

Public health ethics and abortion: A response to Simkulet

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1 | MORTALITY AND MORBIDITY

Recently, we argued that if fetuses are granted the moral status of persons, then abortion is a public health crisis, justifying an abortion ban.¹ William Simkulet² has responded to our argument, raising a number of criticisms. To begin with, he claims that our estimate of the harm caused by abortion focuses on mortality, and ignores the non-lethal harm that COVID-19 causes. Unfortunately, he confuses morbidity and mortality numerous times,³ and does not seem to notice that we state morbidity is an important consideration as well as mortality. Yes, we grant that our comparison of COVID-19 with abortion compares mortality, not morbidity, but it is more difficult to quantify the harm of morbidity. In terms of years of life saved, preventing an abortion prevents far more harm than preventing a case of COVID-19. In terms of non-lethal harm, preventing a case of COVID-19 will prevent more harm than preventing an abortion—there is not usually any non-lethal harm associated with abortion.⁴ Our point is that they are both very serious public health crises, and it does not matter to our argument which one is judged more harmful overall.

Simkulet also argues that our years of life saved harm calculations are contra to the prolife view that the immorality of abortion is based on the fetus's personhood. However, our entire argument is predicated on public health utility, not prolife views—and on this basis, years of life saved is a major consideration. So, we do not believe these objections succeed.

2 | DELIBERATE AND INDELIBERATE HARMS

One of our key claims is the importance of Mill's harm principle in public health ethics, which states that “the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others.”⁵ It is a justification for the state restricting our liberty of action, if harm to others will ensue.

In this context, Simkulet raises concerns about what he describes as our distinction between deliberate and indeliberate harm. He and others have described the problem of spontaneous abortion as a significant health crisis that prolife advocates seem uninterested in acknowledging.⁶ We leverage this claim, arguing that if spontaneous abortion is a public health crisis, then so is induced abortion. However, we distinguish between the two issues by stating that “no-one is inflicting deliberate harm on miscarried fetuses, unlike induced abortion.”⁷

Simkulet rightly points out that many public health crises such as the COVID-19 pandemic do not involve deliberate harms, and claims this undermines our reasoning. Perhaps we should have been clearer here, but we did not (and do not) claim that indeliberate harms fall outside the scope of Mill's harm principle. We cited passive smoking bans and seat belt laws as examples of legislation justified by indeliberate harms. Rather, our point was that if the harm principle justifies restricting individual rights to prevent indeliberate harms, then it provides even greater

¹Blackshaw, B., & Rodger, D. (2021). If fetuses are persons, abortion is a public health crisis. *Bioethics*, 35(5), 465–472.

²Simkulet, W. (2021). Public health, induced abortion, and spontaneous abortion. *Bioethics*. Advance online publication. <https://doi.org/10.1111/bioe.12944>

³For example, he refers to “maternal morbidity” and cites figures on maternal mortality.

⁴In rare cases, individuals have been known to be born alive following an abortion attempt and some of those that do not die shortly after birth may have abortion-related morbidity.

⁵Mill, J. (2011). *On liberty* (Cambridge Library Collection—Philosophy). Cambridge University Press, p. 22. <https://doi.org/10.1017/CBO9781139149785>

⁶Murphy, T. F. (1985). The moral significance of spontaneous abortion. *Journal of Medical Ethics*, 11, 79–83; Ord, T. (2008). The scourge: Moral implications of natural embryo loss. *The American Journal of Bioethics*, 8(7), 12–19; Simkulet, W. (2017). Cursed lamp: The problem of spontaneous abortion. *Journal of Medical Ethics*, 43(11), 784–791; Berg, A. (2017). Abortion and miscarriage. *Philosophical Studies*, 174(5), 1217–1226.

⁷Blackshaw & Rodger, op. cit. note 1.

justification for the restriction of individual rights to prevent deliberate harms (such as induced abortion).

Spontaneous abortion, however, is very different to induced abortion and pandemics. Contra Simkulet's claim that "more lives are lost from spontaneous abortion than all other causes combined,"⁸ spontaneous abortion is *not* a cause of death, but rather a term for natural death of the fetus prior to 20 weeks' gestation.⁹ As we explain elsewhere,¹⁰ most causes of spontaneous abortion are not preventable, and so Mill's harm principle, which concerns restricting liberty of action to prevent harm to others, seems inapplicable in these cases. It would make no sense to restrict individual rights when doing so does nothing to prevent relevant harms.

Of course, there is one way to radically reduce the number of spontaneous abortions, which Simkulet suggests—by compulsory vasectomies. There is, however, a crucial difficulty with this suggestion. Most accounts of harm are *person-affecting*—they regard an act as harmful only if it makes things worse for a person. To make that judgement requires comparing their circumstances, with and without the act occurring. Conception is unique in that it is responsible for a person's existence—if conception does not occur, the person does not exist. We cannot compare a person's non-existence with their existence, and so preventing a person's existence cannot be said to prevent harm.¹¹ Consequently, Mill's harm principle again does not apply, and so provides no justification for Simkulet's compulsory vasectomy proposal.

3 | MATERNAL MORTALITY

Simkulet rightly claims that pregnancy demands a great deal from women, and argues that a fetus causes indeliberate harm to its mother. In his view, therefore, maternal mortality and unwanted pregnancy are also public health crises. There are two difficulties with these claims. First, Simkulet himself notes that maternal mortality is preventable by improving access to better quality healthcare, and this is clearly preferable to killing fetuses (given that we are assuming they are persons). Second, it is highly disproportionate to harm a fetus by killing it because of the harm it may cause to a woman who does not wish to gestate it to birth. There may be rare occasions where the mother's life is threatened by her pregnancy, but legislation prohibiting abortion in general can allow for rare exceptions such as this.

Simkulet also raises so-called "disconnect" abortions—abortions that do not directly kill the fetus, but remove it and allow it to die—as cases of indeliberate harm. We reject that assessment, but as we agree that indeliberate harm is within the scope of the harm

principle, public health ethics also justifies restricting "disconnect" abortions.

4 | RAPE

Rape is always a difficult topic in abortion ethics—it is clearly a highly harmful act, and the harm is likely to be compounded if a pregnancy ensues. However, Simkulet argues that our argument from public health ethics does not allow an "arbitrary, uncommon feature" such as conception by rape to be made an exception.¹² As it happens, we do not believe an exception can be justified on the prolife view that the fetus is a person,¹³ but here we are approaching the issue from a public health perspective. The overall goal (given our assumption that fetuses are persons) is to reduce the abortion rate, and if allowing an exception for rape is conducive to this goal, then it might be justifiable. A non-arbitrary feature of pregnancies from rape is that there is (rightly) particular widespread public sympathy and deep concern for women in these situations, and consequently it might be extremely difficult to enact restrictions that do not include such an exception.

5 | MAKING INDUCED ABORTION SCARCE

Finally, Simkulet argues that "something is a public health crisis only if it is common,"¹⁴ and sees this as a flaw in our argument. He is certainly correct that on a public health basis, if induced abortion were scarce, then it would no longer qualify as a public health issue that requires abrogating individual rights. How scarce would induced abortion need to be? Simkulet himself suggests that the current maternal mortality figures of 295,000 women each year is still a public health crisis, and so the target for alleviating a public health crisis must be significantly below this. Reducing induced abortion numbers from an annual 73 million to a figure less than 295,000 is an almost unimaginable goal for prolife advocates. This would be seen as a huge achievement, and therefore this does not seem to be a significant flaw in our argument.

6 | CONCLUSION

Simkulet has helped us to clarify that we do not see a distinction between deliberate and indeliberate harms in public health ethics. However, this undermines much of his criticism of our argument. We have also explained that Mill's harm principle is largely inapplicable to spontaneous abortions. This does not entail that spontaneous abortion is unimportant and should not be addressed—

⁸Simkulet, op. cit. note 2.

⁹For a careful examination of this point, see: Bohn, J. A. Miscarriage can kill... But it usually does not: Evaluating inconsistency arguments. *The New Bioethics*, 27(3), 245–265.

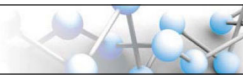
¹⁰Blackshaw, B. P., & Rodger, D. (2019). The problem of spontaneous abortion: Is the pro-life position morally monstrous? *The New Bioethics*, 25(2), 103–120.

¹¹This is more formally known as the non-identity problem. See Parfit, D. (1987). *Reasons and persons*. Oxford University Press, pp. 351–378.

¹²Simkulet, op. cit. note 2.

¹³Blackshaw, B. P. Can prolife theorists justify an exception for rape? *Bioethics*. Advanced online publication. <https://doi.org/10.1111/bioe.12953>

¹⁴Simkulet, op. cit. note 2.



after all, most diseases are not the result of the actions of others. If fetuses are persons, it is a serious public health concern, and deserves attention and resources.¹⁵ However, in public health ethics, abrogating the rights of others is only justified if it curbs significantly harmful actions such as induced abortion. Our argument still succeeds.

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CONFLICT OF INTEREST

The authors declare no conflict of interest.

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¹⁵Bohn points out there is already considerable research into the causes and prevention of miscarriage. Bohn, op. cit. note 9.