SCHOOL OF LAW
CASE WESTERN RESERVE UNIVERSITY

Health Matrix: The Journal of Law-Medicine

Volume 17 | Issue 1

2007

Book Review: Perils of Wlishful Thinking About Abortion

Jonathan L. Entin

BOOK REVIEW

THE PERILS OF WISHFUL THINKING ABOUT ABORTION

Jonathan L. Entin[†]

THE POLITICS OF ABORTION
by Anne Hendershott

(New York: Encounter Books, 2006) iv + 179 pp.

Abortion has been one of our most divisive issues for some time now.[1] University of San Diego sociologist Anne Hendershott seeks to "assess the progress in the culture wars surrounding abortion,"[2] but *The Politics of Abortion* exemplifies the difficulty of "recover[ing] the language of public argument" on this subject.[3] Most of the book reads more like an advocacy document than a rigorous social scientific analysis. Professor Hendershott might be correct that "momentum in the political debate has swung almost imperceptibly to the pro-life side,"[4] but the evidence she adduces for this conclusion is sketchy and anecdotal at best. The problem is not that the author has a point of view, but rather that she allows her point of view to obscure her vision of the ambiguities and uncertainties that still surround the abortion debate.

[†] Associate Dean for Academic Affairs and Professor of Law and Political Science, Case Western Reserve University. E-mail: jle@case.edu.

[1] A detailed analysis of data from the General Social Survey and the National Election Study found that abortion was the only specific issue among several dozen that showed increasing polarization between the early 1970s and the mid-1990s. Paul DiMaggio et al., *Have Americans' Social Attitudes Become More Polarized?*, 102 AM. J. SOC. 690, 715-16, 729-30, 733-39 (1996). For further discussion of the General Social Survey and the National Election Study, see *infra* Part I.

[2] ANNE HENDERSHOTT, THE POLITICS OF ABORTION 6 (2006).

[3] *Id.* at 147.

[4] *Id.* at 138.

I.

Let's begin with the notion that most Americans are pro-life. In support of this claim, Professor Hendershott relies on a press release posted on the Zogby International web site that in turn refers to an October 2003 Washington Post-ABC News poll which found that 58 percent of respondents "thought abortion when the mother's life is not in danger [was] morally unacceptable."[5] The same press release, titled "New National Abortion Poll Shows Majority of Americans are Pro-Life," reported Zogby's own finding that 53 percent of respondents surveyed in December 2003 agreed with the statement that "[a]bortion destroys a human life and is manslaughter."[6]

There are several problems with inferring from these figures that most Americans oppose abortion. To begin with, a January 2006 Zogby poll, also discussed on its web site but not mentioned by Professor Hendershott,[7] found that 52 percent of respondents nationwide "favor abortion."[8] The 2006 press release provides neither the precise wording of the question nor specific baseline data supporting the headline that the new figure was "down markedly from the 1990s."[9]

Entirely apart from the more recent Zogby poll, the earlier one cannot support the weight that Professor Hendershott would have it bear. First, the abortion debate has focused much more on the existence of a legal right to terminate a pregnancy than on the ethics of doing so. Many Americans are profoundly ambivalent about the morality of abortion but do not necessarily support outlawing the practice.[10] Even if most people believe that abortion involves the destruc-

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[5] *Id.* at 30 (quoting Press Release, Zogby International, New National Abortion Poll Shows Majority of Americans are Pro-Life (Jan. 16, 2004), www.zogby.com/soundbites/readclips.dbm?ID=6982). The Zogby International release provides no further details about that poll.

[6] Press Release, Zogby International, New National Abortion Poll Shows Majority of Americans are Pro-Life (Jan. 16, 2004), www.zogby.com/soundbites/readclips.dbm?ID=6982. Professor Hendershott does not cite the 53 percent figure but rather emphasizes that 43 percent of Democratic respondents agreed with the statement to support her claim that Democratic voters are becoming increasingly hostile to abortion and that the Democratic Party's pro-choice position, therefore, is out of the political mainstream. HENDERSHOTT, *supra* note 2, at 29-30.

[7] She does cite some roughly contemporaneous sources as well as several more recent ones, the latest dated May 10, 2006. *See* HENDERSHOTT, *supra* note 2, at 157 nn.32-38, 160 n.30, 161 nn.31-33, 161-62 nn.18-19, 162 n.9, 164 nn.26-28.

[8] Press Release, Zogby International, Support for Abortion in Sharp Decline (Jan. 23, 2006), www.zobgy.com/search/ReadNews.dbm?ID=1060.

[9] The release does, however, give the sample size and margin of error. *See id.*

[10] *See, e.g.*, Jacqueline Scott, *Conflicting Beliefs About Abortion: Legal*

tion of a human life, it does not follow that they favor a pro-life public policy that would make it difficult or impossible for women to obtain abortions in at least some circumstances. The 2003 Washington Post-ABC News poll mentioned in the Zogby press release focused on the moral acceptability of abortion, not on the legality of the practice.[11]

Second, opinions about abortion are very sensitive to question wording and context. Variations in the way a question is asked can lead to noticeably different results. For example, specifying particular circumstances in which a woman might seek an abortion results in less polarized responses than asking general questions that suggest an all-or-none response.[12] Similarly, limiting the question to the first trimester might elicit greater approval of abortion in at least some circumstances than leaving the duration of pregnancy undefined.[13] Moreover, the order in which questions are asked can also affect survey results. For instance, asking a specific question about abortion before a more general one generates higher levels of disapproval than asking the general question before the specific one.[14] We know very little about the Zogby poll emphasized by Professor Hendershott. It seems to have used a general agree-or-disagree question that probably impelled some respondents to a more extreme position than they actually held. The press release on which she relies noted that the poll asked other abortion-related questions but provided no information about the precise wording or order of those questions, so we have no way of assessing how those factors might have affected the results.[15]

Approval and Moral Doubts, 52 SOC. PSYCHOL. Q. 319 (1989).

[11] The 2003 Zogby poll discussed in the same release is more ambiguous on this point in that the question referred to abortion as constituting manslaughter. *See* Zogby International, *supra* note 6. As we shall see in the immediately following text, however, there are other reasons to question whether the responses to that question show that most Americans have embraced a pro-life position on abortion.

[12] *See* Elizabeth Adell Cook et al., *Measuring Public Attitudes on Abortion: Methodological and Substantive Considerations*, 25 FAM. PLAN. PERSP. 118, 119-21 (1993). The authors of this study and of the others cited *infra* notes 13-14 held full-time academic appointments and were not affiliated with any abortion-related organization. *Cf.* Teresa Stanton Collett, *Transporting Minors for Immoral Purposes: The Case for the Child Custody Protection Act & the Child Interstate Abortion Notification Act*, 16 HEALTH MATRIX 107, 127 & n.89 (2006) (discounting studies suggesting adverse consequences from parental-notification requirements for pregnant adolescents seeking abortions because those studies were "conducted by reproductive rights activists").

[13] *See* Larry L. Bumpass, *The Measurement of Public Opinion on Abortion: The Effects of Survey Design*, 29 FAM. PLAN. PERSP. 177, 178-79 (1997).

[14] *See* Howard Schuman et al., *Context Effects on Survey Responses to Questions About Abortion*, 45 PUB. OP. Q. 216 (1981); Bumpass, *supra* note 13, at 179-80.

[15] Later in the book, Professor Hendershott also cites a 2005 Harris Poll finding that substantial majorities of Americans believe that abortion should be illegal

Third, the Zogby press release provides no direct support for the view that public opinion about abortion is moving toward a pro-life majority. This is not surprising because the release addressed a 2003 poll without providing baseline information that would allow us to draw inferences about trends. We do, in fact. have some information on that subject, and it comes from the most respected academic programs in the field of public opinion research. The American National Election Study (ANES), conducted by the Center for Political Studies at the University of Michigan, and the General Social Survey (GSS), conducted by the National Opinion Research Center at the University of Chicago, have been surveying representative national samples for more than three decades. Among the topics covered is abortion. Although both surveys have found that opinions about abortion have fluctuated somewhat during this time, the range of variation has been relatively narrow. In the following paragraphs, I present data from the most recent twenty-year period, beginning in 1984 and running through 2004.[16]

The ANES has asked the following question since 1980:

> Which one of the opinions on this page best agrees with your view?
>
> 1. By law, abortion should never be permitted.
> 2. The law should permit abortion only in case of rape, incest, or when the woman's life is in danger.
> 3. The law should permit abortion for reasons other than rape, incest, or danger to the woman's life, but only after the need for the abortion has been clearly established.

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in the second and third trimesters of pregnancy, although most respondents apparently thought that first-trimester abortions were acceptable. HENDERSHOTT, *supra* note 2, at 140. She does not provide the exact wording of the questions, so it is difficult to compare these findings with those of the Zogby survey described in the press release that she emphasizes or with the long-term studies that are discussed in the immediately following paragraphs of the text. In any event, the Harris result does not offer baseline data that could be used to assess changes in public opinion. Earlier studies also found lower approval levels for abortion at later stages of pregnancy. *See* Bumpass, *supra* note 13, at 178-79.

[16] The information on which the following discussion and tables are based can be found at the websites of the ANES (http://www.electionstudies.org/) and the GSS (www.norc.uchicago.edu/projects/gensoc.asp) as well as at the Survey Data Archive at the University of California, Berkeley (http://sda.berkeley.edu/archive.htm) and the Interuniversity Consortium for Political and Social Research at the University of Michigan (www.icpsr.umich.edu/access/series.html).

4. By law, a woman should always be able to obtain an abortion as a matter of personal choice.[17]

Table 1 presents the responses to this question since 1984. Throughout this period, typically between 12 and 14 percent of respondents have said that abortion should never be allowed (except for 1992, when the figure was 10 percent), and between 28 and 33 percent have said that abortion should be permitted only in cases of rape, incest, or danger to the woman's life. These two responses capture the pro-life position. During the second half of this period, the totals have ranged between 42 and 46 percent; in the first decade the figure was between 41 and 45 percent (again with the exception of 1992, when it was 38 percent). On the other hand, between 35 and 40 percent of respondents have agreed that abortion should always be a matter of personal choice (except for a high of 46 percent in 1992). Between 14 and 19 percent have taken the intermediate position that the need for an abortion should be clearly established.

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[17] NAT'L ELECTION STUDIES, 1980 PRE/POST ELECTION STUDY 36 (produced and distributed by CTR. FOR POLITICAL STUDIES, SURVEY RESEARCH CTR., INST. FOR SOC. RESEARCH, UNIV. OF MICHIGAN) (1999), *available at* ftp://ftp.electionstudies.org/ftp/nes/studypages/1980prepost/1980prepost_qnaire_pre.pdf. In addition, between 1972 and 1980, the options were:

1. Abortion should never be permitted.
2. Abortion should be permitted only if the life and health of the woman is in danger.
3. Abortion should be permitted if, due to personal reasons, the woman would have difficulty in caring for the child.
4. Abortion should never be forbidden, since one should not require a woman to have a child she doesn't want.

Both versions of the abortion question were asked in 1980. *See, e.g.*, NAT'L ELECTION STUDIES, 1972 PRE/POST ELECTION STUDY 34 (produced and distributed by CTR. FOR POLITICAL STUDIES, SURVEY RESEARCH CTR., INST. FOR SOC. RESEARCH, UNIV. OF MICHIGAN) (1999), *available at* ftp://ftp.electionstudies.org/ftp/nes/studypages/1972prepost/1972prepost_qnaire_pre.pdf.

Table 1. American National Election Study Abortion Approval (Percent)

	1984	1986	1988	1990	1992	1994	1996	1998	2000	2004
Never	13	13	12	12	10	13	13	12	12	14
Rape, Incest, Danger	29	28	33	33	28	31	30	30	31	32
Clear Need	19	18	18	14	14	14	16	16	15	18
Personal Choice	35	38	35	40	46	40	40	40	39	36
Don't Know	3	2	1	2	2	2	2	1	2	1

These figures do show that the pro-life position enjoyed more support in the most recent survey than it did in any of the previous ones. On the other hand, the change between 2000 and 2004 was only three percentage points and still leaves the pro-life position below majority support. An absolute majority of 54 percent rejected the pro-life position in 2004, although one-third of those respondents also rejected the strong pro-choice view. It is, of course, entirely possible that the three-point increase represents the leading edge of a trend toward a pro-life majority, but it is too soon to draw firm conclusions. There was a four-point move toward the pro-life position between 1986 and 1988, but that was followed by a seven-point decline between 1990 and 1992.

The GSS approaches abortion in a somewhat different way, but its results follow a similar pattern. Since 1972, the GSS has asked the following questions:

> Please tell me whether you think it should be possible for a woman to obtain a legal abortion:
>
> a. If there is a strong chance of a defect in the baby?
> b. If she is married and does not want any more children?
> c. If the woman's own health is seriously endangered by the pregnancy?
> d. If the family has a very low income and cannot afford any more children?

e. If she became pregnant as a result of rape?
f. If she is not married and does not want to marry the man?
g. If the woman wants it for any reason?[18]

Table 2 presents the responses to these questions since 1984. I have reordered the responses to put the more restrictive reasons for approval at the top and the more permissive reasons at the bottom to facilitate comparison with Table 1. The GSS has found substantial approval for abortion in cases where a pregnancy would seriously endanger a woman's health or resulted from rape as well as in situations in which there is a high likelihood of a serious birth defect. At least the first two of these situations can be seen as tapping the pro-life orientation. Like the ANES results, these figures suggest that a committed minority of Americans has opposed abortion in virtually all circumstances. Moreover, a majority of respondents has consistently disapproved of abortion for the more permissive reasons that the woman cannot afford an additional child, is unmarried, does not desire an additional child, or wants to terminate her pregnancy for any reason at all (the strongest pro-choice position), but a significant minority (typically above 40 percent and often above 45 percent) has supported abortion in those circumstances.

Table 2. General Social Survey Abortion Approval (Percent)

	1984	1985	1987	1988	1989	1990	1991	1993	1994	1996	1998	2000	2002	2004
Danger	89.5	89.3	87.9	88.7	90.1	91.9	91.5	89.8	90.6	91.6	87.9	88.5	91.6	86.0
Rape	80.4	81.2	79.6	81.1	83.2	84.8	86.5	82.9	83.6	84.3	80.1	80.6	79.7	76.2
Defect	80.2	78.5	78.0	78.8	81.3	81.2	83.5	81.3	82.3	81.8	78.6	78.7	78.5	72.9
Can't Afford	46.3	43.7	44.7	42.0	47.7	48.1	48.5	49.9	50.4	46.6	44.3	42.2	44.4	41.0
Not Married	44.2	41.2	40.1	39.4	45.4	45.3	44.8	48.1	47.6	44.9	42.3	39.1	42.0	40.9
Wants No More	42.7	40.3	41.0	39.9	44.5	45.1	44.6	47.1	48.3	46.7	42.3	40.7	44.8	41.8
Any Reason	38.6	36.9	39.2	36.1	40.3	43.4	42.6	45.3	46.3	45.0	40.9	39.9	43.0	40.6

[18] The GSS began asking the last question (the "for any reason" question) in 1977.

Whether the GSS data show the existence of a pro-life majority is probably in the eye of the beholder. Table 2 contains some apparent anomalies, such as greater support in some years of allowing abortion for any reason the woman wants one than for some of the specific reasons.

More important, the data suggest the difficulty of defining the term "pro-life." Although most respondents have consistently disapproved of abortion for the more permissive reasons, almost as many have regularly approved of abortion when there is a high likelihood of a serious birth defect, as when the pregnancy threatens the woman's health or resulted from rape. Although at least some pro-life advocates have been willing to tolerate exceptions for rape and health, few, if any, would do so in the case of a birth defect.

Of greater significance, however, these data do not suggest a dramatic change in public opinion in recent years. To be sure, approval of abortion in all cases was lower in 2004 than it was in 2002, and support for abortion in the more restrictive situations (health, rape, and birth defect) was lower in 2004 than in any previous year shown in Table 2.[19] Before concluding that this marks a turn in public opinion, we should remember that the figures have fluctuated throughout the twenty-year period. Moreover, approval of abortion in three of the four more permissive situations actually increased in 2004 over the corresponding figures for 2000, and approval of abortion for "any reason" was higher in 2000 (the recent low point) than it was in any year between 1984 and 1988.[20] The 2004 figures suggest a mild shift in the pro-life direction since 2002, but, if we use 2000 as the baseline instead, a more ambiguous picture emerges: gains in pro-life attitudes on some questions that are partially offset by modest shifts in the pro-choice direction on others. In other words, 2004 might have been a pivot point, but it might simply reflect cyclical variation in attitudes on a complex subject. Again, it is too soon to draw firm conclusions.

What matters for present purposes is that the meager evidence Professor Hendershott presents cannot establish that there is now a pro-life majority or that public opinion has recently turned decisively in the pro-life direction. Because she is a social scientist, it would be interesting to get her analysis of these or similar data. For the same

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[19] In fact, those figures are the lowest for any year since the GSS began asking the questions in 1972.

[20] For that matter, approval of abortion for "any reason" in 2000 and 2004 was higher than for any year between 1977, when the question was first asked, and 1983 (with the exception of 1980).

reason, it is disappointing that she relies on such flimsy evidence for one of her most important claims.

II.

There are other curious aspects to the book. Most significant, Professor Hendershott has almost nothing to say about contraception. She does at one point refer to "the abortifacient morning-after pill"[21] and devotes several pages to attacking birth control pioneer Margaret Sanger as a racist snob "who wanted poor women and children to be eliminated."[22] That is the extent of discussion of the subject.

It is not clear whether the first reference is to mifepristone (RU-486), which can work after implantation,[23] or levonorgestrel (Plan B), which works before implantation but has no effect after implantation has occurred.[24] Virtually everyone agrees that RU-486 is an abortifacient, but making the same claim about Plan B is quite controversial precisely because actual implantation is part of the standard medical definition of pregnancy.[25] Preventing implantation, therefore, does not cause an abortion.[26] Perhaps this scientific imprecision is understandable, although Professor Hendershott criticizes a fellow sociologist on similar grounds.[27] After all, her discussion of the morning-after pill appears in a section about policies at Catholic colleges and universities. Because Catholic doctrine holds that life begins at fertilization, anything that prevents implantation involves the taking of a human life and, therefore, must be treated as impermissibly inducing abor-

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[21] HENDERSHOTT, *supra* note 2, at 111.

[22] *Id.* at 36. *See generally id.* at 34-37, 39-40. Professor Hendershott does not say anything about Sanger's views on abortion. She focuses only on Sanger's motivation for promoting contraception.

[23] *E.g.*, Anna Glasier, *Emergency Postcoital Contraception*, 337 NEW ENG. J. MED. 1058, 1060 (1997); Sophie Christin-Maitre et al., *Medical Termination of Pregnancy*, 342 NEW ENG. J. MED. 946, 946-47 (2000). In fact, RU-486 can also avert pregnancy by preventing implantation. Glasier, *supra*, at 1059.

[24] *E.g.*, Glasier, *supra* note 23, at 1060; David A. Grimes, *Switching Emergency Contraception to Over-the-Counter Status*, 347 NEW ENG. J. MED. 846, 847 (2002); Carolyn Westhoff, *Emergency Contraception*, 349 NEW ENG. J. MED. 1830, 1830-31 (2003).

[25] *E.g.*, COMM. ON TERMINOLOGY, AM. COLL. OF OBSTETRICIANS AND GYNECOLOGISTS, OBSTETRIC-GYNECOLOGIC TERMINOLOGY 299 ("Conception is the implantation of the blastocyst. It is not synonymous with fertilization."), 327 ("Pregnancy is the state of a female after conception and until termination of the gestation.") (Edward C. Hughes ed., 1972).

[26] *Id.* at 414; Grimes, *supra* note 24, at 847.

[27] *See infra* notes 59-62 and accompanying text.

tion.[28] If that is the explanation, however, Professor Hendershott does not say so.

As for Sanger, there is no doubt that she sympathized with the eugenics movement and some of its unsavory views, but the story is not as simple as Hendershott tries to make it. Professor Dorothy Roberts, whom she quotes disparagingly in a different context,[29] has explained the complex racial implications of the birth control movement. While some African-Americans regard contraception as a genocidal imposition by the white power structure, others view the practice as a way to promote individual and family fulfillment as well as community improvement.[30] Hendershott seems unaware of such alternative perspectives. Moreover, she argues that pro-choice forces "target" women of color by locating most abortion clinics in or near minority neighborhoods.[31] Perhaps so, but she never addresses the possibility that the higher incidence of abortion among African-Americans might reflect, at least in part, racial disparities in the incidence of out-of-wedlock pregnancy. This is a curious omission because in her previous book Professor Hendershott defended Daniel Patrick Moynihan's controversial 1965 proposal to combat disproportionately high black illegitimacy rates and observed that we are now paying the price for ignoring his prescient warnings about the adverse social consequences of family instability.[32] Perhaps it would not be feasible to investigate the extent, if any, of the relationship between racial disparities in pregnancy rates for unmarried women and similar differentials in abortion rates, or maybe there is no such relationship. One might, however, expect a sociologist to talk about the question.

The most striking aspect of the dearth of attention to contraception in a book that claims to be seeking a way to lower the intensity of the abortion debate is that preventing unintended pregnancies should reduce the incidence of abortion. Professor Hendershott clearly understands this connection, devoting several pages to the way that federal welfare reform sought "to lower the incidence of out-of-wedlock

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[28] This view is not exclusive to Catholic doctrine. Anyone who believes that life begins at fertilization will regard anything that prevents implantation as an abortifacient.

[29] HENDERSHOTT, *supra* note 2, at 46 (criticizing Roberts for supporting President Clinton's lifting of the ban on abortion counseling at federally funded health clinics).

[30] *See* DOROTHY ROBERTS, KILLING THE BLACK BODY: RACE, REPRODUCTION, AND THE MEANING OF LIBERTY 56-103 (1997).

[31] HENDERSHOTT, *supra* note 2, at 32, 37.

[32] ANNE HENDERSHOTT, THE POLITICS OF DEVIANCE 156-57 (2002) [hereinafter HENDERSHOTT, DEVIANCE].

childbearing without increasing the rate of abortion."[33] Even here, though, she says nothing about birth control.[34] Maybe the whole subject is just too difficult for many pro-life people to contemplate.[35] Surely, though, any thorough analysis of abortion politics should at least mention the issue, if only to explain why contraception looks like a taboo topic for some important participants in the debate.

There is also an odd tension in Hendershott's treatment of the abortion debate in higher education. She complains that "many Catholic campuses are Catholic in name only"[36] and applauds moves to ban pro-choice speakers who take positions that contradict church doctrine.[37] At the same time, she hails the emergence of pro-life advocacy at elite secular institutions.[38] How we are to move the abortion debate, as Hendershott urges, "out of the courts and back to the realm of local policy, where we might once again debate the politics of abortion as neighbors and friends,"[39] is difficult to envision if we cannot conduct civil discourse about this complex subject in our colleges and universities. On the author's own premise, we should view as positive developments both the emergence of pro-life views on campuses that have been predominantly pro-choice and the appearance of pro-choice positions on campuses that have been predominantly pro-life. Of course, religious institutions that oppose abortion cannot and should not be compelled to endorse a practice they find abhorrent.[40] There is, however, a vast difference between listening to different views and endorsing objectionable ones. Hendershott seems not to see this distinction.

Two final gaps are worth noting. One relates to the political analysis, the other to the legal discussion. Let me take these in order. On the political side, the book contains extensive criticism of Democratic leaders for allowing their party to be "hijacked" by pro-choice

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[33] HENDERSHOTT, *supra* note 2, at 50.

[34] *See id.* at 50-54.

[35] *See* William Saletan, *Where the Rubber Meets* Roe, WASH. POST, Oct. 1, 2006, at B2 (explaining that objections by some pro-life forces led to the failure of a congressional compromise aimed at reducing abortion through various methods, including increased access to birth control).

[36] HENDERSHOTT, *supra* note 2, at 112.

[37] *Id.* at 113-14.

[38] *Id.* at 114-18.

[39] *Id.* at 147.

[40] One prominent Catholic institution, Boston College, recently adopted a policy that includes a provision that could require student organizations to bring in a supporter of Catholic doctrine if they invite a speaker whose views are inconsistent with church teaching. Thomas Bartlett, *Boston College to Veto Students' Speakers*, CHRON. HIGHER EDUC., Oct. 27, 2006, at A40.

extremists.[41] At the same time, the author has almost nothing to say about the politics of abortion inside the Republican Party. She alludes to the existence of pro-choice Republicans, such as Nelson Rockefeller, who signed New York State's 1970 abortion liberalization law,[42] and Kathy Taylor, a pro-choice Pennsylvania Republican who spoke at the 1992 Democratic National Convention where pro-life Governor Robert Casey was not allowed on the podium.[43] Those references are one-sentence digressions from the critique of the Democrats. We get no sense of how representative of Republican opinion Rockefeller and Taylor might have been. Meanwhile, Professor Hendershott ignores Ronald Reagan, who signed California's pioneering 1967 abortion reform bill but later embraced the pro-life view.[44] Moreover, she is completely silent about the importance of opposition to abortion within the GOP. For example, President-elect George W. Bush's preferred candidate for attorney general, Governor Marc Racicot of Montana, withdrew from consideration in December 2000 after influential conservatives strenuously lobbied against him for being insufficiently pro-life.[45] Similarly, some previously pro-choice Republican politicians have come out against abortion while considering runs for higher office.[46]

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[41] HENDERSHOTT, *supra* note 2, at 18. The author devotes her first chapter to this subject. *See id.* at 9-30.

[42] *Id.* at 13.

[43] *Id.* at 19.

[44] *See* DAVID J. GARROW, LIBERTY AND SEXUALITY 331, 634 (1994).

[45] *See, e.g.*, Mike Allen, *Montana Gov. Didn't Have Right Stuff; GOP Conservatives Derailed Racicot for Attorney General*, WASH. POST, Jan. 2, 2001, at A1; Gloria Borger, *How to Get Bush's Goat*, U.S. NEWS & WORLD REP., Jan. 15, 2001, at 24; *see also* Mike Dennison, *Reports: Conservatives Opposed Racicot for U.S. Attorney General*, GREAT FALLS TRIB., Dec. 22, 2000, at 1A.

[46] The most prominent pro-choice GOP official to have recently embraced a pro-life position is Massachusetts Governor Mitt Romney. *See* Pam Belluck, *Governor of a Blue State Tries to Accentuate the Conservative*, N.Y. TIMES, Aug. 2, 2005, at A1; Scott S. Greenberger, *Romney Hints of a Shift on Abortion: In Interview, Says He Is 'In a Different Place,'* BOSTON GLOBE, May 25, 2005, at B1; *What He Said*, BOSTON GLOBE, June 4, 2005, at B5. Ohio Attorney General Jim Petro switched from pro-choice to pro-life several years ago and took an even stronger position against abortion during his unsuccessful quest for the 2006 Republican gubernatorial nomination. His opponent in the primary, Secretary of State J. Kenneth Blackwell, opposed abortion in all cases; Petro supported an exception for the life of the pregnant woman but abandoned his earlier willingness to permit abortion in cases of rape or incest. *See, e.g.*, Joe Hallett, *GOP Foes Harden Abortion Positions; Blackwell, Petro Now Against Procedure in Almost All Cases*, COLUMBUS DISPATCH, Feb. 4, 2006, at 1A; Julie Carr Smyth, *Candidate Petro Touts Values in Ads*, CLEV. PLAIN DEALER, Nov. 29, 2005, at B5.

Although Professor Hendershott overlooks such examples on the Republican side, she has quite a lot to say about Democratic politicians who switched from

Finally, Professor Hendershott's legal analysis is noticeably incomplete. She has much to say about *Roe v. Wade*,[47] all of it negative. The criticism begins on the first page and continues until virtually the last.[48] She also refers in passing to *Webster v. Reproductive Health Services*,[49] but her focus there is on an amicus brief submitted by a group of historians rather than on the actual decision,[50] and she devotes several pages to a very sympathetic profile of pro-life activist Joseph Scheidler, who makes no bones about his goal of shutting down abortion clinics and was sued by the National Organization for Women in a case that went to the Supreme Court three times.[51] Astonishingly, however, there is no mention of *Planned Parenthood of Southeastern Pennsylvania v. Casey*,[52] which reaffirmed that the Constitution protects a right to abortion but repudiated much of the *Roe* framework while announcing that abortion regulations would henceforth be assessed using a more deferential undue-burden test. Finally, she criticizes President Clinton for vetoing legislation that would have outlawed partial-birth abortion[53] and takes heart that "Congress continues to attempt to ban" the procedure.[54] In that connection, she apparently has overlooked the passage of the Federal Partial-Birth Abortion Ban Act of 2003;[55] she also fails to note the Supreme Court's

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pro-life to pro-choice. *See* HENDERSHOTT, *supra* note 2, at 15, 18-19, 21-22.

[47] 410 U.S. 113 (1973).

[48] Professor Hendershott begins by saying that *Roe* "reveal[s] the will of those with the power to shape the laws," HENDERSHOTT, *supra* note 2, at 1, and writes near the end that "*Roe* has shown that laws imposed from the top down create chaos and dissension," *id.* at 146.

[49] 492 U.S. 490 (1989).

[50] *See* HENDERSHOTT, *supra* note 2, at 6.

[51] *See generally id.* at 67-76. *See* Nat'l Org. for Women, Inc. v. Scheidler, 510 U.S. 249 (1994) (allowing the civil RICO suit to proceed because the statute does not require that either the criminal enterprise nor the predicate acts have an economic purpose); Scheidler v. Nat'l Org. for Women, Inc., 537 U.S. 393 (2003) (holding that the defendants' predicate acts did not involve the extortion of property from the plaintiffs and therefore could not support a civil RICO claim); Scheidler v. Nat'l Org. for Women, Inc., 126 S. Ct. 1264 (2006) (holding that physical violence unrelated to robbery or extortion, as alleged in claims apparently not addressed in the Supreme Court's 2003 ruling, could not support a civil RICO claim).

[52] 505 U.S. 833 (1992).

[53] HENDERSHOTT, *supra* note 2, at 18-19.

[54] *Id.* at 138-39.

[55] Pub. L. No. 108-105, 117 Stat. 1201 (codified at 18 U.S.C. § 1531 (Supp. IV 2004)). She does not mention this statute in her list of recent congressional initiatives, which includes the Born-Alive Infants Protection Act of 2002, Pub. L. No. 107-207, 116 Stat. 926 (codified at 1 U.S.C. § 8 (Supp. IV 2004)), and the Unborn Victims of Violence Act of 2004, Pub. L. No. 108-212, 118 Stat. 568 (codified at 10 U.S.C. § 919a and 18 U.S.C. § 1841 (Supp. IV 2004)). HENDERSHOTT, *supra* note 2, at 138.

2000 ruling in *Stenberg v. Carhart*,[56] which invalidated Nebraska's partial-birth abortion law, or the several appellate rulings striking down the federal law, two of which the Supreme Court will review during its current term.[57]

III.

In her introduction, Professor Hendershott laments that instead of helping us understand the abortion debate, too many social scientists have "enlisted in the pro-choice army."[58] She specifically criticizes Professor Kristin Luker for using the term "embryo" instead of more value-laden vocabulary (such as "fetus" or "baby") in her study of activists on both sides of the abortion issue. Although Professor Luker conceded that her terminology was "technically inaccurate," she defended her decision as a way to avoid taking sides in connection with her research.[59] Hendershott rejects this explanation, contending that Luker had simply refused to "violate the tenets of feminist political correctness."[60] Perhaps Luker's decision reflected a misguided gesture toward objectivity,[61] but Hendershott does not contest any of Luker's

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[56] 530 U.S. 914 (2000).

[57] Nat'l Abortion Fed'n v. Gonzales, 437 F.3d 278 (2d Cir. 2006); Planned Parenthood Fed'n of Am., Inc. v. Gonzales, 435 F.3d 1163 (9th Cir.), *cert. granted*, 126 S. Ct. 2901 (2006) (No. 05-1382); Carhart v. Gonzales, 413 F.3d 791 (8th Cir. 2005), *cert. granted*, 126 S. Ct. 1314 (2006) (No. 05-380). The Second and Ninth Circuit rulings in *National Abortion Federation* and *Planned Parenthood Federation* were decided on January 31, 2006, and the Supreme Court granted certiorari in *Carhart* on February 21, 2006. Even if these developments occurred too late for inclusion in the book, *but see supra* note 7 (noting citation of several more recent sources), the Eighth Circuit's 2005 *Carhart* ruling came down well before several other events that Professor Hendershott discusses. The Supreme Court accepted *Planned Parenthood Federation* for review on June 19, 2006, which is later than any source cited in the book.

[58] HENDERSHOTT, *supra* note 2, at 6.

[59] KRISTIN LUKER, ABORTION AND THE POLITICS OF MOTHERHOOD 2 n * (1984).

[60] HENDERSHOTT, *supra* note 2, at 6.

[61] Another writer on the abortion controversy decided that "[t]he least biased solution [to the vocabulary problem] is to let each side choose its own name." WILLIAM SALETAN, BEARING RIGHT: HOW CONSERVATIVES WON THE ABORTION WAR 4 (2003). Luker sometimes, but not always, followed that approach in referring to the activists' positions. *See* LUKER, *supra* note 59, at 2 n.*. Meanwhile, Professor Hendershott dismisses Saletan's claim that pro-choice forces have lost control of the abortion issue as "counterintuitive," HENDERSHOTT, *supra* note 2, at 5, but that does not keep her from relying on Saletan's book in her discussion of President Clinton's abortion policies. *See id.* at 155 nn.1, 3-6, 11 & 20. She never explains what is "counterintuitive" about Saletan's argument that pro-choice advocates have allowed abortion opponents to set the terms of the debate even when abortion restrictions have

findings or challenge her research methodology in any way. Like her approach to so many other issues, Professor Hendershott's condemnation of Professor Luker suggests an inability to understand or respect positions with which she disagrees.[62]

It should be clear by now that Professor Hendershott strongly disapproves of abortion. This is consistent with her view that some things are "morally wrong"[63] and her call on sociologists for "a renewed willingness to make moral judgments."[64] Readers might disagree with her position, but there is nothing wrong with her having a point of view. The problem arises because she allows her point of view to get in the way of rigorous social scientific analysis. We simply cannot tell, from the evidence she presents, whether many of her principal claims are accurate. Moreover, her approach raises serious questions about the prospects for lowering the intensity of the abortion debate. It is disheartening that a sociologist could not make a more

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been rejected. *Id.* at 5.

[62] Professor Luker's sensitivity to the opinions and motivations of activists on both sides of the abortion debate stands in marked contrast to Professor Hendershott's approach. Another notable example of careful analysis of abortion activists of all stripes, which Hendershott does not cite, is Faye Ginsburg's anthropological study of Fargo, North Dakota, a city where frictions over abortion have resulted in numerous reported judicial rulings. *See generally* FAYE D. GINSBURG, CONTESTED LIVES: THE ABORTION DEBATE IN AN AMERICAN COMMUNITY (1989). Among the many abortion-related cases that have arisen in Fargo over the years are Veneklase v. City of Fargo, 248 F.3d 738 (8th Cir. 2001) (en banc) (7-5 ruling upholding the validity of a residential picketing ordinance); Kirkeby v. Furness, 92 F.3d 655 (8th Cir. 1996) (2-1 decision holding that a different version of the residential picketing ordinance violated the First Amendment); Habiger v. City of Fargo, 80 F.3d 289 (8th Cir. 1996) (rejecting a § 1983 claim brought by a pro-life demonstrator who violated a temporary restraining order against picketing an abortion clinic); United States v. Lindgren, 883 F. Supp. 1321 (D.N.D. 1995) (enjoining demonstrators from obstructing access to an abortion clinic); State v. Holecek, 545 N.W.2d 800 (N.D. 1996) (reversing a trial court's dismissal of criminal charges arising from demonstrations at the abortion clinic); City of Fargo v. Brennan, 543 N.W.2d 240 (N.D. 1996) (affirming the convictions of demonstrators at the clinic); Fargo Women's Health Org., Inc. v. Lambs of Christ, 502 N.W.2d 536 (N.D. 1993) (upholding limits on demonstrations at the clinic); State v. Franck, 499 N.W.2d 108 (N.D. 1993) (affirming a conviction for violating a preliminary injunction limiting demonstrations at the clinic); State v. Purdy, 491 N.W.2d 402 (N.D. 1992) (affirming trespass convictions of protesters who unlawfully entered the abortion clinic); Fargo Women's Health Org., Inc. v. FM Women's Help and Caring Connection, 444 N.W.2d 683 (N.D. 1989) (holding that the abortion clinic could bring a false-advertising claim for damages against a pro-life counseling service), *overruled in part by* Trade 'N Post, L.L.C. v. Duty Free Americas, Inc., 628 N.W.2d 707 (N.D. 2001).

[63] HENDERSHOTT, DEVIANCE, *supra* note 32, at 11.

[64] *Id.* at 163; *see also id.* at 156 (criticizing "[t]he reluctance of sociologists to acknowledge that there are moral judgments to be made").

constructive contribution to public understanding of such a contentious issue.

Of course, Professor Hendershott might not have set out to write a broad overview of abortion politics. Perhaps she meant only to assess the pro-life movement's current status and future prospects. That is certainly consistent with the structure and tone of the volume she actually produced as well as with the one endorsement on the dust jacket.[65] Yet even from this perspective the book falls short. A good lawyer must understand the other side's case as well as she knows her own. So should a social scientist with a strong point of view. Because of its gaps and blind spots, this book will not serve as a reliable guide even for the most dedicated adherent to the pro-life cause.

[65] That blurb, by Dr. Jennifer Roback Morse, concludes: "Pro-life leaders and activists need this book."