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Building the New Europe

KISSLING'S COMMENTARY invites discussion that will help us develop more effective strategies. No political disaster will occur from considering—as so many pregnant women do—the value of fetal life. This discussion however will not lead to the changes needed in our movement unless we also engage in an equally profound and searching examination of how we value pregnant women's lives.

My own experience in the field is that many prochoice activists are not, as Kissling suggests, fully committed to women's autonomy and rights. While Kissling fairly criticizes the prochoice response to the "partial-birth" abortion bans as legally astute but politically ineffective, I saw a movement that took nearly two years to develop any response at all. I believe that many prochoice activists value fetal life above that of pregnant women or—at least above those pregnant women who are perceived to be undeserving because, for example, they inexplicably put off having a responsible, early abortion.

Indeed, when the pregnant woman is low-income, of color, has HIV, or has drug problems, and wishes to continue her pregnancy to term—many in the prochoice movement have cited the value of fetal life as a justification for not opposing a variety of interventions—including those that undermine her autonomy and integrity. Thus there has been relatively little opposition to mandatory HIV testing, or to the arrests of pregnant women accused of

fetal abuse or homicide because they refused a cesarean section, experienced a stillbirth or were unable to overcome a drug problem.

To some extent, Kissling's commentary directs us away from the critical and equally challenging conversation about how we value pregnant women. For example, Kissling urges us to consider, among other things, the "inherent value of fetal life on its own terms." This inquiry, even though only an exercise, requires the erasure of pregnant women. Similarly, Kissling identifies a very limited value to be considered for women: "The human right of women to decide whether or not to continue a pregnancy." This formulation, however, is too limited, encouraging us to think only about having or not having an abortion. It directs us away from hard questions about pregnant women: Do they have special, greater moral obligations than other humans, requiring them to give up their rights to bodily integrity, life and liberty at some point in pregnancy? Many prochoice people do in fact feel that pregnant women have greater obligations than other humans. Unless we begin to talk about this, our ability to respond to fetal rights proposals that play upon such feelings but fail to promote either maternal or fetal health will continue to be limited and ineffective.

Indeed, Kissling asserts that, "Inherent in our focus on women's rights has been our belief that fetal life does not attain, at any point in pregnancy, a value that is equivalent to that of born

persons." That formulation, however, ignores the physical realities of pregnancy and the fact that it is fetal superiority and not equality that is opposed. Outside of the abortion context this is clear. When Angela Carder was forced to have a cesarean section—one that contributed to her death and failed to save the fetus—the argument in support of this decision was based on valuing fetal life as greater than, not equal to, the value of a born person—who have no right to force others to undergo medical procedures on their behalf.

Not only have we failed to articulate how we value fetal life, we have also failed to articulate how we value pregnant women and motherhood. Leading prochoice organization have responded to fetal rights legislation by referring to the threat such laws pose to *Roe*, or to choice, failing to address the harm they do to women continuing pregnancies to term and to their families. The prochoice movement has done a poor job of listening to women and accepting without correction or opposition their language and experiences. Women, explaining why they chose to have abortions, often include considerations of the value of fetal life, and provide reasons that are profoundly connected to family and personal responsibility, marriage and religious beliefs. Similarly, women who continue pregnancies to term despite a drug or other health problem, value fetal life and have no intention of causing harm.

Most women who have abortions are also women who

give birth to and raise children. These are the people who walk and chew gum at the same time, and by listening to them, instead of pollsters and political advisors, it becomes clear that it is possible to oppose the recognition of fetal personhood as a matter of law without denying the value of potential life as matter of religious belief, emotional conviction or personal experience.

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FRANCES KISSLING COULD not be in graver error when she asserts that the "Unborn Victims of Violence Act of 2004", which gives "personhood" and constitutional rights to all stages of intra-uterine life—from zygote to fetus—as being unimportant: "As difficult as it may be, this may have been one piece of legislation we could have tolerated. In the war of ideas, not every hill is worth climbing;" and that the theological dogmas of "ensoulment" that gives "personhood" to the fetus are today irrelevant: "In theology, the question has traditionally focused on when is it most likely that God gives the developing fetus a (rational) soul, a discourse pretty much abandoned by both traditional and innovative theologians" but, unfortunately, is a definitive reality to politicians who legislate fetal theology.

The "Unborn Victims of Violence Act of 2004" is the most dangerous legislation passed in over 50 years that will eventually lead to the end of *Roe v. Wade*; the de-

struction of the wall of separation of church and state; and place American law and its Constitution in the service of dogmatic and dictatorial religious theology—unimaginable by our Founding Fathers but is rapidly becoming a reality under Bush Republicanism and reifies the crimes against Galileo.

The abortion issue is pre-eminently a religious moral issue which the government is prohibited from legislating upon by the First Amendment of our Bill of Rights: "Congress shall make no law representing as establishment of religion, or prohibiting the free exercise thereof." Legislating a specific religious dogma of fetal personhood violates the First Amendment and is *de facto*, unconstitutional. The government is prohibited by the First Amendment of becoming engaged in theological debates of whether a "soul" exists or what kind of soul and when that soul becomes "ensouled" in developing human life, viz the theological theory of the vegetative, animal and rational souls where the rational soul defines "personhood."

The Unitarian Universalist Association and the Jewish faith reject the concept of a theology of "fetal personhood." (See documents at: <http://www.violence.de/politics.shtml>.)

The "Fetal Personhood Law" is not only a blatant violation of the First Amendment but of the Fourth, Thirteenth and Fourteenth Amendments to the Constitution. States will pass more draconian laws where the

state can seize the pregnant woman to defend "fetal rights" against "fetal endangerment" from a dangerous mother, like child endangerment laws. Compulsory motherhood would become legal, which is as onerous as compulsory abortion.

Every effort should be made before the 109th Congress to repeal the Fetal Personhood Law, as unconstitutional, as are compulsory pregnancy and compulsory motherhood.

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AS A WOMAN BORN IN THE years since the passage of *Roe v. Wade*, I found Frances Kissling's article deeply resonate.

In my life, I have not experienced a sense of "all-or-nothing" when it comes to my reproductive health care. Therefore, much of the crisis-laden rhetoric of the pro-choice movement fails to relate to the way I understand my health or my values. Many young women have developed a more nuanced and inclusive position on abortion than was possible for the generation of women who were fighting for it to exist. This is our privilege, but it can also be a challenge.

It is a position that has made it harder for many young women to feel comfortable in the prochoice movement as it currently exists. Much of the time it feels like, as a movement, we are trying to hide something—and we are. We are

hiding the discomfort many of us feel with the question of the value of the fetus. Abortion is ugly and painful, but many times we fail to acknowledge this for fear that if we give an inch, they will take a mile. But, as Kissling says, this failure to acknowledge the very human discomfort with abortion makes the pro-choice movement inaccessible to anyone who doesn't already share our position.

As a person of faith, I have found it very difficult to work within the secular pro-choice community. The respect we all feel and show for the rights of women is not always extended to those we perceive as "our opposition." Those among us who do not walk the party line too often feel like traitors when we acknowledge our own discomfort with abortion. But it is only by acknowledging the complexities of our feelings that we will change minds and hearts. In the same way that the antichoice movement cannot afford to ignore the woman, neither can we afford to ignore the fetus.

It is my hope that pro-choice activists can take guidance from Kissling. Not only will it help us speak more honestly to those with whom we do not agree, but it will help us better understand our own movement and all of the women, young and old, on behalf of whom we often claim to speak.

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I WANTED TO THANK YOU for your article and the issue it highlights. I am Mexican and was raised Catholic. Although I'm not an active Catholic, I believe that life is sacred and I also believe that a fetus is a potential life, unique and unrepeatable. I also, however, know that I can't force my values and beliefs on anyone else. I strongly believe that abortion should be legal and safe.

Your article highlighted an argument that has always troubled me: that abortion is a woman's choice alone. Prochoice supporters have always ignored the fetus because it places them in an awkward position. I've always felt that fetuses were equated to body parts and that troubled me, as I'm sure it troubles other people. I realize that only talking about a woman's right to choose, prochoice people probably want to eliminate the emotional factor.

The thing is, you can't eliminate emotion from this equation as your article rightly points out. I think acknowledging that this is a difficult, emotional and painful decision strengthens and humanizes your movement and make us, the people who are "on the fence," understand that those who are prochoice also have to wrestle with the moral issues of abortion and have not just decided to see things in black and white.

I applaud your effort and your honesty. I hope others do too.

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