

RESPONSE TO FESER ON LIBERTARIANISM

WALTER E. BLOCK

Harold E. Wirth Eminent Scholar Endowed Chair and Professor of Economics
Joseph A. Butt, S.J. College of Business
Loyola University New Orleans
wblock@loyno.edu

ABSTRACT:

In Block (2010) I had occasion to criticize Feser (2004). In Feser (2010) he took severe issue with my critique of his earlier work. The present article is my attempt to defend Block (2010) against Feser (2010). What are the issues involved? We disagree on libertarian theory being based upon the non-aggression principle (NAP), and on private property rights predicated upon homesteading. His example of Jones, the air-grabber, I claim is mistaken. Most germane to modern day sensibilities, he protests sharply against my contention that his view toward homosexuals is compatible with those of ISIS: namely, he is in effect calling for the death penalty for this group of people.

KEYWORDS

Libertarianism, private property, homesteading, gay rights.

I. INTRODUCTION

Feser (2010) is a critique of Rothbardian libertarianism as articulated by the present author, that is, me, in general, and in particular, a rejection in its entirety of a previous article of mine, Block (2010). His main thrusts are that private property rights, which undergird this sort of libertarian theory are indeterminate, and thus incapable of bearing the load Rothbardians such as myself place on them. Secondly, Feser maintains that libertarians are guilty of a logical contradiction in not agreeing with him about the proper prohibition of homosexual behavior. He also avers that the libertarian concept of self-ownership is replete with errors as well as subject to a whole host of other philosophical mistakes. We shall consider these points in the following order. Section II deals

with Feser's views on self-ownership. In section III I respond to his perspective on gay rights, or the lack thereof, and in section IV, to his rejection of private property rights, at least the libertarian version, and its non-aggression principle, NAP. We conclude in section V.

II. SELF-OWNERSHIP

Feser (2010) begins¹ his critique² of libertarianism with the claim

... that the thesis of self-ownership simply isn't as determinate as its defenders usually take it to be... There are several reasons for this. One reason is that to own something is to have a bundle of rights over it, so that the content of a claim of self-ownership cannot be determined until we first know what theory of rights grounds it. And some rights theories that can be said plausibly to entail a kind of self-ownership nevertheless do not entail all the rights over ourselves that libertarians claim we have. For example, Locke's theory of rights famously entails a kind of self-ownership, but also entails that we can have no right to commit suicide or in other ways to cause serious damage to ourselves.

But this is problematic. Ownership means that the object owned may be used in any manner desired by the owner, compatible of course with the stipulation that he may not utilize it in a way incompatible with the ownership rights of other people. If A owns a baseball, he may not throw it through B's window, because that would violate the latter's rights. On the other hand, B may not seize this

¹ From time to time this author criticizes me not for what I have written, but for the very opposite: what I have not written. For example he states: "...this combination of views (self-ownership together with egalitarian ownership of external resources) is regarded as a kind of libertarianism by those who defend it, a group of thinkers who call themselves "left-libertarians." See Peter Vallentyne and Hillel Steiner, eds., *Left-Libertarianism and its Critics: The Contemporary Debate* (Basingstoke: Palgrave, 2000). For whatever reason, Block neglected to discuss this variety of left-wing libertarianism in his paper." And again: "In (an) article, I endorse and briefly defend Mack's self-ownership proviso. (I have defended it at much greater length elsewhere, in an article that Block unfortunately ignores when he attacks the proviso, even though I cited it prominently in the paper he criticizes. Block also ignores Mack's own detailed defense of the proviso.)" I am tempted to say I will not dignify such criticisms with a response, but I have thought better of it. Instead, I will now respond. It is highly problematic to criticize someone not for what he wrote, but for what he did not write. Were I to follow this path, I would have an almost infinite number of criticisms to launch against Feser. There are many, many, many things he has ignored in his writing career: "Of shoes and ships and sealing-wax. Of cabbages, and kings." Nor has he weighed in, at least to the best of my knowledge, about the evils of Mao, Stalin and Hitler, nor of the impropriety of rejecting libertarianism, the last best hope for the survival of mankind.

² Unless otherwise noted, all comments on this author will refer to this one article of his.

sporting equipment from A; that would be theft of A's property. One would have thought this would be perfectly clear to all and sundry.

But, in case this is not fully clear, allow me to mention a statement by Malcolm (1958, pp. 30-31) of his teacher Ludwig Wittgenstein:

On one walk he 'gave' to me each tree that we passed, with the reservation that I was not to cut it down or do anything to it, or prevent the previous owners from doing anything to it: with those reservations it was henceforth 'mine.'

The point, it should be clear, is that if the owner may not do what he wants with the tree (always subject to other people's ownership of their own property), nor prevent others from taking it from him, then he really cannot be said to own it. Similarly, if we own ourselves,³ we may do with our bodies whatever we wish, again, always subject to other people's ownership of their own person's and property. Thus, it would be improper for any of us to rape, kidnap, enslave, murder anyone else, or steal their property. As for suicide, Locke and Feser to the contrary notwithstanding, it would not at all follow from self-ownership that suicide would be illicit.⁴

Feser also complains about "the 'self' part of the thesis. What exactly is a self in the first place? One needs to answer that question before one can know exactly *what* one owns by virtue of being a self-owner;" No, no, no. This is neither the time nor the place to delve deeply into what, for all love, is a "self." It is sufficient to say, at least for ignorant libertarians such as me, that self-ownership precludes murder, rape, kidnapping, assault and battery. Why? Because, as Wittgenstein

³ What about "self-ownership"? The same considerations apply. We are each self-owners. This means we may do whatever we wish with our bodies, and no one else may do so without our permission. Of course, there is always that side-order condition. We may wave our arms about all we want, but not if they connect with someone else's nose (assuming there is no contract, such as boxing, where this would be permitted). For the view that we may even sell ourselves into (voluntary) slavery, see Andersson, 2007; Block, 1999, 2001, 2002, 2003, 2004, 2005, 2006, 2007A, 2007B; Boldrin and Levine, 2008; Frederick, 2014; Kershnar, 2003; Lester, 2000; Mosquito, 2014; Nozick, 1974, pp. 58, 283, 331; Steiner, 1994, pp. 232; Thomson, 1990, pp. 283-84. In the view of Boldrin and Levine, 2008, p. 254: "Take the case of slavery. Why should people not be allowed to sign private contracts binding them to slavery? In fact economists have consistently argued against slavery – during the 19th century David Ricardo and John Stuart Mill engaged in a heated public debate with literary luminaries such as Charles Dickens, with the economists opposing slavery, and the literary giants arguing in favor."

⁴ Of course, committing suicide on someone else's property, and burdening them with your dead body, would be entirely another matter; clearly, that would be off-limits.

would have it, these are violations of ownership rights; these acts are incompatible with bodily integrity, with our private property rights in ourselves.

Our author relies upon, for the basis of his own positive theory, “a divinely appointed end, namely the sustenance of human existence.” And he has the temerity to complain that libertarianism is not “determinate?” According to some religions, infidels must be put to death. How is that compatible with the sustenance of human existence? Other religions claim that unless a man engages in polygamy, he must be killed. How is that compatible with the sustenance of human existence? Still others maintain that homosexuals should be murdered. How is that compatible with the sustenance of human existence?⁵ Most religions of course reject such abominable anti-libertarian stances. But which religion is correct? If God is omnipotent, and benevolent, how do we explain the acts of Hitler, Mao and Stalin? I say this not to criticize religion, but to question Feser’s reliance on this very *indeterminate* source of wisdom on political philosophy.

Feser favors “... traditional natural law theory (which) entails very strong private property rights and holds that some degree of inequality is part of the natural order. At the same time, it also entails that property rights can never be *so* strong that it would be in principle unjust to redistribute even a small part of the surplus of the wealthy to aid those who are starving.” Redistribute? Redistribute *how*? Would this be done voluntarily through private charity? Then, of course, libertarianism would not say “nay” to such an occurrence. On the other hand, if this is done compulsorily, we have a word for it; it is called “theft.” It seems difficult to reconcile this with the natural law position in which Feser seeks to clothe himself. This philosopher, moreover, blithely assumes, along with the interventionists, that fewer people will starve if food is forcibly taken away from those who legitimately own it than if such robbery is strictly forbidden. This is an empirical claim without much merit, methinks.

In the view of our author “... we need first to develop a theory of rights before we can determine either what aggression is or what self-ownership amounts to. To try to build a theory of rights on either a non-aggression principle or the thesis of self-ownership has things backwards.” I would say, in contrast, that there is some mutual determination going on here. There are rights, there is aggression, and there is ownership. None of them can be completely divorced from either of the other two. Of course, any one of them, standing entirely on its own, cannot get us very far in terms of developing a philosophy of just law. If coins were three-sided,

⁵ Well, maybe, gays are not really human? See below for my criticisms of Feser on this issue.

we might be tempted to say that the three of these, rights, aggression, ownership, form a three-sided coin.

Let us start our analysis of Feser by quoting him at length on a weakness he sees in libertarian homesteading theory. He states:

... suppose Smith and Jones are walking in some virgin meadow, heretofore unknown to and unclaimed by anyone. Jones, being a mad scientist, suddenly dons an oxygen mask and then activates a special device he has prepared that sucks away all the oxygen for the entire square mile around he and Smith, generously leaving enough oxygen in the air around Smith to last him another minute. He then tells Smith: "Sorry about that, but I need this particular parcel of oxygen for an experiment I'm conducting. Unless you can run very fast and very far on a minute's worth of oxygen, I'm afraid you're going to suffocate to death. I admit this is very cruel of me. But look, it isn't really an *injustice*, strictly speaking. You didn't own this square mile of oxygen, because no one did—it's virgin territory—so you really had no enforceable claim over it. But I acquired it, just now, with my device, 'mixing my labor with it,' as it were. So in fact it's now all *my* oxygen, and I don't have an obligation in *justice* to give any to you—even though, I acknowledge, I'm being very uncharitable in refusing to do so. Moreover, I'm not really 'killing' you anyway, any more than I'm 'killing' starving Third World children (or whomever) by deciding not to send money to them. In both cases, I'm just refraining from using my justly earned property in a charitable way, which I have a perfect right to do. Letting someone die is not the same as murdering him. Anyway, I guess you'd better start running!

Now, has Jones violated Smith's self-ownership rights or not? We might ask it this way: Has he suffocated Smith (which, we've agreed, would violate his self-ownership rights), or merely let Smith suffocate (by simply refusing to offer assistance by giving up some of his own resources, which arguably would not violate Smith's self-ownership rights)? One possible answer is to say that Jones has respected Smith's right of self-ownership *formally* but not *substantively*. In other words, he has not, strictly speaking, damaged, trespassed, or in any other way violated anything Smith owned by virtue of being a self-owner: Smith has been left intact 'from the skin inward.' But he *has* nevertheless put Smith in the very sort of dire situation the avoidance of which is presumably part of the *point* of defending the thesis of self-ownership in the first place. He has followed the letter of the thesis of self-ownership but not its spirit.

I anticipated this type of argument in my Block (2010), since Feser made it in his publication of 2004. I said this, there:

Gordon (2006B) responds to Feser's sally: 'Fred has killed Charles, in a perfectly straightforward sense. It is true that he has not touched Charles, but why is this relevant? Libertarians maintain, like almost everyone else, that persons have a right

not to be killed. There isn't a special libertarian view of what killing someone involves: if you kill someone, even without touching him or his property, you have violated his 'formal' right to self-ownership. In like fashion, suppose that Fred poisons some unowned water that he has good reason to believe Charles is about to drink. Fred has, in an ordinary understanding of law, attempted to murder Charles. Libertarians should not hold otherwise; and there is no need to modify the self-ownership principle to take account of such cases.

Gordon's is a good answer. Here is another one: Ordinarily, when Charles is sitting quietly, breathing, we cannot say that he is homesteading the air, since this commodity is not a scarce item, and one can only homestead, or, indeed, own, scarce goods (Kinsella, 2001). However, when Fred's machine sucks away all the air from the proximity of Charles, oxygen all of a sudden becomes scarce for the latter, very scarce indeed. But, Fred is thus guilty, under the libertarian legal code, of interfering with the peaceful homesteading by Charles of vital air, thus killing him. This invasion, or oxygen theft, certainly rises to the level of murder. Imagine were Fred to encounter Charles deep beneath the sea, where both were breathing air from their respective tanks. Whereupon Fred seizes, e.g., steals, Charles' air supply, leaving him to drown. There would be no question but that this would be murder, nor, should there be any issue about such a verdict in the very clever⁶ parallel case posed by Feser.

Feser (2010) is not convinced by this argument. The problem here is that he merely repeats what he said in Feser (2004), but with one little additional twist. Instead of the bad guy swiping *all* of the air from the victim, he, "generously," leaves for the latter a little bit: just enough for one minute of life-support.

Why Feser, or the referees who monitored his paper, or the editor who accepted it for publication, or anyone else, should think this answers the objections Gordon and I launched, or is even relevant to it, is beyond me. The point is, the criminal, whatever is his name, is just as guilty of murder for possessing all, or virtually, of the air the victim has every right to inhale, for reasons given above.

There is a song: "Take all of me."⁷ Let us apply its message to the present case. Sometimes, it is easier to see matters when they are writ large. Let us leave off of Feser's air thief who kills a single victim, whether by allowing him one minute's worth of air, or taking it all away from him. Let us not be pikers. Suppose some scientist captures *all* the air, and *everyone*⁸ dies. It is difficult to see how it can be denied that he is a murderer. But if this applies to all people, why not to a single victim of Jones', namely, Smith?

⁶ Too clever by half

⁷ <https://www.youtube.com/watch?v=DAwigrJ3Cyc>

⁸ Except him and his friends

There is yet another difficulty here, whether Feser takes away all the air of the victim, or allows him one minute's grace in this regard. This is seen in yet another statement of this author's, when he writes: "Another problem is that I now see that it is false to say that external resources start out with no one having any claim over them." The key words here are "start out." Feser on the one hand, and a libertarian of the Rothbardian stripe such as the present author, interpret this phrase very differently. For the former, "start out" means pretty much right now. That is, at the time the air-hog tries to murder the victim in this rather unusual way. However, for the homesteading theorist, matters are very different. They "start out" a long, long time ago, hidden in the mists of human history.

Let us consider exhaling. Why do we all have a right to exhale? On the face of it, this is curious, since this practice releases carbon dioxide which is either a deadly poison, or, at least, a pollutant.⁹ The answer, emanating from this quarter, is that our great, great, great, etc., parents homesteaded this right, quite a while ago.¹⁰ They, then, bequeathed it to us. So, if a Feserian magician were to compel us to no longer exhale, he would be violating our rights at the exact moment in time he somehow prevented us from doing so. But the same exact analysis applies to inhaling; taking in air, that is. But this is precisely what Feser's scientist is doing. The point is, the victim has had bequeathed to him in this manner not only the right to exhale into the air, but also to inhale from it. Yes, the air is now unowned. One can only own scarce resources, and air is plentiful. But not in Feser's example. There, is it no longer scarce, not with a "scientist" of the Feserian persuasion on the loose. But the point is, as soon as this murderer scoops up all the air surrounding the victim, he is committing a crime.

Feser (2010) relies upon magicians grabbing stuff. Homesteading, in contrast, stems from natural law. The latter is if anything *realistic*. Once we introduce malevolent prestidigitator into the mix who can make air disappear while other people are in the act of breathing it, we are outside of the realm of reality. We might as well be talking about voodoo specialists, who can stick a pin in a doll of their devising and create bodily injury to their victims without coming within

⁹ Rothbard (1982) offers a splendid libertarian analysis of the challenge of pollution, a so-called external diseconomy.

¹⁰ When we stopped being apes and started in on this homo sapien business. The former do not have rights, but the latter do.

miles of them.¹¹ But in this case, even if we posit Feser's conjurer, his critique shall not suffice. This is because the illusionist will be interfering with the *process* of homesteading. Note, the victim *first* reaches for X. *Then, and only then* before the victim can actually attain X, Feser's man makes it disappear. But the victim was the *first* homesteader.¹² The magician only later on "disappeared" the material the victim was in the process of attaining.

Can Feser's example be saved? Yes. But we shall have to posit a super magician (SM), not merely Feser's plain old ordinary follower of the occult. The SM can not only make parts of the material world disappear at will, but he is also a mind reader and knows the future. *Before* the victim can even think of homesteading something, or, just as he gets an inkling of doing this, the SM causes it to vanish. But wait. That is not good enough. What we really need to make Feser's scenario viable is not the mere SM, but rather the super duper SM (SDSM). This worthy can make *everything* in the universe cease to exist, except of course for the victim, who will find it a tad difficult to survive with no earth, no planets, no nothing, except for himself sitting there all on his lonesome.¹³ But will that not also kill the SDSM? It makes no matter. We can posit that the SDSM wants to commit suicide. By this time, we have strayed quite a way from anything anyone can call reality.

¹¹ With exactly as much justification, Feser could have attacked libertarian theory using voodoo. After all, if this practice actually worked, the criminal could murder his victim without any physical contact, exactly as in the case of his air grabber.

¹² Says Kinsella (2009A) in this regard (footnotes omitted): "Instead of a might-makes-right approach, from the insights noted above it is obvious that *ownership presupposes the prior-later distinction*: whoever any given system specifies as the owner of a resource, he *has a better claim than latecomers*. If he does not, then he is not an owner, but merely the current user or possessor. If he is supposed an owner on the might-makes-right principle, in which there is no such thing as ownership, it contradicts the presuppositions of the inquiry itself. If the first owner does not have a better claim than latecomers, then he is not an owner, but merely a possessor, and there is no such thing as ownership. "More generally, latecomers' claims are inferior to those of prior possessors or claimants, who either homesteaded the resource or who can trace their title back to the homesteader or earlier owner. The crucial importance of the prior-later distinction to libertarian theory is why Professor Hoppe repeatedly emphasizes it in his writing. Thus, the libertarian position on property rights is that, in order to permit conflict-free, productive use of scarce resources, property titles to particular resources are assigned to particular owners. As noted above, however, the title assignment must not be random, arbitrary, or particularistic; instead, it has to be assigned based on "the existence of an objective, intersubjectively ascertainable link between owner" and the resource claimed. As can be seen from the considerations presented above, the link is the physical transformation or embordering of the original homesteader, or a chain of title traceable by contract back to him."

¹³ Sitting on *what* one may well ask.

Note how far we have to go¹⁴ in order to escape the doctrine of libertarianism based on private property rights embedded in first come first served homesteading. But even this will not suffice, for, consider the following:

Feser attempts to wiggle out of this objection by maintaining that his golum leaves a bit of air for the victim. But this one minute's worth of air will not suffice. The victim was homesteading *as much of the air as he needed for his entire life*, not merely a little bit of it necessary to keep him alive for 60 seconds. And how do we know this, pray tell? This is because his father, and grandfather, and all of his predecessors, homesteaded enough air to breathe their entire lives. They, in effect, bequeathed this property right to Feser's victim.

III. HOMOSEXUALS

Let us now consider Feser and the gays. He maintains that his principles enable him to legally oppose not homosexuality per se, but merely the public display of affection amongst members of this demographic.¹⁵ But his arguments do not hold water. For what of the fact that many gays have a distinctive way of walking, of holding their bodies, even when they are not displaying the affectionate behavior that Feser finds improper? Surely, our impressionable straight children will be put off, irretrievably harmed, when they witness such activity? They may be heterosexual, but they are not entirely naïve. They know full well what this portends. Gays off the streets, then?

Then there is the problem of the child soon to become actively gay.¹⁶ Based on Feser's "logic," such youngsters will be dismayed by public displays of affection by those mean, dirty, disgusting *heterosexuals*. The point is, this issue is reciprocal.¹⁷ What is sauce for the goose is, or at least should be, sauce for the gander. If Feser's heteros can violate the rights of homos, then the latter is equally justified.

¹⁴ I must say that I admire; Feser's fertile imagination. Grabbing air away from people indeed. Magnificent! Even though this scenario cannot undermine libertarianism, as he intends it to do.

¹⁵ He is not at all happy that I have interpreted him to the contrary.

¹⁶ I now assume, if only arguendo, that choice of sexuality is at least partly biologically driven. Hey, if Feser can invent super magicians, I can also go out on a limb.

¹⁷ For an author who has done more than perhaps anyone else to focus our attention on reciprocation, see Coase, 1960.

True, the former outnumber the latter ten or twenty fold. But since when do mere numbers determine rights?

Then, too, there is the argument from privacy. But this is *not* a right, at least not for Rothbardian libertarians such as the present author. States Mr. Libertarian:

It might, however, be charged that Smith does not have the right to print such a statement, because Jones has a ‘right to privacy’ (his “human” right) which Smith does not have the right to violate. But is there really such a right to privacy? How can there be? How can there be a right to prevent Smith by force from disseminating knowledge which he possesses? Surely there can be no such right. Smith owns his own body and therefore has the property right to own the knowledge he has inside his head, including his knowledge about Jones. And therefore he has the corollary right to print and disseminate that knowledge. In short, as in the case of the ‘human right’ to free speech, *there is no such thing as a right to privacy except the right to protect one’s property from invasion*. The *only* right ‘to privacy’ is the right to protect one’s property from being invaded by someone else. In brief, no one has the right to burgle someone else’s home, or to wiretap someone’s phone lines. Wiretapping is properly a crime not because of some vague and woolly ‘invasion of a “right to privacy”’, but because it is an invasion of the property right of the person being wiretapped.¹⁸

So we now posit an intrepid photo journalist who, without violating property rights,¹⁹ records gays doing their thing in their own homes, with the doors shut and the venetian blinds closed. Horrors, he publishes these pictures in a newspaper, magazine or blog where impressionable young heterosexuals, gasp!, can see them. Then, using Feser’s own principles, this will justify the government to do what? Jail the gays? Execute them? It is difficult to say; but, of a certainty, violate their rights. My debating partner will not welcome this conclusion. But, if A inexorably leads to B, and B to C, then he who says A must necessarily also say C, whether he likes that conclusion or not. Feser is hoist by his own petard.

States Feser (267): “Block ... says ... that I proposed ‘banning Homosexuality’ and ‘prohibiting [it] by law, as if I favored marching homosexuals off to prison. In fact I did not propose, and would not propose, any such thing.’”

Suppose Feser were to say X, and X logically implies Y. Surely, then, it would be permissible for me to ascribe to him the statement Y, even though he did not explicitly say that. I go further. If X logically implies Y, and Feser says X, then I

¹⁸ Rothbard, 1998; see also Block 2013A, 2013B

¹⁹ He has long-range x-ray cameras; if Feser can invent atmospheric clearing magicians, I can be excused for introducing this phenomenon

am permitted to hold him responsible for Y even if he explicitly denies Y. For example, X could be: “Socrates is a man; all men are mortal.” And Y? It would be: “Socrates is mortal.” I would not care how often, or how vociferously, Feser denies that Socrates is mortal.” If he opines that “Socrates is a man; and all men are mortal” he is philosophically stuck with its logical implication, “Socrates is mortal.” Similarly, it matters not one whit how repeatedly, nor how stridently, Feser maintains his philosophy does not violate the rights of homosexuals, he has painted himself into a corner in this regard. There is no escape for him, no escape.

Let me put this into other words, since Feser is adamant about this matter. He states (267): “Indeed, I explicitly denied in my article that governmental measures directed against acts between consenting adults done in private could be justified on the basis of my argument.” This avails him nothing, in defense against my charge. So, consider this second example. X: $A > B, B > C$. Y: therefore $A > C$. He who asserts X is logically compelled to accept its logical conclusion, Y. There is no getting away from this fact. Feser (267) accuses me of “... mostly ignor(ing) (his) overall argument and focus(ing) instead on a few non-essential examples (he) gave to illustrate it.” Not so, not so. Rather, Feser is logically compelled to accept the truth of Y, given that he supports X, whether he likes it or not. If he dislikes Y so much, let him withdraw X. But he is very loath to do that since X constitutes his main broadside against the philosophy he hates so much, libertarianism.²⁰

How does this work out in the present case? What are the specifics? What are the Xs and Ys? In order to put this in Feserian language, we abjure self-ownership and speak entirely of rights.²¹ Y is now, clearly, “banning homosexuality,” or “legally prohibiting homosexuality” or “sending gays to prison” (if they publicly exhibit homosexual behavior).²² And shooting them down like rabid dogs should

²⁰ Let me say, parenthetically, that although I do not think this author has any substantive truth on his side, I still welcome his contribution to this debate. For all too long, and even now, libertarianism is given disproportionately less attention in the scholarly literature than it deserves. As long as a critic mentions this philosophy, and spells it correctly (it is not libertoonyism, nor librarianism, nor yet libertinism), as far as I am concerned he is making a positive contribution.

²¹ States our author (266): “... much (though not all) of what libertarians want to say when they use the language of self-ownership is, I now think, false. So, even if there is *some* sense in which we can be said to “own” ourselves, it is not the standard—libertarian—sense. Better, then, just to focus on the question of what specific rights we have, and bypass the language of self-ownership altogether, which is at best otiose and at worst misleading.”

²² I do give Feser partial libertarian “credit.” My understanding of the logical implication of his position is that if a homosexual exhibits no gay behavior whatsoever, he merely refrains from all

they refuse to be jailed. I claim that Feser is logically obliged to support this ISIL – like position.²³ And, what, pray tell, is Feser’s X? It is his view that gays have no “right” to exhibit their loving behavior amongst themselves, where young impressionable children might see them. But without privacy rights, see *supra*, their acts, *all* of them in their own homes, are an open book.

But does not our author have a readily made rejoinder to this charge available to him? After all, we must be fair to my debating partner, and acknowledge all strengths to his argument. He would only legal prohibit affectionate homosexual conduct *in public*. In *private* as far as this legal moralizer is concerned, this demographic may engage in acts between consenting adults to their heart’s content. This possible reaction on Feser’s part fails. For, according to libertarianism, at least the Rothbardian version of it that I defend, there simply is no right to privacy, as we have seen, *supra*.

Now suppose the following scenario.²⁴ Two gays are doing their thing behind closed doors, but they have left their window curtain open a crack. There is a peeping tom (Block, 2013A, ch. 18) out there with a camera. Or, stipulate that there is a scientist whose camera has X ray vision, just like Superman, able to penetrate brick walls.²⁵ One of these worthies takes a video film of the homosexuals in the midst of their activities and posts it on the web. Given the present day ubiquity of this medium, young impressionable children, horrors, view the proceedings. Would this not violate rights? Of course it would, given Feser’s malign interpretation of desirable law. So, for him, it must be banned. All of it. No exceptions. None of this business of “behind closed doors” or keeping homosexuals in the “closet” for Feser. Thanks to this author, virtually all gays are “out” whether they like it or not, and, thus, subject to the Feserian law banning them, or at least their typical behavior. If homosexuals insist upon having sex in their own private homes, or bath-houses that welcome them, Feser’s logic leads

heterosexual acts, Feser is not logically obligated to support a violation of his rights. But the same can be said for ISIS, amongst others. As long as a man does not engage in any homosexual act, whatsoever, even the authorities in such a totalitarian anti-gay regime would have no reason to suspect his preferences.

²³ Feser (267) mentions “Block’s desire to portray me as some kind of totalitarian monster.” And in this he is entirely correct. That is indeed my “desire.” And he is precisely that. Yes, a “totalitarian monster.”

²⁴ I risk repetitiveness here. I do so since Feser is so adamant that I have misunderstood him, misquoted him, misrepresented him.

²⁵ Hey, if Feser can invent highly talented scientists who can scoop out air, but leave just enough around the target to enable him to breathe for one more minute....

inexorably to jail for them, at least. If they resist, insist upon their libertarian rights to do anything they wish provided they do not violate the NAP, then, dire consequences await them. They would be violating the law of the land. If this is not a “totalitarian monstrosity” then nothing is.

Let us quote Feser (265, footnote omitted) on this so that there can be no mistake. He argues

... that if one combines the self-ownership proviso with certain conservative moral assumptions drawn, say, from Thomistic natural law theory (assumptions which a number of libertarians of the Rothbardian school Block belongs to would sympathize with), it would follow that even given self-ownership, one could justify ... certain limited governmental interventions in private transactions where these transactions might have, as a side effect, the promotion of a social climate that tends to make it extremely difficult to raise children according to the sorts of moral principles associated with natural law theory. I won't repeat the whole argument here—interested readers are referred to the original paper itself—but the key idea was that if Mack's proviso is intended to safeguard our use of our world-interactive powers, then if these powers include our *moral* powers, and if (as Aristotelians and Thomists would argue) those powers can in the normal case only be properly formed through habituation, especially during childhood, then it would follow that the moral corruption of a child would count as exactly the sort of nullification of one's world-interactive powers that Mack's self-ownership proviso is intended to rule out. Hence respect for self-ownership would entail at least some measures for upholding conservative morality through legal means. For example, if someone held natural law grounds that the institutionalizing of 'same-sex marriage,' or adoption of children by homosexual couples, or a popular culture oriented toward sexual debauchery, tended to undermine the realistic possibility of children forming morally sound attitudes about sexuality, then one could make a case, in principle, for government action to prevent these sorts of things, even given self-ownership.” Feser is well and truly hoisted by his own petard into supporting a view that both he and I would regard as a “totalitarian monstrosity.”

There is a second reason to draw this conclusion, apart from privacy: reciprocity.²⁶ This relationship is reciprocal, something overlooked by Feser. If a gay person threatens “the moral corruption” of hetero children, then the hetero person threatens “the moral corruption” of homo youngsters. So, according to the “logic” of our author, not only must we ban, by law, all homosexual activity, we must do so, also, for all heterosexual activity. If a young person is threatened by “the moral corruption” of one type of behavior, the same goes for the other. What

²⁶ Coase (1960) stresses the reciprocal nature of much of economic activity, particularly externalities. See fn. 17, *supra*.

are we to do then? Ban all sex between consenting adults, and legally require that the human race comes to a grinding halt? Perhaps we should compel everyone to become a bi-sexual? In that way, the reciprocal nature of this phenomena can be made explicit. No, wait, from the Feserian point of view, bi-sexuality should also be expressing prohibited by law, since it is an equal opportunity offense to practically everyone. It is difficult to navigate this sort of legal thicket in which Feser would place us.

IV. PRIVATE PROPERTY RIGHTS

Next, Feser accuses me of a “most egregious act of intellectual dishonesty— it is very hard to see how it could plausibly be attributable to mere error...” According to Feser, I truncated a statement of his so severely, and inaccurately, as to render him saying the very opposite of what he clearly said.

Here is the unadulterated passage that Feser wrote:

After all, if I own myself, doesn't it follow that I can, *morally* and not just legally speaking, do anything I want with myself, since it's my own property I'm using—including engaging in certain sexual and other behaviors frowned upon by conservative moralists?¹² And I go on to explain why, *in the view of most libertarians themselves* (again, Block included), the answer to this question “is a firm No,”

Here is my rendition of it:

. . . if I own myself, doesn't it follow that I can . . . do anything I want with myself, since it's my own property I'm using—including engaging in certain sexual and other behaviors frowned upon by conservative moralists? . . . The answer . . . is a firm No.

In this version of the complete passage, I capitalize the words I omitted:

AFTER ALL, if I own myself, doesn't it follow that I can, *MORALLY AND NOT JUST LEGALLY SPEAKING*, do anything I want with myself, since it's my own property I'm using—including engaging in certain sexual and other behaviors frowned upon by conservative moralists? (TWELVE). AND I GO ON TO EXPLAIN WHY, *IN THE VIEW OF MOST LIBERTARIANS THEMSELVES* (AGAIN, BLOCK INCLUDED), the answer TO THIS QUESTION “is a firm No,”

As can be seen, I eliminated some of his comments regarding morality.²⁷ Why? Because libertarianism has little if anything to say about this subject. Rather, our concern is with but a sliver of that larger subject: which actions should be legal, and which ones against the law. As well, I removed “After all,” “*morally* and not just legally speaking,” “to this question” and this: “And I go on to explain why, *in the view of most libertarians themselves* (again, Block included.” In Feser’s view I was thereby guilty of the “most egregious act of intellectual dishonesty” presumably because I quoted him as saying something contrary to his own view, even, contradictory to it. I think this is merely hysteria on Feser’s part. I doubt any fair-minded judge would agree with my debating partner on this matter. Certainly, the editor of the journal in which both our essays appeared made no such objection, nor did any referee.

Consider this following statement of Feser’s (269):

Although in the article Block is criticizing I did indeed focus on the way in which the self-ownership proviso could be used to justify upholding conservative moral views via legal means, I also made it clear that this was so only to the extent that one independently accepted some conservative (e.g., natural law) conception of morality.” This, clearly, is untrue. Feser is not at all limiting his scope “only to the extent” we assume “conservative moral views” on the part of people. *Au contraire*. As demonstrated above, if Feser had the power, he would compel gays to refrain from certain non-invasive behaviors. He would do so whether or not they or anyone else accepted a “conservative (e.g., natural law) conception of morality.

This author (269) asserts that my analysis of his air-sucking scientist “simply misses the point; in particular, it fails to address the worry that, given the view of property rights endorsed by some libertarians (e.g., Rothbardians), the perpetrator could argue that he is not really “killing” the victim at all, but only letting him die by refusing to give him any of the oxygen he has justly acquired, and thus has a right to withhold.” The key word in this quote, of course, is “justly.” Feser has a hard row to hoe, here. He is attempting a *reductio ad absurdum* of the Rothbardian libertarian position, not his own. Thus, he must demonstrate in *this* perspective, not his own, that his “scientist” may homestead so much air that innocent people can choke to death for the lack of it. But he has not succeeded in establishing any such thing. He has not even *tried* to do this.

²⁷ One error of mine, for which I now apologize. I should have said “footnote omitted.” However, I don’t think this is relevant to Feser’s complaint against me. Still, this was a mistake of mine and I must acknowledge it.

Instead, he contents himself merely with asserting that this is the case; that if the mad scientist is the first to commandeer all of this for the moment unused air, he may make off with it. But he reckons in the absence of the point made *supra* regarding exhaling and inhaling.

Feser (269-270) now offers a syllogism:

(1) Air, in ordinary cases (such as when one is sitting quietly and breathing) is not scarce; but (2) One can only homestead or own scarce goods; so (3) In ordinary cases, sitting quietly and breathing doesn't count as homesteading air. But (4) To use a device to suck away all the air in some person's vicinity makes it suddenly scarce; so (5) Anyone who does this commits an injustice by interfering with the peaceful homesteading of air.

This author rejects the "crucial second premise." Why, pray tell, may someone not homestead, or even own, a non-scarce good? I shall not respond to Feser here. Instead, I merely note there is an exhaustive libertarian literature attesting to this very issue.²⁸ The point is, contrary to Feser, when one employs a *reductio*, one is logically obligated to adopt the *target's* basic premise, not one's own. My debating partner fails to do that here.

Feser relies upon Locke (1689). Note the emphasis of the former on homesteading, "mixing labor" with unowned (scarce) material. This is something with which all Rothbardians would enthusiastically agree, apart, of course, from Locke's "proviso" which has been subjected to withering rejection (Hoppe, 1993; Kinsella, 2009B; Machan, undated; Makovie, 2015; Rothbard, 1998, 244-245). Remember, Feser is supposed to be depending upon a *reductio ad absurdum*. This implies that he be able to show some evidence of at least being aware of just what the (Rothbardian) libertarian perspective on this matter *is*. In relying on Locke's proviso, he demonstrates the exact opposite. So, again, it is Feser, not me, who "needs to say something in defense of his claim, rather than merely asserting it."

Feser maintains that (5) does not logically follow from the previous four premises. I have two responses. It does. And it need not. First, why and how does

²⁸ See for example Boldrin and Levine, 2008; De Wachter, 2013; Kinsella, 2001, 2008, 2012; Long, 1995; Menell, 2007A, 2007B; Mukherjee and Block, 2012; Navabi, 2015; Palmer, 1989. May Feser object that he does not accept this argument? Of course he may. But he cannot plead ignorance of it. After all, his article appeared in the *Journal of Libertarian Studies*, and the impropriety of owning non-scarce goods is a well-established point of view in this perspective. Contrary to Feser (270), then, I do not at all "need... to say something in defense of this claim, rather than merely asserting it."

it? Feser sees these matters as unfolding in a discrete manner. First this happens. Then, that occurs. Whereupon yet something else takes place. And then we come to a conclusion. At that point yet another episode eventuates. I see matters quite differently, more as a continuous process, at least on Smith's part. I agree with Feser that Jones acts abruptly; a *dues ex machina*, as it were, who jut pops up. Smith is in the *midst* of breathing. He is homesteading the air, one breath at a time. He is counting on more of the same, for a long, long time.²⁹ Is the air scarce? Yes and no. Yes, in the context of Jones hiding in the wings, soon to perpetrate his evil deed. But no in the ordinary sense. I realize I am now attempting to have my cake and eat it too. But, I aver, I am entitled to do so. Context is all in this case.³⁰ Something, the very same thing, can be true or not be true, one and the same thing that is, depending upon the context. The air is non-scarce without Jones and his machinations, but scarce once he is introduced to our little scenario. It is non-scarce in his absence, because, ordinarily, there is plenty to breathe, and more. But with his, Jones' presence, everything changes. Now, the air is a contested resource. Given the parentage of *both* of them,³¹ where each of their forebears grabbed up air only in an amount sufficient to breathe, this sets a precedent. This sets up a context, one that Feser is pleased to entirely ignore.

Consider the water as an analogy. Assume people are like fish, swimming in the ocean. There is plenty of room for all of them, and more. Along comes an aquatic Jones who scoops it all up for his nefarious purposes. Perhaps he sends it into outer space. All of the human "fish" die. Now, let us convert Jones' actions from instantaneous to gradual. That is, he scoops up all the water alright, but an acre foot at a time. At first the human fish do not even realize what is happening. After a short while, though, the more observant of them note that the water level of all the oceans has been reduced by an inch or so. But, as Jones expels more and more H₂O out of the ocean and into deep space, it starts to become semi scarce. The human fish, more and more of them, begin to protest that Jones is commandeering their water. He is now, more and more, violating everyone else's rights.

²⁹ This is implicit, not explicit. Undoubtedly, Smith is thinking of very different things right before Jones pounces on his future air supply.

³⁰ And in many other to boot in legal philosophy.

³¹ We assume that Feser's Jones is the first of his family to want to grab up more than he can use for his own personal survival.

The air bubble relied upon by Feser (pp. 270-271) will avail him nothing. It is not at all relevant. Jones is still interfering with the patrimony bequeathed to Smith³² from his ancestors. We must reject Feser's claim (p. 270) that it is "even more obvious that Jones is not interfering with Smith's homesteading of air."

Let me try again. Mr. A is homesteading some land. He has marked out 160 acres with fence posts at the four corners of his intended property, and is busily uprooting trees, breaking up rocks, and has already seeded with corn or wheat 40 of these acres. There is land aplenty contiguous to what A intends to be his holdings. The Lockean proviso is being met. Along comes Mr. B. Does he start homesteading land contiguous to A's? To ask this is to answer it: no, he does not. Instead, he barges in to A's soon to be legitimately claimed property, the other 120 acres, and begins homesteading that very territory *in the process* of being homesteaded by someone else, A. When A objects, B, a bigger and stronger person, shoves him aside. Feser would in effect claim that B did nothing wrong. Libertarians in contrast, would vociferously disagree. How can it be a successful *reductio ad absurdum* if our author does not adopt the basic premise of his target, Rothbard and his followers in this case, and demonstrate even on that basis something untoward to his creator can be deduced?

Next consider this sally by our author (p. 271): Jones has

homesteaded a much bigger share, but that is hardly something a Rothbardian like Block can regard as intrinsically unjust. For Rothbardians and (at least many) other libertarians hold that there is no strict *injustice* involved, but only a lack of charity, if (say) someone is allowed by others to starve to death simply because through bad luck he has no access to food, and others, who do have it and got it fair and square, refuse to share any with him. The case at hand, I submit, differs from this sort of case only in degree, not in kind. If Block and other Rothbardians find this troubling, good for them—they should find it troubling.

"Troubling?" If Feser is so "troubled" by the specter of starving people, why does he not disgorge all of his wealth? Well, just that amount of it he has over and above the amount he needs to keep himself alive. He could give this "excessive" amount to the impoverished who, without his help, will surely die. But there this philosopher sits, fat and sassy, with his vast holdings, compared to those about to die from lack of food. Feser lifts nary a finger to help them. He may well donate to charity for the poor, but that is not enough; not nearly so.³³ According to his own concern with being "troubled" he is required to do far more. The word

³² And to Jones too, of course,

³³ Feser is not the only one who can employ a *reductio*

“hypocrisy” arises in this context. Moreover the case at hand differs wildly from the one that “troubles” Feser. We posit that Feser is not at all responsible for the starvation that unfortunately occurs in many corners of the globe. Feser did not first steal their food, and then watch them die. He did not promote socialism in the under-developed world. Matters are far different, a difference in kind, not degree, with “Jones.” This latter does indeed steal oxygen from those who are about to inhale it. Yes, it is not fully owned, Feser’s “contribution” to this discussion. But that makes no nevermind. Smith was in the *process* of homesteading this land, or, by analogy, air, *before* Jones came upon the scene.

Feser asks us (p. 271):

...to imagine someone (another mad scientist, say) who uses a device to cause things to disappear whenever you reach for them. The point of the example was that, here too, we have a case where even though the person doing this does not violate your selfownership in a formal way—he leaves you unmolested ‘from the skin inward’—he nevertheless denies you any substantive self-ownership by making it practically impossible for you to bring your self-owned powers to bear on the external world. Block’s only reply to this example is to assert without argument that the actions of such a person would obviously count as ‘theft,’ so that, once again, we have a scenario which (Block alleges) poses no need for a distinction between formal and substantive self-ownership, etc. But what he fails to realize is that the example in question, like the example of Smith and Jones described above, concerns individuals in ‘virgin territory,’ a context where the resources in question are unowned and no property rights yet exist. So, when the mad scientist causes everything you reach for to disappear, what he’s causing to disappear are things that *no one*—not you, not him, not anyone else—heretofore had any claim over. In effect, *he* is acquiring or ‘homesteading’ them (and immediately destroying them) before you have a chance to. But in doing so, he is not engaging in ‘theft,’ precisely because they didn’t belong to anyone before he caused them to disappear.

Let us in addition “imagine” the following by returning to an example mentioned supra: A man, call him Smith is homesteading the proverbial “forty acres” with his mule. First, he sets up a fence surrounding his property. Then, he cleans up and plows 10 of those acres, and is clearly in the *process* of mixing his labor with the other 30. Jones is about to come tom along and grab off some of this property, but before he can do so, let us explore the status of those 30 acres so far untouched by human hand, or, in this case, by mule and human feet, along with corn kernels. Is it fully owned by Smith? No, he has not yet come into contact with a square inch of it. Is it completely unowned at this point, there for the licit taking of Feser’s man, Jones? No, no, a thousand times no, Feser to the

contrary notwithstanding. Let us call this quasi, or semi, or demi owned property. Owned by whom? By none other than our man Smith, who has at least made homesteading intentions with regard to it. In Feser's simplistic analysis, land³⁴ is either fully owned, or not owned by anyone at all. There is simply no room in his philosophy for any third, or intermediate, category. Nor is there really any need for same, in the absence of his picayune attempts to undermine Rothbardian homesteading theory. But, in order to adequately respond to Feser, and defend all that is virtuous, true and just, we must resort to this transitional condition. Once we have that in mind, it is again easy to dismiss Feser's "Jones" whether he is unjustly grabbing land, air, or for that matter, water, while there are people actively engaged in homesteading same.

According to Feser, I "simply fail... even to grasp the point the example" in the long quote supra regarding the "mad scientist." No. I see it all too well. Feser engages in an all or none analysis. He ignores the fact that good philosophy requires appreciation of gradations, of continua (Block and Barnett, 2008). For Feser, the air is either owned or not owned. The only owned air, apart, presumably, from that in oxygen tanks, is the air people are now in the very process of breathing. All other air, all of it, is completely and totally unowned. It is there for the taking by Jones, the air-hog. He may have it all if he grabs it up first. What of the rights of the rest of us, such as Smith, to be assured that not only may we inhale this second, or even for a minute, as Jones (in Feser 2010, but not Feser 2004) so generously offers, but for the rest of our lives, and those of our children. Our author gives the back of his hand to all such contentions. No. Jones sucked it up, all of it, fair and square, and we Rothbardians will have to live that that state of affairs. Death for everyone, except Jones.³⁵ We must choose between cleaving to the homesteading principle of Locke, Rothbard and Hoppe, etc., or the survival of the entire human race.³⁶

A nice try, Professor Feser, but it will not suffice. The air that your man Jones is seizing is not completely unowned. It is only quasi unowned, or, equally so, quasi owned. It is owned in this continuum sense based upon what we have said about inhaling, exhaling, the human fish, the farmer with 40 acres and a mule. In a word, this extra air, not now being breathed by anyone, but the target of Jones, is *contestable*. What is this? The word has several meanings in political economy. It is used in monopoly theory. There it implies no costs of entering or leaving an

³⁴ Air in the case at hand, but we are now arguing by analogy

³⁵ And, presumably, his friends.

³⁶ Except for Jones and his friends.

industry, and full information available to all.³⁷ It is of course used in sports. When two individual athletes, or teams, range against one another, only one can win such a *contest*. There are of course beauty contests, chess contexts, spelling bees (contests), in all cases giving rise to one winner and a single, or many, losers. In our present context, a contest means there are various individuals, or groups, who are each claiming something. Some seven billion people claim, in effect, enough air to breathe. Feser's Jones, in contrast, wants it all, apart from a small bit for each of us, which will enable life for about one minute. Feser thinks that according to libertarian homesteading theory, we must all stand idly by which Jones scoops up all the air. Jones will not be murdering us all according to our author, he will merely be allowing us to die. The libertarian answer emanating from this quarter is, nice try Mr. Clever Feser, but it hardly overturns this philosophy.

Let me try to respond to Feser (2010) from an entirely different vantage point. At present air is not scarce, at least not on earth, under present circumstances. We have more than a sufficient amount of it, nowadays, at our disposal. At the end of a marathon race, when the finishers are gasping to catch their breathes, no one reproaches them for taking in more than their fair share. Thus, it cannot, may not, be owned, since ownership applies, only, to scarce commodities.³⁸ However, when Jones starts to grab up air, all of a sudden it becomes very, very scarce. Then and only then does this chemical become a good, since it is now scarce. But, is it licit to homestead non-scarce items? Not on the basis of the libertarian analysis³⁹ of another non-scarce commodity, information. So, again, and for an entirely different reason, Feser's critique of libertarianism fails.

V. CONCLUSION

Feser complains of the "vitriol" with which I react to his essay. My response is the proverbial, if you can't stand the heat, don't go into the kitchen. Another is, do not be surprised if, when you try to tear down libertarianism, the last best hope for the survival of the human race, those who advocate this perspective take

³⁷ See http://www.economicsonline.co.uk/Business_economics/Contestable_markets.html

³⁸ Kinsella (2001, 2012) applies this important insight to intellectual property, which, also, is not scarce.

³⁹ Block, 2013B; Boldrin and Levine, 2008; De Wachter, 2013; Kinsella, 2001, 2012; Long, 1995; Menell, 2007A, 2007B; Mukherjee and Block, 2012; Navabi, 2015; Palmer, 1989.

strenuous objection. But perhaps the best response is, vitriol? What vitriol? Block (2010) did no more than dispassionately counteract Feser's (2010) "defamation"⁴⁰ (p. 261) of the libertarian viewpoint.

Feser's understanding of homesteading, at least the Rothbardian, Hoppean, Kinsellian version thereof, is wanting. Were we to apply it to the Indians,⁴¹ we would have to return virtually the entire United States territory to them. They were here first. They, presumably, homesteaded all of it; every square inch of it. But wait a second. Do not Indians, especially their medicine men have magical powers, based on mushrooms? Peyote? Of course they do.⁴² If so, then according to the logical implication of Feser's theory,⁴³ we do owe the entire land mass of the country to them. But to say this is again to leap far away from the reality that Rothbardians insist undergirds libertarian homesteading theory.⁴⁴ As of 2016, there are some 330 million people in the U.S. There are still vast empty spaces that have never come under homesteading.⁴⁵ When the white man first appeared on the scene, there were only a handful of millions of Indians. They could not have mixed their labor with more than a small percentage of the available land. The point is, these natives had no more right to the entire U.S. than Feser's magician had to the air surrounding the victim; even when he so graciously allowed him a bubble of air so that he could breathe for an entire generous minute.

Why do I go on at such length about Feser (2010) which either purposefully misconstrues libertarian homesteading theory, or is in abject ignorance of it? There are several reasons. For one thing, justice. Feser (2010) was unjust to Block (2010) in particular and to Rothbardianism in general. Simple justice requires that the record be put straight. For another, Feser declares himself an ex-libertarian. That, alone, is like waving the red flag at the bull. Libertarianism is a magnificent philosophy. We need every adherent of this perspective we can get. Newcomers

⁴⁰ For a libertarian defense of defamation, libel and slander see Block 1976, ch. 7, 2008; Rothbard, 1998, ch. 16

⁴¹ Native Americans, not people from the country India

⁴² If they do not, we can assume this to be the case, Feser-style.

⁴³ If Feser's magician can suck up air as he pleases, my Indians can homestead the entire land mass under discussion

⁴⁴ And, this is important, since Feser is launching a *reductio ad absurdum* against this system. If so, he is logically compelled to abide by its strictures, and not create straw men arguments. As we have seen, time and again, he fails to do so.

⁴⁵ Feser's favorite institution, government, claims these lands, but we need not be bothered with such assertions in the present discussion

are certainly welcome. But it is imperative that old hands such as Feser stay in this blessed fold, not leave it. Third, as can be seen by reading his publications, this author is very clever and inventive. No one who can concoct Feserian magicians, who actually makes a coherent⁴⁶ case for legally prohibiting homosexuality⁴⁷ can be properly characterized in any other way. It is important that this creativity of his be harnessed in the interests of (libertarian) justice, not against it. Professor Feser, please consider coming back home.

REFERENCES:

- Andersson, Anna-Karin. 2007. "An alleged contradiction in Nozick's entitlement theory." *Journal of Libertarian Studies*, Vol. 21, No. 3, Fall: 43–63
- Block, Walter E. 2008 [1976]. *Defending the Undefendable*. Auburn, AL: The Mises Institute
- Block, Walter E. 1999. "Market Inalienability Once Again: Reply to Radin," *Thomas Jefferson Law Journal*, Vol. 22, No. 1, Fall, pp. 37-88
- Block, Walter E. 2001. "Alienability, Inalienability, Paternalism and the Law: Reply to Kronman," *American Journal of Criminal Law*, Vol. 28, No. 3, Summer, pp. 351-371; http://www.walterblock.com/publications/reply_to_kronman.pdf
- Block, Walter E. 2002. "A Libertarian Theory of Secession and Slavery," June 10; <http://www.lewrockwell.com/block/block15.html>; <http://libertariantruth.wordpress.com/2006/12/08/a-libertarian-theory-of-secession-and-slavery/>
- Block, Walter E. 2003. "Toward a Libertarian Theory of Inalienability: A Critique of Rothbard, Barnett, Gordon, Smith, Kinsella and Epstein," *Journal of Libertarian Studies*, Vol.17, No. 2, Spring, pp. 39-85; http://www.mises.org/journals/jls/17_2/17_2_3.pdf
- Block, Walter E. 2004. "Are Alienability and the Apriori of Argument Logically Incompatible?" *Dialogue*, Vol. 1, No. 1. <http://www.univishtov.bg/dialog/2004/256gord6.pdf>
- Block, Walter E. 2005. "Ayn Rand and Austrian Economics: Two Peas in a Pod." *The Journal of Ayn Rand Studies*. Vol. 6, No. 2, Spring, pp. 259-269
- Block, Walter E. 2006. "Epstein on alienation: a rejoinder" *International Journal of Social Economics*; Vol. 33, Nos. 3-4, pp. 241-260

⁴⁶ Even if erroneous

⁴⁷ Not merely the public expression of it

Block, Walter E. 2007A. "Secession," *Dialogue*. No. 4; pp. 1-14; <http://www.unisvistov.bg/dialog/2007/4.07.WB.pdf>

Block, Walter E. 2007B. "Alienability: Reply to Kuflik." *Humanomics*. Vol. 23, No. 3, pp. 117-136

Block, Walter. 2008. "Sue for libel?" December 29; <http://www.lewrockwell.com/block/block124.html>

Block, Walter E. 2010. "Libertarianism is unique; it belongs neither to the right nor the left: a critique of the views of Long, Holcombe, and Baden on the left, Hoppe, Feser and Paul on the right." *Journal of Libertarian Studies*; Vol. 22: 127–170

Block, Walter E. 2012. "Rozeff on Privacy: A Defense of Rothbard." December 13; <https://www.lewrockwell.com/lrc-blog/rozeff-on-privacy-a-defense-of-rothbard/>

Block, Walter E. 2013A. *Defending the Undefendable II: Freedom in all realms*; Terra Libertas Publishing House

Block, Walter E. 2013B. "There Is No Right to Privacy." July 13; <http://archive.lewrockwell.com/2013/07/walter-block/there-is-no-right-to-privacy/>

Block, Walter and William Barnett II. 2008. "Continuums" *Journal Etica e Politica / Ethics & Politics*, Vol. 1, pp. 151-166, June; <http://www2.units.it/~etica/>; http://www2.units.it/~etica/2008_1/BLOCKBARNETT.pdf

Block, Walter, Stephan Kinsella and Roy Whitehead. 2006. "The duty to defend advertising injuries caused by junk faxes: an analysis of privacy, spam, detection and blackmail." *Whittier Law Review*, Vol. 27, No. 4, pp. 925-949;

Block, Walter and Roy Whitehead. 2005. "Compromising the Uncompromisable: A Private Property Rights Approach to Resolving the Abortion Controversy," *Appalachian Law Review*, 4 (2) 1-45

Boldrin, Michele and David K. Levine. 2008. *Against Intellectual Monopoly*. Cambridge: Cambridge University Press; <http://www.dklevine.com/general/intellectual/against.htm>

Coase, Ronald H. 1960. "The Problem of Social Cost," *Journal of Law and Economics*, 3:1-44; <http://www.sfu.ca/~allen/CoaseJLE1960.pdf>; <http://www.econ.ucsb.edu/~tedb/Courses/UCSBpf/readings/coase.pdf>

De Wachter, Joren. 2013. "IP is a thought crime." at TEDxLeuven. June 6; http://www.youtube.com/watch?feature=player_detailpage&v=E5BOBs3Nmbw

Feser, Edward. 2004. "Self-Ownership, Abortion and the Rights of Children." *Journal of Libertarian Studies*. Vol. 18, No. 3, Summer, pp. 91-114; http://www.mises.org/journals/jls/18_3/18_3_5.pdf

Feser, Edward. 2010. "Reply to Block on Libertarianism Is Unique." *Journal of Libertarian Studies*, Vol. 22, No. 1, pp. 261-272; <https://mises.org/library/reply-block-libertarianism-unique>

Frederick, Danny. 2014. "Voluntary Slavery," *Las Torres de Lucca* 4: 115-37, http://www.lastorresdelucca.org/index.php?option=com_k2&view=item&id=145:laesclavitud-voluntaria&Itemid=24&lang=en

Gordon, David. 2003. "On Nozick: *Freedom or Slavery*." *Mises Review* 9, No. 2 (Summer) <https://mises.org/library/nozick-edward-feser>

Gordon, David. 2006A. "Feser, War, and Libertarianism." March 27. <http://archive.lewrockwell.com/gordon/gordon16.html>

Gordon, David. 2006B. "Unfazed by Feser: Phase 2," March 31; <http://www.lewrockwell.com/gordon/gordon17.html>

Hoppe, Hans-Hermann. 1993. *The Economics and Ethics of Private Property: Studies in Political Economy and Philosophy*, Boston: Kluwer.

Kershnar, Stephen. 2003. "A Liberal Argument for Slavery," *Journal of Social Philosophy*, 34 (4): 510-36.

Kinsella, N. Stephan. 2001. "Against Intellectual Property," *Journal of Libertarian Studies*, Vol. 15, No. 2, Winter, pp. 1-53; http://www.mises.org/journals/jls/15_2/15_2_1.pdf

Kinsella, N. Stephan. 2008. *Against Intellectual Property*. Auburn, AL: The Mises Institute. <https://mises.org/library/against-intellectual-property-0>

Kinsella, Stephan N. 2009A. "What Libertarianism Is," in Jörg Guido Hülsmann & Stephan Kinsella, eds., *Property, Freedom, and Society: Essays in Honor of Hans-Hermann Hoppe* (Auburn AL: Mises Institute)

Kinsella, Stephan. 2009B. "Down with the Lockean Proviso." March 13; <http://archive.mises.org/9611/down-with-the-lockean-proviso/>

Kinsella, N. Stephan. 2012. "Economic Freedom of the World Rankings and Intellectual Property: The United States' Bad Ranking is Even Worse Than Reported." <http://c4sif.org/2012/09/economic-freedom-of-the-world-indexes-and-intellectual-property-the-united-states-bad-ranking-is-even-worse-than-reported/>

Lester, Jan Clifford. 2000. *Escape from Leviathan*. St. Martin's Press. <http://www.amazon.com/exec/obidos/ASIN/0312234163/qid%3D989845939/107-8070279-6411737>

Locke, John. 1689. *Second Treatise of Government*, <http://www.constitution.org/jl/2ndtr05.htm>

Long, Roderick. 1995. "The Libertarian Case Against Intellectual Property Rights." *Formulations*. Vol. 3, No. 1, Autumn; <http://libertariannation.org/a/f3111.html>

Machan, Tibor. Undated. "Self-Ownership & the Lockean Proviso." <http://mises.org/journals/scholar/Machan9.pdf>

Makovi, Michael. 2015. "The 'Self-Defeating Morality' of the Lockean Proviso." *Homo Oeconomicus*, 32(2): pp. 235-274

Malcolm, Norman. 1958. *Ludwig Wittgenstein: A Memoir*. Oxford University Press.

Menell, Peter S. 2007A. "Intellectual Property and the Property Rights Movement." *Regulation*, Fall; <http://www.cato.org/pubs/regulation/regv30n3/v30n3-6.pdf>

Menell, Peter S. 2007B. "The Property Rights Movement's Embrace of Intellectual Property: True Love or Doomed Relationship?" *Ecology Law Quarterly*, Vol. 34.

Mosquito, Bionic. 2014. "The Sanctity of Contract." April 19; <http://bionicosquito.blogspot.com/2014/04/the-sanctity-of-contract.html>

Mukherjee, Jay and Walter E. Block. 2012. "Libertarians and the Catholic Church on Intellectual Property Laws." *Journal of Political Philosophy Las Torres de Lucca*. Issue No. 1, July-December, pp. 59-75; http://www.latorresdelucca.org/index.php?option=com_k2&view=item&id=93:libertarios-y-la-iglesia-catolica-en-las-leyes-de-propiedad-intelectual&Itemid=24&lang=en&Itemid=23

Navabi, Ash. 2015. "To Taylor, Love Freedom." June 23; <https://mises.ca/posts/blog/to-taylor-love-freedom/>

Nozick, Robert. 1974. *Anarchy, State and Utopia*, New York: Basic Books, <http://www.amazon.com/Anarchy-State-Utopia-Robert-Nozick/dp/0465097200>

Palmer, Tom. 1989. "Intellectual Property: A Non-Posnerian Law and Economics Approach" *Hamline Law Review*, Spring, Vol 12 No. 2.

Rothbard, Murray N. 1982. "Law, Property Rights, and Air Pollution," *Cato Journal*, Vol. 2, No. 1, Spring; reprinted in *Economics and the Environment: A Reconciliation*, Walter E. Block, ed., Vancouver: The Fraser Institute, 1990, pp. 233-279; <http://mises.org/story/2120>; <http://www.mises.org/rothbard/lawproperty.pdf>; <https://mises.org/library/law-property-rights-and-air-pollution-0>

Rothbard, Murray N. 1998. *The Ethics of Liberty*, New York: New York University Press. <http://www.mises.org/rothbard/ethics/ethics.asp>

Steiner, Hillel. 1994. *An Essay on Rights*, Oxford: Blackwell Publishers Thomson, Judith Jarvis. 1990. *The Realm of Rights*, Cambridge, MA, Harvard University Press