

My body, still my choice: an objection to Hendricks on abortion

Kyle van Oosterum 

ABSTRACT

In 'My body, not my choice: against legalised abortion', Hendricks offers an intriguing argument that suggests the state can coerce pregnant women into continuing to sustain their fetuses. His argument consists partly in countering Boonin's defence of legalised abortion, followed by an argument from analogy. I argue in this response article that his argument from analogy fails and, correspondingly, it should still be a woman's legal choice to have an abortion. My key point concerns the burdensomeness of pregnancy which is morally relevant to the question of whether the state can coerce people to use their bodies to help another person.

In 'My body, not my choice: against legalised abortion', Hendricks offers an intriguing argument that suggests the state can coerce pregnant women into continuing to sustain their fetuses.¹ His argument consists partly in countering Boonin's defence of legalised abortion,² followed by an argument from analogy. Critical to Boonin's view is that personhood is insufficient for granting a right to use another person's body. The thought here is that just because a person has a right to life, it does not mean they have the right to use another person's body even if they need that body to live. Contra Boonin, Hendricks argues that it does not follow from this that a fetus (assuming it is a person) does not have a right to its mother's body. If this inference does not follow, then Boonin's defence of legalised abortion would fail. How does Hendricks arrive at this conclusion? He develops the following case to support his view:

Cabin: Sally is 9 months pregnant. Unfortunately—as occasionally happens—she doesn't know that she's pregnant. One day, while out hiking, a snowstorm unexpectedly hits, and she is forced to take shelter in a cabin. To make matters worse, she goes into labor while stuck in the cabin. The birth goes well, and her baby is healthy. Sally is stuck in her cabin for 7 days before she is finally dug out. Rescuers find her alive and well, but her infant is dead due to starvation—Sally did not feed her infant, despite having ample food for herself, and

producing ample breastmilk (there was no baby formula available in the cabin).

The intuition one should draw from this case is supposedly that Sally's actions were wrong: she should have used her breastmilk to feed the newborn and prevent its death. Therefore, Hendricks argues, the state would be right to coerce Sally into feeding her infant (perhaps via laws that punish this sort of conduct). He offers a variant case on *Cabin* where Sally instead has ample baby formula and lets her infant starve. He suggests that the state would be equally in the right to coerce Sally to feed her baby with the baby formula or breastmilk (as in the original *Cabin* case). Assuming then that it is okay for the state to coerce Sally in *Cabin*, that is, forcing her to use her body to feed her infant, he concludes that it 'should (very likely) also coerce pregnant women into continuing to sustain their fetuses'. The case of pregnancy is similarly one where a person (in this case, a fetus) should be allowed to use its mother's body to live. Therefore, Boonin's argument for the legality of abortion fails.

But does Hendricks' counterargument succeed? That depends on the strength of his analogy. Unfortunately, Hendricks' counterargument fails simply because there is an important *disanalogy* between 'feeding' and 'sustaining' a life through pregnancy. In his *Cabin* examples, the mother has ample breastmilk or ample formula and such feeding is not an inconvenience and is not significantly burdensome to the mother. To neglect and starve a child does seem impermissible and a good case can be made for its illegality.

However, in the case of pregnancy, sustaining life is always a burdensome endeavour for mothers: it changes their bodies irrevocably, can incur a risk of death, it may affect how they progress with important life goals (e.g. future career progress) as well as a host of personal freedoms. The important difference between these cases is that pregnancy places a significantly larger burden on the mother in a morally relevant way such that state coercion here would be deeply problematic. The state should not force its citizens to use their bodies to help others when such significant burdens to individuals are at play. Therefore, Hendricks' analogy does not work and it does not support his view that pregnant women should be coerced into continuing to sustain their fetuses. Ergo, this argument does not plausibly get us to the conclusion that abortion should be illegal.

Hendricks has nevertheless pointed out an interesting counterexample to Boonin's argument where it does seem like another person might sometimes have a right to use another's body. There are *other features* about this case that make it seem like a newborn can use another's body.

Perhaps it has something to do with the fact that a morally insignificant burden is being posed to the mother in the *Cabin* cases. However, once we attend to the difference in 'burdensomeness-to-the-mother' between managing a pregnancy and feeding, we obtain a ground for why the state should not be criminalising choices to do with the former activity. More generally, there seems to be a plausible moral limit at which we are not obligated to take on serious burdens for the sake of others. Sustaining a pregnancy seems like an important example of this phenomenon.¹ In any case, while Hendricks has shown the invalidity of Boonin's general argument he has not yet shown that abortion should be criminalised.

Of course, my point is very much sensitive to empirical facts about the burdensome nature of pregnancy. Hendricks might rebut my argument by imagining a scenario wherein pregnancy does not incur any of the burdens and risks I mentioned above. In such a world, where the burdensomeness between the *Cabin* cases and pregnancy are truly analogous, then Hendricks' argument might escape my criticism. Unfortunately, that is not the world we live in, which should make us reaffirm, contra to Hendricks, that it is and should still be a woman's legal choice to decide whether to have an abortion.

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ORCID iD

Kyle van Oosterum <http://orcid.org/0000-0002-6373-5368>

REFERENCES

- Hendricks P. My body, not my choice: against legalised abortion. *J Med Ethics* 2022;48(7):456–60.
- Boonin D. *Beyond roe: why abortion should be legal even if the fetus is a person*. Oxford University Press: Oxford, 2019.

¹I credit Lewis Williams with suggesting this point to me.

Correspondence to Kyle van Oosterum, Faculty of Philosophy, Oxford University, Oxford, UK; kyle.vanoosterum@philosophy.ox.ac.uk