

COMMENTARY

Restrictivism, Abortion, and Organ Donation

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Introduction

*Restrictivism*¹ is the view that abortion is immoral and should be illegal in most cases with rare exceptions, such as when the mother's life is at risk. Restrictivist opposition to abortion is grounded in two beliefs that (1) human fetuses are persons, broadly construed, with a right to life, and (2) that parents have special moral obligations to protect their children. Judith Jarvis Thomson² argues that even if we assume fetuses are persons with a right to life, this alone would not entitle the fetus to use the mother's body against her will. However, restrictivists can meet this challenge if they can show that gestational mothers, *qua* parents, have special moral obligations to protect their fetuses. Restrictivists believe these special obligations necessitate parents to sacrifice their bodily autonomy and take on significant medical risks and burdens to protect their children.

In a recent article, Emily Carrol and Parker Crutchfield³ argue that if (1) and (2) justify restricting women's rights to bodily autonomy, it creates a similarly burdensome obligation for parents to donate blood, tissues, marrow, and organs to their children. Nicholas Colgrove, Bruce Philip Blackshaw, and Daniel Rodger⁴ call this kind of argument an *inconsistency argument*, dilemmas that share the following form: either restrictivists ought to (1) abandon their opposition to abortion or (2) do more—in this case, restrictivists ought to advocate for legislation that forces all parents to sacrifice their bodily autonomy to protect their children *and* donate. Carrol and Crutchfield argue that such legislation, in addition to restricting abortion, would require parents to donate blood, tissue, marrow, and even organs to their children.

In this paper, I argue that Carroll and Crutchfield fail to show that restrictivism requires such legislation. My argument turns on *safehaven laws*—laws that allow parents to surrender their parental obligations to the state. The rationale for safehaven laws is clear: safehaven laws promote child welfare by giving parents a way to provide for their children without personal sacrifice. Struggling parents unable to provide for their children can be assured the state will provide for them, whereas unwilling parents can legally offload their children on the state, avoiding personal sacrifice while assuring their children are taken care of. However, should restrictivist legislation require parents to donate, this would incentivize parents to neglect their children's medical care, or abandon their children using safehaven laws. Rather than promote the child's welfare, restrictivist donation legislation would hinder it.

The Organ Donation Inconsistency Argument

Carrol and Crutchfield's argument begins by assuming the two beliefs that most restrictivist opposition to abortion rests on that (1) fetuses are persons, broadly construed, from conception, or soon afterward, with a right to life, and (2) parents have special moral obligations to their children, including a duty to protect that, according to the restrictivist, would (at least) require a gestational mother to make great personal sacrifices and take on substantive medical risk to protect their child.

The first assumption is contentious, but well-trodden ground. Carrol and Crutchfield note that the best arguments against abortion require the truth of this proposition.

The second assumption is less well trodden. This paper will briefly discuss two arguments that parents have special obligations to their children—the vulnerability argument and the parenthood argument.

The Vulnerability Argument

Carroll and Crutchfield suggest grounding parents' special moral obligations in the work of Robert Goodin,⁵ who argues that special obligations are derived from vulnerability. They characterize his position as follows: "A has a duty to protect B just in case B's interests are vulnerable to A's actions." Children, Carroll and Crutchfield argue, are especially vulnerable to their parents, so parents have especially strong obligations to their children.

There are three problems with this approach. At first glance, this view seems consistent with restrictivism—because a gestational mother can cause severe harm to her fetus, restrictivists can argue that gestational mothers have strong, special moral obligations to their fetus. However, the fetus is as vulnerable to the mugger's coercive threat "your money or your life," or the assassin's poison as the rest of us, but it would be absurd to conclude that the mugger or assassin has a special obligation to protect the fetus... or their adult victims; rather the wrongness of harming their victims is better explained in virtue of it violating their targets' right to life.

Second, this view would open restrictivism up to a variety of inconsistency arguments^{6-7,8}; on this view, a moral agent's special obligations scale with their ability to harm; those in the greatest position to harm others have the greatest obligations to protect their potential victims. However, a duty to protect goes beyond merely not harming their potential victims, and it requires one to sacrifice to protect and promote the well-being of those in their charge. The wealthy and the powerful have the power to cause great harms to many vulnerable people, but it would be absurd to conclude that they have robust special obligations to protect and provide for them merely because they can harm them.

Finally, Goodin's view suggests that special obligations change as vulnerability changes. If it makes sense to say that a fetus is more vulnerable to its gestational mother than an infant, the gestational mother's special obligations to their fetus would be greater than to their infant. This threatens to undermine Carroll and Crutchfield's argument that parents of born children have the same special obligation to sacrifice their bodily autonomy as gestational mothers; to succeed, they need to ground a parent's special obligations to their children in some feature that does not change with a child's circumstances.

The Parenthood Argument

Don Marquis⁹⁻¹⁰ contends that parents have special moral obligations to protect and provide for their children—obligations they do not have to others. I think most of us would agree with this proposition. For example, we might say that a parent, *qua* parent, has a *prima facie* obligation to feed, cloth, and educate their children, but no such obligation to the other children in the neighborhood.

From here, though, Marquis's parenthood argument seems to play it fast and loose. Marquis contends that if human fetuses have a right to life, then they are children, and that all (mammalian) children have mothers. He then claims that it only makes sense to conclude that the gestational mother is the mother of the fetus, and therefore the gestational mother has special moral obligations to the fetus.

Elsewhere, I have¹¹ challenged Marquis's parenthood argument:

[E]ither "mother" is meant as a biological category, or a moral category. If "mother" is taken to be a biological category, then [Marquis] is left with the problem of explaining why a merely biological category should make a moral difference. However, if "mother" is taken to be a moral category, then the claim that the [gestational mother] is the mother of the fetus needs to be established.

If we assume fetuses are children, then it makes sense to say that gestational mothers who conceive naturally are biological mothers, but it is less clear that they are moral mothers. But there is no ambiguity with regard to adoptive parents, adoptive parents expressly consent to become the moral parents of their children. I argue that it is not sufficient to show that gestational mothers are the biological parents of the fetus, and supporters of the parenthood argument must show that either (1) mere biological parenthood generates special moral obligations, or (2) in those cases in which abortion would be immoral, gestational mothers are also moral parents to their fetus, and thus have special moral obligations to their fetus.

Carrol and Crutchfield briefly discuss what a *voluntarist* model of special obligations, where in individuals come to have special obligations by voluntarily taking them on. This view is prima facie consistent with how adoptive parents are said to come to have special obligations to their children. However, Carrol and Crutchfield contend that the voluntarist model of special obligations is prima facie at odds with the restrictivism, unless the restrictivist can show that (most) gestational mothers do, or at least should, personally assent to take on such obligations.

The Violinist Argument

Carrol and Crutchfield contend that for the restrictivist, one of the special obligations that parents have toward their children is a duty to protect. This duty, they argue, goes beyond merely not causing harm to one's charge; one is often required to provide assistance and prevent harm from other sources. If we assume gestational mothers have a duty to protect their children, this gives restrictivists ground to respond to Thomson's rights-based criticism of restrictivism. Thomson asks us to consider the following case:

Violinist: The Society of Music Lovers kidnap you and attach your circulatory system to a famous, innocent, unconscious violinist suffering from an ailment that will kill him unless he remains connected to you for 9 months. The violinist is unaware of what is going on.¹²

By assumption, the violinist has a right to life, but Thomson contends that most of us would agree that you have the right to disconnect yourself from the violinist, even if doing so will result in his death. The violinist's right to life does not give him the right to use your body without your permission. On this view, even if it would be wrong to kill the violinist, it is not wrong to disconnect him and let him die.

Note that Goodin's vulnerability position is at odds with Thomson's analysis; because the violinist's interests are vulnerable to your actions, on his view, it seems you have a duty to protect the violinist—the same kind of duty you would have to protect a fetus during pregnancy.

However, if the restrictivist were to ground the wrongness of abortion in a parent's special duty to protect, they can agree with Thomson that you have a right to disconnect the violinist, but argue that gestational mothers do not have the right to disconnect from their fetus, as the duty to protect requires more than merely not killing one's charge; by assumption, it would require them to take on medical risks and burdens to protect and provide for their fetus. (Of course, all of this assumes that (1) fetuses are persons and (2) the gestational mother, *qua* parent, has special moral obligations to their fetuses, including a duty to protect.)

The Organ Donation Argument

We are now in a good position to summarize Carrol and Crutchfield's organ donation argument. First, the restrictivist argument can be summarized as follows:

The Restrictivist (Antiabortion) Argument:

- 1) Fetuses are person children.
- 2) Parents have a duty to protect their person children.
- 3) Gestational mothers are the parents of their fetus person children.
- 4) The duty to protect requires the sacrifice of bodily autonomy to protect one's charge.
- 5) Conclusion: Gestational mothers, *qua* parents, have a duty to sacrifice their bodily autonomy to protect their person children. This duty requires that they continue the pregnancy despite medical risk and burdens. (1–4)

According to this argument, abortion is wrong because it violates the parent's duty to protect their person children. Pregnancy is medically risky and burdensome, but restrictivists contend that the parent's special obligation to protect requires that they take on these medical risks and burdens.

(Note that the restrictivist argument is limited to person children; if it were possible for humans to serve as gestational mothers for nonpersons, restrictivists need not hold that gestational mothers sacrifice their bodily autonomy to protect their nonperson children. For example, if a mad scientist were to successfully transfer a pig fetus to a gestational mother, this argument does not show that aborting the nonperson pig fetus is wrong, even if the restrictivist were to conclude the gestational mother is the parent of the pig fetus.)

Carrol and Crutchfield note that in some cases, parents can protect their born children by taking on similar medical risks and burdens to those of the gestational mother in the form of donating blood, tissue, marrow, and organs. In light of this, the restrictivist argument seems to obligate donation. This conclusion seems to follow from the restrictivist antiabortion argument when we add a single premise:

The organ donation argument:

- 6) Parents are parents to their born person children.
- 7) Conclusion: Parents, qua parents, have a duty to sacrifice their bodily autonomy to protect their children. This duty requires that they donate blood, tissue, marrow, and organs if doing so will protect their born person children. (2, 4, and 6)

(Note that a parent would not have an obligation to donate if their child is not a person, such as if they adopt a piglet, or if their human child were to lose their personhood, perhaps by becoming braindead.)

If aborting the fetus is wrong because it violates the duty to protect, Carrol and Crutchfield contend that failing to donate also violates this duty. Furthermore, restrictivists believe that the wrongness of violating the duty to protect is sufficient to justify the state is coercing the gestational mother to continue with her pregnancy. On pain of inconsistency, because a failure to donate constitutes a similar violation of the duty to protect, they argue that restrictivism would similarly justify the state is coercing the parents to donate to their born children.

Due to factors about human biology, genetically related parents are often in a better position to protect their children by donation than adoptive parents, but according to this argument, even adoptive parents would have the obligation to donate, if doing so would protect their child.

Of course, restrictivists are often willing to make *some* exceptions for abortion when the mother's life is in danger, and, by extension, may be able to make some exceptions for donating. The problem is that all pregnancies carry substantive medical risks and burdens, yet restrictivists still believe gestational mothers are obligated to take on these risks and burdens in most cases. As such, it seems restrictivists would be committed to parents of born children taking on comparable medical risks and burdens. They may make exceptions regarding donating vital organs which will certainly lead to a parent's death but seem committed to requiring parents donate in many cases which merely risk parental morbidity and/or cause nonlethal, lasting medical harm to the parent.

Note that being unable to do something precludes one from having a duty to do that thing; thus, a parent's duty cannot require they donate compatible organs if they do not have compatible organs.

Finally, it is worth noting that all cases of abortion—whether killing or letting die—lead to the fetus's death, but not all cases of refusal to donate lead to the death of born children; in some cases others may step in and donate should the parents refuse. However, this does not mean that parents are off the hook; no doubt parents have a duty to feed their children, but the mere fact others can step in and feed their starving children while they take a trip abroad does not excuse their negligence.

Objections

1) On Coercive Force, Abortion, and Donation

Carrol and Crutchfield contend that a consistent restrictivist position holds that parents have a duty to take on substantive medical risks and burdens to protect their children. If a state is justified in coercing a gestational mother to continue with pregnancy, they contend that this implies that the state would be

similarly justified in coercing parents to donate blood, tissue, marrow, and organs to their children if doing so will protect them.

However, it is not clear what such coercion would entail with regard to donation. In cases of pregnancy, state coercive force involves restricting access to abortion and possibly punishing women who illegally abort. However, in cases of parental neglect or abuse of born children, coercion involves taking custody of those children, picking up the slack from negligent parents, or punishing neglectful or abusive parents, often with jail time.

Carrol and Crutchfield suggest that parents would have a mandate to donate if doing so will protect their children, but it is not clear how this mandate would work. Because abortion involves action, a state may restrict access to abortion services; but failure to donate involves an omission, so it is unclear how the state can make it harder for parents to refrain from donating (without a massive change in how healthcare is provided).

Suppose a physician reports that a parent refuses to donate. If we treat failure to donate as we do failure to feed a child, then the parent loses custody of the child and might go to jail if convicted. However, it is unclear how we can treat failure to donate as we might treat an attempt at (illegal) abortion. One option is to force convicted parents to donate organs, but it is unclear how this would work, and even if the state did this, it seems likely they would also take custody of the child.

2) Safehaven Laws

Many states have adopted safehaven laws that allow parents to surrender their children to state custody, often with no questions asked. The rationale behind these laws is clearly to promote child welfare. Many new parents struggle financially or psychologically to raise a child. Safehaven laws give parents an option to ensure that their child is adequately cared for, when otherwise they might suffer due to their parents' inadequacies. Safehaven laws also provide an out for neglectful parents who are unwilling to provide adequate care for their children, when otherwise they might neglect their children or, worse, harm their children to be rid of the burden.

At this point, we are in a good position to explore how struggling and fair-weather parents might grapple with a legal obligation to donate. First, consider financially struggling parents. Many struggling parents already put off regular checkups and preventative care. However, imagine restrictivist donation laws pass such that when a physician decides parental donation might help the child, the state forces parents to undergo an expensive, medically risky donation procedure *or* face jail time and lose custody of their children. Under these circumstances, even loving parents might opt to put off regular checkups out of fear that their child will be taken away from them! This disincentivizes parents from getting regular medical care, drastically increasing the risk that preventable and treatable conditions go unprevented and untreated to the detriment of their children!

But now, consider fair-weather parents, those parents that are willing to care for their children as long as it does not require too much sacrifice. Of course, parenthood typically requires a lot of sacrifice, but it is easy to imagine wealthy fair-weather parents that feed, house, and educate their children, but that might prioritize their job, lifestyle, hobbies, or the like over forming close bonds to their children. Many of us might call such parents neglectful in some sense, but such parents can make a good case that they live up to their duty to protect their children. However, when confronted with the restrictivist donation laws, these parents face a new rational calculation—if their child should need an organ, they would be legally required to donate. Even if they could find another donor willing to donate, it is unlikely the unrelated donor would be a better match than the parent, as such the restrictivist law would require the parent to donate over the stranger.

Both struggling and fair-weather parents might seek to use safehaven laws to avoid the worst-case scenarios of restrictivist donation laws. Struggling, loving parents might conclude that they are unable to afford raising a child *and* donating an organ, and thus might believe their child is better off with the state. Fair-weather parents might conclude that they are unwilling to donate an organ, so they would be better off if others took custody of their child.

If restrictivist donation laws were passed, many parents might take advantage of safehaven laws to avoid the legal risk of being required to donate, especially if these laws allowed parents to surrender their children in response to a medical test requiring donation. (Many safehaven laws restrict when parents can surrender their children, but it is not clear that this is the best way to promote child welfare.)

Restrictivist donation legislation can be said to have two goals—to promote children’s welfare, and to require parents live up to their duty to protect. The existence of safehaven laws frustrate the latter goal, as parents wishing to evade their duty will surrender their children to the state. Thus, the two goals of restrictivism seem to be at odds with each other. If the restrictivist wishes to ensure parents live up to their duty to protect, they need to pass restrictivist donation and antiabortion laws *and* overturn safehaven laws, risking harm to children.

However, if the restrictivist wishes to promote child welfare, then it is not clear donation legislation would accomplish this. *Sans* donation legislation, parents unwilling to donate organs have the option to change their mind. For example, financially struggling couples may be willing to donate if charity covers the cost of donation, whereas negligent and/or fair-weather parents might come around, perhaps motivated by their love for, or duty to, their children... or even for more selfish reasons, such as to preserve one’s public image. However, if restrictivist donation legislation passes, these parents are incentivized to take advantage of safe-haven laws and surrender their children to the state, making changing their mind and choosing to donate far less likely.

In light of this discussion, it is clear that restrictivist donation laws could threaten the welfare of children in two substantive ways—first, it disincentivizes regular, preventative medical care, and second, it encourages parents to surrender their children to the state to avoid being required to donate, making it less likely they will change their mind and donate in the future.

Conclusion

Restrictivist opposition to abortion turns on two beliefs that (1) human fetuses are persons, and (2) parents have special moral obligations to protect their children. Though these restrictivist claims are *prima facie* consistent with our moral intuitions, critics argue that they do not hold up under scrutiny. Carrol and Crutchfield raise an interesting challenge to restrictivism in the form of an inconsistency argument; if, as restrictivists claim, (2) requires gestational mothers to sacrifice their bodily autonomy and take on the medical risks and burdens associated with pregnancy in most cases, then it seems consistency requires restrictivists to require parents of born children to make similar sacrifices and donate blood, tissues, marrow, and organs, sacrificing their bodily autonomy and taking on similar medical risks and burdens if doing so will protect their children.

Here, I have argued that adopting restrictivist donation laws could threaten child welfare, rather than promote it. In short, either restrictivists will also repeal safehaven laws, threatening the welfare of children whose parents are struggling or neglectful, or parents will take advantage of safehaven laws to evade the duty to donate, making it far less likely they will change their mind and donate in the future.

At present, this analysis is irrelevant to the question of whether restrictivists should promote antiabortion legislation. Safehaven laws are meant to promote the welfare of children, but *sans* ectogenesis technology that can allow otherwise unviable fetuses to develop outside of their gestational mother, a gestational mother disconnecting her fetus and surrendering it to the state would not promote the welfare of the fetus. This is to say that whereas restrictivist donation laws may threaten the welfare of children, restrictivist antiabortion laws do not seem to. In short, although restrictivism still needs to meet many prochoice challenges in the form of other inconsistency arguments, questions regarding the moral status of the fetus, and (perhaps most pressing) questions regarding the source of gestational mother’s purported special obligations to their fetus, the organ donation inconsistency argument fails to show that restrictivists ought to revise their stance on abortion.

Notes

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