THE STATE OF NATURE AS THE STATE OF WAR

A FEW REMARKS ON THE CONDITION OF THE CONCEIVED CHILD WITHIN THE CONTEXT OF ABORTION ON DEMAND

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1. Introduction

The ways in which human beings can exercise power over others have long been the subject of interest for representatives of many fields of science.[1] As early as in the ancient times it was believed that it is natural what the mightier impose on the weaker, what the stronger decide with respect to the weaker,[2] and the right thing is what is just in the interest of the mightier. The individualistic theory of today surprisingly seems to be exercised in order to legitimate activities based on the manifestation of power of the mightier over the weaker, where the will of an individual and individual autonomy becomes the source and justification of activities superseding individual rights.[3] It especially concerns the condition of the conceived child, a dependent living human being, which is carried by the woman within her body.[4] The place, in

1 See inter alia W.C. Gay, The violence of domination and the power of nonviolence, (in:) L.F. Bove, L.D. Kaplan (eds.), Philosophical Perspectives on Power and Domination: Theories and Practices, Amsterdam-Atlanta 1997, p. 15.

2 J. Hervada, Historia prawa naturalnego, Kraków 2013, p. 17.

3 See G. Puppinck, Abortion and the European Convention on Human Rights, (in:) A. Stępkowski (ed.), Protection of Human Life in Its Early Stage. Intellectual Foundations and Legal Means, Frankfurt am Main, in press, p. 227.

4 J.F. Adolphe, A Response to Amnesty's International's Abortion Policy in Light of Mulieris Dignitatem, "Ave Maria Law Review" 2011, vol. 8(2), p. 328.

which the child should be treated with utmost care, on many occasions, becomes a battlefield, where the right to life is the stake of the war.

It is particularly visible in the context of decisions of the European Court of Human Rights (Court), which has issued several judgments on abortion, especially in recent years. In many of these cases the Strasbourg tribunal weighed mutually competing interests in specific situations where the life or the health of the pregnant woman was endangered, or when the pregnancy was the consequence of a rape with the right to life of the conceived child. Nevertheless, upon exercising creative conventional interpretation, the Court simultaneously applies to the vast majority of abortions practiced, i.e. "abortion on demand", also called *on request*: abortions that are not justified by a matter of health, life or rape, but by the free will of the woman.[5] Disregarding the fact that the Convention neither includes nor creates the law on abortion, and the Court emphasized on many occasions that the Convention cannot be interpreted as conferring the right to abortion,[6] for over twenty years the UN human rights framework has been used by some governments and non-governmental organizations (NGO) as a legislative and policy forum to promote abortion on demand as a human right.[7] According to the report Abortion Policies and Availability from April 7, 2014, abortion on demand is available in 59 countries, i.e. in 30% of countries.[8] There is abortion on demand (without the need for a specific justifying reason) during the first trimester of pregnancy in over thirty European states.[9] Sexual and reproductive rights are used to promote abortion in cases where the woman does not want to continue the pregnancy. Viewed in this way, there are not just two underlying assumptions as originally thought, but rather three: abortion is the only option, legal abortion is a safe abortion, and abortion is a human right.[10] The

5 G. Puppinck, Abortion on demand and the European Convention on Human Rights, http://www.ejiltalk.org/abortion-on-demand-and-the-european-convention-on-human-rights/.

6 Judgement European Court of Human Rights 30.10.2013 in case P.&S. v. Poland, application no. 57375/08.

7 S. Gennarini, The Diffusion of Sexual and Reproductive Rights through the UN Human Rights Framework, (in:) A. Stępkowski (ed.), *op. cit.*, p. 255.

8 Abortion Policies and Availability, Vincenzina Santoro, United Nations Representative – American Family Association of New York, April 7, 2014.

9 E. Wicks, A, B, C v Ireland: Abortion Law under the European Convention on Human Rights, "Human Rights Law Review" 2011, vol. 11(3), p. 557.

10 J.F. Adolphe, *op. cit.*, p. 325.

World Health Organization has recognized that "women all over the world are highly likely to have an induced abortion when faced with an unplanned pregnancy – irrespective of legal conditions".[11] Likewise, the Parliamentary Assembly in Resolution 1607 (2008) "Access to safe and legal abortion in Europe" invites the Member States of Council of Europe to "guarantee women's effective exercise of their right of access to a safe and legal abortion".[12] Meanwhile, a well-documented proof demonstrates how the act of abortion comprises the execution of violence against a developing unborn child and a woman.[13] Abortion on demand, justified not by the protection of life or health of a woman or rape committed on her, but by her own strong will, comprises an arbitrary activity and *per se* is the manifestation of power by the mightier over the weaker and the dominance of the living over the yet unborn. In such case the justification primarily becomes violence, even though it is described as liberty. Can this be tolerated as legitimation to violate human rights?[14]

This article endeavours to evaluate the situation of a conceived child as remaining *de facto* within the power of the mother and estimating the quality of relations between these individuals in the light of Thomas Hobbes's and John Locke's views on the state of nature. For one cannot resist the impression that the indicated elements of the condition of the conceived child constitute the emanation of the state of nature within Hobbes's view as the state of war, a permanent conflict of every man against another, in which there exists neither justice nor injustice, and every action taken is evaluated against the individual measure. Thomas Hobbes's concept of the state of nature will be presented far this cause. Contrary to common assertions, John Locke equally treats this state as „notorious" and in reality arrives at the same ascertainment as Hobbes. Taking into account the limited size of the hereby elaboration, the considerations will be narrowed to the most essential elements of the state of nature concept of both philosophers. The conclusions made will be used in the further part of considerations in order to justify the

11 World Health Organization, Unsafe abortion: Global and regional estimates of the incidence of unsafe abortion and associated mortality in 2008, 27, p. 6.

12 http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta08/eres1607.htm.

13 J.F. Adolphe, *op. cit.*, p. 325.

14 See G. Puppinck, *op. cit.*, p. 251.

claim that legalization of abortion on demand constitutes legitimation of violence and is emanation of power in the hands of the mightier over the weaker.

2. The state of nature as state of war in the philosophy of Hobbes and Locke

Thomas Hobbes, while describing the state of nature as the state of humankind existent before the formation of society and the state, conceptualizes it as a state of war of every man against another,[15] *bellum omnium contra omnes*. The pre-state period is a state of ubiquitous and permanent conflict among individuals, in which there prevail the highest threat, insecurity and uncertainty,[16] fear of others and general distrust: „Hereby it is manifest that during the time men live without a common power to keep them all in awe, they are in that condition which is called war; and such a war as is of every man against every man. For war consisteth not in battle only, or the act of fighting, but in a tract of time, wherein the will to contend by battle is sufficiently known: and therefore the notion of time is to be considered in the nature of war, as it is in the nature of weather (…) so the nature of war consisteth not in actual fighting, but in the known disposition thereto during all the time there is no assurance to the contrary. All other time is peace. Whatsoever therefore is consequent to a time of war, where every man is enemy to every man, the same consequent to the time wherein men live without other security than what their own strength and their own invention shall furnish them withal. In such condition there is (…) continual fear, and danger of violent death; and the life of man, solitary, poor, nasty, brutish, and short".[17]

In the state of permanent war and anomy every man has the right to take every measure and the justification of the means applied is evaluated by the individuals themselves.[18] In the state of nature, where

15 V.H. Thornton, State of Nature or Eden?: Thomas Hobbes and His Contemporaries on the Natural Condition of Human Beings, Rochester Studies in Philosophy 2005, p. 71.

16 A. Krawczyk, Hobbes i Locke – dwoiste oblicze liberalizmu, Warszawa 2011, p. 47.

17 T. Hobbes, Leviathan, The University of Adelaide Library, chapter 13, http://ebooks.adelaide.edu.au/h/hobbes/thomas/h68l/chapter13.html.

18 J. Hervada, Historia prawa naturalnego, Kraków 2013, pp. 178–179.

„every man is judge",[19] every man owns the right to do everything, also *ius in omnia*, and an individual is not obliged to anything, also in that they strive to save others' lives.[20] This follows from the fact that in the state of nature there exists no common normative criterion, *ergo*, it is by no means possible to apply the notion of justice and injustice to the pre-state period.[21] Thomas Hobbes adamantly claims that "to this war of every man against every man, this also is consequent; that nothing can be unjust. The notions of right and wrong, justice and injustice, have there no place. Where there is no common power, there is no law; where no law, no injustice. Force and fraud are in war the two cardinal virtues. Justice and injustice are none of the faculties neither of the body nor mind".[22] Thereby the author of *Leviathan* argues that violence in relations among people is justified in the case of the lack of law (legislative power) that determines the criteria of good and evil, justice and injustice.

One should agree with A. Stępkowski in that John Locke arrives at the same conclusions.[23] The concept of state of nature and state of war in the view of the philosopher from Oates is, in truth, often juxtaposed against the model described by Hobbes.[24] Nevertheless, a deep study of *Two Treatises of Government* justifies the ascertainment that both Hobbes and Locke comprehend in the quality of original existence in the state of nature in a similar manner.[25] *Prima facie* it appears that in the optics embraced by Locke „we have the plain difference between the state of nature and the state of war, which however some men have confounded, are as far distant as a state of peace, goodwill, mutual assistance, and preservation; and a state of enmity, malice, violence and mutual destruction are one from another".[26] Meanwhile the discrepancies in the comprehension of the state of nature clearly diminish when one

19 T. Hobbes, *op. cit*., chapter 14.

20 A. Krawczyk, Hobbes i Locke – dwoiste oblicze liberalizmu, Warszawa 2011, pp. 48–50.

21 A. Stępkowski, Hobbes i Locke – czy rzeczywiście dwie różne koncepcje genezy państwa?, (in:) A. Wielomski, C. Kalita (eds.), O źródłach państwa i władzy politycznej, Warszawa 2011, p. 269.

22 T. Hobbes, *op. cit*., chapter 13.

23 A. Stępkowski, *op. cit*., p. 266. Further considerations within the state of nature in the view of Hobbes and Locke shall be based on the subject-matter article.

24 *Ibidem*, p. 275

25 J. Locke, Two Treatises of Government, II, § 19; http://www.efm.bris. Ac.uk/het/locke/government.pdf

26 J. Locke, *op. cit*., II, § 7.

observes Locke's category of the normative nature of the more closely. According to Locke, "the law of nature would, as all other laws that concern men in this world 'be in vain, if there were no body that in the state of nature had a power to execute that law, and thereby preserve the innocent and restrain offenders. And if any one in the state of nature may punish another for any evil he has done, every one may do so: for in that state of perfect equality, where naturally there is no superiority or jurisdiction of one over another, what any may do in prosecution of that law, every one must needs have a right to do".[27] Moreover, "in the state of nature, one man comes by a power over another" and „has the liberty to be judge in his own case".[28] Therefore, in the state of nature every individual should be considered as an autonomous legislator equipped with competences to both form norms and execute them, not excluding extortion. Hobbes arrived at similar ascertainment, deeming an individual an independent criterion for good and evil in the state of nature.[29] Like Hobbes, Locke describes the state of nature as „very unsafe, very unsecure. This makes him (man – J.B.) willing to quit a condition, which, however free, is full of fears and continual dangers".[30] Thus, however much Locke strived to juxtapose the idyllic state of nature against the state of war, finally he admits that the state of nature is notorious, imposes its hasty abandonment, and the condition of an individual in the state of nature amounts to the quality of life of an individual in the state of war in the view of Hobbes.[31]

3. Justification of violence against the unborn child

Admittedly, Hobbes pertains that the state of nature as *bellum omnium contra omnes* is a theoretical situation that would exist but for sovereign power, however, he states that „many are places where people live in such state of war even today".[32] Juxtaposing the condition of individuals in Hobbes's state of nature against the contemporary situation of the

27 *Ibidem*, II, § 8.
28 *Ibidem*, II, § 13.
29 A. Stępkowski, *op. cit.*, pp. 270–271.
30 J. Locke, *op. cit.*, § 123.
31 A. Stępkowski, *op. cit.*, pp. 272–283.
32 A. Krawczyk, *op. cit.*, p. 46.

conceived child and the practice of individual state-countries within abortion on demand, it is impossible not to get an impression, that the emanation of the state of nature as a state of war and anomaly is a condition of *nasciturus* remaining in the power of the mother. It is especially visible in the context of the following ascertainment.

Firstly, on the one hand, neither Convention, nor other European or international law instruments exclude prenatal life from their scope of protection and Court has never excluded unborn child from its field of application.[33] The Strasbourg judicature has reinforced and confirmed the special significance of the mandate of life protection (art. 2 of the Convention) and indicated that the interpretation of the decisions of the Convention must be based on deeming the superiority of life protection. That means that all deviations from its protection are of special character and should be clearly reflected in the text of the convention.[34] Simultaneously, one should emphasize that the Strasbourg Tribunal consequently evades the unambiguous assessment of the *nasciturus* status in the light of the Convention. As the Court noticed in the judgment dated 8 July 2004 in case *Vo. v. France*,[35] "at European level, the Court observes that there is no consensus on the nature and status of the embryo and/or foetus. At best, it may be regarded as common ground between states that the embryo/foetus belongs to the human race. The potentiality of that being and its capacity to become a person – enjoying protection under the civil law – require protection in the name of human dignity, without making it a "person" with the "right to life" for the purposes of art. 2. The Court is convinced that it is neither desirable, nor even possible as matters stand, to answer in the abstract the question whether the unborn child is a person for the purposes of art. 2 of the Convention. The Court emphasized, that "it may be regarded as common ground between States that the embryo/foetus belongs to the human race" and that he/she "requires protection in the name of human dignity". Nevertheless, it should be emphasized that – in the optics of the Tribunal – even supposing that, in certain circumstances, the foetus might be considered to have rights protected

33 G. Puppinck, (in:) A. Stępkowski (eds.), *op. cit*., pp. 212–213.

34 L. Garlicki, (in:) Konwencja o Ochronie Praw Człowieka i Podstawowych Wolności. Komentarz do artykułów 1–18, vol. 1, Warszawa 2010, pp. 64–65.

35 Application no. 53924/00.

by art. 2, *nasciturus* is invariably perceived as dependent on the mother and her interests. In the evaluation of the Tribunal, in the circumstances examined by the Convention institutions – that is, in the various laws on abortion – the unborn child is not regarded as a "person" directly protected by art. 2 of the Convention and that if the unborn do have a "right" to "life", it is implicitly limited by the mother's rights and interests. The pursuit of abortion on demand thus denotes leaving the child in the power of the mother (and not only, as it frequently means leaving the mother to the pressure exerted by others), namely, similarly to what Locke describes as the state of nature, characterized by leaving one man to the power of another. Whom to whose power? The weaker to the mightier. As long as the Tribunal consequently refuses to grant the conceived child clear, full right to life, the ground remains open as to deeming priority to the right of a woman,[36] including her rights to self-determination and individual will.

Secondly, the Court consequently avoids answering the question if the practice of abortion on demand conventionally infringes the protected rights and liberties. The Tribunal has merely stated *expressis verbis* that the prohibition of abortion on demand does not infringe the provisions of the Convention. However, in its previous judicature it did not attempt to evaluate the practice of abortion on demand. Seemingly, abortion on demand is in compliance with the provisions of the Convention as the Convention does not object to abortion on the premise referring to mother's health and life. Nevertheless, only such cases of abortion on health-related grounds or considering the threat to mother's life can be deemed justified for the interest guaranteed by the Convention. Abortion on demand fails to fall in the same category. Meanwhile, when the life of the unborn child has been sacrificed for the protection of other interests, it has become impossible to determine the value of such life in a non-arbitrary manner.[37]

Thirdly, despite the Tribunal's unwillingness to unambiguous respect for the right of life of the conceived child, the Tribunal is very cautious about acknowledging the existence of the right to choice

36 E. Wicks, A, B, C v Ireland: Abortion Law under the European Convention on Human Rights, "Human Rights Law Review" 2011, vol. 11(3), p. 566.

37 G. Puppinck, (in:) A. Stępkowski (eds.), *op. cit.*, p. 251.

for the pregnant woman pursuant to art. 8 of the Convention. The Tribunal recognizes the claim to respect private life only when this affects procedural aspects instead of the core of self-determination as referred to pregnancy termination.[38] The Court has never claimed that the autonomy of woman's will constitutes sufficient justification for conducting abortion. It stems from the fact that by weighing competing interests it is difficult to find justification for juxtaposing the right to life against the individualistic will of an individual. Meanwhile, only the right to personal autonomy may potentially comprise the practice of abortion on demand. Many European states exercise such practice, where the only justification for such abortion is its demand. Thus, "the right to abortion on demand" results from the right to personal autonomy.[39] Juxtaposing this argument against the stance of the Court, pursuant to which one cannot deduce the right to abortion from art. 8 of the Convention, we find ourselves in a situation in which abortion on demand constitutes an expression of authorised lawlessness. In the context of the aforementioned ascertainment, one should acknowledge that the only manner to have the threshold of unambiguous and irrefutable values of life, one should ascertain that the right to life of a child in mother's womb may be balanced by the simultaneous right to life of their mother. Any other juxtaposition of values comprises manifestation of the power of the mightier over the weaker, the dominance of the born over the unborn. In such a circumstance, the legitimation becomes the power and strength *per se*, that one individual has over another. Simultaneously, the criterion of evaluation of the measures taken is in the consideration of an individual as such and their uninhibited will. Moreover, measures taken by an individual cannot be evaluated in the category of justice and injustice. The question of keeping balance between the protection of foetus and the respect for self-determination of a woman is an issue allowing a wide margin to state-countries. Simultaneously, there appears European consensus, that the scale should prevail to the woman's side, at least when her health or wellbeing is endangered or in early stages of pregnancy.[40] "Balancing the will of the mother against the life of the

38 E. Wicks, *op. cit*., p. 565.
39 G. Puppinck, (in:) A. Stępkowski (ed.), *op. cit*., p. 250.
40 E. Wicks, *op. cit*., p. 565.

unborn equals to evaluating the power of the woman over the life of her child".[41] Legalization of abortion on demand constitutes justification of violence committed on the unborn child, glorification of power and apotheosis of dominance of the mightier over the weaker. It is relatively about a situation in which those who are currently in a privileged situation, healthier, stronger and capable of exercising their will, may arbitrarily use their power and violence over and against those who are weaker and unable to put up any resistance to violence.[42] Consequently, we have to do with power amounting to law. „In the case of abortion on demand, (abortions which were not resulted from health reasons, but only grounded in the will of the mother), the Court has never admitted that the autonomy of the woman could, *per se*, suffice to justify an abortion in terms of the Convention requirements."[43]

Fourthly, a woman that is forced to abortion on the grounds of financial difficulties, residential problems, violence exercised by the partner, pressure from third parties is called a victim. In such a situation, not only has the right to life of the unborn child been infringed, but also the woman is forced to bear the suffering and humiliation connected with the practice of abortion.[44] As the Court noticed in the judgment dated 30 October 2013 in case *P. & S. v. Poland*, "it cannot be overlooked that the interests and life prospects of the mother of a pregnant minor girl are also involved in the decision whether to carry the pregnancy to term or not. Likewise, it can be reasonably expected that the emotional family bond makes it natural for the mother to feel deeply concerned by issues arising out of reproductive dilemmas and choices to be made by the daughter". It is noted that the two most common reasons for undergoing abortion were "having a baby would dramatically change my life" and "I can't afford a baby now" (cited by 74% and 73%, respectively). Some women pointed at relationship problems or a desire to avoid single motherhood (48%). Relationship problems mostly concern the fact of drinking problem of a partner, physical abuse, adultery, lack of confidence, immaturity and lack of a father (frequently because of

41 G. Puppinck, (in:) A. Stępkowski (ed.), *op. cit.*, p. 212.
42 A. Stępkowski, The Necessity…, *op. cit.*, p. 100.
43 G. Puppinck, (in:) A. Stępkowski (ed.), *op. cit.*, p. 212.
44 *Ibidem*, p. 253.

serving a sentence). Many women are disillusioned as their partner has reacted to pregnancy by denying paternity, breaking relations with them or by saying that they did not want a child.[45]

4. Conclusions

Abortion denotes authorisation of the state of war between the mother and the child in the prenatal phase and the acknowledgement that this is an issue between the mother and the child. The mother is very frequently left to her worries and doubts, to the pressure of being rejected, stigmatization or violence from third parties. Consequently, the will of the woman becomes her right – if the mother wants to kill her child, that is fair and square. The state-country thus legalizes the state void of legal norms, *ergo* abortion is legalized lawlessly. The so-called right to abortion implies the dominance of the will of the individual over the life, subjectivity over objectivity. Meanwhile, it should be emphasized, that the will of the individual does not create law. The opposite statement would lead to false ideas about human rights, namely the projection of the individual will into the social order. Consequently, every desire / will of the subject would be treated as falling within the range art. 8 of the Convention and considered to be right and any restriction of individual will constitute a violation of statutory provisions.[46] Comparing these findings with the Preamble of the Convention on the Rights of the Child,[47] which refers to the Declaration of the Rights of the Child, whereby "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth", it should be noted that the practice of abortion on demand destroys the basic knowledge of human dignity and violates fundamental principles of human rights.

45 L.B. Finer, L.F. Frohwirth, L.A. Dauphinee, S. Singh, A.M. Moore, Reasons U.S. Women Have Abortions: Quantitative and Qualitative Perspectives, "Perspectives on Sexual and Reproductive Health" 2005, vol. 37, no. 3, pp. 112–116. http://www.guttmacher.org/pubs/journals/3711005.pdf

46 G. Puppinck, Abortion and the European Convention on Human Rights, "Irish Journal of Legal Studies" 2013, vol. 3(2), p. 160–163.

47 Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20.1.1989 entry into force 2.09.1990, in accordance with art. 49.

Can the moment of birth truly be acknowledged as convincing termination of such state of legalized war? Or may legalization of abortion significantly tend to shift this state to prenatal phase? One should agree with the ascertainment that legalization of abortion entails consent to arbitrary decision as to marking the moment in which human life starts being protected by the provisions of law and simultaneously marks a moment till which the mightier may dominate over the weaker and manage their life. In such a context concerns appear to be justified that legalization of abortion comprises merely an element of a longer process, in which once the criterion for the moment of granting legal protection becomes a relative assumption, which, depending on circumstances, may be shifted to further stadia of development.[48]

Keywords: abortion, abortion on demand, nasciturus, state of nature, state of war, Hobbes, Locke

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48 A. Stępkowski, The Necessity…, *op. cit.*, p. 103.

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STAN NATURY JAKO STAN WOJNY
KILKA UWAG NA TEMAT SYTUACJI DZIECKA POCZĘTEGO W KONTEKŚCIE ABORCJI NA ŻĄDANIE

Problematyka wykonywania władzy nad innymi była od dawna przedmiotem zainteresowania przedstawicieli różnych dziedzin nauki. Już w starożytności wyrażono pogląd, że za naturalne uważa się to, co silniejszy narzuca słabszemu, co zarządzą silniejsi wobec słabszych. Sprawiedliwe jest zatem to, co jest w interesie silniejszego. Teoria indywidualistyczna w zaskakujący sposób także dziś wydaje się być wykorzystywana do legitymizowania działań opartych na manifestacji władzy silniejszego nad słabszym, kiedy wola jednostki i przysługująca jednostce autonomia staje się źródłem i usprawiedliwieniem działań wypierających indywidualne prawa. Dotyczy to zwłaszcza kondycji dziecka poczętego. Wtedy gdy dziecko powinno zostać otoczone największą troską i opieką, staje się niejednokrotnie „polem bitwy", a stawką w tej wojnie jest prawo do życia. Szereg opracowań wskazuje, w jaki sposób aborcja stanowi użycie przemocy nie tylko wobec rozwijającego się nienarodzonego dziecka, ale także i kobiety. Aborcja na żądanie, uzasadniana nie ochroną życia lub zdrowia kobiety albo gwałtem na niej popełnionym, ale jej wolną wolą stanowi działanie arbitralne i jest *per se* manifestacją siły silniejszego nad słabszym i dominacją żyjącego nad jeszcze nieurodzonym. Usprawiedliwieniem w takim przypadku staje się tylko i wyłącznie przemoc, nawet jeżeli określi się ją mianem wolności. Czy może być ona tolerowana jako legitymacja do naruszania praw człowieka?

Celem artykułu jest podjęcie próby oceny sytuacji dziecka poczętego jako pozostającego *de facto* we władzy matki oraz dokonanie oceny jakości relacji pomiędzy tymi jednostkami w świetle poglądów Tomasza Hobbesa i Johna Locke'a na stan natury. Nie można bowiem oprzeć się wrażeniu, że wskazane elementy kondycji dziecka poczętego stanowią emanację stanu natury w ujęciu Hobbesa jako stanu wojny, permanentnego konfliktu każdego z każdym, w którym nie istnieje sprawiedliwość i niesprawiedliwość, a każde podejmowane działanie jest oceniane miarą jednostki. Również John Locke traktuje ten stan jako „nie do zniesienia" i w rzeczywistości dochodzi do tych samych konstatacji co Hobbes. Legalizacja aborcji na żądanie stanowi legitymację stosowania przemocy i jest emanacją władzy posiadanej przez silniejszego nad słabszym.

Aborcja oznacza legitymizację stanu wojny pomiędzy matką i dzieckiem w fazie prenatalnej oraz uznanie, że jest to sprawa między matką i dzieckiem; matką bardzo często pozostawioną na pastwę swych trosk i zwątpień, pod presją groźby odrzucenia, stygmatyzacji czy przemocy ze strony osób trzecich. W konsekwencji wola kobiety staje się prawem.

Zdigitalizowano i udostępniono w ramach projektu pn.
Rozbudowa otwartych zasobów naukowych Repozytorium Uniwersytetu w Białymstoku,
dofinansowanego z programu „Społeczna odpowiedzialność nauki" Ministra Edukacji i Nauki na podstawie umowy SONB/SP/512497/2021