

# Abortion and Miscarriage<sup>1</sup>

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*Opponents of abortion sometimes hold that it is impermissible because fetuses are persons from the moment of conception. But miscarriage, which ends up to 89% of pregnancies, is much deadlier than abortion. That means that if opponents of abortion are right, then miscarriage is the biggest public-health crisis of our time. Yet they pay hardly any attention to miscarriage, especially very early miscarriage. Attempts to resolve this inconsistency by adverting to the distinction between killing and letting die or to the difficulty of preventing miscarriage fail, leaving a dilemma. Opponents of abortion should either advocate a substantial shift in our political and medical priorities or else give up the view that fetuses are persons from the moment of conception.*

Public debates about abortion often get stuck on disagreement about the moral status of fetuses: whether they are persons from the moment of conception. Many opponents of abortion claim that fetuses are persons; others insist that they are not. But those who think that fetuses are persons from the moment of conception (call them PAC, or Personhood-At-Conception, opponents of abortion) are in danger of a troubling inconsistency in their views on abortion. If current statistics are correct, miscarriage is staggeringly common, probably deadlier than any familiar disease. And yet PAC opponents of abortion do not appear to give miscarriage the weight it clearly deserves on their views. This leads to a dilemma. Either PAC opponents of abortion must radically change their political and medical priorities, or else they must accept that they do not accord fetuses the status of persons from the moment of conception.<sup>2</sup>

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<sup>1</sup> Thanks to Craig Agule, Richard Arneson, Matt Braich, David Brink, Theron Pummer, and an anonymous reviewer at *Philosophical Studies* for helpful comments on earlier versions of this paper.

<sup>2</sup> After drafting this essay, I learned of a related article in which Ord argues that the prevalence of miscarriage commits those who believe that fetuses have the full moral status of persons to extreme moral conclusions about the need to combat the miscarriage pandemic (Ord 2008). I recommend Ord's article, but we formulated our views

## 1. Miscarriage

Miscarriage, also referred to as pregnancy loss, spontaneous abortion, or stillbirth, is extremely common.<sup>3</sup> Between 22 and 89 percent of pregnancies are believed to end in miscarriage.<sup>4</sup> By any measure, the vast majority of miscarriages, perhaps two out of three, occur before a woman is aware she is pregnant (Simpson 2011, p. 112).

Think for a moment about the extraordinary implications of this fact. According to the CDC, heart disease kills one in four Americans (“Deaths and Mortality” 2015; “Heart Disease Facts” 2015). Cancer kills nearly as many. Strokes kill about one in twenty. Miscarriage is almost certainly deadlier than any of these—depending on which statistics about miscarriage are correct, it may be deadlier than all of these *combined*. And keep in mind that while at least 22% of all *pregnancies* end in miscarriage, about 25% of people *who have been born* die of heart disease. If we counted miscarried fetuses in our total population, the percentages of people who die of stroke, cancer, heart disease, and so on would fall dramatically. If fetuses are persons with equal status to all others, then miscarriage is very likely to be the biggest public-health crisis of our time.

But our society, including PAC opponents of abortion, does not treat miscarriage this way. Think about the campaigns to warn people of the risks of smoking. Or the foundations that raise awareness of breast cancer. Or even the pharmaceutical funding for male impotence. What miscarriage campaigns have received this level of public awareness?<sup>5</sup> We don’t see public service announcements; politicians don’t mention miscarriage in their stump speeches; no one holds rallies at the Capitol to prevent miscarriage. Even if women receive

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independently, and my essay focuses more on the resulting moral and political dilemma facing those who believe that fetuses are persons from the moment of conception. In arriving at similar conclusions, we emphasize different consequences of the prevalence of miscarriage; he does not, for example, discuss the potential relevance of a distinction between doing and allowing.

<sup>3</sup> Technically, these terms sometimes refer to slightly different things—“stillbirth” is reserved for late-term pregnancy losses, and “miscarriage” sometimes means earlier pregnancy losses (perhaps those before the 20<sup>th</sup> week of pregnancy) (“Miscarriage” 2014). To simplify, I refer to all pregnancy losses as miscarriages throughout.

<sup>4</sup> Nepomnaschy et al. (2006) report the prevalence of miscarriage as between 31 and 89%; the 22% figure comes from Weintraub and Sheiner (2011). Others give different estimates (about 70% in Macklon, Geraedts, and Fauser (2002); 40-50% in Berghella and Achenbach (2012); 30% in Simpson (2011)). Whatever the precise number, it is clearly very large.

<sup>5</sup> In discussing online communities dealing with miscarriage, Hardy and Kukla note that the women who are members of these communities “often come to the boards specifically because they experience themselves as abandoned by the healthcare system...” (2015, p. 111). That these women feel as though their doctors aren’t taking them seriously suggests that their awareness of the issues surrounding miscarriage has not spread to their doctors, let alone to the wider public.

information from their doctors on how to prevent miscarriage, this comes too late in the majority of cases. Most of us simply do not treat miscarriage like we treat the health problems of those who have already been born.<sup>6</sup>

Granted, we might think that not all miscarriages are bad in the same ways. Late miscarriage, like late abortion, seems to be bad in a different way than early miscarriage is. This is sometimes thought to affect the permissibility of abortion. The documentary *After Tiller* (2013) profiles the only four doctors left in the United States (as of 2013) who openly perform third-trimester abortions. These doctors, who clearly think that abortion is at least sometimes permissible, nevertheless struggle with the moral issues surrounding abortion, sometimes refusing to perform an abortion when a pregnancy is sufficiently advanced and they do not believe there are enough countervailing reasons to perform the abortion. We might think that they have a point. We may accept that late-stage fetuses have the features that make us persons and therefore accept that late miscarriages are equivalent to the deaths of born persons. But this will be true of relatively few miscarriages, since so many miscarriages occur before a pregnancy is clinically detectable (Simpson 2011, p. 112).

None of this is to deny that miscarriage, whether it happens early or late in pregnancy, is frequently a terrible tragedy. Family and friends may grieve intensely for the child who would have been.<sup>7</sup> In some ways, miscarriage may be *worse* than the death of someone who has been born—we may mourn the lost potential of the fetus and worry about whether future pregnancies will be healthy.<sup>8</sup> But most of us do not treat miscarriage, particularly early miscarriage, as we would a condition that kills 22-89% of born persons. Early miscarriage is not perceived to be the equivalent of the death of someone who has been born. If it were equivalent, we would treat the prevalence of miscarriage as a public-health catastrophe. And we just don't.

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<sup>6</sup> Philosophers have recently paid some attention to miscarriage; see the 2015 *Journal of Social Philosophy* special issue on this topic. Still, even philosophers spend much less time talking about miscarriage than about either abortion or diseases affecting born persons.

<sup>7</sup> Though perhaps not always—Hardy and Kukla (2015), as well as Stoyles (2015), note the variety of emotional reactions women report on finding out that they've miscarried.

<sup>8</sup> Porter argues that the grief some women experience is evidence that fetuses have at least some moral status, because grief requires a moral patient (2015, p. 64). She points out that it is sometimes wrong to kill things with at least some moral status, even when they lack a right to life—for example, it is wrong to kill the critically endangered “tree lobster” (Porter 2015, p. 63). So even if a fetus does not have a right to life, abortion may still be impermissible. But the case of the tree lobster shows us that we need a special reason for thinking that it is wrong to kill something without a right to life—in the case of the tree lobster, this might be concerns about the extinction of a valuable and unique species. To show that fetuses do not have a right to life and that abortion is still impermissible, we need some analogous special reason.

## 2. A dilemma

Many people think fetuses are persons from the moment of conception. One YouGov poll found that 66% of Americans believe that fetuses in the womb are people and that 52% believe that life begins at conception (Moore 2015). Although public conceptions of personhood may not be philosophically rigorous, it's clear that fetal personhood at conception is not a fringe belief. And opponents of abortion frequently make use of this claim about fetal personhood, arguing that we should give persons in the womb the same consideration as persons outside of it. But when PAC opponents of abortion couple this belief with the facts about the prevalence of miscarriage, they are faced with a dilemma.

On one hand, PAC opponents of abortion could maintain this belief. This means that they must start treating miscarriage as if it is equivalent to the death of born persons. This should lead them to agitate for a massive shift in society's medical and political priorities. Think about how our society has dealt with acute public-health crises: Ebola, SARS, even flu season. Or think about the funding for the high-profile health issues which chronically plague our society: cancer, heart disease, dementia. PAC opponents of abortion should advocate a similarly huge influx of money into medical research on the causes of and ways to prevent miscarriage. But there's only so much money for medical research to go around. This means that PAC opponents of abortion should find themselves advocating for a substantial shift in funding *away* from heart disease, cancer, and the flu toward miscarriage, since almost certainly none of these conditions kill as many people as miscarriages do. They may find it regrettable that they must advocate for this shift in priorities, but given their belief that all fetuses are persons, this is obviously the right thing to do. Think about how many persons preventing miscarriage would save.

PAC opponents of abortion should also work to shift society's political and social priorities. They should all ask elected officials what they will do about this massive public-health crisis. They should refuse to vote for candidates who don't have a miscarriage plank in their platforms; think of the analogous 21% of voters who say they will only vote for a pro-life candidate (Saad 2012). They should hold rallies to get people to donate money to miscarriage research. They should encourage sexually active women, who are at risk of miscarrying without knowing it, to monitor their bodies extremely closely to determine as soon as possible whether they are even possibly pregnant.

An increased focus on miscarriage will also shift the priorities of PAC opponents of abortion *away* from abortion. Miscarriage, it turns out, is a bigger killer than abortion. According to the Guttmacher Institute, 21% of the pregnancies that *don't* end in miscarriage end in abortion ("Induced Abortion" 2016). Even on a conservative estimate of the rate of miscarriage, then, miscarriage ends one and a half to two times as many pregnancies as abortion does. Opponents of abortion, it turns out, should also, perhaps primarily, be opponents of miscarriage.

This shift from abortion to miscarriage makes sense because miscarriage is relatively more politically tractable. Even if abortion were completely illegal, it would probably be impossible to prevent all abortions. And because most Americans support keeping abortion legal in at least some circumstances, it seems unlikely to become completely illegal any time soon (“Abortion” 2016). Working to end miscarriage, on the other hand, does not face organized political opposition. If PAC opponents of abortion truly believe that fetuses are persons from the moment of conception, they should work to end *all* fetal deaths, not just those caused by abortion. The most effective way to do this may be to focus on miscarriages.<sup>9</sup>

But there might be good reasons for PAC opponents of abortion not to focus on medical research into miscarriage. They may reason that even if miscarriage is politically tractable, it is an intractable medical issue. While there are many causes of miscarriage, chromosomal abnormalities form the biggest cluster of causes.<sup>10</sup> Some of these abnormalities may be so severe that a pregnancy would never be viable. Perhaps there’s simply nothing that can be done. In that case, PAC opponents of abortion would be justified in focusing on preventing abortions instead.

This reply makes sense if miscarriage is not equivalent to the death of a born person. If we owe fetuses less moral concern, we may not have to try to overcome the medical obstacles to preventing miscarriage. But imagine throwing up our hands about a horrible disease that kills 22-89% of born persons. Imagine saying that we should let AIDS, or cancer, or heart disease take its course, rather than expending more effort researching how we might prevent that disease or treat people who contract it. That’s not what we do. Instead, public pressure has led to increased research on these diseases, causing incredible strides in preventing, treating, and curing them.

AIDS activism provides an example here. In the late 1980s, activists formed ACT UP, the AIDS Coalition to Unleash Power, to push for more and faster research into treatments for AIDS (“A Timeline” 2016). ACT UP’s tactics—including a “die-in” in St. Patrick’s Cathedral in New York and a daylong shutdown of the Food and Drug Administration—were unorthodox, maybe even offensive. But they worked. Partly because of ACT UP’s pressure, the FDA changed its approval process for AIDS drugs, and some pharmaceutical companies lowered

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<sup>9</sup> Pogge calls this argument for shifting our attention away from abortion the “argument from moral waste,” although he thinks we ought to shift toward global poverty rather than miscarriage (2010, p. 125). But if fetuses are persons, then miscarriage kills many more persons than global poverty does. Prioritizing global poverty over miscarriage *might* still be the right thing to do if we accept Pogge’s argument that severe poverty is a violation of our negative duties toward the poor, however.

<sup>10</sup> See Simpson (2011); Macklon, Geraedts, and Fauser (2002); and Weintraub and Sheiner (2011) on the causes of early pregnancy loss.

their prices.<sup>11</sup> In just a couple of decades, AIDS went from a mysterious underground disease, to a devastating and fatal epidemic, to a relatively manageable chronic condition (Scandlyn 2000, p. 132). Activist groups can only do so much to promote medical research, but the example of ACT UP shows that they can be an important catalyst. Would medical research into miscarriage see similar advances if miscarriage prevention groups shut down government buildings and conducted die-ins? We don't know, because PAC opponents of abortion (among others) have not applied this kind of pressure.

So perhaps some future medical discovery will completely change our view of the intractability of miscarriage: we simply don't know. Even if some chromosomal abnormalities cannot be treated, surely there are some causes of miscarriage (other chromosomal abnormalities, thyroid problems, uterine abnormalities) that we could eventually learn how to treat. If ending miscarriage is even a remote possibility, PAC opponents of abortion should be lobbying for more research into how we can identify, treat, and prevent causes of miscarriage.

But maybe many PAC opponents of abortion don't even get to the point of considering the medical obstacles to preventing miscarriage. Maybe they simply don't know the facts about miscarriage. They might genuinely believe that fetuses are persons from the moment of conception, but they might not know that up to 89% of persons die as a result of miscarriage. Once they learn that, they may quickly shift their political and social priorities in order to push for more research on miscarriage.

But can ignorance really be the explanation? Information about the prevalence of miscarriage is freely available online.<sup>12</sup> If a PAC opponent of abortion learns about the number of persons who are dying as a result of miscarriage, but doesn't do anything to alert others, she seems to be in danger of a serious moral inconsistency. I suppose it's possible that no PAC opponent of abortion is aware of the prevalence of miscarriage, but it seems unlikely. Surely there are medical researchers and OB-GYNs who believe that a fetus is a person from the moment of conception. If these people do not do everything in their power to alert others of the public-health crisis they are aware of, are they being inconsistent?

Perhaps not. Perhaps there are other explanations besides ignorance for why PAC opponents of abortion do not shift their political and medical priorities to focus on miscarriage over abortion. For one thing, many of us, including many PAC opponents of abortion, believe that it is morally worse to kill someone than to let someone die. Even knowing the facts about miscarriage, PAC opponents of abortion might continue to invest resources in opposition to abortion on the ground that they should be doing more to prevent killings than to prevent

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<sup>11</sup> For more information on ACT UP's advocacy and effects, see the documentary *How to Survive a Plague* (2012).

<sup>12</sup> Hardy and Kukla (2015) do an especially good job of pointing out the variety of resources available online for women experiencing miscarriages.

unintended deaths. But given how many deaths are caused by miscarriage, it would be strange for PAC opponents of abortion not to refocus *some* of their public efforts toward supporting research into how to stop miscarriages. We do not focus all our attention on stopping murders rather than disease on the grounds that death by disease is a case of letting die rather than killing.<sup>13</sup> PAC opponents of abortion can advocate for restrictions on abortion and the overturning of *Roe v. Wade* while simultaneously working to shift medical-research money to miscarriage. If millions of persons are dying before birth, mostly because of miscarriage, then PAC opponents of abortion should be doing more to prevent unintended deaths as well as killings.

Moreover, the distinction between killing and letting die does not appear to extend to *preventing* cases of killing versus letting die (Pogge 2010, p. 126). It may make a moral difference whether I kill someone or allow her to die, but it does not seem to matter in the same way whether I intervene to rescue someone from being killed or from being allowed to die. If PAC opponents of abortion are only considering what we can do to prevent *other people's* abortions or miscarriages, then the moral difference between abortion, as a case of killing, and miscarriage, as a case of letting die, fades away even further. If PAC opponents of abortion aren't ignorant of the biological facts, it's not clear that they have good moral grounds for treating miscarriages differently from abortions.

Finally, perhaps the differences in the way PAC opponents of abortion treat abortion and miscarriage should lead us to consider an alternative possibility: that, as Wendler argues, they do not actually hold the belief that a fetus is a person from the moment of conception. Instead, they accept what he calls the "natural process" argument for abortion: that abortion is wrong because "The deliberate interruption of an instance of a natural process which, as a kind of process, helps define the fundamental structure of our lives is *prima facie* seriously immoral" (1999, p. 51).<sup>14</sup> This can explain the apparent inconsistency between the ways PAC opponents of abortion treat abortion and miscarriage. Abortion is a moral issue because it is the deliberate interruption of a natural process; miscarriage is not a moral issue because not deliberate.

But Wendler's explanation strikes me as unlikely to be correct. Wendler appears to claim that abortion opponents *currently* accept the natural process argument against abortion (1999, p. 44). While some philosophically sophisticated opponents of abortion may indeed hold this view, it's not clear why we should think that this is the view generally held by PAC opponents of abortion. The idea that fetuses are persons from conception holds such a prominent

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<sup>13</sup> Wendler makes a version of this point (1999, p. 45).

<sup>14</sup> Note that Wendler thinks that stopping disease isn't immoral because, while diseases are natural processes, they don't "define the fundamental structure of our lives" (1999, p. 38). Whether this account can show how it is moral to interrupt the often-natural, fundamental-structure-defining process of death is, as Wendler notes, a project for another time (1999, p. 38). Thanks to Craig Agule for suggesting this clarification.

position in both popular and philosophical arguments about abortion that it would be very odd to find out that opponents of abortion had, all along, held a different view.

Moreover, even if the natural process argument turns out to be a better argument against abortion than the view that fetuses are persons, it may have trouble distinguishing early from late miscarriage. If, as Wendler says, abortion opponents do not exhibit special moral concern about miscarriages because they are “viewed as simply one possible outcome of a natural process that, in other cases, leads to birth,” then all miscarriages are morally equivalent (1999, p. 46). This means that we would expect to see very early and very late miscarriages treated with equal levels of moral concern, and we would never treat any miscarriages, even very late ones, as equivalently morally concerning to the deaths of born persons. If the natural process argument justifies treating abortion and miscarriage differently, it also has trouble distinguishing those miscarriages many of us are morally concerned about from those we are not.

I have argued that taking seriously the prevalence of miscarriage, especially early miscarriage, leads to a dilemma for anyone who thinks that fetuses are persons from the moment of conception. For PAC opponents of abortion to be consistent in their moral beliefs, they must work for a substantial shift in society’s political and medical priorities toward the needs of fetuses, particularly very early fetuses, and away from the needs of persons who have already been born. They should do this even though miscarriage may be difficult to prevent, since they would do so for any other complicated but lethal condition. Even if they believe that killing is worse than letting die, they should shift their resources away from opposition to abortion and toward preventing miscarriage, because so many more deaths are caused by miscarriage. Truly acting according to the belief that fetuses are persons from the moment of conception would substantially alter the priorities of PAC opponents of abortion.

### **3. The other horn of the dilemma**

But there’s another horn to this dilemma. Rather than making this shift in priorities from born persons to early fetuses (many of them still clinically undetectable), we might accept that very few people, even very few PAC opponents of abortion, truly believe that an early miscarriage is equivalent to the death of a born person. While miscarriage is often devastating, especially for those immediately affected by it, the medical and political priorities of PAC opponents of abortion show that they do not think it is the *same kind of* tragedy that the death of 22-89% of born persons would be. Those who think that abortion is permissible have long given reasons for why we might think this: fetuses, especially the early fetuses who are so often miscarried, lack some or all of the features that we think make the deaths of born persons bad, such as



consciousness and self-awareness.<sup>15</sup> If PAC opponents of abortion do not shift their priorities, this may show that they tacitly accept this reasoning.

But not all opponents of abortion are *PAC* opponents of abortion. Some might oppose abortion not because it is the death of a person but because it is the death of a *potential* person: it is morally wrong, perhaps, to kill beings that have the potential to develop into persons.<sup>16</sup> The same problem reoccurs here: this argument will not show why we should be concerned about the abortion of a potential person but not at all about the miscarriage of a potential person.<sup>17</sup> But the challenges for these different kinds of opposition to abortion do not by themselves show that abortion is always permissible. If our moral concern for later miscarriages is because a later fetus is more plausibly a person, then accepting that a very early miscarriage is not equivalent to the death of a born person does not require us to treat all miscarriages the same.

Knowing the facts about miscarriage means that PAC opponents of abortion must think seriously about whether they can actually accept that fetuses are persons from the moment of conception. Now that they know the prevalence of early miscarriage, are they prepared to shift resources away from born persons to fetuses whose existence is still clinically undetectable? If they continue to maintain that fetuses are persons from the moment of conception, then they must make this political and medical shift immediately. If they are unwilling to change their priorities in order to prevent what they should, on pain of inconsistency, regard as the biggest public-health crisis of our time, then they should accept that they do not actually believe in the personhood of all fetuses. Arguments that abortion is wrong because fetuses are persons from the moment of conception turn out to be arguments that even PAC opponents of abortion may not accept.

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<sup>15</sup> This is a common argument in both philosophical and public discussions of abortion, including in Warren's (1973) classic piece.

<sup>16</sup> Marquis (1989) holds a prominent version of this view.

<sup>17</sup> See Harman (1999) for the view that only early fetuses who will live to term have moral status. But even if this view gives us moral grounds to distinguish abortions from miscarriages, I suspect it is not one opponents of abortion are rushing to adopt.

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