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Once Again, Evictionism Is Not a Solution: Response to Professor Walter Block[2]

Summary

The present paper argues that Professor Walter Block's evictionism is not a solution to the abortion dilemma. Being a response to Professor Block's recent article published in this journal, my piece submits (in some respects once again) that evictionism should be rejected because contrary to what it claims: (1) the unwanted fetus is not a trespasser; (2) there are insufficient reasons to support the premise that our life and thus our concomitant self-ownership status begins at the moment of conception; (3) evictionism entails positive duties; (4) evictionism conflicts with the homestead principle; (5) instead of being an original solution to the abortion dilemma, evictionism collapses into a well-known doctrine of doing and allowing; and (6) eviction is not the gentlest way possible of securing the woman's rights.

Streszczenie

Artykuł ten argumentuje, że ewikcjonizm profesora Waltera Blocka nie jest rozwiązaniem dylematu aborcji. Będąc odpowiedzią na najnowszy tekst profesora Blocka opublikowany w tym czasopiśmie, mój artykuł wskazuje (w niektórych aspektach po raz któryś z kolei), że ewikcjonizm powinien zostać odrzucony, ponieważ w przeciwieństwie do tego, co twierdzi: (1) niechciany płód nie jest nie narusza praw autowłasności kobiety; (2) nie ma wystarczających argumentów na wsparcie przesłanki, iż nasze życie i autowłasności zaczyna się w momencie zapłodnienia; (3) ewikcjonizm implikuje pozytywne obowiązki; (4) ewikcjonizm stoin w konflikcie z zasadą pierwotnego zawłaszczenia; (5) zamiast być oryginalnym rozwiązaniem dylematu aborcji, ewikcjonizm redukuje się do dobrze znanej doktryny powodowania i pozwalania; i w końcu (6) ewikcja nie jest najłagodniejszą możliwą metodą ochrony praw kobiety.

Keywords: abortion, evictionism, libertarianism, rights

Słowa kluczowe: aborcja, ewikcjonizm, libertarianizm, uprawnienia

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1. Introduction

In his most recent paper "Evictionism, Pro-Life and Pro-Choice" published in this journal (Block 2025), Professor Walter Block once again argues that his theory of evictionism offers a solution to the abortion dilemma and, what's more, one that purports to reconcile seemingly irreconcilable pro-choice and pro-life sides of the debate. Although I have already quarreled with Professor Block on this matter on many occasions (Dominiak 2018; Dominiak and Wysocki 2023a; Dominiak and Wysocki 2025), I believe it is worthwhile to lay out the reasons for our disagreement once again so that the scholarly readers of this journal may judge their merits and perhaps join the debate themselves. Thus, in what follows I am going to put forth my main arguments against evictionism and claim that it is not a solution to the abortion dilemma. However, before I do so, I wish to make clear that even though I reject evictionism as the final word on the issue, I hold its theoretical ingenuity and sophistication in high regard, especially its fecundity in opening new avenues for philosophical inquiry.

My argument against evictionism will try to remain relatively internal to this doctrine and, more broadly, to libertarianism as such. It means that I will take many evictionist assumptions for granted and try to show that even if we accept these assumptions, evictionism will fail nonetheless. Still, some evictionist assumptions will be directly criticized and rejected, although always for the reasons that should be acceptable also to libertarians. In this regard, I will target six evictionist postulates. First, the contention that the unwanted fetus is a trespasser. Second, the premise that beings like you and me begin their lives and acquire all their self-ownership rights at the moment of conception. Third, the belief that evictionism implies no positive duties on the part of parents. Fourth, the claim that parents homestead only the guardianship status vis-à-vis their children rather than acquire any property rights thereto. Fifth, the conviction that evictionism offers an original solution to the abortion dilemma. Sixth, the supposition that eviction is the gentlest possible means of defending the woman's rights against the unwanted fetus's trespass. Against these contentions I will argue that: First, the fetus cannot be a trespasser because it has no duties that it could possibly breach. Second, that evictionism has no tenable arguments whatsoever for the claim that self-ownership is vested at the moment of conception and that if libertarianism can say anything at all about the beginning of both our life and its concomitant self-ownership status, it is most consistent with the functional brain account. Third, that both guardianship and notification duties assumed by evictionism are typical positive duties. Fourth, that the evictionist denial of parents' rights to their children contradicts the homestead principle and is thus unlibertarian. Fifth, that instead of being an original solution to the abortion dilemma, evictionism collapses into the doctrine of doing and allowing (DDA). Sixth, that at least in some cases a legal action similar to the wrongful birth lawsuit can not only be sustainable, proportionate and just, but also constitute a much gentler remedy than eviction.

The present paper is organized in the following way. Section 2 argues against the claim that the unwanted fetus is a trespasser. Section 3 demonstrates that evictionism has no

arguments for the claim that our life begins – and thus that we acquire our self-ownership status – at the moment of conception and offers an alternative hypothesis. Section 4 rejects the claim that evictionism implies no positive duties. Section 5 demonstrates how evictionism contradicts the homestead principle. Section 6 shows that evictionism is prone to collapsing into the doctrine of doing and allowing and thus is hardly an original solution to the abortion dilemma. Section 7 argues against the claim that eviction is the gentlest means of defending the pregnant woman's rights and considers an alternative remedy. Section 8 concludes.

2. Fetus Is Not a Trespasser

Let me begin with Professor Block's claim that the unwanted fetus is a trespasser. I already attacked this claim in a systematic way in my other paper (Dominiak and Wysocki 2023a), but since the trespass premise plays a crucial role in the evictionist argument, it is worth dismantling once again, this time in a more focused way. To do so, let me assume the truth of the most lenient theory of self-defense on the table, that is, Judith Jarvis Thomson's rights-based account of self-defense (Thomson 1991). According to this theory, the victim is permitted to kill the threat even if the threat is innocent, that is, even if the threat is not only free of any fault, but is not acting at all. For example, if an unconscious (free of fault) person is thrown down the well by a villain or a gust of wind (and thus is not acting at all) so that he will crush the victim at the bottom of the well to death unless the victim annihilates him with her ray gun, the victim may kill such an innocent threat (cf. Nozick 1974; Thomson 1991). The explanation of this permissibility is that unless the victim kills the threat, the threat will violate the victim's right by killing her. Thus, under the rights-based account or what can be called, following Thomson's (Thomson 1973; Thomson 1991) own phrasing, the technical liability standard, it is possible to violate another's rights without even acting – a contention that is already problematic (cf. Otsuka 1994), but I will grant it to Professor Block without any further ado. By the same token, it must also be possible, at least in a sense, to be a trespasser without even acting. This I will also grant to Professor Block.

Now, Professor Block does not explicitly embrace the technical liability standard. To the contrary, he openly subscribes to strict liability (Block and Block 2000). However, under the strict liability standard it is not possible to violate another's rights without acting (Epstein 1971; Rothbard 1998). Thus, if I took Professor Block for his words, evictionism would be a non-starter, for it is clear that fetuses do not act and so cannot be trespassers either. All the same, I am willing to grant to Professor Block the technical liability standard. Under this standard, the unwanted fetus, who does not act but is nonetheless on the course of thwarting the woman's interests, is at least prima facie a trespasser. But is it a trespasser all things considered? I doubt it. For note that to be a trespasser is to violate another's rights and to violate another's rights is – by correlativity of rights and duties (Hohfeld 1913; Hohfeld 1917) – to breach one's own correlative duty. However, even if we admit that it is possible to breach one's duty by not even acting and so that even unconscious human projectiles can breach their duties, it is nevertheless untenable in the extreme to claim that *fetuses* have any duties to begin with (Dominiak and Wysocki 2023a). But if fetuses have no duties to begin with, there is nothing they can breach. And if there is nothing they can breach, there is also nothing they can correlatively violate. In other words, the pregnant woman does not hold her rights *against the*

fetus as the fetus does not have any correlative duties towards her. Thus, since it is untenable to claim that fetuses have duties – in clear contradistinction to claiming that unconscious persons have duties – it is also untenable to claim that fetuses are trespassers and a major pillar of the evictionist argument collapses (Dominiak and Wysocki 2023a).

3. Neither Conception, Nor Birth

My own take on evictionism has always been that this libertarian theory assumes that the fetus becomes a self-owner at conception only for the sake of discussion. After all, Professor Block has always been adamant about libertarianism being a thin legal or political doctrine (Block 2015) that does not concern itself with metaphysical or purely moral questions. Ad undoubtedly, the question of who we essentially are or when we begin to exist is a metaphysical question hook, line and sinker. Yet, Professor Block does not hesitate to give us a definite answer to this metaphysical question: "The episode… that makes all the difference philosophically, an legally, is the one where the sperm enters inside the egg. From that moment on, there is a human being with all the rights…. Conception is a profound, gigantic, change in status from non-existence to existence" (Block 2025).

Two things should be said about this pronouncement of Professor Block. First, I know of no libertarian principle, be it the self-ownership principle, homestead principle, voluntary transfer principle or what have you, that would imply, even remotely, that "conception is a profound, gigantic, change in status from non-existence to existence" or that "from that moment on, there is a human being with all the rights" (Block 2025). All of the aforementioned libertarian principles work equally well (or even better) with the whole gamut of alternative metaphysics of our life and this is what accounts for their intellectual attractiveness. Libertarians do not have to be committed to any specific theory of who we are and when we begin to exist. Thus, what the above pronouncement amounts to is Professor Block inserting his personal beliefs into libertarianism. We do not have to share them, even if we have to respect them.

But, second, what are the reasons offered by Professor Block for his belief that "conception is a profound, gigantic, change in status from non-existence to existence" (Block 2025)? As I take it, the main reason seems to be that since birth, although "many people believe that [it] is a profound event…, is merely, usually, a very small change of address" so that "the newborn and the pre-born baby one minute from birth are as alike each other as any of the rest of us, a few minutes apart" (Block 2025) and since, arguably, there is no other profound moment between birth and conception that bespeaks any radical change in status, it must be the very first moment itself that gives rise to "a human being with all the rights" (Block 2025), especially that it indeed involves a significant biological change.

Now, this is a well-worn reason that comes with equally well-worn rejoinders. Let me evoke just two of them. For one thing, Professor Block's argument assumes that our coming into existence is an all-or-nothing event rather than a gradual process. Yet, this assumption should not be taken for granted but argued for. There are states of affairs that come about only gradually and any attempt to mold them into an all-or-nothing shape usually ends up pretty badly. A hackneyed example is baldness. I am bald now. But when did I become bald? Between

me now and the time I had a full grown hair there was no single moment at which I became bald. Are we then justified in concluding that I must have been bald all the way? Of course, not. Getting bald, usually, is a process, not an all-or-nothing "profound, gigantic, change in status" (Block 2025). Thus, to sustain his argument for conception as the beginning of our lives, Professor Block would first have to prove that coming into existence is not gradual – like going bald – but rather an all-or-nothing metaphysical leap.

Second, it is not the case that no "profound, gigantic, change in status" (Block 2025) occurs between conception and birth. For around the 8th week of gestation the fetus's brain begins to function while between the 20th and 26th week it develops to a point at which the fetus becomes sentient, that is, capable of feeling pain and pleasure (Steinbock 2011). Now the importance of brain development and everything that comes with its functionality does not require much comment. The point worth making though is the one made by Professor Block's fellow libertarian scholar (albeit of the left-libertarian stripe), Baruch Brody (1975) that since our life ends when our brain dies, it can begin only when our brain starts to function. Otherwise, why would we consider brain death the end of our life rather than wait much longer until particular cells stop functioning? Besides, brain functionality – and an advanced functionality for that – is what underlies essentially all libertarian bases for self-ownership such as, for example, a capacity to shape one's life in accordance with some overall plan (Nozick 1974), a capacity to argue (Hoppe, 2001), a capacity to petition for rights (Rothbard, 1998), free will (Rothbard, 1998) or an objective mind-body link (Kinsella 2024).

4. Positive Obligations Despite Their Explicit Rejection

One of the bedrock assumptions of libertarianism is the rejection of primary positive duties. And indeed, Professor Block spends a considerable amount of time staving off the arguments showing that in the case of a voluntary intercourse the woman has positive duties to the fetus. For if she had such duties, the entire evictionist argument would collapse. She could no longer regard the fetus a trespasser. She could no longer change her mind about whether the fetus is wanted and thus transform its status into an interloper. Hence, it is a crucial step for evictionism to sustain the claim – controversial as it is – that the woman has no positive duties to the fetus.

And yet, curiously enough, Professor Block drops this claim entirely when it comes to the postpartum care. For as he contends, "legally requiring parents to either care for their young children, and/or notifying potential adoptive agencies does not constitute a positive obligation" (Block 2025). Now the reason for this truly extraordinary, as far as libertarianism is concerned, a contention is twofold. First, Professor Block believes that parents do not own their offspring but at most "may become guardians of their children" (Block 2025). Second, he draws an analogy between, on the one hand, landowners who prevent potential homesteaders from appropriating a landlocked piece of an unowned real estate and parents who refuse to both care for their children and notify potential adoptive agencies of their relinquishment of guardianship, on the other.

However, both of these reasons clearly involve positive duties. First, to be a guardian means, quite straightforwardly, to have a positive duty to guard, that is, to protect, secure, tend and care for a ward. Thus, by saying that parents "may become guardians of their children…

by ‘homesteading’ their progeny, that is, mixing their labor with them” (Block 2025), Professor Block is simply saying that parents acquire a right to be burdened with a positive duty to guard their children. Pretty much the same as I could acquire a right (via proper education and recruitment process) to be a custodian in a museum, that is, to have a duty to care for its precious exhibits – a right and a duty that I clearly lack at the moment. Now besides the fact that becoming a guardian perforce involves becoming a positive duty-bearer – the fact that in itself undermines Professor Block’s contention that “legally requiring parents to either care for their young children, and/or notifying potential adoptive agencies does not constitute a positive obligation” (Block 2025) – it is entirely mysterious, in sharp contradistinction to a custodian in a museum, to whom they should owe this positive duty under libertarianism. For remember that Professor Block rejects the idea that they can owe it to the fetus or the newborn. So, the idea of homesteading a guardianship clearly does not work in Professor Block’s favor.

Second, the analogy with the landlocked parcel of unowned land also misses the crucial point and works against Professor Block’s claim that “legally requiring parents to either care for their young children, and/or notifying potential adoptive agencies does not constitute a positive obligation” (Block 2025). For although I agree with Professor Block that the landowner has a duty to allow a potential homesteader’s crossing through his land for the purpose of appropriating the landlocked parcel, the duty in question is clearly a negative duty. The landowner is supposed to abstain from any action that would preclude, prevent, thwart or in any way interfere with the homesteader’s crossing. This is a duty of abstention or forbearance rather than a duty of action. And Professor Block admits that himself when he says that its violation would result in “the crime of precluding, or preventing, or thwarting” (Block 2025). He also admits that when he says that the landowner “must *allow* a path through his property” [emphasis added] (Block 2025). However, the parents’ duty to “notify churches, orphanages, hospitals” (Block 2025) is not at all like this. Neither is the parents’ duty to “bring their baby back to the hospital or to an orphanage or other such place that will provide care to the baby” (Block 2025). Nor is the parents’ duty to look after their children, that is, to “care for them, feed them, diaper them and in all such other ways support them” (Block 2025). All these duties are clearly duties of action, not of abstention. Thus, they are clearly and decidedly positive duties. Their calling not only “sounds a lot like a positive obligation” (Block 2025), it is one.

It is important to note a crucial slippage in Professor Block’s argument here. If parents abandoned their children and blocked any access to them to potential foster parents, adoption agencies or other organizations or individuals who would like to “homestead” their children, they would indeed violate these parties’ rights of way (incidentally, note that they would thereby not violate the children’s rights – the fact that constitutes yet another problematic consequence of evictionism). It would be the case because they are under a negative duty not to undertake any actions that preclude, prevent or thwart others’ access and they would be breaching this duty exactly by undertaking actions that do so. However, dutifully forbearing from actions that block others’ access is an entirely different thing than being under a duty to perform actions that “notify churches, orphanages, hospitals” (Block 2025) or “bring their children back to the hospital or to an orphanage” (Block 2025) or to “care for them, feed them, diaper them and in all such other ways support them” (Block 2025). Such duties can be breached only by omission, abstention or forbearance – a fact that testifies to their positive nature. Hence,

it is decidedly not the case that "the analogy between [landlocked] area A and the baby is a strong one…. Just as B must allow paths through his property for C to reach A, the parents must notify churches, orphanages, hospitals, etc., of the availability of their baby for adoption" (Block 2025). To the contrary, the analogy is not only weak but entirely broken by the crucial slippage in Professor Block's reasoning failing to realize the difference between a negative duty to allow access and a positive duty of notification and care.

5. Evictionism Against the Homestead Principle

Professor Block's idea that parents can only own the guardianship status vis-à-vis their children but not the children themselves runs into yet another problem. It is clearly inconsistent with the libertarian homestead principle according to which one owns one's labor and whatever one mixes it with, so long as the "whatever" is either unowned (homesteading proper) or already one's own property (production). Under the classical Rothbardian interpretation, the property title thus acquired is held in perpetuity (Rothbard 1998) whereas under some more physicalist interpretations, it persists only until the mixed labor dissipates from the object into surrounding space (Roth 2018). But at any rate, the title persists for a substantial and does not vanish prematurely into thin air without a voluntary waiver or tortious forfeiture.

It goes without saying that children are produced out of the matter of their parents' bodies and by the labor their parents, especially the mother, pour into them. It follows rather straightforwardly from the homestead principle that parents should hold the property title to their children at least as long as their material and energetic input does not dissipate into surrounding space, that is, at least as long as quite some time after their children's death, unless, of course, they waive or forfeit their title. This prediction would be a no-brainer if it concerned any other product than human beings themselves, who, as we know otherwise, are also self-owners. Now squaring these two principles, that is, the homestead principle and the self-ownership principle, is a well-known problem in libertarianism that goes under the name of the paradox of universal self-ownership (Steiner 1994). But ignoring one of the conflicting principles – the homestead principle in Professor Block's case – is hardly a solution to the problem. Neither is offering an ad hoc guardianship hypothesis which, to boot, is entirely divorced from libertarianism. For note that this peculiar hypothesis requires that the laborers – parents in this case – must continually re-mix their labor with their product to maintain their claim thereto whereas the homestead principle requires only a single labor-mixing act to establish the title. Moreover, the guardianship hypothesis postulates that what they acquire by this incessant process of labor-mixing is a guardianship duty whereas the homestead principle vests laborers with the property title.

The unlibertarian character and adhocness of Professor Block's guardianship hypothesis can also be revealed by asking the following question. Parents clearly own their own bodies. They also clearly own the labor of their own bodies. When they conceive their children, both their labor and material parts of their bodies (gametes) are employed in the production process of an embryo. During the entire gestation process the woman's labor and body is crucially engaged in the production of the fetus. During – *nomen omen* – labor, the woman's labor is painfully utilized in the production of a newborn and so on and so forth. What happens with all this parents-owned labor under Professor Block's guardianship hypothesis? What happens to

the property title they have to the matter and energy of their bodies poured into the production of their children? It simply looks like they are expropriated without compensation (Professor Block is tellingly silent about any compensation to thus expropriated parents) and that the homestead principle is violated in broad daylight. No, the guardianship hypothesis is clearly unlibertarian and should be rejected without much hesitation.

6. DDA and Evictionism's Redundancy

In another article (Dominiak and Wysocki 2025), my co-author and I argue that evictionism verges on redundancy when compared to the classical doctrine of doing and allowing (DDA). In this paper I would like to sustain this point, adding some new wrinkles to it. The idea behind the redundancy criticism is pretty straightforward. Since under libertarianism there are no primary positive duties and since negative duties can be breached only by doing and never by allowing, the woman may simply allow the fetus to die at any stage of its development without violating any of its rights. However, if we reject the above-debunked unlibertarian positive guardianship duty, any significant difference between evictionism and DDA disappears and instead of being an original libertarian solution to the abortion dilemma, evictionism becomes redundant vis-à-vis this age-old doctrine. This can be captured in the following modified table, adapted from Professor Block:

	Pro-life	Pro-choice	Evictionism	DDA
May the fetus be evicted?	No	Yes	Yes	Yes
May the fetus be allowed to die?	No	Yes	Yes	Yes
May the fetus be killed?	No	Yes	No	No

As one can readily see, the DDA column is extensionally equivalent to evictionism once positive duties are removed from the latter. What evictionism predicts, when adjusted for its unlibertarian elements, is that it is impermissible to kill the fetus as doing so would be an excessive means of defending the woman's self-ownership rights when less radical eviction method is available (this claim is covered by Professor Block's Gentleness Principle). However, evicting the fetus simply allows it die, for it removes it from its life-sustaining system, that is, from the woman's body, and exposes it to death from other causes. But this is exactly what DDA predicts as well. To wit, it is impermissible to kill the fetus who has negative rights against being killed, but permissible to let it die since, by the libertarian assumption, the woman has no positive duty to sustain its life. And letting the fetus die in the abortion context can in turn be accomplished only by removing it from the woman's body. Thus, evictionism collapses into DDA – a fact that poses no problem in itself, but undercuts evictionism's claim to distinctiveness.

Now the juxtaposition with DDA points to yet another kind of redundancy besetting evictionism. This time it concerns the trespass assumption. For note that if letting the fetus die is always permissible due to the fact that the woman has no positive duties to the fetus and all

the rights of the fetus are strictly negative, then the fetus does not have to forfeit any of its rights to be legitimately allowed to die. In other words, the fetus does not have to be a trespasser to be liable to eviction. This, in turn, renders the trespass assumption redundant. But if the trespass assumption is redundant, then the very appeal to eviction – instead of removal or expulsion (Rothbard 1998) – becomes rather poorly motivated. For eviction, strictly speaking, is a legal remedy resorted to in order to defend the landlord's property rights against the tenant's unlawful possession. Thus, unless there is an infringement of the landlord's rights, there is no cause of action for the eviction remedy. Any removal of the tenant from the landlord's property in such a situation could then be called eviction only *secundum quid* or in a very loose sense. By the same token, unless the fetus's trespass is doing any distinct work, there is not much point in talking about eviction either.

7. Evictionism and Absolute Property Rights

Let me close with a hypothesis rather than a criticism – one that emerges even if we accept evictionism's key premises. Thus, even if we agree that the fetus is a trespasser, that the parents have postpartum positive guardianship duties thereto and that "there is a human being with all the rights" (Block 2025) from the moment of conception on, the question still remains as to whether eviction is always the proper remedy for the violation of the woman's self-ownership rights. More specifically, the question might be asked whether eviction is not an excessive means of defending the woman's property rights in the case of viable fetuses. For as it seems, there is a difference between suffering the trespass for 9 months (as it would be if eviction were not permissible in early pregnancy) and suffering it for 4 months (as it would be if eviction were not permissible only in late pregnancy). What does this difference exactly come to?

First, it is important to note that evictionism contends that the sufficient reason for the permissibility of eviction is that the woman changes her mind about whether she wants to bear the fetus to term or not. For the very act of changing her mind transforms the fetus's status from being welcomed on her private property to being an unwanted trespasser. Under libertarianism she has this power because as a self-owner, she has the absolute right to decide about her own body. Her body, her property, her choice, if you will. There is then no need for her life or health to be in danger. No need for her socio-economic situation to be difficult. No need for the pregnancy stemming from crime. No, everything that is needed is that she changes her mind as to the disposition of her private property, her own body. Thus, evictionism itself invites us to consider exactly such a case (perhaps larger than life) – the pregnant woman deciding, for no specific reason, to terminate her pregnancy in the 5th month. Beginning with this extreme example, we can ask a question of whether eviction is indeed the proper remedy for the fetus's trespass.

For one thing, in the case of a voluntary intercourse, the woman caused (partially, to be sure) the fetus to be in her body. Thus, she causally contributed to the trespass. Accordingly, under the doctrine of comparative negligence or its structural equivalent as applied to strict liability, the woman is comparatively liable for the trespass and so the fetus's prima facie liability should be apportioned also to the woman. (Note, by the way, that if the doctrine of contributory negligence were applied instead of the doctrine of comparative negligence, the fetus's liability would be entirely extinguished.) Now since eviction is the remedy available

also in the case of rape in which the woman's comparative liability is null and zero – as pointed out by Professor Block, "the pregnant rape victim is able to remove the fetus from her person at any time during the nine-months period, in that while human, an innocent, to be sure, he is still a trespasser" (Block 2025) – it only makes perfect sense to conclude that the remedy available to the woman in the case in which she did causally contribute to the trespass should be appropriately truncated in accordance with the liability apportionment. This, in turn, strongly suggests that eviction would in such a case be an excessive means of defending the woman's rights. In a word, if eviction is the gentlest possible remedy in the case of rape, it does not seem to be so in the case in which the woman herself is comparatively responsible for the trespass.

This point is of course further supported by the aforementioned facts that in the case of late pregnancy one compares 4 months of suffering the trespass with whatever the alternative remedy available to the woman would be; and that there is no other good of the woman at stake than the exercise of her right to decide about her own body – the infringement of which right would be remedied at any rate in some other way. For if the woman had to suffer 9 months of trespass and some other good of hers such as her life or health were at stake, the point could be made that even though she causally contributed to the trespass, eviction is still a proportionate remedy. However, it is much more difficult to sustain such an argument in the case under consideration. And there is no clear reason to even try to do so. For as we argued in other places (Dominiak and Wysocki 2023b; Wójtowicz, Dominiak and Wysocki 2024), the usual libertarian motivation (Rothbard 1998; Kinsella 1996) for doing so that unless we grant the owner the right to successfully stop the attack on his property, come what may, we thereby undermine his absolute ownership rights, is philosophically unsupported and runs into various conundrums, both logical and moral. Incidentally, Professor Block's aforementioned point about the potential homesteader's right of way or easement on another's land – deservedly known as the Blockian Proviso – is a solution to one of such conundrums (Dominiak 2017; Dominiak 2019; Dominiak 2021). It is therefore neither necessary nor desirable for libertarian property rights that they always come with a right to defend them *ex ante*, come what may. Rather, it is both sufficient and desirable that they sometimes come only with some kind of proportionate and enforceable remedy *ex post*.

Thus, can one point to such an alternative remedy *ex post* that could be available to the woman under libertarianism in cases in which eviction would be an excessive means of defending the woman's rights? I believe – and here the hypothetical nature of the present section comes to the fore – that one indeed can point to something resembling such a remedy. Consider a version of a wrongful birth lawsuit – call it a wrongful pregnancy action – where the woman, denied eviction due to its excessiveness, nonetheless retains a claim to compensation for suffering the 4 months of trespass to her body and so can sue the child for money damages. As it is usually the case with the real-life wrongful birth lawsuits in which it is not the defendant (usually a doctor, clinic or hospital) but his insurer who pays the damages, so in our hypothetical wrongful pregnancy suit the compensation burden could ultimately fall on the party (foster parents, adoption agency or hospital etc.) who would acquire a claim to the child after the plaintiff renounced hers. To be sure, adopting the child burdened with the woman's claim to compensation might be more expensive than a regular adoption, but it would hardly be impossible.

8. Conclusions

In the present paper I argued that evictionism is not a solution to the abortion dilemma and more specifically that it is not a solution that libertarians should accept. On a general note, evictionism problematically assumes that the unwanted fetus is a trespasser and, without sufficiently supporting it, that both our life and concomitant self-ownership status begin at the moment of conception. Moreover, evictionism does not seem to be particularly original, especially vis-à-vis the doctrine of doing and allowing. Nor does it offer a persuasive account of parental and filial duties. On a more specific note, in turn, evictionism runs against the homestead principle and straightforwardly implies positive duties without anchoring them satisfactorily in the broader corpus of the libertarian theory. And from both points of view, that is, the general one and the libertarian one, eviction does not seem to be the gentlest possible method of securing the woman's rights, at least not in all cases. Nevertheless, as it is typical for philosophy, a theory's intellectual value very rarely consists in its being beyond reproach. To the contrary, quite often its true scholarly worth lies in its ability to inspire philosophical dialogue and learned controversy. For it is only in academic discussion that we all, in common effort and struggle, can hopefully move a bit closer to the truth. In this regard, the intellectual credit of evictionism is high indeed.

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