on the gentleness principle. Moreover, if we analyze Block's aforementioned thought experiment involving B's stepping on A's lawn, we can see that probably even Block himself is not ready to bite the bullet and conclude that ultimately A may blow B away with the bazooka. After all, Block considers successively more severe means aimed at defending A's property right in the lawn. Specifically, Block suggests that A ought to start with relatively mild defensive measures employed against B, such as notifying "B of his trespass," and only then to proceed with "a threat to call the police." But why the need to gradually escalate the severity of defensive means? If Block sincerely believes in his gentleness principle, then it is a matter of fact that in his imaginary scenario nothing less than a bazooka would do for the purpose of property defense.

De gustibus non est disputandum, or *de gustibus non disputandum est*, is a Latin maxim meaning "In matters of taste, there can be no disputes." DW's case against my "gentleness principle" comes down merely to a matter of different tastes. These authors take yeoman's efforts to render this principle of mine "unpalatable" and then, shockingly, find it not to their taste. First, they talk about an "urchin." That means, if it means anything at all, a mere child. Second, they posit that there is no other way for the shopkeeper to safeguard his property than by killing this mere babe. How likely is it that a storeowner can only protect his wares by doing away with a child?

Not very. Let us attempt to render this horror scenario more palatable. Posit that the stolen goods can save the lives of 1000 people, but will be entirely wasted if the child is allowed to abscond with them; he will just throw them down the sewer as soon as he leaves the emporium. Now, all of a sudden, the gentleness principle becomes more attractive. But this alteration has little or nothing to do with the principle. Rather, it stems from the side

conditions DW and I are imposing on the situation. These authors also maintain that my views lead to “morally counterintuitive predictions.” Yes, indeed, killing a youngster does not pass the moral smell test unless, of course, it is to save the lives of 1000 people. This applies as well to the critique of DW to the effect that “Still, the moral verdict reached on Block’s grounds is most definitely implausible.” The same holds true for “a grotesque lack of proportion.” Again, these scholars confuse punishment, where proportion is all important, with defense, where it is entirely irrelevant.

Let us now poke a hole in the doctrine that requires “proportionality” not in punishment, where it full well applies,¹⁵ but in defense, where it most certainly does not.

Suppose someone is coming at you, yelling that he is going to kick your butt, and has only arms and legs to do his bidding (he has no knife or gun). Are you limited to fighting him *mano a mano*, with only fists and kicking at your disposal? This seems to be highly problematic, not to say “a morally counterintuitive prediction.” If this miscreant is known to be a karate or judo master, may you use in your defense a knife or an even more powerful implement, a gun? If only a knife is apropos, but you shoot him with a pistol, are you to be considered a criminal, along with him? Suppose he has a knife; proportionality would appear to limit you to a similar weapon. If you utilize your pistol, are you a criminal? That sounds at least to my ears, “highly unpalatable” or, should I say, “a grotesque lack of proportion,” but highly justifiable. We are not now talking about “urchins” grabbing bubble gum, or people inadvertently and unintentionally stepping on your lawn. We are now discussing a person intent upon tearing you limb from limb. Proportionality, in addition to being unseemly, is dangerous to boot. Are you supposed to ask this person if he is acquainted with the finer points of judo or karate, whether or not he is good at merely stabbing, or can also throw his knife at you with pinpoint accuracy from 20 feet away? Also, if he flashes a gun at you in his attack upon your person, are you required to ask him his score on the shooting range? After all, it would not be at all “proportional” if you were a better shot than he was.

¹⁵ The punishment should “fit” the crime, both vertically and horizontally. In the former case, the punishment for slight crimes should be less severe than that for severe violations of law. In the latter case, criminals guilty of the same or similar crimes should be treated in like manner.

The point is, a requirement for proportionality in self-defense takes egalitarianism out of all reasonable considerations. This is not a sports contest, where it is important to have a level playing field, where after each touchdown the two teams switch sides, to ensure fairness. This is a life-and-death situation, and proportionality simply has no proper role to play, the views of DW to the contrary notwithstanding.

Next, consider this critique of my viewpoint: "... the gentleness principle eventually does predict that if the use of a bazooka were the gentlest means of enforcing A's property right in the lawn, A may indeed blow B away with the bazooka. We submit that this is the most morally implausible conclusion, and as such it constitutes a decisive reason to reject either Block's standard of property defense or to attenuate his uncompromising commitment to the view that to have a private property right is to have a right to defend it."

I acknowledge the power of this objection to my thesis. It does indeed look and sound awful, even to my own eyes and ears, to blow someone into smithereens for the slight property rights violation of trespassing on the gun owner's lawn. But a little bit of deeper analysis indicates that matters are not quite so straightforward.

First of all, this trespass upon the lawn was not accidental; it was on purpose. If the former were true, the person stepping on the lawn would say "oops" and then apologize and then quickly remove himself from the premises. So, this was a purposeful violation of property rights.

Second, it is a heroic assumption that the only way, and/or the gentlest way possible, to remove the purposeful trespasser was to kill him. More realistically, the lawn owner could say something of the order of "If you don't remove yourself from my lawn, I'll call the cops on you." In any even semi-realistic case, this would more than suffice. Killing is hardly necessary. However, DW insist that this is the only solution. Now, they are raising the ante. They are raising it so far that it will boomerang upon them. For now it is not merely the choice as to whether this trespasser shall die. It is instead rather, how many people will perish if private property rights can be obliterated by not allowing the lawn owner to rid himself of this squatter. The answer, of course, is that thousands, maybe millions, of innocent people will be killed if private property rights are not upheld, and not strictly enforced. The problem with the DW analysis is that we only see this one person, the intruder, and our hearts go out to him. We do not want him killed.

Hazlitt (1946) and Bastiat (1850) have warned us about the seen and the unseen. DW “see” only this one person. Unseen by them are the literally millions of people, maybe all of us, whose very lives depend upon the sanctity of private property rights. When there is only the one life at stake, the one of the intruder, I agree with DW, and my theory looks “morally implausible.” But when we put the matter in full context and consider not only this “seen” phenomenon, but also the multitudes of the “unseen” if private property rights are trashed, as they wish, this criticism of theirs loses its force.

Next, DW state: “It is important to note, however, that this implausibility of Block’s position is still arrived at by way of a highly charitable interpretation of his gentleness principle and that it would have been even greater had we read this author less generously.”

I am grateful to these authors for offering “a highly charitable interpretation” of my thesis. That, indeed, is the scholarly way of interpreting viewpoints. Of course, if the interloper escalates, and not only refuses to get off the lawn but now increasingly initiates the quantity and severity of the violence utilized against the property owner, then it becomes easier and easier to accept my viewpoint. However, I have just discussed their criticism above, under the heading of the seen and the unseen, in which the case against my perspective is the strongest: the trespasser does not use or escalate his use of violence at all; he merely insists upon remaining in possession of property that does not belong to him. And here, I think I made a strong case in this regard.

My learned friends aver as follows: “Our last objection against Block’s theory of property defense is that it does not cohere with his account of punishment. As far as punishment is concerned, Block (2019b) holds on to the proportionality standard in the form of ‘two teeth for a tooth’, with minor qualifications aside. To highlight how grossly Block’s account of self-defense and of punishment diverge...”

Of course, they diverge, and indeed they do so “grossly.” But this is entirely justified, since the two phenomena are widely disparate. In the case of defense, the victim is under the gun or the knife. His very life is in danger, to say nothing of that of his dependents. He is entitled to engage in extreme measures to defend himself and his loved ones. But where punishment is concerned, matters are very different. The victim is no longer in danger. The perpetrator is behind bars or in handcuffs. There is no longer

any immediate danger of a crime. That the libertarian analysis of the two situations should “grossly” diverge between these two very different circumstances should occasion no great shock or intellectual dismay.

DW next take up the case where the urchin has already absconded with the bubble gum, and criticize my analysis of this case. My libertarian colleagues aver that “... what clearly constitutes a morally optimal course of action is to let the bubble gum thief go and subsequently claim restitution.”

But suppose the thief hides, and/or, for any other reason, is never heard from again. Then this course of action implies support for theft. I find that difficult to reconcile with libertarianism. Even if he is found, he may not be able to offer any restitution. And even if he is, why should the owner of property have to wait to have his merchandise returned to him when he has the power to stop the theft in the first place?

All throughout their essay, these authors maintain that my gentleness principle leads to conclusions that appear incompatible with libertarianism, or “morally implausible.” Here, I return the favor. They “... suggest that an absolute right in property *x* does not necessarily come accompanied with a concomitant right to defend *x*...” This sounds very counterintuitive. I am tempted to reply that if a person has an absolute right in property *x*, then he necessarily has a concomitant right to defend *x*. Further, if he does not have a concomitant right to defend *x*, then he really has no such thing as an absolute right in property *x*.

They say: “... the storekeeper may not shoot the thief. And yet, this fact would not threaten his absolute right at all, for he would still have recourse to the law in the form of claiming restitution.” In my view, to the contrary, this is insufficient. Yes, if the thief gets away with his crime, restitution is all well and good. But in addition, the owner of the store may indeed try to stop the crime at its source, and, almost always, the “gentlest manner possible” for so doing is not at all intuitively awkward.

These authors repeat what I consider to be an error of theirs: “... there are rights in property *x* that do not imply rights to defend *x*.”

As against this, I offer this statement of Malcolm’s (1958, pp. 31–32) which he wrote while he was a student, about his then teacher, Ludwig Wittgenstein: “On one walk he ‘gave’ to me each tree that we passed, with the reservation that I was not to cut it down or do anything to it, or prevent the previous owners from doing anything to it: with those reservations

it was henceforth mine.” The point, of course, is that Malcolm really does not own those trees. In like manner, neither does the “owner” of *x* really own *x* if he is legally forbidden to protect his so-called property.

By “*x*” DW mean some physical property, such as bubble gum, or a car, or a pair of shoes, or something like that. But this hardly exhausts the types of property which may properly be owned by individuals. They may also be said to own their own bodies, to own their very selves. This is why rape, kidnapping, and murder are crimes: the rights violator in each case is guilty of interfering with these property rights. Let us discern how DW’s statement to the effect that “... there are rights in property *x* that do not imply rights to defend *x*” applies in this case.

When a rapist comes a-calling, and the only gentle defense the woman can utilize is to shoot him dead, she may not do so according to DW, since this would be overkill. After all, the rapist would lose his very life, while his intended victim, let us stipulate, would suffer a less grievous invasion of her body.¹⁶ I find it highly problematic that according to libertarianism, the woman must allow the rape to occur, since her rights in her own body do not “imply rights to defend” herself against this unwarranted attack on her person. Yes, afterward, she may seek compensation.¹⁷ Whatever kind of world this is, it is not a libertarian one.

According to these learned philosophers: “Block’s gentleness principle yields morally implausible verdicts. That is, it predicts that even though defensive measures may turn out to be grossly disproportionate, they would still be permissible as long as they count as the mildest ones. And as we saw in the bubble gum scenario, Block’s theory of legitimate self-defense leads to the conclusion that shooting the urchin is permissible since this act constitutes the mildest defensive means available, something which pretty much reduces Block’s position to absurdity.”

Any conclusion to the effect that the female victim must acquiesce in a rape, when she has the ability to halt it in its tracks by shooting the rapist, constitutes a very serious *reductio ad absurdum*. In the words of DW, this is “morally implausible.”

¹⁶ Rape is a horrid crime, to be sure, but it is less intrusive than outright murder.

¹⁷ She may not be able to attain much in the way of compensation if her rapist is a homeless bum.

DW base much of their analysis in this paper on the insights of Kramer (2014). I greatly regret this, since I regard these authors as brilliant libertarian theoreticians, and in this one case they have substituted Kramerism for Rothbardian libertarianism.

Bibliography

- Bastiat, F. (2022 [1850]). *What Is Seen and What Is Not Seen*. November 25. Mises Institute. <https://mises.org/library/which-seen-and-which-not-seen>; <https://fee.org/resources/that-which-is-seen-and-that-which-is-not-seen>.
- Block, W. E. (2003). Berman on Blackmail: Taking Motives Fervently. *Florida State University Business Review*, 3 (1), 57–114.
- Block, W. E. (2010). Response to Jakobsson on Human Body Shields. *Libertarian Papers*, 2 (25), 1–9.
- Block, W. E. (2011a). Response to Wisniewski on Abortion, Round Two. *Libertarian Papers*, 3 (4).
- Block, W. E. (2011b). Evictionism is Libertarian; Departurism Is Not: Critical Comment on Parr. *Libertarian Papers*, 3 (36), 1–15.
- Block, W. E. (2019a). Human Shields, Missiles, Negative Homesteading and Libertarianism. *Ekonomia – Wrocław Economic Review*, 25 (1), 9–22.
- Block, W. E. (2019b). Libertarian Punishment Theory and Unjust Enrichment. *Journal of Business Ethics*, 1 (154), 103–108.
- Dominiak, Ł., & Wysocki, I. (2023). Libertarianism, Defense of Property, and Absolute Rights. *Analiza i Egzystencja*, 61, 5–26. <https://wnus.usz.edu.pl/aie/pl/issue/1238/article/19663/>.
- Hazlitt, H. (2008 [1946]). *Economics in One Lesson*. Mises Institute. http://mises.org/books/economics_in_one_lesson_hazlitt.pdf.
- Kinsella, S. (1992). A New Justification for Individual Rights. *Reason Papers*, 17, 61–74.
- Kinsella, S. (1996). Punishment and Proportionality: The Estoppel Approach. *Journal of Libertarian Studies*, 12 (1), 51–73.
- Kinsella, S. (1999). Inalienability and Punishment: A Reply to George Smith. *Journal of Libertarian Studies*, 14 (1), 79–93.

Kramer, M. (2014). *Torture and Moral Integrity*. Oxford University Press.

Malcolm, N. (1958). *Ludwig Wittgenstein: A Memoir*. Oxford University Press.

Rothbard, M. N. (1998). *The Ethics of Liberty*. New York University Press.

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