Understanding the New Politics of ABORTION

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Foreword

This book grew out of a happy coincidence of interests. During our editorship of the *American Political Quarterly,* we, along with the Editorial Board, decided that a special symposium on the politics of abortion would be a timely contribution to an issue of the journal. We hoped that such a symposium, announced well in advance, would both stimulate and report high quality research on this important issue.

At the same time, Sage Publications encouraged us to think about publishing edited collections of articles from *American Politics Quarterly.* The topic of abortion politics seemed exciting to them as well as to us.

Before long, we began to receive a steady flow of submissions for the special issue, many of very high quality. There were, in fact, 4 times as many as we could publish, and many good articles were rejected. With this in mind, we were delighted when Malcolm L. Goggin expressed an interest in writing an overview of the field of abortion politics for the special issue, and when, some time later, he accepted our invitation to edit this book.

Our special issue was published in January 1993 and reflected the best of up-to-date scholarship on public attitudes toward abortion, causes and consequences of state abortion policy, and abortion politics in the legislatures. In this volume, Malcolm L. Goggin has expanded the coverage to include substantially greater treatment of the context of the abortion debate, as well as additional chapters focusing on both public opinion and legislative politics. He has also revised and updated his own thinking on the framework for understanding the new politics of abortion.

Together, the chapters in this volume stand as an indication that political scientists have much to offer to our understanding of the nature of abortion

politics. Given the likelihood that this issue will remain high on the public agenda for quite some time, we are sure these chapters will be widely cited by those laboring to understand this complex issue.

—SUSAN WELCH
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Preface

The seeds for this book were planted in 1988, when I spent the year at the Brookings Institution in Washington, DC, as a Guest Scholar. While interviewing members of the U.S. House of Representatives and Senate and their staff as well as several representatives of organized interests I soon learned that there was no "wall of separation" between abortion and family planning. It also was evident that abortion was a very complex issue when lawmakers were faced with tough policy—as opposed to moral or legal—choices. Moreover, many legislators in Washington hoped that they would not have to cast a vote on either the family planning or abortion issue during a Presidential election year, when party unity was so desirable.

On July 3, 1989, in its *Webster v. Reproductive Health Services* decision, the Supreme Court narrowly upheld a very restrictive anti-choice Missouri statute that prohibited public employees from performing abortions in public facilities, prohibited the use of public facilities to perform abortions, and required doctors to test to see if the fetus could survive outside the womb before performing an abortion. *Webster,* and *Planned Parenthood of Southeastern Pennsylvania v. Casey,* a second landmark Supreme Court decision on abortion restrictions that was decided 3 years later, applied an "undue burden" standard—permitting state restrictions as long as they did not substantially interfere with a woman's free choice to seek and acquire abortion services—that Justice Sandra Day O'Connor articulated in 1983 in *City of Akron v. Akron Center for Reproductive Health* and refined in 1986 in *Thornburgh v. American College of Obstetricians and Gynecologists.* Essentially, *Webster* and *Casey* redefined the political

debate by giving states more leeway to adopt abortion restrictions and thus shifted the political venue to the states.

In a paper that I presented at the 1990 annual meeting of the American Political Science Association in San Francisco, I attempted to define the contours of post-*Webster* abortion politics and get down on paper some very preliminary thoughts about how one might make sense of this "new" politics of abortion. A vastly revised version of my APSA paper was published in the January 1993 special abortion politics issue of *American Politics Quarterly.* The Introduction to this volume represents another iteration of my theoretical argument. Seven other articles from *APQ*—most with additions and updates—appear as Chapters 2, 4, 6, 7, 9, 14, and 15 in this book.

I commissioned chapters for this edited volume that take into account shifts in the nature and scope of the conflict over abortion or changes in the institutional context within which the issue of abortion is being debated, changes that have been influenced by the *Webster* and *Casey* decisions. The aims of *Understanding the New Politics of Abortion* are to present a novel theoretical framework for understanding the "new" politics of abortion and serve as: (1) a vessel for the most current empirical and theoretical research on the issue; (2) an up-to-date assessment of the abortion controversy; (3) a stimulus for debate about what abortion policy is likely to be like in the future; and (4) a tool to teach students about abortion as a *political* issue—at all levels and in all branches of American government.

A project of this scope—15 chapters written under very tight deadlines by 28 different authors—could not have been possible without the help of many individuals. I am especially grateful to John Hibbing and Susan Welch, first, for encouraging me to submit an "agenda" piece to *APQ*, and, second, for suggesting that I work with Sage Publications to edit this volume. Others who deserve thanks are the score or so anonymous outside referees who critically reviewed at least some of the book chapters. Mary-Margaret Goggin selflessly put aside her own professional activities to nurse me through several weeks of pneumonia while helping me with the editing; and Peter Goggin prepared the index. Wanda Seguin, Deborah A. Orth, Ai-Ping Cai, Tiffany Quaranta, Robbie Strong, and German Espinoza helped with the administrative aspects of putting all the pieces of this rather complex writing project together. Finally, the book moved forward about as fast and as flawlessly as one could expect, thanks to the able nurturing of Carrie Mullen, editor at Sage Publications, and Mary Curtis, her editorial assistant.

—MALCOLM L. GOGGIN

Contents

Introduction

A Framework for Understanding the New Politics of Abortion

MALCOLM L. GOGGIN

As the United States entered the decade of the 1990s, battles over abortion were raging in all branches and at all levels of government. The U.S. Supreme Court's July 1989 *Webster v. Reproductive Health Services* decision granting states more freedom to place additional restrictions on abortions; the Court's June 1990 decision in *Hodgson v. Minnesota* that let stand a Minnesota law requiring teenagers seeking an abortion to get the consent of two parents as long as there is a judicial bypass option; the protracted struggle among the judicial, executive, and legislative branches of government over a controversial Department of Health & Human Services "gag" rule prohibiting workers in federally funded family planning clinics from giving advice about the availability of abortion services; as well as tough new state antiabortion laws like the ones in Idaho, Louisiana, and Utah have meant additional restrictions on a woman's already qualified right to have an abortion.[1] Together, these events also point to a new political climate surrounding the abortion issue.

What these rapid changes in the political landscape suggest is the emergence of a new, post-*Webster* politics of abortion. The parameters of this "new" politics of abortion are outlined in the first section of this introductory chapter. In the second section, a framework to aid understanding of the politics of abortion is explicated. This framework depends on an assessment of the nature and scope of the conflict over abortion and the institutional context within which that conflict takes place. In the concluding pages, the themes, purposes, and organization of this edited volume are briefly sketched.[2]

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Contrasting the "Old" and "New" Politics of Abortion

What is different about the "new" politics of abortion? In the pre-*Webster* era, groups opposed to abortion directed much of their attention to the Supreme Court, where, between 1973 and 1989, approximately 50 abortion-related cases were decided (see Eisenstein 1988; Epstein and Kobylka 1992; Keyes, with Miller 1989; Mezey 1992; Rubin 1987).[3] The many court actions taken by the fetal-rights forces[4] were aimed at gradually chipping away at a woman's qualified right to have an abortion that was embedded in *Roe v. Wade*. Now, right-to-life forces are seeking nothing less than a reversal of *Roe*. Four developments since *Webster*—a shift in the composition of the Supreme Court, an increase in the percentage of the public who apparently now prefer to make abortion illegal, an expansion of activity in state legislatures, and an increase in public activities by members of fetal-rights groups—indicate that overturning *Roe* is much more likely.

The Political Context

Between January 1973, when *Roe v. Wade* was decided, and July 1989, when the *Webster* decision was handed down, the liberal 7-2 majority on the Supreme Court turned into a 5-4 conservative majority (see Table A.1). Since *Webster,* two more conservatives—Associate Justices David Souter and Clarence Thomas—have been added. There is now a solid 6-3 conservative majority.[5]

During the 1970s and 1980s, many Americans seemed ambivalent and uneasy about confronting the issue of abortion. But they appeared content with the status quo, preferring it to the two extremes of unrestricted access to abortion—abortion on demand—or making abortion illegal in all circumstances (see Table A.2).

Since *Webster,* a larger percentage of the public seems to think abortion "should not be permitted," increasing from 15% in November 1989 to 22% in June 1991 (*CBS News/New York Times* 1989-1991).[6] This recent, post-*Webster* shift in public opinion in the fetal-rights direction also makes it more likely that *Roe* will be overturned.

Webster effectively transferred authority over access to abortion services to state politicians, and the institutional forums quickly shifted to state legislatures and state political campaigns (Goggin and Wlezien 1992; Mezey 1992:262-63). States responded accordingly. In the months immediately following the July 1989 landmark decision, almost 40 bills were introduced in state legislatures around the country and in many states there were calls for special sessions to deal with the abortion issue (Alan

Table A.1 Major Abortion Cases 1973-Present

Case	*Date*	*Issue(s)*	*Vote*[a]	*P/A*[b]
Roe v. Wade	1973	Abortion criminalized	7-2	P
Doe v. Bolton	1973	Hospital/doctor restrictions; residency requirement	7-2	P
Planned Parenthood of Central Missouri v. Danforth	1976	Saline abortions; parental/spousal consent; recordkeeping/reporting; physician's duty to fetus; definition of viability	5-4	P
Beal v. Doe	1977	Medicaid funding limits under Social Security Act	6-3	A
Maher v. Roe	1977	Medicaid funding limits under equal protection clause	6-3	A
Poelker v. Doe	1977	Public hospital's refusal to perform abortions	6-3	A
Bellotti v. Baird	1979	Parental consent	8-1	P
Colautti v. Franklin	1979	Physician's duty to fetus	6-3	A
Harris v. McRae	1980	Constitutionality of Hyde amendment	5-4	A
M. L. v. Matheson	1981	Parental notice	6-3	A
Akron v. Akron Center for Reproductive Health	1983	Second-trimester hospitalization; parental consent; waiting period; risk/fetal development lecture	6-3	P
Planned Parenthood of Kansas City v. Ashcroft	1983	Second-trimester hospitalization; pathology report; second physician; parental consent	5-4[c]	A
Simopoulos v. Virginia	1983	Second-trimester abortions in licensed facilities	8-1	A
Thornburgh v. ACOG	1986	Risk-fetal development lecture; recordkeeping/reporting; physician's duty to fetus; second physician; waiting period	5-4	P
Zbaraz v. Hartigan	1987	Parental notice; waiting period	4-4[d]	P
Webster v. Reproductive Health Services	1989	Preamble defining life; public fund restrictions; viability testing	5-4	A
Hodgson v. Minnesota	1990	Two-parent notice	5-4[e]	A
Ohio v. Akron Center for Reproductive Health	1990	Parental notice	6-3	A
Planned Parenthood of Southeastern Pennsylvania v. Casey	1992	Spousal consent; informed consent; parental consent; waiting period	5-4[f]	A

SOURCE: Adapted from Susan Gluck Mezey, *In Pursuit of Equality: Women, Public Policy, and the Federal Courts*, New York: St. Martin's. 1992, p. 211.
NOTES: a. Because votes in abortion cases are often split on the specific regulation, the vote shown may not represent the votes on all issues decided.
b. P = Pro-choice. A majority voted to strike all, or most of, the regulation under review; A = Antiabortion. A majority voted to uphold all, or most of, the regulation under review.
c. A 6-3 majority struck the hospitalization requirement; a different 5-4 majority voted to uphold the other provisions.
d. With an equally divided Court, the lower court ruling (striking the waiting period) was affirmed.
e. A 5-4 majority found the two-parent notice provision unconstitutional; a different 5-4 majority ruled that it was made constitutional by the judicial bypass procedure.
f. A 5-4 majority found the spousal consent provision unconstitutional; a different 5-4 majority voted to uphold the other provisions.

Table A.2 Attitudes Toward the Legality of Abortion, 1975-1988

Q. Do you think abortions should be legal under all circumstances, only certain circumstances, or illegal in all circumstances?

	Legal in all circumstances (%)	*Legal in certain circumstances (%)*	*Illegal in all circumstances (%)*	*No opinion (%)*
1975 (1,500+)	21	54	22	3
1977 (1,500+)	22	55	19	4
1979 (1,500+)	22	54	19	5
1980 (1,500+)	25	53	18	4
1981 (1,500+)	23	52	21	4
1983 (1,558)	23	58	16	3
1988 (1,001)	24	57	17	2

SOURCE: The Gallup Poll.
NOTE: The results of the survey are based on telephone interviews with a national sample of adults, aged 18 and over. Number of respondents in each survey is in parentheses.

Guttmacher Institute 1990:3). Moreover, abortion quickly became a central issue in several state elections, for example, in the gubernatorial races in California, Virginia, and New Jersey, and the contest for mayor of New York City (see Dodson and Burnbauer 1990a; and Chapters 8 and 9, this volume). This increased attention to state politics is one of the characteristics of the "new" politics of abortion.

Perhaps because of the liberal majority on the Supreme Court, the "old" politics of abortion was also characterized by an abortion-rights coalition that was often on the defensive; especially after 1976, the movement became more reactive than proactive (Fried 1990:6; Staggenborg 1991:152). This posture changed in anticipation of *Webster* when, during the first half of 1989, pro-choice groups changed their tactics to become both more active and more confrontational (Goggin and Wlezien 1991, 1992). Right-to-life groups, on the other hand, waited until after *Webster* to step up their level of activity (see Table A.3); and during the summer of 1991, and again in the spring of 1992, fetal-rights groups such as Operation Rescue escalated the level of abortion clinic violence. For the pro-choice forces the "new" politics of abortion actually began in early 1989, whereas for right-to-life supporters it started in July 1989—with the *Webster* decision. Thus, one could read *Webster* as the midwife of a "new" politics of abortion.

These features of the shifting political landscape are conditions that favor enactment of the right-to-life agenda. Yet there are at least two recent developments—the Supreme Court's July 1992 *Planned Parenthood of Southeastern Pennsylvania v. Casey* decision to uphold the constitutionality

Table A.3 Abortion-Rights and Fetal-Rights Group Activities, by Year and by Type, 1985-1989

Activities	*Year*											
	1985		*1986*		*1987*		*1988*		*1989*		*total*	
Conventional Activities	*AR*	*FR*	*AR*	*FR*	*AR*	*FR*	*AR*	*FR*	*AR*	*FR*	*AR*	*FR*
Holding a Press Conference	3	0	1	0	3	1	0	0	1	0	8	1
Releasing Report/Poll	0	0	0	0	3	0	0	0	0	0	3	0
Commenting on Decision	1	0	0	0	0	0	0	0	1	1	2	1
Filing an Amicus Curiae Brief	0	0	0	0	0	0	0	0	1	0	1	0
Lobbying Congress	0	0	1	0	0	0	0	0	1	1	2	1
Sub-Total	4	0	2	0	6	1	0	0	4	2	16	3
	80%	0%	33%	0%	100%	33%	0%	0%	17%	13%	38%	8%
	1985		*1986*		*1987*		*1988*		*1989*		*total*	
Public Activities	*AR*	*FR*	*AR*	*FR*	*AR*	*FR*	*AR*	*FR*	*AR*	*FR*	*AR*	*FR*
Marching/Demonstrating	1	1	4	3	0	2	1	13	20	4	26	23
Boycotting	0	0	0	0	0	0	0	2	0	1	0	3
Civil Disobedience	0	0	0	1	0	0	0	0	0	9	0	10
Violent Protest	0	0	0	1	0	0	0	0	0	0	0	1
Sub-Total	1	1	4	5	0	2	1	15	20	14	26	37
	20%	100%	67%	100%	0%	67%	100%	100%	83%	87%	62%	92%
Grand-Total	5	1	6	5	6	3	1	15	24	16	42	40
	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

SOURCE: Adapted from Malcolm L. Goggin and Christopher Wlezien, "Interest Groups and the Socialization of Conflict." Paper Presented at the Midwest Political Science Association, Chicago, April, 1991, tables 1 and 2.
NOTE: AR = Abortion-Rights Group; FR = Fetal-Rights Group

of *Roe v. Wade* and the November 1992 presidential election of Bill Clinton, a committed pro-choice Democrat—as well as two countermobilization strategies that will make it more difficult to ban abortions and, at least in the short run, lead to stalemate, thus stalling any pro-life victory.

In July 1992 the Supreme Court decided to restrict access to abortion in the state of Pennsylvania by upholding all but one of the provisions in a statute that placed severe restrictions on choice. In *Casey*, the Court agreed with Planned Parenthood that spousal notification represented an undue burden for married women seeking an abortion. But the significance of the Court's decision also lay in its support for the state of Pennsylvania's ability to place further restrictions on abortion, for example, denying the use of public hospitals for the purpose of gender selection, and requiring a 24-hour notification period, parental notification, and a lecture from a physician.

But more important, the Court's narrow 5-4 vote to uphold *Roe* was a stunning upset for the Bush administration and fetal-rights forces who had seen the *Casey* decision as the first opportunity for the newly constituted Court to confront the constitutionality of *Roe* directly. The 1992 post-*Casey* decision by the Court to let stand *Ada v. Guam Society of Obstetricians/Gynecologists*—an outright ban on abortion—and a similar decision in early 1993 on Louisiana's tough antiabortion law underscore the point, and make it quite evident that the Court will probably refuse to use other state abortion rulings to overturn *Roe* as well.

On January 20, 1993, Bill Clinton, who was elected on an abortion-rights platform and supported by pro-choice interests, moved into the Oval Office, replacing a staunch fetal-rights President. During his campaign for the presidency, Clinton promised to appoint pro-choice supporters to the Supreme Court as vacancies occur, support the Freedom of Choice Act, overturn the "gag" rule, allow fetal tissue research, and consider the medical benefits of importing RU-486. These changes in executive branch policy will undoubtedly thwart the right-to-life agenda, especially the movement to reverse *Roe*.

Pro-choice organizations have also effectively mobilized their supporters, both in Congress and in the nation. Since *Webster*, pro-choice groups have worked hard to enact legislation that would put abortion rights beyond the reach of the Supreme Court. For example, they have supported the Title X Pregnancy Counseling Act (a direct response to the "gag" rule and the Supreme Court's decision in *Rust v. Sullivan*), the Reproductive Health Equity Act, and the Freedom of Choice Act.[7]

Indeed, it could easily be argued that *Webster* is already acting as a catalyst to mobilize pro-choice forces in the same way that *Roe v. Wade* served as the stimulant for a right-to-life single-issue countermovement in

the early 1970s (Staggenborg 1991:57). In a sociological reconstruction of the development, maintenance, and growth of the pro-choice movement, both nationally and in the state of Illinois, Suzanne Staggenborg (1991:4-5) makes the argument that, "Despite its ups and downs, the pro-choice movement has remained continually mobilized since its 1973 victory," due in large part to its professional leadership and formalized organization. In short, an increasing threat from the Right helped create a pro-choice movement that became stronger and more institutionalized over time. Ironically, the very survival of the pro-choice movement is attributed to the right-to-life countermovement, beginning with its successful passage of the Hyde amendment banning federal funding for abortion in 1976. Staggenborg tells a fascinating story of escalating mobilization and countermobilization, and predicts that this cycle will eventually lead to a pro-choice victory.[8]

The essential characteristics of the "new" politics of abortion—expansion of activities to all levels and branches of government (especially the states); increased levels of public participation for fetal-rights groups, including an escalation of clinic violence; and pro-choice mobilization and countermobilization that certainly contributed to a Clinton victory in 1992—have implications for both sides of the abortion political controversy. Given a conservative public mood (Stimson 1991), a conservative majority on the Supreme Court, and a cadre of committed activists who now seem bent on changing abortion policy through the enactment of more restrictive state abortion laws, fetal-rights groups have good reason for thinking in terms of victory. On the other hand, abortion-rights groups have seen their cause advanced by the Clinton election victory and his choice of Janet Reno as Attorney General. Partly in response to escalating clinic violence, Reno cited in her confirmation hearings her intention to vigorously protect the right of access to abortion clinics.

Pro-choice forces, who sparred with fetal-rights groups in a cycle of escalating mobilization and countermobilization throughout the 1970s and 1980s, have once again gone on the offensive, targeting state legislatures, the U.S. Congress, and the White House. For example, the National Abortion Rights Action League (NARAL) worked hard to influence the outcomes of the 1992 Congressional and Presidential elections; and new techniques such as EMILY's List (Early Money is Like Yeast) and the Republican WISH List were used to fund successful campaigns of abortion-rights candidates in both political parties. In their choice of tactics, pro-choice groups seem to be trying to capture the middle ground, painting themselves as moderates while portraying pro-life groups as extremists.[9] Some within the ranks of pro-choice activists think that compromise will draw the "soft" supporters, that is, that compromise will move people from

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