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## Response to Block

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**Bio-sketch:** Gene Callahan is the author of *Oakeshott on Rome and America* (Imprint, 2012) and *Economics for Real People* (Mises Institute, 2002).

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Professor Walter Block has done me the honor of penning an extended critique of portions of my paper, “Liberty Versus Libertarianism.” His response which addresses my comments on the work of the professor himself, and on his mentor, Murray Rothbard. A vigorous attack being a much more complimentary response to a paper than is a placid indifference, my thanks are sincere. Nevertheless, I think Block has misunderstood the essence of my thesis, particularly in his contention that I am only arguing “utilitarian” points, and I contend that his reply would have been more cogent had he paid more attention to the other parts of my paper. In writing this response, I hope that I can motivate a mind as sharp as Professor Block’s to actually engage with my entire argument, and not just those portions of it that explicitly address his own work.

Block begins his response to my paper with a defense of Rothbard’s idea that rights cannot conflict. He writes:

The former [Callahan] begins with a citation from the latter [Rothbard] to the effect that “rights cannot conflict with one another.” What is the basis for Callahan’s claim that rights can conflict with each other? It consists of a quote from Aristotle to the effect that “the ‘admitted goods’ of a society must be weighed one against another in sound, practical political reasoning.” But “rights” are not at all the same thing as “goods.” Surely, Rothbard would acquiesce in the notion that *goods* may conflict with one another in the sense that people must choose between goods like ice cream and shoes...

Surprisingly, Block does not seem to have examined this “quote” from Aristotle at any length, which would have led

him to realize the only quoted bit is “admitted goods.” Nor does he seem to have tried to find out what Aristotle meant by this. If he had, he would have found that Aristotle, invoking “goods,” was talking about the “maxims” that guide a society, or in modern vocabulary, what “rights” citizens have, and not choices between ice cream and shoes! (McIntyre, 2004, p. 171).

Furthermore, the whole critique of Rothbard and Block in my original paper is predicated on the critique of rationalism in politics that is offered in the first and second parts of it. The particular complaints I have about Rothbard and Block are abbreviated not because they are the sole basis of my criticism, but because the reader is expected to have absorbed the earlier parts of my paper. His neglect of all parts of my paper except those dealing with his work and that of his mentor, Rothbard, is also on display when he writes, “Rothbard is concerned with justice; Callahan, with mere utilitarianism,” and again when he writes, “On the one side are the utilitarians, of whom Callahan is broadly representative.” He does not seem to have noticed that an entire section of my paper is, in fact, a critique of utilitarianism (the section on Buchanan and Tullock), nor that my paper is almost wholly “concerned with justice”: it contends that Rothbard and Block are fundamentally *mistaken* about what constitutes justice: they believe that justice requires shackling all of society to some abstract scheme exalting one right (in their case, the right to property) above all others, while I (following Aristotle) contend that justice means balancing all of the “admitted goods” of society, carefully weighing one rights claim against another.

Block goes on to assert that: “Consequences are utilitarian considerations, very far removed from issues of justice.”

But this statement simply assumes that the deontological vision of justice is correct, and that utilitarians' focus on outcomes has nothing just about it. But that is as wrong-headed as utilitarians exclusive concern with outcomes. Deontology and utilitarianism are both abstract conceptions of ethics, and therefore, partial and defective. Their plausibility derives from two factors:

- 1) They each get at part of the truth: it *is* true, as deontologists insist, that principles are an important part of ethics. And it *is* true, as utilitarians contend, that the consequences of one's actions are an important part of ethics.
- 2) Each approach is able to benefit from the defective nature of the other: so long as rationalism is understood as the only possible approach to ethics, then, to the rationalist, deontology appears to be the only alternative to utilitarianism, and vice-versa. So deontologists can strengthen their appeal by pointing out the obvious defects in utilitarianism (it ignores principles), while utilitarians do the same by noting the obvious defects in deontology (it ignores consequences). It is like a war between one's right leg and left leg over which is the essential limb in walking: each leg can correctly note its importance to the activity, and also note the flaws in the argument of the other limb that it is exclusively essential to perambulation. Read in light of the critique of rationalism I offer in my original paper, Block's invocation of "Justice though the heavens fall," is not a sign of purity, but of *imprudence*, which, in my (and the common-sense) view of ethics, is a vice, and not a virtue.

Block goes on to claim that it is somehow *illogical* to argue that rights claims can conflict with one another:

In logic, there are three main principles: the law of identity; the law of non-contradiction; and the law of excluded middle. The first means that a thing is itself; it is not something else. The second states that something cannot both be, and not be. The third establishes that either a proposition is true, or its negation is true; there is no other alternative. Rothbard's view that "rights cannot conflict with one another" is merely an extension, from logic to ethics, of these three laws.

I'm not at all sure what to make of this passage. Does Block think that, because logical truths cannot conflict with each other, therefore *nothing* can conflict with *anything* else?

Would he declare that the statement: "Nazi Germany and Great Britain could not have been in conflict during World War II" to be "merely an extension, from logic to international relations," of the laws of logic? Presumably not: to do so, he would have to show that the concrete facts of international relations are just a sub-species of statements in logic. It is pretty obvious that such an attempt must fail.

But despite his assertion that Rothbard has merely extended the laws of logics into rights claims, Block makes no attempt to show that rights claims are the same sort of entities as logical statements. Is "if A then B implies that if A is true, then B is true as well," a statement of the same sort as "Jeb has an easement across Seamus's land"? And I think there is a good reason he doesn't attempt to demonstrate this: rights statements are quite obviously *different* than logical truths. Rights statements are assertions of powers possessed by individuals which may not be legitimately interfered with by other individuals. The claim that "I have the right to control of that acre over there" is quite obviously different than a proposition in logic, and is demonstrated to be true in an entirely different way: we show the truth of our property rights claim by producing deeds of sale and so forth, not by analyzing syllogistic logic. And such rights claims quite clearly *can* and *do* conflict: the person clinging to the balcony flagpole, in the scenario presented by Block that I cite in my original paper, has a right to life, while the person whose balcony flagpole is being clung to has a right to her property. Justice requires *balancing* these claims; whereas Block's *unjust* solution to the conflict allows the balcony owner's rights claims to run roughshod over that of the person merely trying to save her own life.

Block attempts to answer the charge that shooting the fall victim if she attempts to climb off of the balcony flagpole is an absurd elevation of the right to property over the right to life by noting:

Suppose that this woman with the gun was raped only the day before by a man who resembles the flagpole holder. She is in not unreasonable fear of further bodily injury, and even death. Who is Callahan to deprecate her subjective assessment of the situation in which she now finds herself?

Why in the world does Block think I deprecate this assessment? In our legal tradition, the fact that the person clinging to the balcony looked just like the property owner's recent rapist would undoubtedly be taken into account in deciding whether or not the property owner is guilty of murder. Block

presents us with a false dichotomy: either we give the property owner's "subjective assessment" of the situation complete reign, or we ignore her assessment entirely. But this is not at all what our current legal system (as any reasonable legal system must, I contend) looks at here: instead, we ask, "Was it *reasonable* for the property owner to feel threatened by the person hanging onto her balcony?" If it turns out she was wrong that this was her rapist, but the falling victim did, indeed, closely resemble the rapist, she will probably get off or by convicted of, perhaps, manslaughter. Block's unexamined acceptance of the "subjective assessment" of a person who is possibly a murderer would, in fact, if applied consistently, destroy his own property rights regime: for instance, if my "subjective assessment" of Block's co-authoring two papers with me is that thereby he was handing over all of his property to me, then per his own principle, who is he to "deprecate" my "subjective assessment" on this matter? But any reasonable court, including the anarcho-capitalist courts Block advocates, would have to evaluate my "subjective assessment" for plausibility, and would hopefully decide that it is absurd: whatever delusions I may entertain, there is no reasonable basis for concluding that by co-authoring with me, Block meant to grant me all of his property. Similarly, if the woman owning the balcony had been raped by a large white man, while the person clinging to her railing was a petite black woman, I would hope that even anarcho-capitalist courts would decide that her fear that the clinger might be her rapist was entirely unreasonable, and that she is guilty of murder, not engaged in a "defense of her property rights." And, contra Block, my case against her is entirely based on the *injustice* of her action, and not upon "utilitarianism": whether or not one has been recently a victim of a crime, it is fundamentally *unjust* to kill people simply on the basis of unfounded fears that they might conceivably be a threat.

Similarly, Block mistakes my case against police torture of suspects as turning on the utilitarian results of such torture; that is all wrong: I contend that it is *unjust* for law enforcement officials to torture suspects, even when it is absolutely clear to those officials that the suspects are guilty. Every human being is worthy of respect for their human person, and no one, whatever they have done, is *ever* justly tortured. The fact that allowing such torture produces bad results is not the *reason* that torture is unjust; it is *evidence* that it is unjust.

Block writes: "Let us suppose, however, that cops now have an *increased* motive to create 'evidence' inculcating innocent suspects. Still, Callahan's criticism of Rothbard fails. For the latter is discussing *justice*, not utilitarianism."

This is nonsense: it is *unjust* for people to be framed by corrupt cops, even if it happened to produce greater utility. Block's foray into utilitarian grounds for deciding such cases is a complete diversion: my concern is not about what maximizes some abstract concept of "utility," but about what *actual* rules are most likely to produce *just* outcomes. And Block's dismissal of such concerns does not demonstrate his (or Rothbard's) greater commitment to justice: instead, it demonstrates their obsession with achieving easy, deductive answers to conflicts, rather than doing the hard work of actually trying to achieve real world justice by careful balancing of competing rights claims.

Block also addresses my horror at the Rothbardian idea that parents ought to be able to starve their own children to death without consequence. He notes that, in response to the off-putting nature of Rothbard's original example, many other libertarians have sought to amend Rothbard's initial position:

Does the mother have any obligation, not to feed the baby, but to notify others (church, orphanage, hospital, synagogue, etc.) that she is no longer willing to do so? Of course she does, and this is not a violation of the no-positive-obligations principle of libertarianism. Here, Callahan ignores a rather large literature (Block, 2001a, 2003, 2004, 2008; Block and Whitehead, 2005) making precisely this case: that the obligation to notify is compatible with the NAP.

Block's argument here is simply that I addressed Rothbard's argument as he wrote it, rather than taking up the numerous attempts to patch over how horrific the conclusion of that argument is, as Rothbard initially framed it. I congratulate Block and others for recognizing the problem and for their attempts to save Rothbard from the condemnation his original argument rightly deserves, but it is hardly my responsibility to help them in this venture, since I have shown that the argument rested on faulty (rationalist) premises in the first place.

Oddly, despite apparently lacking the time to read my entire paper, Block did have time to make up objections to libertarianism himself. See, for instance, his whole digression about Okinawa, Japan, and China. What this has to do with the many arguments I actually made is unclear to me.

However, in his eagerness to supply his own libertarian counter-examples that he can then refute, Block actually undermines his whole case with his example of the niqab-wearing witness. A Muslim woman's right to free exercise of

her religion suggests that she should be able to wear such a garment wherever she is. But if she is in court accusing another person of some crime or tort, the accused has a right to “face” his accuser. Here is a clear-cut example of rights conflicting, offered by Block himself! His “handling” of this obvious case of a rights conflicting is to assert that anarcho-capitalist courts will resolve this conflict in various ways, and that this result will be better than that achieved by statist courts. Well, perhaps he is right about this: my paper was not intended to decide between various judicial systems. But if Block is correct, it is because anarcho-capitalist courts are *better at resolving rights conflicts* than are statist courts! After all, if there were no rights conflict here, and we could just deductively arrive at the “correct” result, then all anarcho-capitalist courts should reach the exact same, deductively correct, resolution to the issue. By admitting that just courts might resolve this issue in different ways, Block has given away the entire game.

In conclusion, I find Professor Block’s objections to my paper to be based upon a very partial reading of my thesis, one focused entirely upon my comments on the works of Rothbard and Block himself. He treats these comments as if they were a standalone paper themselves, rather than correctly understanding them as merely examples of the rationalism that is evaluated in the first sections of the paper. In brief, while I am thrilled that Professor Block chose to address my paper at all, I do not find his objections to it, based as they are on a partial reading of it, convincing.<sup>1</sup>

## NOTES

- 1 Thanks to Robert P. Murphy for helpful comments.

## REFERENCES

- McIntyre, K. (2004). *The Limits of Political Theory: Oakeshott’s Philosophy of Civil Association*. Exeter: Imprint Academic