



LIBERTARIANISM AND OBLIGATORY CHILD SUPPORT

*Łukasz Dominiak**

— ABSTRACT —

In the present paper, I investigate the relation between the institution of obligatory child support and libertarianism, particularly a libertarian theory of distributive justice. I demonstrate that the institution of obligatory child support is incompatible with the classical libertarian theory of distributive justice as represented by Murray N. Rothbard, Hans-Hermann Hoppe, Walter Block, Stephan Kinsella or Robert Nozick. However, the main research question that I address in the paper is: What construal of the libertarian theory of distributive justice is the institution of obligatory child support compatible with? I hypothesise that obligatory child support is compatible with the libertarian theory of distributive justice interpreted in terms of the “finders-creators ethic”, as represented by Israel M. Kirzner. To inquire into the main research problem, I employ the method of reflective equilibrium.

— KEYWORDS —

libertarianism, distributive justice, obligatory child support, finders-creators ethic, homesteading, entitlement theory

INTRODUCTION

It is commonly believed amongst libertarians that the institution of obligatory child support as an instance of uncontractual positive duty is incompatible with the fundamental tenets of the libertarian doctrine. As Walter Block puts

* Nicolaus Copernicus University in Toruń, Faculty of Political Science and International Studies.

it, “a basic premise of libertarianism is that there are no positive obligations” (Block 2004: 275). The strongest formulation of this ubiquitous idea concerning children’s rights was formulated by Murray Rothbard in his widely acclaimed book *The Ethics of Liberty*. Starting with the purely negative concept of right as an area of human action that no one is allowed to interfere with, Rothbard demonstrates that “any positive duty that coerces a man to perform an act for another’s sake is an infringement on the former’s liberty and property rights and as such is unacceptable in the free society”, hence “the parent should not have a legal obligation to feed, clothe, or educate his children, since such obligations would entail positive acts coerced upon the parent and depriving the parent of his rights” (Rothbard 1998: 100). What is more, in the case of parents who do not want to work (or do not want to work so much) and generate income, the state forces them to work under a threat of property seizure and imprisonment what makes obligatory child support a form of involuntary servitude, i.e. “a condition in which the victim is forced to work for another by the use or threat of physical restraint or physical injury, or by the use or threat of coercion through law or the legal process” (*United States v. Kozminski*, 1998). This very feature of obligatory child support is what libertarianism opposes particularly vehemently. As Murray Rothbard says: “If there is anything a libertarian must be squarely and totally against, it is *involuntary servitude* – forced labor – an act which denies the most elemental right of self-ownership” (Rothbard 2002: 78).

In the present paper, I investigate the following research question: *What construal of the libertarian theory of distributive justice is the institution of obligatory child support compatible with?* To solve my research problem, I first analyse the reasons for which obligatory child support is incompatible with the classical libertarian theory of distributive justice. I identify two main reasons of this incompatibility: 1) obligatory child support is not an instance of a duty that stems from creation of peril; 2) obligatory child support is not a contractual duty in a sense of the property title-transfer model of contracts. I claim that the background reason of this incompatibility is what I call the *Conjoined Child Ownership Account* that is presupposed by the classical libertarian theory of distributive justice. Hence, for obligatory child support to be compatible with libertarianism, the *Conjoined Child Ownership Account* has to be jettisoned and replaced with the *Exclusive Child Ownership Account*. This, however, is possible only if the libertarian theory of distributive justice is construed in an unorthodox way. The main thesis of this paper is then the following assertion: *Obligatory child*

support is compatible with the libertarian theory of distributive justice interpreted in terms of the “finders-creators ethic”.

To investigate my research problem, I employ the method of reflective equilibrium (Arras 2007: 46–71; Daniels 1979: 256–282; Daniels 2011, Dominiak 2012: 143–156; Dworkin 2013: 185–222, Haslett 1987: 305–311, Rawls 1951: 177–197; Rawls 1999: 17–18). Generally speaking, the method of reflective equilibrium aims at putting our considered judgements, principles and background theories into a state of coherence. However, since social institutions are embodiments of our beliefs, they also can correspond with theories, doctrines, or principles. In this sense, an institution can be compatible with doctrines or theories. Since “institutions are stable and recurring patterns of behavior” (Huntington 1965: 394), it follows from the concept of institution that the thesis of compatibility or incompatibility of a particular institution with a given theory or belief should not hinge on the incidental, extraordinary, whim-dependent or pathological behaviours that occur within the purview of an institution. Quite to the contrary, the analysis should focus on stable, recurrent, default and normal elements of an institution.

POSITIVE DUTIES, THEORY OF CONTRACTS, AND OBLIGATORY CHILD SUPPORT

In his seminal paper on the topic, *The Law of Omissions and Neglect of Children*, Williamson M. Evers considers four sorts of legal duties existing in Anglo-American law in terms of which parents' obligation to support their children could possibly be interpreted: a duty to help the government, a status-based duty, a duty that stems from creation of peril, and a contractual duty. According to the libertarian political philosophy, for a positive duty not to violate individuals' rights it has to be either a duty that stems from creation of peril or a contractual duty. The first two types of duty are incompatible with libertarianism for obvious reasons: 1. the government is either as such incompatible with anarcho-libertarianism or compatible only as a minimal government with the minarcho-libertarianism, i.e. in neither case duties to help the government are justified; 2. if you oblige A, who peacefully works in a given profession (or who adopts a given social role), to perform some positive actions he does not want to perform, you prevent him from pursuing this profession, and at the same time you prevent innumerable others from voluntarily dealing with A (employing A,

buying A's services or goods, etc.); you thereby initiate aggression against A and innumerable others.

Hence, according to the libertarian political philosophy, for a positive duty not to violate individual rights it has to be either a duty that stems from creation of peril or a contractual duty. The first case, as far as it corresponds with the libertarian principles, presupposes that for a positive duty to occur, the obliged person has to put somebody in danger by committing an invasive act. As Williamson Evers points out, "the criminal law punishes persons who put into motion some force that invades individual rights and who then neglect to halt the force which they originally set in motion" (Evers 1978: 3). If you push somebody into water, you have a positive duty to rescue him or you will be guilty not only of infringing upon his bodily inviolability (pushing him into water against his will) but also of homicide (if he drowns in effect of your already illicit act). What is the basis of positive duties in these types of cases is that "the creator of the peril has effectively committed an invasive act" and that the obliged person is the same person as the person who has created the peril: "the duty of the perpetrator to aid the imperiled in such cases is to be distinguished from a more generalized duty that is sometimes advanced, namely, a duty of everyone to aid imperiled" (Evers 1978: 3), which is unjustified on libertarian grounds.

Some libertarians hold that bringing a child into being is a situation analogous with putting this child into danger and so that it places positive duties on parents. Stephan Kinsella writes: "the libertarian could argue that the parent has various positive obligations to his or her children, such as the obligation to feed, shelter, educate, etc. The idea here is that libertarianism does not oppose 'positive rights'; it simply insists that they be voluntarily incurred. One way to do this is by contract; another is by trespassing against someone's property. Now, 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" (Kinsella 2006).

Unfortunately, this analogy is entirely tenuous. 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. Second of all, as the Non-Identity Problem (Parfit 1987: 351–379; McMahan 2004: 445–475; Glover 2004: 429–444; Steinbock 2011: 83–92; Singer 2011: 109–119; Dominiak 2013: 46–52) demonstrates, for this very child with its “natural needs for shelter, food, care”, the only option was either to exist with these needs or not to exist at all, and since we do not consider the life with needs not worth living or worse than non-existence, the analogy with “throwing someone into a lake” is again broken. By throwing someone into a lake you worsen his situation, otherwise he would not complain or there would be no issue at stake; by getting pregnant, on the other hand, you do not worsen anyone’s situation, you create life. Hence, obligatory child support cannot be justified as a duty that stems from creation of peril.

The second possibility is that obligatory child support could be an instance of a contractual duty. Unfortunately, this theory also meets insurmountable difficulties. Referring to the fact that “some persons believe that the obligation to support children stems from a contract or implied contract between the parents themselves or between the parents and children” (Evers 1978: 5), Evers claims that the attempt to interpret a duty to support one’s minor children as a contractual duty is implausible for two main reasons.

First of all, it is usually the case that people do not sign contracts to support their children, therefore what we can talk about here is just an implicit contract. But the problem with implicit contracts is that “deriving obligations from implicit contracts looks very much like simply imposing obligations on others by force. Then we are no longer talking about contract and consent but about might defining right” (Evers 1978: 7).

Second of all, even if a contract to support one’s children were an explicit and formal one, no transfer of property title would take place in such a contract: “it should from the first be clear that no transfer of property title has occurred in such alleged contracts, and that therefore they should not be legally binding” (Evers 1978: 5). From a libertarian point of view, as it is clearly expressed by Murray Rothbard in *The Ethics of Liberty*, for a contract to be binding it has to involve a real property transfer between parties. Mere promises and expectations cannot be legally binding, even if they assume a formal and explicit character. For a contract to bind, there has to be some property that one party conditionally

transfers to the other party so if the other party did not fulfil her part of the contract, she would be in an illegitimate possession of this property; in other words, she would initiate an invasion of the property rights, thereby creating a reason to seize her property as a compensation for the violation. Rothbard writes: “In short, a contract should only be enforceable when the failure to fulfill it is an implicit theft of property. But this can only be true if we hold that validly enforceable contracts only exist where title to property has already been *transferred*, and therefore where the failure to abide by the contract means that the other party’s property is retained by the delinquent party, without the consent of the former (implicit theft)” (Rothbard 1998: 133).

By the same token, for obligatory child support to be a contractual duty, there has to be first some property transfer *to the payer* of child support to legally oblige him to pay child support *to the receiver*. It means that child support would be obligatory in the libertarian social order if and only if it were the case that child-support avoider would thereby come to the position of being in an illegitimate possession of the obligee’s property. On the other hand, if we were to recognise a contractual duty of child support where there was no real transfer of property title involved, we would end up with “the promised expectations model or the present mixed content of the law of contracts” (Evers 1977: 5) that legally enforce promises and thereby violate people’s property rights.

Why enforcing promises violates people’s property rights? A person who makes a mere promise does not violate anyone’s property rights, does not initiate aggression and thereby is not an aggressor; she merely enjoys her property rights to her vocal cords and brain. On the other hand, if we hold a person who is not an aggressor liable for breaking a promise and take of her property as a compensation to a promisee, we initiate aggression against the former’s property rights.

Hence, since if obligatory child support is to be a contractual duty, there has to be first some property transfer *to the payer* of child support, the question arises: What kind of property could it be and who would be the parties of child support contracts? The only natural candidate for the answer to the first part of the question is that this property would be the child itself. As to the second part of the question, there are two possibilities: either parents and children or only parents would be the parties of child support contracts.

If we construe child support contracts as contracts between parents and children, we fall into contradiction. Children cannot act as consenting agents until relatively late in their lives. Without the ability to act as consenting agents

they are unable to conclude contracts. The moment at which they acquire this ability is the moment at which they stop being children and so the moment at which paying *child* support to them is not logically possible any more. So, if we wanted child support contracts to be contracts between children and parents, we would make these contracts objectless by the very act of signing them. Even if one argued that this contradiction is only an apparent one, the fact that we could not conclude child support contracts until relatively late would utterly undermine the very idea and purpose of child support. This possibility is then excluded.

So, we are left only with the second possibility, namely, that these are parents who could be the parties of a child support contract. However, if we assume – as it is assumed in the current legal systems – that both parents are owners of the child, we end up with the promised expectation model of contracts. If both parents own the child, there is nothing which the child support payments could be exchanged for and the promised expectations model of contracts is the only option available to us. Imagine, for instance, a child support contract modelled on the actual child support law. Parents who consider securing their children's material situation in the case of divorce oblige themselves to support financially their children in such a manner that the custodial parent will incur the costs of bringing them up whereas the non-custodial parent will transfer, let's say, 20% of his income to the custodial parent in order to share 50% of the care costs with the custodial parent. Does any transfer of property titles between parties of the contract take place here? Of course not. The only transfer of property title is between parents and children. They transfer their property to children by supporting them, both before divorce and after it. But they do not transfer any property titles between each other. Hence, what we are dealing here with is a sheer promise: the mother promises the father to support their children in the case of divorce and the father does the same.

Therefore, it seems that the only possibility for obligatory child support to function as a contractual duty (as well as the only possibility for obligatory child support to be compatible with libertarianism) would be the situation in which only one of the parents would be the exclusive owner of the child. Then the owner could conclude a contract with the other parent stipulating, e.g.: "Hereby I transfer the title to half of my property in the child to the father and the father obliges himself to pay child support to me in exchange for the title". However, can such a construal of child ownership (*Exclusive Child Ownership Account*) be justified within the libertarian political philosophy? This is the question of the libertarian theory of distributive justice.

CLASSICAL LIBERTARIAN THEORY OF DISTRIBUTIVE JUSTICE AND CHILD OWNERSHIP

According to the classical libertarian theory of distributive justice, one can become a legitimate owner of a thing only in two ways: either by homesteading a previously (at the moment of homesteading) unowned thing (by mixing one's labour with the thing, occupying it, transforming it, etc. – there is an ongoing debate as to the question of what homesteading consists in), or by receiving a previously owned thing through voluntary transfer from the previous owner (in exchange for something else or as a free gift). As Robert Nozick points out, the appropriation of a holding may take place only in these two ways:

A person who acquires a holding in accordance with the principle of justice in acquisition is entitled to that holding.

A person who acquires a holding in accordance with the principle of justice in transfer, from someone else entitled to the holding, is entitled to the holding.

No one is entitled to a holding except by (repeated) applications of 1 and 2 (Nozick 2014: 151).

There are, thus, only two possible general ways in which the mother could become the exclusive owner of the child (a more radical thesis that the father could be the exclusive owner of the child seems utterly doomed to failure): 1. she could homestead the child; 2. she could receive it as a free gift or in exchange for something. To answer the question if the mother could be the exclusive owner of the child on the basis of the classical libertarian theory of distributive justice we have to analyse these two options in turn.

First, the mother cannot become the exclusive owner of the child by homesteading (i.e. transforming, occupying or mixing her labour with) it since for homesteading to take place, the resources that are homesteaded (i.e. transformed into something else, occupied or mixed with labour) cannot be owned. Only when the resources are unowned one can homestead them. As Hans-Hermann Hoppe says, “the homesteading principle means the first-use-first-own rule regarding unowned, nature-given resources” (Hoppe 2006: 413–414). Obviously, there are no previously unowned children floating in the air, waiting for somebody to homestead them. Quite to the contrary, children are produced from gametes that are already owned by both parents. So, the resources that are transformed into the child are already owned. Therefore, the mother cannot become the exclusive owner of the child by homesteading it.

One could try to argue that it is possible that the father could abandon his gametes, thereby making them unowned, and that only then the mother would homestead the gametes and produce the child. That would be the case of becoming the legitimate exclusive owner of the child. Unfortunately, this reply is much weaker than it seems at first glance. Its weakness consists in not realising that in the libertarian social order children are also resources that can generate profits on their owner's behalf. Therefore, the abandonment of children in the libertarian society, although theoretically possible, would be praxeologically improbable – the same as praxeologically improbable is the claim that people will start abandoning their real estates tomorrow. But let's analyse this reply in detail.

As I mentioned above, in the libertarian social order there are no positive duties except duties that stem from creation of peril and contractual ones. By the same token, there are no duties connected with being a co-owner of the child except these two types. Therefore, the father who does not sign a child support contract can be a co-owner of the child and have no duties (no costs) connected with this ownership. On the other hand, if one wants to abandon one's property, one has to notify others of this fact. As Walter Block points out, this necessity of notification "follows not from any positive obligation whatsoever, but rather from the logical implication of what it means to abandon something. You cannot (logically) abandon something if you do not notify others of its availability for their own ownership. At most, if you do not undertake any notification, you have not abandoned it, but rather are simply the absentee owner over it [...] you are still the owner of it, and are (temporarily, for the moment, even for the rest of your life) not using it any more. You have, in a word, not yet succeeded in abandoning it. In other words, abandoning property is not something you *can* attain merely by wishing for it; merely by no longer using it; merely by no longer exercising the tradition ownership rights over it" (Block 2004: 279). Therefore, the father who wants to abandon his gametes has to notify others (the mother) of this fact. However, such a notification means extra costs. Therefore, by being a co-owner of the child, the father does not incur any costs, whereas by abandoning the gametes he incurs some extra costs. Hence, what the above reply essentially boils down to is the assertion that the father having a choice between two ways of not taking care of the child would choose the more expensive one. This sounds implausible. Moreover, taking into consideration the aforementioned fact that being a co-owner of the child can bestow profits on

the father (the mother might one day want to buy his part of the property title, the father can demand remunerations for agreeing to the mother's decisions concerning the child, both parents can put the child up for paid adoption, etc.) whereas abandoning the gametes can involve extra costs (the father could one day change his mind as to the child ownership), the plausibility of this reply plummets drastically. Basically, because in the libertarian social order children are also resources, it is, generally speaking, better to have them than to abandon them. A father who would prefer to costly abandon his property instead of holding it, would be an extraordinary case that does not have a bearing on the question of institutional compatibility.

Second, it seems then that the mother could become the exclusive owner of the child *via* transfer of the gametes (or a part of the property title in the child) from the father. This is perfectly conceivable and even presupposed by the above argument: since children are resources, so do gametes; if the father does not want to have the child, he can sell his gametes (or his part of the property title in the child) to the mother (he can even make a gift). What is though highly improbable is that the same man who just effectively demonstrated – by selling his property title in the child (or gametes) – that he does not want to have the child, would even though be willing to pay child support to the child/mother, i.e. would be willing to buy back the property title to the same child for his child support payments. Although it is theoretically possible, it is praxeologically improbable and makes the case for the claim that obligatory child support is compatible with libertarianism to hinge on the whims of protean individuals and extraordinary cases.

As this analysis proves, except extraordinary and highly improbable cases, the classical libertarian theory of distributive justice does not allow for the existence of the institution of obligatory child support. The reason for that is that classical libertarianism presupposes what I call the *Conjoined Child Ownership Account*. According to this account, a default (standard) situation is that both parents own the child. It can be the case that for some extraordinary reasons (for instance, the death of the father) only one parent would be the owner of the child, however normally, as far as the *institution* of family and child ownership is concerned, the *Conjoined Child Ownership Account* is valid and default theory of child ownership. This idea is confirmed by such outstanding libertarians as Murray Rothbard or Walter Block. According to Rothbard, when a child is born, “the parents – or rather the mother, who is the only certain and visible parent – as the creators of the baby become its owners” (Rothbard 1998: 99). In turn, Block

points out that the mother does not homestead the child alone but “with a little initial help from the father” (Block 2004: 280). Therefore, it has to be concluded that the institution of obligatory child support is incompatible with the classical libertarian theory of redistributive justice. For the institution of obligatory child support to be compatible with libertarianism, the *Conjoined Child Ownership Account* has to be jettisoned. However, since this account is presupposed by the classical libertarian theory of distributive justice, then the whole theory would have to be reformulated. Is libertarianism capable of such a reformulation? This is the question of the alternative construal of the libertarian theory of distributive justice.

FINDERS-CREATORS ETHIC, LIBERTARIAN THEORY OF DISTRIBUTIVE JUSTICE, AND CHILD OWNERSHIP

In what way the classical libertarian theory of distributive justice has to be construed to allow for the *Exclusive Child Ownership Account* and compatibility between the institution of obligatory child support and libertarianism? I claim that such a construal can be provided by the Israel M. Kirzner’s theory of finders-creators ethic and entrepreneurial discovery (Kirzner 1997: 60–85; Kirzner 1973; Kirzner 1979; Kirzner 1985; Kirzner 1989).

According to the finders-creators ethic, an entrepreneur or producer do not transform the existing resources but create them, or their value, *ex nihilo*. An entrepreneur – thanks to his intelligence, talent and labour – discovers a potential use of the existing resources and by implementing his discovery, he creates something, a resource or value, that did not exist before his discovery. Therefore, after an entrepreneurial discovery, there is both an old, previously existing resource, and a new one, created by the entrepreneur. Kirzner writes, “until a resource has been discovered, *it has not*, in the sense relevant to the rights of access and common use, *existed at all*. On this view it seems plausible to consider the discoverer (of the hitherto ‘non-existent’ resource) as, in the relevant sense, the *creator* of what he has found” (Kirzner 1981: 395–396).

Hence, according to Israel M. Kirzner, next to the original acquisition of holdings and transfer of property, there is the third way of appropriating things: a creation. “It should be noted that ownership-by-creation is quite different from ownership-by-just-acquisition-from-nature. Ownership by acquisition occurs against the prior background of *given* unheld resources. Acquisition is, in fact,

a kind of ‘transfer’ (from nature to the first holder). Ownership by creation, on the other hand, involves no notion of transfer at all. The finder-creator has spontaneously generated hitherto non-existent resources, and is seen, therefore, as their natural owner” (Kirzner 1981: 396).

Imagine the following scenario. A lumberjack cuts down a tree that belongs to him. A carpenter comes into lumberjack’s timber without the latter’s consent and makes a wardrobe of this timber. Who is the owner of the wardrobe? On the basis of classical libertarian theory of distributive justice, it cannot be the carpenter since he violated both the principle of justice in transfer (lumberjack did not consent to the transfer of his timber to the carpenter) and the principle of justice in acquisition (timber was not an unowned resource). As Stephan Kinsella points out, no libertarian would “hold that creating an item using raw material owned by others gives the thief-creator ownership of the item” (Kinsella 2008: 39). In turn, on the basis of the finders-creators ethic, it is the carpenter who is the owner of the wardrobe. Even though without the lumberjack’s labour and timber there would be no wardrobe – the same as without the carpenter’s work there would be no wardrobe either – the lumberjack cannot be the “creator” of the wardrobe in the sense of finders-creators ethic since he did not effectively discover a hitherto unknown use for timber (timber as a wardrobe); what he “created” is timber; he discovered a new use for a tree (tree as timber). It is the carpenter who effectively discovered that timber can be the wardrobe and therefore he is the “creator” of the wardrobe.

The finders-creators ethic introduces, therefore, an alternative construal of the principle of homesteading. The classical libertarianism understands homesteading as appropriation of unheld resources. On the other hand, from the finders-creators ethic vantage point, the appropriation can also take place by “creation of an entirely new dimension of the holding – something not only, not previously held, but also something that did not, in the relevant sense, exist previously altogether” (Kirzner 1981: 402). Hence, the classical libertarian theory of original acquisition is characterised by the “decided lack of enthusiasm for the possibility that many cases of original acquisition may qualify, at least in part, for justification under the finder-creator, finder-keeper ethic” (Kirzner 1981: 402).

Therefore, from the finders-creators ethic point of view, the carpenter, as the creator of the wardrobe, is as a matter of logic the first-comer to the wardrobe, the original appropriator of the wardrobe; before he created the wardrobe, there had not been the wardrobe yet to first come to or to homestead. Obviously, the

lumberjack still has property title to his timber. But on what basis should he have it to the wardrobe? Has he received it through the rightful transfer of holdings or through original acquisition of holdings? Before the carpenter made the wardrobe, there had not been this wardrobe yet for anyone to have property title to. Nor did the carpenter transfer property title to the wardrobe to the lumberjack. Of course, nothing of this sort happened in the first place either when the carpenter seized the lumberjack's timber. But no one holds that the lumberjack lost thereby the property title to his timber. However, since there is no timber any more, only the wardrobe, the lumberjack has a right to be compensated for his timber (plus for all other negative consequences of unlawful action of the carpenter). He has though no right to the wardrobe as such. As Kirzner points out, one can argue in objection to the finders-creators ethic "that if I discover new, hitherto unnoticed value in my neighbor's property, that additional value ought, on the finders, keepers ethic, be mine *without* any transfer of property at all. To the extent that the 'new value' can be consumed without violating the rights of the neighbor, this seems not unreasonable. In general, where consumption of the newly discovered value cannot occur without violating existing rights, it will be in the interest of the discoverer to buy up *those* rights, in order to enjoy the new values which *he* has discovered" (Kirzner 1981: 411).

By the same token as in the lumberjack-carpenter thought experiment, even though without man's labour and sperm there would be no child – the same as without mother's labour and egg there would be no child either – a man cannot be the "creator" of a child since he does not effectively produce a new resource or value as far as his gametes are concerned; he does not create "an entirely new dimension of the holding – something not only, not previously held, but also something that did not, in the relevant sense, exist previously altogether". What he creates is sperm; his body transforms other cells such as spermatogonia into sperm, adding thereby "an entirely new dimension" to his spermatogonia. It is a woman who transforms a sperm and egg into a child, adding thereby "an entirely new dimension" to gametes – "something not only, not previously held, but also something that did not, in the relevant sense, exist previously altogether", and therefore it is a woman who is the "creator" of a child. Whatever the moment of the beginning of human life we assume on the continuum ranging from conception to birth, it is the labour of mother's body that produces a child from the father's and mother's genetic material. Hence, as far as the finders-creators ethic is concerned it is the mother who is the creator of the child and thereby its exclusive owner.

It is then clear that the finders-creators ethic presupposes the *Exclusive Child Ownership Account*. According to the *Exclusive Child Ownership Account*, it is not possible for a man to become an owner of a child in a “natural” way. On the basis of the finders-creators ethic and the *Exclusive Child Ownership Account*, contrary to contemporary political regimes, being the genetic father (or genetic mother) of the child has no bearing on the property title to the child. As I demonstrated above, what matters is who adds “an entirely new dimension” to the gametes, who transforms the genetic material into a child. In the case of natural pregnancy, it is always a genetic and biological mother and therefore she is the creator, the original appropriator of the child; in the case of *in vitro* fertilisation and surrogacy, it is, depending on the theory of the beginning of human life, a scientist or biological mother (not genetic one), unless a contract with the *in vitro* fertilisation clinic or surrogate mother stipulates otherwise. So, whatever the case, the genetic father of the child is not a “natural”, original owner of the child; he is a late-comer. Second of all, because a genetic father is a late-comer who, regardless of his motives, beliefs or aspirations, cannot originally appropriate a child, there is only one legitimate possibility left for him as to the child ownership, namely, he can appropriate a child through transfer of holdings. Hence, the praxeological constraints that would be placed on the genetic parents by the finders-creators ethic and the *Exclusive Child Ownership Account* would determine “stable and recurring patterns of behavior”, according to which *if a man wants to have a child, he has to receive property title to a child from its mother who is its exclusive original appropriator*. It means that whatever man’s motives and beliefs are, receiving the property title to a child from its mother would constitute for him an inevitable means *if* he wanted to achieve an end of having a child. Since a man could acquire property title to a child from the mother only in one of the two ways: 1) he could receive it as a gift; 2) or he could exchange it for his property, the second scenario would of course be the case of the spontaneous emergence of obligatory child support. Although the exact and detailed form that obligatory child support would adopt under conditions of unorthodox libertarianism is beyond our comprehension, we can predict with a perfect certitude that *if* it developed, it would function as an exchange of property titles between the mother and a man.

Because, as I mentioned earlier on, the only possibility for obligatory child support to function as a contractual duty, as well as the only possibility for obligatory child support to be compatible with libertarianism, is the situation in which just one of the parents is the exclusive owner of the child, it is now obvious that

on the basis of the unorthodox libertarian theory of distributive justice (finders-creators ethic), it is perfectly possible for obligatory child support to function as an explicit contractual duty in accordance with the property title-transfer model of contracts. If the mother is the exclusive owner of the child, she can transfer her property title in the child to a man in exchange for man's property title to his money (or other property); as a result of the transfer, he becomes a co-owner of the child and she appropriates his child support payments. Hence, Williamson M. Evers' criticism "that no transfer of property title occurs in such alleged contracts, and that therefore they are not legally binding" is valid only as far as we espouse the classical libertarian theory of distributive justice and the *Conjoined Child Ownership Account*: if a child is originally co-owned by the parents, there is nothing to exchange the child support payments for. But as far as we espouse the unorthodox libertarian theory of distributive justice (finders-creators ethic) and the *Exclusive Child Ownership Account*, Evers' criticism does not apply.

CONCLUSIONS

In this paper, I analysed the problem of compatibility between the institution of obligatory child support and libertarianism. I demonstrated that the institution of obligatory child support is incompatible with the classical libertarian theory of distributive justice since the latter presupposes the *Conjoined Child Ownership Account*. If children were naturally a property of both parents, child support contracts would degenerate into promised expectations model of contracts which is inconsistent with the libertarian doctrine. On the other hand, the institution of obligatory child support is compatible with the unorthodox libertarian theory of distributive justice, namely with the finders-creators ethic. According to this approach, the mother is the creator of the child and thereby its exclusive owner. It is then possible for child support contracts to function within the property title-transfer model of contracts. Therefore, the main thesis of the paper, namely that *obligatory child support is compatible with the libertarian theory of distributive justice interpreted in terms of the "finders-creators ethic"*, has been confirmed.

REFERENCES:

- Arras J.D. (2007). *The Way We Reason Now: Reflective Equilibrium in Bioethics*. [in:] *The Oxford Handbook of Bioethics*. B. Steinbock (ed.). New York: Oxford University Press.
- Block W. (2004). *Libertarianism, Positive Obligations, and Property Abandonment: Children's Rights*. „International Journal of Social Economics” 31 (3).
- Daniels N. (1979). *Wide Reflective Equilibrium and Theory Acceptance in Ethics*. “The Journal of Philosophy” 76 (5).
- Daniels N. (2011). *Reflective Equilibrium*. [in:] *The Stanford Encyclopedia of Philosophy*. [online] <http://plato.stanford.edu/entries/reflective-equilibrium/>; [accessed 09.07.2014].
- Dominiak Ł. (2012). *Metoda równowagi refleksyjnej (reflective equilibrium) w filozofii polityki*. „Athenaeum. Polskie Studia Politologiczne” 36.
- Dominiak Ł. (2013). *Prenatal Harm and Theory of Identity*. „Political Dialogues. Journal of Political Theory” 15.
- Dworkin R. (2013). *Taking Rights Seriously*. London: Bloomsbury Academic.
- Evers W.M. (1977) *Toward a Reformulation of the Law of Contracts*. “Journal of Libertarian Studies” 1 (1).
- Evers W.M. (1978). *The Law of Omissions and Neglect of Children*. “Journal of Libertarian Studies” 2 (1).
- Glover J. (2004). *Future People, Disability, and Screening*. [in:] *Bioethics*. J. Harris (ed.). New York: Oxford University Press.
- Haslett D.W. (1987). *What Is Wrong With Reflective Equilibria?*. „Philosophical Quarterly” 37 (148).
- Hoppe H.-H. (2006). *The Economics and Ethics of Private Property. Studies in Political Economy and Philosophy*. Auburn: Ludwig von Mises Institute.
- Huntington S.P. (1965). *Political Development and Political Decay*. “World Politics” 17 (3).
- Kinsella S. (2006). *How We Come To Own Ourselves*, „Mises Daily” September 7, [online]: <http://mises.org/library/how-we-come-own-ourselves>; [accessed 30.05.2015].
- Kinsella S. (2008). *Against Intellectual Property*. Auburn: Ludwig von Mises Institute.
- Kirzner I.M. (1973). *Competition and Entrepreneurship*. Chicago: University of Chicago Press.
- Kirzner I.M. (1979). *Perception, Opportunity, and Profit: Studies in the Theory of Entrepreneurship*. Chicago: University of Chicago Press.
- Kirzner I.M. (1981). *Entrepreneurship, Entitlement, and Economic Justice*. [in:] *Reading Nozick. Essays on 'Anarchy, State, and Utopia'*. J. Paul (ed.). Oxford: Basil Blackwell.
- Kirzner I.M. (1985). *Discovery and the Capitalist Process*. Chicago: University of Chicago Press.

- Kirzner I.M. (1989). *Discovery, Capitalism, and Distributive Justice*. New York: Basil Blackwell.
- Kirzner I.M. (1997). *Entrepreneurial Discovery and the Competitive Market Process: An Austrian Approach*. "Journal of Economic Literature" 35 (1).
- McMahan J. (2004). *Wrongful Life: Paradoxes in the Morality of Causing People to Exist*. [in:] *Bioethics*. J. Harris (ed.). New York: Oxford University Press.
- Nozick R. (2014). *Anarchy, State, and Utopia*. Oxford: Blackwell Publishers.
- Parfit D. (1987). *Reasons and Persons*. New York: Oxford University Press.
- Rawls J. (1951). *Outline of a Decision Procedure for Ethics*. "The Philosophical Review" 60 (2).
- Rawls J. (1999). *A Theory of Justice*. Cambridge: Harvard University Press.
- Rothbard M. (1998). *The Ethics of Liberty*. New York: New York University Press.
- Rothbard M. (2002). *For a New Liberty: The Libertarian Manifesto*. New York: Macmillan Publishing.
- Singer P. (2011). *Practical Ethics*. New York: Cambridge University Press.
- Steinbock B. (2011). *Life Before Birth. The Moral and Legal Status of Embryos and Fetuses*. New York: Oxford University Press.
- United States v. Kozminski*, 487 U.S. 931, 942 (1998).