

# ISSUES IN PERSPECTIVE

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## *Abortion: 40 Years after Roe v. Wade*

The Supreme Court's *Roe v. Wade* decision in 1973 changed America. Abortion remains one of the most contentious issues in our culture, with positions on both sides of the divide uncompromisingly hardened. For many, it is the touchstone issue of life. And perhaps because it deals with life and its value, it will never diminish in its importance to American civilization.

Several thoughts:

- First, a new book on the Court's 1973 decision, *Abuse of Discretion*, by Clarke Forsythe, offers some helpful insights into how the Court made its 1973 decision. Shortly after the 1973 decision, Harvard Law School professor Lawrence Tribe commented that the Court "went to lengths few observers had expected, imposing limits on permissible abortion legislation so severe that no abortion law in the United States remained valid." Before she joined the Court, Ruth Bader Ginsburg argued that *Roe* was "not a measured motion" because it "invited no dialogue with legislators." Instead, it created "a set of rules that displaced virtually every state law then in force." Not only did this case cause a furor, but in a companion case, *Doe v. Bolton*, the Court voted by the same 7-2 margin to strike down 13 more liberal abortion laws, passed between 1967 and 1970, on the grounds that they did not include a health exception that permitted women to seek abortions at any point in a pregnancy if their health was threatened. Further, the Court mandated that "health" include psychological as well as physical issues. For these reasons, Forsythe argues that "the sweeping scope of *Roe* and *Doe* isolated the United States as one of approximately nine countries that allow abortion after 14 weeks and one of only four nations (with Canada, China and North Korea) that allow abortion for any reason after fetal viability." Forsythe demonstrates that Justice Blackman, who was assigned to write the opinion, at first wanted a narrow decision, but it was Justice William O. Douglas who threatened a scathing dissent unless Blackman agreed to a broader ruling without a rearguing of the case. Forsythe also demonstrates how "haphazardly the court selected 'viability' as the point in fetal development after which abortions could be prohibited by the states." Forsythe also maintains that the premise on which the justices were basing their decision was that "abortion is safer than childbirth." He suggests that the data they used were open to question and, by treating abortion as a constitutional right, they made "abortion virtually immune" from public health oversight. In short, Forsythe's book enables us to reach the conclusion that the 1973 decision and its accompanying *Doe v. Bolton* decision were both examples of extreme judicial arrogance almost without precedent in US history. Perhaps the only comparable example was the 1857 *Dred Scott* decision. Many have compared *Roe* to this dastardly Court decision that helped bring on the Civil War. From *Dred Scott* came the conclusion that slaves (and blacks in general) were not citizens and had no rights or constitutional protection whatsoever. That is exactly how *Roe* treated the unborn baby. This 40<sup>th</sup> anniversary of the *Roe* decision is

one the darkest anniversary's in our nation's history. As a nation, may we hang our collective heads in shame—for this decision has produced a modern holocaust of 55 million babies murdered. Those babies had no constitutional protection, no rights and no value—except to God!

- Second, the ethics and very personal dimension of abortion remain issues of profound importance 40 years later. For example, Meghan Winter in the 18 November 2013 issue of *New York Magazine* authored the cover-story article that recounted the stories of 26 women who had an “abortion experience.” These are in fact enthralling testimonies. Whether one is pro-choice or pro-life, these testimonies evidence the trauma and wrenching emotion associated with having an abortion. Winter writes that “Of all the battles in our half-century culture war, perhaps none seems further from being resolved, in our laws and in our consciences, than abortion.” That such a statement comes from a magazine associated with liberal causes and from an author equally liberal evidences that abortion remains an agonizing aspect of American culture. Theologian Albert Mohler argues that “America has a divided mind and a divided heart on abortion. But that must be seen as a pro-life victory of sorts, for the very fact that abortion remains such a controversial and morally troubling issue refutes the claim that abortion on demand is a settled fact.” Winter also makes clear how integral abortion is to everyday life and everyday decisions in America: “. . . abortion is part of our everyday experience. Nearly half of all pregnancies are unintended; about half of those—1.2 million—will end in abortion each year.” Winter also argues, correctly in my opinion, that “abortion is something we are more comfortable discussing as an abstraction.” Her article personalizes abortion, showing the personal distress that many of these women actually experienced. Mohler writes that “For the advocates of abortion, these testimonies offer a clear refutation of their strategy of doing everything possible to speak constantly of a ‘woman’s right to choose,’ while avoiding any reference to the baby. The baby refuses to disappear. When these testimonies of abortion reveal the very women who had an abortion speaking of ‘our baby’ and noting that ‘the baby would now be one year old,’ the moral bankruptcy of the pro-abortion argument is there for all to see. The baby refuses to leave the picture.”
- Third, for those of us who are Christians, God’s view of prenatal life is clear in Scripture—and that is indisputable. Most importantly, in Psalm 139:16 King David declares that “when I was an unformed substance [i.e., the embryo] in my mother’s womb, Oh LORD you knew me.” God knew David even when he was an embryo growing in his mother’s body. There is no more convincing proof of God’s perspective on prenatal life than Psalm 139:16. May the truth of that verse permeate our culture.

See Jeffrey Rosen’s very helpful review of Forsythe’s book in the *Wall Street Journal* (12-13 October 2013) and [www.albertmohler.com](http://www.albertmohler.com) (18 November 2013).