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Beyond the one-child policy: a response to Conly

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Abstract

The problems with Conly's proposed 'one-child' policy are a good example of where the attempt to limit paternalism becomes self-defeating, and actually ends up potentially aiding the case against controlling population rather than promoting it, as well as negatively influencing the debate about paternalism more generally. There are many better potential ways of developing public policy towards population control than a 'one-child' policy that synchronise with richer ways to understand individual interests.

Keywords:

One child policy; coercive paternalism; reproductive ethics; reproductive autonomy; liberal individualism.

One child, many objections

Should a 'one-child policy' be advocated as a global norm to combat population growth and environmental threats, as suggested by Conly (2016, 2016a)? Conly suggests that public policy should be directed against the inalienable right to have more than one child. "The limitation to one child", she suggests, "means that *two people who procreate should limit themselves to one child between them*" (Conly, 2016:2, my italics). The objective of this response is not to challenge,

or support, the fundamental case for population control. It is simply to identify the philosophical underpinnings and associated problems for this particular proposed form of the solution, and provide alternatives.

The first problem with Conly's formulation is that *it is not clear who has or should lose this presumed right*. Despite what at first sight appears to be an entirely biological definition, at varying points in the article she refers to the entity with rights as a 'couple' (Conly, 2016a:27), and a 'family' (Conly, 2016a:29) and sometimes just 'you' (Conly, 2016a:29). A 'couple', or a 'family' is not, in many cultures, a permanent or even particularly persistent state. Serial monogomy, or something like it, is quite common in many societies, and has been for millennia. Fluid relationships between parents, which are now common in many societies, certainly increase the social difficulties of a one-child policy. Already in US law, for example, the legal definition of family is being extended to include three or more parents (Lewis, 2016).

But apart from observed historical difficulties in execution, and questions over whether the policy should be one child per couple or two, as advocated by Jing (2013), in fact, *the very notion of two people creating one child biologically is already outdated*, which over time will progressively invalidate Conly's 'one child between them' formulation. There is already legal recognition of 'three person parenting' in the UK, following the passing of an amendment to the 2008 Human Fertilisation and Embryology Act which permits IVF techniques aimed at preventing serious inherited mitochondrial disease (Tingley, 2014). This may be the beginning of progressively more genetic intervention, all of which will increase the number of people who are genetically involved, in however limited a fashion, with the creation of a child, a process that has been described as 'inevitable' even by a critic of the resources devoted to it (Baylis, 2013:534). The ultimate destination of such medical practice can easily be conceived as an N-parent child, where N could be some very large number. Aside from any ethical objections to multiple biological parenting, what rational formula could be devised relating the number of children produced to the number of parents? If person X contributed 1% of the DNA of a child, would this give them 49% remaining to 'spend'? It is hard to imagine that following this approach could lead to any politically acceptable public policy, and still harder to imagine the social utility of such a process.

Finally, the social consequences a one-child policy poses for even a relatively traditional society as a whole have been well-documented, with China as a practical example (Hesketh et al, 2005, Whyte et al, 2015). The policy has led to gender imbalance amongst many other problems such as evasion, bribery, contorted and progressively more complex structures of exceptions (e.g. allowing a second child if both parents are themselves single children), and a dependence on fines for local income (Jing, 2013). In the forthright words of prominent critics, 'It is a policy that has forcefully altered family and kinship for many Chinese, has contributed to an unbalanced sex ratio at birth, and has produced effects that will be felt for generations, with its burden falling disproportionately on those many couples who were forced to have one child' (Feng et al, 2012:123). Similar, but attenuated, issues will likely continue with a two-child policy. The problems with administering any such policy amid fluid family structures would be still greater. Talking, as Conly does, of tax breaks for one-child families and indeed any approach utilising tax policy for example confines policy to those earning, which misses a significant chunk of global population, whilst changes to benefits may impact adversely on children who were not individually responsible for their situation.

Perhaps the policy could be softened to one child per individual, or even one per *woman*, which is at least much more easily monitored and controlled, and would take the sting out of several of the adverse social consequences noted in China. But this would not be a 'one child policy' as conventionally understood, it has nothing to do with couples, serial, permanent or otherwise, it does not make anything like the same contribution to curbing population, and is still open to the genetic criticism. It is also blatantly sexist in the latter formulation, and would obviously produce a panoply of personal and social problems itself, for example in regard to serial monogomy and similar family structures.

The underlying philosophy

Given the evident difficulties with the one-child policy, the question arises, is there perhaps an underlying reason why Conly has chosen to formulate policy in this particular way? More specifically, is there a philosophical underpinning for her work that circumscribes her formulation of a solution to the population problem? To answer this, it is necessary to turn to her earlier work where she develops a more general argument against individual autonomy and in favour of what she describes as coercive paternalism, the view that we may and are

sometimes morally obligated to force people not to do some things and to do others (Conly, 2012:18). By which she means, force people to act *in their own interests*. Throughout her thinking (and still more those of her critics who advocate much weaker forms of population control with less interference with personal autonomy, such as Rieder (2016)), runs the assumption that individual objectives and interests – what she calls ‘better living’ (Conly, 2012: 17) - can be identified, analysed, and supported through government actions. She goes further, identifying an entire sphere of activity, what she calls ‘personal life’ (Conly, 2012:17) where she believes coercive paternalism should intervene. She does recognise that many government regulations are aimed at alleviating distress and improving the lives of others, not the perpetrators, but she excludes these decisions from her definition of paternalism, which rests, it seems, on a very clear distinction between ‘your’ interests and ‘mine’.

Conly’s position in favour of control over this identified zone where, in her view, individual freedom is ethically acceptable is based on the interpretation by authorities of individual long-term goals. She makes a presumption that these individual goals are sufficiently tolerable and not in conflict with one another – at least in any significant and permanent sense. For Conly, the only problem lies in informational asymmetry which results in failures to select the most cost-effective and appropriate means to achieve them: in particular, as she recognises (Conly, 2012:22) and others have argued at length, failures caused by impatience and an inability to calculate a ‘rational’ rate of discounting the future (Loewenstein, 2010:xi). This can be alleviated, at least, by government interference and control. The stress on individuals and goals within a liberal democracy is what results in Conly’s formulation of a one-child policy: the policy must in her view ultimately address and compromise with individual autonomy, rights, and decisions.

The admitted aim of Conly’s coercive paternalism is therefore to enable individuals to become better decision-makers in their *own interests*, not to reformulate individual interests in a wider, more communitarian sense. There are two types of objection to this straightforward position, which as noted above contains so many liberal assumptions about individuality.

First, there are already plenty of examples where decision-making does not devolve onto individuals. One of the most obvious is a hierarchical organisation such as

a military unit: risks are allocated to individuals on the basis of such conditions as temporary geographic location, utility to the unit as a whole, and speed of reaction: individuals are not given choices about which risks to undertake. The effectiveness of the unit as a whole would be crippled if individuals were allowed this kind of autonomy. Similar examples abound from commerce, politics and social life generally. Yet in a world facing what Conly herself regards as an immense environmental crisis generated in significant part by population pressure, she cannot bring herself to detach from an ideological framework that continues to rely on the liberal idea of the individual and amorphous 'couples' generated by individuals as the appropriate unit for the location of population control.

Second, there are plenty of alternative ideas of individuality to which it would be possible to turn as an alternative philosophical underpinning and which would not require devolution of the population control regulatory process – whether ethically or practically – onto biological parents at all. This scholarship recognises that the idea of vesting rights in individuals is an historical phenomenon associated with the development of capitalism, not some innate aspect of philosophical discussion. Writers such as Oshana (2006) – referred to in passing by Conly – Nedelsky (2011), and many others, have developed a nuanced view of individuality as relational, viewing persons as socially embedded and recognising that agents' identities, and the decisions that they make, are formed within the context of social relationships and shaped by a complex of intersecting social determinants, such as race, class, gender, and ethnicity (Mackenzie & Stoljar, 2000:4). A simple example relating to Conly's own work would be the point that decisions about smoking and obesity are well-known to be linked to social class and identity (Barbeau et al, 2004), a fact that Conly herself relegates to a footnote with the surely awkward, and certainly contentious, deduction from the fact that men smoke more than do women, that there is no evidence that one group is generally better able to avoid cognitive bias than another (Conly, 2012: 38fn). At the very least this argument needs much more detailed support. If it is incorrect, as relational theorists would generally agree, it follows that individuals are not always best placed to express their own interests, as she expressly says (Conly, 2012:36). These communitarian views, which owe much to feminist scholarship but which also echo Marx, are strongly in accord with the type of practical development in law noted above (Lewis, 2016) and have obvious significance for policy-making, especially in respect to the kinds of poor decision-making that Conly wants to stress are a strong argument for coercive paternalism.

With a relational view of individuality substituted for the liberal view that underlies Conly's work, coercive paternalism can be embraced more fully and more plausible policy options can be contemplated. Specifically, in relation to having children, an understanding of relational individuality can be extended to the recognition that individuals may be prevented by what some Marxists would call 'false consciousness' (Eyerman, 1981) and which others might describe less scientifically as selfishness, short-sightedness or a form of subconscious biological determinism, to overvalue (and over-invest in) their own biological children at the expense of children more generally. This set of views may be tolerated in a world in which population control is not perceived as necessary. But just as similar misguided individualistic viewpoints must be jettisoned in order for organisations to work – for example the longstanding view that women should not work in factories was conveniently set aside during World War I – so effective population control may actually rely on this change in underlying philosophical perceptions about individuality and individual interests.

None of this is meant to suggest that a wider perception of the way in which having children infringes on others' rights (or at least their interests, of which having more children can be seen as a related or extended problem) is not capable of radically altering the ethical perception of reproduction. Many years ago, Peter Singer put the powerful argument that if individuals in rich, advanced Western countries are able to assist the less fortunate in developing countries, there is a clear and present moral imperative on them to do so. This obligation stands regardless of the diminution in their own welfare – and implicitly, those of their families, including their children – not least because there is no morally significant difference between killing and allowing to die, irrespective of distance, either in time or space. There is no moral justification, Singer suggested, in separating out any particular individual to help (Singer, 1972).

By focusing exclusively on coercive paternalism in relation to individual interests in the liberal, individualist sense, Conly implies the opposite of Singer's position: ie that the choices we make are about 'our' children, for whom we bear some special responsibility *at the expense of others*. Conly's liberal individualism is therefore likely to militate against any convergence between her position and that proposed by Singer, and arguably to reduce the power of her argument to effect social change. The message here is that by changing the philosophical underpinning the door opens to different policy options.

The Big Objection

Conly rightly recognises the criticisms levelled against coercive paternalism by liberals and other individualists that intervention in personal lives, such as the control of population, are the beginning of a slippery slope towards some kind of deeply objectionable form of government with widespread misuse of authority and much greater injustice. Once again, my intention here is not to add to the case in support of coercive paternalism in general: she herself advances many, I contend, convincing arguments against this line of criticism (Conly, 2012). Nor is it to engage in the wider debate of the extent to which population control is in conflict with liberal values of freedom, except to observe in passing that it shares this potential conflict with many other regulatory and legislative controls over individual freedom of action.

It is however to suggest much more narrowly that critics of coercive paternalism are actually strengthened in their argument by the way Conly advocates legislation and regulation should be aimed at individuals and couples. Conly's approach neither encompasses a wide societal agreement on the need to control population, nor does it entail a perception of a collective moral obligation to act. Conly does identify the criticism that individuals become 'inauthentic' if they adopt social standards without a well-considered estimation of their value (Conly, 2012:80). But just as Conly argues that libertarian paternalism is less likely to succeed than coercive paternalism, so I would stretch the argument further to contend that coercive paternalism itself needs to be applied across society in a democratic way, involving concepts such as fairness and justice in the design of policy, to give it a better chance of success and to repel the criticism of individual inauthenticity. Authentic citizens are those who actively participate in the democratic process, which definitely includes big societal choices with numerous variables such as population control. As Conly herself says, the point is not to avoid paternalistic legislation, but to legislate properly (Conly, 2012:101).

Alternative Solutions

If society is to move towards a coherent population policy, it will be necessary to focus much more on desirable outcomes for children and much less on the liberal concept of the individual and their rights that permeates Conly's approach. There are many ways that the politics and economics of population control could be administered whilst still retaining the circumscription of behaviour and focus on legislation and regulation explicit in coercive paternalism.

No particular political ideology will in practice necessarily be crowded out from participation in the public policy process on such an important topic to the extent that supporters of opposing political standpoints might agree on the need for a solution to the problem, but disagree on the formulation of appropriate policy. So, for example, whereas Manning (2016:23) implicitly criticises any market measures, market apologists might advocate precisely a system of bids for reproductive licences, akin for example to the Singapore system of Certificates of Entitlement for automobile ownership. Citizens pay what in other countries would be regarded as exorbitant sums for licences to own and drive cars, in order to control what would otherwise swiftly become total gridlock on the city's roads (Land Transport Authority of Singapore, 2017). Obviously such a system would require careful working out and colossal administration, and would no doubt generate loopholes, evasion and other immense problems and complexities of its own, as money is clearly not the only prerequisite for a successful life. But such a type of solution is neither impossible nor unimaginable in a world that has embraced market solutions for problems that even a generation ago would have seemed inconceivable. So far, reproductive rights have been exercised independently of capitalist exchange, but their incorporation might even – paradoxically for free marketeers – spur greater debate about the equitable distribution of financial resources within societies. Those who oppose market solutions would likewise advocate administrative solutions to the issue of population control, probably favouring some system of rules that attempted to create as 'fair' a structure as possible across all socio-economic levels with the maximum possible set of desirable opportunities and outcomes for the children of the future, and the minimum amount of invasive punishment for breaking the rules. Similar policy rules after all apply now to immigration worldwide, which would have been unthinkable a century ago when travellers and immigrants formed an extremely small cohort amongst all resident populations. Critics would of course likewise point to evasion, as with rich Chinese giving birth in a foreign country to evade the one-child policy (Jing, 2013).

What if the system eventually adopted were to resemble how most societies worldwide have solved the distribution of health and education resources? The outcome would be a combination of the two systems, with both private licences and a state scheme in operation, the two together fitting into a general plan for population control agreed democratically, subject to regularly reviewed

sanctions and incentives, and all subject to periodic review. Perhaps a suitably modified licensing system – public buses, school buses and emergency vehicles are exempted from the Singapore COE – might well form the direction in which public policy eventually moves.

No one of these policy frameworks therefore can be decided upon in advance, especially in a democratic context. Nor is it to argue that implementation would be easy or swift, even in an advanced industrial society, let alone in a developing country context. Most importantly, *any* of these solutions would be highly likely to have a better social outcome, rather than trying to administer a system which bases the ‘right’ to have children entirely on the individual and a restriction in their own alleged liberty.

Conclusion

Conly puts forward no satisfactory reason why the supremely social issue of population control should be determined by a decision of an individual or a couple, whilst her arguments rest on a particular concept of the individual and their ability to identify their own interests. Given developments in reproductive technology, as well as social change, if any control at all is to exist it may eventually be inevitable for society as a whole to take charge of the process and produce a plan for sustainable population growth. This would evidently have to take cognisance of and be integrated with issues such as immigration, social integration, the age distribution of the population present and future, and other issues. It would be an extremely complicated plan, and no doubt there would be exceptions, problems, abuse and offences against the resultant laws, as there have been against every law ever introduced. But it is a more rational and surely a more likely eventual outcome than some formula based on an arithmetic relationship between N parents and their rights or otherwise to produce a child. In sum, the one-child (or two-child) policy is a dead-end. Society needs a better approach and a more accurate, and nuanced, concept of individuality to underlie it.

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