

COMMENTARY

# Why the case against abortion is weak, ethically speaking

Many medical procedures are ethically similar to abortion — but without the outcry. Why?

By **NATHAN NOBIS** - **JONATHAN DUDLEY**

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Pro-life activists demonstrate in front of the the US Supreme Court during the 47th annual March for Life on January 24, 2020 in Washington, DC. (OLIVIER DOULIERY/AFP via Getty Images)

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Abortion rights are under attack. But ethics education can help — and defenders of

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In recent years, over 250 **abortion-restrictive laws** have been proposed across 45 states. **Arkansas** and **South Carolina** are the most recent states to pass laws to ban abortion after 6 weeks into pregnancy, when a "heartbeat" can be detected in the fetus and before many women even know they are pregnant.

The **Supreme Court** now has a majority of justices who identify as "pro-life," and will surely be more receptive to these attacks on abortion rights than previous courts have been. If the issue comes before them, it is unclear how they might rule: they have already **restricted a medication** used to induce abortions and might welcome **further restrictions**.

While legal attacks demand immediate legal responses, these responses aren't a long-term, comprehensive strategy to protect legal rights and access to abortion.

Representatives of pro-choice organizations sometimes claim they are "**doing all they can**" to protect abortion rights, but this is not true: Mary Ziegler recently reported in *The Atlantic* that, since the 1990s, pro-choice advocates have **deliberately avoided engaging moral or ethical questions about abortion**; they have focused solely on the legal freedom to choose abortion.

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Meanwhile, over that same time period and up to the present, pro-life advocates have seen engaging the ethics of abortion as essential to their cause and have invested heavily into training sessions, educational institutes, and materials to help move their message. Surely they view this "**ethics education**" as a wise and effective investment, since it has helped bring abortion rights to the legally precarious place they are now.

Given the stakes here, it's time for pro-choice advocates and organizations to rethink the wisdom of avoiding talk of ethics.

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Think about what motivates people who want to make abortion illegal. Their primary motivations are, from their perspective, ethical or moral. If asked why abortion should be illegal, they will often reply with an argument like this:

Fetuses are innocent human beings with the right to life, and—since it's always wrong to kill innocent human beings—abortion is murder and should be illegal, with few exceptions.

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Advocates of this type of argument include the **Catholic Church**, **evangelical Christians**, and organizations like the **National Right to Life** and **Americans United for Life**. Pro-life "ethics education" involves training people to advocate for this type of argument.

reduce abortions, and claiming that abortion opponents have bad motives or are hypocritical, or that opposition to abortion is inherently religious, that abortion is "normal," and offering slogans, such as that abortion is "not up for debate," simply do not engage the core issue: these types of responses do not explain why abortion is not murder or show what's wrong with the argument against abortion.

Even more sophisticated bodily autonomy defenses of abortion—that women's rights to choose what happens to and with their bodies and lives justify abortion—are often at least presented in ways that do not challenge the assumption that abortion is murder, along the lines of, "Say whatever you want about the ethics of abortion: we've got the legal right to it."

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But abortion generally is not murder and the ethical arguments given to try to establish this are demonstrably weak. The more people who know and understand why this so and are able to effectively communicate this knowledge, the better, since that would do some good towards helping undercut the primary motivation for making abortion illegal.

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To better recognize the flaws in the core ethical argument against abortion, it is useful to consider two far less controversial medical procedures that also end the lives of human

First, in every U.S. state and most countries, if a person elects to be an **organ donor**, their organs can be removed for transplant when that person suffers complete brain death—even if their body is still alive. Organ harvesting involves cutting living human beings open and their organs being removed one-by-one until, at last, the heart is detached and the **human being dies**, having been directly killed by the procedure.

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But almost no one believes that such organ donation procedures are immoral. Pro-life organizations have not mobilized against them or even signaled disapproval. And hundreds of thousands of people have signed up to be organ donors with full knowledge that their bodies might be killed in this way if their brains permanently cease functioning.

What this shows is that most people recognize that it's not always wrong to kill human beings. This is true even when those human beings are considered "innocent," as human beings used for organ donation are often categorized. This is a first step in undercutting the pro-life argument.

A second relevant set of cases involves **anencephalic infants**, or babies born with severely undeveloped brains. These babies usually do not live long, and the widely accepted medical practice is to let these infants die, providing palliative care only, even though they could be kept alive by a machine. This ends their lives, but it is not wrong.

the lives of even innocent human beings, if they lack what would make ending their lives wrong.

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And these cases share a core feature with the vast majority of U.S. abortions, **88 percent of which take place during the first 12 weeks** of pregnancy: the human beings in question do not have brains capable of supporting consciousness, awareness, or feelings. Since these common medical practices concerning organ donation and anencephaly are morally permissible, so are most abortions.

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Abortion opponents will respond that this conclusion about abortion does not follow, given differences among the cases.

Pro-life intellectuals argue that organ donors are **not really "human beings."** But surely they are human beings—they are living human organisms, with heartbeats. The pro-life premise that it's always wrong to kill human beings implies that organ donation practices are wrong, so this is a good reason to reject the assumption and its application to abortion.

About anencephalic infants, pro-life advocates recognize these babies as human beings and argue that **it would be wrong to harvest their organs to use for other children.** But either both

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Some would respond that organ donation and anencephalic newborns cases involve human beings who, tragically, have lost even the potential for valuable futures. Yet fetuses, they argue, have lives, or potential lives, before them, and so have rights to those lives. And they are "innocent" too.

But calling fetuses "innocent" assumes that they are persons: "innocence" implies the potential for guilt, and that's only true of persons. Nobody would refer to human eggs or tissue as "innocent," because nobody thinks these things are persons. And for someone to have a potential future seems to require that "someone" be a person: for any future to be someone's future, there must be a person whose future that belongs to. So are fetuses persons?

"Personhood" is a controversial concept, but the organ donation and anencephaly cases can help us understand it. First, we should all agree that it's usually wrong to end the lives of persons: persons have the right to life. But since organ donation practices and how anencephalic newborns are treated is not wrong, we can conclude that these human beings are not persons: if they were persons, ending their lives would be wrong. And these humans are not persons because, again, they lack brains capable of supporting any type of consciousness: they were persons in cases of organ donation and cannot be persons in cases of anencephaly. And this suggests that beginning fetuses are not persons either, since they

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So, in sum, the "abortion is murder" charge doesn't stick: it's not always wrong to kill human beings; at least early-term fetuses are not persons with the right to life; and "innocence" is a concept that just doesn't apply to fetuses. Ethical arguments—and ethics education—can support the pro-choice side after all, and the more people making these types of critiques, in different ways and for different audiences, the better.

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Why, though, should we think that abortion is generally morally acceptable? Why think attempts to ban abortion are unjust attempts to criminalize morally acceptable behavior? The simple failure to show that abortion is wrong might be enough for that, but we can offer positive arguments as well.

The ethical framework most medical ethicists use to determine whether a human being has moral rights, such as the right to life, involves the question of whether the individual has "interests." Interests are what make someone's life go well or poorly for them: respecting and promoting someone's interests typically promotes their well-being; ignoring or denigrating their interests typically harms them. Interests are the basis for concerns about "equality," which are about equal consideration of interests.

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Rights protect interests, and interests are not possible without a sufficiently developed brain. What determines how an individual should be treated is not the simple fact of whether they are biologically human organisms; rather, it's factors that depend on their having a brain that allows for any form of consciousness: minds matter, not heartbeats or human DNA. The basis of human rights is not human biology, as statements of **human rights** might misleadingly suggest, but having interests, and most fetuses—at the stages of pregnancy when most are aborted—do not have interests, given their undeveloped brains and nervous systems.

Pregnant women, of course, have interests and the resulting **rights to life, liberty, and control of their bodies**. Fetuses would have the right to women's bodies, labor, and time only if they are explicitly granted that right, and, of course, women who seek abortions have not given the fetus that right. While women's rights to autonomy may be sufficient to justify abortion, that argument is surely easier to make if fetuses are not persons, do not have basic moral rights, and so abortion is not murder.

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To be sure, fetuses in the third trimester (after 27 weeks) likely have interests, as research on **fetal pain** suggests. And even most **pro-choice ethicists** agree that third-trimester abortions raise pressing moral concerns, although these concerns are complicated when such abortions are sought due to newly discovered **fatal anomalies** or threats to the health of the prospective mother. But pro-life advocacy is not focused on the unique ethical issues concerning later abortions, which account for **less than 1 percent of all abortions**; their goal is prohibiting nearly all abortions, the overwhelming majority of which affect fetuses without interests.

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So, is abortion murder? Does it violate human rights? Not unless other widely-accepted medical procedures that end human life are also wrong. But they aren't, and neither is abortion. Ethics education—of many types, at many levels, for many different audiences—helps people better understand why this is so.

Enabling more people to more productively engage the many ethical arguments about abortion won't, by itself, solve any social or political problems: no single strategy would. But ethics education is an essential part of any successful comprehensive strategy to ensure abortion rights and access, and so pro-choice advocates should engage in it. More generally, our political culture needs genuinely fair and balanced, honest and respectful engagement of **arguments and truth-seeking**: more people practicing this with the complex topic of abortion would help set a better intellectual and moral tone that would enable us all to better engage the many other polarizing issues that confront our society.

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If the legal right to abortion is lost, however, pro-choice advocates will be forced to engage with the study of ethics in trying to rebuild their case for abortion rights. So they might as well start that now, while they still have the law on their side. That's not just smart strategy: ethics demands it.

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