

LIFE MATTERS: ROE PLUS 40

With age comes wisdom, or so they say. *Roe v. Wade* has turned 40. So what have we learned?

Forty years later, the *Roe* decision's references to "potential life" seem scientifically outdated at best. Even abortion rights activists now concede the basic biological fact that human life begins at conception.¹ Unfortunately, because most have been reticent to publicly admit this, many Americans (including some vocally "pro-choice" Catholic politicians) still fail to understand that *science informs Church teaching* in this regard.² Forty years later, it is not only theologically obtuse but also scientifically misinformed to make statements like: "As a Catholic, I believe life begins at conception, but..." We human beings begin our existence when our father's sperm meets our mother's egg—whether *we* choose to believe it or not. A human being, in every other context in U.S. history save the era of slavery, has been understood to enjoy certain human rights *simply because he or she is human*. Today a child, in every context of American law save abortion, merits her parents' care and protection—*simply because she is their child*.³

Forty years later the United States continues to have one of the most extreme abortion regimes in the world. Yet we're often led to believe that *Roe v. Wade* merely legalized abortion in the first three months of pregnancy. The trouble is that the *Roe*



Court actually said abortion must be allowed for any reason in the next three

months as well. It then said laws against abortion must have a broad health exception even in the final "trimester," but only described its breadth in the little known companion case, *Doe v. Bolton*, decided the same day. In *Doe*, the Court announced that health, for the purposes of late-term abortion law, would be synonymous with the mother's "physical, emotional, psychological, familial ... wellbeing"—in other words, every reason a

pregnant woman could give for seeking an abortion in the first place.

Together *Roe* and *Doe* display a dramatic instance of the exception swallowing the rule, making the U.S. *one of only nine* countries in the world permitting abortion after 14 weeks of pregnancy, and *one of only four* that allows abortion for any reason after viability,⁴ yet most Americans still falsely assume that abortion is strictly limited after the first trimester.

Forty years later, women's health is still a central issue, but scientific data does not support abortion access as healthy for women. Beyond dispute, if little known, are the data that show an increased likelihood of preterm birth and placenta previa in subsequent pregnancies, both of which put mother and child at increased risk of health and life-threatening complications.⁵ Women who have had abortions are also at increased risk of anxiety, depression and substance abuse. A 2011 "meta-analysis" (i.e., study of the studies) revealed that more than half of all women experienced mild to severe mental health problems following their abortions, including a 155% increased risk of suicidal behavior.⁶ Short-term complications including hemorrhaging, uterine perforation, and infection injure tens of thousands of women each year.⁷

Forty years later, abortion is more often than not regarded as a *necessary evil*: evil, because it takes the innocent, dependent life of a uniquely precious unborn child; "necessary," because it is claimed that women's equality depends upon it. But isn't it rather sexist to claim that for a woman to be *equal* to a man she must have the right to become *more like* a man (i.e., not pregnant)? Doesn't such a claim tend to promote a devaluation and even rejection of women's capacity to bear children, that very capacity that makes women different from men? Wouldn't authentic equality instead require that men and society at large respect, protect, and support women's childbearing capacity, alongside their many other talents and abilities? Not all women become mothers, but those who have children depend upon a cultural esteem for pregnancy and motherhood—the nurturing of an individual and unique human being—for their social

and professional support. Indeed, women's physical, emotional, and professional sacrifices endured during pregnancy and beyond would be far more honored and rewarded were we, as a culture, more honest and consistent about the dignity of the human beings entrusted to their care.

Forty years later, women from all backgrounds—affluent and highly educated to poor and disadvantaged—attest to the difficulty of meeting men worthy of, and willing to commit to, marriage.⁸ They may be interesting, talented, ready for fun, yes. Marriageable? Not so much. Herein lies a complex problem with many potential causes.⁹ But over the last decade and a half, a number of economists have demonstrated that liberal abortion laws and widespread contraception, especially when acting together, have empowered men to expect or initiate sex without the need or desire for any sort of commitment.¹⁰ Once upon a time, women were in a position to make serious demands upon men prior to physical intimacy, due to the commitment necessary for taking care of a child who may possibly result. Increasingly available contraception and abortion have realigned this set of cultural expectations toward the male prerogative for low commitment sex. Increased confidence in contraception (alongside the continued reality of contraceptive failure) has translated, forty years later, into increased rates of unintended pregnancy, single motherhood, and abortion—all of which disproportionately affect women, especially poor women.¹¹

Forty years later, the pro-life community is as committed as ever to promoting the human dignity of *both mother and child*. Indeed, it is the vulnerability of *all those involved in abortion* that makes the issue one of deep and abiding concern. The evident vulnerability of the innocent human being, to be sure, but also the vulnerability of the single mother who feels she has no “choice” but to abort; the anxious father who has no legal say; the parents whose unborn child appears handicapped or may die shortly after birth; the victim of rape; and even the abortion provider who, we can only hope, will experience a conversion of heart and abandon this trade. Forty years later, the courage and grace shown by those women who choose life—in the face of fear, uncertainty, parental or partner intimidation, seemingly insurmountable odds—make them today's heroes. They are joined by the many who counsel, support, and nurture them both

before and after the birth of their child. Such self-giving love—especially in the face of forty years of “choice”—is powerfully transformative of mother, of child, of families, of cultures.

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¹ For example, Frances Kissling, “How to Think About Abortion,” *www.salon.com* (Nov. 16, 2010), (noting that “there’s the reality that abortion does take life—human life”); Camille Paglia, “Fresh Blood for the Vampire,” *www.salon.com* (Sept. 10, 2008), (“I have always frankly admitted that abortion is murder, the extermination of the powerless by the powerful.”); Mary Elizabeth Williams, “So What if Abortion Ends a Life?” *www.salon.com* (Jan. 23, 2013), (“I would put the life of a mother over the life of a fetus every single time—even if I still need to acknowledge my conviction that the fetus is indeed a life. A life worth sacrificing.”).

² 2006 Zogby Poll, “Abortion Tough Issue for Hillary Clinton and '06 Congressional Democrats”; at *www.prnewswire.com/news-releases/zogby-associated-television-news-poll-reveals-abortion-tough-issue-for-hillary-clinton-06-congressional-democrats-70730252.html* (accessed 4/24/13).

³ Helen M. Alvaré, “*Gonzales v. Carhart*: Bringing Abortion Law Back into the Family Law Fold,” 69 *Montana Law Review* 409 (2008) (noting the Court’s opinion in *Gonzales* rightly uses concepts from family law to describe the relationship between “mother” and “child” in the abortion context). See also, Erika Bachiochi, “Embodied Equality: Debunking Equal Protection Arguments for Abortion Rights,” *Harvard Journal of Law & Public Policy* (2011), at 932ff for discussion of parental duty generally.

⁴ The four countries are the U.S., Canada, China and North Korea.

⁵ John M. Thorp et al., “Long Term Physical and Psychological Health Consequences of Induced Abortion: Review of the Evidence,” 58 *Obstetrical & Gynecological Sur.* 70, 75 (2003) (explaining that abortion increases the risk of placenta previa in later pregnancies by fifty percent and doubles the risk of preterm birth).

⁶ Priscilla K. Coleman, “Abortion and Mental Health: Quantitative synthesis and analysis of research published 1995-2009,” *The British Journal of Psychiatry* (2011) 199:180-186.

⁷ M. Paul et al., *A Clinician’s Guide to Medical and Surgical Abortion* (New York: Churchill Livingstone, 1999), 20-21.

⁸ See, e.g., Barbara Defoe Whitehead, *Why There Are No Good Men Left* (2003) and Kathryn Edin and Maria Kefalas, *Promises I Can Keep: Why Poor Women Put Motherhood Before Marriage* (2005).

⁹ Kay Hymowitz, *Manning Up: How the Rise of Women Has Turned Men into Boys* (2011); Hanna Rosin, *The End of Men* (2012).

¹⁰ George A. Akerlof et al., “An Analysis of Out-of-Wedlock Births in the United States,” *The Quarterly Journal of Economics* (1996), 111:277-317; Timothy Reichert, “Bitter Pill,” *First Things* (May 2010); Joseph Anthony Burke and Catherine Pakaluk; “The Contraceptive Revolution and the Second Demographic Transition: An Economic Model of Sex, Fertility, and Marriage,” Working Paper No. 1003, Ave Maria University (2010); see also, sociologists Mark Regnerus and Jeremy Uecker, *Premarital Sex in America: How Young Americans Meet, Mate, and Think about Marrying* (Oxford University Press, 2011).

¹¹ See Erika Bachiochi, “Women, Sexual Asymmetry & Catholic Teaching,” forthcoming in *Christian Bioethics* (2013) for a survey of these findings.



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