sciendo

studia humana
QUARTERLY JOURNAL

Studia Humana
Volume 10:4 (2021), pp. 36—65
DOI: 10.2478/sh-2021-0022

Reconciling the Irreconcilable: A Property Rights Approach to Resolving the Animal Rights Debate

Anthony J. Cesario

Loyola University. New Orleans
6363 St. Charles Avenue
New Orleans LA 70118, the USA

e-mail: ajcesari@my.loyno.edu

Abstract:
Libertarianism is understood to be a "deontological theory of law" that purportedly applies exclusively to humans. According to some libertarians, however, "one of the greatest weaknesses of libertarian theory" is that there are no provisions outlawing the abuse and torture of animals even though this seems to be one of "the most heinous acts it is possible to do". Moreover, a few of these libertarians go even further and claim that this legal philosophy of non-aggression should actually be extended to include other animals. The purpose of this paper is to reconcile this seemingly irreconcilable situation by arguing that it is a "continuum problem" and offering a principled, libertarian compromise that resolves the animal rights debate using the non-aggression principle (NAP) and private property rights.
Keywords: animal rights, evictionism, libertarianism, property rights, children's rights.

1. Introduction[1]

Libertarianism is understood to be a "deontological theory of law" that purportedly applies exclusively to humans [1, p. 275].[2] According to some libertarians, however, "one of the greatest weaknesses of libertarian theory" is that there are no provisions outlawing the abuse and torture of animals even though this seems to be one of "the most heinous acts it is possible to do" [14, p. 83].[3] Moreover, a few of these libertarians go even further and claim that this legal philosophy of non-aggression should actually be extended to include other animals [18]. The purpose of this paper is to reconcile this seemingly irreconcilable situation by arguing that it is a "continuum problem" and then offering a principled, libertarian compromise that resolves the animal rights debate using the non-aggression principle (NAP) and private property rights [3].

2. The Traditional Rothbardian View of Animal Rights

The traditional libertarian view of animal rights, expressed most notably by Murray Rothbard, is straightforward. According to Rothbard,

> While natural rights, as we have been emphasizing, are absolute, there is one sense in which they are relative: they are relative to the species man. A rights-ethic for mankind is precisely that: for all men, regardless of race, creed, color, or sex, but for the species man alone. The Biblical story was insightful to the effect that man was 'given' — or, in natural law, we may say 'has' — dominion over all the species of the earth. Natural law is necessarily species-bound [21, pp. 155-156].

In short, under the Rothbardian view, libertarian legal theory currently only applies to humans.[4] To clarify the reason why, he explained that,

> The assertion of human rights is not properly a simple emotive one; individuals possess rights not because we 'feel' that they should, but because of a rational inquiry into the nature of man and the universe. In short, man has rights because they are natural rights. They are grounded in the nature of man: the individual man's capacity for conscious choice, the necessity for him to use his mind and energy to adopt goals and values, to find out about the world, to pursue his ends in order to survive and prosper, his capacity and need to communicate and interact with other human beings and to participate in the division of labor. In short, man is a rational and social animal. No other animals or beings possess this ability to reason, to make conscious choices, to transform their environment in order to prosper, or to collaborate consciously in society and the division of labor [21, p. 155].

This means the rights of human beings stem from their capacity as a species to engage in purposeful action in order to satisfy goals that they have intentionally set. Specifically, "man, 'the rational animal,' possesses reason to discover such ends and the free will to choose" [21, p. 7]. Unlike humans, animals are "compelled to proceed in accordance with the ends dictated by their natures" [21, p. 7].

In addition to the ability for humans to engage in conscious choices directed toward the pursuit of particular goals, another thing that distinguishes humans from other animals, according to Rothbard, is the ability to petition for their rights to be respected and their capacity to likewise respect the rights of others. In an attempt to clarify this, he stated,

> There is, in fact, rough justice in the common quip that 'we will recognize the rights of animals whenever they petition for them.' The fact that animals can obviously not petition for their 'rights' is part of their nature, and part of the reason why they are clearly not equivalent to, and do not possess the rights of, human beings. And if it be protested that babies can't petition either, the reply of course is that babies are future human adults, whereas animals obviously are not [21, pp. 156-157].

In other words, under the traditional Rothbardian view, rights are granted to those who can petition for those rights to be respected and reciprocate that respect to others. They are also granted to those who will be able to do so at some point in the future of their development.[5] From this perspective, since animals cannot petition for their rights and are not capable of doing so in the future of their development, they consequently do not have any rights. If, however, at some point in the future they became capable of engaging in such actions, then they would be granted rights. The same would apply to the discovery of a new alien species. According to the traditional Rothbardian view, if the alien

species is capable of petitioning for their rights and respecting the rights of others, then its members would likewise be granted rights. If the alien species couldn't, though, then they wouldn't have any rights.[6]

He is far from alone in this understanding of libertarianism. In defense of Rothbard's views regarding animal rights, Hans-Hermann Hoppe has stated, "animals are incapable of engaging in propositional exchange with humans. Indeed, it is this inability which defines them as non-rational and distinguishes them categorically from men as rational animals. Unable to communicate, and without rationality, animals are by their very nature incapable of recognizing or possessing any rights" [21, p. xxxv].

Similarly, Walter Block has also made the case that libertarianism is "a legal philosophy for *humans*" that "allows us to know how we may act with regard to each other" [14, p. 85].[7] To reinforce this point, he's pointed out that "animals are simply not capable of functioning in human society" [14, p. 85]. To clarify, he stated, "animals cannot possess the right of self-ownership because they cannot exercise control over their actions like humans, and so they may properly be considered as our property" [14, p. 89].

Block has also argued in defense of granting rights based on being able to petition for rights or belonging to a species that has members who can petition for their rights. Specifically, he stated,

> Why is petitioning so all-important? Because this lies at the very core of libertarianism. This philosophy is predicated upon the non-aggression principle (NAP). It is illicit, unlawful, for anyone to initiate violence against an innocent person or his property, or threaten him thereby, unless permission is given. But the opposite side of the coin of this principle is private property rights. For, if I own your jaw, and I punch it, or, you stole from me the shoes you are now wearing and I repossess it, then, you are the criminal, not I. So, we need a theory of private property rights. According to the libertarian viewpoint, this is based on homesteading, and self-ownership, the "mixing of labor" with virgin land of Locke, and the legitimate title transfer theory of Nozick. But petitioning is a sort of homesteading of rights. When you petition, you "mix your labor" with, you link to, your rights. Yes, babies, the comatose, the senile, those who are asleep, cannot do so, but we go by species, not individual, membership. If and when chimps or pigs or dolphins learn to earn their rights in this way, libertarians will then indeed have to rethink their rejection of rights for these species [16, p. 55].

To put it differently, the assumption that legal rights extend further beyond species which are capable of petitioning for their rights and respecting the rights of others is inconsistent with "thin"[8] libertarianism, at least as it is traditionally understood by Rothbard and others. In other words, the traditional Rothbardian view of animal rights maintains that thin libertarianism, which is limited to the NAP and property rights, purportedly has something to say about where the line should be drawn. Specifically, that the line should be drawn at membership to a species which has other members that are capable of petitioning for rights and respecting the rights of others *qua* libertarianism.

As a result, the treatment of animals, according to Block, is not something that libertarians *qua* libertarians have anything to say about. Specifically, he stated,

> The challenge to libertarianism, that it has no answer to the challenge of animal abuse, has been met. The solution is that, at least according to correct libertarianism, the thin version thereof, this is not an issue that this philosophy can or should deal with. Rather, it is adventitious with regard to the freedom perspective. For libertarianism covers but a very narrow slice of political economy. It concerns itself, solely, with violations of the NAP between human beings. Cruelty to animals falls outside this realm. Is this a weakness of

> libertarianism. [sic] Yes and no. Yes in the sense that its coverage, correctly understood, is limited. When we view the matter through the lens of thin versus thick libertarianism, that supposed weakness in this philosophy widely thought to exist does not really exist. Thick libertarianism is more pernicious and more of a threat than previously imagined, before this present solution to the challenge against it created by the specter of animal cruelty. Libertarianism, the NAP, is solely concerned with man's relationship to man; that is it! There is no more. There is nothing in this perspective of relevance to the torture of animals [13, p. 110].

3. Criticisms of the Traditional Rothbardian View of Animal Rights

It's possible, however, that the present line may not be drawn at the proper place. When it comes to abortion, for instance, some libertarians, like Rothbard, have maintained that as far as libertarianism is concerned, the line regarding legal protection should be drawn at birth [21]. According to this view, libertarianism only applies to humans who have already been born. Yet Block, in his defense of evictionism, has argued that the matter is actually a continuum problem and has given other reasons why he believes that the line should actually be moved all the way to the moment of conception [2]. Given this, then, it could likewise be the case that when it comes to animals and legal rights, it may not be proper to draw the line at being a member to a particular species. In other words, much like how Block has insisted that libertarianism doesn't only apply to humans who have already been born but also includes unborn humans, some critics of the Rothbardian view of animal rights have suggested that it is likewise the case that libertarianism doesn't only apply to members of a particular species that can petition for their rights, but also other members outside of that particular species who cannot do so.

One of the most vocal libertarian critics of the Rothbardian view of animal rights shared by both Hoppe and Block was Thomas Raskin [20; 23].[9] According to Raskin,

> There are three related problems with Block's argument. First, Block assumes from the outset that the human-animal division is morally significant, even though that division's moral significance is the very thing that Block needs to prove. Second, Block seems to make the inappropriate assumption that individuals have rights if and only if they can articulate a sincere respect and desire for rights. Third, Block pays inadequate attention to sentience when determining who has a right not to be tortured [20].

Before proceeding further, it is extremely important to first address a problem with the first point raised by Raskin regarding the human-animal division being *morally significant* and to offer a friendly amendment. Specifically, libertarianism focuses on *legality*, not morality. Whether or not the human-animal division is *morally significant*, therefore, is beside the point of libertarianism. What matters is whether or not the human-animal division is *legally significant*, which Block appears to maintain. To assist Raskin, then, the first objection should be revised to say, "Block assumes from the outset that the human-animal division is *legally* significant, even though that division's *legal* significance is the very thing that Block needs to prove."

There's also a slight problem with the second point made by Raskin regarding individuals having rights "if and only if they can articulate a sincere respect and desire for rights" [20]. To clarify, the problem with this is that while an individual's capability to articulate a sincere respect and desire for rights may be sufficient, it is not necessary under the Rothbardian view of animal rights. This is because it's possible for individual beings to have rights despite not being able to petition for such rights, such as babies and the intellectually disabled. What matters is whether or not the individual *belongs to a species that can petition for rights*.[10] Therefore, to offer a friendly amendment to his second objection, it can be revised to state, "Block seems to make the inappropriate assumption that

individuals have rights if and only if they *belong to a species* that can articulate a sincere respect and desire for rights" [20].

These revised objections, coupled with Raskin's other objection, work together to cast doubt on the soundness of the Rothbardian view of animal rights held by Block and many other libertarians.[11] Building off of his previous objections, Raskin ultimately concludes that "any legal system permitting unprovoked assaults on sentient animals would be unjustified" [20].

Another critic of the Rothbardian view of animal rights held by Block and others is Michael Huemer [18], [19]. In response to the idea that membership to a particular species is what matters when it comes to whether or not rights should be granted, Huemer has likewise questioned why the line must be drawn specifically at membership to a species that can petition and respect rights and not elsewhere. Specifically, he stated,

> The assertion seems to be that babies and the mentally disabled have rights because other members of their species have homesteaded things. Block makes no effort to explain why species classifications are morally special but not genus classifications, race classifications, hair color classifications, or any other grouping – nor, indeed, why the moral rights of an individual would depend upon a grouping of that being with any other entities at all, rather than on the actual characteristics of that individual [19, p. 44].[12]

To clarify and further underscore his point, Huemer added,

> Let's think about land ownership. This is the source of Block's idea of homesteading, and Block invites us to take land ownership as the model for all rights. But land ownership certainly does not work in the way that Block and Rothbard require: I do not own a plot of land because I could homestead it in the future, or because someone else homesteaded it, or because other members of my species homesteaded other things. The way homesteading works is that the individual who actually homesteads a plot of land acquires that specific plot of land and nothing else. So again, on the homesteading theory, there is no basis for infants or severely disabled humans to have any rights. The idea that they have rights because they might homestead something in the future or because other conspecifics have homesteaded other things is a non-starter [19, p. 44].

In other words, according to Huemer, when it comes to owning a particular plot of land, someone doesn't own a particular plot of land because other humans have homesteaded other plots of land, nor do they own it because someone else homesteaded it or because they could potentially homestead it in the future. Rather, land ownership is specific to the individual who homesteaded it. If species membership isn't what grants ownership of a particular plot of land and instead it's done more on an individual level, then, in Huemer's view, it's not clear why legal rights should be based on species membership instead of on the individual level. Huemer's objection, in conjunction with the other objections raised by Raskin, provide further reason to doubt the idea that, *qua* libertarianism, the line should be drawn at membership to a particular species.

4. Arriving at a Crossroads

So which is it? Do animals have legal rights or don't they? Respectable libertarians appear to fall on both sides of this issue. In this paper, the former position will be what is mostly assumed. Specifically, that legal rights are not necessarily limited to members of a species that can petition for rights and respect the rights of others. Consequently, this paper will analyze a variety of other places where the

line may be drawn. Wherever the line is assumed to be drawn, those animals will have the same legal rights as humans, albeit non-rational humans such as children and the intellectually disabled.[13]

This position is taken for two reasons. The first reason is philosophical and involves the points made by Raskin and Huemer about drawing the line at membership to a particular species being problematic. Consider, for instance, that alien life is discovered on another planet. Suppose further that this alien life has the exact same features as humans do. The only differences are that for some reason they do not have human DNA and, as a species, they are all intellectually disabled, meaning that they lack the ability to petition for their rights. To be clear, this alien species is not a part of the human species even though they look and act identical to them.

According to the Rothbardian view of animal rights, while it would be completely illegal to abuse and torture intellectually disabled humans since they are a member of the human species, it would be perfectly legal to abuse and torture the alien creatures who look and act exactly the same as the intellectually disabled humans merely on the grounds that they evolved separately on a different planet and consequently have different DNA. Why, though? On what grounds, *qua* libertarianism, does membership to a particular species grant individuals rights, especially when those individuals may never be able to petition for rights or respect the rights of others themselves? Such a distinction does not appear legally significant, *qua* libertarianism.[14] It consequently calls into question the assumption that being a part of a species that can articulate a sincere respect and desire for rights is what grants a species legal rights and it suggests that the issue is a "continuum problem," which means that the answer cannot be determined *qua* libertarianism [3].[15]

To put it differently, basing rights on membership to a particular species does not appear to follow strictly from libertarianism, which is limited to the non-aggression principle and private property rights based on homesteading. Rather, where specifically to draw the line appears to be a continuum problem.[16] To clarify, the non-aggression principle only has to do with initiating "violence against an innocent person or his property, or threaten him thereby" without his permission [16, p. 55]. It doesn't say anything about what counts as a legal person or where the line for rights should be drawn. Similarly, private property rights based on homesteading is about mixing one's labor with land or other property.[17] It likewise doesn't have anything to say about how far rights should extend. Plus, as noted earlier by Huemer, in order for someone to own something, they themselves have to homestead it. They don't get a property right to something because other members of their species have homesteaded it or are at least capable of homesteading it. In other words, just because individuals own themselves doesn't mean that the line should be drawn at membership to a species that can petition for rights and respect the rights of others.

Perhaps it may be argued, though, that "self-ownership," which has to do with whether or not living beings can "exercise control over their actions," is what determines that the line should be drawn at membership to a species that can petition for rights and respect the rights of others [14, p. 89]. To echo Huemer's concern, however, how does it follow that one particular creature having rights based on self-ownership due to being able to exercise control over their own actions means *other creatures* who are a part of the same species but *cannot* exercise control over their own actions likewise have rights or self-ownership? To clarify, people having control over their actions just means that those individual people have rights based on self-ownership. It doesn't follow from this that others who are apart of the same species but cannot control their actions likewise have rights. Specifically, just because individuals own themselves doesn't mean that the line should be drawn at membership to a species that can petition for rights and respect the rights of others. To sum up the first reason why this paper takes the position that legal rights are not necessarily limited to members of a species that can petition for rights and respect the rights of others, it is due to the fact that drawing the line at species membership does not appear to follow from the NAP, private property rights, or self-ownership and instead appears to be a continuum problem.

The second reason is a more "logical – rhetorical – pedagogical one" [2, p. 17]. To clarify, despite the foregoing, this paper will ultimately end up defending a largely "non-vegan" position. Specifically, the conclusion will be that killing and eating animals could be legal, regardless of where the line is drawn. Consequently, it is imperative that every potential obstacle is placed in the way to avoid the possibility of tearing down or defending against any straw man arguments. If it was assumed that animals don't have legal rights, then the case would be open and shut. If, however, it can be shown, as this paper intends to do, that it could still be legal to abuse, torture, and kill animals even if it's given that animals have legal rights, then such an approach would make the analysis "more logically robust" [2, pp. 17-18].[18] Since this paper ends up supporting some non-vegan outcomes in this respect, the analysis begins by considering the vegan belief that the line for legal rights should be drawn in a manner to include at least some, if not all, animals in order to make the case as difficult as possible. Given this, how can the legal abuse, torture, and killing of those animals with legal rights be defended?

5. A Primer on Evictionism

In order to understand how such a conclusion can be reached, it is first important to outline the libertarian theory of "evictionism" developed by Block as a compromise to the abortion controversy. According to the evictionist view, human life is assumed to begin at the fertilized egg rather than at birth or somewhere in between, which means that fertilized eggs on up would have the same legal rights that non-rational humans such as children or the intellectually disabled have under traditional libertarian theory.[19] This is not just for philosophical reasons, but also for similar rhetorical reasons that were described above.[20] Namely, that despite assuming that life begins at birth, the evictionist view ends up supporting the pro-choice position related to it being legal for a woman to remove an unborn baby from her womb at any time during the pregnancy for any reason even though the child in the womb lacks *mens rea*,[21] so assuming the pro-life view regarding when life starts helps strengthen the argument.[22]

Regarding the issue of pregnancy, the property in question is the mother's womb. To quote Block,

> But what of the property under dispute between the mother, who does not want, for any reason, or no reason at all, to carry the fetus in her womb for the full gestation period of three quarters of a year, and the human baby whose life is in dire danger if she has her way, and who wishes to remain exactly where he is for the full duration? Why, clearly, it belongs to the mother, and entirely so. The womb consists of parts of her very body. One point for the pro-choicers. Who has a right to control property in the libertarian view? Why, its owner of course; that is precisely who. The unwanted fetus is thus akin to a trespasser for the mother who wishes him not to occupy that or indeed any part of her body. Do property owners have the right to kill trespassers, such as unconscious people, or babies, who lack *mens rea*? Of course not. Must the homeowner allow the trespasser, however innocent to remain in her domicile for as long as the latter need to do so to preserve his life? No, certainly not either. Therefore, the proprietor of the property in question may evict, but not kill the stowaway. He must remove him in the gentlest manner possible consistent with retaining full rights over his own property, lest he, too, engage in an act incompatible with libertarian law [7, p. 126].

In other words, a pregnant woman may evict the unborn baby from her womb, according to libertarian legal theory, but she may not unnecessarily kill it.[23] This is because the unborn baby, by being an unwanted occupier of another person's property (the woman's womb), is a trespasser (albeit one that lacks *mens-rea*, otherwise known as a guilty conscience) and libertarianism permits individuals to use

any means necessary, up to and including deadly force, to put an end to a rights violation such as trespass. This is what is meant by the "gentlest manner possible."[24]

To clarify, since killing is a necessary part of the eviction process prior to viability, lethally removing the unborn baby would be licit. After viability, however, it no longer becomes necessary to end the life of the unborn baby, which means that doing so would be illicit. Consequently, as medical technology improves, lethal evictions would be pushed further and further back toward the fertilized egg while the number of non-lethal evictions would increase. Eventually, the technology may become so advanced that the unborn baby can be non-lethally removed from the womb from the moment of conception and any time along the way to birth, which means that the killing of unborn babies in the womb would be completely outlawed under libertarianism.

6. A Primer on Children's Rights

What about children who have already been born or non-lethally evicted from the womb? According to Rothbard,

> Parental ownership is not absolute but of a 'trustee' or guardianship kind. In short, every baby as soon as it is born and is therefore no longer contained within his mother's body possesses the right of self-ownership by virtue of being a separate entity and a potential adult. It must therefore be illegal and a violation of the child's rights for a parent to aggress against his person by mutilating, torturing, murdering him, etc. [21, p. 100].

This essentially means that children own themselves; the parents do not own their children as property and therefore cannot legally violate their negative rights by engaging in things like physical or sexual abuse.[25] Although parents don't own their children, they can come to homestead ownership of the trustee or guardian role for particular children. Specifically, since being a trustee involves caring for a particular child, doing so is how a parent homesteads ownership over the right to continue caring for the child. If a parent stops caring for a child, then they forfeit their ownership of their role as a trustee, which means that someone else can claim ownership of the trustee or guardian role by stepping in and caring for the child. In the words of Block,

> The arch-typical way to 'homestead' an infant is to engage in sexual intercourse, and then provide a 'home' for the baby for 9 months and thereafter. But if a male and female scientist inserted a sperm belonging to one of them into an egg belonging to the other, and then grew the resulting embryo in a test tube, or in a willing host mother, and then cared for the baby after the 9-month gestation period, they, too, would and should be considered the proper parents. The only difference between the cow and the child is that in the former case outright ownership is possible, whereas in the latter all that is 'owned' is the right to continue to homestead (e.g., care for) the child. Doing so establishes the right to keep doing so, until the youngster reaches adulthood [4, p. 431]. [26]

The extent of the parent's role as trustee also depends on the child's ability to say "no" and leave the home.[27] To underscore this point, Rothbard has explained that,

> Regardless of his age, we must grant to every child the absolute right to run away, and to find new foster parents who will voluntarily adopt him, or to try to exist on his own. Parents may try to persuade the runaway child to return, but it is totally impermissible enslavement and an aggression upon his right of self-ownership for them to use force to

> compel him to return. The absolute right to run away is the child's ultimate expression of his right of self-ownership, regardless of age [21, p. 103].

It should be noted, however, that while parents and trustees may not legally aggress against their children, they also do not have a legal obligation to educate, clothe, or feed them under libertarianism "since such obligations would entail positive acts coerced upon the parent and depriving the parent of his rights" [21, p. 100].[28] This means that it is permissible to legally transfer ownership to someone else if the trustee no longer wants to care for the child, which is something that Rothbard has elaborated on in detail. Specifically, he stated,

> If a parent may own his child (within the framework of nonaggression and runaway-freedom), then he may also transfer that ownership to someone else. He may give the child out for adoption, or he may sell the rights to the child in a voluntary contract. In short, we must face the fact that the purely free society will have a flourishing free market in children. Superficially, this sounds monstrous and inhuman. But closer thought will reveal the superior humanism of such a market. For we must realize that there is a market for children now, but that since the government prohibits sale of children at a price, the parents may now only give their children away to a licensed adoption agency free of charge. This means that we now indeed have a child-market, but that the government enforces a maximum price control of zero, and restricts the market to a few privileged and therefore monopolistic agencies. The result has been a typical market where the price of the commodity is held by government far below the free-market price: an enormous 'shortage' of the good. The demand for babies and children is usually far greater than the supply, and hence we see daily tragedies of adults denied the joys of adopting children by prying and tyrannical adoption agencies. In fact, we find a large unsatisfied demand by adults and couples for children, along with a large number of surplus and unwanted babies neglected or maltreated by their parents. Allowing a free market in children would eliminate this imbalance, and would allow for an allocation of babies and children away from parents who dislike or do not care for their children, and toward foster parents who deeply desire such children. Everyone involved: the natural parents, the children, and the foster parents purchasing the children, would be better off in this sort of society [21, pp. 103-104].

If parents do not have any legal obligations to care for their children, though, does that mean it would therefore be licit to keep them on their property and starve them to death or neglect them in some other way? Not as long as there are others willing to care for them.[29] This is due to the fact that someone who is neglecting a child no longer owns the role of trustee over that child. In other words, the status of that role is unowned, and someone who uses their property to prevent others from homesteading unowned property is guilty of the crime of "forestalling," which is a negative rights violation. As a consequence, it would be legally permissible for individuals to enter onto the neglectful people's property and rescue the children so that they can be looked after by someone who is willing to take care of them.[30] This, to be clear, is not a positive obligation to care for the child, but rather, it is the stopping of a negative rights violation being committed by the person forestalling against others.[31]

What about situations where no one else is willing to care for a particular child? If no one truly wanted to care for the child, then in these kinds of situations, and only these kinds of situations, would it be legally permissible for a child to be neglected. This is for two reasons. First, since no one has a positive obligation to care for children, no one would have an obligation to keep any children alive if there wasn't anyone who wanted to take care of them. To clarify, if no one else wanted to care for particular children, then that means that those children would essentially be stuck on whatever property they were last on and since those property owners don't have a positive obligation to keep those

children alive, it would be licit to let them let them starve to death or neglect them in some other way. Second, if no one else wanted to care for the children, then the people who are now neglecting the children would not be forestalling against anyone. It is only when others make it known that they want to care for particular children that it becomes an illegal act of forestalling.

Moreover, if no one wanted to care for the child, the property owner would not have any legal obligation to allow the unwanted child, who is now technically a trespasser despite lacking *mens rea*, to continue occupying their property. This means that the property owner would be justified in using force, up to and including lethal force if necessary, to put an end to the trespass. In other words, it would be licit for someone to end the life of a child on their property provided that no one else wants to care for that child since doing so would be acting in the gentlest manner possible consistent with stopping the crime. Such an action would not be a rights violation against the child, to be clear, because the child is actually the one engaging in a rights violation by being a trespasser; ending their life is simply putting a stop to the rights violation.

7. Stem Cell Research

A final point worth mentioning relates to whether stem cell research would be legally permissible under libertarianism since, according to the theory of evictionism, it is stipulated that life starts at the moment of conception. For starters, it would be licit for people who have a desire to do research on stem cells to produce as many embryos as they'd like since doing so is not itself an initiation of aggression.

Once produced, though, these embryos would be considered rights bearing creatures akin to infants and the intellectually disabled.[32] This means that those who cultivate the embryos would not own them but rather only own the right to continue caring for them. If they no longer wish to care for the embryos, then they can abandon their role as trustee or guardian and pass the child along to someone else to continue caring for them. If the person who created the embryos decides to abandon their role as trustee but also prevents others who do wish to care for them, however, then they would be guilty of forestalling and consequently violating the rights of those who want to look after the unborn babies.[33]

It should also be noted that abandonment involves notifying others of its availability to be owned. Specifically, "you cannot (logically) abandon something if you do not notify others of its availability for their ownership" [1, p. 279]. In order to abandon property and not be guilty of forestalling, then, the person abandoning the property must let others know that they can now acquire ownership of it. To clarify, someone who decides that they no longer want to care for an embryo or child but fails to notify others who do want to provide care of their decision would be guilty of forestalling. In other words, when it comes to children and embryos, someone can be guilty of forestalling either by preventing others from caring for them or by no longer caring for them while failing to notify others who are interested that they can take over the role of guardianship.

What does all of this mean for stem cell research? Essentially, those who have a desire to do stem cell research can do so if and only if no one else wishes to care for the embryos. As long as there are people who wish to look after them, however, then they "get first option at them" [4, p. 435]. To clarify, "if there are adoptive parents forthcoming (presumably from the pro-life community, but not at all necessarily limited to it) then their rights trump those of the creators of the fertilized egg, since the latter do not wish to homestead them, for example, protect them from harm, whereas the former do" [4, p. 434].

In other words, if no one else wishes to care for the embryos, then, and only then, would it be legal to use them for research purposes. The reason for this is that since no one wants to care for the embryos, they are confined to the current piece of property that they're on. Since the owner of that property, however, likewise does not want them occupying the property that they're currently on, the

unwanted embryos are, legally speaking, guilty of trespass. Since the property owner cannot evict the embryos onto other people's property without violating the rights of those property owners, lethal force would be justified on the grounds that it is the only means by which an end can be put to the ongoing trespass. Since lethal force against the embryos would be justified, lesser forms of aggression would also be justified, such as conducting experiments on them or abusing them in some other way.

What matters, then, is the number of people who want to care for the embryos compared to the number of embryos in existence. If there are more people who want to look after the embryos than there are existing embryos, then there wouldn't legally be any stem cell research. If, on the other hand, there are more embryos in existence than there are individuals interested in adopting them, then stem cell research could legally be conducted on the excess embryos that are not wanted by others. To put it differently,

> If allowed, this scenario will constitute a true compromise between the contending forces on the stem cell research debate. It will be an empirical issue as to which side will win the fertilized egg 'race.' Will the demand on the part of potential adoptive parents outstrip the supply of fetuses that can be created in the laboratory? If so, then not a single one of them will be killed, and no research will [licitly] take...place, under the legal regime we are now considering. Or, will the ability of the medical technicians to create fetuses in this way overwhelm the willingness of adoptive parents to bring them up? If so, then some fetuses will be saved, those who are adopted, and others will be used and/or destroyed in medical research, the ones that exceed the demand of adoptive parents [4, p. 435].[34]

8. Tying It All Together: Application to Animal Rights

How does all of this relate to animal rights? First off, much like the way that the theory of evictionism stipulates that life starts at the moment of conception, the compromise in this paper will assume, for the reasons mentioned earlier, that animals are included under libertarian legal theory and consequently have the same rights as non-rational humans such as infants or the intellectually disabled.[35,36] This is one point in favor of vegans.

To be clear, this means that animals own themselves, at least partially; people do not own animals as property and therefore cannot legally violate their negative rights.[37] Despite this, people can come to homestead ownership of the trustee or guardian role for particular animals by caring for them.[38] If, however, a person stops caring for an animal, then they forfeit ownership of their trustee role, meaning that someone else can come in and, by caring for the animal, become the guardian of it.[39] As long as there are people who want to care for particular animals, it would not be legal for individuals to abuse, neglect, or starve those animals since doing so would make them guilty of forestalling.[40] This is another point in favor of vegans.

Much like with children, though, people would likewise not have any positive legal obligations to care for any animals. This means that, as long as no one else wants to care for the animal, it would be licit to let an animal starve to death or to neglect it in some other way. In addition to this, since the animal in this situation is currently an unwanted occupier of whatever piece of land it is currently on, it would also be legal for the property owner to use whatever force necessary to put a stop to the trespass. In other words, a property owner would be legally justified in ending the life of an animal that is currently on their property in a situation where nobody else wants to take care of the animal because, in that case, using lethal force would be acting in the gentlest manner possible consistent with stopping the violation of rights. This is one point in favor of non-vegans.

With this in mind, consider the case of animal abuse. Under the Rothbardian view of animal rights, it would be completely licit for people to torture or abuse their pets despite the fact that there may be others willing and able to care for them, which is something that Block himself has referred to

as being perceived as "one of the greatest weaknesses in libertarian theory" [14, p. 83].[41] Under the compromise position presented in this paper, however, this supposed weakness would be eliminated since it would not be legal to torture or abuse a pet if someone else wants to care for it. If there is someone willing to adopt a particular dog, for instance, then that person's right to homestead ownership of the trustee role for that dog trumps that of the individual abusing it due to the fact that the former wishes to protect it from harm whereas the latter does not. It would only be in situations where nobody wanted to care for the dog that abuse or torture would be licit.[42] This is a third point in favor of vegans.[43]

Consider another thorny problem related to animal rights, namely, that of bestiality. Under the Rothbardian view of animal rights, it would be completely legal for people to engage in unrestrained sexual intercourse with their pets. Under the compromise position presented in this paper, this apparent weakness is also eliminated since, as long as there are people willing to care for them, it would be just as illegal to have sexual intercourse with pets as it would be to have sexual intercourse with children. This is a fourth point in favor of vegans.[44]

Additionally, consider the torture or killing of animals to produce meat and other products, such as the operations of industrialized farming. Under the Rothbardian view of animal rights, such activities would be perfectly legal. Under the compromise position presented in this paper, the industrialized farming of animals would also be legal if and only if no one else wanted to care for the animals.[45] While this may seem like yet another point in favor of vegans, a closer examination will show that it is actually a point in favor of non-vegans. To begin with, it would be legal for people who have a desire to slaughter animals for meat and other products to produce as many animals as they'd like since doing so is not itself an initiation of aggression. Once produced, the animals would be considered rights-bearing creatures and as such, they cannot be owned; only the role of guardianship over them can be owned. Since no one has a positive obligation to care for any animals, however, it could be the case that no one wants to care for particular animals. In that situation, it would be legal to neglect, abuse, or even kill those specific animals. In the case of stem cells, it's likely that there wouldn't be any stem cell research since it's relatively easy to produce stem cells but just as easy to adopt them and then freeze them for future use. In the case of animals, though, it's likely that there would be industrialized farming of animals since it is much easier to continuously produce animals than it is to continuously adopt them and care for them.[46,47] This, then, is a second point in favor of non-vegans.[48]

Finally, consider using animals for medical or cosmetic testing. Under the Rothbardian view, doing so would be completely licit. Similarly, under the compromise position in this paper, it would also be legal contingent on the fact that no one else wants to care for the animals in question. If someone wants to care for the particular animals, though, then they would get priority over them.[49] Much like with industrialized farming, therefore, it's likely that there would be medical and cosmetic testing on animals since it's harder to continuously adopt and care for animals than it is to continuously produce them. This is a third point in favor of non-vegans.

To summarize, there are at least four possible points in favor of veganism and three possible points in favor of the non-vegan position. On the vegan side, animals have legal rights and, because of this, it would be illegal to neglect, abuse, or torture any animals so long as there are people who have an interest in caring for them. On the non-vegan side, in situations where no one wants to care for particular animals, it would then be licit to neglect, abuse or torture animals, which leaves open the possibility for the industrialized farming of animals for meat and other products as well as medical and cosmetic testing. In other words, although the compromise would grant legal rights to animals, it would also allow for the possibility of animals to be legally tested on or killed for human consumption.

In short, the libertarian compromise to the animal rights controversy is capable of starting wherever proponents of animal rights assume the line should be drawn by clearly defining the ownership of those animals along the lines of trusteeship, much like what is done with both born and unborn children as well as the intellectually disabled.[50] In doing so, the issue becomes one of property

rights; namely, whether or not someone owns, or is willing to own, the role of trustee over an animal. If no one owns the role of trustee over an animal, and no one is willing to homestead such a role, then abusing or killing an animal would be licit. Otherwise, doing so would be illicit. Essentially, then, the compromise presented in this paper is based on the universal application of the non-aggression principle and property rights wherever the line ends up being drawn along the continuum.[51]

9. Further Implications

While keeping the foregoing section in mind, consider how this compromise compares with Raskin and Huemer's views as well as the Rothbardian view of animals. Also, consider a few implications of this compromise related to predators and prey (i.e. lions and gazelles or wolves and deer), rodent infestations, germs and insects, plants and vegetables, alien species, and cannibalism.

a. Raskin and Huemer's Views on Animal Rights

To begin, compare the compromise view presented in this paper with Huemer and Raskin's views on the treatment of animals. According to the compromise described in this paper, which applies the NAP and strict private property rights to animals given the assumption that they have legal rights, if people are willing to care for a particular animal, then abusing or killing it would be illegal since doing so would make the person guilty of forestalling. However, if no one is willing to care for particular animals, then it would not be illegal, under libertarianism, for people whose property is being occupied by those animals to use force, up to and including deadly force, to stop them from continuing to trespass on their property since property owners do not have a positive obligation to continue caring for the animal and also because preventing property owners from doing so would be incompatible with strict private property rights.

According to the views held by Raskin and Huemer, however, it does not appear that they would support the idea of being able to legally kill animals, even if no one else wants to care for these animals. Raskin, for instance, has stated, "because it would greatly exaggerate the importance of agents' articulateness and vastly understate the importance of their capacity for pain, any legal system permitting unprovoked assaults on sentient animals would be unjustified" [20]. Similarly, Huemer has claimed, "factory farming is wrong because of the enormous amount of pain and suffering it causes, for the sake of trivial benefits for ourselves" [19, p. 48].

These views, though, appear to either imply positive obligations or undermine strict private property rights, both of which are inconsistent with libertarianism. To clarify, being required to care for an animal that no one wants to care for would imply that there's some kind of positive obligation to care for others. But, under libertarianism, much like people do not have any positive obligations toward other humans, they likewise do not have any positive obligations to animals. Similarly, being prohibited from using force to stop a trespass would imply that private property rights can be interfered with. Yet, under libertarianism, private property rights should be upheld in the event of a trespass, even if doing so resulted in an enormous amount of pain for the sake of trivial benefits. This means that it would be legal for the property owner to use force, up to and including deadly force, to stop a trespass from occurring even if doing so would result in an enormous amount of pain and suffering in exchange for a trivial benefit. As a consequence, unlike the compromise presented in this paper, which is consistent with libertarianism regardless of where the line is drawn, the views held by Raskin and Huemer do not appear to be fully consistent with libertarianism. [52]

b. The Rothbardian View of Animal Rights

In addition to Raskin and Huemer's views, compare the compromise presented in this paper with the Rothbardian view of animal rights. As noted earlier, the compromise view only allows for killing of an animal determined by courts to have legal rights extended to them if no one else wants to care for the animal. This implication for animals is the same as the implications for both born and unborn children as well as the intellectually disabled under evictionism's uniquely libertarian application of the NAP and private property rights. As a result, if it's assumed that animals have the same legal rights as children or the intellectually disabled, then it would likewise be consistent with libertarianism to apply the same reasoning to animals.

According to the Rothbardian view of animal rights, however, which doesn't view the matter as a continuum problem and instead draws the line at particular species membership, it would be legal to abuse and kill animals that others want to care for even if courts extend legal rights to them. Consequently, if courts decided to draw the line for legal rights beyond membership to a particular species to include dogs and cows, for instance, then the Rothbardian view, assuming it insists on drawing the line at particular species membership and doesn't include dogs and cows, would imply that it would be permissible for people to effectively forestall against others by preventing others from homesteading the role as guardian over those animals. But, since forestalling is prohibited under libertarianism, the Rothbardian view of animals shared by Block and others likewise does not appear to be fully consistent with libertarianism regardless of where the line is drawn.

c. Predator and Prey Animals

Next, consider the implications of this compromise if courts were to draw the line at larger predator and prey mammals. Since all of these animals would, by stipulation, have legal rights, the predator and prey would both be thought of as children under the law. Would it be legal, then, for one child to kill and eat another child? Not as long as there are others who want to care for the child being killed and eaten. Similarly, it would not be legal for one mammal, such as a lion or wolf, to kill and eat another mammal, such as a gazelle or deer, as long as there are people who want to care for the prey of the other animal. A mammal that kills and eats one of these animals which someone else wanted to care for, then it would be guilty of a negative rights violation as well as forestalling, their lack of *mens rea* notwithstanding. In addition to that, trustees who allow one of their animals to kill and eat other animals which they're the guardians of would similarly be guilty of a rights violation as well as forestalling. Moreover, it would also be illegal for people to allow their animals to kill and eat animals who have different trustees since doing so would not only violate the rights of the animal but also violate the rights of the other trustee by interfering with their role as a guardian.

If, however, no one wanted to care for a particular prey mammal, then it would not be forestalling under these conditions for the predator to kill and eat it. Therefore, much like when it comes to slaughtering animals for meat and other products, what primarily matters is the number of people who want to care for the prey animals compared to the number of prey animals in existence. Since it would likely be easier to continuously produce prey animals than it would be to continuously adopt and care for them, it's likely that there would be plenty of animals for predators to eat. For example, if there was a surplus of prey animals, those prey animals could be slaughtered and fed to zoo animals or sent to a safari park to be hunted by humans or other animals.[53]

Suppose, however, that there wasn't a surplus of prey animals, which would mean that it would be illicit for predators to kill and eat the currently existing prey animals. While this would likely result in the extinction of all the various predators since they need to kill and eat other creatures in order to survive, is this a weakness of the libertarian compromise presented in this paper? Absolutely not! If there was a vampire species that could only survive by sucking the blood out of living humans, it

would not be legal for those vampires to aggress against others and involuntarily suck their blood out of necessity. If they end up going extinct as a result, then so be it![54] Similarly, if slavery was the only way to keep the human species alive, it would still not be legally justified under libertarianism since it is a deontological, not a consequentialist, theory of law.

d. Rodent Infestations and Extermination

Now consider the implications of this theory when applied to rodent infestations. Specifically, suppose that someone's house becomes infested with rats and the courts have drawn the line for legal rights to include small rodents in addition to large mammals. According to the compromise presented in this paper, each of those rodents would be assumed to be rights bearing creatures, which means it would not be licit to aggress against them as long as others want to care for them. Does this mean that a person with a rodent infestation must allow the rats to continuously occupy their property? Not at all. The property owner may legally evict, but not kill, the unwanted trespassers, assuming that the homeowner was there prior to the rodents coming.[55] If the only way to evict the rodents is to necessarily kill them, then doing so would be justified.[56]

What does this mean for rodent exterminators? For starters, much like with abortion, extermination is really a combination of two acts: eviction and killing. Therefore, under this theory, evicting the rodents would be licit but killing them, provided that others want to care for them, would be illicit. In other words, if it is assumed that others want to care for the rodents and that it's not necessary to kill the rodents in order to remove them, then the role of exterminators would be to go over to someone's house, capture the critters alive, and then bring them somewhere else where they are wanted, such as an animal shelter or another person's house.

e. Germs and Insects

Another thing to consider is how this theory would apply if the line was drawn at microscopic germs and insects. According to the compromise position presented in this paper, they would all likewise have legal rights similar to other animals, children, and the intellectually disabled. Nevertheless, what matters is whether or not there are more tiny germs and insects in existence than there are people willing to care for these living organisms. If there are more people who want to care for existing organisms, then it would be illegal to kill these tiny critters,[57] unless it's necessary for individuals to do so in order to evict them from their property.[58] Given the sheer number of germs and insects and the current lack of interest in caring for them all, then, it would be likely that squishing these creatures or using pesticides on them would be legally permissible.

f. Plants and Vegetables

Moreover, consider the even more extreme case of plants and vegetables. Would the compromise position still hold up if it was insisted, even if only to test out the limits of this theory, that these living organisms would likewise be protected by the law just like germs, insects, animals, and children?[59] Certainly. While it may seem absurd at first, such a radically fringe view of life would not necessarily pose any problems to the theory. To clarify, just like with all of the other living organisms, what would matter would be whether or not there are more individuals who want to care for the plants and vegetables than there are existing plants and vegetables.[60] Since it is far easier to continuously produce such vegetation than it is to adopt and care for it, it's likely that there would be plenty of flora for people to consume.[61] In addition to this, not only would there be plenty of plant matter to eat, it's likely that there would also be plenty of plant life for people to "torture," as would be the case with grass planted in a city park for people to walk on.[62]

In this preceding analysis, it has been assumed that there are ways to evict the plant life without killing it. It should be noted, however, that if the only way for a property owner to evict a piece of vegetation is to necessarily kill it, then doing so would be legally justified. It would also be legal for someone to continuously plant vegetables in the ground knowing that they won't want to continue caring for them in the future even if the only way to remove them at a later point in time was lethal eviction. Under this assumption, this would essentially mean that farming would be completely legal regardless of whether or not people want to care for the plants and animals since there would be no way to non-lethally remove them from property they're currently on. An analogy to this would be an unborn baby in a woman's womb; namely, that it would be legal for the pregnant woman to lethally evict the future child from her womb before viability even if others want to care for that individual. Similarly, if there was a type of sci-fi development that can grow humans in the ground like trees and the only way to remove these tree-like humans who are attached to the land would be to kill them, it would likewise be legal for property owners to lethally evict them from the property, even if the property owners voluntarily planted them there in the first place.

g. Alien Species

Furthermore, consider the case of an alien species being discovered on another planet. Would this newly discovered alien species have rights? In other words, would it be legal to abuse or kill this newly discovered species? According to the Rothbardian view, it would only be illegal if the alien species was capable of petitioning for their rights. If this was not the case, then it would be licit [21].

Under the compromise in this paper, however, it would be assumed that they have legal rights regardless of whether or not they can petition for them. As a consequence, it would only be legal to abuse or kill the newly discovered species if no one else wanted to care for them. Otherwise, doing so would be illicit.

h. Cannibalism

Finally, since this compromise position allows for the possibility of legally killing and eating animals despite the fact that they have the same legal rights as human children, consider the bizarre case of human cannibalism. How does the compromise position presented in this paper compare to the Rothbardian view? According to both views, it's possible that human cannibalism could be done legally if, and only if, no one else wanted to care for the person being eaten.[63]

To clarify, if no one wanted to care for a particular person or let that person on their property, then that individual would be confined to the current piece of property that they're on. If they don't own the current piece of property that they're on, the person who does own the property does not have a legal obligation to continue letting them occupy their property. Since there is no other property where the person can transfer the person to, lethal eviction becomes the only means necessary to put a stop to the crime. Once that person's life is put to an end, the property owner may do what they please with the remains, which includes eating them or selling them to others.[64]

10. Non-Vegan Objections

a. The Law Simply Does Not Apply to Animals

The primary possible non-vegan objection to the compromise position presented in this paper is that, under libertarianism, the law simply does not apply to any individuals who do not belong to a species capable of petitioning for rights. This objection fails for a few reasons, though. First, while many may

be comfortable taking this position, defending the killing and eating of animals under this assumption is far too easy and consequently not a very intellectually rigorous defense of such conduct.

Second, there are several philosophical problems with this objection. The main problem is related to the legal significance of species membership. Specifically, the issue concerns exclusively applying legal rights to all members of a species that can petition for their rights and respect the rights of others, even if some of the individual members cannot do so. This concern, coupled with a few others mentioned earlier, casts doubt on the soundness of the Rothbardian view that concludes that animals do not have legal rights on the grounds that they do not belong to a species that can petition for and respect rights.

Third, since many non-vegans would ultimately get pretty much the same outcomes that they desire under the compromise position as they would without having to make the assumptions that they do under the Rothbardian view, it is not even necessary to make this objection. Given that it could be possible to kill and eat livestock and game animals under the theory presented in this paper, the main difference between the two views is essentially related to whether or not people can torture or sexually abuse their own pets if others are willing to care for them. Under the Rothbardian view, doing so would be legal whereas under the compromise position, such acts would be criminal animal abuse.[65] Those who are okay with killing and eating animals but not okay with allowing unnecessary animal abuse, therefore, would be right at home if they adopted the compromise and wouldn't actually be losing out on anything.

Fourth, for those who are not only okay with killing and eating animals but also okay with unnecessary animal abuse, this objection fails for pragmatic, consequentialist reasons. Specifically, as of now, the non-vegan people are "winning the battle" over whether or not killing and eating animals is legal; right now, countless animals are slaughtered every day for human consumption.[66] However, there is no reason to expect that this will always be the case. In fact, as nations continue to develop, there could be a growing global movement in favor of animal rights. This means that in the distant future, it's entirely possible the tide shifts and the people in favor of animal rights get their way and consequently make it illegal to kill and eat animals even if no one else wants to care for them. In this type of situation, the non-vegans would ultimately lose the battle since they wouldn't be able to abuse or kill any animals, even their own. Under the compromise position, though, non-vegans would be in a much better situation. Specifically, if the compromise was adopted, then in the future situation just described, the non-vegan people would at least be able to consume animals that no one else wanted to care for rather than not being able to consume any animals at all.

b. Continuum Problem

A second possible non-vegan objection that could be brought up is that it is problematic for there to be a "continuum problem" when it comes to deciding what living organisms should have legal rights and which ones, if any, should not have legal rights [3]. Similarly, it could also be objected that there being a similar continuum problem when it comes to deciding what constitutes animal abuse is also problematic.

Regarding the first objection, one of the purposes of this paper showing how this compromise position can deal with even the most extreme stipulations, such as assuming plants, germs, and insects all have legal rights is to demonstrate that the existence of a continuum problem would not actually be problematic since it could be applied wherever the line is drawn. In each of these cases, what matters is whether or not there are more people who want to care for the organism in question than the number of organisms in existence. Similarly, this compromise can even deal with the even more extreme assumption that hurricanes and other natural phenomena have legal rights by treating them like aggressive individuals who lack *mens rea*.

Regarding the second objection, being uncertain about where to actually draw the line wouldn't necessarily be a problem for the compromise since the existence of continuum problems does not necessarily undermine libertarianism [3]. Consider, for instance, at what point shining an increasingly bright light at a neighbor becomes a rights violation. A similar problem involves the point at which a threat becomes imminent. Someone jokingly telling their friend in another country who's on the phone that they're going to punch them wouldn't be an imminent threat, but someone with a knife angrily chasing another person while shouting that they're going to stab them would be.[67]

If where the line should be drawn is unclear, then these issues would just be left up to courts to decide. Regarding the abuse of animals, it may end up being the case that courts decide that whipping workhorses is legal but lighting cats on fire for fun is illegal torture.[68] When it comes to where precisely the line will be drawn on continuum problems, though, libertarians *qua* libertarians have nothing to say. Libertarianism as a legal theory limited to the NAP and property rights is agnostic about continuum problems and, to reiterate, lets the courts work it out instead.

In the words of Block, "of course there will always be, at least potentially, continuum [3] problems...There is nothing in political philosophy that can be done with these insoluble challenges" [14, p. 85, n. 9]. To clarify, "there are no objective non-debatable solutions to any of [the continuum problems]. All answers to them are arbitrary. Responding to these challenges are, ideally, the responsibility of courts, juries, etc." [3, p. 151].

To be clear, then, this paper does not suggest that the line should be drawn in a specific place. Rather, it argues that determining where the line should be drawn should be left up to the courts and that species membership appears to be too narrow of a distinction as well as one that cannot be made *qua* libertarianism.

c. Animals Shouldn't Be Given Rights That Cannot Be Reciprocated

A third possible non-vegan objection that could be brought up is that this compromise grants rights to animals that they are unable to reciprocate. Specifically, Block has argued,

> The problem with this more 'humane' system is that if adopted, we humans would be granting to mammals, for example, more rights than they, in turn, accord to the creatures upon which they prey. To take but one example, the cat tortures the mouse, playing with it, not putting it to an immediate and relatively painless death. To prohibit by law abusing cats would be to grant to them more rights than they offer mice [14, p. 90].

This objection fails, however, for multiple reasons. First, even the traditional Rothbardian view grants rights to individuals who are unable to reciprocate those rights, such as the severely intellectually disabled. While they may belong to a species that has other members that can petition for rights and respect the rights of others, that doesn't change the fact that they cannot reciprocate whatever rights are granted to them. Second, as established earlier, granting rights based on the ability to reciprocate the respecting of those rights does not appear to actually follow from the NAP and private property rights. Instead, it is more of a continuum problem. Third, while some cats may torture some mice, that doesn't mean that other cats that haven't ever tortured mice don't have any rights. If a particular cat has never tortured or killed another mouse, then this objection doesn't apply. Fourth, under the compromise presented in this paper, if the courts granted rights to both cats and mice, then any cats that torture or kill mice would be treated the same as any child or intellectually disabled person who tortures and kills another child or intellectually disabled person. In other words, just because some animals may not respect the rights of others doesn't mean that those animals, or the trustees of those animals, cannot be held accountable for violating the rights of others.

11. Vegan Objections

a. Lethal Evictions Contradict the NAP

One of the most common vegan objections to the compromise that someone could potentially bring up is that people lethally evicting animals from their property in situations where no one wants to care for them is an act of violence and would, therefore, be inconsistent with the NAP and consequently a violation of the animals' rights. This objection also fails, though, due to the fact that killing another rights-bearing creature is not always illegal. It would not be a rights violation, for example, for someone to use force, up to and including deadly force if necessary, to defend their own life or the life of someone else from an attacker. The same applies to people defending their property or the property of others from trespass, theft, or damage. Since the unwanted animal in the situation described earlier is occupying the property of someone who does not want them there either, they are technically a criminal trespasser, and as such, it would not be a rights violation to use the force necessary to stop the trespass from continuing, even if the necessary force is deadly.

Block has applied this same reasoning to abortion, stating,

> Individuals only have a right not to be aggressed against. The fetus is not being aggressed against by eviction from a woman's womb, which is her property; that is, this 'facility' is owned by the woman not the fetus. On the contrary, the fetus aggressor, albeit not purposefully, is the initiator of violence [2, p. 22].

To clarify, he added,

> The position put forth here...is one of eviction not of killing. However, if the only way to evict is by killing the fetus, then the woman's right to her property - that is, her womb - must be held above the valuable life of the fetus. At least in cases of rape, it is clear that the fetus is a trespasser and a parasite. This, then, is true in every case because all fetuses have the same rights.
>
> Let us put this in other words. Must A agree to stay attached to B, who has no functioning kidney, for the rest of his life? Hardly. Individual B is a parasite, no matter how personally innocent. Must A agree to maintain this bizarre experiment for nine months, if that is how long it would take to uncover a new donor for B? Not at all. Any such requirement would entail slavery of A, for whatever the duration.
>
> Nor, at the other extreme, may A simply haul off and shoot B to death. The latter is not guilty of any wrongdoing. Our theory would require that A detach himself from B in the gentlest manner possible, so as to give him the best chance for survival. This would entail, presumably, a visit to the hospital that very day, where they could be surgically disconnected, and the status quo ante achieved.
>
> If this discussion is correct, we deduce that the pregnant woman may remove the fetus from her body in a manner that does the least harm to it possible. That is, she may evict but not kill it. True, one hundred years ago the only way to rid herself of the unborn human within her would have been to put it to death; one hundred years from now, it will presumably be possible to transfer it to a test tube or a host mother without disturbing it in the slightest [2, p. 24].

b. Animals Lack Mens Rea And Cannot Be Trespassers

A second common vegan objection that could get brought up by someone is that animals lack *mens rea* and consequently cannot be trespassers. This objection, however, also fails due to the fact that *mens rea* is not necessary for someone to be guilty of trespass under libertarianism due to the doctrine of "strict liability," which means that a rights violation does not depend on whether or not someone intended to do so. [22, p. 131]. In other words, the only thing that matters, according to libertarian legal theory, is whether someone actually violated the rights of another person, not whether they intended to do so. If fully rights bearing adults unintentionally trespassed onto other people's property, it would still be the case that they're an unwanted entity occupying the property of the other owners, making them a trespasser. As a result, it would be legal for the property owners to use force, up to and including deadly force if necessary, to put an end to the trespass, even if the people didn't mean to trespass in the first place.

This is something that Block has also discussed in the context of abortion, stating, "Certainly, neither the fetus nor (an entirely innocent) X can be regarded as an aggressor...Both lack *mens rea*. Neither can be considered as a criminal. But, it cannot be denied that objectively they are trespassers, a very different matter indeed. They are innocent trespassers; but they are still trespassers" [11, p. 6].[69]

To clarify, he added,

> Of course, this baby human being lacks *mens rea*, and thus cannot be considered a criminal. However, he is nonetheless violating the libertarian legal code, which forbids anyone, for any reason, from trespassing on, occupying against the will of the owner, another person's property. It cannot be denied that the fetus is totally devoid of any intention to trespass. But the same can be said for the unconscious adult, who is unknowingly stowed away on someone else's airplane or boat. Innocence must not be allowed to prevail over private property rights, at least not for the libertarian [7, p. 127].[70]

c. *Positive rights*

A third common vegan objection that could potentially be brought up is that animals have a positive right to not be abused or killed, even if no one else wants to care for them. This objection, however, also fails due to the fact that there are only negative rights, which constrain others from violating another person's rights and stem from self-ownership and the NAP, not positive rights, which obligate people to perform certain actions, since positive rights conflict with people's self-ownership and the NAP. To clarify,

> A basic premise of libertarianism [is] there are no positive obligations. No one is forced to contribute to charity. Good Samaritan laws mandating that people come to the aid of those in trouble (say, an unconscious person) are incompatible with libertarianism. To take an extreme case, there would be no law against refusing to toss a life preserver to a drowning man even if one could do so with minimal effort, and his death would occur otherwise. In this political philosophy, there are only negative obligations. It is prohibited, and a punishable criminal offense, to initiate or even threaten violence against anyone or his justly acquired property [1, p. 275].

d. Deadly Storm Scenario

A fourth common vegan objection that could be raised is that someone who lets an animal occupy their land is similar to someone inviting that animal onto their property, and if someone is invited onto another person's property right before a deadly storm breaks out, the person would not be allowed to evict the individual until the deadly storm passes. The deadly storm, in this case, is analogous to a situation where no one currently wants to care for a particular animal, which means it would not be able to survive outside of the other person's property. As a consequence, it would not be legal, according to this objection, for property owners to kill unwanted animals occupying their property. Instead, they would have to allow the animals to continue occupying their property until someone decides to adopt them, which could potentially never happen.

Much like the other objections, this one also fails. First of all, it is not necessary for a property owner to allow an unwanted animal to occupy their land while it waits for someone else to change their mind and adopt it much like how a property owner would not have a legal obligation to allow a trespasser to complete their journey across their property. To make this clearer, suppose someone trespassed onto someone else's property to cross over to the other side. If the whole trip across would take one hour, the property owner would not be legally obligated to let the person trespass on their property for an hour while they walk across to the other side.

Second, someone who let's an animal stay on their property in a situation where no one else wants them is acting as a Good Samaritan and improving their condition, not worsening it. Doing so, however, does not obligate the person to continue caring for an indefinite length of time. They could decide, at any moment, to no longer care for that individual and to kick them off of their property. It doesn't matter if someone else will possibly change their mind and decide to care for the animal in one hour, one day, one week, one month, or even one year.[71] What matters is upholding property rights, not the duration of the trespass.

Block has applied this same reasoning to using a lifeboat to rescuing someone, stating,

> A is swimming 500 miles from shore. B picks up A out of the water, invites A onto his boat, feeds him, nurtures him for a day. Then, B demands that A leave his boat and get back into the water. This will spell certain death for A, who cannot swim 500 miles. We assume there is no other boat around. Yes, property owners must remove no longer wanted invitees in the gentlest manner possible, but, sometimes, as in the case of the fetus not yet into the third trimester, and in the case of A, this will end up in a killing of an innocent trespasser (one with no *mens rea*) [11, p. 2].

e. Offenses Against Animals Are Worse Than Offenses Against Property

Finally, a fifth common vegan objection that could get brought up is that offenses against animals are worse than offenses against property. This means that while trespassing on someone's property may be bad, ending the life of the trespasser is far worse and therefore should not be legal in those situations.

This objection also fails, though, because it does not matter if offenses against property are not as bad as offenses against animals or even people. All that matters, under libertarianism, is whether or not a trespass is occurring and whether or not deadly force is necessary to stop the violation of rights. To clarify, it would be legal, for instance, for someone to kill a person who is trying to steal their car, if doing so was necessary to stop the crime, even though stealing a car may not be as bad as ending a life.[72]

12. Conclusion

In conclusion, prominent libertarians have come down on different sides of the issue about whether or not animals have legal rights, but none of their views on the matter are fully compatible with libertarianism. The non-vegan Rothbardian position on animal rights that draws the line at membership to a species that can petition for rights and respect the rights of others is too narrow and not one that can be arrived at *qua* libertarianism since it is a continuum problem. The vegan position on animal rights is likewise not fully compatible with libertarianism since it would either obligate people to care for animals even if no one wanted to do so or prohibit lethally evicting them from one's property even if no one else wanted to care for them.

Only the compromise position presented in this paper is fully compatible with libertarianism. Under this theory, which ultimately views where to draw the line as a continuum problem to be left up to the courts, even if animals have the same legal rights as children and the mentally disabled, the existence of industrialized farming, as well as animal testing, could still be possible. This conclusion can be reached by first assuming the vegan argument in favor of animals having legal rights and then applying the theory of evictionism, which addresses the rights of children and the unborn using property rights and the NAP, to animals and other living organisms.[73]

One major benefit of this theory, then, is that it allows for the killing of animals, which is a point in favor of non-vegans, while simultaneously granting legal rights to animals, which is a point in favor of vegans. A second major benefit is that it does all of this by remaining consistent with the "thin" libertarian principles of non-aggression and private property rights. Another major benefit of this compromise is that it eliminates several perceived weaknesses of the Rothbardian view of animal rights, including bestiality and the torture of pets which others would like to care for. A fourth major benefit of this theory is that it is capable of dealing with issues related to predators and prey, rodent infestations, tiny germs and insects, plants and vegetables, and even hurricanes and other natural phenomena. A fifth major benefit of this compromise is that it leaves what the outcome of such an approach will be open to courts and market forces. While it may be likely that there would be industrialized farming and animal testing, it could be the case that the demand related to caring for animals exceeds the supply of animals in existence, in which case neither of those things would be legally permissible. The outcome would ultimately be decided by the market, which makes it an empirical issue. Similarly, while it may be the case that courts extend legal rights to cattle but not rodents, it could also be the case that the courts rule that legal rights should also include rodents. A sixth major benefit is that this theory is capable of withstanding various objections from both vegans and non-vegans. For all of these reasons, the Rothbardian view of animal rights and the traditional vegan view of animal rights should both be abandoned by libertarians in favor of the compromise position presented in this paper.

References

1. Block, W. Libertarianism, Positive Obligations and Property Abandonment: Children's Rights, *International Journal of Social Economics* 31 (3), 2004, pp. 275-286.
2. Block, W., and R. Whitehead. Compromising the Uncompromisable: A Private Property Rights Approach to Resolving the Abortion Controversy, *Appalachian Journal of Law* 4 (1), 2005, pp. 1-45.
3. Block, W., and W. Barnett II. Continuums. *Ethics and Politics* 10 (1), 2008, pp. 151-166.
4. Block, W. A Libertarian Perspective on the Stem Cell Debate: Compromising the Uncompromisable, *Journal of Medicine and Philosophy* 35, 2010, pp. 429-448.
5. Block, W. Evictionism Is Libertarian; Departurism Is Not: Critical Comment On Parr, *Libertarian Papers* 3 (36), 2011, pp. 1-15.

6. Block, W. David Friedman and Libertarianism: A Critique, *Libertarian Papers* 3 (35), 2011, pp. 1-33.
7. Block, W. Rejoinder To Parr On Evictionism, *The Journal of Peace, Prosperity, and Freedom, 2*(Summer), 2013, pp. 125-138.
8. Block, W. Toward a Libertarian Theory of Evictionism. *Journal of Family and Economic Issues* 35 (2), 2013, pp. 290-294.
9. Block, W. Should Abortion be Criminalized? Rejoinder to Akers, Davies and Shaffer on Abortion, *FBIM Transactions* 2 (1), 2014, pp. 33-44.
10. Block, W. The Natural Rights of Children, *International Journal of Health Policy and Management* 2 (2), 2014, pp. 85-89.
11. Block, W. Rejoinder to Wisniewski on Evictionism, Round Four. *FBIM Transactions* 2 (2), 2014, pp. 1-14.
12. Block, W. Specific performance contracts; voluntary slavery. Lew Rockwell, 2015; https://www.lewrockwell.com/lrc-blog/specific-performance-contracts-voluntary-slavery/.
13. Block, W., and S. Montgomery. Animal Torture: A Critique of Thick Libertarianism. *The Review of Social and Economic Issues* 1 (2), 2016, pp. 105-116.
14. Block, W., and S. Craig. Animal Torture, *The Review of Social and Economic Issues* 1 (4), 2017, pp. 82-95.
15. Block, W., and K. Williamson. Is Libertarianism Thick or Thin? Thin! *The Italian Law Journal* 3 (1), 2017, pp. 1-17.
16. Block, W. On Huemer on Ethical Veganism, *Studia Humana* 9 (2), 2020, pp. 53-68.
17. Hoppe, H. *A Theory of Socialism and Capitalism*, New York City, NY: Springer, 1989.
18. Huemer, M. *Dialogues on Ethical Vegetarianism*, Routledge, Taylor and Francis, 2019.
19. Huemer, M. *Reply to Walter Block on Ethical Vegetarianism*, Studia Humana 10 (1), 200, pp. 41-50.
20. Raskin, T. *Animal Torture Violates Rights: A Response to Walter Block*, Center For A Stateless Society, 2017; https://c4ss.org/content/49736.
21. Rothbard, M. *Ethics of Liberty*, New York City, NY: New York University Press, 1998 [1982].
22. Rothbard, M. Law, Property Rights, and Air Pollution. *Cato Journal* 2 (1), 1982, pp. 55-99.
23. Steigerwald, L. *Animal Rights?: A Debate Between Walter Block and Thomas Raskin*. Youtube, 2017; https://www.youtube.com/watch?v=CEtbzIKPKQI.
24. Thornton, A. This Is How Many Animals We Eat Each Year. *World Economic Forum*, 2019; https://www.weforum.org/agenda/2019/02/chart-of-the-day-this-is-how-many-animals-we-eat-each-year/.

Notes

1. The present author would like to thank Dr. Walter Block for happily encouraging the prompt submission of this paper for publication despite his present disagreement with it as well as acknowledge the deeply saddening loss of Thomas Raskin, whose views are mentioned repeatedly in this paper.
2. Or any other creature that can one day petition for their rights [21, pp. 156-157].
3. "Animals" in this paper means "non-human animals."
4. In addition to humans, libertarian legal theory would also apply to any other species that is capable of petitioning for their rights, as will be discussed later.
5. As developed later by Block [14], rights also extend to individuals who cannot petition for their own rights or respect the rights of others but are a member of a species that is capable of doing so under the traditional view.
6. To clarify, Rothbard stated,

> What of the 'Martian' problem? If we should ever discover and make contact with beings from other planets, could they be said to have the rights of human beings? It would depend on their nature. If our hypothetical

> 'Martians' were like human beings — conscious, rational, able to communicate with us and participate in the division of labor — then presumably they too would possess the rights now confined to 'earthbound' humans.
>
> But suppose, on the other hand, that the Martians also had the characteristics, the nature, of the legendary vampire, and could only exist by feeding on human blood. In that case, regardless of their intelligence, the Martians would be our deadly enemy and we could not consider that they were entitled to the rights of humanity. Deadly enemy, again, not because they were wicked aggressors, but because of the needs and requirements of their nature, which would clash ineluctably with ours [21, p. 156].

7. Expanding further on this point, Block has stated that libertarianism,

> …is but a narrow slice of ethics. It is concerned, solely, with intra human actions. That is true of the thin libertarian view of the matter. However, it cannot be denied, there is also a version of thick libertarianism in the literature. In that view, in addition to the non-aggression principle (NAP) of thin libertarianism, there are a host, a plethora, of other requirements to comply with this philosophy. For left wing thickists, the libertarian must embrace feminism, homosexual rights, labor unions and oppose hierarchies ('bossism') and prejudice against minorities. In contrast, right wing or conservative thickists maintain pretty much the opposite of all these criteria. And in the view of thin libertarians,this philosophy has no position on any of these outside issues. As long as a person does not initiate violence against any of these groups, he is acting in accordance with the freedom philosophy. The perspectives on any of these causes are as relevant to libertarianism as is the issue of whether chess or checkers is more libertarian. For the purist or logically consistent libertarian, as long as an individual does not toss checkers at innocent people, or gouge them with chess pieces against their will, his actions are compatible with libertarianism [13, pp. 106-107].

8. Thin libertarianism, to be clear, "is defined as being based, solely, on the non-aggression principle (NAP)" [15, p. 1]. Specifically, "it is a theory of just law, or, equivalently, the proper use of violence. This philosophy maintains that it is licit to use force only in defense, or punishment against NAP violators. That is, people may lawfully do exactly as they please, except that they may not initiate aggression against non-aggressors, nor steal their property" [15, p. 1]. To put it differently, "a (thin) libertarian theorist is one [who] maintains that property rights and the NAP exhaust the basic premises of this philosophy" [15, p. 4, n. 6]. For more information on the distinction between "thin" vs "thick" libertarianism, see [15].
9. Raskin has published a written response to Block [20] and also verbally debated him on the topic [23]. For another proponent of animal rights who is also critical of the Rothbardian view, see Michael Huemer [18]. For a critique of Huemer by Block, see [16]. For a reply to this critique by Huemer, see [19].
10. Since babies and the intellectually disabled cannot exercise control over their own actions or petition for their own rights, though, it would be legal for people to do things to them against their will if, and only if, what they're doing improves, not worsens, their condition. In other words, parents would be legally allowed to feed, bathe, and change the diapers of babies against their will since doing these things are all improvements of the children's conditions, even though it would be illicit for someone to do that to a fully developed, conscious adult. They wouldn't, however, be allowed to unnecessarily beat or sexually abuse them since doing so would be a worsening of their condition. Because of this, children and the intellectually disabled are somewhere between having the full rights of fully developed humans and no rights at all. In relation to this, if children acquire property, such as an inheritance, then their trustee would likewise be the trustee of their child's property, rather than the actual owner of it themselves. As trustees, they would only be allowed to do things with the child's property against their consent as long as it improves, not worsens, their condition. This means that if a child received a million-dollar inheritance, the parent wouldn't be able to squander the money on drugs and alcohol for themselves but they would be able to spend the money on a life-saving medical operation for the child.
11. It should also be noted that if animals do, indeed, have legal rights, then a strong analogy could be made between vegans and the abolitionists who opposed slavery. A similar analogy could be made between the treatment of animals and the Holocaust. Given the number of animals slaughtered every day, though, the atrocities against humans would appear to pale in comparison to the cruelty inflicted upon a countlessly greater number of animals.
12. Huemer likewise makes the same mistake as Raskin when he says "Block makes no effort to explain why species classifications are *morally* special." To clarify, since libertarianism focuses narrowly on *legality*, Block is not suggesting that the classifications are *morally* special, but rather, that they are *legally* special. To offer a friendly amendment to Huemer's statement, then, it can be revised to state, "Block makes no effort to explain why species classifications are *legally* special."
13. The reason why animals have legal rights similar to children and the intellectually disabled will be clarified later.
14. To be clear, if this point is objected to on the grounds that where precisely to draw the line when it comes to extending legal rights is really a "continuum problem," which is something that will be discussed in more detail later, then that would mean that there are no "objective, non-debatable solutions," consequently making their initial objection to extending rights to animals moot [3].

15. It also highlights how sentience or something else may actually play more of a role than species membership. To clarify, the intellectually disabled serve as an especially hard case for those who believe that legal rights should be extended to them but do not believe that legal rights should be extended to animals. Normally, under libertarianism, legal rights are extended to others if they can petition for their own rights and respect the rights of others. In addition to this, legal rights are also extended to those who will develop into someone who can petition for their rights and respect the rights of others at some future point. When it comes to the intellectually disabled and animals, however, neither can petition for their own rights nor can they respect the rights of others. On top of this, neither will not eventually develop into someone who can do such things. Yet, according to the Rothbardian view, the intellectually disabled humans would have legal rights because they are a part of a species that has other members which can petition for their own rights but animals would not have legal rights because they don't belong to such a species. In other words, the main difference is that one has human DNA and the other has different DNA. But drawing the line here would be inappropriate for libertarians *qua* libertarians to do since it is a narrow philosophy focused on the NAP and private property rights and including the intellectually disabled but not animals does not follow from these principles.
16. Since the issue of where to draw the line is a continuum problem, this paper will explore how the implications of this compromise would apply to situations involving a variety of different assumptions about where the line may potentially be drawn.
17. To clarify, libertarian property rights are "based on homesteading, and self-ownership, the 'mixing of labor' with virgin land of Locke, and the legitimate title transfer theory of Nozick" [16, p. 55].
18. Therefore, even if the claim that there are philosophical problems with the Rothbardian view of animal rights is ultimately rejected, a case can still be made for embracing the compromise presented in this paper for the second, more rhetorical, reason.
19. In this context, the word "non-rational" means not being capable of petitioning for one's rights; this is in contrast to "rational," which would mean capable of petitioning for one's rights in this context.
20. To be clear, according to Block, conceding this assumption under the theory of evictionism is not a case of "thick" libertarianism since the extent to which legal rights should be granted is a "continuum problem" [3]. Specifically, "in a sense there is No unambiguously correct answer to the question of when human life begins. It is a continuum problem, and hence there is no non arbitrary solution to it. The fertilized egg stage is as good as any of the other possible responses, and better than some" [8, p. 291].
21. The phrase "*mens rea*" is Latin for "guilty conscience" and is related to people intentionally committing crimes.
22. An obvious exception to this would be surrogate mothers who sign a contract agreeing to bear a child in their womb for the full nine months due to the libertarian recognition of performance contracts [12], which are legal contracts binding the party who signed it to perform a specific task. Another exception would be situations where the baby is seconds from being born due to the legal concept known as *de minimis* [6], which has to do with the law not dealing with trifles.
23. To make this point clearer, it should be noted that abortion is technically a combination of two acts, eviction and killing. Under evictionism, the former is licit at any point during the pregnancy barring any exceptions whereas the latter is only licit prior to viability.
24. Block has expanded on this further, stating,

> I contend that [the gentlest manner] stems from the non aggression principle (NAP): in countering a rights violation, we want to ensure that we stop just on this side of violating the rights of the rights violator. So, if 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 [5, p. 5].

25. In an attempt to clarify this further, Rothbard stated,

> The mother, then, becomes at the birth of her child its 'trustee-owner,' legally obliged only not to aggress against the child's person, since the child possesses the potential for self-ownership. Apart from that, so long as the child lives at home, it must necessarily come under the jurisdiction of its parents, since it is living on property owned by those parents. Certainly the parents have the right to set down rules for the use of their home and property for all persons (whether children or not) living in that home [21, p. 103].

26. To further clarify this point, Block has suggested that determining when a child should be considered an adult for legal reasons is a continuum problem. Specifically, he stated,

When does a child become an adult? As with all continuum problems, the solution does not lie in objective numbers. For no matter what age is selected, it is always possible to be critical, and reasonably so, on the ground that an age one day older or younger would also be justified. It is always possible to point to those under this age who are more mature than some who exceed it. Surely, there are some if only a few 12 year olds who act in a more adult manner than some who have reached the age of 21.

Other criteria must instead be employed if the continuum problem is to be finessed. One such is offered by Rothbard (1998). Here, the criterion is not calendar years, but rather the type of human action, or homesteading, which is indicative of maturity. The child becomes an adult in effect when he seizes control over himself by setting up his own household. This might have to be done under the approval of a judge, but in this manner a modicum of common sense is inculcated into what would otherwise be a sterile objective criterion [3, p. 157].

27. To quote Hoppe,

> According to the natural theory of property, a child, once born, is just as much the owner of his own body as anyone else. Hence, not only can a child expect not to be physically aggressed against but as the owner of his body a child has the right, in particular, to abandon his parents once he is physically able to run away from them and say 'no' to their possible attempts to recapture him. Parents only have special rights regarding their child — stemming from their unique status as the child's producers — insofar as they (and no one else) can rightfully claim to be the child's trustee as long as the child is physically unable to run away and say 'no' [17, p. 24, n. 12].

28. Block has emphasized this point as well, stating,

> Positive obligations are anathema to libertarianism. As supporters of laissez faire capitalism, we support only the doctrine of negative obligations: people are obligated, only, to refrain from initiating, or threatening, physical violence against innocent people or their property. They are not at all legally obliged to help others, to be a Good Samaritan. Once we open up the floodgates of positive obligations, there is no logical stopping place. We will be logically obligated to accept a right to food, clothing, shelter, medical care, etc. Welfare "rights" cannot be far behind [5, p. 6].

29. If this was the case, then people who no longer wanted to care for their children would need to notify others of their ability to take over caring for them. In addition to this, they wouldn't be allowed to keep the children on their property to starve to death but would instead have to bring them to those interested in caring for them. This, to be clear, wouldn't be done as a positive obligation, but rather, as a way to avoid being guilty of forestalling. In other words,

> Do the parents have any obligation to support the child? No. Are they free to dump him out? Yes, to the orphanage, hospital, religious organization that takes on babies or to an adoptive parent. May the initial parent starve or freeze the baby to death? Certainly not. Are the parents obliged to try to find an alternative caregiver first? Yes, indeed. However, if there is not a single solitary adult on the planet who wishes to take on this role, then and only then may the baby be put to death. Can the parents, for instance, put the child behind a window and charge viewers to watch it starve to death? No; that is grotesque. Do they have an obligation to find alternative caregivers? Yes; this does not constitute a positive obligation based on forestalling theory. Must they, by law, give notice that the child is in need of a caregiver? Yes. Must they bear any costs at all to keep the child from dying, supposing they do not want to raise it? The only costs they need bear are those necessary to bring the child to the proverbial church steps or make other similar arrangements [10, p. 89].

30. One of the most common examples of forestalling is someone who homesteads in the shape of a bagel (the person homesteads in a circle but leaves the center of the circle un-homesteaded). In this example, if the individual who homesteaded in this manner refused to let people homestead the inner circle, then that person would be guilty of forestalling (a negative rights violation) since they would be preventing others from homesteading the plot of unowned land. This means that it would not be a negative rights violation for the other people to go across the original person's property without their consent in order to homestead the inner circle.

31. To clarify,

> Suppose a person comes to own these guardianship rights, legitimately, but then no longer wants to continue to feed and clothe her baby. May she hide this child from others, who would be glad to be its guardian? No more than may anyone homestead land in the bagel format. For, to do so would be to forestall others from adopting that child. Just as nature abhors a vacuum, and land homesteading disallows the donut format, so, to, does libertarian theory reject the person who kills a fetus, when there are others who would gladly have

adopted it. It is no more a positive obligation to allow others into the hole in the bagel than it is to notify the orphanage, church, monastery, etc., of an no longer-wanted infant, whether pre or post birth [5, p. 7].

32. To quote Block,

> Let us now consider the compromise position on stem cell research: Allow all those who wish to do research on embryos to create as many of them as they wish. To do so is not per se to contravene the one libertarian legal axiom of non-aggression against non-aggressors. It matters not one whit whether these embryos are unneeded frozen leftovers from in vitro fertility clinics or are created de novo for the express purpose of medical research. It is also a matter of complete indifference, as far as libertarian law is concerned, whether the 'activated egg' has a sperm cell in it or a transferred nucleus from another area of the body. As long as the egg fertilized in either manner will eventuate in a child when properly housed, it is a human being at that point, by stipulation [4, p. 434].

33. If this led to the death of the embryo or fetus, then they would be guilty of murder and could be punished accordingly.

34. Block has expanded on this topic in immense detail, stating,

> Strictly speaking, the issue of who would win this race is irrelevant to libertarianism. After all, this philosophy 'merely' sets up the rules for human interaction; it specifies no particular outcome, it mandates no specific behavior, and provided only that whatever occurs complies with the non-aggression axiom. Which side will win, then, is a matter of complete indifference to libertarianism, properly understood.
> Nevertheless, it is of great practical interest to know, if this libertarian compromise is implemented, whether it will likely result in the creation of numerous fetuses available for medical research (the pro-choice position), or none at all (the result desired by those who take the pro-life stance.).
>
> At first blush, it would appear that the former would win, hands down. After all, it is far easier to create hundreds, thousands, even millions of fertilized eggs in the laboratory than it is to feed, cloth, care for, love, financially support, so many potential children. Those who wish to do stem cell research would appear to have a total and overwhelming advantage. But this only holds true if we characterize the contest as one between those who create fertilized eggs and those who bring them to fruition as human beings. This, however, need not be the case. Let us remind ourselves that any substantial improvement in the lives of a child who is going to be killed by his natural parents, on the part of those willing to adopt him, would count as a homesteading of unwanted property. If A is going to kill his child, whereupon a poverty stricken B comes along who is willing to keep him alive, albeit with a very poor standard of living, libertarian law would certainly not allow the killing to take place. Rather, it would force A to give over the unwanted child to B, the would-be adoptive, but impecunious parent.
>
> If B is willing to bring the fertilized egg to term, and then to raise the resultant child, well and good. As we have seen, the law would force A to hand over this bit of protoplasm to B under such conditions. But suppose B is unwilling or unable to bring up the child in the normal manner; however, he contractually obligates himself to keep this fetus alive, perhaps under the self same laboratory (refrigerated) conditions it is now being kept viable, for research, by the scientific creators of it. Would this count as a 'substantial improvement' in the fetus's welfare? Certainly it would! How so? In making this determination, I reject the doctrine of reincarnation, wherein souls percolate into different bodies in different lives. In this view, the fetus might well be better off dead, so that it could later enter into a 'better' body and live an entirely different life. Instead, I am assuming in making this claim that this is the one and only chance the fetus will have to live. Alive, the fetus has a chance to reach maturity; dead, no chance at all. It cannot be denied that the pro-life forces would be hard put to adopt, and bring up to adulthood, all the fertilized eggs scientists are capable of creating in the laboratory. But on the other hand, there is little doubt that the task of refrigerating them in their own laboratories, and thus preserving their lives, would be one to which they would be more than equal.
> But it is still an empirical issue. If the scientists are far richer than the baby savers, it is still possible that they could churn out enough 'material' that would overwhelm the pro-life forces—even under the assumption of their reduced responsibilities. If and only if this was true would stem cell research (for the fertilized eggs who are not safeguarded) be justified in the libertarian society [4, pp. 435-436].

35. The reason animals have the same rights as infants and the intellectually disabled is due to the fact that, much like the latter, animals are non-rational and consequently cannot exercise control over their actions or petition for their rights. In both cases, it is not necessary for them to be capable of respecting the rights of others in order to have rights of their own.

36. It should be noted that conceding this point would not be a case of "thick" libertarianism any more than conceding the point that life starts at the moment of conception makes evictionism "thick." To clarify, this is because how far legal rights should be granted is a a similar "continuum problem" [3].

37. To be clear, much like with the theory of evictionism, which assumes that embryos have legal rights from the moment of conception, this compromise, which assumes that at least some animals have legal rights, would *not* be a case of "thick" libertarianism since the issue of animal rights appears to likewise be a continuum problem. Rather, it is just a principled compromise that strictly applies the libertarian principles of non-aggression and private property rights to animals regardless of where the line is drawn along the continuum.
38. The trustees would also be legally permissible to do things to the animals against their will as long as what they are doing improves, not worsens, their condition. This means that they would be allowed to do things like pick up and carry animals, bring them on walks, bathe them, and take them to the vet. They wouldn't, however, be allowed to do things that worsen their condition, such as torture or abuse them, which will be explained in more detail later on. Similarly, if the animal produced or acquired some kind of property, such as a bird building a nest or a beaver creating a dam, the trustee of the animal would be the trustee of the animal's property as well. This means that they would only be able to interfere with the animal's property if it was to improve, and not worsen, their condition. To be clear, though, if property owners no longer wanted to care for the animal or it's property, then it would be legal to destroy the animal's property if doing so was the only way to remove it from the other people's property.
39. In this sense, the legal treatment of an animal would be more similar to the treatment of a child than the treatment of a couch, which is why, as it will be shown later, people who neglect or abuse their pets would forfeit their rights as guardians over them.
40. Similarly, it would not be legal for someone to abuse an animal that is under the care of a different trustee since doing so would not only violate the rights of the animal, it would also violate the rights of the trustee by interfering with their role as a guardian.
41. To clarify, Block stated,

> Libertarianism faces a problem with the notion that animals have no rights whatsoever; that they are considered as no different than an inanimate object, such as the aforementioned couch. Yes, animals cannot possess the right of self-ownership because they cannot exercise control over their actions like humans, and so they may properly be considered as our property. But if, in a libertarian society, a person is allowed to torture animals to death that he owns this is a problem with the very framework of libertarianism. The overly sharp division between humans and everything else, in the libertarian philosophy, moreover, seems quite anachronistic given our scientific understanding of the animal kingdom; although humans are, by far, more intelligent than other animals, we know that other species have the ability to feel pleasure or pain (both physical and mental). Thus, assigning full rights to humans and no rights whatsoever to any other creature seems rather arbitrary [14, p. 89].

42. The same would go for "pour[ing] gasoline on a cat, then light[ing] the cat on fire, just for the fun of watching it writhe in agony" [18, p. 14]. Similarly, this would also apply to creatures that are killed by flooding caused by dams.
43. This is also a point in favor of non-vegans who believe that "viciously mistreating helpless animals is about the most despicable act imaginable" and, consequently, are personally opposed to the unnecessary abuse of pets [13, p. 105].
44. In addition to this, it is also a point in favor of non-vegans personally opposed to bestiality.
45. Similarly, sports involving animals, such as cockfighting, dogfighting, and bullfighting would be legal only if no one else wanted to care for the particular animals being used.
46. To clarify this further, imagine someone who had an interest in raising and eventually slaughtering cows and pigs for meat and other animal products. Under the compromise position, a person who had such an interest could allow the animals to continuously reproduce. Anyone who then wanted to care for the animals would get the first option to adopt them. Since cows and pigs are fairly large creatures that take up a lot of space and cost quite a bit of money to care for, it's likely that the number of cows and pigs adopted would be considerably limited. Assuming this is true, then it would be relatively easy for those who want to slaughter cows and pigs to produce a greater number of cows and pigs than people are capable of caring for. Once the number of animals exceeded the number of people, it would be legal to end the lives of the surplus creatures and sell their remains to others.
47. If there were more people who wanted to care for animals than there were existing animals, a case could also be made by non-vegans in favor of eating meat related the concern that if everyone stopped eating meat, then farm animals would likely all go extinct due to a lack of demand to keep producing them, which means that it would be better for the animals to exist and eventually be eaten than for them to eventually be wiped out completely.
48. To be clear, it could be the case, under this compromise, that no animals can be legally killed for meat and other products, which means this could potentially be another point in support of the vegan position. What matters is the number of people who want to care for the animals compared to the number of animals in existence. If there are more people who want to look after the animals than there are existing animals, then there wouldn't be any legal killing of animals. However, if there are more animals in existence than there are individuals interested in caring for them, then, and only then, would

killing the excess animals be licit. And since it's easier to produce animals than it is to adopt and care for them, this point leans in favor of the non-vegan position.

49. Under this compromise position, it would not be legal to use animals that others wanted to take care of for testing even if there was great benefit in doing so since libertarianism is a deontological theory of law, not a consequentialist one.

50. Determining where the line should actually be drawn for this particular continuum problem, though, would be a matter that's left up to the courts to decide.

51. As will be shown later, this can even extend to natural phenomena.

52. In fairness to Huemer, his view is only incompatible with libertarianism if by "wrong," he means "should be illegal" since libertarianism recognizes that just because something is wrong doesn't mean it should be illegal [19, p. 48].

53. They could also live on unowned land and fend for themselves, but it is assumed for the sake of discussion that all of the land that they could live on, including the oceans, is owned. Therefore, every single animal would be occupying someone's property and as such, would be subject to the implications of evictionism. As a brief digression, however, suppose that all of the land wasn't owned and consequently, some of the prey animals that no one wants to care for lived on unowned land as wild animals alongside other predator animals. According to this compromise position, all of those animals would still be rights bearing creatures. This means that if a wild lion, or someone's pet lion, ate a wild gazelle on unowned land, the lion, and possibly the trustee of the lion if it's a pet, would still technically be a rights violator. However, since no one has a positive obligation to care for animals or to stop the violation of rights, and since no one in this situation wanted to care for the wild prey living on unowned land, no legal action against the lion would likely result. If someone wanted to hunt down that lion and treat it like a murderer, though, then it would be perfectly licit to do so since the lion technically violated the rights of the gazelle. In other words, hunting wild predator animals on unowned land would be completely legal.

54. For the sake of discussion, it's assumed that people's blood can't be voluntarily removed and placed in bags for the vampires to drink. If this possibility is also assumed, then the vampire species may not go extinct. Their existence, however, would depend on the willingness of others to voluntarily donate their blood.

55. If the rodents were there first, then those who arrive later would be the trustees of them and could only do things to them that improve their condition.

56. It would also be justified to lethally evict any rodents that are not wanted by anyone else as well as any rodents that present an imminent threat to the property owner since doing so would be an act of self-defense.

57. To expand on this even further, consider a situation where people do want to care for particular insects so they homesteaded the role of trustee for the organism by providing them with food and letting them occupy their land. Would it be legal for someone to come onto their property and kill the insect of which they were the trustee? Under both the Rothbardian view of animal rights and the compromise in this paper, such an act would be illegal. According to the Rothbardian view, it would be illegal because doing so would be a violation of the owner's property rights. According to the compromise position, doing so would be illegal because it not only violates the rights of the insect but also violates the rights of the trustee by interfering with their care of the living organism.

58. To be clear, though, if the tiny germs or insects present an imminent threat to the health or safety of others, then it would be licit for those organisms to be killed in self-defense.

59. Including plants and vegetables, as well as tiny germs and insects, alongside animals and humans helps to highlight that this theory is not undermined by a continuum problem. Just to be clear, though, even if it was uncertain where the line should be drawn, that wouldn't necessarily be a problem since there are other continuum problems in libertarianism that do not undermine the theory, as will be explained in more detail later further on.

60. To emphasize this point, what would matter would be whether or not there are people who want to care for the plants and vegetables, not people who want to eat the plants and vegetables. Starving people who want to eat the plants and vegetables would not necessarily get first claim to the unwanted plant life because the important point is not whether or not people want to eat the vegetation, but whether or not they want to care for them. Since starving people lack the means to care for themselves, it's unlikely that they would be able to care for the plant matter like someone would a pet or child. If no one is willing and able to care for the plants, then it would be legal for the owner of the property where the vegetation is located to evict and kill the plant matter and then do what they wish with the remains, such as selling them at a marketplace. Starving people, to be clear, would not get to claim a legal right to the plant remains and thereby stop the person from selling them to others. This is because, first, there isn't a positive legal obligation to be fed or cared for, and second, being in need does not grant someone legal ownership over the unwanted possessions of another person.

61. If there were people who insisted on caring for the plants and vegetables, it would just be a matter of people continuously producing more until those who insist on caring for them can no longer afford to do so. Consequently, there would likely be plenty of vegetation for people to eat.

62. Related to this, consider the problem of hurricanes, tornados, earthquakes, and other natural phenomena. If someone were to assume, just for the sake of testing the limits of this theory, that these natural phenomena are also living organisms and therefore have legal rights, would this pose any problems? No it would not. First of all, it's unclear how someone would homestead guardianship over something like a hurricane. Suppose, though, that someone did so with a machine that created

hurricanes and these hurricanes, it is stipulated, are rights bearing creatures like infants or intellectually disabled people. Even in this situation, there would not be a problem with this compromise position since the hurricane would be similar to a person without *mens rea* who is imitating aggression on other people. In other words, much like how it would be legal to use force, up to and including deadly force, to stop such an individual from aggressing against others, people would be completely justified in using any means necessary to stop the natural phenomena from aggressing against others.

63. Assuming that all of the land is privately owned.
64. Since it would be legal to sell and eat the remains of humans under certain conditions, it would therefore also be legal to sell and eat the remains of animals under similar conditions.
65. While unrelated to libertarianism, the compromise position also seems to be more compatible with many people's intuitions on the matter.
66. For more information, see [24].
67. To clarify this point, Block has stated,

> A similar situation applies to the age at which statutory rape applies. That there must be such a law is clear; females below some cut off age point are simply incapable of engaging in consensual sexual relations. But at what level should this apply. Twelve seems far too young, and 21 too old. So is the correct age 14, 16, 18? Whichever age is picked, there will be girls younger than that who are more mature than others who are older. And what of the age of the male involved? Surely, there is a difference in physical relations between a girl who is 16 and a boy who is 17, or a man who is 45. Cut off points of this sort simply cannot be derived in any straightforward manner from the law of non-aggression. There is a need for private competing courts18 and juries to decide such matters [3, pp 158-159].

68. This also applies to the first objection. Perhaps courts will draw the line at mammals and rule that non-mammals such as fish, reptiles, insects, germs, and plants, do not have legal rights. Perhaps the courts will also include fish and reptiles. *A priori*, where the line will actually be drawn is unknown.
69. To underscore this point, he added,

> It is important to realize that a trespasser need not have *mens rea*: a guilty mind. The trespasser need not purposefully want or intend to unlawfully occupy someone else's property. The trespasser could be comatose, or unconscious, or, as in the case of the fetus, unawake, and in any case too young to think or have purposes. But, as long as the fetus, whether invited or not, and A, who is explicitly invited, occupies someone else's property against their will (in the absence of a contract giving the occupier rights), he is a trespasser, and the property owner should have a legal right to remove him, in the gentlest, least rights-destroying manner possible [9, p. 2].

70. In other words,

> Of course the fetus cannot actively, purposefully, consciously, commit a trespass. But he can passively do so. The same applies to the adult person who is drugged unconscious and then stowed away on a boat or plane, or attached to someone else's kidney. Of course the fetus and such an unconscious adult person cannot 'refuse' or agree, for that matter, to depart from someone else's property. But he can fail to do so. If he does, he is in violation of libertarian (not 'gentleness') law. It is thus justified for the rightful owner or his or her agents to act so as to defend their property [7, p. 130].

71. With the exception of the *de minimis* principle.
72. Assuming that killing the car thief in this situation is the gentlest manner possible necessary to stop the crime.
73. As well as natural phenomena.