



## Is the Fetus a Person?: A Comparison of Policies across the Fifty States

By Jean Reith Schroedel



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Without a doubt, the sharpest public debates over the value of fetal life have revolved around the conditions, if any, under which abortion should be legal. Yet the question of whether the fetus is or is not a person is central in two other policy domains: substance abuse by pregnant women and assaults on pregnant women, especially assaults that cause the death of a fetus. At first glance, all three issues seem similar?all ask the question of how the state should respond to actions that threaten or destroy fetal life. But the response of state and society to each has been very different: while the highly charged debate over abortion rights rages unabated, the other two issues engender no such social or political divisions. And while drug use and third-party fetal killings are universally condemned, "fetal abuse" is a term used only to describe harm that a pregnant woman brings to her own fetus, and not harm brought to it by a third party. Similarly, a great deal of media attention has been paid to such "fetal abuse," while the question of third-party harm has been all but ignored. *Is the Fetus a Person?* analyzes fetal personhood by examining all of the major areas of the law that could implicitly or explicitly award the fetus such status. Jean Reith Schroedel presents a comprehensive history of fetal protection ideas and policies in America, considering the moral and legal underpinnings of existing laws while paying particular attention to the influence of gender and power relations on their formation. As much a model for future research as a study of the status of the fetus, this book offers an extraordinary examination of one of the most divisive and complex issues of late-twentieth-century American life.

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### Editorial Review

From The New England Journal of Medicine

It is said that politics is perception, and Jean Reith Schroedel, a professor in the Department of Politics and Policy at Claremont Graduate University, has set out to explore the war of perception in the ongoing struggle over abortion and women's rights. Her provocative and well-researched book tests the rhetoric of the prolife movement, which focuses on the protection of the most vulnerable among us, and the rhetoric of the prochoice movement, which focuses on the protection of women's equality and autonomy. By examining the degree to which antiabortion forces also support other measures to enhance the well-being of fetuses and infants, Schroedel concludes that their motivations are better explained by a resistance to female autonomy. This perception is widely shared within the women's movement, but until now it has not had the benefit of systematic empirical research to support the claim. Although the methods are certainly imperfect and the conclusions still subject to challenge, Schroedel's research nonetheless provides crucially important evidence in support of the claim.

Schroedel compares three phenomena: antiabortion statutes, statutes that criminalize drug use by pregnant women, and those that criminalize third-party fetal killings. Her hypothesis is that states with policies that strongly discourage abortion ought to have policies that are equally strong in their condemnation and criminal treatment of third parties who cause fetal death (usually by domestic battering of pregnant women), if the underlying justification of the antiabortion policies is indeed to protect the fetus's right to life. In contrast, if third-party killings are largely ignored, whereas prenatal drug exposure renders pregnant women subject to prosecution or involuntary commitment, then the antiabortion policy is probably focused more on moral approbation of women's behavior than on the protection of the rights of the fetus. After devoting several chapters to a history of attitudes toward fetal life, legal treatment of abortion, and third-party fetal killing and prenatal drug exposure, Schroedel moves on to a state-by-state correlation of policies.

The author presents her key findings by testing three propositions. The first, and more important, assertion is that if the premise of antiabortion statutes is a concern for fetal rights, then states with antiabortion legislation should consistently treat the fetus as a person in other settings. A review of legislation in these states suggests that they do not. The states with strong antiabortion statutes criminalize third-party fetal killings only a little less than two thirds of the time, and the states with weak antiabortion statutes do so about a third of the time; in contrast, these two groups of states enact punitive measures against pregnant drug users 80 and 64 percent of the time, respectively. Thus, the treatment of the fetus as a person with moral and legal rights is inconsistent in states with strong antiabortion policies. These states are more likely to treat the fetus as a person when the threat to the fetus comes from the pregnant woman herself rather than from a third party, such as an abusive husband. This observation leads to the author's next proposition: the states with strong antiabortion statutes tend to be those in which women have a relatively low socioeconomic status. Her analysis supports this correlation.

Together, these two observations, along with Schroedel's evidence that antiabortion states often fail to have a variety of other policies that could promote the well-being of fetuses and infants, provide strong circumstantial evidence that the perceptions of the women's movement are correct: antiabortion politics is strongly motivated, whether consciously or unconsciously, by disapproval of women's choices and foibles rather than solely -- or even predominantly -- by concern for fetal life. In this respect, Schroedel's book joins other noteworthy works that have used long conversations with members of the antiabortion movement as a basis for deconstructing the motivations that underlie the passionate and well-organized opposition to

abortion.

Schroedel is appropriately modest in her claims for this approach. She acknowledges, without extensive exploration, the reality that policy making is not driven entirely by ideology. Instead, coalitions form and reform around specific events, making some bills easier to pass than others. Indeed, as someone who teaches and writes about congressional-executive relations, Schroedel is undoubtedly aware that compromise is a more potent force than consensus in American politics, leading to piecemeal approaches to policy issues. It would be interesting to use her methods in a country with a parliamentary system, in which more comprehensive and ideologically coherent approaches are possible because the executive and legislative branches share an ideological vision and party discipline makes it easier to pass sweeping programs of reform.

It would also be interesting to pose the author's question in a somewhat more explicit fashion. The title of her book, *Is the Fetus a Person?*, presupposes that personhood entitles the fetus to certain rights. Schroedel sets out to determine whether those rights are enforced in a sex-neutral way and concludes that they are not. But as philosopher Judith Jarvis Thomson has persuasively argued, granting the fetus personhood does not necessarily entitle it to a right to life that precludes a right to abortion. Instead, it instigates a discussion about the degree to which one person is obligated to make sacrifices for another. If a pregnancy is unexpected and unwanted, is a woman obligated to sacrifice her own psychological and bodily interests in order to permit the fetus to develop to term? If so, then to what degree are parents, fathers and mothers, obligated to make similar sacrifices for their children who have already been born? Must they donate blood or organs in order to allow their children to live? In fact, parents are not obligated to make such sacrifices, even if they are the only people with the necessary, life-saving tissue types and even if the donation would pose a minimal risk.

Many scholars have noted that there appears to be a higher degree of sacrifice forced on pregnant women than on the fathers and mothers of children already born, even when such children were expected, wanted, and deliberately conceived. This difference in notions of parental duty, many argue, is evidence that the underlying motivation is not so much concern about the well-being of the fetus or child as it is disapproval of pregnant women's choices. If the states imposed a higher duty on parents to sacrifice themselves for their children, a similar degree of sacrifice by pregnant women for their still nonsentient fetuses might be in order.

Schroedel's book develops important evidence for the claim that this battle will not be won or lost by our regard for fetal life, but rather by our regard for women's equality and the obligations of all people, men and women, to make sacrifices for others.

*R. Alta Charo, J.D.*

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From [Booklist](#)

Schroedel, a professor of politics and policy, offers a demanding but quite valuable analysis of how different states address the issue of whether a fetus has legal protected "personhood." At the core of her work are three situations in which the nature of the fetus raises legal questions: abortion, drug use by pregnant women, and battering of pregnant women. She examines the history of moral and legal discourse about the nature of the fetus and then analyzes statutes and case law now in force in the 50 states to determine how consistent specific states are in defining the fetus as a person or something less than a person. Where (in most states) Schroedel finds inconsistency, she considers the impact of public opinion on laws and court decisions. In a final chapter, Schroedel reviews recent developments, identifies a number of ways the pro-life movement has used fetal-rights campaigns to restrict access to abortions, and suggests specific areas where both sides of the highly polarized life-choice debate could find common ground. *Mary Carroll*

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#### Review

"Schroedel, a professor of politics and policy, offers a demanding but quite valuable analysis of how different states address the issues of whether the fetus has legal protected 'personhood.'"?Mary Carroll. Booklist. July 2000.

"A thoughtful legal and philosophical examination of the problem of fetal personhood, with implications for public policy and criminal law. . . . A well-researched and well-reasoned contribution to our continuing and contentious national conversation on fetal personhood and abortion laws."?Kirkus Reviews, August 2000.

"Neither the title nor the jacket design does justice to this book. . . Schroedel concludes. . . that fetal protection policies are really about controlling women. . . This book should be required reading for the US Supreme Court as it enters the fray this term in *Ferguson v. Charleston*. A timely, important, and highly recommended book."?Choice, March 2001

"Jean Reith Schroedel's provocative and well-researched book tests the rhetoric of the prolife movement, which focuses on the protection of the most vulnerable among us, and the rhetoric of the prochoice movement, which focuses on the protection of women's equality and autonomy. By examining the degree to which antiabortion forces also support other measures to enhance the well-being of fetuses and infants, Schroedel concludes that their motivations are better explained by a resistance to female autonomy. . . . Schroedel's book develops important evidence for the claim that this battle will not be won or lost by our regard for fetal life, but rather by our regard for women's equality and the obligations of all people, men and women, to make sacrifices for others."?R. Alta charo, J.D., University of Wisconsin. *The New England Journal of Medicine*. Vol. 343, No. 23

"States with the strongest antiabortion laws generally are among the states that spend less on needy children and are less likely to criminalize the battering or killing of fetuses in pregnant women by a third party, according to a provocative new study. The study, the first of its kind . . . says that states with strong antiabortion laws provide less funding per child for foster care, stipends for parents who adopt children with special needs, and payments for poor women with dependent children than do states with strong abortion rights laws. . . . 'To put it simply, pro-life states make it difficult for women to have abortions, but they do not help these women provide for the children once born,' Schroedel said."?William Claiborne, *The Washington Post*. October 9, 1999.

"The background on the legislative problem as well as the amount and quality of data by itself make Schroedel's book an excellent primer for those interested in working on abortion legislation and policy in the years to come. . . Schroedel's book should be considered basic reading for anyone interested in the ethics and politics of abortion."?Ida Roy, University of Pennsylvania. *Theoretical Medicine* Vol. 22, 2001

"One of the favorite tactics of pro-lifers is to accuse abortion rights supporters of being anti-child, hyperindividualistic, unwilling to protect the vulnerable and generally in favor of 'death.' The truth is almost the opposite. Jean Reith Schroedel's book supports the pro-choice quip that anti-choicers' concern for children begins with conception and ends with birth, finding 'virtually no support' for the antiabortion claim that opposition to abortion is all about caring for kids. Empirical research is a wonderful thing."?Katha Pollitt

"This unique book takes a broad and inclusive sweep, covering abortion laws, drug abuse/narcotic exposure laws, fetal battering, tort law on fetal harm, civil detention of pregnant women, fetal tissue research, and more. Jean Schroedel takes a creative leap to show how these policies and practices are all related and should

be examined through the same lens, as responses to the same real-world problem (the well-being of vulnerable people). An excellent book."?Deborah Stone, author of Policy Paradox: The Art of Political Decision Making

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