The Struggle over Reproductive Rights in the United States

Dorothy E. McBride
Florida Atlantic University
University of Washington
dmcbrid6@fau.edu

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Abstract
The conflict between pro-life and pro-choice movements in the U.S. permeates election campaigns, the legal system, and numerous domestic and foreign policy debates. For many observers, the battle over reproductive rights is a symbol of the major cultural divide in America. This paper describes and analyzes these debates and the policy outcomes, focusing on the period since 2000. It will consider several current issues: (1) the debate over sex education, birth control and abstinence for the young; (2) recent policy conflicts with respect to availability of emergency contraception (the “morning after” pill); (3) The Mexico City policy; (4) the symbolic place of the ban on partial birth abortions; (5) the assault on Roe v. Wade. A goal of the analysis will be to show the relation between the framing of debates and policy outcomes and to place the American debates in a comparative context. The conclusion will assess the status of women’s reproductive rights in policy debates the U.S.
Introduction

The use of contraceptives and the medical practice of abortion are legal in the United States. This means that the state governments, which have the primary authority over these policies, do not have the constitutional authority to criminalize their use. However, the 1973 ruling by the U.S. Supreme Court that criminal abortion laws are unconstitutional launched a vigorous and growing campaign not only to make abortion illegal once again, but also to restrict access to all sorts of reproductive services. The opponents of legalized abortion have waged a relentless campaign at all levels of government to shut down completely any public support for reproductive services. They are countered by a coalition of feminists, family planning organizations, physicians, lawyers, welfare workers, and abortion providers who seek to maintain and expand access to reproductive services. Today, the conflict between these two movements permeates election campaigns, the legal system, and numerous domestic and foreign policy debates. For many observers, the battle over reproductive rights is a symbol of the major cultural divide in America.

This paper will describe and analyze some of these debates and the policy outcomes, focusing on the period since 2000. It will consider several current issues: (1) the debate over sex education, birth control and abstinence for the young; (2) recent policy conflicts with respect to availability of emergency contraception (the “morning after” pill); (3) the Mexico City Policy limiting support for family planning abroad; (4) the symbolic place of the ban on partial birth abortions; (5) and the battle over Roe v. Wade. A goal of the analysis will be to show the relation between the framing of debates and policy outcomes. The conclusion will assess the status of women’s reproductive rights in the U.S.
Conceptual Foundation: Movements, Framing, Policy Arenas

Frames and Framing.—The assumption underlying this analysis is a view of policy making processes in democracies as a series of conflicts over ideas. Basic to any conflict is the definition of the problem for policy action—what is wrong and what should be done. At the core of the conflict is a distribution of power. “The definition of alternatives is the supreme instrument of power; the antagonists can rarely agree on what the issues are because power is involved in the definition. He who determines what politics is about runs the country, because the definition of the alternatives is the choice of conflicts and the choice of conflicts allocates power.” (Schattschneider 1960, 66). In any policy debate, the definition of alternatives used by the decision makers, however it is determined, is the issue frame of the debate. An example of an issue frame can be found in the long 19th century debate over criminalization of abortion. Policy makers viewed the problem of the growing rate of abortions as a sign of that immorality was spreading in the country. The issue frame was social morality.2

Issue frames, once established, determine who has influence and who doesn’t. If policy making is about morality and not about women, then religious actors are privileged and women’s movement actors are not. While women can put forth a moral argument, it does not explicitly gender the debate and does not gain them a place at the table. Further, the frame shapes the outcome. If all agree the question pertains to morality, then the policy fight is over how much the government should be involved in setting the moral agenda for the country, and will not recognize women’s stake in the outcome.

Activists in social movements also use frames to mobilize their followers, gain support, counter their opponents, and gain the attention of policy makers. Social
movement scholars call these *collective action frames* (Benford & Snow 2000; Snow and Benford 1988; McAdam 1996). These frames are often central to the purpose of the social movement. Benford and Snow (2000) identify three elements of action frames: 1. *diagnostic* in which the advocates set forth their grievances and assign blame; 2. *prognostic* in which the advocates suggest the solution to the grievances and a way to achieve it; and 3. *motivational* ideas which are aimed to mobilize adherents to action. Framing is a dynamic process in social movements: ideas develop, are reproduced, changed, rejected, challenged, broken apart, and reassembled over the span of movement activism.

Movement activists use *strategic framing* to seek specific short term goals. These frames may reflect basic movement ideas only in part or may adapt them in special ways to conform to specific needs. Strategic framing is especially important for movement actors who seek to influence the policy making process in government. Since the definition of the conflict is the key to power and issue frames establish winners and losers with respect to policy outcomes, those participants representing social movements seek to convince policy actors to adopt their frame as the dominant issue frame. Thus, in the 19th century abortion debates, the American Medical Association, whose primary interest was driving the midwives who performed many abortions out of business, was successful in convincing policy makers that the abortions they performed were a sign of dangerous social immorality.

To summarize, we have three types of framing to examine in policy debates on reproductive issues: collective action frames of pro-life and pro-choice movements; the strategic framing of movement actors in specific policy debates; and the issue frames used by policy actors. Strategic framing is central to building coalitions that are necessary to be successful in policy decisions. As Stone says: “In politics, the
representation of issues is strategically designed to attract support to one’s side, to forge some alliances and to break others. Ideas and alliances are intimately connected.” (Stone 2002: 34).

Policy arenas.—Struggles over reproductive rights are widespread in U.S. politics. One way to think about the locations of the debates is the concept of policy arenas. The idea behind this concept is that the relationships among participants or policy actors involved in work about a particular issue or policy problem take place in a space bounded by organization structures and government institutions. Arenas can be quite formal, such as a legislature, or more informal, such as the iron triangle of interactions among interest groups, congressional committees and executive agencies.

The struggle over reproductive rights in the US can be found in most of the conventional policy arenas: Congress and its committees, iron triangles, inside the executive agencies, in the courts as well as in state legislatures, political parties and elections. What makes a set of relationships a policy arena is that the discussions that take place are pertinent to authoritative policy making outcomes. The debates covered in this paper have taken place in nearly all types of authoritative policy arenas.

The Movements in the U.S. and Their Collective Action Frames

There are two great movements that form the basis for the reproductive rights struggle in the US: Those who wish to increase information and access to reproductive information and services and those who wish to restrict information and services. Anyone writing about reproductive rights in the U.S. has to decide what names to give the contending movements. The choice can reveal the author’s own views on the matter. Those who support women’s rights call the movements “pro-choice” and “anti-choice”. Those who wish to restrict information and services call
them “pro-abortion” and pro-life”. Others opt to name the movements the way they name themselves: pro choice and pro-life. Ferree *et al* (2002) in their analysis of newspapers stories in U.S. and Germany refer simply to “pros” and “antis”: “Anti-speakers are those who express a predominance of ideas favoring more restrictions or the need to preserve current ones: Pro speakers are those who express a predominance of ideas favoring fewer restrictions or none at all, or who oppose adding additional ones.”(117) Because this paper ranges across several debates sustained by two political movements, I have opted to use the terms that are more complete and most familiar in public discussion: pro-choice and pro-life.

The pro-life collective action frame has roots in Christian fundamentalism and traditional American conservatism (Saletan 2003). The religious influence is seen in pro-life beliefs in separate spheres for men and women, the relation between sex and procreation, the family as an organic whole, and that human life from conception to natural death is sacrosanct. Mothering is the primary purpose for women and this role is so important to the family and society women cannot assume control over their own fertility. The purpose of sex is for procreation, and sex outside of marriage is morally wrong. Pro-life movement discourse despairs at the widespread sexual revolution of the 1960s that promoted the idea that sex can be for pleasure alone and that everyone, including adolescents, should be able to enjoy it. Indeed, to religious fundamentalists, the sexual revolution and the women’s movement are one and the same and both have seriously upset the moral order upon which society rests. The family as an organic entity provides the foundation for healthy and moral society, according to the pro-life perspective. Individual rights laws should not split wife from husband or child from parent. Finally, abortion is murder and thus a transgression
against God and his moral order. For many, the role of the government is to promote this moral view through regulations, programs and services.

The pro-choice collective action frame is almost diametrically opposed to that of the pro-life movement. Its ideological foundation is in feminism and American liberalism. The pro-choice beliefs that anchor the movement’s activism include the equality between men and women, the separation of sex from procreation, the family as a social institution composed of individuals, and acceptance of a pluralism of religious and moral beliefs about human life. Women’s reproductive roles can be an impediment to full social and economic equality with men and thus pro-choice discourse maintains that motherhood should be voluntary (Luker 1984). Sex can be for pleasure and by bringing intimacy can contribute to overall emotional well being. At the same time, women’s ability to say no to sex even with their husbands is a fundamental part of their reproductive freedom. The traditional male-dominated family impedes the pro-choice vision, and they tend to recognize many pathologies in family relationships that require some autonomy for family members, including, especially, teenage children. Pro-choice discourse does not define the moral status of embryos and fetuses, although in general, there is recognition that their significance grows with the development of pregnancies. An important component of the pro choice frame is that the view of the moral status of unborn life is up to individual conscience and there should be no one view imposed. Generally, the pro-choice perspective sees the role of government to enhance information and services to enable women, primarily, to exercise their freedom in sexual relations, reproduction, and family life.

Major Debates and Policy Outcomes

1. *Sex Education and Abstinence*
The debate over the place of abstinence in publicly supported sex education programs brings pro-life and pro-choice movements to policy arenas in Congress, the executive branch and the states. The diagnostic strategic frame of the pro life advocates is that American culture is saturated with sex and sexually explicit messages that encourage adolescents to widespread sexual activity. The problem with this is that teen sex is responsible for serious social problems: increasing the incidence of sexually transmitted diseases (STD), emotional and psychological injury, promiscuity, and high levels of out-of-wedlock childbearing (Rector 2002; Maher 2006.) Taken together, these effects render many young adults incapable of committing to marriage and family responsibilities.

Most sex education programs promote the use of condoms and other contraceptives to solve the problems caused by teen sex activity. First of all, they claim that contraceptives are often ineffective in preventing pregnancy and condoms provide only limited protection against STDs say the pro life advocates. Giving them to teens encourages risky sexual activity and leads to higher rates of disease, pregnancies and abortions. Many of the so-called “safe sex” or “comprehensive sex education” programs claim to include a discussion of abstinence but in fact they do not. The solution or prognosis in the pro-life frame is that abstinence only programs are desirable and effective. They promote personal responsibility and commitment to marriage while reducing out of wedlock births among young adults. Pro-life advocates claim there are a growing number of studies that show the effectiveness of these programs which have become highly popular among teens.

Rector (2002), a policy analyst for the Heritage Foundation, includes some examples of motivational framing on the pro-life side:

“A review of scientific literature reveals that, on average, condoms failed to prevent the transmission of the HIV virus between 15 and 31% of the time”
“Guidelines developed by SEICUS (pro choice organization) include teaching children age 5 through 8 about masturbation and youths aged 9 through 12 about alternative sexual activities such as mutual masturbation, ‘outercourse,’ and oral sex.”

“The actual content of ‘abstinence plus’ curricula would be alarming to most parents. For example, such programs typically have condom use exercises in which middle school students practice unrolling condoms on cucumbers or dildoes.”

On the other side, pro-choice strategic frames diagnose the problem to be the expansion of abstinence-only programs in schools. These are steadily replacing what they call the real sex education curricula which had become widespread in the 1970s (Feldt 2004). The abstinence only approach teaches the young that sex is dangerous and the contraception is ineffective to protect them and silences teachers who would like to give students information about how to prevent pregnancy and disease effectively through knowledge and contraceptive use. Instead they are told to sign pledges of virginity and engage in sexual activity only upon marriage. Most young people do have sex in their teens and wait until they are 25 or older to marry. The effect of the decline of real sex education includes increases in unintended pregnancy and STDs in the U.S.—among the highest rates among post-industrial democracies—because people aren’t getting real information and abstinence-only programs do not work. The policy solution in the pro-choice frame is to eliminate the abstinence-only approach in favor of comprehensive sex education in the schools—favored by most parents—which will comprise all the information including abstinence as an option. Theses courses should be based on beliefs that sexuality is natural, normal, and healthy, not something to fear or feel guilty about. Such courses should provide accurate information about birth control and how to use condoms, promote the lifelong consistent use of contraception, and cover topics like abortion, masturbation and sexual orientation.
Some examples of motivational frames in the pro choice discourse come from Gloria Feldt (2004), President of Planned Parenthood:

“There’s a small but very vocal minority in this country that believes that any sex outside marriage is evil, and that it is their mission in life to force their view of morality on the rest of us.”

“[Abstinence-only program] would be laughable if their results weren’t so harmful—and sometimes even tragic.”

“Abstinence-only programs teach students—and our society—that it is permissible to override the constitution, for two key principles are separation of church and state, and freedom of speech.”

The issue frame in the sex education debate places abstinence against other forms of sex education; both sides contend that to follow the other side’s plan leads to disease and abortion. Abstinence has become more central to the issue frame since the late 1970s and this has favored the pro-life movement. The federal government has been funding abstinence education since the Adolescent Family Life Act was passed in 1981. The winners in the conflict over the definition of the issue are religious organizations and conservative organizations who benefit from grants to the detriment of those favoring secular sex education and freedom. The 1996 welfare reform act authorized matching grants to states for abstinence education aimed at groups prone to out of wedlock births (about $50 million per year). The push to abstinence-only programs replacing more general sex education in the schools has strengthened during the Bush administration. Since 2001, Congress has spent $779 million on abstinence programs aimed through grants to schools and not-for-profit groups. Some of the latter are part of the Bush strategy to engage “faith-based” (religious) groups in administering social policy. State legislatures have adopted similar programs to limit conventional sex education in favor of abstinence education. In response, some parents and health professionals are challenging these trends in the states and have proposed their own comprehensive sex education bills.
2. Emergency Contraception: Plans for “Plan B”?

Most policy makers believe that while abortion remains very controversial, most Americans accept giving support for birth control methods and services as important and legitimate public policy. In the pro-choice collective action frames, unintended pregnancy represents serious harm to the health of women and their children. Since unprotected sex and even rape continue to occur, emergency contraception (EC) must be available to solve the problem and prevent abortions.

Intense challenges over access to EC, sometimes called the “Morning-After Pill,” came as a surprise to pro-choice activists. In their strategic frames, it is this effort by opponents of EC to restrict its use that is the problem because it reflects a broader pro-life strategy to promote abstinence and limit birth control generally. Worse, the pro-choice actors claim these dangerous efforts are led by political appointees inside the executive agencies in the Bush administration, especially at the Food and Drug Administration which has been reluctant to allow EC to be available without a doctor’s prescription or over the counter (OTC).

In the pro-choice frame, the prognosis or solution to the problem is to expand access to EC, making it readily available in hospitals for rape victims and in drug stores to help women whose contraception has failed. They argue that EC prevents pregnancy, it does not end a pregnancy. Therefore, it is not an abortifacient as pro-life opponents claim and its use presents no moral choice. In addition, EC is most effective when taken within 24 hours of sexual intercourse so it is imperative that women be able to obtain the drug over the counter. Research shows that having EC available does not lead to risky sexual behavior or increase sexual promiscuity among teens, according to pro-choice strategic frames.

Motivational frames from the Center for Reproductive Rights include:
“Some extreme anti-choice groups oppose EC by equating it with abortion, which they also oppose. These groups are out of step with the mainstream medical community, and their views find almost no support in laws and policies at the state and federal level. The attacks against EC are unwarranted and must therefore be seen as part of an agenda to ban all contraceptives”

“Emergency Contraception is valuable because it: prevents unwanted pregnancies; serves women's health needs; advances reproductive self-determination.”

“Every 10.5 seconds, there is an unplanned pregnancy in the United States. Every year, there are approximately three million unplanned pregnancies. Experts estimate that better access to emergency contraception, like Plan B, could prevent as many as half of those pregnancies from happening.”

Like most pro-choice/pro-life debates, the strategic frames of the two movements mirror each other with respect to access to EC. For the pro-life activists the problem with EC is that it is an abortifacient. Conception occurs when the sperm fertilizes the egg, and they assert that the result is an embryo and a pregnancy. Since EC works to prevent this embryo from implanting in the uterus it destroys it, the same as an abortion. In fact, for many religious pro-life advocates, all birth control pills have the same effect by making the uterus unsuitable for implantation. Some claim that scientists who maintain that pregnancy results only after implantation are “medically dishonest” (Wilks 1998).

Not only does EC result in an abortion, access to it promotes unsafe sexual behavior. With access to drugs that quickly abort such pregnancies, people don’t have to show restraint. The result is an increase in promiscuity and sexual disease. In short, the pro-life movement places EC as an immoral threat to traditional marriage and its relation to procreation. Thus, like abortion, its use presents a moral dilemma for policy makers, doctors and pharmacists. The solution is to restrict availability and access to EC and, for some activists, limit all birth control pills as well. Pharmacists for Life International are among those who argue that pharmacists must have the right to decline to fill prescriptions for EC and policy makers at the FDA are correct in keeping restrictions on access to the pills.
Examples of Motivational frames on the pro life side of the EC debates include:

“If scientists succeed in convincing people that human life begins after implantation, eventually most people will have no objection to the pill. They will have been tricked into believing that human life had not begun when the pill exerted its anti-implantation effect.” (Wilks 1998)

“But even if these contraceptives were not abortifacient, their use encourages promiscuity, gives a false sense of security, does not prevent venereal diseases like AIDS, Chlamydia, genital herpes, genital warts, gonorrhea, hepatitis B, and syphilis. A healthy woman takes the pill to make her sick, so she can't conceive, and the product she takes is fraught with physical dangers like blood clots, strokes, heart attacks and breast cancer, not to mention lesser discomforts such as nausea, bleeding, high blood pressure, tumor growth and skin spotting.”

“Contraceptives make a mockery of reproduction. They are intrinsically immoral, and were condemned by all Christian denominations up to 1930, and are still condemned by the Catholic Church. Contraception violates the natural law as well as the divine positive law. There is a psychological price women pay for becoming more of an object than a valued human person. The moral damages caused by contraception is incalculable in that its intended purpose is to prevent God's gift of life from being passed on, in effect ordering God out of one's life.” (Scheidler)

The issue frame of the debate centers around contradictory claims over the safety and effects of EC, whether it is a necessary means of reproductive choice or an immoral means to sexual promiscuity, abortion, and disease. To date, neither movement has been successful in dominating the frame so policy action is at a standstill. EC is legal but requires a doctor’s prescription. The drug company, many doctors, and pro-choice activists demand that the FDA allow it to be sold over the counter. Science advisory committees to the agencies have recommended approval but FDA policy makers have deferred action. Critics charge that the FDA non-action is based on ideological attachment to pro-life notions about EC and not based on the science. To date, the controversy has postponed the confirmation of President Bush’s nomination for a permanent FDA director. In April 2006, Senate Democrats also introduced the Prevention First Act to link birth control to preventing abortion and expanding education about all contraception and require it to be offered to victims of assault.

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There is policy action in state arenas as well as at the federal level (Guttmacher Institute 2006). Nine states have policies that expand access to EC, including eight that allow pharmacists to dispense EC without a prescription under certain conditions. The Governor of Illinois ordered that pharmacists in that state who stock birth control must dispense EC despite any moral qualms. Around the same number of states have policies restricting access including four who allow pharmacists to refuse to dispense contraceptives on moral grounds, including EC. Bills are pending in other states, some that require hospitals to make EC available to rape victims. The Federal Office of Violence Against Women did not include any mention of EC in its recent hospital protocol for victims of sexual assault.

3. *Mexico City Policy or Global Gag Rule?*

Pro-life advocates welcomed President Reagan’s 1984 policy that banned U.S. aid to American and foreign family planning organizations that provided abortions, abortion counseling, or advocated for legal abortion access anywhere in the world outside the US. Reagan's rationale was that even if an agency involved in both family planning and abortion were given funding only for their family planning functions, it would release funds within the organization for their abortion activities. The pro-life frame refers to this rule as the “Mexico City Policy”. The problem with aid to family planning organizations is that it promotes abortion as a form of birth control and amounts to taxpayer funding of abortion in foreign countries. Many of the countries, especially in Latin America, have laws criminalizing abortion; funding what pro-life activists call “population control” organizations allows them to harass these governments to legalize abortion against the countries’ cultural norms and traditions. These population control organizations attack human life and human dignity by encouraging women to seek abortions that endanger their health. The prognosis in the
pro-life frame is for the U.S. government to continue the Mexico City policy and expand it.

Examples of pro-life motivational frames on this issue are:

“In our view, the Mexico City policy respects the dignity of poor women in developing nations, as well as the laws and cultures of the vast majority of nations, far better than such gravely misguided legislation [to rescind policy] does. The President has rightly removed the United States from the business of exporting a culture of death.” (Quinn 2001)

“Poor women in developing nations are not calling for help to abort their children. They are calling for education, food, housing, and medicine for themselves and their children so that they can lead lives of full human dignity.” (Quinn 2001)

“President Bush's decision to restore the Mexico City policy represents a sign that the new administration is willing to respect the legal and historical traditions of Latin America. By forbidding the use of American foreign aid to promote abortion in Latin America, the new American foreign policy restores harmony between the laws of Latin America and the foreign policy of the United States.” (Mantilla 2001).

The pro-choice movement frames this debate and policy as the “Global Gag Rule.” The problem is the policy itself which they see as a terrible blow to efforts of non-government organizations (NGO) to improve the health and status of women around the world. Removing support for family planning organizations and the education and services they provide leads to an increase in unwanted pregnancies and thus the number of abortions, many unsafe. For some pro-choice advocates, the policy is not only an anti-abortion measure but an attack on family planning itself. The results will be tragic because family planning educates and empowers women to take better care of themselves, their families, and communities. It will also undermine efforts to stop the spread of HIV/AIDS because many of the NGOs who promote family planning also educate and promote safe sex. Finally, the problem with the Global Gag Rule is that it impinges on free speech by penalizing groups for the counseling and information they provide; they argue it would be unconstitutional if instituted in the U.S. The prognosis frame is simply to remove the rule and commit
US resources and energies to advancing health and development through family planning.

Motivational frames in the pro-choice discourse (Meehan & Feldt 2004) include:

“Under Bush's policy, organizations that play a vital role in women's health are forced to make an impossible choice. If they refuse to be "gagged," they lose the funding that enables them to help women and families who are cut off from basic health care and family planning. But if they accept funding, they must accept restrictions that jeopardize the health of the women they serve.”

“It is the tragic outcome of a decision-making process that puts blind ideology before sound public health practice and global cooperation.”

“So many lives are at stake. We can't afford to exclude any family planning organization that can safely and effectively provide comprehensive reproductive health services. America should be leading -- not gagging -- global efforts to improve women's health.”

The issue frame in the debate over foreign aid boils down to whether the U.S. should use financial resources to support family planning and women’s health or prevent resources from being used to support abortion and disregard criminal abortion laws in other countries. This frame retains the essential elements of both the pro-choice and pro-life movements’ collective action frames and has remained unchanged since the 1980s. In principle, the issue frame brings both sides to the policy arenas. However, since foreign aid policy is made by the President, which groups have influence depends on the party in power in the White House. In 1989, President George H.W. Bush retained Reagan’s approach but President Bill Clinton reversed the policy in 1993 and allowed foreign aid for family planning organizations. When Republicans took control of Congress in the 1990s pro-life legislators introduced legislation to reinstate Reagan’s ban but were not successful. Then, in 2001, immediately after his inauguration, President George W. Bush put the policy back in effect. Democrats in the Senate tried unsuccessfully to introduce legislation to return
to the Clinton approach. In the 2004 election Democratic candidate John Kerry pledged that his first action as President would be to reverse the Mexico City policy.

The Bush administration got high marks from pro-life activists on this matter until Bush became interested in bringing U.S. support to fight the AIDS epidemic. The administration pledged to spend millions of dollars on prevention and treatment only to discover that many of the organizations that were equipped to use the funds effectively were also family planning organizations that also counseled people on abortion. Pro-life groups expressed disappointment that President Bush was failing to follow a strict pro-life policy.  

4. Partial-Birth Abortion Ban

In 2000, the Supreme Court gave pro-choice forces a policy victory by ruling that state laws banning the procedure called “partial-birth” abortion without an exception for the woman’s health were unconstitutional (Stenberg v. Carhart 530 U.S. 914 2000). This outcome was a direct result of pro-choice influence in bringing women’s into the issue frame of the debate. (McBride Stetson 2001). In the early 1990s, the pro-life movement had developed a strategy to ban an abortion procedure rather than launch a frontal attack on all legal abortion. Their success depended on gaining Republican control of the Congress and inserting a new frame that excluded women from the discussion. The pro-life strategic frame separated the fetus from the woman’s body and presented the procedure as a form of infanticide performed by doctors. They accomplished this by their definition of a procedure called Dilation and Extraction as killing a baby outside the womb, a baby who otherwise would be born alive. Pro-choice activists, with the help of President Clinton who vetoed all partial birth bans passed by Congress in the 1990s, successfully reinserted women into the issue frame by focusing on the need for this procedure to preserve women’s health.
All bans enacted so far in the U.S. have allowed exceptions only to save a woman’s life, not her health. This includes the federal ban enacted in 2003 and signed by sympathetic President Bush.

The Court’s ruling did not end the debate, however, which has continued since 2000. Pro-choice activists try to challenge the pro-life frame which has proved immensely effective in attracting political and public support. They claim that the term itself is misleading—a term manufactured by pro life strategists to gain support but which in fact is not a medical term. This deception is intended to be a smoke screen that will hide the true motives of pro-life activists on this issue: to criminalize abortion procedure by procedure with the goal of making abortion unattainable in the U.S. The bans are written in such general terms that they extend to more than one procedure and threaten safe procedures for second trimester abortions. Pro-life activists denounce the pro-life argument that the law bans just one procedure and there are alternatives available to women in need as a myth promoted to disguise the true goal of criminalizing any abortion practice.

To pro-choice movement actors, a “renegade Congress” flaunted the Supreme Court by enacting a national ban without a health exception—the type of law already ruled unconstitutional (Center for Reproductive Rights 2003). Congress, based on a deluge of “legislative findings,” claimed a health exception is never necessary. The pro-choice frame charges that Congress has shown a complete disregard for women’s health and medical judgment, pointing to the opposition of most medical associations to the federal interference in medical judgments represented by the law. Most voters oppose “abortion bans”, they claim.

The motivational frames build on these themes:
“Partial-birth abortion’ is a fabricated term that anti-choice activists concocted in an attempt to make almost all abortions illegal. There is no medical procedure known as ‘partial birth abortion.’”

“Women have abortions to prevent real tragedies in their lives. Real women. Women just like you, your sister, your daughter, your mother, your friend. And those having later abortions are not that much different from the 99% of women who have abortions early in the pregnancy - just more desperate and often, more at risk for tragedy” (Abortion Access Project 2003)

“Anti abortion activists consider the protection of women’s health to be a ‘loophole’ that must be closed to elevate the embryo or fetus to a status higher than the woman’s. Eliminating the health exception would destroy another of the pillars of Roe and make further assaults on the core right to legal abortion more likely to succeed.” (NARAL 2006).

Pro-life strategic framing has changed little in the partial-birth abortion debate. Having defined the procedure as killing a “living baby” outside the womb, activists are content that most people will see graphic drawings of the procedure as infanticide, not really abortion. The child no longer resides in the mother and the horrible procedure kills a child just “three inches” from full citizenship and personhood. They warn their supporters not to be fooled by pro-abortionists use of the term Dilation and Extraction (D&X) which is, they say, is “pseudo-medical jargon”; partial-birth is the term used by doctors. They go on to give “facts” about the situation: this brutal procedure is performed thousands of times in the U.S.; generally doctors oppose the practice; the majority of these abortions are performed on healthy babies of healthy mothers. Most of these babies would live, they claim, if allowed to be born instead of brutally killed.

So, according to pro-life advocates, the pro-choice claim that these abortions are performed for health reasons is a myth. Quoting medical doctors and other health professionals they assert that performing a partial birth abortion for health reasons is never necessary. They caution that the health exception is typically very broad, includes mental health, and thus can allow abortions at any stage. The frame asserts that convenience is the primary reason women and their doctors decide to perform
partial birth atrocities. It’s time for the Supreme Court to treat human life with
dignity by upholding the Congressional ban.

The motivational frames include the following:

“Convenience is the primary reason that women seek late-term abortions. Even abortion-rights advocates admit this. In 1993, the National Abortion Federation told its members: "Don't apologize. There are many reasons why women have late abortions¼ lack of money or health insurance, social or psychological crisis, lack of knowledge of human reproduction." (Pulkistenis & Bossom 2002)

“Partial Birth Abortion, a late-term and highly controversial abortion procedure, is currently legal in almost the entire United States. The baby is killed when it is only a few inches from being given full U.S. citizenship and the legal right to life. The baby is alive when the Partial Birth Abortion procedure is performed.” (Abortioninfo)

“The main issue protecting partial birth abortions is fear that women may need this procedure to preserve their health. However America's leading authority on late-term abortion stated that partial birth abortion is "never necessary to preserve a woman's health." Partial birth abortion is an unnecessary procedure that sacrifices thousands of children." (Abortioninfo).

The issue frame in the policy debate over partial-birth abortion procedures has remained unchanged since the mid 1990s: whether the ban limits infanticide or threatens women’s health and fertility. So far the frame has favored efforts by pro-choice advocates to eliminate the bans, but only by moving the debate to policy arenas in federal courts and away from state and federal legislatures. As stated earlier, Congress enacted a law in 2003 similar to the state laws already declared unconstitutional in 2000. The Planned Parenthood Federation and the Center for Reproductive Rights immediately challenged the new law and the cases have been working through the appeals process. In February 2006, the Supreme Court agreed to hear the case on the constitutionality of the federal ban. At issue will be the contention by the Congressional majority that the exception for women’s health is not necessary because partial birth abortions are never medically necessary and other procedures are available. The case will be tried by the Court composed of two new justices—Chief Justice John Roberts and Justice Sam Alito—appointed by President
Bush with the support of the pro-life movement. This court may also be the policy arena for the next major abortion debate—the coming showdown between pro-life and pro-choice movements over the status of legal abortion itself.

5. The Showdown: the battle over Roe v. Wade.

The linchpin of abortion policy in the U.S. is the Supreme Court’s 1973 decision in *Roe v. Wade* (410 US 113 [1973]). In this decision the court struck down states’ criminal abortion statutes, in place since the 19th century, because they violated rights of women and doctors to privacy. They also set forth guidelines for future policy. In 1992, The court upheld what they called the “central ruling of *Roe*” which was “a recognition of the right of the woman to choose to have an abortion before viability and to obtain it without undue interference from the State.” (*Planned Parenthood of Southeastern Pennsylvania v. Casey* 505 US 833: 846 1992). The court also decided that prior to viability state governments may enact administrative hurdles to abortion services as long as they were not an undue burden on women. In rulings since *Casey* the court has been consistent that regulations that endanger women’s lives or health would be undue burdens.

Ever since *Roe*, the central goal of the pro-life movement has been to somehow override, with constitutional amendment, or overturn, through changes in the Court, this constitutional law. Today, 23 years after this decriminalization of abortion, the pro-life strategic frame focuses on the number of abortions that have occurred, saying that babies are dying, and they vow to protect babies from what they see as a grisly practice. Linking unborn or “pre-born” children with those who are born, they demand protection for all human beings. In addition, pro-life attorneys represented by Americans United for Life charge that the decision was an “unconstitutional usurpation of people’s right to self government.”
While there remains widespread agreement among activists on the diagnostic pro-life frame, there is disagreement on the policy solutions, that is, the prognostic frame. Some pro-life organizations want to stay with the plan of pushing laws that make access to abortion services more and more difficult through regulations on clinics and administrative hurdles for patients. These include waiting periods, extensive counseling and lectures from doctors on fetal development, informed consent, and parental consent and notifications. Others, however, want a more direct attack on legal abortion itself to overturn *Roe v. Wade*. They have campaigned in several states for legislatures to enact laws that conflict with Supreme Court rulings, which will force the Court to reconsider this precedent. Until late 2005, however, there was a solid 5 or 6 vote majority (out of 9) on the Court in favor of *Roe*. When President Bush appointed two conservative judges to the court—Justices Roberts and Alito—pro-life activists in the states pushed to put their plan into action. They reasoned that with the resignation of Justice Sandra Day O’Connor—a pro-*Roe* justice—and the likely resignation of another in the next two years, this was the time to give the anti-*Roe* majority a chance to reverse the court’s ruling. Other pro-life activists oppose this strategy because they think it is premature. They worry that the votes are not there on the Court and there is no guarantee they will be there in the near future. Roberts and Alito have never stated that they would vote to overturn or reverse this decision.

Motivational frames reflect the disagreement:

“Complete bans on abortion are premature for a very simple reason—the votes at the Supreme Court simply aren’t there. I think you have to count to at least five, if not more, and right now I can only count to 2. And I don’t know anybody else who can count higher than that.” (Clark Forsythe. Americans United for Life)

“None of us are involved in this struggle to predict what nine Supreme Court justices may do, or what a campaign to obliterate abortion through public referendum might produce. We do what we do because babies are dying and we want to end the senseless crimes that produce thousands of dead bodies every single day.”
“It's outlandish for any organization or individual who is identified as pro-life to argue that a bill banning all surgical and medical abortions is ill-timed. Such statements defy the heart of what the pro-life movement is all about.” (Brown 2006)

The strategic frame of the pro-choice movement with respect to the status of _Roe_ is similar to that on the partial-birth abortion debate: Any ban on abortion is an attack on women’s health. Activists vow to stand up for women’s freedom and privacy, but emphasize women’s health as the issue of paramount importance. They have long claimed that legal abortion is in jeopardy and the pro-life campaign to make direct challenges to _Roe v. Wade_ underscores the threat. The prognostic pro-choice frame shows a shift toward activism in the policy arenas in state legislatures.

Motivational frames from pro-choice actors include:

“This proposed ban is a reprehensible attack on women’s health care in South Dakota and across the country; it makes a bad situation completely intolerable for women.” (Sarah Stoesz. Planned Parenthood. Lehrer News Hour March 23 2006)

“Can you believe it? South Dakota Gov. Mike Rounds (R) has just signed into law a ban on abortion in the state of South Dakota! Last month, anti-choice activists celebrated when the South Dakota legislature passed a law outlawing virtually all abortions. Americans across the nation are outraged at this wild attack on women's rights. So let's do something about it.” (Planned Parenthood 2006)

“This is exactly the fight that right-wing zealots have been itching for -- a chance to reverse _Roe_ and once again seize control of women's bodies and lives. Almost in concert, other states are introducing their own bans, including Mississippi, which moved forward with similar legislation last week.” (NOW 2006)

The issue frame that dominates the debate over _Roe v. Wade_ in Congress and the courts remains the question of whether the constitution guarantees privacy to women and doctors in making decisions about abortion and how these rights can be balanced with the government’s interest in protecting fetal life (McBride Stetson 2004). This was evident in the recent Congressional hearings on the confirmation of the new Supreme Court justices. In the Court, the frame remains whether specific abortion regulations constitute an undue burden on women’s liberty, especially with respect to their lives and health. Thus, the frame favors the pro-choice position, but
the pro-life attack on *Roe* is intended to change this frame to define the issue in terms of the equal personhood of an unborn child and the Court’s powers which would work against pro-choice goals.

The debate over the direct attack on *Roe* is still unfolding. In March, the governor of South Dakota signed a statute that criminalizes abortion in all cases except when the pregnancy is a direct threat to the mother’s life. It declares that life begins at conception and that the “guarantee of due process of law under the Constitution of South Dakota applies equally to born and unborn human beings, and that under the Constitution of South Dakota, a pregnant mother and her unborn child, each possess a natural and inalienable right to life.” (South Dakota 2006, sec 1).

Throughout the act the fetus is referred to as an “unborn human being”. Persons who perform abortions may be prosecuted but the woman seeking the abortion may not.

Most observers expected that pro choice organizations, such as Planned Parenthood and the Center for Reproductive Rights would challenge immediately the constitutionality of the statute which is in direct conflict with current constitutional law. Instead they first organized a campaign for repeal within South Dakota. This involves circulating a petition for the question to be placed on the ballot in November. If they get the necessary 17,000 signatures, the action will suspend the law, due to go into effect in July, until after the election. If they are unsuccessful in the repeal campaign they will bring a case in court. Repeal would squash this opportunity for pro-life activists to get a chance at the new Court. In the meantime, the spring legislative sessions in the states were busy with abortion-related issues. Ten states considered new bans on the procedure and national organizations were organizing state campaigns to resist these proposals.
Conclusion

This paper provides a survey of five contemporary debates in U.S. politics over reproductive rights and policy. The major activists in the debates represent two large political movements: pro-choice and pro-life. Depending on the issue, they contend in a variety of policy arenas. Controversies over sex education, abstinence, birth control and emergency contraception take place in Congress, the federal executive agencies and the state legislatures. The question of foreign aid for family planning is the domain of federal executive agencies alone. Efforts to ban abortion procedures, either partially or completely, focus on the courts along with state and national legislatures.

The strategic frames of the pro-life and pro-choice movements are selected, for the most part, from their more extensive collective action frames. Table 1 below summarizes the debate on the five issues. Pro-life actors emphasize that sexual behavior is risky, especially for the young and that abstinence, not birth control is the preferred approach. Abortion kills babies and should be banned. There is some disagreement on whether to work incrementally or try to confront legal abortion directly. The pro-choice strategy frames intend to counter the pro-life frames by claiming that birth control prevents pregnancy and birth control and abortion services are necessary for women’s health.

The issue frames on four of the debates reflect the debate between movement actors’ strategic frames. Both sides have been successful in maintaining their perspective on the issue in the deliberations among policy actors. On the fifth debate over Roe v. Wade the dominant frame is the one established in the 1970s---that the question of legal abortion is about privacy, women’s liberty and health while protecting potential life (McBride Stetson 2001).
The issue frames and policy outcomes over abstinence sex education and the Mexico City policy (debates 1 and 3) have favored the pro-life movement. These debates take place in policy arenas dominated by social conservatives, mostly in the Republican party, in Congress, the Bush administration and some state legislatures. So far, the pro-choice movement has prevailed in the issue frames and the outcomes relating to proposed abortion bans (debates 4 and 5). They have had influence when they can bring the issue to the Courts, less so in the federal or state legislatures. There is a standoff over Emergency Contraception (debate 2); this debate takes place within the FDA pitting the pro-choice scientific experts against the pro-life Bush administration appointees. In these hot controversies on reproductive issues, the results reflect the deep divisions between the political parties and in public opinion.

Birth control and abortion remain legal and women of means are generally able to obtain services they need. However, the opportunities for action on behalf of women’s rights are steadily declining. This is reflected in the narrowing range of pro-choice strategic frames as a result of relentless pro-life activism to limit on abortion access incrementally, ban abortion procedures, and restrict information about contraception. In the 1970s and 1980s, pro-choice frames expanded the definition of women’s reproductive rights to include privacy, personal liberty, and complete services for women regardless of income. Since the 1990s, activists struggle to retain a foothold in the issue frame with a focus primarily on women’s health. If this trend continues policy successes are likely to shift more and more in favor of the pro-life goals and limit women’s reproductive rights.

The idea of choice has become less and less effective as a frame for abortion rights in public policy debates. Pro-life frames that emphasize morality and despair at the taking of life that is inevitable in abortion have been successful in dominating
issue frames in legislative and electoral arenas. Some pro-choice writers and legislators suggest that movement actors seek to regain the high ground in the debate by focusing less on women’s rights and health and more on the moral problem of abortion with the goal of reducing abortions rather than criminalizing them. This means linking failure to prevent unintended pregnancies to the abortion rate and demanding attention to sex education, contraception and abstinence, expanding health insurance and access to Emergency Contraception. “What we need is an explicit pro-choice war on the abortion rate, coupled with a political message that anyone who stands in the way, yammering about chastity or a ‘culture of life,’ is not just anti-choice, but pro-abortion.” (Saletan 2006).
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NOTES

1. The debates over many of these issues are fast moving and new developments appear regularly. The information in this paper is as of 10 May 2006.

2. This is one of eight issue frames identified by Ferree et al 2002. The others are Fetal Life; Balancing; Women’s Rights; Individual and the state; Effects on Society; Pragmatic Consequences; and Social Justice.

3. “In the past, the discourse used the term “unwanted pregnancy” which pro life activists challenged by arguing with adoption, no baby is unwanted. The change to “unintended” leaves it open whether the pregnancy may be wanted or unwanted.

4. EC is legal and available through prescription.

5. There is growing evidence that this is the case. See, for example, Shorto 2006.

6. In September 2005, Susan Wood, Director of the Office of Women’s Health at the FDA, resigned accusing the agency of using abortion politics in its decision.

7. Senators Hillary Rodham Clinton (NY) and Patty Murray (WA) will block confirmation until FDA makes a decision about the status of EC.

8. The Government Accountability Office has reported that many of these funds are going to ineffective abstinence-only education programs in Africa rather than emphasizing protection: “The mandate requires that individual teams spend at least one-third of their anti-AIDS funding on promoting sexual abstinence.” The report also identified widespread confusion about whether USAID workers were allowed to teach about condoms, since the term "condom promotion" is prohibited by the legislation, while there is ambiguity surrounding the term "condom education."” (Dwoskin 2006).
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