

contexts

understanding people in their social worlds



VOLUME 1 / NUMBER 2 / SUMMER 2002

\$10

a publication of the
american sociological association



faith in america
is discrimination dead?
pop culture goes uptown
photo essay: arab americans

abortion talk in germany and the united states: why rights explanations are wrong

The American debate over abortion is unusually volatile—but not because Americans pit the rights of women against those of fetuses. Americans actually invoke the issue of rights less often than do the far less confrontational Germans. What makes the American debate so rancorous?

Why does the abortion controversy continue to be so acrimonious in the United States when European nations are not torn apart over it? We studied this question by looking at the nature of the debate in Germany and the United States since 1970, interviewing dozens of leaders of advocacy organizations on both sides of the abortion issue in both countries and journalists who regularly write about it. We also analyzed more than 2,500 newspaper articles written about abortion.

Some authors, such as Mary Ann Glendon, attribute the irreconcilability of the American abortion debate to a peculiar tendency to talk in terms of rights, pitting the right to life of the fetus against the woman's right of self-determination. This leaves no ground for pragmatic compromise. Others, such as James Davison Hunter, say Americans are caught in a culture war in which abortion stands in for other values. The issue becomes a battleground for those who support gender equality and those who defend patriarchal families and their related ideas of sexual morality.

Neither of these common explanations, however, really distinguishes the American debate from the German one. Germans talk about rights—especially fetal rights, surprisingly enough—even more than Americans do. Also, gender equality is even more explicitly part of the German debate than it is in the United States. The most significant difference between the two is each nation's view of the role of government. This changes the meaning of what is said about the rights of women and the unborn.

the right to life

In the United States, even religious leaders do not agree about whether the fetus is a life that the government should protect. In *Roe v. Wade*, the Supreme Court explicitly held that the beginning of life was something on which theologians disagreed. More than 30 years ago, the Protestant Council of the City of New York argued that the "sanctity of human life is of paramount concern to both Christians and Jews [but]... those who share this concern for human life... may sincerely differ on the point at which life begins."

Protestant leaders in Germany, on the other hand, argue that the controversy is not about when life begins. "It is beyond debate," said Bishop Martin Kruse, speaking for the German Lutheran Church, "that unborn life deserves and needs protection. The controversy is really only about how this protection is best achieved." In 1975 the German constitutional court said that protecting life includes the government's obligation to protect unborn life. This responsibility begins at conception. Nonetheless, German policy makers in 1992



Photo by Klaus Rose

The words on the front of the car read, "218 must go," referring to the German law that criminalizes abortion. The banner above the women reads "For women's right to self-determination."

allowed women to decide for themselves about abortion in the first trimester, arguing along with Bishop Kruse that “the best protection for the unborn child is the conscience of the mother” and that respecting life demanded working “with the woman and not against her.”

This solution seems alien to Americans who, unlike Germans, do not see the welfare state and the benefits it offers as part of how the government “protects” life. In fact, the abortion controversy is really about the specific meanings given to rights and responsibilities in each political culture.



Photo courtesy of Argus

The big banner says: “To have a child or not, we alone will decide!” (and in smaller letters) “For the absolute right to self-determination for all women.” The demonstration took place in Karlsruhe, West Germany, on the eighth anniversary of the 1975 court decision that the fetus is a human life deserving state protection.

two models of “protection”

In the United States, by virtue of *Roe v. Wade*, a pregnant woman’s right to an abortion is legally protected through the second trimester. In Germany, the fetus has the government’s protection from the moment of conception. The pregnant woman who wants a first-trimester abortion can get one in Germany, however, and if she is poor even have the government pay for it. Pregnant women in the United States, particularly those who are poor, young or living outside a major city, can find that actually getting an abortion poses more obstacles than can be overcome. This apparent paradox can be explained only by the way that rights are tied to responsibilities in each country.

Consider the following: Two American and two German social scientists (actually, we four authors) are collaborating on a study of abortion. The Americans quote Congressman Barney Frank: “Right-to-Lifers believe that life begins at conception and ends at birth.” Instead of the wry grin or the dirty look this line elicits in the United States, the Germans respond with puzzled stares. How come? Their puzzlement reveals a lot about what most Americans take for granted.

In Germany, the prevailing view is that the government should be an active force for good in social life. It should take responsibility for the well-being of its citizens, including both the pregnant woman and the unborn child. When the German constitutional court (the equivalent of the U.S. Supreme Court) ruled that the government has a duty to protect fetal life, Chief Justice Ernst Benda also asserted that it would be “insupportable” (in German, *unzumutbar*) to demand that a poor woman bear a child in intolerable conditions.

Benda argued that the German government should try to create reasonable conditions that allow women to bear children and care for them decently. If it fails to do so, exceptions have to be granted. As Justice Benda put it, in creating exceptions for “social necessity” the government does not violate its obligation to protect life. The obligation is met by offering “counseling and help with the goal of reminding the pregnant woman of her fundamental duty to respect the life of the unborn and, especially in cases of social need, of supporting her with practical assistance.” The German court made protecting fetal life a primary government obligation, but it also demanded that the government help the pregnant woman enough for her to be able to choose willingly to have a child.

The German abortion debate in the 1990s revolved around who was in the best position to decide whether the conditions a pregnant woman faced were truly “insupportable.” Rita Süssmuth, a self-described feminist as well as a leader of the conservative Christian Democratic Union, acknowledged that “there is no self-determination as a right over another human life,” but she also opposed criminalizing abortions: “A termination of pregnancy can only be considered in a situation of need and conflict in which there is no way out. But I wonder why a doctor, or a judge or prosecutor second-guessing him, would be granted more competence or responsibility in this matter than the woman, who not only now, but life-long, takes on the responsibility for the child, the children. Let us finally stop thinking of women as incapable of this decision, incapable of responsibility.”

As a result of the 1975 constitutional decision, West Germany’s abortion law had given the government, not the woman, the right to decide what constituted a “social emergency.” Faced with this, women continued to get abortions

illegally, either out of the country or from doctors who were willing not to report the procedure. So the question the German abortion debate confronted in the 1990s was whether punishing such women for abortion actually reduced the number of abortions or just degraded and endangered women. The proliberalization position was to protect fetal life, but “with the woman, instead of against her,” while the antiliberalization position insisted that both the carrot of social welfare and the stick of criminal law were necessary. The liberal position won, making the pregnant woman the final arbiter of whether she faced a situation of “social emergency” and blocking any second-guessing of her decision as long as she went through the legally required counseling beforehand.

In the United States, the government’s constitutional responsibility for protecting fetal life varies with the stage of



Pro-choice buttons, USA.

pregnancy and the viability of the fetus. The central issue for the Supreme Court majority was the right to privacy from government intrusion into intimate personal matters. Protecting the woman’s right to an abortion means keeping government out of the process, not actually making sure she has the opportunity and means to make a free and informed decision.

The government’s hands-off stance on the practical issue of abortion access was set in the late 1970s. The U.S. Supreme Court upheld the constitutionality of state laws forbidding Medicaid to pay for abortions for poor women. Justice Powell, writing for the majority, observed that “we are certainly not unsympathetic to the plight of an indigent woman who desires an abortion, but the Constitution does not provide judicial remedies for every social and economic ill.” Asked whether he thought this decision was fair, President Jimmy Carter said, in stark contrast to the German philosophy, “Well, you know, there are many things in life that are not fair, that

wealthy people can afford and poor people can’t. But I don’t believe that the federal government should take action to make these opportunities exactly equal, particularly when there is a moral factor involved.”

The historical legacy of American distrust of government is often shared across the political spectrum. Government is “Big Brother,” part of the problem rather than part of the solution and something to “get off our backs.” This distrust of government is double-edged. It rules out interference but leaves to Americans as individual citizens the responsibility for protecting their own welfare.

If Americans are leery of Big Brother’s help, however, they also don’t want him interfering in their bedrooms, deciding on whether or not they should have a baby. Lawrence Lader, a pro-choice activist we interviewed, made the point forcefully when we asked what he thought the role of government should be in the abortion question: “Get the hell out of it.”

The two different political value systems and constitutional decisions that frame the abortion debate—protecting fetal life in Germany and individual privacy in the United States—are not the only ways abortion is talked about in either country. These ways of speaking provide an advantage, however. If you can claim that what you want is consistent with the constitution, you have the power of its framing on your side.

the framing contest

It is useful to think of the abortion controversy as a framing contest. A frame is a thought organizer. Like a picture frame, it puts a border around something, distinguishing it from what is outside it. A frame spotlights certain events and their underlying causes and consequences, directing our attention away from others. By selecting themes from an apparently diverse array of symbols, images, and arguments and organizing them according to coherent principles, a frame influences how we perceive an issue and suggests what is at stake. Each frame also gives an advantage to certain ways of talking and thinking, while it places others “out of the picture.” Take, for example, the debate over names: Are those who want the government to restrict abortion “pro-life” or “anti-choice”?

Setting the anti-abortion frame. The Catholic Church is a major player in both Germany and the United States, but in Germany spokespersons for the church are much more likely to use a “fetal life” frame (the issue is about when life begins) than their counterparts in the United States. More than 70 percent of those speaking for the German Catholic Church in the newspaper articles we analyzed used the fetal life frame. In the United States, by contrast, only half of the Catholic speakers used the fetal life frame in the 1970s, and



Anti-abortion poster in residential front yard, USA.

this declined to about one-third in the 1980s and 1990s. This is surprising, because it is a matter of Catholic moral teaching in both countries.

German Catholic speakers remained constant in their use of this frame, while its use by German Protestant speakers increased from around 40 percent at the beginning of the 1970s to almost 70 percent more recently. The Protestant churches accept the German court's definition of the fetus as human life, while endorsing policies that offer a "carrot" rather than a "stick" to pregnant women by providing government support for children and mothers, as well as counseling for the pregnant woman about the financial benefits available if she has the child.

In the United States, religious pluralism and the separation of church and state produced a political strategy by anti-abortion advocates to de-Catholicize the issue. As early as 1972, an anti-abortion activist was suggesting: "We have to reach more people of Protestant persuasion so we don't get clobbered again and again by the charge that this movement is the Catholic Church attempting to foist its ideas on the community." This effort has been successful, abetted by two interacting factors: the Catholic Church's desire to take a lower profile by

standing behind ecumenical anti-abortion groups and the rise of the Right-to-Life cause among evangelical Protestants.

These Protestants did not focus on supporting women who bear children, including unmarried, poor women—unlike some Catholics. The late Cardinal Joseph Bernardin called for church initiatives in the fields of employment, housing, health care and welfare reform as "a concrete test of the seriousness of our commitment to the basic human right to life," which he called a "seamless garment" of respect for all life. The seamless garment approach—focused on positive measures to support "born and unborn life"—is the mainstream position that dominates German abortion talk. But the seamless garment framing challenges the dominant Christian Right and conservative anti-abortion frames in the United States that stress privacy, meaning that individuals are responsible for their own welfare.

Setting the pro-abortion-rights frame. Supporters of abortion rights have also adapted their strategies to framing opportunities in the different countries. In Germany, abortion rights are more specifically about a woman's rights—her unique existential crisis in facing an unwanted pregnancy. Feminist advocates for women's choice accepted the court's



Anti-abortion bumper sticker in suburban U.S. neighborhood.

premise that the fetus had a right to state protection from the moment of conception but argued that the best way to protect the fetus was “with the woman and not against her.” Inge Wettig-Danielmeier, one of the feminist legislators who constructed the 1992 abortion law, argued that insisting first on social change doesn’t undervalue developing life. “Only when women are finally equal, finally have the same rights and duties, finally know that their lives do not stand every day at the disposition of their partners and children, will they be able to decide to have children with pure joy and full inner conviction.”

Rather than the stick of criminal law, the state should offer women the carrot of equality. This must include benefits for child rearing. “A politics that is against women, to whom developing life is entrusted in the first place, is at the same time a politics against developing life,” another woman legislator argued. Anti-discrimination provisions and better wages for women workers encourage women to see raising a child as affordable. Germans do not find it odd that their abortion law included a government commitment to fund day care for all three- and four-year-olds.

In terms of the U.S. Supreme Court’s position, the issue is not really women’s rights, but individual rights. It just so hap-

pens that women are the only ones who can get pregnant, but both men and women have a right to control decisions concerning their own bodies. Reproductive rights are privacy rights. They are, however, part of a more general and abstract right to have government leave people alone.

Defending legal access to abortion in the language of privacy is also a strategic choice. Emily Tynes, speaking for a pro-choice communications consortium, acknowledges that “all the [abortion rights] groups see it in a women’s rights frame [but] when it plays out in terms of what’s actually happening, it doesn’t play out in terms of women’s rights. It plays out in terms of constitutionality, or a piece of legislation invading people’s bedrooms.” She characterizes their media strategy as “really playing to basic U.S. values. And individual rights is at the top.”

Tynes is quick to acknowledge the costs of this strategy. Demanding that the government pay for poor women’s abortions is a difficult case to make when also emphasizing that women are autonomous moral agents who should be allowed to make decisions without government interference. No matter what they did, Tynes reasons, they would not have been able to win. “There have always been groups at the table who argued the moral position. ‘Yeah, we can’t win but we shouldn’t give



Photo by Robert Liner

Pro-Choice demonstration in Washington, D.C., 1992.

up [the fight for] Medicaid funding.” She regrets, however, the loss of “the high moral ground in terms of the women’s movement by not always being an advocate [for funding the poor].”

In Germany, speakers can draw on an assumption of government support to argue that the government should “help, not punish” the pregnant woman. Government support includes a network of benefits well beyond what the American welfare state would dream of offering—paid maternity leave, universal health insurance and state contributions to retirement benefits based on time taken for child rearing. Single mothers are less likely to be poor in Germany than in the United States. Welfare pays for children but also pays for poor women’s abortions, since demanding that a woman bear a child in a situation of “insupportable” social need goes beyond what the constitution can morally demand of her. She has a right to be a mother who can afford to raise a child.

the real difference in the debates

Rather than an emphasis on rights, the real difference between the U.S. and German abortion debates lies in the framing of the issue. An anti-abortion position in the United States generally goes along with less support for welfare recipients and fewer benefits for single mothers and their children. The strategic decisions of both sides have placed a particularly narrow version of individual privacy at the center of the debate in the United States, one that seems odd to both sides in Germany. In German political culture, offering more benefits to mothers, including single mothers, is how one is anti-abortion in practice. In the German context, the right to life of the fetus and the right of a woman to self-determination are reconcilable. The welfare state is what reconciles them.

The frames around both fetal rights and women’s rights in Germany allow for a common ground in the state’s moral obligation to serve the welfare of both. The central compromise defines truly effective protection for the fetus as being attained only when women don’t want abortions. Although some people on both sides reject this compromise, few people in Germany sense that the abortion question is intrinsically irresolvable.

Rights talk about abortion in the United States, in contrast, proceeds with neither side bringing the welfare state into the picture. On the anti-abortion side, this reflects the “de-Catholicizing” of the issue and its capture by anti-government conservatives. On the abortion-rights side, this reflects a strategy of treating abortion as merely one of many private choices that people make.

Making rights talk more reconcilable in the United States would require an activist government that would protect abortion rights and fund legal abortions, as well as generously support and encourage childbirth even among poor single mothers. In the U.S. context, making this political program the centerpiece of an anti-abortion position is outside the frame. Thinking outside the frame might allow both sides to find more common ground. How impossible that may seem is a measure of just how powerful frames can be. ■

recommended resources

Condit, Celeste Michelle. *Decoding Abortion Rhetoric: Communicating Social Change*. Urbana and Chicago: University of Illinois Press, 1990.

Glendon, Mary Ann. *Abortion and Divorce in Western Law*. Cambridge: Harvard University Press, 1989.

Ferree, Myra Marx, William A. Gamson, Jürgen Gerhards, and Dieter Rucht. *Shaping Abortion Discourse: Democracy and the Public Sphere in Germany and the United States*. New York: Cambridge University Press, forthcoming. See also www.ssc.wisc.edu/abortionstudy.

Hunter, James Davison. *Before the Shooting Begins*. New York: The Free Press, 1994.

Luker, Kristin. *Abortion and the Politics of Motherhood*. Berkeley: University of California Press, 1984.

Solinger, Rickie, ed. *Abortion Wars: A Half Century of Struggle, 1950-2000*. Berkeley: University of California Press, 1998.

Tribe, Lawrence H. *Abortion: The Clash of Absolutes*. New York: W.W. Norton, 1990.