

THE NEGATIVE HOMESTEADING THEORY: REJOINDER TO WALTER BLOCK ON HUMAN BODY SHIELDS

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ACCORDING TO THE NEGATIVE homesteading theory, one can come to own misery—a state of being, or about to be, attacked—which one cannot legitimately pass on to someone else, without his permission. Should one however try to forward this misery onto someone else, this person has the right to defend himself from the “forwarding of misery.” One has, however, not the right to initiate force against someone who only “holds” misery or has just been relieved of one’s misery.

This, I believe, is the essence of the negative homesteading theory, as presented by Walter Block (2006). Should the theory be true, the libertarian position regarding human shields needs to be revised, Block argues.

The issue of human shields is an issue of hostage situations; if a criminal is using someone as a shield, making it impossible to defend oneself from the aggression of the criminal without harming the kidnapped, is it then legally permissible to defend oneself? According to what Block labels “classical” libertarianism, it is not legitimate, since this would constitute aggression against the kidnapped, an innocent person (see, e.g., Rothbard 1982).

According to the negative homesteading theory, this “classical” libertarian position is mistaken. Since the kidnapped was the first to receive misery, it is illegitimate for him to forward his misery to anyone, thus making it legitimate to defend oneself from the criminal. Below, it will be argued that the negative homesteading theory does not support Block’s claim. Before that, three topics need to be addressed: what is

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misery and how can one come to own it, how does one forward the misery onto others, and why it can only be the forwarding of misery that can be defended against.

Misery is some sort of unhappiness or inconvenience that has befallen someone, or is about to. Block does not give a strict definition of what this unhappiness could be, but it's expedient to deal only with misery that can harm a person, or his property. Thus, should lightning be about to hit D, we can say that D has homesteaded misery. Similarly, if the lightning strikes D, he owns the misery of being struck by lightning. In this sense, owning is to be taken as a status of a person, and an individual can come to own this status by others' aggression against them, or by accidents of the forces of nature.

Misery can be forwarded from the misery-holder onto others by passing on the misery. But how does this happen? Consider D, who is about to be struck by lightning, and let's suppose that he has a magical device that will make the lightning strike someone else, namely E. This way of forwarding misery is, however, an act of aggression in itself so, as Block contends, it is still compatible with "classical" libertarianism to defend oneself from it. Block describes another way to forward misery, in a human shield-scenario, to which we'll now turn our attention.

Suppose that A kidnaps B, and uses B as a shield from any retaliation from C, whom A is trying to murder. C's only way of saving himself is to use his gun and shoot A, through B. Also, B has a guardian angel that will defend B from any aggression from C, unfortunately not from A. So, if C tries to shoot B, B's guardian angel will use his gun and shoot C.

In this scenario, either C or B must die, and since libertarianism is a way to resolve conflicts over property rights, only one of the two has the right to defend himself from the other (we're leaving A out of the picture). The classical libertarian position is that, since B does not aggress against C, it would constitute aggression for C to shoot B. But, what if B is forwarding misery onto C? Then, it would be permissible for C to shoot B. How then, does B forward his misery onto C?

Simply put, "B is indeed attempting to pass on his role of first victim onto C by in effect acquiescing in his guardian angel's shooting of C" (Block 2006, p. 4). This reasoning has some minor problems—what if A attacked C first? what if B didn't have a guardian angel?—but these are only problems if we accept that C may shoot B because the latter forwards his misery by letting his guardian angel defend him. Thus, only this aspect will be criticized.

There are two points in time when B can let his guardian angel shoot C: (1) when C is about to shoot B or threaten to shoot B, or (2) before C is about to shoot/threaten to shoot B. If B were to shoot C in

the second case it would be the same as murder; C is currently not aggressing against B. If this indeed counts as forwarding of misery, then both classical libertarianism and negative homesteading agree on this issue. But, what about the first case?

If we accept that C can only shoot B if B is trying to pass on his misery to C, then C is, in effect, never allowed to shoot B. This is so because the only thing that justifies C to “be about” to shoot B is either an aggression from B, or him passing on his misery. But B will only be able to pass on his misery after C tries to shoot him. Suppose that events unfold this way:

- (1) B, or his guardian angel, does nothing.
- (2) C threatens to shoot B/C is about to shoot B.
- (3) B acquiesces in letting his guardian angel shoot C

We can contrast this with the second situation, where B begins by forwarding his misery onto C:

- (1) C does nothing.
- (2) B acquiesces in letting his guardian angel shoot C.

It cannot be argued that the negative homesteading theory says that it is legitimate for C, in situation (1), to attack B, since B hasn’t tried to forward his misery. At least not on the ground that B has done anything to C.

It should be clear now that C is indeed, in the first case, aggressing against B. To reiterate, in the first case B doesn’t aggress or try to forward his misery, so when C tries to shoot him, he’s aggressing against B. Thus the negative homesteading theory does not, contrary to Block’s claim, conclude that it is permissible to attack against innocent shields.

REFERENCES

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