

COMMENTARY

## What's Wrong with Restrictivism?

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### Abstract

Emily Carroll and Parker Crutchfield propose a new inconsistency argument against abortion restrictivism. In response, I raised several objections to their argument. Recently Carroll and Crutchfield have replied and seem to be under the impression that I'm a restrictivist. This is puzzling, since my criticism of their view included a very thinly veiled, but purposely more charitable, anti-restrictivist inconsistency argument. In this response, I explain how Carroll and Crutchfield mischaracterize my position and that of the restrictivist.

**Keywords:** abortion; ethics; restrictivism; organ donation; inconsistency argument

### Introduction

Emily Carroll and Parker Crutchfield<sup>1</sup> propose a new inconsistency argument<sup>2</sup> against abortion restrictivism. I raise several objections to their argument.<sup>3</sup> Recently Carroll and Crutchfield have replied<sup>4</sup> and seem to be under the impression that I'm a restrictivist. This is puzzling, since my criticism of their view included a *very* thinly veiled, but purposely more charitable, anti-restrictivist inconsistency argument. In this response, I explain how Carroll and Crutchfield mischaracterize my position and that of the restrictivist.

Anti-abortion *moralism* is the view that abortion is (usually) seriously morally wrong. There are many compelling arguments against this view.<sup>5,6,7</sup> Anti-abortion *restrictivism* is the view that abortion should (usually) be illegal. The arguments against restrictivism are arguably more compelling.<sup>8,9,10,11</sup> Indeed, most moralists reject restrictivism, fearing restrictivist laws would be unable to make commonsense exceptions to allow abortion in cases of rape and medical risk.

We all know the arguments.

### The moralist argument

1. Fetuses are persons.
2. Abortion kills fetuses.
3. All else being equal, it is immoral to kill persons.
4. Therefore, abortion is immoral.

### The restrictivist argument

1. Fetuses are persons.
2. Abortion kills fetuses.
3. The state has a duty to protect persons.
4. So, all else being equal, it ought to be illegal to kill persons.
5. Therefore, abortion ought to be illegal.

I think many people find these arguments *pre-theoretically* morally compelling. They are simple. You do not even need to know what a fetus is, *where* it is, or what pregnancy is to follow along. Frankly... it kind of helps if you do not.

While the premise that fetuses are persons from conception may be *prima facie* plausible, whether it's true turns on subtle and nuanced facts about human conception and fetal development, personhood, and identity over time – subtleties many anti-abortion theorists overlook. Similarly, many people take it for granted that abortion kills, but medication abortion merely lets the fetus die by preventing it from becoming attached to the gestational mother's uterus, and surgical abortion can disconnect the fetus and let it die, rather than killing it.

Furthermore, most people agree that it is acceptable to kill in self-defense, which is why moderate anti-abortion theorists want to make exceptions for abortion in cases of medical risk. But all pregnancy is medically risky, and few anti-abortion theorists spend much time trying to draw a line between acceptable and unacceptable risk.

Pro-choice criticism of these arguments tends to fall into one of three categories; personhood<sup>12</sup>, rights<sup>13,14</sup>, and inconsistency. Personhood critics question whether the fetus is a person. Rights critics argue that even if a fetus had a right to life, it would not have a right to use the mother without her permission.

Inconsistency critics<sup>15,16,17,18,19,20</sup> take a more Socratic approach, illustrating apparent inconsistencies in anti-abortion arguments and presenting them with a dilemma – either (a) do more, or (b) do less. While some inconsistency theorists<sup>21,22</sup> believe anti-abortion inconsistency is evidence that they do not really believe a fetus is a person with a right to life, I'm<sup>23,24</sup> far more inclined to think the inconsistency turns on a combination of confusion and ignorance, confusion about fundamental concepts regarding pregnancy, medical risk, rights, personal identity over time, etc., and ignorance regarding the rate of spontaneous abortion, surplus frozen embryo creation, starving children, and so forth. Once the anti-abortion theorist takes these into account, they can engage in a reflective equilibrium and choose which horn of the dilemma to pursue.

Carroll and Crutchfield<sup>25,26</sup> propose a new inconsistency argument:

### The organ donation inconsistency argument

1. If restrictivism requires restricting access to abortion, it also requires organ donation compulsivism.
2. Proponents of restrictivism do not support compulsivism.
3. Therefore, proponents of restrictivism act inconsistently.

*Compulsivism* is the view that parents have a legal obligation to protect their children even if it includes donating organs, and the state may compel parents to donate their organs to their children. Of course, compulsivism is ridiculous, so Carroll and Crutchfield's argument is meant to be a *reductio ad absurdum* argument against restrictivism.

I've argued this argument fails, as there are two reasons to think premise 1 is false. First, Carroll and Crutchfield assume that restrictivists explain parental obligations by appealing to Robert E. Goodin's<sup>27</sup> vulnerability account, according to which one person's ability to harm another generates an obligation to protect their possible victim. Maybe Carroll and Crutchfield find Goodin's account compelling, but they give no substantive reason for why the restrictivist should adopt this view of special obligations over, say, Don Marquis's parenthood view,<sup>28,29</sup> or a voluntarist model of special obligations. Indeed, many anti-abortion theorists seem to believe that consent to sexual activity involves an (irrevocable?) consent to parenthood which would serve the same purpose of grounding special obligations without the slippery slope to compulsivism. Rights critics<sup>30,31</sup> raise compelling objections to this, though many anti-abortion theorists find this pre-theoretically compelling.

Second, restrictivist laws differ in kind and degree from compulsivist laws. Notably moderate restrictivists want to make exceptions for medical risk, and the risks involved in organ donation would seem to meet this standard. Restrictivists require some sacrifice, compulsivism would require a greater degree of sacrifice. Furthermore, restrictivists that reject a positive right to life and explain parental obligations in terms of special obligations draw a distinction between acting and refraining; killing and

letting die. They (erroneously) believe all abortion kills, but refraining from donating does not kill anyone!

In my original criticism<sup>32</sup>, I raise one more serious objection to Carroll and Crutchfield's argument; I argue that compulsivist laws would likely increase the risk of harm to fetuses, so restrictivists might reasonably reject them on those grounds alone. I say:

[I]t 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.

Carroll and Crutchfield<sup>33</sup> reply:

[I]f decreased likelihood of receiving regular medical care is sufficient to undermine the obligation to donate organs, it is also sufficient to undermine restrictions upon abortion, as such restrictions also disincentivize standard medical care.

Exactly! My criticism of their view was also a thinly veiled inconsistency argument against restrictivism. Carroll and Crutchfield's reply is that it is uncharitable. Whatever else you think of anti-abortion theorists, it would be uncharitable to interpret them as disinterested in the health and wellbeing of children. Whether restrictivist laws threaten child well-being is an empirical matter, and things do not look good for the restrictivist position!<sup>34,35</sup> Many proponents of restrictivism are unaware of such risks, and would likely abandon the view if they came to believe them.

Many people find restrictivism *pre-theoretically* morally compelling, but it seems the view does not stand up to scrutiny well. It makes sense that the anti-abortion theorist will go out of their way to explain their pre-theoretical moral intuitions, but sometimes the best explanation is the simplest one – pregnancy, rights, and personal identity over time are tricky and nuanced concepts and our pre-theoretical moral intuitions may not have properly taken these into consideration.

## Notes

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