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Reply to Wójtowicz on Evictionism

Abstract: Wójtowicz argues that when a person puts another in danger, he owes the latter the obligation to help him. He maintains that by creating a fetus, the mother is placing him in a state of peril. Therefore, she is obligated to protect him. How so? By bringing him to term after a full nine months of pregnancy. Therefore, my theory of evictionism is erroneous, since I maintain the mother has a right to evict her pre-born baby at any time during her pregnancy.

Keywords: positive obligations, pregnancy, evictionism, endangerment

This brilliant and very creative author starts off with a stark challenge to the evictionist thesis: “[...] 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 it¹ and there-

¹ I am uncomfortable with the use of “it” to describe a very young human being. “He” would be much more appropriate. However, as I have often made this mistake myself, I cannot too harshly condemn others for doing so too.

fore has a positive duty to carry the pregnancy to term (until the child is able to survive outside the womb).²

The way I see matters, to generate a positive duty, one has to first violate someone else's rights. *A* knocks *B* into the lake; the latter cannot swim and is now drowning. It cannot be denied that *A*, a good swimmer, is obliged to rescue *B*. But is Wójtowicz really contending that to create a child is to violate that child's rights? It is difficult to reject this interpretation. If so, it is clearly false. One problem would be that every pregnant woman is a criminal. That ought to be enough of a *reductio ad absurdum* all on its own to knock out this contention. Another difficulty is the counter claim that by bringing the baby to life, the mother, the parents, are actually benefiting the fetus, because life, even with all of its travails, is better than non-existence. This contention would get almost unanimous support³ from everyone except for those in the process of committing suicide. The vote of those who have already taken their own lives cannot count, since they no longer exist.

In the view of our author: "[...] whether the fertilised ovum is indeed a human being endowed with rights – is, as we know, a matter of dispute".⁴

But what are the other possibilities for human life to begin apart from the fertilized egg? One possibility is birth. But there is a tremendous difficulty with that option. For the baby 5 minutes before birth, and 5 minutes afterward, is no different than you or I ten minutes apart. The best way to look at birth is that it is a mere change of address.⁵ At one moment in time, this pre-born baby resides inside his mother's "house", or body. At the next moment in time in our scenario, his location is in her arms. No big deal. Nothing to look at here. Let us all move on.

According to the Jewish tradition, birth begins when the heart starts to beat.⁶ But this will not suffice, either. When a person receives a heart trans-

² Stanisław Wójtowicz, "Against Evictionism. Creation of Peril, Positive Duties, and Libertarianism", *Studia z Historii Filozofii* 16(1): 61–82.

³ Might does not make right, nor does majority rule. Still, neither can properly be totally ignored.

⁴ Ibidem, 62.

⁵ The post office should be notified of this geographical alteration.

⁶ Actually, in this religious tradition, it occurs when the fetus graduates from medical school!

plant, the first step in this process is to remove this organ of the recipient's, so as to make room for the incoming donated heart. But during this period of time, the recipient's heart is no longer beating. Thus, he is not any longer a human being? So, if someone were to kill him during that window of opportunity by putting a bullet in his head, the would-be assassin could not be considered a murderer? This is an obvious difficulty with the position. No, we are stuck with the idea, whether we like it or not, that human life begins when the sperm enters the egg.

Wójtowicz, with a little help from Dominiak and Wysocki, offers a magnificent, eloquent and keenly accurate summary of my view on evictionism. I hate to say this, but his rendition is superior to my best efforts. I am very grateful to the three of them for this. I take the liberty of repeating it here:

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, Dominiak and Wysocki standardise Block's theory in the following way:

- 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;
- (2) there is no violation of the woman's rights because the mother consented to the presence of the child in her womb;

- (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;
- (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”;
- (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.⁷

Here is my counter to the foregoing. If all of this is so, the woman also has a positive duty to keep the child alive all throughout the rest of her life. If he dies before she does, she is a murderer, according to the “logic” of this objection. For if it is a given that by bringing the child into the world via pregnancy she has put the child at risk of death, the same applies to giving birth to him. Let me put this in other words. Every woman who gives birth to a baby puts the child at risk of death not only if he is not attached to her body as a pre-born, but, also, after he exits from the womb. There are all sorts of dangers “out there”: there are murderers, traffic fatalities, heart attacks, cancer, drug overdoses, etc. The woman who gives birth to a child subjects him to all these risks, and far more, of course. Thus, according to Wójtcowicz, she takes on a positive obligation to safeguard him from each and every one of these later perils. If the son dies before the mother, she has not upheld this positive duty of hers, and should thus be considered a criminal. There is more. Suppose, God forbid, she trips and falls while pregnant and loses the baby. This is no longer merely horrid and greatly unfortunate, but is also a criminal act on her part, since, in the event, she has once again not lived up to her positive obligation to safeguard her very young child.

⁷ Ibidem, 63–64.

Wójtowicz puts his argument into syllogistic format, which eases discussion:

- 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.⁸

This is a very well-thought-out way of proceeding on the part of this incisive, logical and well-organized author. I accept P1 entirely. Indeed, this a very good succinct summary of my evictionist theory.

I have difficulty with P2. There are all sorts of ways in which we can each endanger each other without in the slightest taking on any positive obligations to help our “victim”. A opens up a grocery store next to B’s emporium. A is imposing “peril” on B. A threatens to outcompete B, “steal” B’s customer from him, and drive B into bankruptcy. If so, A owes B not a penny. Allen is courting Barbara. Charles comes along and woos her away from him. Charles has not only “endangered” Allen’s love life, he has stolen it away from him. Yet, Charles owes Allen no “help” or compensation. Take a case of physical danger. Every time an airplane takes off, there is a risk of its falling and hurting people on the ground. Pilots and passengers thus “endanger” unaware house dwellers, people walking on the street. Must the former “help” the latter even though, right now, that plane has not crashed? From a practical point of view, this would end air travel. From a deontological perspective, it is difficult to see why *Übermenschen* and *Luftmenschen* must pay surface dwellers for placing them in such peril. It is easy to add numerous examples. Everytime elderly

⁸ Ibidem, 65.

people go for a walk, there is a chance they may topple over, impacting innocents. Whenever anyone gets behind the wheel, they place others in danger. Ice hockey must be banned since the puck can hit bystanders, etc.

According to P4: "conceiving a child endangers it". Well, that is certainly true. This constitutes a worsening of his condition. That is one way to look at the matter, and not a totally incorrect one. But this occurrence can be viewed, also not unreasonably, in the entirely opposite manner. Here, giving life to a fetus improves its welfare, compared to non-existence. After all, how many of us wish we were never born? Apart from a very few, happily, this is not at all the opinion of most.⁹ Thus there is a very strong case to be made that existence is to be preferred to non-existence. If so, then, while introducing the sperm to the egg does indeed create hazard, it also brings forth great happiness to all concerned, and the credits outweigh the debits.

According to P5: "by conceiving a child, its mother acquires a positive duty to protect it from [...] danger". This may be true in other philosophies, but not for libertarianism. Here, there are no positive obligations incumbent upon people without their volunteering to take them up. For example, if I buy a pair of shoes at an agreed upon price, I have a positive obligation to pay for them. Only if someone perpetrates a crime on someone else is the former obliged to help the latter. But getting pregnant cannot be conceived of as criminal, *per se*.

Thus, I must also reject the conclusion: "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". It is interesting that Wójtowicz makes an exception in his thesis for the case of rape. He is quite right to do so, since bringing the baby to life was not an act of hers.

According to our author, "libertarian theory identifies three means by which a positive duty can be acquired: contract, creation of peril, and violation of rights. Of these three, the first two have been proposed as ways in which the mother can impose positive duties on herself".¹⁰ I would only add

⁹ And they, for the overwhelming most part, have the opportunity to do away with themselves.

¹⁰ *Ibidem*, 66.

that the host mother has positive obligations; not to the baby, but to her contractual partners, the couple that is hiring her for nine months of services.

On a related matter, I join Wójtowicz in supporting Dominiak versus Kinsella on the issue of whether or not getting pregnant is akin to pushing someone into a lake. On the other hand, as to the question of whether or not the mother imperils the pre-born child by becoming pregnant with him, Wójtowicz and I depart from each other and I join Dominiak in his criticism of this claim.

Let us now appreciate this important scenario of our author's:

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-defence – 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.¹¹

Wójtowicz has inverted his own *A* and *B*. To be sure, in this scenario, *A* has not violated any rights of *B*. But the reverse does not hold. That is, *B* has violated *A*'s rights by throwing a punch at *A*. Let us be clear on this. *B* is the bad guy herein. *B*, not *A*, is now drowning after *A*, the good guy, tossed *B* into the lake in self-defence. Wójtowicz is arguing that *A* owes *B* a debt, a positive obligation, to save *B* from drowning, but offers no ground whatsoever that this is the case.

¹¹ Ibidem, 70.

Next, consider this scenario, a product of a very fertile and creative mine:

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 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.¹²

My response is as follows. Not only does *A* not have a duty to help *B*, but *B* has an obligation to make good his interference with *A*'s target shooting. Also, *B* got blood all over *A*'s shooting range, and someone has to pay to clean it all up. If *W* were around, he would of course be liable not only to help *B*, but to compensate *A* for his losses, financial and pecuniary. Why? This is due to my negative homesteading theory. To be sure, *B* was totally innocent. But who was the first homesteader of the misery? *B* or *A*? Of course this was *B*. First, *W* pushed *B* into *A*'s line of fire, immiserating *B*. Only then, later, was *A* made miserable by *B*'s ruining his shooting practice. Here is yet another important hypothetical:

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

¹² Ibidem, 70–71.

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.¹³

No. the people who owe aid to *B* are not the usher, *A*, but members of the crowd that trampled *B*.

This eminent scholar has assigned positive obligations to help people who have been harmed, non-criminally. Here are a few reductios for this brilliant and very creative author to consider. In these cases, according to the "logic" he employs, positive obligations can be assigned to help people one has already, unambiguously, helped. For example, Dr. Debakey perfected heart transplants. He saved the life of a patient who would have died without this operation. But, the good Doctor, or, perhaps, I should say the bad doctor, has endangered this sick man because now he is imperiled by possible volcanoes, bullets, lightning strikes, etc. Smith is a lifeguard. Green was drowning. Smith saved Green. So Smith now owes Green a positive obligation to keep him safe for evermore, for, in saving his life from drowning, Smith subjected Green to all sorts of other dangers, such as the ones mentioned above. If there is any "danger", it is if Wójtowicz's philosophy is implemented, people will be fearful of saving others, lest they then be required to take on the positive obligation to keep them alive ever after, since in helping them, they subjected them to danger. This cannot be philosophically correct. But notice the parallel between all of these do-gooders and the pregnant mom. They all do good, and then are penalized by having a positive obligation pinned on them.

Moreover, why does this supposed obligation of the mother end in a mere nine months? Why should she not be obligated, according to this theory, to keep her child alive until he dies a natural death? But wait a moment. If she pre-deceases him, she has violated her positive obligation to keep him alive. If he dies first, of natural causes, she is still derelict in not adhering to her posi-

¹³ Ibidem, 71.

tive obligation to keep him safe from danger, such as dying from a heart attack. These are very powerful *reductios ad absurdum* of this thesis.

Here is yet another scintillating scenario:

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.¹⁴

A did not do B all that much of a favor by separating B from his insulin. I warrant that this example fails to demonstrate how helping someone can take on a positive obligation. However, I am in awe of this learned philosopher’s ability to create numerous hypotheticals of this sort.

Let us now consider this statement of our author:

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.¹⁵

Wójtowicz is intellectually¹⁶ obligated to demonstrate why the mother’s positive obligation ends with birth; he has not done so. He does not seem aware that it is his (logical) obligation to do so.

¹⁴ Ibidem.

¹⁵ Ibidem, 72.

¹⁶ Not legally.

Wójtowicz is the Mozart of hypotheticals. I greatly appreciate his efforts in this regard. However, I aver that the rocket *A* example fails. Bringing a person to life is to confer a benefit upon him, not a debit. It is illicit to shoot off very slow moving bullets. That is surely a debit, not a credit. It is a rights violation. Becoming pregnant, in sharp contrast, is not a per se rights violation. The analogy thus fails.

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. I repeat: Wójtowicz does not seem to realize that it is incumbent upon him to demonstrate why the woman's positive obligation ends with the birth of her child. Surely, he is still in danger after that event.

At this point our author states: "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. 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".¹⁷

I side with Dominiak¹⁸ vis-à-vis Wójtowicz on this business of violating the rights of non-existent persons. The latter brilliantly shows that this can be done with his slow moving rocket scenarios; they will kill people 200 years from now, who do not yet exist. But there is a strong disanalogy when this is applied to pregnant women. The rocket launcher per se violates rights. The woman who becomes pregnant does no such thing.

¹⁷ Ibidem, 76.

¹⁸ His contributions to this debate on abortion include: Łukasz Dominiak, "Libertarianism and Obligatory Child Support", *Athenaeum. Polish Political Science Studies* 48 (2015): 1–20; Łukasz Dominiak, "The Blockian Proviso and the Rationality of Property Rights", *Libertarian Papers* 9(1) (2017): 114–128; Łukasz Dominiak, "Must Right-Libertarians Embrace Easements by Necessity?", *Diametros* 16(60) (2019): 34–51; Łukasz Dominiak, "Accession, Property Acquisition, and Libertarianism", *Diametros* 17(1) (2024): 22–40; Łukasz Dominiak, Igor Wysocki, "Evictionism, Libertarianism, and Duties of the Fetus", *The Journal of Medicine and Philosophy* 48(6) (2023): 527–540; Łukasz Dominiak, Igor Wysocki, "Libertarianism, Defense of Property, and Absolute Rights", *Analiza i Egzystencja* 61 (2023): 79–98.

Wójtowicz now probes the issue of:

[...] 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.¹⁹

But why does this hold only for the nine month gestation period? Surely, the newborn will perish without the aid and help of either her, or the father, or some other adults. The logic of this argument holds no calendar stopping point. The obligation would appear to be forever. That is, when the caretaker herself dies of old age, she will have violated her positive obligation to her son, even given that he is an adult, since he is still in danger from all sorts of things, the be-all and end-all of this fascinating theory. I hate to be repetitive, but I am only following the pattern of this author. All of his beautiful, fascinating, creative examples fail on this ground.

The next arrow in this brilliant creative philosopher's quiver is this:

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

¹⁹ Wójtowicz, "Against Evictionism. Creation of Peril, Positive Duties, and Libertarianism", 77.

cases, a person is placed in a situation where his or her life is endangered by the actions of another person.²⁰

There are problems here. One of them is that this example runs dab smack against what has been called the Blockian Proviso.²¹ The father, to be sure, has no positive obligation to safeguard his son. However, if he wishes to do so, he is obliged to notify someone, the orphanage, the hospital, etc., that he no longer desires to own the guardianship rights to his progeny. This stems not from any positive obligation but, rather, from the legal requirement not to claim ownership over that to which one is not entitled. Picture the bagel, with the hole in the middle labeled *A*, the bagel itself, *B*, and the surrounding area *C*. It is impermissible to homestead area *B*, for then one can control *A*, too, without ever having set as much as a foot on that terrain, much less homesteaded it.²² In like manner, this errant father is claiming ownership of, well, not the lad, but guardianship rights over him, and he in this act of abandonment, is not exercising that right. In the case of land, once you duly homestead it, you own it forever; absentee land ownership is legitimate. Not so with regard to the ownership of guardianship rights over sons. Then, you

²⁰ Ibidem.

²¹ Walter E. Block, "Toward a Libertarian Theory of Abortion", *The Libertarian Forum* 10(9) (1977): 6–8; Walter E. Block, "Abortion, Woman and Fetus: Rights in Conflict?", *Reason* 9(12) (1978): 18–25; Walter E. Block, "Roads, Bridges, Sunlight and Private Property: Reply to Gordon Tullock", *Journal des Economistes et des Etudes Humaines* 8(2–3) (1998): 315–326; Walter E. Block, "Stem Cell Research: The Libertarian Compromise", LewRockwell.com, September 3, 2001; Walter E. Block, Roy Whitehead, "Compromising the Uncompromisable", *Appalachian Law Review* 4(2) (2005): 1–45; Łukasz Dominiak, "The Blockian Proviso and the Rationality of Property Rights", *Libertarian Papers* 9(1) (2017): 114–128; Łukasz Dominiak, "Must Right-Libertarians Embrace Easements by Necessity?", *Diametros* 16(60) (2019): 34–51; Stephan Kinsella, "The Blockian Proviso", Mises Archive, September 11, 2007; Stephan Kinsella, "Van Dun on Freedom versus Property and Hostile Encirclement", StephanKinsella.com, August 3, 2009; Roderick Long, "Abortion, Abandonment, and Positive Rights", *Social Philosophy and Policy* 10(1) (1993): 165–189; Roderick Long, "Easy Rider", AAEBlog, September 11, 2007.

²² I assume that there is no such thing as helicopters, bridges, tunnels, super duperpole vaulters etc. Wójtowicz is not the only one who can concoct weird scenarios. I sense a kindred spirit in this world class thinker.

must continue to use them or lose them; that is, continually²³ guard your progeny, lest you are no longer the proper guardian, as in this case. What the father does in this case is an outright violation of this requirement.

Yet another difficulty is that the son is not at all a trespasser upon the father, as is the fetus on the mother. This, alone, I think, is sufficient to destroy the analogy.

Our author is not behindhand in challenging his own thesis. He does so, of course, in order to rebut the criticism, but methinks not successfully. He states:

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.²⁴

²³ Parents are allowed to go to sleep, but even then, before doing so, provision must be made for the safety of the child.

²⁴ Wójtowicz, "Against Evictionism. Creation of Peril, Positive Duties, and Libertarianism", 77–78.

I must demur. In my view, Wójtowicz at this point has come up with an objection problematic for his own theory. His entire enterprise is predicated upon the notion that the woman owes nine months of her life to the fetus, since she has endangered him. But to endanger someone is to violate his rights. It is a crime. Thus, according to this thesis, she would have no right to get pregnant in the first place.²⁵

I once had the occasion to witness a small boy, aged about 10 years old or so, who was shooting arrows at a tree. These were not rubber-tipped arrows; these were the real thing, used for hunting. I objected to the parents that if he missed the tree, the nearby neighbors might be killed. They defended this practice on the ground that it was a wide tree, and that he was shooting from a close distance, and had never so far missed. I asked how they would feel if their neighbor's child reciprocated in this practice. They were not too happy with that prospect, and stopped their son. He was endangering all the neighbors and was thus engaged in a criminal act. This boy should have been stopped, by the police if need be.

In the view of Wójtowicz, the pregnant woman is involved in an analogous act; endangering her son by in effect creating him. According to the logic of the case brought by this author, she should be considered a criminal, and should be stopped by the forces of law and order. This seems like a *reductio* to me.

Saith Wójtowicz: "All this seems to indicate that the conception of a child has the character of a non-trespassing creation of peril".²⁶ This is true enough: for the welcomed fetus. But it does not at all apply to the unwanted pre-born infant. That lies at the basis of my own evictionist theory.

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

²⁵ If the pregnancy ensues from rape, then it is the father, not the mother, who is the criminal. Otherwise, this guilt should lie with her.

²⁶ *Ibidem*, 78.

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 the matter: "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)".²⁷

Wójtowicz is an evictionist in the case of rape. I welcome his limited support. But he predicates the difference between the rape and the non-rape case of pregnancy on the basis of inaction on the part of the women in the former and acquiescence on her part in the latter. My gifted colleague and I part company in the instance of voluntary pregnancy. He maintains that because she endangered her child, she must take him to term. This philosopher fails to deal with the fact that this baby will be in peril all his live long life, and his mother's positive obligation should not end with his birth, a powerful *reductio*.

Will this concession save his theory? "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".²⁸

I fear not. Even adult children, living in the vale of tears, are still endangered. The mother's obligation should never end according to this thesis. Even when she herself has died, she would still be guilty of reneging on her obligation, if we take this theory to its logical conclusion.

I have been taken on a roller coaster of a ride by this dazzling philosopher. At times, I have felt I have been holding onto the car of this ride in this intellectual debate only by the skin of my teeth; he has been that creative and incisive. However, now that this perilous ride is over, I still feel I can cling to evictionism as the one and only correct libertarian theory on abortion. I am

²⁷ Wiśniewski, "A critique of Block on abortion and child abandonment", 2 (as cited in: Wójtowicz, "Against Evictionism. Creation of Peril, Positive Duties, and Libertarianism", 79).

²⁸ Wójtowicz, "Against Evictionism. Creation of Peril, Positive Duties, and Libertarianism", 80.

delighted that he and I agree on this insight, at least in the case of rape. At least, more modestly, I am still in a position to favor the support of evictionism vis-à-vis its two rivals, pro-life and pro-choice.

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