

Choices and lives: The changing politics of abortion

by [Charles C. Camosy](#) in the [April 1, 2015](#) issue



AP Photo / Pablo Martinez Monsivais

Those who attempt to limit abortion in the United States are often described by their opponents as “moving backward.” In the summer of 2013, for instance, the Texas legislature moved to ban abortion after 20 weeks and to require all abortion facilities to offer women easier access to hospitals in case abortions go wrong. Writing in the *Washington Post*, Jamila Bey spoke for many pro-choice people when she claimed that Texas was trying to “turn back the clock” on women’s rights.

But those who view Europe as more progressive than the United States on social issues like abortion might be surprised to learn that the Texas law is rather tame in comparison to European restrictions. Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Holland, Spain, and Sweden restrict abortions to well before 20 weeks. Many countries draw the line at 12 weeks, and many require that the procedure be done in a hospital.

Health care. Paid maternity leave. Ecological concern. Especially for progressives, Europe stands for ideas and policies to which many hope the United States will aspire. But something that I call the Costanza strategy is in effect in the United States. I’ve named this phenomenon for the character George Costanza in *Seinfeld*, who once adopted a strategy of doing the opposite of every instinct he had. While Republicans usually stand for small government, and Democrats energetically use government to protect the vulnerable from marginalization and injustice, both parties tend to “do the opposite” when it comes to abortion.

Evidence appears to show, for example, that Republicans play on the concerns for prenatal children by claiming to stand for a big government that will regulate the intimately private and personal reproductive practices of women. And the evidence also appears to show that Democrats play on the concerns of many for women's rights by claiming to stand for privacy and freedom of the individual over and against the government's interest in protecting the vulnerable.

The Costanza strategy also describes the political reaction to abortion laws in Europe. Conservatives, who often criticize attempts to use Europe as a model for social issues, are pushing our abortion laws to be more like those in France and Sweden. Liberals, who often evoke Europe as a place of social progress, imagine such changes to be moving backward. But the reality is that we are slowly becoming more like Europe when it comes to abortion restrictions. Though there is no serious attempt to make abortion totally illegal, dozens of bills have passed in recent years that significantly restrict abortion. Here are just a few:

- Thirty-three states have passed laws requiring informed consent (24 include a requirement for an ultrasound).
- Thirty-one states have passed abortion clinic regulations.
- Thirty-eight states have passed rules on parental notification or involvement.
- Thirty-eight states have wrongful-death laws that treat the unborn child as a person; 11 of these protect the fetus from fertilization onward. Thirty-seven states have fetal homicide laws, and 25 of these extend the protection from fertilization.
- Virtually every state today has prenatal-injury laws that compensate for prenatal injury at any time after conception.
- With the passage of the previously mentioned Texas law, Texas became the 13th state to ban abortion beyond 20 weeks.

The trend shows no signs of slowing. The year 2013 saw the second highest number of pro-life state laws passed in American history (2011 holds the record). There are many more in the pipeline. One of the few attempts to change the law in the *other* direction was defeated in New York State in June 2013, when both Republican and Democratic legislators rejected Governor Andrew Cuomo's attempt to expand access to late-term abortion.

So there's been a broad and dramatic shift, especially in the last 15 to 20 years, toward more abortion restrictions in the United States. This trend toward European-

style restrictions will almost certainly continue for at least another generation.

The laws mentioned above continue to be passed by legislatures because they have the support of the people. But our abortion *practices* remain out of step with what most Americans believe is acceptable:

- Sixty-two percent believe that abortion should be legal in “few” or “no” circumstances.
- Forty-two percent believe that abortion should be illegal except in cases of rape, incest, or a threat to the life of the mother; 10 percent believe that it should be illegal without exception.
- Sixty-one percent believe abortion should be legal in the first trimester, 27 percent in the second trimester, 14 percent in the third trimester.

Contrast this with abortion practices in the United States:

- Thirty-three percent of women will have an abortion in their lifetimes.
- Every year 1.2 million abortions are performed.
- Twenty percent of pregnancies end in abortion (40 percent in New York City).
- Ninety percent of fetuses diagnosed with Down syndrome are aborted.
- One hundred and twenty thousand abortions are performed in the second and third trimesters.

Our political parties are using the Costanza strategy in order to raise money and turn out their base. Their stated views on abortion run counter to their core political beliefs—so it is hardly surprising that neither party has done much to change the federal abortion law.

But it will not stay this way forever; eventually the will of the people will be reflected in public policy. This seems undeniable, especially when we think about the coveted voters of the next generation: Hispanics, millennials, and women. Hispanics are now the majority ethnicity in California; Texas will soon follow, along with much of the rest of the country. Though Hispanics disproportionately vote Democrat, they are not reliable pro-choice voters. Far from it. As Victoria M. DeFrancesco Soto, a physician appearing on *NBC Latino*, noted, “On the issue of abortion Latinos are significantly more pro-life than non-Latinos.” For instance, Hispanics are 10 percent more likely than whites to think that abortion should be made broadly illegal. Soto also noted that Latino opposition to abortion changes little whether Latinos identify as Democratic, Republican, or independent. As Hispanics assume more positions in

the power structures of the United States, abortion politics will change dramatically.

Yet the most obvious way that the electorate will shift will come from the rise of the millennials. It's well known that young people are trending pro-life, and that this was the primary reason for the 2013 resignation of NARAL's 61-year-old president, Nancy Keenan. This issue has been on the radar screen of pro-choicers since the appearance of Elizabeth Hayt's 2003 *New York Times* article, "Surprise, Mom, I'm Against Abortion." The trend was clear:

Fifty-four percent of 282,549 students polled at 437 schools last fall by the University of California at Los Angeles agreed that abortion should be legal. The figure was down from 67 percent a decade earlier.

A 2003 Gallup poll also found that over 70 percent of teenagers thought that abortion was "morally wrong." In 2010, Gallup found that "support for making abortion illegal was growing fastest among young adults." In 2012, only 37 percent of all millennials considered abortion to be morally acceptable.

During a debate in Texas and in the U.S. Congress about whether to ban abortion beyond a gestation period of 20 weeks, the *Washington Post* noted that among people who were 50 or older, 44 percent supported such a ban; among those 18 to 29, 52 percent supported it.

This trend holds for young Catholics as well. A 2013 *New York Times* poll asked Catholics: "Should the next pope be for or against legalized abortion?" In the age group 45 to 64, only 49 percent said "against," but among those 18 to 44, that number rose to 58 percent. Pro-choice groups such as EMILY's List and NARAL are also worried about what they call the "intensity gap." Of young people who identify as pro-life, 51 percent claim that abortion is an important issue, but for young people who identify as pro-choice, that number plummets to 20 percent.

Finally, consider the politically all-important demographic of women. It is commonly assumed that women are the group most opposed to pro-life policies. But in the *Times* poll that asked whether the new pope should be for or against legalized abortion, 60 percent of women said "against" compared to only 52 percent of men. Fifty percent of women were for the 20-week ban, compared with only 43 percent of men. In a 2013 Pew Forum study, 49 percent of women said that having an abortion was morally acceptable, compared with 45 percent of men. Once again, the conventional wisdom on abortion is called into question by facts on the ground.

Two things are worth watching. The first is the Costanza strategies of the political parties. With the Internet and social media taking over political campaigns, it's unlikely that the party bosses will be able to hold on to power via political sleight of hand and, at times, outright dishonesty. This shift had happened to a certain extent already in 2009, with the rise of the pro-life Democrats and the passage of the Stupak Amendment. We are already starting to see a shift in the abortion debate toward "libertarian vs. nonlibertarian" rather than "Democrat vs. Republican." Those who are opposed to abortion will realize that they need pro-life Democrats, while the pro-choice movement will continue to enlist Republicans in their cause. The Costanza strategy won't last forever.

The other factor to keep in mind is that many believe that the pro-life laws that states are enacting are unconstitutional. In a May 2013 *New Yorker* article titled "The Abortion Issue Returns," legal analyst Jeffrey Toobin noted that a few of these laws have already been struck down by lower courts. The judges most often claimed that such laws posed an undue burden on women, something prohibited by *Planned Parenthood v. Casey*. Toobin notes that the holdover from that 1992 decision is Anthony Kennedy, who will likely be the swing vote in abortion cases. Would he uphold a state law with a 20-week (or earlier) ban? A law mandating ultrasounds? More abortion clinic regulations? It isn't clear that he thinks such laws are undue burdens.

Toobin points out that in *Gonzales v. Carhart* (2007), Kennedy upheld federal law against late-term abortions and reflected a very different sensibility than he did in *Casey*: "The State may use its regulatory power to bar certain procedures and substitute others, all in furtherance of its legitimate interests in regulating the medical profession in order to promote respect for life, including life of the unborn." What counted as an undue burden for him when he helped decide *Casey*, Toobin noted, looked very different to Kennedy 15 years later. What will it look like when these state laws come before the Supreme Court?

Given current trends, the positions of key future demographics, and the legal challenges on the horizon, the question is not *if* the national abortion policy will undergo a substantial change, but *when*. Though this view may favor pro-lifers, the longtime pro-choice activist Frances Kissling of Catholics for Choice has been saying something similar for years. In a 2011 *Washington Post* op-ed, she accused pro-choice activists of being out of touch with trends in the debate. She argued that the rhetoric of choice and freedom—especially when combined with the view that

abortion is just like any other medical procedure—is losing the argument in American culture.

We can no longer pretend the fetus is invisible. . . . We must end the fiction that an abortion at 26 weeks is no different from one at six weeks. These are not compromises or mere strategic concessions, they are a necessary evolution. The positions we have taken up to now are inadequate for the questions of the 21st century. . . . The fetus is more visible than ever before, and the abortion-rights movement needs to accept its existence and its value. . . .

Abortion is not merely a medical matter, and there is an unintended coarseness to claiming that it is. We need to firmly and clearly reject post-viability abortions except in extreme cases. . . . Those kinds of regulations are not anti-woman or unduly invasive. They rightly protect all of our interests in women's health and fetal life.

When hardcore pro-choice activists like Frances Kissling suggest changes with which many pro-life activists are likely to agree, there is good reason to think that changes will happen. When we refuse to let the extremists rule the debate, we can see that Americans have a large amount of overlap in what they believe about abortion. We truly are on the cusp of a new moment for public discussion of abortion in the United States.

This article is excerpted from Charles C. Camosy's book Beyond the Abortion Wars, just published by Eerdmans. Used with permission of the publisher.