Cambridge Quarterly of Healthcare Ethics (2025), 34: 1, 3–8
doi:10.1017/S0963180124000185

CAMBRIDGE UNIVERSITY PRESS

EDITORIAL

Bioethics and Public Policy: Is There Hope for Public Reason?

Leonard M. Fleck

Center for Bioethics and Social Justice, Michigan State University, East Lansing, MI, USA
Email: fleck@msu.edu

In my contribution to this special section, I ask in my essay title whether appeals to public reason, when intended to address policy issues related to controversial bioethics problems, should be regarded as a seductive delusion or an ambitious aspiration. Spoiler alert! In most cases, it is a bit of both. It is at times a seductive delusion because any liberal, pluralistic society will be populated with some number of unreasonable citizens committed to unreasonable beliefs beyond the persuasive powers of public reason. Neo-Nazis and Christian nationalists are perfect exemplars of such unreasonable citizens.[1] We delude ourselves if we believe some compelling reasonable arguments will dislodge the more hateful and fanatical beliefs of either of these groups.

At the other end of the spectrum is ambitious aspiration. This is the belief that every controversial policy issue related to medicine and bioethics can be amicably resolved with sufficient commitment to public reason. This is an ambitious (unrealistic) aspiration. As John Rawls would insist, reasonable disagreement will persist in any liberal, pluralistic, democratic society.[2] This is certainly true regarding virtually any bioethics-related policy matter. The disagreement persists because of the complexity of the task of balancing conflicting values and because it is usually the case that several reasonable policy options are possible. A pluralistic society does not recognize any value as being superior to all other values in all policy contexts. This brings into play what Rawls refers to as the "burdens of judgment," multiple reasonable interpretations regarding how complex information and related social factors can be used to construct several reasonable policy responses capable of democratic legitimacy.[3]

To illustrate the sort of complex policy challenges I have in mind, consider the medical research occurring now aimed at developing an artificial womb. The immediate use would be for extremely premature births, perhaps at 19 or 20 weeks. Assuming this technology was very safe and very effective in saving the life of that pre-term baby, could a woman refuse to permit such a transfer, maybe because she thought it was too unnatural? What would be a reasonable policy to govern such situations? The hard question is whether she would have a right to the death of the fetus, even though the fetus was unimpaired, and a lifesaving technology was close at hand.[4]

Even more complicated would be a version of the artificial womb that could be used from conception to birth, perhaps for the benefit of women without a womb capable of sustaining a normal pregnancy (though one could imagine it being used for personal convenience as well). Suppose such an artificially sustained pregnancy is at 15 weeks and the couple has a falling out. They now request that the fetus be aborted and removed from the artificial womb. Must that decision be respected? All the usual justifications for legalized abortion are missing. The pregnancy was voluntary, not the result of rape or careless sex. The fetus is not making unjustified use of the woman's body; it is not a threat to the life or health of the mother. The fetus' own health is not at risk because of a serious genetic or developmental flaw. The direct care of the fetus is the responsibility of health professionals monitoring these artificial wombs, not the parents.[5] What policy should public reason recommend or justify in response to this future possible situation?

Some readers might find this last example too futuristic and too speculative. We can call to mind instead the recent Alabama Supreme Court decision that gave legal status to embryos as "pre-born children."[6] One practical implication of this is that abortion would be illegal under all circumstances.

Another practical implication is that three hospitals immediately shut down their IVF programs. This is because IVF typically involves the creation of multiple embryos, most of which will ultimately be discarded or made available for medical research. In either case, the Alabama court would see this as the killing of these "children," who should never have been created in the first place. The Alabama court was able to come to this conclusion because of the enormous range of permissiveness the US Supreme Court apparently granted to the states in the *Dobbs* decision that overturned the 1972 *Roe* decision. Another problematic implication of this court decision is that women in the early stages of a pregnancy who are then diagnosed with an aggressive cancer would not be permitted to have an abortion prior to treatment for that cancer. That treatment would likely have teratogenic effects on the fetus. Consequently, she could forego the cancer treatment for 6 months, thereby sparing the fetus, but with a substantial risk to herself of a premature death from that cancer.[7]

To illustrate further, several states are considering legislation that would severely restrict access to contraceptives on the grounds that access to contraceptives has dramatically increased sexual permissiveness outside marriage.[8] Idaho has passed a law that would criminalize the behavior of any individual who assists a pregnant minor to leave the state in order to have an abortion. The concern of many is that this law would be expanded to include any pregnant woman, which is something that has been legislatively attempted in Missouri and Texas.[9] Other states with very restrictive abortion laws are seeking to criminalize the purchase or transport of abortion medications from out-of-state.[10] How might we imagine public reason could be used to address, what on the surface appear to be, clearly illiberal and unreasonable social policies that serve no justifiable public interest and would seem to violate fundamental political rights that we should all enjoy? In that latter regard, proposed laws (now on hold) in Missouri and Texas would impose travel restrictions on pregnant women, in effect making them prisoners of the state. Such laws might provide a good starting point for public reason and democratic deliberation among more reasonable citizens.

What is the scope of public reason? What are the capacities of public reason? No simple formula will yield an answer to either of these questions. As I note in the first essay in this special section, public reason for Rawls is *practical*. Public reason evolves through wrestling with public problems requiring a reasonable policy response. A response is reasonable when all reasonable citizens can accept that policy as reasonable, as congruent with the most fundamental norms of a liberal, pluralistic society, even if they disagree with that policy. Among other things, that will require members of that society to adopt the role of *being a citizen* for purposes of creating public policies. Being a citizen in a liberal, pluralistic society will mean putting aside any of our commitments to comprehensive doctrines, whether religious, ideological, or philosophical. Instead, we must make judgments that rely upon common understandings of the world, the best relevant scientific information, and public values that all can recognize and accept.

Adopting the stance of being a citizen allows individuals with very diverse religious and philosophic commitments to solve fundamental political disagreements respectfully and peacefully. Thus, for policymaking purposes, we must be agnostic regarding the metaphysical status of the embryo (as well as the existence of God, free will, a life after death, the categorical imperative, monads, and a proletarian paradise). Instead, the relevant question, from a public reason perspective, would be: How may embryos be used for medical research or reproductive personal purposes? What personal rights and public interests are relevant and reasonable for answering that question? That same agnostic (but respectful) attitude must be taken regarding all comprehensive doctrines when we need to address complex policy issues as reasonable citizens committed to reasonable, but diverse, comprehensive doctrines.

Conscientious refusal by health professionals has been a topic of complicated debate for several decades. In this essay, "Assessing public reason approaches to conscientious objection in health care," Doug McConnell is seeking to clarify several elements of this debate from a public reason perspective. On the one hand, medical knowledge and medical expertise may be seen as a public good, a product of social investment, not just a private skill. The practice of medicine is deliberately restricted to those who have acquired sufficient medical knowledge and sufficient therapeutic skills to deserve a license to practice medicine *for the good of their patients.* Refusals to provide legitimate medical therapies to those in need for reasons of conscience appear to give unwarranted preference to a physician's personal moral beliefs at the expense of patients' medical needs. On the other hand, in a liberal, pluralistic society, deep moral

beliefs deserve to be respected rather than ignored. The obvious examples are refusals to perform or facilitate access to an abortion or voluntary euthanasia.

Of course, as McConnell and others have pointed out, some range of "moral beliefs" may be ethically problematic, using the language of morality to provide cover for racist or homophobic practices that have no moral justification and cannot justify a physician's refusals to provide care. Conscientious refusals that are racist or homophobic are easy to reject. Others may be more problematic. What criteria can be proposed under the auspices of public reason that can address what we might describe as a balancing problem? McConnell considers several of the major reasonable positions that are in the literature from a public reason perspective. Ultimately, he defends the view that the grounds of any conscientious refusal must be consistent with the standards of good medical practice. In addition, any individual healthcare professional must be able to justify their conscientious refusals; mere assertion without reasonable justification is not defensible.

Abe Brummett and Jason Eberl also address the issue of conscientious objection in their essay, "The reasonable content of conscience in public bioethics." They reject what they refer to as the "absolutist" version of conscientious objection, which they see as endorsed from an Engelhardtian perspective. That perspective is too permissive in that it fails to take seriously the obligations that health professionals have to their patients. Worse still, that perspective would give moral legitimacy to what in reality were the worst forms of discrimination that might be imposed by health professionals under cover of conscience. The authors defend instead what they refer to as a "reasonability view," contending, contra to Tristram Engelhardt, that public reason (as understood by Rawls) has sufficient content to constrain within reasonable boundaries appeals to conscientious objection by health professionals so that the health interests of patients are not unjustly put at risk.

Reasonableness is about balancing competing reasonable norms: respect for the consciences of health professionals and the obligations of health professionals to meet the medical needs of their patients. Recall, for example, the late 1980s when a substantial number of health professionals were refusing to care for HIV+ patients. HIV positivity was a death sentence, but the actual risk of transmission to a health professional observing universal precautions was extremely low. Fear in that case was not reasonable and could not justify refusal to provide care, certainly not as a matter of conscience. Refusal to provide care because of personal religious objections to lifestyle choices that resulted in becoming HIV+ could not be justified as a matter of conscience. Unlike being asked to perform an abortion, meeting the health care needs of HIV+ patients required simply providing the care that one was trained to provide and competent to provide. This is a clear example of practical public reason.

The next essay is by Jacob Appel, "Applying Rawls' theory of public reason to controversies over parental surrogacy." Appel's goal is not to enumerate all possible arguments in favor of or against parental surrogacy, nor to resolve this issue. Rather, his purpose is to demonstrate that public-minded disagreements regarding surrogacy can be overcome. In other words, examining these concerns through the framework of public reason discourse may help demonstrate that such progress on building a consensus is possible in a democratic society. In line with that goal, Appel canvasses the relevant legal and bioethics literature related to surrogacy. The disagreements are deep, which calls to mind for him a passage from Ruth Macklin that he finds provocative.

Macklin asks, "Is surrogate motherhood more like the issue of in vitro fertilization, or more like abortion? Is it simply a novel social situation, which requires us to establish safeguards against abuses and to resolve the question of who has rights to what in surrogacy arrangements? Or is it a practice that raises profound moral considerations that may forever resist resolution?"[11] This would appear to be a substantial challenge for the application of public reason to some number of more contentious bioethics' issues. The author suggests one possible response to this challenge, namely, to ascertain whether there is *any* set of safeguards, guideposts, and contexts that would make surrogacy palatable to the bulk of its critics. In the final analysis, the author offers a modest conclusion. Specifically, the author contends that public reason offers a framework for hoping that private citizens with distinct moral positions on parental surrogacy can find enough common ground to negotiate a political consensus regarding the degree and nature of regulation on the subject that all reasonable and rational citizens can accept. This is a reasonable conclusion. It reminds us that the work of public reason is ongoing, that initial policy

choices have consequences, and those consequences may require readjusting those initial choices. Rarely will public reason yield policy decisions that are perfectly reasonable, free of all problematic side effects. That is simply an unrealistic aspiration or a fanatical imposition.

Martin Buijsen offers us an interesting historical and political/ sociological perspective on the challenges faced by public reason in the contemporary world of a pandemic. His essay is titled "Public reason in times of corona: countering disinformation in the Netherlands." Buijsen calls to our attention the emergence of the book and the Enlightenment. "Without the printed book, without its reasoning readership, the Enlightenment would not have occurred." I think that is a correct judgment. The book helped to create and stabilize Habermas' public sphere. And, as Buijsen and Jurgen Habermas go on to note, the emergence of social media has had the exact opposite effect as the book. That is, the diversity and instability and fragmentation of social media has resulted in a cacophony of self-authenticating voices that have created all sorts of information/disinformation "enclaves."

That last term is one that Cass Sunstein introduced into the literature, but he may have borrowed the idea from Habermas. This is an awful state of affairs so far as public reason is concerned. As Buijsen writes, "the volatility of information is not conducive to democracy." "Fake news generates more attention than facts." "The infodemic subverts the democratic process." These are frightening conclusions. Then, as we get to near the end of the essay, Buijsen writes, "The government, too, must be willing to engage in public discourse properly." And I take it that the reason this is essential to the overall argument is that the government must be able to function as a trusted umpire to resolve political disputes (should masks be required in all public spaces for the duration of the Covid epidemic?) that ultimately require a practical resolution (they cannot just go on indefinitely).

However, I would ask, what are we supposed to do (at least here in the USA) when it seems government itself has been infected with the same infodemic virus (heavy reliance by politicians on social media, often with some complex mix of information/ disinformation, hyper-partisan divisions)? Is the Netherlands and most of Europe free of the infodemic virus, at least in the governmental institutions that are supposed to serve as umpires in public disputes, as models of public reason? What can be done to protect the institutions of government from being infected by the infodemic virus? And, once infection has occurred, what is supposed to be the therapeutic intervention that will restore the integrity of those institutions as models of public reason? These are provocative questions; I do not see any easy resolution to the challenges raised by these questions. Buijsen is calling our attention to the pandemic. How many other current bioethics policy issues are infected by this infodemic?

Soren Holm takes us back to some foundational questions in his essay, "Public reason requirements in bioethical discourse." The first question the author addresses is whether there is a public reason requirement for some range of bioethics topics that are discussed in the bioethics literature. The answer Rawls would give is that there is no such requirement because the discussions in the bioethics literature are not directly intended to shape public policy. There is a journal called *Christian Bioethics.* Presumably, the discussions in that journal reflect mostly a Christian perspective and are discussions among Christians. But even in secular journals, as Holm notes, many of the bioethics issues discussed have little relevance to fundamental policy issues which might be related to the "constitutional essentials" Rawls has in mind. Other issues do connect with "constitutional essentials" such as abortion and euthanasia, but Holm contends there is ambiguity there regarding whether such discussions should stay within the bounds of what counts as public reason. Holm goes on to critically assess some of the conceptions of public reason in the literature. He would contend that more needs to be done to characterize what makes something a *public* reason as opposed to a *non-public* reason. It will not be sufficient to say that it is simply a reason that is not integrated into some comprehensive doctrine. Later in the essay he raises the question of whether an "expansive" use of public reason makes sense, that is, applying it to the actions of individuals. He rejects that more expansive view (which is clearly far outside anything Rawls had in mind). Finally, though Holm does not explicitly address this issue, we do need to inquire how precisely public reason needs to engage with the actual world of public policy and policy-making. This is what is referred to as the problem of "translational bioethics."[12]

Gustavo Millan offers an interesting take on the public reason problem in his essay, "Populism and bioethics." Rawls speaks of the role of being a "citizen" as integral to his understanding of public reason.

He suggests that all members of our society have a responsibility to craft reasonable policies to address fundamental social conflicts. This can be interpreted as a rejection of political elitism. That in turn can suggest an endorsement for some form of populism. According to Millan, that is clearly not Rawls' intent. Some, however, might believe Rawls is endorsing some form of populism.

Millan in this case offers an extensive critical analysis of populism demonstrating that it is not at all congruent with Rawls' conception of public reason. Among other things, populists are inclined to denigrate science, which we are seeing in the United States right now. That matters, so far as bioethics is concerned, because so much of bioethics is precipitated by emerging scientific work and medical therapeutic discoveries. Another dimension of populism is what Millan refers to as "moral populism." The problem with moral populism is that it often reflects popular prejudices that should not be given any moral legitimacy. In short, moral populism tends to be uncritical. Millan also calls our attention to "medical populism," which is often infected with medical misinformation or disinformation. Politicians may pick up on this and exploit such disinformation for what they believe is political advantage. Medical populism tends to reject medical expertise.

Populism also creates distrust in government, which can result in significant injustices regarding social welfare policies if populist leaders see such policies as favoring socially disadvantaged groups that are the object of popular disdain. None of these outcomes are outcomes that Rawls would endorse or that Rawls would see as being congruent with public reason. Still, the political reality is that populism is real, and is a threat to the legitimate use of public reason. Emerging medical technologies that are ethically and socially controversial deserve a fair hearing, which is what populism cannot assure. Populism may be seen as a form of fanaticism, often succumbing to and seeking to legitimate prevailing social prejudices. This is the antithesis of public reason and the responsibilities of citizens as citizens to construct reasonable public policies for adjudicating policy-relevant bioethical disagreements.

Finally, our hope is that this collection of essays will motivate further exploration of the role of public reason in shaping reasonable public policies that address many of the bioethics issues precipitated by emerging medical technologies.

Competing interest. I have no competing interests.

Notes

1. David French has a nice essay explaining who counts as a Christian Nationalist. French D. What is Christian Nationalism, exactly? *New York Times*; 2024 Feb 25; available at https://www.nytimes.com/2024/02/25/opinion/christian-nationalism.html (last accessed 25 Feb 2024).
2. Rawls J. *Political Liberalism*. New York: Columbia University Press; 1996:3–9.
3. See note 2, Rawls 1996, at 54–8.
4. Judith Jarvis Thomson introduced this question in her well-known essay, Thomson JJ. A defense of abortion. *Philosophy and Public Affairs* 1971;**1**:47–66. Thomson herself defends the right of a woman to choose abortion, but that does not include a right to the death of the fetus if the fetus somehow managed to survive outside the womb. A growing literature has emerged around this point because of the anticipated creation of an artificial womb at some point in the future. See Räsänen J. Ectogenesis, abortion and a right to the death of the fetus. *Bioethics* 2017;**31**:697–702. Räsänen wishes to defend the view that parents would have a right to the death of the fetus in the context of an artificial womb, as if it were the same as a legal abortion. However, Daniel Rodger et al. will contend that ending the life of a fetus under those circumstances would be the same as infanticide. See Rodger D, Colgrove N, Blackshaw BP. Gestaticide: Killing the subject of the artificial womb. *Journal of Medical Ethics* 2021;**47**:e53. doi:10.1136/medethics-2020-106708.
5. See Fleck LM. Abortion, artificial wombs, and the 'no difference' argument. *American Journal of Bioethics* 2023;**23**:94–7.
6. Rabin RC, Ghorayshi A. Alabama rules frozen embryos are children, raising questions about fertility care. *New York Times*; 2024 Feb 21; available at https://www.nytimes.com/2024/02/20/health/ivf-alabama-abortion.html (last accessed 25 Feb 2024).

7. Malhi S. Alabama embryo ruling may have devastating effect on cancer patients. *Washington Post*; 2024 Feb 25.
Cancer patients express worry, devastation about Alabama IVF ruling. *The Washington Post* (last accessed 26 Feb 2024). Apart from risks to the life of the woman, cancer treatments may also put fertility at risk, which is then a reason to undergo IVF and save frozen sperm or ova for future conceptions (which would be outlawed in Alabama).
8. Millhiser I. A notorious Trump judge just fired the first shot against birth control. *Vox*; 2022 Dec 13.
A Trump judge just fired the first shot against birth control, in Deanda v. Becerra. *Vox* (last accessed 26 Feb 2024). Nine states have put in place laws that would outlaw access to Plan "B" contraceptives. There is a growing concern, however, that more restrictions will be placed on access to ordinary contraceptives. Clarence Thomas, a US Supreme Court Justice, endorsed this idea in his comments on the *Dobbs* decision.
9. Bendix A. Idaho becomes one of the most extreme anti-abortion states with law restricting travel for abortions. *NBC News*; 2023 Apr 6. Idaho law criminalizes helping someone leave state for an abortion (nbcnews.com) (last accessed 26 Feb 2024).
10. Belluck P. Abortion shield laws: A new war between the states. *New York Times*; 2024 Feb 22.
Abortion shield laws: A new war between the states. *The New York Times* (nytimes.com) (last accessed 26 Feb 2024).
11. Macklin R. Is there anything wrong with surrogate motherhood? An ethical analysis. *Law, Medicine, and Health Care* 1988;**16**(1–2):57–64.
12. The topic of translational bioethics has recently been addressed in an entire issue of the journal *Bioethics*. One of the more interesting essays in that issue is by Baeroe C. Translational bioethics: Reflections on what it can be and how it should work. *Bioethics* 2024;**38**:187–95.

Cite this article: Fleck L. M (2025). Bioethics and Public Policy: Is There Hope for Public Reason? *Cambridge Quarterly of Healthcare Ethics* 34: 3–8, doi:10.1017/S0963180124000185