

# BEYOND A HOUSE DIVIDED



THE MORAL CONSENSUS  
IGNORED BY WASHINGTON,  
WALL STREET,  
AND THE MEDIA



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## Beyond the Clash of Absolutes: Abortion

The title of Harvard Law professor Laurence Tribe's 1992 book, *Abortion: The Clash of Absolutes*, is perhaps the best summation of the manner in which abortion is usually portrayed in the United States.

"Our national institutions are braced for a seemingly endless clash of absolutes," Tribe wrote. "The political stage is already dominated by the well-rehearsed and deeply felt arguments, on either side of the abortion issue, that we have come to know so well. The debate is unending."<sup>1</sup>

There is the sense that the subject is irreconcilable, and that consensus can only be found on the fringes of the debate, in peripheral areas such as prenatal care or adoption. The possibility that Americans could ever agree on broader abortion legislation is seen as extremely unlikely.

Leaders of both our political parties speak of abortion in a similar way. For example, in August 2000, at the Republican National Convention, the soon-to-be elected George W. Bush said the following:

I know good people disagree on this issue, but surely we can agree on ways to value life by promoting adoption and parental notification, and when Congress sends me a bill against partial-birth abortion, I will sign it into law.<sup>2</sup>

Similarly, nearly a decade later, speaking at The University of Notre Dame in 2009, President Barack Obama said this:

So let us work together to reduce the number of women seeking abortions, let's reduce unintended pregnancies. Let's make adoption more available. Let's provide care and support for women who do carry their children to term.

He added:

I do not suggest that the debate surrounding abortion can or should go away. Because no matter how much we may want to fudge it—indeed, while we know that the views of most Americans on the subject are complex and even contradictory—the fact is that at some level, the views of the two camps are irreconcilable.<sup>3</sup>

Pollsters, too, usually see the issue as intractable. In 2008, John Zogby wrote that we had to think through the public's contradictions on the abortion issue to move past the ongoing "intractability that has plagued the abortion discussion since *Roe v. Wade*."<sup>4</sup>

The idea is that we need to find a way forward, but that none currently exists. For commentators including Tribe, the only way forward would be for the polarized halves of the American people to move toward the center.<sup>5</sup> Somewhere along the way, the terms "pro-choice" and "pro-life" were taken as monolithic and applied, all or nothing, to every American. Polls that asked Americans to choose one label or the other lent credence to this apparent division.

We have seen the focus on the "number wars" in abortion polling played out with the conventional understanding over the past two years. The "deep divide" among Americans over abortion made headlines once again in 2009 after Gallup reported a slight change in the direction of the polarity: For the first time since Gallup began asking the question in 1995, Americans—who had long

identified themselves by narrow margins as pro-choice—now responded that they were pro-life, 51 to 42 percent.<sup>6</sup>

Soon, other polls confirmed this. For many covering the slight shift in the winds, the ongoing story was the continued polarity. When the Pew Research Center's 2009 poll likewise found the public slowly moving away from supporting abortion, *The New York Times* covered it this way: "A new poll, though, suggests that support for abortion may have declined, with the public almost evenly divided over the issue."<sup>7</sup> A few months later, when the Gallup poll found the gap had tightened (now with 47 percent pro-life vs. 46 percent pro-choice), the *U.S. News & World Report* "God and Country" blog declared "Americans Evenly Split on Abortion."<sup>8</sup>

While the lead remained close, the momentum, it seemed, was with pro-life Americans—but only by single digits.

Even so, more than three decades after *Roe v. Wade*, and with two political parties so identified with opposing stances on abortion, this was big news. Like a World Cup match in overtime, the smallest point-advantage was significant. This was seen to such an extent that in 2010, when the narrow lead among those identifying as pro-life still held, Gallup declared "the new normal on abortion."<sup>9</sup>

Conventional wisdom holds that, as with a World Cup match, the only constant is this: Regardless of which side holds a slight advantage, the two will always be almost evenly matched competitors. The numbers might vary by a few percentage points, but—so the story goes—Americans will always be split between two rival and antithetical positions.

Even these small shifts were sometimes dismissed as simply political. As Gallup itself explained in 2010:

Barring evidence that Americans are growing more wary about the morality of abortion per se, the trends by party identification suggest that increased political polarization may be a factor in Republicans' preference for the "pro-life" label, particularly since Barack Obama

took office. Whatever the cause, the effect is that the “pro-life” label has become increasingly dominant among Republicans and to a lesser degree among independents, while the “pro-choice” label has become more dominant among Democrats.<sup>10</sup>

Such commentary suggests that Americans care more about political candidates than they do about abortion itself, and that abortion has become an issue linked more to partisan affiliation than to personal opinion on the issue.

One could easily conclude, as Tribe does, that “the debate is unending.” But Americans want it to end. Nearly four decades after *Roe v. Wade*, 82 percent of Americans say the argument on abortion has gone on for too long.<sup>11</sup> Far from wishful thinking, Americans’ desire to see the debate resolved is closer to reality than the idea of a country evenly divided between absolute positions on the issue.

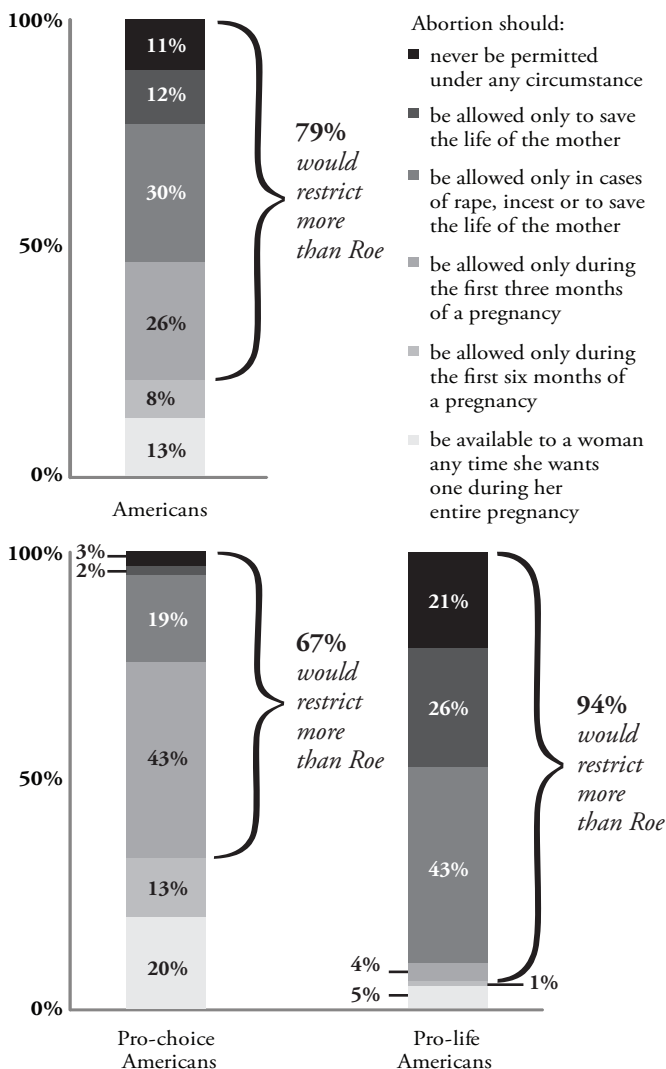
There is consensus, enormous consensus, on abortion among Americans—that is, if you give people more choice in responding to surveys on the issue.

Pollsters often ask if people support all, some, few or no abortions. However, understanding that induced abortion is a procedure that can only happen during pregnancy, and that pregnancy is divided into gestational periods (trimesters), we decided to poll based on the terms used in the medical and legal professions. As it turns out, asking Americans to consider abortion in terms of these clearly defined time periods within a pregnancy yielded very interesting answers.

We found that about eight out of 10 Americans (84 percent in 2008, 86 percent in 2009, 79 percent in 2010) favor restrictions that would limit abortion to the first three months of pregnancy at most.<sup>12</sup>

We didn’t find a clash of absolutes but a consensus on what almost everyone sees as the most hopelessly divisive issue in America today.

Figure 1: Spectrum of Opinion on Abortion



Which one of the following statements comes closest to your opinion on abortion?



Even within this overwhelming consensus, the majority favors more restriction rather than less. Fifty-three percent of Americans would limit abortion to cases of rape, incest or to save the life of a mother—or would not allow it at all. Among women, the number is even higher—55 percent.<sup>13</sup>

The clash of absolutes is actually hard to find. Less than a quarter of Americans choose an absolute position: Fourteen percent want abortion allowed at any time during a pregnancy and 11 percent believe abortion should never be permitted under any circumstances.<sup>14</sup> Whatever “pro-” label people say they identify with, in the area of legislation, almost all Americans fall into a category somewhere between the two absolute positions, with the overwhelming majority united in their agreement that abortion should be restricted far more than it is now. That moral consensus—that abortion can and should be restricted—ought to be the starting point for resolving the political impasse on abortion.

We don’t need to move the two polarized halves of the American population toward a compromise position on abortion; we need to start our conversation in the place where the overwhelming majority of Americans already stand.

In addition to our own polling, other polls that have offered respondents a wider spectrum of possible answers have likewise seen a consensus in favor of significant restriction of abortion.

In April 2010, a poll from CNN/Opinion Research Corporation asked Americans nationwide, “Do you think abortion should be legal under any circumstances, legal only under certain circumstances, or illegal in all circumstances?” Seventy-eight percent favored abortion only under certain circumstances or never at all, with only 21 percent selecting legal abortion under any circumstances. The CNN poll then went even further, asking those who responded “legal under only certain circumstances” whether abortions should be allowed in most cases, or only a few. As in our poll, an increase in options resulted in a noticeable trend among respon-

dents in favor of significant restriction on abortion. By a more than three to one ratio, Americans—given such options—say that abortion should be legal in only a few circumstances.<sup>15</sup>

Interestingly, women are actually likelier to favor more stringent restrictions than men. While 16 percent of men say abortion should be legal any time, only 11 percent of women say the same. A slightly higher percentage of women would restrict abortion completely: Thirteen percent of women say abortion should never be permitted under any circumstance compared to nine percent of men.<sup>16</sup>

In other words, not only would more women completely restrict abortion than allow it at any time during the pregnancy, but the consensus for restricting abortion in general is even higher among women than among men: Eighty-two percent of women and 76 percent of men want abortion restricted to—at most—the first three months of pregnancy.<sup>17</sup>

It's a trend that's not likely to change.

A 2005 Zogby poll of high school seniors—an age cohort comprising those who were, or were about to become, the nation's youngest voters, and thus those with the most elections still ahead of them—found that young people have reached a consensus on abortion.

Seventy percent of female students say they wouldn't consider an abortion themselves, and 67 percent of male students wouldn't want their girlfriend to have an abortion.<sup>18</sup> Additionally, while the poll listed six possible rationales for abortion, a majority of students support it only in cases of serious threats to the mother's health and in cases of pregnancy resulting from rape.<sup>19</sup>

Though the broad consensus for significant abortion restriction has not received much attention, some have noticed the youthful trend toward the pro-life position.

"I just thought, my gosh, they are so young," Nancy Keenan, president of NARAL Pro-Choice America, said when she surveyed the crowd at the pro-life "March for Life" in Washington, D.C. "There are so many of them, and they are so young."<sup>20</sup>

Young people are increasingly pro-life. Fifty-six percent of the general population believes abortion is morally wrong, an opinion that resonates in strong majorities across age demographics. This includes nearly six in 10 “Millennials” (58 percent). Sixty percent of those in “Generation X” and 62 percent of those who make up the “Silent,” and “Greatest” generation agreed, as did a majority of “Baby Boomers” (51 percent).<sup>21</sup>

In addition, two-thirds of students in the Zogby poll (67 percent) said abortion was wrong—either always (23 percent) or usually (44 percent). By contrast, only four percent said abortion was always right.<sup>22</sup>

The lesson here is not that there is a small shift to the overall “pro-life” label, but that the trend and consensus—which include so many young people—is stable for the foreseeable future.

Some commentators have a difficult time reconciling statistics like these. As the Hamilton College commentary on the Zogby poll of high school students noted:

Many high school students are not strangers to this issue. Half the females and 36 percent of the males polled say they know someone who has had an abortion. We asked females whether they would “consider” abortion if they became pregnant in high school and males whether they would want their partner to do so. The response from 70 percent of females and 67 percent of males was “No.” However, the relatively high proportions of seniors who know someone who has had an abortion suggests they might themselves be more open to it if faced with a real decision about their own lives and futures.<sup>23</sup>

But the logic—and numbers—of the last statement in this commentary just don’t add up. In 2005, when this poll was conducted, less than 30 percent of 16 to 18-year-old girls who became pregnant ended their pregnancy by having an abortion.<sup>24</sup> In other words,

while 70 percent of the students responding to Zogby's poll said hypothetically they would not consider an abortion. Reality was consistent with this. By an almost identical margin, more than 70 percent of their classmates who actually were pregnant chose not to have an abortion.

The fact that even more women in the general population have had abortions hasn't made abortion any more popular. The Guttmacher Institute estimates that one in three women will have an abortion at some point in their lives.<sup>25</sup> Even if that number is high, it means that many of us are likely to know someone who has had an abortion. Perhaps it is for that very reason that Americans by more than a two to one margin don't think abortion solves problems in the long term. By 53 to 26 percent, most believe that "abortion does more harm than good," rather than "improve a woman's life."<sup>26</sup>

The anguishing factors that lead many women to feel that abortion is their only choice are real—even the partisans agree on that. However, the American people know that whatever abortion may seem to "fix" in the short term, it's much more complicated than that in the weeks, months and years following the loss of a child.<sup>27</sup>

Legally speaking, the consensus on abortion is reflected also in Americans' understanding of the things that laws should prohibit and those that laws should protect.

For instance, when asked if laws can protect both the health of the mother and the life of her unborn child, 81 percent of Americans say yes—including 74 percent of those who identify as pro-choice.<sup>28</sup>

Asked if health care workers or doctors should be required to perform or assist with abortions despite their religious or moral objections, 79 percent of Americans answer no. They want the law to protect freedom of conscience. Again, two-thirds (67 percent) of those who identify themselves as pro-choice also feel this way.<sup>29</sup>

With such a widespread agreement on limiting abortion, this consensus has had an impact on other debates as well. During the

*Figure 2: Views on Abortion*

*Which statement comes closer to your view?*

	<b>Americans</b>	<b>Pro-life Americans</b>	<b>Pro-choice Americans</b>
It is possible to have laws which protect both the health and well-being of a woman and the life of the unborn	<b>81%</b>	<b>89%</b>	<b>74%</b>
It is necessary for laws to choose to protect one and not the other	<b>19%</b>	<b>11%</b>	<b>26%</b>

*The Knights of Columbus/Marist Poll July 2010 Survey*

*Do you think health care workers such as doctors and nurses who believe abortion is wrong should be required to perform them, or not?*

	<b>Americans</b>	<b>Pro-life Americans</b>	<b>Pro-choice Americans</b>
Yes, required	<b>21%</b>	<b>8%</b>	<b>33%</b>
No	<b>79%</b>	<b>92%</b>	<b>67%</b>

*The Knights of Columbus/Marist Poll July 2009 Survey*

*In the long run, do you believe having an abortion improves a woman's life or in the long run, do you believe abortion does more harm than good to a woman?*

	<b>Americans</b>	<b>Pro-life Americans</b>	<b>Pro-choice Americans</b>
Improves a woman's life	<b>26%</b>	<b>7%</b>	<b>45%</b>
Does more harm than good	<b>53%</b>	<b>85%</b>	<b>23%</b>
Does not make a difference	<b>3%</b>	<b>1%</b>	<b>5%</b>
Unsure	<b>18%</b>	<b>7%</b>	<b>27%</b>

*The Knights of Columbus/Marist Poll July 2009 Survey*

2009-2010 health care debate, Americans rejected the inclusion of abortion coverage in federally funded plans by a similar percentage of more than six in 10.<sup>30</sup>

In his book *The Way We'll Be*, John Zogby noted of abortion views that, "as amazing as it seems, we appear to be arriving at what amounts to a national conversation on such a divisive subject."<sup>31</sup> Perhaps we should add that this conversation has resulted in an overwhelming consensus—a consensus in favor of significant restriction of abortion beyond those currently in place in the United States. Those in positions of political or judicial leadership should have the courage to go beyond the high-profile polarities and listen to the results of our "national conversation," using this consensus as its starting point—even if a small percentage of the country disagrees.

How did we arrive at a place where eight in 10 Americans favor restricting abortion to the first three months of pregnancy—a tighter restriction than can be construed from any possible reading of *Roe v. Wade*?

To understand how America finds itself with the abortion laws it has today, it is important to review both pivotal court cases that legalized elective abortion: *Roe v. Wade* and *Doe v. Bolton*. On its face, *Roe* seems to allow state legislatures to ban abortion in the third trimester. Indeed, according to the Guttmacher Institute, 38 states have some form of this third trimester restriction in place, counting either from 24 weeks or from viability (which generally occurs at about 24 weeks).<sup>32</sup>

However, such restrictions are illusory. In his opinion in the *Roe* case, Justice Harry Blackmun insisted that *Roe* must be "read

together” with *Doe v. Bolton*,<sup>33</sup> a companion case that was handed down on the same day. *Doe* also challenged the abortion laws, with the result that “health of the mother” was more loosely defined. As Justice Blackmun explained it:

The medical judgment may be exercised in light of all factors—physical, emotional, psychological, familial, and the woman’s age—relevant to the well-being of the patient. All these factors may relate to health. This allows the attending physician the room he needs to make his best medical judgment. And it is room that operates for the benefit, not the disadvantage, of the pregnant woman.<sup>34</sup>

In other words, in *Doe*, the health of the mother was so broadly defined—to include not just the life of the mother but her quality of life—that it swallowed up any possibility of a real restriction on late-term abortions, as promised by *Roe*. What the Court gave, the Court took away, and practically speaking, abortion could no longer be restricted.

Additionally, in most cases, the one making the decision about the mother’s health is also a person with a financial stake in the decision, and *Doe* can easily be used to assert that health makes an abortion necessary even in the most dubious of cases.<sup>35</sup>

This is a legacy that sits well with only a fraction of Americans.

People on both sides of the aisle recognize the problems of Supreme Court jurisprudence on abortion. One of those who has spoken publicly on this issue is Supreme Court Justice Ruth Bader Ginsburg, who addressed students at Princeton University in 2008. Her speech was summarized as follows:

On *Roe v. Wade*, which was decided in 1973, Ginsburg reiterated her previous criticism of the ruling. A strong supporter of abortion rights, Ginsburg nevertheless said the court “bit off more than it could chew.” A more incremental decision “would have been an

opportunity for a dialogue with the state legislators” and a chance for states to take the lead on the issue.<sup>36</sup>

Her statement doesn't sound too different from that of Clarke Forsythe, senior counsel of Americans United for Life, who wrote in his book *Politics for the Greatest Good: The Case for Prudence in the Public Square*:

The Supreme Court's 1973 decision in *Roe v. Wade* was an unnecessary, unconstitutional and tragic decision. It abruptly silenced a vigorous national debate that was ongoing among the American people, across the states. It overturned the abortion laws of all fifty states, most of which were actively enforced and many of which had been recently debated, enacted or reaffirmed by the people of the state. [. . .]

With *Roe*, the Supreme Court incurred a self-inflicted wound. It did not understand the history of abortion: while the Court spent half of its opinion trying to base its decision in history, virtually all of its historical propositions have been thoroughly discredited over the past three decades. It did not understand the legal context of its ruling: the states have regularly passed laws since *Roe* that have increased legal protection for the unborn outside the context of abortion (fetal homicide laws). And it did not foresee the negative public reaction to its decision that has been sustained over three decades.<sup>37</sup>

The problems were apparent, even in the months immediately following the *Roe* decision. John Hart Ely, a professor of law at Harvard University and a specialist in constitutional law—himself pro-choice—had this to say in 1973 about the legal reasoning of *Roe*:

It is nevertheless a very bad decision. Not because it will perceptibly weaken the Court—it won't; and not because it conflicts with either my idea of progress or what the evidence suggests is society's—it doesn't. It is bad because it is bad constitutional law, or rather because



it is not constitutional law and gives almost no sense of an obligation to try to be. [. . .] What is unusual about *Roe* is that the liberty involved is accorded a far more stringent protection, so stringent that a desire to preserve the fetus's existence is unable to overcome it—a protection more stringent, I think it fair to say, than that the present Court accords the freedom of the press explicitly guaranteed by the First Amendment. What is frightening about *Roe* is that this super-protected right is not inferable from the language of the Constitution, the framers' thinking respecting the specific problem in issue, any general value derivable from the provisions they included, or the nation's governmental structure. Nor is it explainable in terms of the unusual political impotence of the group judicially protected vis-à-vis the interest that legislatively prevailed over it. And that, I believe—the predictable early reaction to *Roe* notwithstanding [. . .]—is a charge that can responsibly be leveled at no other decision of the past twenty years. At times the inferences the Court has drawn from the values the Constitution marks for special protection have been controversial, even shaky, but never before has its sense of an obligation to draw one been so obviously lacking.<sup>38</sup>

It wasn't just that *Roe* was out of step with the Constitution, but its legacy has proved out of step with the rest of the world as well. The abortion regime it ushered in is literally one of the world's most permissive. In her 1987 book *Abortion and Divorce in Western Law*, Harvard law professor Mary Ann Glendon made the case that nowhere else in the Western world is abortion less regulated than in the United States. As she put it:

When American abortion law is viewed in comparative perspective, it presents several unique features. Not only do we have less regulation of abortion in the interest of the fetus than any other Western nation, but we provide less public support for maternity and child raising. And to a greater extent than in any other country, our courts have

shut down the legislative process of bargaining, education, and persuasion on the abortion issue.<sup>39</sup>

This is not simply an issue of the American people needing to catch up to the progressive foresight of the Supreme Court. Consider the difference in the public reaction toward another controversial issue: desegregation. In 1954, the Supreme Court's ruling against school segregation in *Brown v. Board of Education* resonated across America. At the time, a majority of Americans approved of the decision, but not overwhelmingly. Yet within the first few years after the Court's ruling, opinion began to change. By the end of 1956, Americans approved of the ruling in *Brown* by more than two to one. By the mid-1990s, Americans had overwhelmingly embraced the legacy of the Court's decision.<sup>40</sup>

I saw this clear consensus for myself while serving for nearly a decade as a member of the U.S. Commission on Civil Rights in 1990s, when I had the chance to gauge the support of the American public for *Brown v. Board of Education*. Clearly, *Brown* resonated with fundamental American principles of equality, fairness and freedom—something that was evident to me in my work for the commission in cities from coast to coast.

Contrast this embrace of *Brown's* legacy with public opinion toward *Roe v. Wade*. When the decision was made in 1973, polling—without the number of choices ours had—showed that, at best, scarcely 20 percent of Americans believed abortion should be legal under any circumstances.<sup>41</sup> However, abortion under any circumstances is exactly what has come to define *Roe's* legacy through subsequent Court rulings, legislation and aggressive advocacy. Today, abortion under any circumstances is no more popular than it was in 1973, and in fact that viewpoint is one of the smallest groups within our polling data at 14 percent. Thirty-seven years after *Roe v. Wade*, the Court's ruling has failed to garner consensus among the American people. *Roe v. Wade* was

a rush to judgment that, unlike *Brown*, was significantly out of step with the moral sense of the American people.

There is an important lesson for both sides in all this. Each of us, too, has a role to play in helping ensure that no one feels an abortion is the only choice. No one puts abortion on her list of life goals—it's an act in desperate circumstances. But that makes it even more imperative that all of us—of whatever political persuasion—pursue solutions so that women do not feel they are in a situation where their only “option” is an abortion—which most Americans believe is neither a moral choice nor the best one.

As I related in my first book, *A Civilization of Love*, the truth of this was brought home to me and my wife in a very personal way. We learned that the daughter of a mutual friend had become pregnant soon after graduating from high school. She didn't want an abortion, but at the same time she didn't want to face her friends and neighbors. We invited this young woman to live with us. We were able to find her a job, and during the time of her pregnancy she became part of our family. Both my wife and I were deeply impressed by her courage and her dedication to her child. Women in difficult circumstances deserve a helping hand, not just rhetoric about abortion.<sup>42</sup>

Understanding that abortion is a moral issue with serious, practical, and life-changing implications, the personal element is shown in who Americans want to hear from regarding the abortion issue. On a scale of 1-5, with 5 being very interested, more than half of Americans (53 percent) want very much to hear from a woman who has had an abortion. Only one out of four do not. Compare this to 66 percent (or two-thirds) of Americans who do *not* want to hear from a politician on the issue.<sup>43</sup>

Considering abortion a moral issue, a consensus of nearly seven in 10 Americans believe it is proper for religious leaders to speak out on abortion, and nearly six in 10 say religious leaders have a key role to play in the national debate on the issue.<sup>44</sup>

Washington, De Tocqueville, Lincoln and Kennedy—to name just a few—had faith in the United States as a moral and religious country. So did Harriet Tubman, who often invoked God in her work.

Writing from a jail in Birmingham, Reverend Martin Luther King, Jr. would note that those who protested against segregated lunch counters were bringing the nation back to the Judeo Christian roots of its founding.<sup>45</sup>

Reverend King—as with so many key figures in American history—was unwilling to believe that his religious conviction disqualified him from speaking out. No one today believes he made the wrong choice. Americans on this issue as well don't want to be told that certain rationales are disqualified.

Americans are happy to support those related issues “we can all agree on”—adoption, prenatal care and finding ways to assist pregnant women in need. But they can also agree on substantial change to our nation's core abortion laws.

The idea that our country is divided on restricting abortion is a myth, and justifications for avoiding the issue on that basis no longer apply. The goals can be achieved. We must only find those in the courts, politics and the media with the courage to move in that direction, and as a nation with a broad consensus, we must demand that they do so.

The vast majority of the American people have a vision in which abortion is talked about in moral terms, where it is restricted—with broad support, with consensus achieved. They look forward to an America whose abortion laws are not the most radical in the Western world, whose debate is not stifled by appeals to a Supreme Court decision. The American people have moved beyond the abortion impasse. What is needed now is the right combination of political leadership and courage.



## CHAPTER 5: BEYOND THE CLASH OF ABSOLUTES: ABORTION

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For those who see America as a country at war with itself, divided red against blue, us against them, Carl Anderson explores what many have missed: statistical data showing an overwhelming consensus on many of the country's seemingly most divisive issues.

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- Why we respect the moral leadership of charitable organizations and volunteers most
- How 8 in 10 Americans actually agree on the issue of abortion restriction
- That 9 in 10 married Americans are happy with their marriages
- Most Americans and business executives believe companies can be both ethical and profitable
- Americans trust politicians even less than they do Wall Street executives
- A 50 percent divorce rate doesn't mean that half of marriages fail
- By 3 to 1 over any other option, Americans think a return to traditional moral values is the greatest source of hope for the country's future

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