**Roe v. Wade (1973)**

**Historical Background**

Since the Supreme Court's decision in *Roe* v. *Wade*, the legal, moral, and political controversy surrounding the abortion issue has polarized the American public. Two camps—one hailing *Roe* as a victory for “choice,” the other arguing that the decision deprives the unborn child of its “right to life”—squared off in the wake of the Court's decision. Their protracted political battle continues today. The deep political divisions that the case created, or revealed, reflect not only conflicting social and moral views, but conflicting views of the law as well. The case pitted two accepted doctrines against one another—the individual's “right to privacy” and the “compelling and overriding interest” of a State. *Roe* v. *Wade* sought an extension of the “right to privacy,” which the Court explicitly recognized for the first time in the case *Griswold* v. *Connecticut*, 1965. In that case, family counselors in Connecticut challenged a State law forbidding the use of “any drug, medicinal article or instrument for the purpose of preventing conception.” In *Griswold*, the Court decided that there was a “right of privacy” implied by the Bill of Rights. It ruled that the 1st, 3rd, 4th, 5th, 9th, and 14th Amendments together create a right of “marital privacy.”

**Circumstances of the Case**

In Texas, State law prohibited the termination of a pregnancy by artificial means (surgery) except when the life of the mother was in danger. The statute was construed as a “nearly complete ban on abortion.” A Texas woman, claiming privacy as a “fundamental right,” challenged the Texas statute. In 1971 the case was argued before the Supreme Court. In 1972 it was argued again. *Roe* and a companion case from Georgia, *Doe* v. *Bolton*, were the first cases to test, in the Court, the newly recognized “right of privacy” against the “compelling interest” of the States to regulate abortions.

**Constitutional Issues**

This case involved the right of privacy as implied by Amendments 1, 3, 4, 5, 9, and 14 versus the police power of the States. Did States have a compelling and overriding interest in regulating the health, safety, and morals of the community? Was there an area of personal, marital, familial, and sexual privacy protected by the Bill of Rights? Was the Texas law an unreasonable invasion of privacy, or was it a reasonable exercise of the police power? Were women permitted to terminate pregnancies “at will,” or were fetuses “persons” with rights to be protected by the State?

**Arguments**

**For Roe:** Under the Bill of Rights, a woman has the right to terminate her pregnancy. It is improper for a State to deny individuals the personal, marital, familial, and sexual right to privacy. Moreover, in no case in its history has the Court declared that a fetus—a developing infant in the womb—is a person. Therefore, the fetus cannot be said to have any legal “right to life.” Because it is unduly intrusive, the Texas law is unconstitutional and should be overturned.

**For Wade:** The State has a duty to protect prenatal life. Life is present at the moment of conception. The unborn are people, and as such are entitled to protection under the Constitution. The Texas law is a valid exercise of police powers reserved to the States in order to protect the health and safety of citizens, including the unborn. The law is constitutional and should be upheld.

**Decision and Rationale**

By a vote of 7-2, with Justices White and Rehnquist in dissent, the Court agreed with Roe and upheld her right to terminate a pregnancy in the first trimester (90 days). The Court observed that Section 1 of the 14th Amendment contained three references to “person.” In his majority opinion, Justice Blackmun noted that, for nearly all such references in the Constitution, “use of the word is such that it has application only postnatally. None indicates, with any assurance, that it has any possible prenatal application.”

Blackmun's opinion carefully steered between the right to privacy and the question of compelling State interest. On the first point, he wrote, the majority of the justices “do not agree” with Texas that the State “may override the rights of the pregnant woman that are at stake.” On the other hand, the State does have an “important and legitimate interest in protecting the potentiality of human life” and in protecting the mother's health. Blackmun's decision revolved around the development of the fetus during pregnancy. He held that during the first trimester, or three months, of a pregnancy, the woman in consultation with her physician had an unrestricted right to an abortion. During the second trimester, States could regulate abortion to protect a woman's health. Finally, during the third trimester, the State's interest in protecting the potential life of the fetus was sufficient to justify severe restrictions.

Approaching the matter of when life begins, Blackmun was clearly hesitant to commit the Court to any position.

Controversial when announced, the *Roe* decision remains at the center of the legal controversy over the right to privacy versus the rights of the unborn. In *Planned Parenthood of Southeastern Pennsylvania* v. *Casey*, 1992, the Court reaffirmed *Roe's* central holding but abandoned its trimester structure. The Court permitted States to require informed consent, a 24-hour waiting period, and/or parental notification, but held that States may not place an “undue burden”on a woman's right to an abortion.

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**Miranda v. Arizona (1966)**

**Historical Background**

With its decisions in the cases of *Mapp* v. *Ohio*, 1961, *Gideon* v. *Wainwright*, 1963, and *Escobedo* v. *Illinois*, 1964, the Warren Court handed down the bases of what it called the “fundamentals of fairness” standard. At both the State and federal level, the Court sent a clear signal to law enforcement and criminal justice officials. Convictions not made in conformity with the “fairness” standard would likely be overturned. Constitutional guarantees of due process for the accused had to be upheld.

The Court heard a number of similar cases at the same time that it heard *Miranda*, but since this case was listed first on the docket, we have come to know the Court's collective judgment by this name. The *Miranda* decision distilled the several “fundamental fairness” standards into one succinct statement of the due process rights of the accused. Thanks to television police shows, the Miranda warning has become a statement of a citizen's rights familiar to many Americans.

**Circumstances of the Case**

A kidnapping and sexual assault occurred in Phoenix, Arizona, in March 1963. On March 13 Ernesto Miranda, 23, was arrested in his home, taken to the police station, identified by the victim, and taken into an interrogation room. Miranda was not told of his rights to counsel prior to questioning. Two hours later, investigators emerged from the room with a written confession signed by Miranda. It included a typed disclaimer, also signed by Miranda, stating that he had “full knowledge of my legal rights, understanding any statement I make may be used against me,” and that he had knowingly waived those rights.

Two weeks later at a preliminary hearing, Miranda again was denied counsel. At his trial he did have a lawyer, whose objections to the use of Miranda's signed confession as evidence were overruled. Miranda was convicted of kidnapping and rape, and received a 20-year sentence.

**Constitutional Issues**

Was a confession an admissible document in a court of law if it was obtained without warnings against self-incrimination and without legal counsel—rights guaranteed to all persons by the 5th and 6th amendments? With whom does the burden of proof rest for determining whether a defendant has legally “waived” his or her rights? What is the standard for judging whether “voluntary confessions” should be deemed admissible? When should an attorney be appointed for a person if he or she cannot afford one?

**Arguments**

**For Miranda:** The police clearly violated Miranda's 5th Amendment right to remain silent, and his 6th Amendment right to legal counsel. Arizona ignored both the *Escobedo* rule (evidence obtained from an illegally obtained confession is inadmissible in court) and the *Gideon* rule (all felony defendants have the right to an attorney) in prosecuting Miranda. His confession was illegally obtained and should be thrown out. His conviction was faulty, and he deserved a new trial.

**For Arizona:** Ernesto Miranda was no stranger to police procedures. He negotiated with police officers with intelligence and understanding. He signed the confession willingly. The prosecution was proper, his conviction was based on Arizona law, and his imprisonment was just. The Supreme Court should uphold his conviction and should not further cripple the work of police.

**Decision and Rationale**

By a 5-4 margin, the Court voted to overturn Miranda's conviction. Writing for the majority, Chief Justice Warren declared that the burden is upon the State to demonstrate that “procedural safeguards effective to secure the privilege against self-incrimination” are followed. “The current practice of 'incommunicado' [unable to communicate with the world] interrogation is at odds with one of our Nation's most cherished principles—that the individual may not be compelled to incriminate himself.”

Warren then summarized the case, measuring it against the “fundamental fairness” standards the Court had established. “[I]t is clear,” he wrote, “that Miranda was not in any way apprised of his right to consult with an attorney and to have one present during the interrogation, nor was his right not to be compelled to incriminate himself effectively protected in any other manner. Without these warnings [his] statements were inadmissible. The mere fact that he signed a statement which contained a typed-in clause stating that he had 'full knowledge' of his 'legal rights' does not approach the knowing and intelligent waiver required to relinquish constitutional rights.”

Turning to the standard for a valid waiver of rights, Warren wrote: “[A] valid waiver will not be presumed simply from the silence of the accused after warnings are given or simply from the fact that a confession was in fact eventually obtained…. Moreover, any evidence that the accused was threatened, tricked or cajoled into a waiver will, of course, show that the defendant did not voluntarily waive his privilege.”

Warren then spelled out the rights of the accused and the responsibilities of the police. Police must warn a suspect “prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires.”

The creation of the Miranda Warning put on the shoulders of the police the burden of informing citizens subject to questioning in a criminal investigation of their rights to “due process.” Ernesto Miranda, retracting his confession, was tried again by the State of Arizona, found guilty, and sent to prison. His retrial, based on a prisoner's successful appeal, did not constitute “double jeopardy.”