

Hidden Meanings of the Culture War over Abortion in the United States*

Significados ocultos de la guerra cultural sobre el aborto en Estados Unidos

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ABSTRACT

This article examines the dispute over abortion in the United States, within a broader context of the transition between the industrial era and the postindustrial, globalized model. My contention is that present clashes over abortion must be considered within this framework, so as to understand them not only as a conflict of values on fundamental issues of life, personhood, citizenship, gender, and family, but also as a contest for the institutional nature of a reconfigured structural and technological order. While the abortion controversy exemplifies contrasting *biopolitics*, it also represents new tensions over the margins of separation of religion and state.

Keywords: 1. abortion, 2. United States, 3. biopolitics, 4. separation of church and state.

RESUMEN

Este artículo examina la disputa sobre el aborto en los Estados Unidos dentro del contexto de la transición entre la era industrial y el modelo postindustrial globalizado. Resulta necesario analizarlo dentro de este marco para comprender la pugna no solo como un conflicto de valores sobre temas fundamentales de vida, personificación, ciudadanía, género y familia, sino además como una contienda por la misma naturaleza institucional de un nuevo orden estructural y tecnológico. Mientras el tema del aborto encarna propuestas biopolíticas enfrentadas, también simboliza la tensión entre propuestas societarias seculares y religiosas que actualmente contienen por los márgenes de separación entre el Estado y la religión.

Palabras clave: 1. aborto, 2. Estados Unidos, 3. biopolítica, 4. separación de Estado e Iglesia.

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*IDENTIFYING COMPONENTS OF THE ABORTION
CONUNDRUM IN THE UNITED STATES TODAY¹*

Contrary to feminist expectations, the matter of reproductive choice in the United States was not resolved in 1973 by the groundbreaking Supreme Court decision in the case of *Roe v. Wade*. From the onset there was fierce opposition by the Catholic Church. However, over the past four decades, the abortion controversy has morphed into an increasingly polarized, emblematic dispute between two contrasting societal discourses that are moored to the challenges of an era of transition between two models of capitalist accumulation and production: modern industrial capitalism and the postindustrial neoliberal order.

From this perspective, second-wave feminism is seen as an upshot of the contradictions of modern industrialism, forming part of a social movement of disruption that marked the end of that era. A growing prosperous middle class, and obligatory primary and secondary education for all, fashioned the first generation of university-educated, economically independent women, unwilling to reproduce the subaltern lives of their mothers and grandmothers. Feminist claims that women's equality in all spheres was contingent on reproductive choice placed women's bodies and the complexities of human reproduction in the eye of a growing ideological storm between secular and religious worldviews. However, as women's demands for equal rights and reconfigured gender roles in the family and society were progressively framed within structural and symbolic redistributive discourses, a new neoliberal global regime was being conceived, tested in Pinochet's Chile, in the seventies (Gilly & Roux, 2015, pp. 12-13), and ultimately implemented worldwide as the latest developmental and monetary paradigm.

By contrast, it was only in the late seventies that a Christian fundamentalist counter-discourse was consolidated as the metalanguage of the new conservative political movement that intersected neoliberal economic principles and policies with traditionalist-patriarchal family ideologies and arrangements, an antifederalist utopia of surging states' rights, and an anti-secular biblical view of the world. Legalization of abortion inspired the counter-mobilization of tens of thousands of conservative grassroots activists in support of a Republican Party that incorporated

¹ This article is based on secondary sources of information. The contents form a chapter of a book that I am writing about the dispute over abortion in the United States and Mexico. Although it is written in English, the article is being published in a Mexican journal. Its goal is to analyze the modern history of the abortion debate in the United States within a contextual framework, so as to better understand the Mexican conflict around the issue.

“protection of the right to life for unborn children” as a basic tenet of its presidential platform in 1980 (Republican Party Platform, 1980). Conservative confirmation of traditional roles and family values, while recognizing women’s growing participation in the workforce, countered the gendered turbulence of the sixties and seventies with re-naturalized gender discourses that by the turn of the 21st century were mainstream in many parts of the country.

Contrasting proposals on sexual practices and reproductive choice represent profound ontological differences about the meaning of life and the purpose of society. In the case of abortion, this includes disagreement over the significance of life; the inception of personhood; questions of rights, entitlements, and their implications for citizenship; the genealogy of the gendered family; and the possibility and consequences of gender equality. Hunter has called this dispute a *culture war*, referring to issues that prompt emotionally charged political wrangling among elites about moral authority, values, and national history and identity (Hunter, 1990, pp. 49-50).

Over the past four decades, and expressly during the last five years, restrictions on the legality of abortion in the United States and consequent margins of autonomy or subordination of women’s bodies have spurred heated debates in state and federal congresses, courtrooms, and campaign trails. As such, access to abortion has again become a question of mounting government scrutiny in many states. Differing state positions on the matter have carved a national geopolitical fault line rooted in contrasting political ideologies and their respective biopolitical proposals. Nonetheless, the binary makeup of rival discourses frequently ignores the nuanced nature of the issue in public opinion (Gallup, 2015).²

Donald Trump’s incursion into abortion politics during the 2016 presidential campaign exposed some of the landmines attached to this issue. His logical response to a newly assumed conservative position against abortion, indicating that women should be penalized for interrupting pregnancy, immediately galvanized both pro-choice and antiabortion proponents in resounding condemnation (Filipovic, 2016). Conservative censure notwithstanding, Trump’s comments bared the key political dilemma of anti-abortion advocacy. If abortion becomes illegal, should women be criminalized? With 54 % of adult women in the United States

² According to the most recent Gallup Poll (2015) on abortion in the United States, 19 % opposed legalized abortion in any circumstance, 29 % were for it in all circumstances, and 50 % were in favor under certain circumstances.

identifying as pro-choice and a greater majority of women supporting legalization in certain circumstances (Saad, 2015), it is no surprise that antiabortion advocates learned early on to blame doctors and victimize women for ending pregnancies. This is particularly relevant for women of reproductive age who have matured within a framework of legality, and older women who remember the trials of transgression.

Confronted with those political costs, antiabortion strategies have morphed over time. Initially, the anti-abortion movement demanded full re-criminalization. Today, the approach of *audacious incrementalism* increasingly restricts access through multiple tactics that condition personal decision and available professional services. As such, religiously grounded discourse has backed 285 antiabortion measures between 2011 and 2013, curbing reproductive rights in 32 states, that are still guaranteed nationwide by Supreme Court rulings (Boonstra & Nash, 2014). Accordingly, the abortion conundrum appears to invoke contemporary political dilemmas that reflect some key tensions of the postindustrial paradigm. A growing appetite among religious orthodoxies for easing the *walls of separation* between religion and state (Constitution Society, 2016) accompanies a renewed push for states' rights, within a global context of increasingly fortified international hegemony and supranational institutions and corporative blurring of modern nation-state hegemony.

In this article I examine the debate over abortion within the framework of an uncertain era of structural and technological reorganization. I emphasize the importance of this transitional context in the consolidation of competing discourses and the legal evolution of the dispute over abortion. I highlight how wrangling over this theme implicitly involves testing the margins of separation between religion and state, while also displaying present-day tensions between state and federal sovereignties. I hope to contribute to a broader understanding of the abortion dispute using this contextual lens. Discursive differences on abortion are analyzed as contested biopolitical standards that have re-mapped a divided country. The meaning and fluctuations of United States church-state *separationist* history are reviewed to better understand the current discord between secular and religious ideologies over the issue of abortion. The evolution of Supreme Court rulings on the issue is also examined, in order to ultimately document the range of present-day state and federal legislation and policies aimed at conditioning, restricting, and making abortion increasingly inaccessible to more women, with particularly negative effects on the reproductive health of low-income women.

*INTERSECTING CONTEXT,
DISCOURSE, AND SOCIAL ACTORS*

Though abortion has historically been a contested issue, contemporary discourses and their respective social actors have emerged from the tensions of this transitional period. Current controversy over the matter is entrenched in a growing web of institutional vacuums that over the past four decades attest to mounting tensions between a new global model of production and consumption and institutions that correspond to a bygone era. As the social order of industrial modernity gradually dissipates, new lifestyles interrogate institutions that are no longer tailored to everyday needs. Novel notions of time and space spawned by profound structural and technological modifications that Castells calls “the second industrial revolution” (Castells, 2010, p. 23), give rise to increasingly unintelligible and dysfunctional institutions festering with conflict.

Some authors have referred to them as *institutional shells*, void of the economic, social, and cultural rationality and reciprocity of industrial times (Giddens, 2003, p. 18).³ Others have referred to this tendency of *de-institutionalization* as linked to expressions of *de-socialization*, thus highlighting the breakdown of established norms and accepted margins of resistance, negotiation, and institutional reorganization characteristic of industrial modernity (Touraine, 1997, pp. 33-35). The constantly changing conditions of what Bauman (2006, p. 9) calls *liquid modernity* hamper the consolidation of new daily habits, while discourses of fear, risk, and loss echo through the institutional cracks. As the economy is progressively freed of its social mores through deregulation, privatization, and other neoliberal strategies, corporate interests permeate the political process and citizenship is gauged through consumerism (Giroux, 2015, p. 2). As such, the marketplace substitutes public space as the arena of citizenship, further weakening collective social ties (Lechner, 2006, in Hoetmer, Vargas, & Daza, 2011, p. 109).

Beck refers to industrial society as a finely tuned arrangement of production, politics, and culture, “a life-style in which gender roles, the family unit, and social classes make up the same constellation”⁴ (Beck, 2000). In contrast, today’s neoliberal

³ While the notion of *culture wars* offers insight into the ideologically polarizing consequences of the disarrangement between institutional lags and changing lifestyles, other authors stress a more contextual analysis of this transitional moment, linking new tendencies to a sociology of the emotions. I consider both approximations to be useful in understanding the texture and tensions of the dispute over abortion in the United States today.

⁴ Translation by author.

model of “industrial production without industrial society” (Beck, 2000, p. 14) destabilizes that systemic integrity, driving individuals and their needs to trump internal institutional coherence. As individuals become more central to institutional functioning, lifestyles based on the politics of choice and reflective self-actualization inform post-traditional discourses that place identity, the body, and ethical issues of recognition, inclusivity, and justice at the core of new interpretations of rights and citizenship. However, these discourses are disparately filtered through race, class, gender, ethnicity, and sexual orientation, or the intersection of these and other factors, revealing another neoliberal tendency toward “rigid exclusions from national citizenship and civic participation” for certain sectors of society (Giroux, 2015, p. 11). Nonetheless, in the midst of today’s institutional commotion, progressive discourses of individual liberty, self-determination, and choice are gradually recalibrating institutions to fit the needs and rhythms of the postindustrial era (Bauman, 2011, p. 12).

This has been especially true of gender and family normativity. The advent of contraception, more equitable renegotiations of binary gender identities and power arrangements, the normalization of gender-equality entitlements, restructuring of the sexual division of labor, and recognition of new gender identities and citizenship claims have reconfigured the very notion of family. Within the framework of the present-day *uncertain family*, as Rousell dubs new fluid kinship reconfigurations (Touraine, 1997, p. 4), the definition of abortion has become a cornerstone of conflict, confronting women’s right to reproductive choice with zygote and fetal rights to personhood throughout gestation. A conflict of rights embodied in contested discourses that compete on the front lines of this struggle for cultural meaning bares disparate views of morality, values, national history, nationhood, and patriotism (Hunter, 1990, p. 50).

Second-wave feminist claims that the deconstruction of gender oppression was contingent on access to birth control, legal abortion, and reproductive sovereignty profiled new domains of rights and citizenship anchored in the private and intimate realms. Equally, they exposed “the power of culture (as) the power to name things, to define reality, to create and shape worlds of meaning” (Hunter & Wolfe, 2006, p. 33). Feminist discourses of women’s corporal sovereignty, reorganization of the sexual division of labor, and gender equality in all realms of society undoubtedly informed new worlds of meaning. Discourses, however, are always contested fields. They compete for the cultural hegemony of a specific historical moment and structural context, while also speaking to the social positioning of their emissaries. As such, every discourse is a situated message, reflecting complex networks of knowledge

production and innate truths that are sustained and promoted by strategies of power (Gutiérrez, 2005, pp. 26-27; Foucault, 1999).

Conservative rejection of feminist discourse and family reconfiguration coveted the stability, security, and apparent solidity of industrial institutionalism. Religious doctrine historically has accompanied conservative currents, crafting narratives of primordial truths and perceptions of existential permanence in the midst of the disruptive, anti-paradigmatic atmosphere of contemporary liquid society. Belief in human life in its most incipient form as the gauge of personhood; defense of a prenatal pre-citizenship founded on the idea of comparative vulnerability; vindication of a *natural family* based on ahistorical gender identities and roles; and faith in the sanctified intentionality of an omnipotent divinity all contest feminist discourses of gender equality, reproductive and sexual autonomy, sexual liberation, the reign of science and human rights, and the right to free will and individual choice as seen from a gender perspective. Two antagonistic biopolitical standards, embracing dissimilar philosophical mores, compete for the hegemony of cultural meaning in this postindustrial nation (Maier, 2016).

BIOPOLITICAL DISPUTES AND GEOPOLITICAL SCHISMS IN THE POSTINDUSTRIAL NATION

Foucault defines *biopolitics* as a strategic, modern dispositive of institutional power that focuses on regulating the body-species. Fused with the concept of population that surfaced in the late 18th century, this technique of modern power shapes sociobiological experiences into population policy through “a series of interventions and regulatory controls: a biopolitics of the population” (Foucault, 1977, pp. 35-36). Complementing the other stellar, industrial-era power technology, the *microphysics of power* that relentlessly and meticulously disciplines the individual body to enhance personal docility and utility, biopolitics molds the collective body-species into a political economy of population that secures the efficiency and submissiveness of a mass society.

From a feminist perspective, the Supreme Court’s ruling in the case of *Roe v. Wade* undermined collective power dynamics that until then had constrained women’s bodies through strict, reproductive regulatory controls. Based on the tenet of individual privacy, safeguarded in the 14th Amendment to the Constitution, the court’s decision rested on three fundamental premises: 1) supremacy of the nation-state’s interest in protecting women’s health over that of the fetus until viability,

which placed new emphasis on women's reproductive rights; 2) prevalence of the nation-state's concern for the fetus after viability, which suggested recognition of personhood only after birth; 3) acknowledgement of science, medicine, and doctors as decisive factors in determining viability over religious and moral considerations (Rose, 2007, p. 67), which spoke to the secular stance of the high court's majority at that time.

While biopolitics are never unmoored from historical, structural and discursive contexts, the court's decision in this case was especially influenced by the sociopolitical and medical issues of the day. Immersed in an environment of cultural upheaval that started in the sixties and signaled the beginning of the end of the industrial era, the 1973 federal ruling on abortion reflected a number of societal concerns. Perhaps most noteworthy was the influence of *second-wave* feminist discourse of the late sixties and early seventies, and its claims that women's liberation was contingent on the unbridling of the female body from patriarchal values and policies. Another significant factor that informed the ruling was the measles epidemic at the end of the fifties that resulted in the malformation of thousands of babies, influencing the medical community's opinion on legalizing abortion (Rose, 2007, p. 6). Equally, the extended use of the drug Depo-Provera in the sixties also resulted in severe birth defects that were of concern to the medical establishment. And certainly, the aforementioned progressive lean of the majority of justices on the bench was key in the Roe verdict. These motives speak to the three types of interests that Stopler (2015, p. 7)⁵ suggests are legitimate reasons for governments to fix fertility policies, and as such, engage in biopolitics.

The focus on the body in feminist discourse highlights sexuality, procreation, and maternity as essential mechanisms in the construction of women's subordination in modern patriarchal societies (Federici, 2010, p. 27; Di Marco, 2011, p. 302). The discovery of a colonized procreative body pointed to the importance of re-appropriating reproductive autonomy. Women's liberation, personal independence, and social equality were portrayed as contingent on reproductive choice, while the very notion of choice was rooted in a particular understanding of the body. Viewing corporality as a historical and culturally specific construct that responds to concrete

⁵Those interests are: "1) legitimate state and group interests; 2) individual liberty interest, such as autonomy and privacy; 3) individual equality interests." Stopler responds to Foucault's concern about when and how the population can be managed, arguing that it is only valid when women's individual liberty and equality interests are considered.

political technologies demanded relocation from the ahistorical, biologically rigid view of traditionalist teachings to a new realm of cultural fluidity that exposes power dispositive behind normative inscriptions. As such, the quintessential female reproductive-body was transformed into a myriad of possibilities by the Supreme Court's decision in *Roe v. Wade*, radically shifting the biopolitical landscape of the nation. The ruling made all reproductive decisions contingent on a woman's right to privacy, fixing the legal window for ending a pregnancy at the moment of fetus viability outside the womb, in most cases.⁶ The Roe finding underscored scientific criteria and medical expertise as benchmarks for access to abortion, basically leaving the decision on abortion to the woman and her doctor.

Resistance to the ruling by anti-abortion forces was swift in coming. Faith-based, politically conservative groups viewed the decision as federal encroachment on matters of moral and religious substance. Considered a secular threat to Christian values (Rose, 2007, p. 7), it was seen as pitting federal authority against states' rights. Initially, conservative state governments contested legal challenges that tested states' rights to laws conditioning the Roe verdict.⁷ For over a decade, the high court maintained the preeminence of women's choice and physicians' authority as steppingstones to abortion access. With continued Supreme Court support for the ruling, Congress became the front line of the *culture war* against abortion. In 1976 it passed the Hyde Amendment, eliminating all federal subsidy of abortion. Upheld by the Supreme Court in 1980, the Hyde Amendment transformed the Roe standard of all women's right to privacy in reproductive matters into a privileged right of the better off. Services offered at Planned Parenthood clinics and others offset the discriminatory effects of this amendment on low-income women.⁸

After failed attempts to question the constitutionality of the Roe verdict, anti-choice legislators opted for a revised strategy aimed at chipping away at the premises and scope of the law. The purpose was to make abortion increasingly inaccessible

⁶Late-term abortions were considered in cases of maternal medical necessity or severe fetal deformation.

⁷In the first post-Roe case, *Planned Parenthood of Central Missouri v. Danford*, in 1976, Planned Parenthood successfully challenged some of Missouri's legal restrictions on abortion access. Since the Roe decision, local or national chapters or clinics of Planned Parenthood have been central in challenging states' restrictions. This nonprofit organization's historical agency in defense of women's reproductive rights has been countered by the determination of anti-abortion forces to close it down.

⁸During the presidential campaign of 2016, Hillary Clinton became the first politician to call for the repeal of the Hyde Amendment in the name of social justice.

to growing segments of the female population, thus reducing what they consider to be infant assassination. Rather than reversing Roe, the goal now was to neuter it. The Hyde Amendment was the first blow of many to weaken the Roe ruling. Two more high court cases ultimately undermined the mainstays of the doctrine, subsequently supplanting expert medical opinion with the religious standards of state legislators. Similarly, the shift from Roe's *compelling state interest* in the woman to the fetus and technology's revision of the threshold of viability also significantly modified the Roe decision with these two rulings.

Until 1989, the Supreme Court maintained the Roe position that only an *extremely compelling state interest* in fetal life could limit a woman's right to abortion. With the *Webster v. Reproductive Health Services* ruling in 1989, and a new conservative majority on the high court, basic principles of Roe began to be questioned. The time frame of compelling state interest in potential human life was extended throughout pregnancy. This interrogated a fundamental premise of the Roe ruling, the viability standard, and enabled some states to limit access even before that moment due to a preferential interest in the unborn. These legal interpretations and related questioning of the parameters of the trimester framework suggest, as Rose says, that the Webster decision was a "pivotal move away from the Roe standard." Regarded by women's rights proponents as a dispositive for curbing reproductive justice,⁹ the Webster verdict is charged with making abortion increasingly unavailable for low-income women (Rose, 2007, pp. 74-75). However, it was the Supreme Court finding in the *Planned Parenthood of Southeastern Pennsylvania v. Casey* case (1992) that fully acknowledged preferential state interest in potential life, as long as it did not pose an undue burden for the woman. Though apparently a nod to women's reproductive rights, the *undue burden* standard is considered by choice proponents as infringing on the right to interrupt pregnancy explicitly expressed in the Roe verdict. As such, the ambiguity of the *undue burden* principle invited a surge of anti-abortion rulings, restricting, conditioning, and delaying access to the

⁹ *Reproductive justice* is a relatively new framework that contemplates the experience of class and race in relation to reproductive issues. Interrogating the mantra of *choice* linked to second-wave, white middle-class feminism, the concept of reproductive justice stresses the intersection of multiple social relations of power in shaping individual reproductive agendas. Denbow (2013, p. 8) questions the application of the choice doctrine with Welfare recipients from this perspective. She suggests that their choice may be to bring pregnancies to term, but economic dependence on state programs may be used as a biopolitical dispositive levied by state actors to pressure poor women to abort.

procedure in many states. Over the past two decades states have progressively gnawed away at women's right to choose, employing strategies legally permitted by the Casey ruling, such as mandated waiting periods, counseling, and other "persuasive measures that favor childbirth over abortion" (*Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 1992, in Rose, 2007, p. 76).¹⁰

As a direct result of these prior decisions, late-term abortions were prohibited by Congress, in 2003, through the Partial-Birth Abortion Ban Act. This law was disputed in the lower courts for many years on the grounds of the *undue burden* standard, given that it lacked an exclusionary clause for the health of the woman. Nonetheless, in 2007, a newly named, fully conservative majority in the Supreme Court ultimately upheld the original congressional law without any exception (*Gonzales v. Carhart*, 2007). Reproductive health champions point to this verdict as a preamble for re-criminalizing abortion in the United States.

Since the Roe ruling, regional differences tending toward religiosity or secularity have informed disparate biopolitical imperatives that ultimately attest to a geopolitically fractured country. Within the context of a reconfigured global order and a progressively consolidated neoliberal state, the issue of abortion has become emblematic of renewed tensions related to the separation of religion and state.¹¹ The next section examines the history and boundaries of U.S. *separationism*, in order to better understand its place in the present dispute over abortion.

THE UNSETTLED LIMITS OF SEPARATION BETWEEN CHURCH AND STATE IN THE UNITED STATES

Safeguarding mutual autonomy of religion and state has been a foundational premise of modernity. As capitalism expanded, distinct interpretations of separation of church and state were adopted by different nations. In post-revolutionary France

¹⁰The ideological balance of the Supreme Court had begun to tip by the time of the Casey decision. The first President Bush appointed two conservative justices who frequently formed a fluid majority with three justices already on the bench.

¹¹In the first weeks of the Trump administration, corporate negotiations, executive actions, and presidential tweets suggest the substitution of neoliberal globalization by an economically protectionist, nationalistic vision. This calls into question the very concept of a neoliberal state. Nevertheless, the new government also embodies the tensions over separation of church and state, having named at least 10 religiously orthodox Christians and Jews as advisers, cabinet members, and ambassadors. As such, religious influence on international and public policy decisions is considered to have been magnified.

and Mexico, for example, the prescription of a *lay* or *secular state*, with rigorous divides between religion and governance, served as a methodology for deconstructing the enormous influence of an exclusive, historically entrenched Catholic Church whose vast economic holdings and political power was an essential component of the old regimen (Blancarte, 2008, p. 7).

The idea of a lay or secular state never took root in the United States. Nonetheless, distinct waves and tints of Protestant immigrants, who sought religious liberty as their prime motivation for colonization, inevitably transformed the principle of freedom of conscience into a dispositive of separation between church and state. Consolidation of the *separationist* principle, however, was complex and contradictory. Nonetheless, in spite of contrasting opinions on the issue, reflecting uniform or diversified spiritual lineages in each colony (Blancarte, 2008, p. 25; Hunter, 1990, p. 68), the United States became the first country to assume *separationism* as a founding principle of nationhood. A bond of Protestant Reform theology and common belief in the sacred mission of the nation, as a beacon of divine intent, forged consensus to ensure freedom of conscience and worship for all denominations (Hunter, 1990).

Since recognition of mutual autonomy between church and state was rooted in the resolve to guarantee religious freedom from government intrusion and secure equality among denominations, the very notion of separation between religion and polity has historically revealed an ambiguous nature. Foundational belief in *American exceptionalism* juxtaposes the conviction of a sacred calling to spread national values globally with the secular implications of contemporary *separationism* and the modern premise of popular sovereignty. This unique faith-based form of disjointing religion and governance has been termed “civil religion” by Bellah, referring to the “subordination of the nation to ethical principles that transcend it and in terms of which it should be judged” (Bellah, 1970, p. 168, cited in Johnson, 2010, pp. 33-34).

Thus separation of religion and state has traditionally been a complicated affair in the United States. Interpretation and application have been contingent on historical context and the scope of religious diversity. Immigration, economic crisis, ideological disputes, and war have all triggered reconsideration of the margins and meanings of the *separationist* yardstick. Religious entitlements were deemed Protestant-based until well into the 19th century, with the uptick of Catholic and Jewish immigration (Hunter, 1990, p. 69). While Protestant diversity led to greater tolerance during the colonial era, the arrival and expansion of other religions in

the 18th and 19th centuries provoked the opposite effect. Catholic immigration, in particular, reignited *separationist* fervor that led to a number of decisive Supreme Court rulings limiting religious influence.¹²

Ideological contentions during the Cold War also set the stage for revisiting U.S. civil religiosity. Fear of an atheistic, communist adversary reconfigured the goalposts of *separationism* by formally inserting religious references into public discourse and national symbols. In 1954, Congress approved an amendment to include the words *under God* in the Pledge of Allegiance, adding divinity to the original “one nation, indivisible, for liberty and justice for all” (Greenberg, 2002). Two years later, still in the throes of the Cold War, Congress approved *In God We Trust* as the national motto. Since then, the phrase has permeated the collective imaginary as a symbol of the very essence of nationhood: a mantra of the imagined exceptional community.

God Bless America is another sacred reference that has been differentially present in political speech since colonial times. As with all civil religiosity, historical periods of uncertainty, instability, transformation, and conflict tend to amplify religious speech in the political sphere. The attack on the World Trade Center in 2001 triggered a cascade of religious references in political discourse. Over the past 15 years of conflict in the Middle East and the *war on terrorism*, conservative governors with fundamentalist Christian credentials have reconfigured the separationist goalposts, using faith-based discourse in public and in governmental spaces to pray for solutions to climatic or political challenges. Equally, members of Congress have defended legislative actions against same-sex marriage or abortion and abortion providers, such as Planned Parenthood, based on religious values and biblical references.

Two quintessential Supreme Court cases confirm a present-day tip of the balance of *separationism* toward acceptance of religious attributions in public speech and corporative affairs. In one case, the legality of prayers led exclusively by Christian ministers at the beginning of town board meetings, in Greece, New York (*Town of Greece v. Galloway*, 2014), was reviewed. The conservative majority of the court determined that the *establishment clause* of the First Amendment had not been violated,¹³ arguing that the United States has had a historical practice of public

¹² Particularly, the *Everson v. Board of Education* verdict, in 1947, applied federal First Amendment separationist criteria to state governments, prohibiting the use of state funds for all religious ends, and banning states from identifying with a particular religion.

¹³ This clause states that Congress (government) shall not establish a preferred religion.

prayer, the township was preponderantly Christian, and nonbelievers were not coerced into participating. As such, the court sanctioned practices of religious exclusivity in government affairs, thus embracing a new revisionist relativism of the notion of separation of church and state.

The Hobby Lobby case is another example of present-day conflict over the fault lines between religious freedom and state responsibility for public welfare. The decision to recognize the right to religious objection by owners of closely held, for-profit corporations (Davidoff, 2014)¹⁴ exempted the Hobby Lobby Corporation from the *contraceptive mandate* of the Affordable Care Act (ACA), which covers the cost of birth-control through company-sponsored medical insurance. The finding sparked disputes over whether corporations are people and have the rights of citizens, since until then religious protection was only applied to autonomous individuals lacking the influence of corporate power. As such, this ruling marks a true turning point in how religious liberty is understood in the United States, questioning the very premise of *separationism*. Additionally, the class implications of validating religious preferences of employers over the devotional practices or secular beliefs of their employees (Maier, 2016, p. 45) recalibrate the walls of civil religiosity within the confines of the asymmetrical nature of capitalist labor relations, thus interrogating the principle of equality of belief systems.

Considering The Notion Of Post-Secular

In recent decades many scholars have pondered the idea of a *post-secular* era linked to neoliberal socioeconomic conditions and an emerging neoliberal state. Habermas coined the term (2008), contemplating contemporary socioeconomic transformations that challenge modern European secularity. Beckford (2012, p. 1) highlights the resurgence of religion in the public arena in the United States, and the expunging of the public/private division between religion and politics. Some religious scholars believe that the blurring of the public/private divide has assisted a “phenomenal resurgence of religion in culture, politics, and thought” (Crockett, 2010, cited in Beckford, 2012, p. 6). Others point to the opening provided for faith-based organizations by the neoliberal shrinkage of state welfare policies, and the resulting familiarity and comfort with public religion. Neoliberalism has also been credited with galvanizing fundamentalist religious passion in the mobilization of a participatory

¹⁴The court did not define what it considered to be a closely held corporation and debate has ensued as to the range of corporations included in this ruling.

devotional citizenry, and consequently injecting faith-based claims into the political arena (Bretherton, 2011, in Beckford, 2012, p. 7). Today's postindustrial society in the United States also harbors an intensification of the conflictive coexistence between growing secularity and consolidated stripes of militant religious orthodoxy. Cohabitation between secular, religiously liberal, and religiously orthodox values is again being tested as these visions of society frontally compete over notions of truth, matters of rights, and narratives of nationhood. The dispute over abortion exemplifies that clash of societal perspectives. As described above, legislative and judicial actions in recent years speak to that tension.

UPDATES ON THE CULTURE WAR OVER ABORTION

Since the Tea Party wave helped arm Republicans with an overwhelming majority in the U.S. House of Representatives in 2010 and contributed to Republican victories for governor and state legislatures in 25 states, the anti-abortion precept of the Republican platform has driven the majority of their state and federal legislative efforts (2012 Republican Party Platform, in Life Issues Institute, 2012).¹⁵ During the past five years, states have adopted 288 laws restricting abortion. While 31 states have passed at least one anti-abortion measure, one-fifth of all state governments have enacted at least 10 new restrictions, accounting for 60 percent of the total abortion limitations adopted between 2010 and 2015 (Nash, Benson, Gold, Rathburn & Ansari-Thomas, 2015). The Webster (1989) and Casey (1992) Supreme Court rulings signaled green lights to state involvement in abortion politics (Rose, 2007). As a result, an increasingly consolidated biopolitical antiabortion stance has been particularly pronounced in Southern and Midwestern states. With Arkansas, Indiana, Kansas, and Oklahoma accruing one-third of all national abortion restrictions, (Guttmacher Institute, 2016) this growing tendency has progressively carved out a geopolitical schism of regionally differentiated abortion policies. Stark discrepancies over the meaning of human reproduction, the limits of women's control over their bodies, and access to abortion services are differentially

¹⁵The platform states: "Faithful to the 'self-evident'" truths enshrined in the Declaration of Independence, we assert the sanctity of human life and affirm that the unborn child has a fundamental individual right to life which cannot be infringed ... We oppose using public revenues to promote or perform abortion or fund organizations which perform or advocate it."

informing women's everyday lives and shaping disparate gender narratives in different parts of the country, bolstered in this instance by religious claims.

Of the 514 provisions considered in 2015, an overwhelming majority of 396, in 46 states, were aimed at limiting women's access to abortion (Guttmacher Institute, 2016). These policies fall into five major categories: 1) waiting periods, pregnancy-screening technologies, and counseling; 2) reduction of legal time frames; 3) prohibition of abortion-inducing medication; 4) abortion prohibitions for private insurance companies; 5) TRAP laws (Targeted Regulation of Abortion Providers). Together they represent a progressive gutting of abortion access in much of the United States, especially for low-income women.

Waiting periods of between 24 and 72 hours have been mandated in 18 states, with 13 requiring two doctor's visits before the procedure. Adding to economic, work-related, or family costs, particularly for working women who do not live near the clinic, emotional stress may also be linked to prolonging the process. This can be compounded by obligatory counseling, generally by opponents of abortion, that is now required in 24 states. Mandated viewing of ultrasound exams in 15 states, and listening to fetus heartbeats in others, could be considered a form of gender-specific, psychological violence in the view of international human rights organizations. Speaking to that, Pennsylvania's governor denied violating women's rights, stating: "You just have to close your eyes" (Bassett, 2012). In a recent study, Kimport found that rather than dissuading women from going ahead with an abortion, these measures form a discursive message that depicts women as incapable of making correct decisions (Kimport, 2016).

Whereas the Gonzales verdict (2007) prohibits late-term abortions on a national level, Webster (1989) and Casey (1992) paved the way for earlier state bans. Since then 23 states have passed bans on second—and third—term abortions, while eight have done so for abortions during the first term. The most extreme example has been North Dakota, in 2013, with a six-week limit on legal abortion, when a fetal heartbeat can be detected but before most women know they are pregnant (Haberkorn, 2015).¹⁶

¹⁶ Evoking the Roe *viability* standard, the 8th Circuit Court of Appeals struck down the law, in 2015, then inviting future Supreme Court challenges. Those challenges probably will never materialize considering the new court ruling on the Texas TRAP laws in the Whole Woman's Health v. Hellerstedt case in 2016).

Planned Parenthood and other private reproductive health care providers have thus become increasingly important in the women's health care field. Considering that 34 states have curbed private insurance for abortion during the past five years, and that the Hyde Amendment has prohibited public funding since 1976, these clinics are frequently the only reproductive health resource available to low-income women. As a result, a recharged campaign against Planned Parenthood has become another cornerstone of this new phase of antiabortion incrementalism. Cutting economic lifelines to clinics guarantees reduced access to legal abortion. Over the past few years, a strategy of isolating this provider has not only included TRAP laws, but also a new push to fully defund Planned Parenthood on state and federal levels. Until the 2016 Electoral College victory of Donald Trump along with continued Republican majorities in both houses of Congress, it was unlikely that Planned Parenthood would be federally defunded in the short term. However, even if that were to become the case, much of the organization's economic and human resources will have to be employed in defensive actions. This appears to be the goal of a surging antiabortion crusade that has morphed from its religious-fundamentalist fringe beginnings to what today appears to be a mainstream, politically consolidated claim of contemporary conservatism.

Research indicates that while the first four categories of this new *incrementalist* anti-abortion strategy may have negative effects on access for economically vulnerable women, TRAP laws restrict access for a much larger portion of the population (Kimport, 2016, p. 16). Claiming to safeguard women's health and welfare, as emphasized in the Casey opinion, TRAP laws are double-edged policies involving: 1) ambulatory surgery center standards, approved in 19 states, that require hospital construction criteria for reproductive health care clinics; 2) admitting privileges for clinic medical staff at local hospitals, mandated in 15 states. The medical reasoning in both instances has been questioned by providers, given that early term abortion, induced by a pill is the preferred method today and one of the safest and simplest medical procedures, with limited complications (Whole Woman's Health v. Hellerstedt, 2016, p. 46).¹⁷

Added to other new *incrementalist* legislation, new Texas' TRAP laws illustrate the negative consequences for women's access to reproductive health care. Of the 44

¹⁷ Five peer-reviewed studies found that less than 0.25 % of first trimester abortions had complications, while three peer-reviewed studies found it to be less than 0.5 % in rarer second-term abortions.

clinics offering integral reproductive services to Texan women in 2011, only 20 were still open by the end of 2013. Passage of TRAP laws in 2014 threatened to reduce that number to only six clinics in the second largest and fastest growing state in the nation; recent data gives Texas 26.4 million people (U.S. Census, 2013). A study by the Center for Politics of the University of Texas warned about the consequences of the TRAP laws, finding that risky, self-induced abortions would rise to 7 percent for all pregnant women, while that rate would skyrocket to 12 percent among the poorest (America Al Jazeera, 2014, in Maier, 2016). Other sources refer to the distances that Texan women would have to travel in order to find an abortion clinic; the possibility of crossing into Mexico to buy prescription drugs that may not be indicated or safe; having back-alley procedures; or raising unwanted children (Fernandez, 2014).

However, these negative consequences for women's health and lives were averted by the recent Supreme Court judgment in the *Whole Woman's Health v. Hellerstedt* case on June 27, 2016. The 5-3 majority disavowed the ideological deadlock of the divided court left by the death of Justice Antonin Scalia in February 2016, refocusing abortion legislation for years to come. Placing the undue burden standard of Casey (1992) at the center, the majority opinion concludes that neither the hospital's *admitting privileges requirement* for doctors performing abortions, nor the *surgical center requirement* for abortion clinics, offer "medical benefits sufficient to justify the burdens upon access that each imposes" (*Whole Woman's Health v. Hellerstedt*, 2016, p. 7). The judgment explicitly asserts that both requirements constitute an *undue burden* on abortion access, thus violating the 14th Amendment of the Constitution.¹⁸ Through renewed emphasis on the *undue burden* standard, the court once again underscores *compelling state interest* in women's rights. As noted in the ruling, Casey's focus on *compelling state interest* in "growing life" during the entire pregnancy could be misinterpreted on state levels in ways that are prejudicial to women (*Whole Woman's Health v. Hellerstedt*, 2016, p.44). The Hellerstedt judgement rectifies this imbalance, redressing women's right to abortion access without undue burden, until viability (*Whole Woman's Health v. Hellerstedt*, 2016, p. 44). With its emphasis on both *undue burden* and *viability*, this judgment has been rendered the most important abortion litigation in more than 20 years.¹⁹

¹⁸The 14th Amendment guarantees equal protection of the laws. It is a foundational premise of the *Roe v. Wade* ruling.

¹⁹Many states have TRAP laws, some almost identical to the ones in Texas. The Hellerstedt verdict undoubtedly will impact the outcome of six challenges to state laws that are presently in the courts.

CLOSING REFLECTIONS

In this article I have stressed the importance of the historical, economic, and technological context for understanding conflicting discourses of the period, the social actors that embody them, and the actions they promote (Hall, 2010, p. 27). It is from this analytical perspective that I have reviewed growing tensions on the issue of abortion in the United States over the past 40 years. Emphasizing the contextual framework of a deeply transitional era, I revise multiple components of what Hunter (1990) has called the *culture war* over abortion. I argue that the implications of this dispute go far beyond the abortion issue, becoming emblematic of fundamental clashes over moral codes, value systems, gender orders and family organization, rights and notions of citizenship, margins of separation between church and state, and societal projects of nationhood.

Since its legalization in 1973, abortion in the United States has become an increasingly contested matter. Conflicting discourses, linked to religious or secular interpretations of social reality, have made abortion a central issue of their world-views. Though the subject has historically informed religious and philosophical discussions of ethics and life values, current tensions are linked to our particular transitional context between two productive and technological models and subsequent shifts in social patterns. The conversion from a stable, comprehensive, industrial order to a fragmented, globalized, postindustrial model has created a disjointedness between outmoded industrial institutions and the everyday needs of fast-paced, constantly changing, contemporary lifestyles. As social and political institutions have been progressively sapped of their cohesive, systemic function, institutional vacuums invite paradigmatic confrontations that compete for the privilege of cultural meaning. Contending *separationist* and religious perspectives strive for institutional representation, attempting to fill these voids.

Within this uncertain context, religious imaginaries have reemerged as dispositives of stability and certitude, increasingly occupying greater public space and speech. Neoliberal shrinkage of state welfare programs opened new areas to public participation by religious institutes, thus enhancing the normalization of religious presence in the public arena. Moreover, the mobilization of a devotional citizenry, poised for political participation and party militancy, has injected religious beliefs into the very fiber of political life. While the history of *civil religion* in the United States belies the possibility of considering a post-separationist era, these factors have undoubtedly contributed to invigorating religious speech and presence in public affairs. As such, the chaotic atmosphere produced by *liquid modernity's* constantly

shifting social reality, together with economic crisis, immigration, ideological conflicts, and war, should also be considered a benchmark for re-disputing the limits of separation of church and state. Abortion politics have become *ground zero* in that struggle.

Since the *Roe v. Wade* ruling, the Supreme Court has revisited the abortion issue on numerous occasions. As the court skewed more conservative over the years,²⁰ new rulings eliminated state responsibility in providing abortions. They recognized compelling state interest in the fetus during the entire pregnancy, while at the same time attempting to not infringe on a woman's right to choose via the *undue burden* clause. Ultimately, third-term abortion was re-criminalized. These judgments opened up testing grounds at the state level for the anti-abortion movement's *incrementalist* strategy to restrict, condition, and make abortion increasingly inaccessible to more women. Accordingly, two very distant biopolitical dispositives were instituted in different states that discipline the female body-species in very different ways. I have termed this a *geo-biopolitical* divide, referring to geographical variances in state reproductive health policies that impact women's bodies and lives in dissimilar ways.

As the recent presidential election has demonstrated, these geo-biopolitical differences have deepened the fissures of a politically fractured nation. With the unexpected Trump Electoral College victory, the chaotic sensation of ubiquitous uncertainty appears to intensify institutional disjointedness, thus opening a wider wedge for cultural contentions. It immediately fostered concern about the future of reproductive rights and abortion in the United States. A day after the inauguration, the Women's March gathered 750 000 people in Washington, D.C., with nearly 4 million marching for women's rights all over the country. Two days later, a presidential order reinstated the Mexico City Policy, or *global gag rule*, which "imposes strict antiabortion rules on overseas family planning programs," and eliminates federal funding for international institutions linked to countries with abortion policies (Barot and Cohen, 2015).²¹ Two weeks afterward, the self-proclaimed *pro-life*,

²⁰ President Reagan and both Presidents Bush named conservative justices to the court. Together they created a majority of five conservatives to four liberals. With Scalia's death in February 2016, the court became deadlocked with four liberal and four conservative justices.

²¹ In the past, the gag rule has reduced U.S. contributions to the United Nations Population Fund (UNPA), while restricting reproductive services of USAID. Studies show severe impact on women's health and healthcare, with increased female mortality rates and higher birth rates all over the developing world (See above link).

antiabortion forces gathered 80 000 advocates in Washington for their annual march under the banner of fully defunding Planned Parenthood.

The presidential nomination of a conservative religious libertarian and constitutional *originalist* to the Supreme Court appears to confirm his electoral promises to name judges who would repeal *Roe v. Wade*. The absence of Scalia, the conservative ideologue of the high court in the 5-3 ruling in the *Whole Woman's Health v. Hellerstedt* case (2016) that ratified women's reproductive rights and choice until viability, though not determinant, speaks to the importance of the ideological tint of the court in constructing cultural significance and hegemony. It is clear that the results of the election will determine changes to the judicial vision of the court's majority that not only will shape national biopolitics for decades, but also will frame the national blueprint of social relations and cultural values for generations.

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