Washington and Lee Law Review Online

Volume 76 | Issue 2 Article 3

4-30-2020

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It is pointless to approach Professor Chatman's argument on its own terms (to wit, "tak[ing] our laws seriously," or equal application across myriad legal categories of "full personhood" rights) because these terms are neither seriously intended nor legally comprehensible. Instead, her essay is intended to create the impression that legally protecting unborn human lives against abortion opens up a Pandora's box of legal complications so "ridiculous" and "far-fetched" that we should rather just leave things where they are under the federal Constitution post-*Roe v. Wade*[1] and *Planned Parenthood v. Casey*.[2] This impression, in turn, is a tool to forward Professor Chatman's personal preference for legal abortion—which she gives away by calling legal abortion by its political name: "the right to choose."

But her arguments, sounding in law, about the alleged chaos to flow from a law protecting unborn human lives from abortion are false on the grounds of basic legal principles concerning federal constitutional and immigration law, as well as the legal principles underlying state legislation and statutory interpretation. I will set these legal principles out below before turning to the more interesting and legally plausible matter of whether or not lawmakers *should* choose to take into account both the needs of pregnant women *and* the humanity of unborn life when crafting laws affecting both, whether the situation involves immigration, incarceration, or women's need for financial support.

First, Professor Chatman's reading of federal constitutional law is erroneous. She suggests that a state law defining unborn human lives as persons would "tie our Constitution into a knot no

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1. 410 U.S. 113 (1973).

2. 505 U.S. 833 (1992).

court can untangle."[3] This cannot be true. The Supreme Court has the last word on the meaning of "person" for purposes of the Fourteenth Amendment's guarantee of "life" to persons. In *Roe v. Wade*, the Court determined that the unborn were not included.[4] If state laws had the last word, then the *Roe* Court could not have overturned the dozens of state laws[5] protecting unborn human lives against killing by abortion. But it did. Today, if states like Alabama and others legally define unborn humans as persons protected against death by abortion,[6] either the Supreme Court will strike down the state's law as inconsistent with the Court's definitive reading of the Fourteenth Amendment, or it will overturn *Roe v. Wade* (and *Planned Parenthood v. Casey*) in order to let states again have the last word regarding the protection due unborn life, as they did pre-1973. In either event, the Constitution is not "tie[d] . . . into a knot"; rather any constitutional issue will be *interpreted* by the Court, as per usual.[7]

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3. Carliss N. Chatman, *If a Fetus Is a Person, It Should Get Child Support, Due Process and Citizenship*, 76 WASH. & LEE L. REV. ONLINE 91, 97 (2020).

4. *Roe*, 410 U.S. at 156–58.

5. James A. Knecht, Comment, *A Survey of the Present Statutory and Case Law on Abortion: The Contradictions and the Problems*, 1972 U. ILL. L.F. 177, 179–81 & nn.25–30 (1972). In 1972, prior to the *Roe v. Wade* decision, twenty-six states permitted abortions only to save the mother's life. Five states only permitted abortion to save the life of the mother or child. One state and the District of Columbia only permitted abortion to preserve the life or health of the mother. Eleven states permitted abortion only under the framework put forth in the Model Penal Code revisions of 1962, which essentially allowed abortion only if there was a "substantial risk that continuance of the pregnancy would gravely impair the physical or mental health of the mother, or that the child would be born with a grave physical or mental defect; the pregnancy resulted from rape; or the pregnancy resulted from incest or other felonious intercourse" *Id.* at 180 (citing MODEL PENAL CODE § 230.3(2) (AM. LAW INST., Proposed Official Draft 1962)). One state appeared to have banned abortion altogether, and one state only allowed abortion to save the mother's life or if the pregnancy resulted from rape. Only five states had limited or no abortion law at all. *Id.* at 181–82. Professor Knecht further clarified: "Semantic problems arise because the statutes state that an unborn child has a life which may be saved, thereby implying that an unborn child is alive, while the proponents of reform believe that a child is not alive until it is born. The import of these statutes, however, is that they view the fetus as a legal entity deserving of protection." *Id.* at 179, n.26.

6. Alabama Human Life Protection Act, ALA. CODE 1975 §§ 26-23H-3, 26-23H-4 (2019).

7. Marbury v. Madison, 5 U.S. 137, 177–78 (1803).

Regarding immigration law, Professor Chatman states that "[i]n states that move the line to define life as beginning as early as conception, personhood and citizenship will begin as soon as a woman knows she is pregnant."[8] She also states that this would "creat[e] a system with two-tiered fetal citizenship."[9] But these statements make no sense. Despite some bold new scholarship on the possibility that states could determine "citizenship" separately from federal law,[10] this proposal remains in the realm of theory; it is well known that citizenship is a matter governed by federal law. In the words of a recent article in the *Stanford Law Review*: "In many ways, the regulation of immigration is a quintessential federal function. Developing a uniform national scheme that dictates who may enter the United States, who must leave, and who may become a national citizen is a power exclusively reserved to the federal government."[11]

Professor Chatman is also mistaken on a basic principle of legislative drafting and interpretation: state laws inevitably define the leading terms employed in a statute to apply only within the four corners of that statute. Of course, it is possible for a word to have the same meaning across statutes, but only if the relevant pieces of legislation say so. Commonly, however—and as done in the Alabama statute[12] Professor Chatman derides—a statute says "As used in this act, the term *X* means such and such." Thus, each statute defines its terms so as to serve the statute's precise object.

Innumerable state statutes use the language of "person" regarding innumerable rights and obligations, but each clearly confines the meaning to the statutory purpose at hand: for example, who can vote, who can enter into a contract, who can run for office, who can commit a crime, who can suffer certain crimes, etc. To give a highly relevant and specific example: today—when abortion *must* be legal everywhere, post-*Roe*—many states define unborn human beings as "persons" (whether or not eventually

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8. Chatman, *supra* note 3, at 97.

9. *Id* at 96.

10. *See generally* Peter L. Markowitz, *Undocumented No More: The Power of State Citizenship*, 67 STAN. L. REV. 869 (2015).

11. *Id.* at 870.

12. Alabama Human Life Protection Act § 26-23H-3.

"born alive") for purposes of both criminal homicide laws and/or wrongful death actions.[13] But these laws have *not* been interpreted to protect unborn humans from being killed by abortion, despite their use of the language of personhood. Instead, such laws define "person" *only* for purposes of the law at hand, using language similar to that appearing in the recent Alabama abortion statute: "As used in this chapter, the following terms shall have the following meanings . . . ."[14] This makes eminent sense in the present legal climate. Legislators know that abortion must be legal as long as *Roe* stands, but they may still want to pass a law to punish third parties responsible for killing the children of pregnant women who did *not* seek abortion. Or—to engage more of Professor Chatman's examples—legislators may want to protect unborn human beings from being killed via abortion, while understanding as a matter of common sense that unborn humans cannot separately obtain a trial or an arraignment. For matters of convenience and expense, the privacy concerns of pregnant women, or even because of the high rates of miscarriage,[15] legislators might not want to extend Social Security or census laws to unborn lives. But at the very same time, a state might have such a high regard for human life at every stage that it would want to punish any deliberate, or even negligent, killing that goes against the mother's will.

Turning now to the legally plausible and more intrinsically interesting possibilities raised by Professor Chatman's editorial: *should* lawmakers *choose* to take the humanity of unborn life into

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13. *State Laws on Fetal Homicide and Penalty-Enhancement for Crimes Against Pregnant Women*, NAT'L CONF. OF STATE LEGISLATURES (May 1, 2018), https://perma.cc/86LG-3H6Q (last visited Feb. 12, 2020) (on file with the Washington and Lee Law Review).

14. Alabama Human Life Protection Act § 26-23H-3.

15. *What Are the Miscarriage Rates by Week?*, MED. NEWS TODAY, https://perma.cc/XGR8-HJEW (last visited Feb. 12, 2020) (generating the following statistics on the relationship between maternal age and risk of miscarriage: at age thirty-five there is a 15% chance of pregnancy loss, at age forty a 35% chance, and at ages over forty-five about a 50% chance) (on file with the Washington and Lee Law Review); *Miscarriage*, MAYO CLINIC, https://perma.cc/G32J-DDAK (last visited Feb. 12, 2020) ("About 10 to 20 percent of known pregnancies end in miscarriage.") (on file with the Washington and Lee Law Review); *see also ACOG Practice Bulletin: Early Pregnancy Loss,* AM. C. OF OBSTETRICIANS & GYNECOLOGISTS (May 2015) https://perma.cc/2M99-6UDY (last visited Feb. 12, 2020) (on file with the Washington and Lee Law Review).

account when crafting laws affecting not only mothers, but also their unborn offspring? I think the answer is a clear "yes,"—for reasons that might appeal both to those who take the label "pro-life" and "pro-choice." Both women and children might benefit from such laws.

Many of the areas of law Professor Chatman identified—especially child support, incarceration, immigration, and tax law—while not legally affected by personhood definitions in any abortion ban, *could* be vehicles for assisting both pregnant women and their children, although this is not how Professor Chatman uses them. More than a few scholars have written on these subjects.

Regarding child support, for example—because pregnant women are in need of both tangible and intangible solidarity and support during pregnancy, and because fathers should take joint responsibility—why *not* implement "preglimony," as suggested by law professor Shari Motro?[16] And because a pregnant woman's environment will affect her unborn child's health, why *not* legally require attention to the health care needs of mother and child during incarceration?[17] And because it would be beneficial to both

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16. *See generally* Shari Motro, *Preglimony*, 63 STAN. L. REV. 647 (2011) (defining preglimony as a "preganancy-support obligation" when an unwanted pregnancy occurs); Shari Motro, *The Price of Pleasure*, 104 NW. U. L. REV. 917 (2010); Shari Motro, *Responsibility Begins at Conception*, N.Y. TIMES (July 6, 2012), https://perma.cc/87KV-F2VY (last visited Feb. 12, 2020) (on file with the Washington and Lee Law Review). The preglimony concept was originally developed in her two law review articles.

17. *See* Jennifer Hahn-Holbrook et al., *Placental Corticotropin-Releasing Hormone Mediates the Association Between Prenatal Social Support and Postpartum Depression*, 1 CLINICAL PSYCHOL. SCI. 253 (2013) (noting that strong social support from families, which includes emotional support, help with tasks or other material assistance, and the woman feeling cared for, valued, or accepted lowers stress hormones in pregnant women) Nazli Hossain & Elizabeth Westerlund Triche, *Environmental Factors Implicated in the Causation of Adverse Pregnancy Outcome*, 31 SEMINARS IN PERINATOLOGY 240 (2007) (concluding that exposure to metals, such as lead, and radiation can cause congenital defects and that mental and physical stress can lead to birth defects, low birth weight, preterm delivery, and preeclampsia). The neighborhood a woman lives in may also impact the pregnancy by inducing psychological distress, depression, or anxiety. The socioeconomic impact of a poor neighborhood may also impact health by having less access to health care, lower quality food in grocery stores, and less outside space that is safe for exercise. Women who live in disadvantaged neighborhoods have more stress, less emotional support, and were more likely to participate in unhealthy activities such as smoking, drinking

the pregnant woman and the child to have the support of both of his or her parents both during the pregnancy and afterwards, why *not* take a woman's pregnancy into account in immigration—in favor of granting her rights to live in the United States—especially if the father resides here?[18] And because having children is expensive and involves costs both during pregnancy and thereafter, why *not* grant tax breaks recognizing the dependency of a child even before he or she is born?[19]

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alcohol, or doing drugs. Conversely, women in safer or more stable areas have lower stress, more ties to the neighborhood, and healthier pregnancies. *See* Marie Lynn Miranda et al., *Environmental Contributions to Disparities in Pregnancy Outcomes*, 31 EPIDEMIOLOGIC REVS. 67, 68 (2009) (explaining that stressors such as poor health care, unemployment, high crime rates, high poverty rates, poor housing, and low income can have negative health effects on both the mother and the pregnancy).

18. In general, international law respects the right of people to marry and have a family. *See* Gallya Lahav, *International Versus National Constraints in Family-Reunification Migration Policy*, 3 GLOBAL GOVERNANCE 349, 355 (1997) ("The notion that 'the family is the natural and fundamental group unit of society and is entitled to protection by society and the State' is often claimed to derive from natural law and is enshrined in international law."). Family immigration—especially if the immigrant does not work outside the home—supports the "care economy," which promotes the well-being of the family in general, including the physical, cognitive, and emotional development of the household. Immigrants who come to the United States via a family-based visa tend to have higher earning growth. Further, the creation of immigrant communities eases assimilation, promotes the formation of new businesses, and may revitalize rundown neighborhoods. *See Fact Sheet: The Advantages of Family-Based Immigration*, AM. IMMIGR. COUNCIL (Mar. 14, 2013), https://perma.cc/ZKJ9-53HF (last visited Feb. 12, 2020) ("Families are crucial to the social and economic incorporation of newcomers.") (on file with the Washington and Lee Law Review). The U.N. Expert Group report also explains that prolonged separation can lead to family members feeling guilty that they abandoned their family to pursue economic or social gain. Family separation may also lead to immigrants feeling unsettled and spending more time trying to immigrate their family members than on integrating into society. *See* Denise L. Spitzer, *Family Migration Policies and Social Integration*, U.N. EXPERT GROUP FAM. POLICIES FOR INCLUSIVE SOCIETIES 4 (May 2018), https://perma.cc/6A9P-QALV (PDF) (explaining that family members provide support to migrants and recognizing that "[p]rolonged familial separation can have deleterious effects on family members, adding stress to intimate and parent-child relationships and creating or exacerbating economic difficulties"); *see also* Philip E. Wolgin, *Family Reunification Is the Bedrock of U.S. Immigration Policy*, CTR. FOR AM. PROGRESS (Feb. 12, 2018, 10:41 AM), https://perma.cc/XS4D-WG94 (last visited Feb. 12, 2020) (explaining that family unity has historically been a shared value across ideological divisions) (on file with the Washington and Lee Law Review).

19. If a woman does not have health insurance, ultrasounds and other

None of these eminently humanitarian policies are *required* by an abortion ban that defines a "person" to include unborn human lives, but all would be morally consistent with such a piece of legislation. In an ideal world, whether an advocate labels herself "pro-choice" or "pro-life," she would recommend consistently life-giving, family-friendly laws to benefit both women *and* their unborn daughters and sons. Professor Chatman missed this opportunity in her haste to portray Alabama-style legislation designed to protect unborn human life from abortion as irrational and impossible.

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prenatal visits and tests cost around $2,000. Prenatal vitamins are around $15 per month. This does not include basic supplies for the baby, including clothes, diapers, a car seat, etc. For example, a pack of 250 diapers is around $40. Childbirth education classes range from $50 to $200. (prices vary). If a woman has a cesarean section, it costs almost $16,000. A vaginal birth costs around $9,600. *See* Heather Hatfield, *What It Costs to Have a Baby*, WEBMD, https://perma.cc/B4V8-42E9 (last visited Mar. 16, 2020) (detailing the expenses associated with having a baby) (on file with the Washington and Lee Law Review); *see also* Hillary Hoffower & Taylor Borden, *How Much It Costs to Have a Baby in Every State, Whether You Have Health Insurance or Don't*, BUS. INSIDER (Dec. 9, 2019, 12:56 PM), https://perma.cc/4BBR-GEWF (last visited Feb. 12, 2020) (noting that the average cost of giving birth in the United States is $10,808) (on file with the Washington and Lee Law Review).