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Against Evictionism

Creation of Peril, Positive Duties, and Libertarianism

Abstract: Walter Block argues that the correct libertarian approach to abortion is evictionism. In his view, it follows from the fact that a woman has the right to self-ownership and to evict an unwanted child from the domain of her body. But according to libertarian theory, one can acquire a positive duty if, among other things, one's actions endanger another person. Therefore, it can be argued that the woman does not have the right to evict the foetus because by conceiving the child she has endangered it and, therefore, has a positive duty to carry the pregnancy to term (until the child is able to survive outside the womb). Łukasz Dominiak has presented a critique of this argument, pointing out that conceiving a child cannot generate positive obligations on the part of the parents because it is not a trespass and because one cannot endanger someone who does not exist. In this paper, I argue that his criticism is unconvincing: to generate a positive duty, an act does not have to be a trespass. Nor is it true that one cannot endanger someone who does not exist. Consequently, if we accept Block's assumption that the child is a human being with a right to self-ownership from the moment of conception, then, according to libertarian ethics, eviction should be prohibited and the mother should carry the pregnancy to term.

Keywords: evictionism, abortion, rights, libertarianism

Introduction

Walter Block argues that the correct libertarian approach to the problem of abortion is explained by his theory of evictionism.¹ Block argues that from the moment of conception, the foetus is a human being endowed with rights – most importantly the self-ownership right.² Whether this is true – whether the fertilised ovum is indeed a human being endowed with rights – is, as we know, a matter of dispute. If this were not the case, if the foetus were not a human being protected by rights, it would be obvious from the point of view of libertarian ethics that the mother has the right to remove it (or even kill it), and the whole ethical problem of evictionism and abortion would not arise in the first place. But since Block accepts this premise, and even argues explicitly for it, I accept this premise *arguendo*. Block believes that even though the foetus is a human being from the moment of conception, the mother still has the right to ‘evict’ it from her womb.³ A woman has the right not to have her body subjected to unwanted intrusions by other people. This, he argues, is due to the right of every person to control his or her own body, a right that is fundamental to libertarianism. One such unwanted intrusion is the development of a foetus in the mother’s womb. In principle, a child can be conceived in three ways: as a result of (1) planned conception, (2) unplanned conception, and (3) forced conception (rape). What distinguishes these three cases is, firstly, the different state of mind of the mother at the time of conception: the desire to conceive a child (1) or the unwillingness to do so (2, 3), and secondly, whether the sexual intercourse was voluntary (1, 2) or coercive (3). In Block’s view, however, the mother’s state of mind at (or around) the time of conception and whether or not intercourse was voluntary are irrelevant to the question of abortion – a mother in whose womb a foetus is developing has the right to change her mind about whether or not she wants the foetus

¹ Walter E. Block, “Evictionism and libertarianism”, *Journal of Medicine and Philosophy* 39(3) (2014); Walter E. Block, “Evictionism: the only compromise solution to the abortion controversy”, *Studia z Historii Filozofii* 1(15) (2024): 55–66.

² Walter E. Block, “Contra Rothbard on Abortion and the Beginning of Human Life”, *Journal of Libertarian Studies* 26(1) (2004).

³ Block, “Evictionism and libertarianism”.

to live inside her. All that counts is the mother's will at any given moment. Thus, according to Block, from the moment a woman decides that she does not want a foetus in her womb, that foetus is in her womb *against* her will, and she has the right to evict it from her body. It should be emphasised that the doctrine of evictionism does not grant the mother the right to unconditionally kill the foetus, but only to evict it. Block points out that a distinction must be made between killing the foetus (feticide) and evicting it (eviction). According to Block, the mother has an unconditional right to the latter, but not to the former. A foetus can be killed only if its killing is a necessary condition of removing it from the womb. If it is possible to evict the foetus from the womb without killing it, the mother cannot kill the foetus and has to remove it, as he puts it, "in the gentlest possible manner". This is because the trespass or intrusion (residing in a woman's body against her will) on a foetus' part does not result in it losing (forfeiting) all of its rights. The foetus does not have the right to reside in woman's body but still retains his rights (e.g. its right of self-ownership). It is true that an act of eviction can result in the death of a foetus. This can happen in two ways – firstly, if the foetus is evicted when it is significantly underdeveloped, it will not survive because it is ill-equipped to exist outside the mother's body; secondly, there may be cases where successful eviction of the foetus requires it to be killed. But in both cases such a death is a result of the woman's right to evict the foetus, and does not stem from the mother's unconditional right to kill it.

The doctrine of evictionism can be summed up in the following way: since the woman has an absolute right to her body, she has a right to evict an unwanted foetus at any time during pregnancy but must exercise this right in the gentlest manner possible – the fetus can be killed during the process of eviction only if its killing is necessary to evict it without harming the woman. In a recent paper,⁴ Dominiak and Wysocki standardise Block's theory in the following way:

⁴ Łukasz Dominiak, Igor Wysocki, "Evictionism, Libertarianism, and Duties of the Fetus", *The Journal of Medicine and Philosophy: A Forum for Bioethics and Philosophy of Medicine* 48(6) (2023): 4.

- P1: The fetus has absolute rights to its body.
- P2: The pregnant woman has absolute rights to her body.
- P3: The unwanted fetus is a trespasser.
- P4: Eviction of the unwanted fetus, when feasible, is the gentlest possible means of successfully stopping the trespass; when unfeasible, feticidal abortion is such a means.
- C: Therefore, depending on the feasibility of eviction, either eviction or feticidal abortion is permissible.

A critic of evictionism may challenge this view in a number of ways. For example, they may point out that:

- (1) there is no violation of the woman's rights because the child was placed in the mother's womb against its will;⁵
- (2) there is no violation of the woman's rights because the mother consented to the presence of the child in her womb;⁶
- (3) even if the mother has the right to evict the foetus from her body, the foetus needs a reasonable amount of time to leave her body;⁷
- (4) the foetus is not a strictly liable trespasser and, therefore, "does not forfeit any of its original rights by residing uninvitedly on the woman's property";⁸
- (5) even if the foetus is a trespasser, evicting it when it is not viable would be wrong because it would be a disproportionate (resulting in death) response to the injury caused by the foetus;
- (6) the mother has a positive duty to carry the child until the end of the pregnancy (or until the child can survive outside the womb after eviction), because by bringing the child into the world she has put the child at risk of death if it is not attached to her body.

⁵ Jakub Bożydar Wiśniewski, "A critique of Block on abortion and child abandonment", *Libertarian Papers* 2(16) (2010).

⁶ Jakub Bożydar Wiśniewski, "Response to Block on abortion, round three", *Libertarian Papers* 3(6) (2011).

⁷ Sean Parr, "Departurism and the libertarian axiom of gentleness", *Libertarian Papers* 3(34) (2011).

⁸ Dominiak, Wysocki, "Evictionism, Libertarianism, and Duties of the Fetus".

In this paper, I will develop this last argument. I will show that the creation of a child exposes it to a danger from which only the mother can protect it – at least in the early stages of pregnancy – by keeping the child in her womb. I will explain why Łukasz Dominiak's critique of this argument – which points out that conceiving a child cannot generate positive obligations on the part of the parents because it is not a trespass⁹ and because one cannot endanger someone who does not exist¹⁰ – is unconvincing. Consequently, if we accept Block's assumption that the child is a human being with the right to self-ownership from the moment of conception, then, according to libertarian ethics, eviction should be prohibited and the mother should carry the pregnancy to term.

My argument takes the following form:

- P1: from the moment of conception, arguendo, the foetus is a human being endowed with rights – most importantly the self-ownership right;
- P2: endangering someone (creating peril) generates a positive duty on our part to help the person we have endangered – to protect them from the risks caused by our action;
- P3: to acquire such a duty, one need not violate the rights of the other person;
- P4: conceiving a child endangers it;
- P5: by conceiving a child, its mother acquires a positive duty to protect it from the danger;
- C: therefore, if the pregnancy was not caused by rape, the mother must carry the pregnancy to term; it is not permissible to evict the child.

The rest of the text is structured as follows. In the second section, I will describe the libertarian theory of positive duties and outline Dominiak's critique of the argument that the conception of a child generates positive duties on the part of the mother. In section three, I will challenge this critique by showing that the creation of peril can generate positive duties even when no trespass has occurred, and that it is possible to endanger the future. In sec-

⁹ Łukasz Dominiak, "Ewikcjonizm i zasada ubi jus ibi remedium. Problem aborcji w filozofii politycznej libertarianizmu", *Studia Polityczne* 46(1) (2018).

¹⁰ Łukasz Dominiak, "Libertarianism and Obligatory Child Support", *Athenaeum. Polish Political Science Studies* 48 (2015): 90–106.

tion four, I will explain why the conception of a child has the makings of such a creation of peril without trespass, and why it therefore generates a positive duty to carry a pregnancy to term. Section five concludes.

The libertarian theory of positive duties and the question of child conception

Libertarianism is a political philosophy based on three fundamental ethical principles. First, every person is the rightful owner of his or her own body and has the right to control it voluntarily (self-ownership). Second, every person has the right to freely manage his or her justly acquired property.¹¹ Third, according to libertarian theory, property can be justly acquired through: (1) original appropriation, (2) voluntary transfer, (3) compensation, (4) production, or (5) accession.¹² The fact that each individual has such rights correlates with an obligation on the part of other individuals not to violate these rights. It is clear from such a distribution of libertarian rights that libertarianism does not recognise the existence of natural positive duties. As Block puts it, positive obligations are an “anathema to the freedom philosophy”.¹³ An individual has no duty to help other individuals in need. This follows directly from the fact that the individual is the sole owner of his body and justly acquired property. If an individual had a positive duty to help, this would mean that he does not have the full right of self-ownership and the right to manage his property.

The fact that there are no natural positive duties does not mean that an individual cannot acquire a positive duty. Libertarian theory identifies three means by which a positive duty can be acquired: contract, creation of peril and violation of rights.¹⁴ Of these three, the first two have been proposed as ways in which the mother can impose positive duties on herself.

¹¹ Murray Rothbard, *The Ethics of Liberty* (New York: New York University Press, 1998).

¹² Łukasz Dominiak, “Accession, Property Acquisition, and Libertarianism”, *Diametros. Early View* (2024): 1–25.

¹³ Walter E. Block, “Libertarian Punishment Theory and Unjust Enrichment”, *Journal of Business Ethics* 154(1) (2019): 106.

¹⁴ Williamson M. Evers, “The Law of Omissions and Neglect of Children”, *Journal of Libertarian Papers* 2(1) (1978); Eric Mack, “In defense of individualism”, *Ethical Theory and Mor-*

A contract is an agreement where parties consent to exchange goods, services or money, either immediately or with a promise to do so at a future date. Having entered into such a contract, the individual acquires a positive obligation to fulfil the agreement. How can we try to apply the concept of contract to the issue of pregnancy that interests us here? Some libertarians have suggested that the conception of a child can be seen as a form of implicit contract between the mother and the child.¹⁵ Just as I cannot, after inviting someone to board my plane, ask them to leave mid-flight because I have decided that their company no longer suits me, so the mother cannot ask the child to leave her womb because by conceiving the child she has entered into an implicit contract with it that allows it to remain in her womb until it is safe to leave. The suggestion that the conception of a child can somehow be understood as a kind of implicit contract whereby the mother undertakes to carry the pregnancy to term seems questionable (although I will not explore this issue in depth). Firstly, at the moment of conception the foetus does not yet exist, so it is not possible to conclude a contract granting it the right to reside in the mother's womb.¹⁶ Moreover, there is no clear reason why the act of becoming pregnant should be interpreted as entering into such a contract. Finally, the foetus is not a subject of legal action.¹⁷

The second way in which a positive duty may arise is when a person's actions put another person in danger. As Eric Mack explains: "A may also acquire... a special right against B to be protected from some danger if B has placed him in that danger".¹⁸ The hypothesis that the mother, by conceiving the child, has put the child in peril, and therefore has a positive duty to carry the pregnancy to term, seems more promising than the implicit contract the-

al Practice 2(2) (1999): 87–115; Stephan Kinsella, "How We Come To Own Ourselves", *Mises Daily*, September 7 (2006), <http://mises.org/library/how-we-come-own-ourselves>; Łukasz Dominiak, "Libertarianism and Obligatory Child Support".

¹⁵ Wiśniewski, "Response to Block on abortion, round three".

¹⁶ Walter E. Block, "Response to Wisniewski on Abortion, Round Three", *Libertarian Papers* 37(3) (2011).

¹⁷ Dominiak, "Ewikcjonizm i zasada ubi jus ibi remedium. Problem aborcji w filozofii politycznej libertarianizmu"; Block, "Response to Wisniewski on Abortion, Round Three".

¹⁸ Mack, "In defense of individualism", 100.

ory. Stephan Kinsella explains the logic of this argument as follows, offering an analogy with putting a man in danger by pushing him into a lake:

if you pass by a drowning man in a lake you have no enforceable (legal) obligation to try to rescue him; but if you push someone in a lake you have a positive obligation to try to rescue him. If you don't you could be liable for homicide. Likewise, if your voluntary actions bring into being an infant with natural needs for shelter, food, care, it is akin to throwing someone into a lake. In both cases you create a situation where another human is in dire need of help and without which he will die. By creating this situation of need you incur an obligation to provide for those needs.¹⁹

Łukasz Dominiak has criticised the theory that the conception of a child creates positive obligations on the part of the mother, analogous to the situation of creating peril. As this author points out, firstly, in order for the act of exposing someone to danger to generate duties, it is necessary for this act to have the character of a trespass. For example, in the scenario presented by Kinsella, one person pushes another into a lake, which constitutes the initiation of violence and a violation of individual rights – a trespass. Getting pregnant, however, does not involve trespass because the creation of a child does not involve the violation of anyone's rights, and therefore cannot generate duties. Writes Dominiak:

First of all, for a positive duty that stems from creation of peril to take place, an invasive act or "trespassing against someone's property" has to take place first. But getting pregnant is not an invasive act. Nor is it 'trespassing against someone's private property', since there is nobody yet whose private property could be trespassed: the child and its private property is only called into existence by getting pregnant; there is no child floating in the air whose private property is violated by getting pregnant.²⁰

¹⁹ Kinsella, "How We Come To Own Ourselves".

²⁰ Dominiak, "Libertarianism and Obligatory Child Support", 93–94.

Secondly, Dominiak challenges the claim that conceiving a child involves putting someone in peril:

One cannot bring danger to someone who is not there. After all, it is not the case that ‘there was a fetus’ on which the mother then brought the danger of death by thrusting it into her body and therefore, in order that this fetus does not now die, the mother must carry the pregnancy to a natural termination. Quite apart from the fact that pregnancy is not a threat to the fetus but an opportunity, and the fact that if it were not for the mother, the fetus would not exist at all, one must state the obvious: the mother could not have brought the danger to the fetus because it did not exist before she became pregnant.²¹

Dominiak concludes that the creation of peril theory cannot explain the mother’s positive duty towards the child.

However, it seems that things are not as obvious as this author thinks. In the following paragraphs, I will show why it is not clear that for a positive duty to arise out of the creation of a risk, there must first be an act of “trespassing against someone’s property”. I will also show that the conception of a child creates peril (endangers the child), despite the fact that the child does not exist at the time of conception. And if this is the case, then pregnancy can give rise to positive duties on the part of the mother.

In order to give rise to positive duties, the creation of peril need not be a trespass

As I mentioned earlier, it is not self-evident that – as Dominiak claims – the creation of peril in order to generate positive duties requires the violation of individual rights. We can imagine situations in which it would seem that the actions of person *A*, which involved and endangered person *B*, could give rise to duties on the part of *A*, even if *A* did not violate *B*’s rights. Let us consider some examples.

²¹ Dominiak, “Ewikcjonizm i zasada ubi jus ibi remedium. Problem aborcji w filozofii politycznej libertarianizmu”, 216–217.

Self-defence

A has had an argument with B. Angered, B tries to punch A in the face. A fends off the attack by pushing B away. As a result, B falls into the lake and, as he cannot swim, is likely to drown. However, B will not drown if A throws him a life preserver.

It seems that by acting in this way, A has generated an obligation on his part to help B, even though he has not violated B's rights. A was entitled to defend himself against a blow from B. If the defensive measures he took (pushing B away) were necessary (it was not possible to protect his rights otherwise) and not excessive – they did not violate either the principle of proportionality or the principle of gentleness, the two competing principles that, according to libertarianism, govern the right to self-defence²² – he did not violate the rights of his attacker. However, by acting in this way, A has put B in danger and, therefore, has a duty to rescue him. If A now leaves the attacker to die alone, we must assert that he has violated B's rights.

Shots at a target

A fires a series of shots at a target, but W pushes B into the line of fire and then runs away from the scene. A accidentally shoots B, causing him to bleed profusely. Does A have a duty to help B? Does A have a greater duty to help B than he would have had if he had found B bleeding in the woods while passing by?

As was the case with *Self-defence*, A did not violate B's rights; A had the right to shoot at the target. The fault here lies squarely with W, and had W been present, it would have been his duty to rescue B. However, in the absence of W, it seems that it is A who has such a duty, because it was his action – although it did not violate B's rights – that put B in danger of death. It seems that A has a greater duty to help B than if A had found B lying in the woods. If a passer-by finds someone bleeding in the woods, the passer-by's actions are not the cause of the person's bleeding. Or, to put it in the form of

²² Łukasz Dominiak, Igor Wysocki, "Libertarianism, Defense of Property, and Absolute Rights", *Analiza i Egzystencja* 61 (2023).

a counterfactual, if there were a parallel universe in which the passer-by did not exist, the bleeding person would still be bleeding. However, if there were a parallel universe in which the shooter did not exist, *B* would not be shot and in need of help.

Fire in a movie theatre

A is an usher in a movie theatre. Suddenly a fire breaks out. *A* shouts “Fire!” to warn the audience to leave the theatre immediately. The panicked crowd, in a stampede, tramples on *B*, a deaf person, who was just leaving the theatre because he did not like the film. As *B* was leaving, he would not be affected by the fire if *A* did not shout. The crowd has left the building and *B* is now in desperate need of help. Is *A* obliged to help *B*?

It seems that *A* has a duty to help *B* with. Even though *A* did not violate *B*’s rights by shouting “Fire!”, but on the contrary performed a benevolent act, warning the viewers, *A* did put *B* in danger and has a duty to help him.

Rescue

A is travelling on a sailing ship and passes a deserted island on which lies a fainting *B*, who has previously made a “Help” message out of pebbles. *A* takes *B* to the sailing ship, but does not (cannot) take with him a box in which *B* – a diabetic – had his insulin. However, there is a supply of insulin on board the sailing ship. Did *A* incur a duty to provide *B* with insulin?

It seems that *A* has a duty to provide *B* with insulin. Even though *A* did not violate *B*’s rights by taking him off the desert island, but on the contrary performed a benevolent act, *A* did put *B* in some kind of danger and has a duty to help him.

Such examples could be multiplied. They all seem to indicate that we are capable of conceiving of situations in which a non-violent act causes danger to another person (a danger that would not have arisen but for the act), so that the actor thereby imposes on himself a positive obligation to help the person he has endangered.

I think these examples are sufficient to show that it is possible to impose an obligation on oneself without violating rights. It is possible, however, that the critic will find these examples unconvincing. They might point out that in the first three examples (*Self-defence*, *Shots at a target*, *Fire in a movie theatre*) *A* has not generated a duty towards *B*, and in the fourth case (*Rescue*) *A* has a duty, but only because he did something he should not have done (he incurred a positive duty by acting against the will of *B*, who admittedly wanted to be taken abroad, but only with his insulin). But even if the critic were to show that the examples given do not prove that putting someone in danger without committing a trespass imposes duties on us, I would argue in favour of such a thesis by pointing out that the best example of such an act is... the conception of a child. In other words, even if we do not impose a duty to help by shouting “fire” in a cinema, I believe that we do impose such a duty by conceiving a dependent child who will die without our help. I will explain why this is so at the end of the next section.

Conception creates peril without being a trespass

Having shown that there are situations in which our actions can give rise to positive duties as a result of exposing someone to danger, even though those actions do not in themselves violate anyone’s rights, I will show that conceiving a child is such an action. To arrive at this conclusion, we have to solve three important problems. First, we have to respond to Dominiak’s objection that you cannot endanger a child by conceiving it because at the time of conception there is no child and therefore no one to endanger by the very act of conception. Second, we have to explain how one action can be simultaneously understood as two separate acts – conceiving a child and putting it at risk. And third, we have to explain why conceiving a person can be thought of as endangering it.

Let us now turn to Dominiak’s argument that conceiving a child does not amount to putting someone in danger because “you cannot bring danger to someone who is not there” (Dominiak 2018: 216). His objection is based on a simple, yet seemingly persuasive recognition that if a child does not ex-

ist, you cannot endanger it, just as you cannot, for instance, take a picture of a non-existent child. But upon closer inspection, things do not seem to be so obvious. Consider the following example:²³

Rocket A

A has launched a rocket with an explosive charge that will return to Earth in 200 years and hit the spot where the crowded square in New York City is now located. The iron laws of biology say that no human being can live longer than 150 years. Has A endangered anyone? If not, can he take such an action?

By launching such a rocket, A does not endanger any existing person. On the other hand, by launching it, A has initiated an action which is likely (with the same probability as would suffice to prohibit him from similar actions against existing persons) to harm some individuals. It would therefore seem that such an action should be prohibited because it is very likely to harm people who will be born in, say, 180 years' time. In fact, we would like to say that such an action should be prohibited because it endangers people who will exist in the future. So this action is prohibited because it endangers people who do not exist (but will probably exist). Consider a second example:

Rocket B

B has launched a rocket with an explosive charge that will hit a forest near New York in 30 minutes, where nobody is at the moment, but where a person – a hunter or a walker – might appear.

The difference between the actions of A and B is that A endangers non-existent people and B endangers existing people. In both cases, however, we can expect that people will die as a result of the actions of both A and B. Moreover, it may be the case (we can stylise the conditions of the thought experiments this way) that we will have reason to predict that people are more likely to die in the case of Rocket A, because we will be right to assume that there is a greater chance that New York will still be a densely populated city in

²³ A similar thought experiment was proposed by Joel Feinberg (Feinberg 1984: 97).

200 years' time and that A's missile will wreak havoc, than that someone will be walking in this forest in 30 minutes' time (not to mention the number of potential victims). It seems, therefore, that an action may be prohibited even if it does not endanger any existing person at the time, but its performance will lead to future harm of persons yet to be created (future people). It is true that the moment when someone creates danger occurs before the other person even exists, but it is not clear why this fact should have any bearing. If I drop a nuclear bomb on a city, but the radioactive fallout does not reach another city 100 kilometres away until two days later, would I not be guilty of endangering a child conceived the day after the nuclear attack and the day before the radioactive fallout reached it? There is no reason to think that an action which took place before an entity came into existence cannot pose a danger to that entity. The reason this child's life is in danger is because a nuclear bomb exploded, and the bomb was detonated by me, so my actions are the reason the child's life is in danger. Therefore, it seems that the whole aspect of time is irrelevant – both casually and morally – to the question of whether A has endangered the people in the Rocket A scenario, and whether he is morally responsible for doing so. Let us imagine that A has indeed launched such a rocket, and that he is able to launch another rocket which will hit the first rocket in space and destroy it, so that it no longer poses a threat to future people. It seems rather obvious that A has a positive duty – a duty that he or she has incurred by endangering those future people – to launch the second rocket, thereby eliminating the danger that the first rocket poses to future people.

There is a seemingly powerful objection to this. Let us imagine a situation in which a person is prevented from launching such a rocket. And let us suppose that after 200 years the rocket did not kill any people, because people in New York stopped reproducing due to the spread of anti-natalist beliefs. This might pose a problem for our theory. For a critic might ask: Whose rights were we protecting by banning A from launching his rocket? The answer cannot be that we were protecting the rights of future human beings, because the future human beings that the ban was intended to protect have not come into existence. So it would seem that we were prohibiting A's action in order to protect people who did not exist. A similar problem would arise if some-

one were to argue that it is wrong to have unprotected sex if you have a genetic mutation that will result in the conception of a child with a birth defect that will make its life unworthy of being lived. If someone were to formulate such a prohibition, they would have to argue that we should abstain from unprotected sex to protect the rights of people who would not exist, since such a prohibition would *ensure* that they would never exist. But surely there must be something wrong with the idea of protecting the rights of people who will not exist (“merely possible people” as they are sometimes called)?²⁴ There are some ways of responding to this objection, but it turns out that we do not need to respond to it, since our argument focuses on the question of what obligation a woman has incurred by getting pregnant, so in our cases there is never a situation in which we are protecting the rights of “merely possible people”. All our argument proves is that when a mother conceives a child, she simultaneously accrues a positive duty to continue the pregnancy until the child is able to live outside the womb.

Note that the fact that we are able to endanger a person who does not exist is at the same time evidence that we can violate the rights of a non-existent person, or at least that certain actions may be prohibited because engaging in

²⁴ This problem was posed by Rivka Weinberg: “Another type of case in which it may seem like our moral reason to consider the interests of future people may force us to consider the interests of merely possible people is the case of deciding not to procreate due to the nature of the life that would result. For whom do we act in such cases? This is an extremely difficult question and I am not sure that it can be answered without an aura of paradox. One may argue that we surely don’t act for the sake of the would-be-miserable person because our action precludes their existence; we must therefore be acting for the sake of the merely possible person. However, acting for the sake of a merely possible person makes even less sense. How can we refrain from creating someone who will never exist? And, if we could, why would we? Why bother acting for the sake of a merely hypothetical being that will never exist? I don’t think that is who we have in mind when we decide not to procreate in order to avoid creating a miserable person. Instead, it seems more reasonable to say that we avoid creating a miserable person for the sake of the miserable person who, by hypothesis, will exist, even though such action turns out, paradoxically, to preclude their existence. When I refrain from creating a miserable person, I do so out of consideration for the real interests that person would have if I did indeed create them. I stop myself from creating that which I should not create for the sake of that which I should not create, namely, an actual miserable person (though, in so doing, I preclude their actuality)” (Rivka Weinberg, “Identifying and Dissolving the Non-Identity Problem”, *Philosophical Studies* 137(1) (2008): 10).

them would violate the rights of future persons. As it seems, then, Dominiak is wrong to suggest – if that is how we should interpret his statements – that the reason why becoming pregnant does not violate the rights of a child is because the child does not exist.²⁵ I agree that getting pregnant does not violate the rights of the child, but not because the child does not exist at the moment of conception. The reason seems to be different: there is simply no basis for thinking that the creation of the child is a violation of the child's rights. Let us say I launch a rocket that will reach a distant planet (currently uninhabited) in 200 years' time and then take some photographs of it. The reason why launching that rocket is not a violation of anyone's rights is not because the possible inhabitants of that planet have not yet been born, but because taking a picture of the planet is not a violation of anyone's rights.

Having established that you can endanger a future person, let us now turn to a weaker objection, which says that by creating a child we are not endangering that child, because all we are doing by is... creating a child. This objection may look like this: "If someone opens a window in his house and a wasp flies in, endangering a guest who is allergic to the wasp's venom, the endangerment takes the form of opening the window and is therefore a separate action. The creation of a child, on the other hand, is not a creation of peril, but a creation of the child. If the mother of a newly born child had allowed a wasp into the postnatal room, she would have exposed the child to danger, but the creation of the child itself is not such an exposure, it is the creation of someone who can be exposed to danger". However, it seems rather uncontroversial to argue that a single action can simultaneously constitute two separate acts. Turning a knob from "off" to "on" simultaneously (1) changes the position of the knob, (2) turns on the light in the room, and may also (3) give a pre-arranged signal to a thief to begin his criminal activities. Even in the wasp example, although opening the window is a single action, it consists of two acts: opening the window and exposing the visitor to a wasp sting. Why, then, the conception should not be both: (1) creation of a child and (2) exposure of this child to danger? Imagine that a woman living on an exotic island could conceive a child in two periods: conceiving in period 1 would mean that the child

²⁵ Dominiak, "Libertarianism and Obligatory Child Support", 94.

would be born in the dry season, and conceiving in period 2 would mean that the child would be born in the rainy season with the risk of contracting a typical childhood disease which spreads during the rainy season and possibly dying. Does conceiving in period 2 put the baby at risk? It would seem so. But what if conceiving at any time of the year puts the child at risk of disease? It would seem that it does not change anything – the woman would still expose her child to the risk of contracting a disease. So it seems rather uncontroversial to assume that conceiving a child may be simultaneously thought of as two separate acts: creation of a child and a creation of peril.

Now, let us turn to the last problem, namely, whether conceiving a child is exposing him to some type of danger. This purported danger consists in the fact that, as a result of the mother's actions, the child has been placed in a situation in which, without her help (without making her womb available to it), the child will inevitably die. Since the child is not equipped to live independently in the world, if the mother does not allow access to her womb, without access to that womb the child will die. Consider an analogy. Suppose a father, an experienced hunter, takes his underage son hunting. Does the father have the right to suddenly abandon the boy in the wilderness so that the son, lacking essential survival skills, is unable to obtain the food he needs to survive? It seems that by taking his son with him, the hunter has put him in danger and therefore acquired a positive duty to look after him. Of course, there is a difference here. In the case of the hunter, the son is already alive, whereas in the case of the foetus, the conception takes place at a time when the baby does not exist. But this difference does not seem to make a moral difference: conceiving a child seems to be similar to taking a son on a hunt, in that it creates a situation in which one being (a foetus or an underage son) is totally dependent for its survival on the other person. In the latter case, the dependency is created by taking an already born son hunting, in the former by conceiving the child. But in both cases, a person is placed in a situation where his or her life is endangered by the actions of another person.

But one might ask whether our argument does not prove too much? If conceiving a child puts it in danger, would not that mean that it should be forbidden? Are we allowed to endanger other people? Such a theory might lead to the unexpected (and probably unwanted) conclusion that parents would

not have the right to bring the child into the world. If bringing a child into existence inevitably involved some form of danger to the child, would not it be forbidden? But that does not seem to be the case. It seems that just as a hunter has the right – under certain conditions – to take his son hunting, so a woman has the right – under certain conditions – to conceive a child, even though both actions involve the creation of some kind of peril. As the example of the hunter shows, a parent is allowed to expose a child to certain dangers in order to confer an important benefit on him – for example, to teach him to hunt (which might be an essential skill if the family lives by hunting). It is permissible for a parent to impose a risk on his or her children if that risk is a cost that the children must bear in order to obtain an essential benefit. However, when imposing a risk on a child, parents must try to limit that risk as much as possible and respond appropriately if that risk could turn into real harm. For example, a hunter may take a son into the forest to hunt, but must not allow the son to be mauled by a charging wild boar, or at least, if such an attack occurs, must do everything possible to ensure that it does not end in harm to the son. Therefore, the parents have the right to bring the child into existence, but the bringing of the child into existence must be linked to the parents' concern that the dangers that await it do not materialise in the form of harm. At this point, I think we can see why, even if the examples provided in section 3 (which were intended to show why creation of peril need not involve a trespass in order to give rise to positive duties) were not compelling, it is still possible to insist that a trespass is not a necessary condition for the positive duty to arise. It seems that just as the situation of the parent who has a child in his care is special, so is the situation of the person who brings the child into the world. Bringing a child into existence is a paradigm example of a situation when we create a peril without engaging in a trespass.

All this seems to indicate that the conception of a child has the character of a non-trespassing creation of peril. The act does not have the character of a trespass because the creation of a child is not a violation of anyone's rights. However, it does have the character of creating peril because, as a result of the conception, the child is in a situation where it will die (suffer harm) unless the mother chooses to carry the pregnancy to term. The analogy with the experienced hunter shows that even though it is not the mother who will

kill the child by carrying out the eviction, but the child itself will die, the reason why the child is in a situation where it needs the mother's help is due to the mother's actions. As Wiśniewski puts it: "To the fetus, the outside world is a lethal place, and if it is the mother who is responsible for bringing it into the safe haven of the womb [...] and it is the mother who now wants to expel it from that safe haven, it is also the mother who is taking upon herself the direct responsibility for the fetus's death (the mother is the crucial and indispensable element of every link of the causal chain in question)".²⁶ The objection that the child cannot be endangered by the creation of the child, because at the time of the creation there is no child, also seems unconvincing. As the analogy with launching a rocket shows, we can also endanger future human beings. Finally, our argument is not hampered by the fact that conceiving a child is not endangering it, since it would have to be a separate act to be considered as such: there are many acts that are in the nature of several separate acts.

It is worth adding how the theory presented here relates to two other problems: the problem of pregnancy resulting from rape and the problem of child abandonment. In the case of rape, the person who endangers the child (creates peril) is the rapist. So it is the rapist who has a positive duty to protect the child from danger. But the rapist has not only endangered the child (by conceiving it), but he has also violated the woman's self-ownership right by, among other things, effectively, placing a foetus in her womb. Since the woman has not acquired the positive obligation to keep the foetus alive (it was not her actions that lead to the pregnancy, but the actions of the rapist), and since it is placed in her womb against her will, she has the right to evict it in the gentlest manner possible. Thus, if the woman were to perform an eviction that resulted in the death of the child because the foetus was not viable, the rapist would be guilty of the death of the child. If, however, according to Block's diagnoses,²⁷ medical advances have led to invention of artificial wombs, the person who would be obliged to provide such a womb would be the rapist.

²⁶ Wiśniewski, "A critique of Block on abortion and child abandonment", 2.

²⁷ Block, "Evictionism and libertarianism", 249–250.

As far as the problem of child abandonment is concerned, it seems quite clear that the danger that the mother poses to the child by conceiving it does not end with birth, but continues until the child is sufficiently developed to be able to support itself. Therefore, our theory suggests that the mother not only has an obligation to carry the pregnancy to term, but that she also has an obligation (along with the father) – contrary to Block²⁸ – to care for the child by feeding it, sheltering it, and providing it with adequate guidance so that it can develop properly.²⁹ It should also be noted that in the case of rape, it is the rapist who is responsible – at least financially – for the proper development of the child until it becomes independent.

Conclusion

Block argues that the correct libertarian approach to abortion is evictionism. In his view, it follows from the fact that a woman has the right of self-ownership that she has the right to evict an unwanted child from the domain of her body. However, as I have shown in this paper, the woman does not have the right to do so, because by conceiving the child she has endangered it and, therefore, has a positive obligation to carry the pregnancy to term (or until the child is able to survive outside the womb). As I have shown, the arguments that the conception of a child cannot give rise to a duty because it does not constitute a trespass and because one cannot endanger someone who does not exist are dubious. If we assume – as Block does – that the child is a human being with rights from the moment of conception, then it would seem that the mother has no right to expel the child from her womb, but should keep it there at least until it is able to survive – on its own or with the help of technology – outside her body.

²⁸ See, e.g. Walter. E. Block, “Libertarianism, Positive Obligations and Property Abandonment: Children’s Rights”, *International Journal of Social Economics* 31(3) (2004).

²⁹ See Roderick Long, “Abortion, Abandonment, and Positive Rights: The Limits of Compulsory Altruism”, *Social Philosophy and Policy* 10(1) (1993); Wiśniewski, “A critique of Block on abortion and child abandonment”. Interestingly, Long’s position is that the mother can abort the child, but if she gives birth to the child, she acquires a positive obligation to support it.

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