

The lesson here appears to be that although Spain is among the many countries that have experienced ethnic based conflict, it is working on a solution. Accommodation by federalization is one important means of resolution by the accretion of dual loyalties to state and region. In this process federalization does not have to be complete, that is, federation, but must meet the country's contemporary governance needs. For Spain that means democratization *with* a form of decentralization that can serve to resolve long-standing grievances. So it matters less how federal Spain is whereas it matters more how those federal arrangements that are a product of accommodation solve the territorial and other problems faced by Spain.

Robert Agranoff
Indiana University, Bloomington

Before Roe: Abortion Policy in the States. by Rosemary Nossiff. Philadelphia: Temple University Press, 2001, 195 pp., \$69.50 cloth, \$21.95 paper.

In this excellent study, Rosemary Nossiff explores how two states, New York and Pennsylvania, responded to calls for abortion reform and repeal in the period immediately preceding the U.S. Supreme Court's 1973 decision in *Roe v. Wade*. During this period, states typically barred abortion unless a physician determined that the procedure was necessary to save the life of the woman. Nearly all the states that attempted to change their abortion laws between 1965 and 1972 broadened access to abortion. Thirteen states liberalized their statutes by allowing abortion in cases of rape, incest, fetal deformity, or endangerment of a woman's health. Four other states repealed their laws, making abortion widely available during the first and much of the second trimesters. One state, however, attempted to bar all abortions by sharply limiting physician discretion. New York and Pennsylvania occupy the positions at the two ends of this spectrum. New York was the first state to repeal its abortion law; Pennsylvania was the only state to bar nearly all abortions.

Nossiff forcefully argues that abortion policy was firmly established in this pre-*Roe* period, and that even after the 1973 decision, these states continued to go their own, very different ways. New York is one of only fourteen states that have broadened access to abortion by providing Medicaid funding for poor women. In contrast, Pennsylvania has gone on to craft four abortion control acts that have effectively limited access during the first and second trimesters. Although the first three of these laws were struck down by the U.S. Supreme Court, the last of these, passed in 1989, was largely upheld in *Casey v. Planned Parenthood of Southeastern Pennsylvania*.

In an attempt to understand how two state legislatures could have crafted such radically different responses to the same issue, the author provides an

in-depth analysis of the pre-*Roe* period in each state. Employing interviews, data from the Family Planning Oral History Project, archival material, the private papers of legislators and advocates, and the newsletters of activist groups, along with more traditional scholarship, Nossiff artfully braids together three strands in state politics: party politics and reform, political discourse, and interest-group activities.

Nossiff first turns her attention to the state's party apparatus, and she assesses the success of attempts to reform party politics in the 1950s and early 1960s. She concludes that bipartisanship provided access to activists, including abortion activists, in the late 1960s and early 1970s. In contrast, the failure of reform efforts in Pennsylvania meant that there were only very limited opportunities for outside actors to influence the legislative process. Moreover, real debate about abortion began early in New York, but it was stifled in Pennsylvania until after the *Roe* decision.

Ultimately, the debate about abortion became one that pitted the rights of women against those of fetuses. The Supreme Court adopted what Nossiff terms a "legal discourse" about abortion, holding in both its *Roe* and its 1965 *Griswold v. Connecticut* cases that reproductive rights are within a constitutionally protected "zone of privacy." Over time, however, the trimester framework adopted in *Roe* has been abandoned, and the rights of women and fetuses have been perceived as being in direct conflict in all three trimesters. In fact, the discourses that were adopted in pre-*Roe* New York and Pennsylvania have continued to play out in the post-*Roe* period. Moreover, this conflict has intensified since the *Casey* decision, as power has devolved back to the states on this issue.

In addition to party politics and political discourse, the first two strands in Nossiff's argument, interest-group activity also played a significant role in the rewriting of abortion statutes in these two states in the pre-*Roe* period. I would argue that the influence of these groups has continued to strongly influence the debate about abortion. Nossiff contends that the Roman Catholic Church and, in particular, the Pennsylvania Catholic Conference (PCC) had significant input into the legislative process. By the late 1960s, the PCC continued to lobby the Pennsylvania legislature vigorously to enact even more stringent abortion regulations well into the early 1970s. According to Nossiff, the PCC moved the abortion issue sharply to the right in Pennsylvania, and put pro-abortion advocates on the defensive in this state. Nossiff argues that the success of the PCC was closely tied to the state party system, which effectively blocked entrance to all new activists, including pro-choice advocates.

Nossiff also contends that in New York, interest groups played an important role in the debate about abortion. Pro-abortion and women's

rights activists effectively lobbied to get Constance Cook, to consider repeal and reform bills. While the PCC moved the debate about abortion to the right in Pennsylvania, women's rights advocates moved it to the left in New York. Because the party system in New York was more open, pro-abortion and women's rights advocates were able to gain entry to the legislative process and to lobby both Democratic and Republican representatives.

One of the many strengths of this book is that it provides an in-depth analysis of the grassroots movement in these two states, and demonstrates how different legislative arenas may be open or closed to would-be participants. Clearly, in Pennsylvania religious communities were able to control the abortion debate, while in New York, abortion reformers dominated this debate. The data drawn upon in this excellent book and the conclusions derived from the data are good examples of the Old Testament adage, "There is no new thing under the sun." Although some public law scholars continue to philosophize about whether courts and law can or should bring about social change, this work reminds us that legislators and the populace often resolve controversial issues before, or even *despite*, a decision by the U.S. Supreme Court. In the abortion cases, the Court was not leading an unwilling public. Even *Roe*, which some activists heralded as a great victory for women's rights and reproductive rights, employed some of the discourse about fetal rights that as later used to permit greater latitude to state legislatures, like Pennsylvania, that sought to limit abortion access. This study leaves me wondering whether *Roe* left us better off or worse off. Nossiff argues, as have others, that *Roe*'s chief contribution was that it brought this issue to the national agenda. It seems that this was both a benefit and a detriment. The Court may have been attempting to standardize abortion law to provide consistency, but it assumed that the state variation on this issue would simply disappear. The last thirty years have shown that it is difficult to superimpose a national "solution" on a question with many different answers. Nossiff would probably argue that the answers are different because the questions are different. Her discussion about discourse suggests that because some states have framed this as a doctor's issue, and others as a woman's issue or a fetus's issue, one could have predicted that there would be significant variation in how abortion would be handled. Moreover, the dominant discourse in a state has also likely affected how *Roe* has been received by both its people and legislators. I am not sure that courts can have a significant impact on this issue. Short of issuing a standard that significantly limits the ability of legislatures to legislate about this issue, it seems that the role of courts is destined to be a limited one. *Before Roe* demonstrates that states can respond to the same problem by crafting vastly different law arrangements and of the input of

interested outsiders. One of the problems with this variation is that the response of legislators may reflect party politics instead of popular preference, and political expedience and compromise may take the place of reasoned public debate or the greater good.

Suzanne U. Samuels
Seton Hall University