

PIOTR LIPSKI

PROBLEMS OF EVICTIONISM

Evictionism is a libertarian perspective on abortion. This position can be summarised as follows. Every human being has a set of basic, non-negotiable rights, including the right to freely dispose of their property. Everyone owns their own body and can therefore decide what to do with it. This right applies to pregnant women in particular. A pregnant woman's body contains an embryo which, over time, develops into a fetus—a distinct human being. Human life begins at the moment of conception. Therefore, from the earliest moments of its existence, the human embryo and later the fetus has all the rights of a human being. It cannot therefore be killed. However, as she has control over her own body, a pregnant woman has the right to remove the fetus from her body, just as a property owner may evict someone from their property. This right is available to a pregnant woman at any stage of pregnancy, even if exercising this right results in the death of the fetus.

In his text “Evictionism, Pro-Life and Pro-Choice” (this issue) Walter Block presents evictionism as an alternative stance on abortion to the pro-life and pro-choice views. He raises many issues related to the topic under discussion, and it would be impossible to adequately comment on all of them in this polemic. I will focus on the following. Firstly, I will address the issue of whether evictionism is indeed an intermediate position between pro-life and pro-choice stances. Secondly, I will highlight the problems that evictionism faces in relation to the techniques currently used for abortion. Finally, I will discuss the counterintuitive consequences of evictionism, which stem from its underlying belief in the sanctity of property rights. Together, these

PIOTR LIPSKI, PhD, Assistant Professor at the John Paul II Catholic University of Lublin, Institute of Philosophy, Department of Theory of Knowledge; correspondence address: Instytut Filozofii KUL, Al. Raławickie 14, 20-950, Lublin, Poland; e-mail: piotr.lipski@kul.pl; ORCID: <https://orcid.org/0000-0002-5108-6233>.

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points will illustrate the difficulties that pose a serious challenge to the position under discussion.

I

Walter Block presents evictionism as an intermediate position between pro-life and pro-choice stances. It shares the former's belief that human life begins at conception, and the consequent conviction that the fetus has all the rights of human beings—first and foremost, of course, the right to life. With the pro-choice position, it is linked by the belief that a woman has the right to terminate a pregnancy at any time, even if this results in the death of the fetus. According to evictionism, the permissibility of aborting a pregnancy does not stem from the fact that the fetus is deprived of legal protection, but rather from the woman's right to freely decide what happens to her own body. When there is a conflict between the rights of the fetus and of the woman, the woman's rights prevail. The purpose of an abortion is not to kill the fetus. The death of the fetus is merely an undesirable side effect.

In theory, all three positions are indeed different. In practice, however, these differences are fading, and evictionism is becoming quite similar to either a pro-life or pro-choice approach. To see this, let's consider the following scenario.

Imagine that medical technology has advanced to the point where artificial wombs are available. Inside such a device, a fetus can safely develop from the earliest stages of its existence until it reaches the stage of development typical of a fetus just before a healthy birth at the end of a healthy pregnancy. In short, an artificial womb enables embryos and fetuses that, for whatever reason, are not in their mother's womb during the prenatal period, to survive. In such a hypothetical situation, how should a woman who wants to terminate a pregnancy act? According to evictionism, the matter is simple. She can terminate the pregnancy at any time, but the fetus should then be transferred to an artificial womb, where it can continue to develop. This position is no different from most pro-life positions. Pro-lifers are not concerned that it should be the mother who carries her child in her own body. The important thing is that the child has the opportunity to survive the prenatal period.

Today, unfortunately, we do not have such advanced technology, and it is unclear whether we ever will. Today, the fetus is able to survive outside the

mother's uterus only from about 23rd week of pregnancy, and even this is not always the case. So, given the current situation, how should a woman who wishes to terminate a pregnancy act? According to evictionism, the matter does not present major problems. A woman can still terminate a pregnancy at any time. Otherwise, her right to dispose of her own body would be restricted, and this is unacceptable. If the abortion occurs after the 23rd week and the fetus is already capable of independent life outside the mother's body, then it should be allowed to survive. Killing the fetus in such a situation is out of the question. If an abortion occurs before the 23rd week and the fetus is not yet viable, the result will be the death of the fetus. However, according to evictionists, a pregnant woman who decides to terminate the pregnancy in such a situation does not kill the fetus, but merely removes it from her own body.

How does this position differ from the pro-choice position? Many abortion supporters believe that a fetus has a right to life if it is capable of surviving outside the mother's body (see KAMM 1992). In most countries where abortion is legal, it is permitted until the fetus is capable of functioning outside the mother's body. Late-term abortions, which involve killing the fetus while it is still in the mother's body—for example, by injecting potassium chloride into the heart to stop the heartbeat—and then removing the dead fetus from the mother's body, are usually prohibited in these countries. Therefore, in practice, the evictionist position is no different from the moderate pro-choice position. Yes, there are extreme positions that grant a woman the right to terminate the pregnancy at any stage. Evictionism differs from such extreme positions. However, these views do not find widespread acceptance.

To present the above intuitions differently, I will resort to the following comparison. The position of evictionism, which is considered an intermediate stance between pro-life and pro-choice, can be compared to agnosticism, which is considered an intermediate stance between theism and atheism. At the theoretical level, agnosticism differs from the two aforementioned views. While theists and atheists formulate a thesis on the question of God's existence, agnostics consider this question unknowable. Nevertheless, in practice, agnostics tend to adopt the attitudes of either theists or atheists. No specifically agnostic quasi-religious practices have emerged. In matters of worship, the behavior of agnostics often resembles that of atheists, that is, it simply means the absence of religious practices. However, this is not always the case, and agnostics may engage in liturgy or other religious activities, moti-

vated, for example, by some form of religious fictionalism. In any case, their behaviour resembles that of either theists or atheists (see TAŁASIEWICZ 2011).

The same is true of evictionism. If we had the technology to produce artificial wombs, evictionism would be indistinguishable from the pro-life position. Currently, without such technology, evictionism is identified with the moderate pro-choice position. Thus, contrary to Block's suggestions, it is not a distinct intermediate position.¹

One more comment is needed. In the introductory paragraph of his text, the Author presents a table summarizing the three positions under discussion, which looks as follows:

	Pro-life	Pro-choice	Evictionism
May the fetus be evicted?	no	yes	yes
May the fetus be killed?	no	yes	no

In light of the foregoing, some cells of this table need to be corrected. Thus, pro-lifers need not at all oppose the possibility of evicting the fetus from the mother's body (as long as the fetus can survive such eviction). Proponents of a pro-choice solution need not agree that the fetus can always be killed (many of them, in fact, believe that once the fetus has reached the appropriate stage of development, it cannot be killed). In both of these cells it would be more appropriate to write: "It depends."

II

The current state of technology creates even further difficulties for evictionism. As Block clarifies, two phases of abortion must be distinguished: (1) the eviction of the fetus from the mother's womb, and (2) the killing of the fetus. The former is always permitted, the latter never. With this understanding of abortion, for evictionism to be consistent, the removal of the fetus must

¹ Many supporters of the pro-choice movement would probably also advocate the need for artificial wombs, if only they were available. Perhaps the fact that up to a certain point in development a fetus is not viable is the main reason for the debates surrounding abortion in the first place.

involve the extraction of a living fetus from the body. Any subsequent death occurs as a result of the fetus being unable to adapt to environmental conditions outside the mother's body. In contrast, the vast majority of abortion methods used today result in the death of the foetus while it is still in the mother's body, followed by the removal of the remaining biological material. This is the process of a late-term abortion described above, performed after the 23rd week of pregnancy, which, because of the fetus' ability to live independently, is unacceptable by evictionists. The same is also true of earlier abortions: both pharmacological abortions, used up to about 11th week of pregnancy, and surgical abortions, performed at later stages. In light of the above thesis about the impermissibility of killing the fetus, such techniques should be prohibited from an evictionist perspective.

To clarify the matter, I will use a comparison. The owner of a property, in enforcing his right to freely dispose of that property, may remove anyone on the property. However, the right to dispose of one's property does not entitle the owner to kill the occupants of the property and then remove their corpses. This is obvious from libertarian positions as well.

So even if, given the mother's right to freely dispose of her own body, an evictionist would like to grant the mother the right to an abortion, it should be performed in some other way than any of those most commonly used today.

An evictionist could still attempt the following defense. The two stages of abortion mentioned earlier are not two separate, consecutive activities, but rather purely logically distinguished two aspects of the same activity that cannot be separated in practice. This argument does not help much. For if two actions are performed in the act of abortion, one of which is fully permissible and the other absolutely forbidden, then the act of abortion must be judged as internally contradictory, or simply forbidden. It cannot be considered legitimate until it is demonstrated that the first aspect highlighted, i.e. the woman's right to evict the fetus, outweighs the second aspect, i.e. the fetus's right not to be killed. This has not been demonstrated. Moreover, the explicit statement that killing the fetus is never allowed suggests rather that the former does not trump the latter. By allowing abortion as it is most commonly performed today, evictionism becomes embroiled in internal contradictions.

III

Even if it were somehow possible to resolve the difficulties described above, evictionism faces another, perhaps the most serious challenge yet. At the heart of evictionism lies the belief in the absolute nature of property rights. The very reason a pregnant woman can terminate a pregnancy is that she has the right to decide freely about her own body, which is her property. This right cannot be limited by anything. However, demonstrating the absolute nature of this right is not simple. Moreover, the belief in the sanctity of the right to property leads to counterintuitive, almost paradoxical consequences. The Author is aware of these difficulties and devotes the longest paragraph of his text, the fourth, to discussing them.

Block begins this discussion with a thought experiment. He describes the following situation. Z owns an airplane. While the plane is at the airport, Y incapacitates X, drugs him and drops him into Z's plane intoxicated. Z takes off unaware of the presence of an intoxicated passenger on board. If Z discovers X's presence on the plane during the flight, can he throw X out of the plane?

Surprisingly, the Author claims that the above question should be answered in the affirmative. The plane belongs to Z so he has the right to dispose of it according to his own will, even if that will were to eject an unwanted, though completely innocent, passenger. Such an attitude is completely counterintuitive. I am willing to bet that most would agree that in the situation under discussion, the owner of the aircraft is obliged to tolerate the company of the passenger in question until the moment of landing, when the said passenger can safely disembark.

I believe the Author defends his counterintuitive solution because he sees an analogy between the story of the airplane and the tragic case of pregnancy resulting from rape. This is not explicitly stated, but this is how I interpret the purpose of citing this thought experiment. For an evictionist (as for a pro-choice advocate), the case of pregnancy resulting from rape is even more obvious than the case of an ordinary, non-rape pregnancy. If a woman is granted the right to terminate her pregnancy in the ordinary case, then this right should be granted even more so in the case of rape. Since the situation of a woman pregnant as a result of rape is analogous to that of an airplane owner, and since we want to give the woman who has been raped the option of terminating her pregnancy, even if the fetus is not at fault, and the eviction will result in the death of the fetus, then in the same way we must allow the airplane owner to eject an unwanted passenger, even if that passenger is

not at fault, and ejecting him will inevitably lead to his death. Denying the plane owner this right would be equivalent to denying the right to abortion to a raped woman.

Knowledge of the Author's motives does nothing to diminish the counter-intuitive nature of the solution he proposes. Aware of this, he therefore attempts to justify his position somehow. He plainly states that "either we believe in the sanctity of private property right, or we do not". He treats any attempt to restrict this right as the proverbial opening of Pandora's box, leading inevitably to disastrous consequences known from the history of states systematically trampling on property rights, in particular some communist countries. Such an argumentation is unconvincing, and actually falls under the slippery slope fallacy. After all, moderate restrictions on the private property rights do not necessarily lead to the complete eradication of these rights.

Moreover, even according to libertarian doctrine, the right to dispose of one's own property is subject to certain limitations (see VOSSEN and CHRISTMAS 2023; ZWOLINSKI n.d.). The fundamental principle is, of course, that my rights are limited by the rights of others. I can do what I like with my property as long as my activity does not restrict the rights of others, including their right to dispose of their own property and even more importantly, their right to life. Even the more fundamental right of self-ownership, upon which the right to dispose of my own property derives, is subject to analogous restrictions. I can decide for myself as long as my decisions do not restrict the ability of others to decide for themselves. The only exception to this rule is when someone tries to deliberately and consciously restrict my rights. In that case, I can act without regard to the rights of the aggressor, but only in response to a previous attempt to restrict my rights. Anyway, even in such cases, some limits are usually set on what is permissible.

The absence of any restrictions, either on the private property right or the self-ownership right, clearly leads to a contradiction. Let's say the owner of an airplane suddenly wishes to land in a field that is not his own, without asking the owner for permission. This would result in a conflict between the plane owner's right to decide on the location of the plane and the field owner's right to decide who can use their land. If property rights were absolutely unlimited, there would be no way to resolve this type of situation. In the case described, however, there is no doubt that the field owner is in the right. It is the aircraft owner who is in violation of the field owner's right. To give an even more extreme example, imagine that the aircraft owner decides to land

in a crowded square. Clearly, no one would consider that he has the right to do so simply because he can decide what to do with his property—in this case, his aircraft.

So if we agree that the owner of the plane cannot land wherever he pleases, because by doing so he would be limiting the rights of others who did not interfere with his rights, then by analogy we should conclude that he cannot eject the aforementioned passenger from the plane. The passenger was in no way consciously and voluntarily trying to restrict the rights of the aircraft owner. Ejecting the passenger, on the other hand, would drastically limit his rights, in fact taking them away from him entirely and permanently.

Furthermore, it should be remembered that there is a hierarchy of rights. In the case described, there is a conflict between the right to property and the right to life. Both of these rights are quite fundamental, but nevertheless the right to life takes precedence over the right to property, because the former conditions the latter (without life there can be no property).

The shortcomings of the Author's proposed thought experiment involving an airplane will become even clearer when this example is compared with Judith Jarvis Thomson's famous thought experiment concerning a dying violinist (see Thomson). Both experiments have a similar structure. The equivalent of ejecting the passenger is, in Thomson's experiment, the disconnection of the violinist, who has been connected to the main character without their knowledge or consent. The connection saves the musician's life. Nevertheless, there is an important difference between the experiments. While ejecting the passenger is intuitively unacceptable, many people feel that the protagonist of Thomson's experiment has the right to disconnect the violinist.² Why, then, do common intuitions differ in the case of the violinist compared to the case of the airplane? Perhaps the difference stems from the fact that, in Thomson's thought experiment, the protagonist decides what happens to their own body, whereas in Block's experiment, they decide what happens to their property. The right to dispose of one's body, the self-ownership right is more fundamental than the right to decide on property. While we are willing to limit our own power over our property to a certain extent for the sake of another person, analogous limitations on deciding about oneself are not so easily accepted. Of course, the Thomson experiment is not conclusive. Opponents of abortion weaken its force in various ways.

² Common, but not universal. Peter Singer, for example, maintains that a utilitarian should recognize the protagonist's duty to remain connected to the violinist (see SINGER 2011).

Nevertheless, it would do a better job of justifying evictionism than an example involving a plane.

By the way, this comparison reveals the Author's surprising decision. Block bases his position on the right to dispose of one's property rather than the right to dispose of oneself and one's body. He refers to private property right rather than self-ownership right. However, the latter is more fundamental, and would be even more relevant to the issue of abortion than the former.

The unfortunate airplane passenger, especially if he had been ejected, clearly suffers harm that demands justice. The Author identifies the cause of the miserable fate of the passenger. He blames Y, who intoxicated X and put him on the plane, for the tragedy. The Author even calls Y a murderer. To prove Y's guilt Block refers to the principle "the criminal must take the victim as he finds him". This principle is also sometimes referred to as the "eggshell skull rule". According to this rule, the perpetrator of a tort is liable for any damage caused by his actions, even if the damage is greater than he might have thought, because it is due to the above-average vulnerability of the victim (hence the reference to an eggshell in the name). For example, the perpetrator kicked the victim. Because the victim suffered from a bone fracture that the perpetrator did not know about, he suffered serious injuries. The perpetrator cannot plead ignorance of the injured person's condition and is therefore liable for any damage he caused.

In the case of an airplane, however, the above principle does not apply. The death of a passenger thrown out by the plane owner is not the result of X's unknown vulnerability. It is the result of an intervening cause—Z's actions. It may be that in some general sense Y bears some responsibility for X's fate, but this does not absolve Z of responsibility. The eggshell skull rule would apply if, for example, X suffered a heart attack as a result of being sensitized to narcotics that Y had administered to him. Even if Y did not know about X's sensitization he would then be liable for the heart attack caused. The situation with the airplane is different. Y is responsible for the hijacking and intoxication of X, but not for his death. This attempt to justify the counterintuitive claim that the plane owner has the right to eject the passenger cannot be considered successful.

As I mentioned earlier, the thought experiment involving the airplane was conceived as an analogy for a situation of pregnancy resulting from rape. Fortunately, such situations are rare. Many pregnancies are planned, and the woman desires the unborn child who is developing in her body. With some reservations, this situation can be compared to an invitation. According to

evictionism, even in such cases a woman has the right to change her mind and evict an unborn child at any time during the pregnancy without giving a reason, even if this were to kill the baby. The author suggests how such a right could be justified. He notes that property law gives the owner the right to evict from his property even such a person who was earlier invited by him. Suppose an invited guest extends his stay against the host's wishes. The host can, of course, expel the guest, even if he had previously invited him. By analogy, a woman has the right to decide about her own body and can evict a fetus, even if it was previously "invited" by her.

However, the above analogy is not satisfactory on at least two counts. Firstly, asking an intrusive guest to leave does not usually result in their death. There is no conflict between the owner's right to decide what happens in their property and the guest's right to life. In the case of abortion, such a conflict arises. Secondly, the guest in question abuses the host's hospitality and extends his stay beyond the scheduled time. It would be extremely rude of the host to ask the guest to leave without reason before the end of their visit. The same applies to pregnancy. After all, a woman "inviting" a fetus into her body knows that under normal circumstances the invited visit will last 9 months. Therefore, she should not end it ahead of schedule. Let me use the airplane example again. Let's say Z invites X to travel together. During the journey, Z changes his mind and wants to get rid of X immediately. Does he have the right to throw X off the plane? An affirmative answer in this case would be even more counterintuitive, if not absurd, than in the original example. According to evictionism, a woman has an unlimited right to abortion in the case of a planned pregnancy as well. As you can see, the justification of this right runs into serious difficulties.

Walter Block cites the example with the airplane as an "attempt to undermine evictionism". He tries to counter it by defending the thesis that the plane owner has the right to eject a passenger. In light of the above considerations, I believe that this attempt is unsuccessful. The thought experiment in question does indeed pose a challenge to evictionism, calling for an alternative solution.

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PROBLEMS OF EVICTIONISM

Summary

In his text "Evictionism, Pro-Life and Pro-Choice" (this issue), Walter Block defends evictionism, which he presents as an alternative stance on abortion to the pro-life and pro-choice views. In this text, I point out the shortcomings of this stance. First, I try to show that evictionism is not in fact an intermediate position between pro-life and pro-choice positions. Next, I point out the problems that evictionism faces in relation to the techniques used today to perform abortions. I then discuss the counterintuitive consequences of evictionism, which stem from its underlying belief in the sanctity of property rights.

Keywords: abortion; evictionism; libertarianism; property rights; Thomson's thought experiment

PROBLEMY EWIKCJONIZMU

Streszczenie

W swoim tekście „Evictionism, Pro-Life and Pro-Choice” publikowanym w tym numerze Walter Block broni ewikcjonizmu, który przedstawia jako stanowisko w kwestii aborcji alternatywne względem stanowisk pro-life oraz pro-choice. W niniejszym tekście wskazuję braki tego stanowiska. Po pierwsze staram się wykazać, że ewikcjonizm nie jest w rzeczywistości stanowiskiem pośrednim pomiędzy stanowiskami pro-life i pro-choice. Następnie wskazuję problemy, jakie stają przed ewikcjonizmem w związku ze stosowanymi współcześnie technikami wykonywania aborcji. Dalej omawiam nieintuicyjne konsekwencje ewikcjonizmu, wynikające z leżącego u jego podstaw przekonania o świętości praw własności.

Słowa kluczowe: aborcja; ewikcjonizm; libertarianizm; prawo własności; eksperyment myślowy Thomsona