

THE CURRENT FRAGILITY OF *MIRANDA*: WHY *MIRANDA* COULD FOLLOW *DOBBS* BACK TO CONGRESS

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INTRODUCTION

The constitutional right to remain silent may soon itself be silenced. In police stations across the United States, officers continue their ritual recitation—“You have the right to remain silent”¹—derived from the Fifth Amendment’s right against self-incrimination.² These words, mandated by *Miranda v. Arizona*, have transcended their legal origins to become akin to constitutional gospel, as deeply embedded in American culture as police sirens and courthouse steps.³ As one scholar noted, “*Miranda* has so permeated the popular culture that not even my word processor’s spell-checker picks it up.”⁴ “*Miranda* may be the only criminal case to have morphed into a verb—to ‘Mirandize.’”⁵ Yet, beneath this veneer of permanence, *Miranda*’s foundation now shows signs of strain. In 2000, the Supreme Court in *Dickerson v. United States* appeared to secure *Miranda*’s future, reaffirming its constitutional status and striking down Congress’s attempt to override it.⁶ However, that victory, built on the shifting sands of stare decisis and a careful characterization of *Miranda* as a “constitutional rule,” is now fragile.⁷

In the summer of 2022, the Supreme Court revealed just how precarious that foundation is by laying the groundwork for what could be the most significant transformation of criminal procedure. On June 23, 2022, in *Vega v. Tekoh*, the Court revealed its deep skepticism of *Miranda*’s constitutional status, referring to its famous warnings as just “prophylactic” rules once again.⁸ Then, a mere twenty-four hours later in *Dobbs v. Jackson Women’s Health Organization*, the Court demonstrated its willingness to overturn even the most entrenched precedents when they represent “abuse of judicial authority.”⁹ This remarkable convergence suggests that *Miranda*, long considered the guardian of custodial rights, needs a guardian of its own.

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1. *Stopped by Police*, ACLU (Sep. 3, 2025), <https://www.aclu.org/know-your-rights/stopped-by-police> [https://perma.cc/46YM-6JV8].

2. U.S. CONST. amend. V.

3. 384 U.S. 436, 469 (1966).

4. Michael Edmund O’Neill, *Undoing Miranda*, 2000 B.Y.U. L. REV. 185, 185 (2000) (italics added).

5. Eugene R. Milhizer, *Miranda’s Near Death Experience: Reflections on the Occasion of Miranda’s Fiftieth Anniversary*, 66 CATH. U. L. REV. 577, 578 (2017).

6. 530 U.S. 428, 444 (2000).

7. *Id.*

8. 597 U.S. 134, 150 (2022); *see also, e.g.*, *Howes v. Fields*, 565 U.S. 499, 507 (2012); *J.D.B. v. North Carolina*, 564 U.S. 261, 269 (2011); *Maryland v. Shatzer*, 559 U.S. 98, 103 (2010).

9. 597 U.S. 215, 231 (2022).

The vulnerability of *Miranda* becomes particularly apparent when viewed through the lens of *Dobbs*, where the Court did more than just overturn a precedent—it rewrote the rules of precedent itself.¹⁰ Like a carefully constructed legal fortress, *Miranda* seems secure behind the walls of stare decisis.¹¹ But in overturning *Roe v. Wade*,¹² the *Dobbs* Court revealed that even these walls could crumble, emphasizing that stare decisis is not an “inexorable command,” particularly when the Court determines that a previous decision improperly removed an issue from the democratic process.¹³ This reasoning casts doubt on *Miranda* and its reaffirmation in *Dickerson*, where the Court similarly overrode democratic will by striking down a congressional statute attempting to modify *Miranda*’s requirements.¹⁴ Just as *Dobbs* returned abortion regulation to the legislative branch, *Miranda*’s prophylactic rules may be destined for the same fate.¹⁵

The story of *Miranda*’s erosion, however, began long before *Vega* and *Dobbs* entered the scene. Through a series of exceptions and limitations, courts have steadily chipped away at *Miranda*’s once-categorical protections.¹⁶ From the public safety exception carved out in *New York v. Quarles* to the labyrinthine analysis of two-step interrogations in *Missouri v. Seibert*, judges have found increasingly creative ways to admit statements that *Miranda*’s original framework would have excluded without hesitation.¹⁷ This pattern of erosion bears an unsettling resemblance to the gradual weakening of abortion rights through exceptions and limitations before *Dobbs* delivered the final blow to *Roe*.¹⁸

The parallel becomes even more striking in the wake of *Vega v. Tekoh*, where the Court quietly dismantled another pillar of *Miranda*’s strength by holding that its violations do not constitute grounds for civil rights lawsuits under § 1983.¹⁹ Like a prelude to a larger constitutional drama, the Court’s characterization of *Miranda* as merely “prophylactic” rather than constitutional echoes the same skepticism that preceded *Dobbs*.²⁰ Most telling was the majority’s description of *Dickerson*’s conclusion—that prophylactic rules could override congressional statute—as a “bold and controversial” claim of judicial

10. *Id.* at 268.

11. *Dickerson*, 530 U.S. at 444.

12. 410 U.S. 113 (1973).

13. *Dobbs*, 597 U.S. at 262, 269.

14. *Dickerson*, 530 U.S. at 444.

15. Ayesha I. Ahsan, “My Mirandas Don’t Stand a Chance, With Cops”: The United States Supreme Court’s Impending Destruction of *Miranda* Rights Under the Pretense of Prophylaxis in *Vega v. Tekoh*, 65 B.C. L. REV. 1445, 1469 (2024).

16. See *New York v. Quarles*, 467 U.S. 649, 659 (1984); *Oregon v. Elstad*, 470 U.S. 298, 318 (1985); *Missouri v. Seibert*, 542 U.S. 600, 617 (2004).

17. *Quarles*, 467 U.S. at 657; *Seibert*, 542 U.S. at 617.

18. *Dobbs*, 597 U.S. at 229–30.

19. 597 U.S. 134, 152 (2022).

20. *Id.* at 150.

authority.²¹ These words, carefully chosen, mirror the very criticisms of judicial overreach that would later topple *Roe*.²²

This Note argues that *Miranda* is constitutionally weak through the lens of recent Supreme Court decisions and proposes for legislative solutions to preserve its protections. Part I explores the historical foundation of *Miranda*, revealing constant debates as to whether it is judicial policymaking or textual interpretation. Part II analyzes the Supreme Court's gradual narrowing of *Miranda* protections through exceptions and recent decisions, demonstrating the doctrine's inherent instability. Part III examines how the *Dobbs* framework for overturning precedent applies directly to *Miranda*, highlighting its particular vulnerability to the Court's new approach to stare decisis. Finally, Part IV argues that congressional codification of *Miranda* warnings represents the only viable path forward, exploring how federal and state legislative action can secure these essential protections.

I. THE HISTORICAL FOUNDATION OF *MIRANDA*: A HOUSE BUILT ON SAND

A. *The Original Miranda Decision and Its Constitutional Roots*

Sometimes the most profound changes in law emerge not from legislative halls but from a simple signature on a confession.²³ The landmark case *Miranda v. Arizona* fundamentally transformed criminal procedure in the United States through a consolidated decision addressing four separate cases where suspects had made incriminating statements during police interrogations.²⁴ The protagonist, Ernesto Miranda, likely never imagined his name would become synonymous with criminal procedure and individual liberties when Phoenix police arrested him in March 1963 for the kidnapping and rape of an eighteen-year-old woman.²⁵ He is regarded as “the central dramatis personae in the Supreme Court’s most famous criminal law decision, rather than as a dangerous criminal who robbed and raped a number of women.”²⁶ His story might have ended as just another entry in the annals of criminal justice, had it not been for what happened next: after two hours of police interrogation, Miranda signed a confession without ever being informed of his constitutional rights or having access to an attorney.²⁷ This confession, obtained in the shadows of constitutional protection, would become not just evidence of his guilt but the catalyst for a seismic shift in American law.²⁸ In *Miranda*’s case, the Court

21. *Id.* at 149.

22. *Dobbs*, 597 U.S. at 237.

23. *Miranda v. Arizona*, 384 U.S. 436, 492 (1966).

24. *Id.* at 445.

25. *Id.* at 491–92; O’Neill, *supra* note 4, at 201.

26. Paul G. Cassell, *The Statute That Time Forgot: 18 U.S.C. § 3501 and the Overhauling of Miranda*, 85 IOWA L. REV. 175, 181–82 (1999) (footnote omitted).

27. *Miranda*, 384 U.S. at 491–92.

28. *Id.*

found that the lack of these safeguards violated his Fifth Amendment rights.²⁹ This decision was not an isolated instance of judicial innovation but rather the culmination of growing concern over the fairness and constitutionality of prevailing police interrogation practices.³⁰

Before *Miranda*, courts wandered through the fog of a “voluntariness” test under the Due Process Clause to evaluate confession admissibility.³¹ This test required judges to examine the totality of circumstances to determine if a confession was freely given.³² This standard proved as inconsistent in application as it was difficult to define.³³ The *Miranda* Court, under Chief Justice Earl Warren’s leadership, recognized that this patchwork approach was about as effective as using an umbrella in a hurricane when it came to protecting suspects in police custody.³⁴ The Court’s decision was grounded in the Fifth Amendment’s protection against compelled self-incrimination.³⁵ Writing for the 5-4 majority, Chief Justice Warren emphasized the inherent coercive nature of custodial interrogation.³⁶ The Court noted that modern psychological interrogation techniques could be just as coercive as the physical methods previously used by police.³⁷ The Court was particularly concerned with the practice of incommunicado interrogation where isolation and psychological pressure worked together in the shadowy corners of police stations.³⁸

From this decision emerged *Miranda*’s famous warnings, which established concrete constitutional guardrails that would become as familiar to television viewers as to criminal suspects. These rights include the right to remain silent, along with the warning that anything said can and will be used against them in court.³⁹ Additionally, suspects must be informed of their right to consult with an attorney before questioning and to have an attorney present during questioning.⁴⁰ Finally, they must be told that if they cannot afford an attorney, one will be appointed for them.⁴¹ These requirements were deemed necessary measures for every person, regardless of any personal traits.⁴² A scholar noted that earlier Supreme Court decisions had always “envisioned—rightly or wrongly—an intelligent citizen-suspect, perfectly able to resist standard police questioning and unwilling, absent threats or fabricated promises of leniency, to falsely

29. *Id.* at 492.

30. *Id.* at 441–42.

31. Richard H.W. Maloy, *Can a Rule Be Prophylactic and Yet Constitutional?*, 27 WM. MITCHELL L. REV. 2465, 2465 (2001).

32. Ahsan, *supra* note 15, at 1454.

33. *Miranda*, 384 U.S. at 461–62.

34. *Id.*

35. *Id.* at 439.

36. *Id.* at 467.

37. *Id.* at 446–48.

38. *Id.* at 457–58.

39. *Id.* at 479.

40. *Id.*

41. *Id.*

42. *Id.* at 472.

confess to the commission of a crime. The Court rejected this idealized conception ⁴³ Instead, the Court emphasized that the privilege against self-incrimination was fundamental to the American system of justice, tracing its origins back to English common law and noting its essential role in maintaining an accusatorial, rather than inquisitorial, system of criminal justice.⁴⁴ The Court stated, “[t]he privilege against self-incrimination secured by the Constitution applies to all individuals. The need for counsel in order to protect the privilege exists for the indigent as well as the affluent.”⁴⁵

The decision marked a significant shift from the previous voluntary confession rule. Where once courts merely asked whether a confession was voluntary, they now presume coercion unless the proper warnings are given.⁴⁶ Yet, even as the Court established these new protections, the Court left a door ajar, suggesting that Congress and the states could develop alternative safeguards—provided they matched *Miranda*’s protective power.⁴⁷ The Court stated, “[o]ur decision in no way creates a constitutional straitjacket which will handicap sound efforts at reform, nor is it intended to have this effect.”⁴⁸ The Court also encouraged the legislative branch to draft laws, but stated the process must be “at least as effective” as the *Miranda* warnings.⁴⁹ This doctrinal framework aimed at creating a careful balancing of law enforcement needs with constitutional protections sparked immediate controversy.⁵⁰ As it turned out, *Miranda*’s greatest test would come not from the police stations the *Miranda* warnings sought to regulate, but from the halls of Congress itself.⁵¹

B. *The Rebellion Against Miranda*

If revolutions invite rebellion, then *Miranda*’s aftermath was textbook. Despite the Court’s intention, the response was not positive.⁵² The ink had barely dried on Chief Justice Warren’s opinion when resistance began mounting from an unlikely alliance of dissenting Supreme Court Justices and Congress.⁵³ Their arguments against *Miranda* eerily foreshadow modern challenges to the decision’s constitutional foundations.⁵⁴

The dissenting voices within the Supreme Court itself proved the most prescient, reading less like typical judicial disagreements and more like

43. O’Neill, *supra* note 4, at 204.

44. *Miranda*, 384 U.S. at 442.

45. *Id.* at 472.

46. *Id.* at 471–72.

47. *Id.* at 467.

48. *Id.*

49. *Id.*

50. O’Neill, *supra* note 4, at 210–11.

51. *Dickerson v. United States*, 530 U.S. 428, 431–32 (2000).

52. *Milhizer*, *supra* note 5, at 588.

53. O’Neill, *supra* note 4, at 207–11.

54. *Id.*; *Miranda*, 384 U.S. at 510 (Harlan, J., dissenting).

constitutional prophecies of doom.⁵⁵ Justice Harlan's dissent was not just a legal argument, but also a warning flare about judicial overreach that would illuminate debates for decades to come.⁵⁶ His characterization of the majority's reliance on the Fifth Amendment's self-incrimination clause as a "trompe l'oeil" anticipated the skepticism about *Miranda*'s constitutional status.⁵⁷ When Justice Harlan declared that the Court's decision "represents poor constitutional law and entails harmful consequences for the country at large[.]"⁵⁸ he effectively previewed *Dobbs*'s framework for overturning precedents that exceeds constitutional bounds.⁵⁹ His insistence that the Court should "restore the initiative in criminal law reform to those forums where it truly belongs"⁶⁰ particularly resonates with the current Court's emphasis on returning contested issues to democratic processes.⁶¹ Moreover, he stated the goal of the majority "is toward 'voluntariness' in a utopian sense, or to view it from a different angle, voluntariness with a vengeance."⁶² He criticized what he saw as the Court's lack of judicial restraint.⁶³

Justice White's dissent struck an even darker chord, one that would resonate ominously through future debates about judicial authority.⁶⁴ His constitutional critique could have been lifted directly from a modern opinion: "That the Court's holding today is neither compelled nor even strongly suggested by the language of the Fifth Amendment, is at odds with American and English legal history, and involves a departure from a long line of precedent . . ."⁶⁵ This emphasis on constitutional text and historical understanding mirrors the exact methodology that *Dobbs* would use to dismantle *Roe*.⁶⁶ White's specific criticism that "[d]ecisions like these cannot rest alone on syllogism, metaphysics or some ill-defined notions of natural justice"⁶⁷ particularly echoes the current Court's skepticism of rights not explicitly grounded in constitutional text.⁶⁸

In police stations across the United States, *Miranda* faced an equally formidable resistance. A 1966 Yale study observing 127 interrogations revealed not just occasional lapses, but widespread, systematic non-compliance with the new requirements.⁶⁹ Police officers were not just bending *Miranda*'s rules—

55. O'Neill, *supra* note 4, at 207–08.

56. *Miranda*, 384 U.S. at 510 (Harlan, J., dissenting).

57. *Id.*

58. *Id.* at 504.

59. *See, e.g., Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022).

60. *Miranda*, 384 U.S. at 524 (Harlan, J., dissenting).

61. *See, e.g., Dobbs*, 597 U.S. at 269.

62. *Miranda*, 384 U.S. at 505 (Harlan, J., dissenting).

63. *Id.*

64. *Id.* at 526 (White, J., dissenting).

65. *Id.* at 531.

66. *Dobbs*, 597 U.S. at 270.

67. *Miranda*, 384 U.S. at 531–32 (White, J., dissenting).

68. *Dobbs*, 597 U.S. at 237, 260–61.

69. Richard A. Leo, *The Impact of Miranda Revisited*, 86 J. CRIM. L. & CRIMINOLOGY 621, 632–33 (1996).

they were actively circumventing them, either ignoring the warnings entirely or providing watered-down versions that stripped them of their protective power.⁷⁰ This was not mere procedural disagreement; it reflected a fundamental rejection of the Court's attempt to rebalance power between law enforcement and suspects.⁷¹

As crime rates soared and the 1968 presidential election approached, *Miranda* transformed from a legal doctrine into a political lightning rod.⁷² Politicians quickly learned that “fear of crime could elect candidates with tough-on-crime agendas,” and *Miranda* became a convenient scapegoat for law enforcement's challenges.⁷³ The rhetoric was stark: “[W]e will not have effective law enforcement so long as the courts allow self-confessed killers to go unpunished. The confusion and disarray injected into law enforcement by such decisions as . . . Escobedo . . . and *Miranda* . . . are deplorable and demoralizing.”⁷⁴

Congress responded to these concerns with what amounted to a constitutional counterattack, enacting 18 U.S.C. § 3501 just two years after the decision.⁷⁵ This statute was no mere procedural adjustment but instead a bold legislative attempt to turn back the constitutional clock, aiming to restore the pre-*Miranda* “voluntariness” standard for admitting confessions in federal court and implement an arguably more “balanced and reasonable” way.⁷⁶ The statute eliminated the requirement for the three specific warnings established in *Miranda*, stating that if such warnings were given, they would merely serve as factors for the courts to consider in determining whether a confession was voluntarily made.⁷⁷ The accompanying committee report stated, “[C]rime will not be effectively abated so long as criminals who have voluntarily confessed their crimes are released on mere technicalities.”⁷⁸ It also stated that “the rigid and inflexible requirements of the majority opinion in the *Miranda* case are unreasonable, unrealistic, and extremely harmful to law enforcement.”⁷⁹

For three decades, § 3501 occupied a peculiar constitutional limbo, a legislative zombie that was neither fully alive nor completely dead.⁸⁰ The Department of Justice, under both Democratic and Republican administrations, treated the statute like an embarrassing family secret, consistently declining to invoke it in federal prosecutions.⁸¹ It became, as one scholar wryly noted, “the

70. *Id.* at 633–34.

71. *Id.*

72. Milhizer, *supra* note 5, at 589.

73. O'Neill, *supra* note 4, at 210.

74. *Id.* at 212 (footnote omitted).

75. Milhizer, *supra* note 5, at 596–97.

76. O'Neill, *supra* note 4, at 230–31.

77. Maloy, *supra* note 31, at 2466.

78. S. REP. NO. 90-1097, at 37, 46 (1968), as reprinted in 1968 U.S.C.C.A.N. 2112, 2123.

79. *Id.* at 2132.

80. O'Neill, *supra* note 4, at 234.

81. Maloy, *supra* note 31, at 2467.

statute that even prosecutors could not quite bring themselves to love.”⁸² This constitutional cold war might have continued indefinitely had the Fourth Circuit not finally fired a kill shot in *United States v. Dickerson*, holding that § 3501 had effectively overruled *Miranda* for federal prosecutions.⁸³ The defendant and the Department of Justice both sided against the statute, and “[t]he Department’s peculiar posture of supporting a criminal defendant . . . continued in the Supreme Court.”⁸⁴ The rebellion that began in police stations and congressional chambers would ultimately have to be resolved in the Supreme Court itself.⁸⁵ As the case that would become *Dickerson v. United States* made its way to the Court, few could have predicted that *Miranda*’s most unlikely defender would emerge from the ranks of its harshest critics.⁸⁶

C. Dickerson: *Miranda*’s *Unlikely Guardian Angel*

Enter the Supreme Court, forced to finally confront the constitutional elephant in the room: whether Congress could simply legislate away *Miranda*’s protections. In a twist of remarkable irony, it would be Chief Justice Rehnquist, long considered *Miranda*’s most formidable critic, who would emerge as its unexpected guardian angel.⁸⁷ His early career revealed deep skepticism of the Warren Court’s criminal procedure revolution.⁸⁸ In a revealing nineteen-page memorandum to John Dean in 1969, when Rehnquist served as Assistant Attorney General, he had launched a direct attack on *Miranda* and its progeny.⁸⁹ The memorandum proclaimed that “the Supreme Court has failed to hold true the balance between the right of society to convict the guilty and the obligation of society to safeguard the accused.”⁹⁰ His critique of *Miranda* was particularly caustic, lambasting the Court’s “dramatic change” in criminal defendants’ rights.⁹¹ He lamented, like Justice White before him, that the decision would render “relevant, competent, uncoerced statements” inadmissible unless an “elaborate set of warnings” were given—warnings so byzantine that they would likely “prevent[] a defendant from making any statement at all.”⁹² More provocatively, he had even recommended that the President appoint a

82. O’Neill, *supra* note 4, at 186.

83. Maloy, *supra* note 31, at 2467.

84. Cassell, *supra* note 26, at 179.

85. Maloy, *supra* note 31, at 2467.

86. Yale Kamisar, *Dickerson v. United States: The Case That Disappointed Miranda’s Critics—and Then Its Supporters*, in *THE REHNQUIST LEGACY* 106 (C. Bradley ed., Cambridge Univ. Press 2006).

87. *Id.* at 106–07.

88. *Id.* at 107.

89. *Id.* at 109.

90. *Id.*

91. *Id.* at 110.

92. *Id.*

commission to consider whether a constitutional amendment might be necessary to overcome such judicial innovations.⁹³

Despite his passionate expression of disagreement with *Miranda*, Rehnquist's *Dickerson* opinion became a masterclass in judicial compromise, at once affirming and subtly undermining *Miranda*'s constitutional foundation.⁹⁴ Writing for a 7-2 majority in *Dickerson*, Chief Justice Rehnquist's opinion can be characterized as a constitutional high-wire act.⁹⁵ While crowning *Miranda* with constitutional status, the Court simultaneously acknowledged its prophylactic nature, creating a curious hybrid that has weaknesses.⁹⁶ Rather than anchoring *Miranda* in firm constitutional bedrock, the Court seemed content to rest it on the shifting sands of cultural entrenchment and stare decisis, stating that "[f]ollowing the rule of *stare decisis*, we decline to overrule *Miranda* ourselves."⁹⁷ Chief Justice Rehnquist's reluctance in deciding this way was palpable in his carefully parsed admission where he stated that "[w]hether or not we would agree with *Miranda*'s reasoning and its resulting, were we addressing the issue in the first instance, the principles of *stare decisis* weighs heavily against overruling it now."⁹⁸

This tepid defense revealed *Dickerson* as less a vindication of *Miranda*'s constitutional status and more a temporary stay of execution.⁹⁹ Rehnquist even acknowledged that although the Court disagrees with the lower court's conclusion in *Miranda*, "we concede that there is language in some of our opinions that supports the view taken by that court."¹⁰⁰ An accurate description is that "his opinion reads more like a compromise report of a divided committee than the principled expression of a scholarly jurist."¹⁰¹ The attorney who had won in the lower court's opinion later remarked that "Dickerson's assertion that *Miranda* created a 'constitutional' rule contradicts numerous clear statements in earlier opinions. Surprisingly, these statements can be traced to Chief Justice Rehnquist, the author of the *Dickerson* opinion."¹⁰²

Justice Scalia, joined by Justice Thomas, penned a dissent that proves to be more prophecy than protest.¹⁰³ With surgical precision, he identified the majority's sleight of hand: to justify its result, the Court had invented what he called "an immense and frightening antidemocratic power," which was the ability to disregard congressional statutes not because they violated the

93. *Id.* at 109.

94. *Id.* at 106–07.

95. *Dickerson v. United States*, 530 U.S. 428, 444 (2000).

96. *Id.*

97. *Id.* (footnote omitted).

98. *Id.* at 443 (citing *Rhode Island v. Innis*, 446 U.S. 291, 304 (1980)).

99. *Id.* at 429.

100. *Id.* at 438.

101. Milhizer, *supra* note 5, at 603.

102. Paul G. Cassell, *The Paths Not Taken: The Supreme Court's Failures in Dickerson*, 99 MICH. L. REV. 898, 900 (2001).

103. *Dickerson*, 530 U.S. at 444 (Scalia, J., dissenting).

Constitution but because they contradicted the Court's self-proclaimed constitutional rules.¹⁰⁴ As one scholar questioned, "How can *Miranda* be classified as both a 'constitutional rule' and a 'prophylactic' with no cause of action attached to it?"¹⁰⁵ In Scalia's view, the inconsistency and the majority's careful phrases about *Miranda* being "constitutionally based" or having "constitutional underpinnings" were a linguistic dance around a simple truth: the Court could not explicitly say that un-Mirandized interrogation violates the Constitution because a majority of justices did not actually believe it did.¹⁰⁶ Like a geological survey identifying future fault lines, Scalia's critique mapped out the very vulnerabilities that now could threaten *Miranda*'s foundation.¹⁰⁷ He believed that the decision in *Dickerson* stood for "the power of the Supreme Court to write a prophylactic, extraconstitutional Constitution, binding on Congress and the States."¹⁰⁸ The Court, he argued, was claiming the power not merely to interpret the Constitution but to expand it using a power he insisted simply did not exist.¹⁰⁹

This early history of resistance, from Congress to law enforcement, illustrated a doctrine facing persistent challenges from its inception. The controversy surrounding *Miranda*'s initial implementation and Congress's attempted override through § 3501 not only revealed the decision's contested nature but also highlighted its potential vulnerability. *Dickerson* thus represents not *Miranda*'s salvation but rather a temporary reprieve that inadvertently highlighted its constitutional weakness. By grounding *Miranda*'s survival in stare decisis rather than constitutional text, *Dickerson* created the very vulnerability that now threatens to bring *Miranda* down in the post-*Dobbs* era where stare decisis carries diminishing weight. *Miranda*'s journey reveals how even seemingly permanent constitutional landmarks can falter when their foundations blur the line between constitutional command and judicial creation.

II. THE GRADUAL EROSION OF *MIRANDA* THROUGH EXCEPTIONS

A. Safety First, Rights Second: Quarles and the Public Safety Exception

The Supreme Court's major retreat from *Miranda*'s protections came not with a bang but with a gun—specifically, Benjamin Quarles's missing gun in a supermarket.¹¹⁰ In *New York v. Quarles*, the Court carved out what would become known as the "public safety" exception to the *Miranda* requirement.¹¹¹

104. *Id.* at 446.

105. Mosche Schwartz, *Privacy and Prophylactics*, 46 HARV. J.L. & PUB. POL'Y 1353, 1361 (2023).

106. *Dickerson*, 530 U.S. at 446 (Scalia, J., dissenting).

107. *Id.*

108. *Id.* at 461.

109. *Id.*

110. *New York v. Quarles*, 467 U.S. 649, 651–52 (1984).

111. *Id.* at 655.

The case arose when police officers apprehended Quarles, a rape suspect reportedly carrying a firearm.¹¹² After chasing him into a supermarket, one officer noticed Quarles's suspicious behavior and immediately asked him where the gun was, without first providing the *Miranda* warning.¹¹³ Quarles, perhaps not versed in constitutional law, obligingly told the officer about the weapon.¹¹⁴ Only then did they arrest him and read him his *Miranda* rights, after which he made additional incriminating statements.¹¹⁵ Quarles's defense argued that the statements made before the *Miranda* warning were inadmissible because the police failed to first advise him of his rights.¹¹⁶

The Supreme Court, faced with deciding whether to suppress Quarles's pre-warning statements, chose pragmatism, reasoning that the officer's immediate question about the location of the gun was justified by concerns for public safety because the weapon posed a significant danger to others.¹¹⁷ Under these circumstances, the Court concluded that the need to protect the public from potential harm outweighed the need to give the *Miranda* warning before questioning.¹¹⁸

This pragmatic approach, however, created a substantial crack in *Miranda*'s protective shield. The public safety exception allows statements made under potentially coercive circumstances to be admissible if officers can articulate an imminent threat.¹¹⁹ "The Fifth Amendment admits of no such public safety exception[.]"¹²⁰ The line between legitimate public safety concerns and pretextual police tactics can blur faster than a suspect's memory in a stressful interrogation.¹²¹ Moreover, the exception rests on a troubling assumption that *Miranda* is merely a prophylactic rule, not a constitutional command; in other words, violating *Miranda* is not necessarily violating the Fifth Amendment itself.¹²² "The rationale Quarles gave, however, was that the *Miranda* rules were nonconstitutional rules subject to modification by the Court. Dickerson hazard[ed] no attempt at explaining Quarles."¹²³ The *Quarles* decision marked more than just another exception to *Miranda*. It represented a fundamental shift in how the Court viewed these protections. *Miranda*, once the gold standard of police procedure, now had an Achilles' heel. This weakness would be exploited time and time again as the Court continued to chip away at *Miranda*'s

112. *Id.* at 651–52.

113. *Id.* at 652.

114. *Id.*

115. *Id.*

116. *See id.* at 654.

117. *Id.* at 657.

118. *Id.*

119. *Id.*

120. Cassell, *supra* note 102, at 902.

121. *Miranda v. Arizona*, 384 U.S. 436, 461–62 (1966).

122. Cassell, *supra* note 102, at 902 (footnote omitted).

123. *Id.*

foundations. The public safety exception was just the beginning of *Miranda*'s long, slow erosion.

B. Question First, Warn Later: The Two-Step Interrogation Strategy

Enter the two-step interrogation strategy where cops question first and *Mirandize* later. This strategy embodies the saying that confession is good for the soul but even better for the prosecution. The Supreme Court's treatment of two-step interrogations, in which police question suspects both before and after giving *Miranda* warnings, further illustrates the gradual erosion of *Miranda*'s protections. Two key cases, *Oregon v. Elstad* and *Missouri v. Seibert*, demonstrate the Court's increasingly flexible interpretation of *Miranda*'s requirements.¹²⁴

In *Elstad*, the Court confronted what appeared to be an innocent mistake.¹²⁵ Police arrested Elstad for burglary but initially failed to provide *Miranda* warnings, obtaining an incriminating statement.¹²⁶ After being informed of his rights, Elstad was questioned again, this time receiving a *Miranda* warning, and he made a second, more detailed confession.¹²⁷ The Court ruled that the second confession, made after receiving the *Miranda* warning, was admissible.¹²⁸ It held that the failure to administer *Miranda* warnings at the outset did not automatically taint the subsequent confession, so long as the confession made after the warning was voluntary.¹²⁹ The Court emphasized that the police's failure to give the warning initially did not necessarily undermine the suspect's later decision to waive his rights.¹³⁰ The Court stated that "a simple failure to administer *Miranda* warnings is not in itself a violation of the Fifth Amendment."¹³¹ The Court reasoned that the second confession was valid because the suspect was adequately informed of his rights before making it.¹³²

But what happens when that mistake becomes a strategy? The Court faced this darker scenario in *Missouri v. Seibert*, where police deliberately employed a two-step interrogation technique.¹³³ The police officers' familiar technique was coerce, warn, re-confess.¹³⁴ The case involved Celia Seibert, who was dragged to the police station in early morning hours and interrogated about her son's death.¹³⁵ Initially, the police questioned her for hours without giving her a

124. See *Oregon v. Elstad*, 470 U.S. 298, 318 (1985); *Missouri v. Seibert*, 542 U.S. 600, 617 (2004).

125. See *Elstad*, 470 U.S. at 301–02.

126. *Id.* at 302.

127. *Id.*

128. *Id.* at 318.

129. *Id.*

130. *Id.*

131. *Id.* at 306 n.1.

132. *Id.* at 318.

133. 542 U.S. 600, 605–06 (2004).

134. *Id.*

135. *Id.* at 604–05.

Miranda warning, and she made an incriminating statement.¹³⁶ Afterward, the police administered a *Miranda* warning and had Seibert repeat her confession, which was then used as evidence against her in court.¹³⁷

The Court ruled that the second confession, made after the *Miranda* warning, was inadmissible.¹³⁸ It held that the two-step interrogation process in which the warning was deliberately withheld at the outset to extract an initial confession was coercive and undermined the protections guaranteed by *Miranda*.¹³⁹ The Court described that the lower court stated the warning must be given before any custodial interrogation begins to ensure that the suspect's waiver of rights is voluntary, knowing, and intelligent.¹⁴⁰

However, the *Seibert* decision proved less protective than it initially appeared. While the Court found this practice inadmissible, it stopped short of categorically rejecting all midstream *Miranda* warnings. Instead, it created a complex framework focusing on the deliberateness of the two-step strategy and whether the warnings could function effectively.¹⁴¹ The key factor in determining the admissibility of midstream warnings is whether the initial confession was obtained through coercion or exploitation of the earlier failure to provide a *Miranda* warning.¹⁴² The Court emphasized that the admissibility of such warnings depends on the specific circumstances of each case, which is essentially the standard Congress had in the statute.¹⁴³ Furthermore, Justice Kennedy's concurring opinion in *Seibert* suggested that even deliberately employed two-step strategies could potentially be cured by additional warnings or procedures.¹⁴⁴ It is a weakening of *Miranda* when the admissibility of a confession turns not on the rights of the suspect but on the intentions of the interrogator.¹⁴⁵

The lesson of *Elstad* and *Seibert* is clear: *Miranda*'s once-robust protections are now subject to the whims and tactics of police questioning. The two-step interrogation strategy has become a standard move in the interrogation playbook, a way to circumvent *Miranda*'s strictures without technically violating its letter. As long as the police can navigate the legal labyrinth created by these decisions, they can have their confession and admit it too. However, the real casualty here is not just the exclusionary rule but also the very idea of *Miranda* as a guardian against coercive interrogations. These cases represent a slow but steady erosion of *Miranda*'s foundation, an impending death by a thousand cuts.

136. *Id.*

137. *Id.* at 605–06.

138. *Id.* at 604.

139. *Id.* at 617.

140. *Id.* at 606.

141. *Id.* at 611.

142. *Id.* at 615–16.

143. *Id.* at 621.

144. *Id.* at 622 (Kennedy, J., concurring).

145. *Id.* at 625 (O'Connor, J., dissenting).

C. Rights Without Remedies: Vega and Miranda's Constitutional Downgrade

If *Elstad* and *Seibert* represented *Miranda*'s impending death by a thousand cuts, *Vega v. Tekoh* might be setting the stage for the coup de grâce.¹⁴⁶ The case posed a seemingly straightforward question of whether individuals may sue police officers under 42 U.S.C. § 1983 for violations of their *Miranda* rights.¹⁴⁷ The Court's answer, a resounding no, revealed just how far *Miranda* had fallen from its constitutional pedestal.¹⁴⁸

The case involved Tekoh, who was interrogated without *Miranda* warnings, leading to a confession used against him at trial.¹⁴⁹ When Tekoh attempted to sue the officers under § 1983, the Court's 6-3 decision slammed the courthouse door in his face.¹⁵⁰ Justice Alito's majority opinion characterized *Miranda* warnings as mere prophylactic measures rather than constitutional requirements themselves.¹⁵¹ Justice Alito also emphasized that nowhere in the original *Miranda* decision did the Court state that a failure to provide warnings would constitute a violation of the Fifth Amendment itself.¹⁵² Instead, the majority viewed *Miranda* warnings as simply one possible means of protecting against self-incrimination during custodial interrogations.¹⁵³ This decision did not just limit civil remedies but also fundamentally downgraded *Miranda*'s constitutional status.¹⁵⁴

Most telling was the majority's treatment of *Dickerson*.¹⁵⁵ Where the Court in *Dickerson* had declared *Miranda* a "constitutionally based" right that could be applied against the states, Justice Alito in *Vega* described this conclusion as "bold and controversial."¹⁵⁶ He also referred to it as a "'judicially crafted' prophylactic rule."¹⁵⁷ The majority's description of *Dickerson*'s conclusion that a prophylactic rule can override a statute as "a bold and controversial claim of authority" is language that notably fails to show adamant support for *Dickerson*'s reasoning.¹⁵⁸ This skepticism is further reinforced by the Court's pointed footnote about *Dickerson* acknowledging that "[w]hether this Court has the authority to create constitutionally based prophylactic rules that bind both federal and state courts has been the subject of debate among jurists and commentators."¹⁵⁹ Justice Alito ended the footnote by stating, "for the purpose

146. Ahsan, *supra* note 15, at 1480.

147. *Vega v. Tekoh*, 597 U.S. 134, 138 (2022).

148. Ahsan, *supra* note 15, at 1480.

149. *Vega*, 597 U.S. at 139.

150. *Id.* at 138.

151. *Id.* at 150.

152. *Id.* at 152.

153. *Id.* at 151.

154. Ahsan, *supra* note 15, at 1480.

155. *Vega*, 597 U.S. at 150.

156. *Id.* at 149 (quoting *Dickerson v. United States*, 530 U.S. 428, 440 (2000)).

157. *Id.* at 151 (quoting *Maryland v. Shatzer*, 559 U.S. 98, 106 (2010)).

158. *Id.* at 149.

159. *Id.* at 149 n.5.

of deciding this case, we follow its rationale.”¹⁶⁰ This explicit recognition of the ongoing debate about the Court’s authority to impose prophylactic requirements on states and the reluctant acceptance of *Dickerson* plants seeds for overturning *Miranda* entirely.¹⁶¹

The implications of *Vega* are profound. It removes a critical avenue of accountability for law enforcement officials who fail to properly advise suspects of their rights.¹⁶² Without the ability to bring civil rights claims under § 1983, individuals who suffer harm due to *Miranda* violations have effectively lost access to meaningful remedies, particularly in cases where their statements are not suppressed at trial.¹⁶³ As Justice Kagan noted in her dissenting opinion, this leaves a significant enforcement gap that could embolden police misconduct.¹⁶⁴ Moreover, *Vega* represents a more fundamental weakening to *Miranda* than previous decisions.¹⁶⁵ While cases like *Quarles* and *Seibert* created specific carved-out exceptions, *Vega* strikes at *Miranda*’s constitutional core by rejecting its status as a constitutional rule.¹⁶⁶ This fundamental downgrading of *Miranda*’s authority, combined with removal of § 1983 liability, creates both practical and doctrinal vulnerability that weaken *Miranda* in such a way that relying on the Court to save its protections is no longer reasonable.¹⁶⁷

III. THE *DOBBS* FRAMEWORK AND *MIRANDA*’S FUTURE

A. *The New Approach to Stare Decisis*

In the world of constitutional law, stare decisis¹⁶⁸ has long served as the mortar holding together the edifice of American jurisprudence.¹⁶⁹ The cornerstone purpose of stare decisis is to foster a legal system characterized by stability and predictability, ensuring that judicial decisions remain consistent and foreseeable for all participants.¹⁷⁰ However, in *Dobbs v. Jackson Women’s*

160. *Id.*

161. *Id.*

162. *Id.* at 138.

163. *Id.* at 157–58 (Kagan, J., dissenting).

164. *Id.*

165. Ahsan, *supra* note 15, at 1467.

166. *Vega*, 597 U.S. at 156 (Kagan, J., dissenting).

167. Ahsan, *supra* note 15, at 1467.

168. The Latin phrase “stare decisis” derives from the maxim *stare decisis et non quieta movere*, which translates to “stand by the thing decided and do not disturb the calm,” reflecting the judicial principle of honoring established precedent. See James C. Rehnquist, *The Power That Shall Be Vested in a Precedent: Stare Decisis, the Constitution and the Supreme Court*, 66 B.U. L. Rev. 345, 347 (1986).

169. *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 263 (2022).

170. See, e.g., *Walton v. Arizona*, 497 U.S. 639, 673 (1990) (Scalia, J., concurring in part and concurring in the judgment) (“The doctrine [of stare decisis] exists for the purpose of introducing certainty and stability into the law . . .”); *Thomas v. Wash. Gas Light Co.*, 448 U.S. 261, 272 (1980)

Health Organization, the Supreme Court did not just remove a brick from this wall; it offered a new blueprint for dismantling entire sections of constitutional architecture.¹⁷¹ The decision represents more than the end of federal abortion rights; it signals a seismic shift in how the Court approaches its own precedents, creating tremors that shake *Miranda* to its foundations.¹⁷²

The case arose from a challenge to Mississippi's 15-week abortion ban, which directly contested the precedents established in *Roe v. Wade* and *Planned Parenthood v. Casey*.¹⁷³ In a contentious 6-3 ruling, the Court held that the Constitution does not confer a right to abortion, effectively overturning *Roe* and *Casey* and returning the authority to regulate abortion to individual states.¹⁷⁴ The Court stated, "*Roe* was on a collision course with the Constitution from the day it was decided, *Casey* perpetuated its errors, and those errors do not concern some arcane corner of the law of little importance to the American people."¹⁷⁵

Yet the significance of *Dobbs* extends far beyond abortion rights. The *Dobbs* majority established a more flexible framework for overturning precedent.¹⁷⁶ The Court stated that stare decisis "is at its weakest when [the Court] interpret[s] the Constitution[.]"¹⁷⁷ While maintaining that stare decisis is "not an inexorable command[.]" a phrase that has appeared in opinions for decades, *Dobbs* gives this familiar disclaimer sharp new teeth.¹⁷⁸ The majority outlined specific factors that could justify overturning precedent: the nature of the Court's error, the quality of its reasoning, the workability of the resulting rule, effects on other areas of law, and the weight of reliance interests.¹⁷⁹ Perhaps most significantly, *Dobbs* introduced a new emphasis on constitutional text and historical understanding that could prove fatal to decisions like *Miranda* that rest heavily on judicial interpretation rather than explicit constitutional commands.¹⁸⁰ The Court also stated, "when one of our constitutional decisions goes astray, the country is usually stuck with the bad decision unless we correct our own mistake."¹⁸¹

This recalibrated approach to stare decisis casts a long shadow over *Miranda*'s future. *Miranda*'s vulnerabilities mirror those the Court identified in *Roe*. Like *Roe*, *Miranda* created a set of rights that, while designed to protect constitutional interests, are not themselves explicitly required by constitutional

(plurality opinion) ("[Stare decisis] serves the broader societal interests in evenhanded, consistent, and predictable application of legal rules."); Nina Varsava, *Precedent, Reliance, and Dobbs*, 136 HARV. L. REV. 1845, 1849 (2023).

171. *Dobbs*, 597 U.S. at 268.

172. *Id.*

173. *Id.* at 232–34.

174. *Id.* at 302.

175. *Id.* at 268.

176. *Id.*

177. *Id.* at 264 (quoting *Agostini v. Felton*, 521 U.S. 203, 235 (1997)).

178. *Id.* at 292.

179. *Id.* at 268.

180. *See id.* at 231.

181. *Id.* at 264.

text.¹⁸² “Consistent with the Court’s prophylactic understanding of the ‘*Miranda* Rights,’ abortion falls to the same logic: a prophylactic with no constitutional claim attached.”¹⁸³ Like *Roe*, *Miranda* imposed specific requirements on states that some view as judicial legislation rather than constitutional interpretation.¹⁸⁴ And, like *Roe*, *Miranda*’s continued validity in *Dickerson* rested heavily on stare decisis and cultural entrenchment.¹⁸⁵ Chief Justice Rehnquist, writing for the majority in *Dickerson*, emphasized that *Miranda* had “become embedded in routine police practice” and “become part of our national culture.”¹⁸⁶ However, in the cold light of the post-*Dobbs* world, such sentimental appeals to tradition and societal integration may no longer be enough to sustain a precedent untethered from constitutional text.

The majority opinion in *Dobbs* stated, “in appropriate circumstances we must be willing to reconsider and, if necessary, overrule constitutional decisions.”¹⁸⁷ *Miranda* and its progeny are the perfect storm of appropriate circumstances.

B. *Miranda*’s Constitutional Vulnerability Under *Dobbs*

Sometimes the most prescient words come from defeat. As Justice Ruth Bader Ginsburg stated, “[d]issents speak to a future age . . . the greatest dissents do become court opinions and gradually over time their views become the dominant view . . . that’s the dissenter’s hope: that they are writing not for today, but for tomorrow.”¹⁸⁸ Justice Scalia was writing with vigorous hope for that tomorrow in his dissent in *Dickerson*. His concern was not just about *Miranda*; it was about judicial power itself. “By disregarding congressional action that concededly does not violate the Constitution, the Court flagrantly offends fundamental principles of separation of powers, and arrogates to itself prerogatives reserved to the representatives of the people.”¹⁸⁹ These words could easily be compared to the majority opinion in *Dobbs*. The theoretical framework established in *Dobbs* now presents a direct threat to *Miranda*’s continued validity, with Scalia’s dissent serving as an unwitting blueprint for its potential undoing.¹⁹⁰ His core argument—that the Court’s insistence on categorizing *Miranda* as a constitutional rule does not make it a constitutional

182. *Vega v. Tekoh*, 597 U.S. 134, 157 (2022) (quoting *Maryland v. Shatzer*, 559 U.S. 98, 106 (2010)).

183. Schwartz, *supra* note 105, at 1371 (italics added).

184. *Dickerson v. United States*, 530 U.S. 428, 446 (2000) (Scalia, J., dissenting).

185. *Id.* at 443.

186. *Id.*

187. *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 264 (2022).

188. NPR Morning Edition, *Ruth Bader Ginsburg and Malvina Harlan*, NPR, at 03:41–04:03 (May 2, 2002), <https://www.npr.org/2002/05/02/1142685/ruth-bader-ginsburg-and-malvina-harlan> [https://perma.cc/D2TY-TC73].

189. *Dickerson*, 530 U.S. at 454 (Scalia, J., dissenting).

190. *See id.*

requirement—finds new life in the current Court’s emphasis on textual interpretation and historical understanding.¹⁹¹

When viewed through *Dobbs*’s analytical framework, *Miranda*’s vulnerabilities become painfully apparent across the five critical dimensions. First, like a house built on sand, *Miranda*’s foundational flaw lies in its nature as a prophylactic rule not explicitly derived from constitutional text.¹⁹² Unlike fundamental constitutional rights, *Miranda* represents a judicially created mechanism for protecting Fifth Amendment rights, a constitutional security system designed by judges rather than the Framers.¹⁹³ As one scholar noted, *Miranda* “‘reads more like a legislative committee report with an accompanying statute’ than a judicial decision.”¹⁹⁴ This tension is further exacerbated by the Court in *Dickerson* overruling the statute.¹⁹⁵ Senator Sam Ervin of North Carolina spoke out against *Miranda* and stated, “[i]f you believe that the people of the United States should be ruled by a judicial oligarchy composed of five Supreme Court Justices rather than by the Constitution of the United States, you ought to vote against the bill.”¹⁹⁶

The *Dobbs* approach explicitly creates a pathway for returning such interpretive decisions to the legislative branch, suggesting that warnings about self-incrimination, like regulations about abortion, might better emerge from democratic deliberation than judicial mandate.¹⁹⁷ Justice Scalia stated, “we cannot allow to remain on the books even a celebrated decision—*especially* a celebrated decision—that has come to stand for the proposition that the Supreme Court has power to impose extraconstitutional constraints upon Congress and the States.”¹⁹⁸ As a scholar discussing *Miranda* noted, “prophylactics are judicially fashioned rules that go further than necessary to protect what the Court sees as a fundamental constitutional right.”¹⁹⁹ The current Court, focused on facilitating democratic processes rather than proactively shaping social norms, could see *Miranda* as exactly the type of judicial policymaking it seeks to curtail.²⁰⁰

The Court’s original error mirrors the very reasoning *Dobbs* used to dismantle *Roe*—creating rights that, while perhaps wise, are not textually mandated and represent judicial overreach.²⁰¹ The current Court’s emphasis on

191. *Id.*; *Dobbs*, 597 U.S. at 231.

192. *Miranda v. Arizona*, 384 U.S. 436, 531 (1966) (White, J., dissenting).

193. *See Dickerson*, 530 U.S. at 465 (Scalia, J., dissenting).

194. O’Neill, *supra* note 4, at 205 (quoting David A. Strauss, *The Ubiquity of Prophylactic Rules*, 55 U. CHI. L. REV. 190, 190 (1988)).

195. *Dickerson*, 530 U.S. at 432.

196. Milhizer, *supra* note 5, at 598 (alteration omitted) (quoting 114 Cong. Rec. 14,155 (1968) (statement of Sen. Ervin)).

197. *See Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 219 (2022).

198. *Dickerson*, 530 U.S. at 465 (Scalia, J., dissenting).

199. Schwartz, *supra* note 105, at 1356.

200. *See Dobbs*, 597 U.S. at 231.

201. *Dickerson*, 530 U.S. at 446 (Scalia, J., dissenting).

originalist interpretation might find this approach as dated.²⁰² Third, *Miranda*'s workability has become increasingly questionable. Like a simple recipe that has acquired too many modifications, the clarity of the original rule has been clouded by decades of exceptions and qualifications.²⁰³ The complexity of *Miranda* warnings and their implementation often creates more legal confusion than clarity as predicted by Justice White's dissent in *Miranda* and as evidenced by the labyrinthine jurisprudence surrounding two-step interrogations.²⁰⁴ Fourth, the decision's far-reaching effects on law enforcement practices and criminal procedure, while testament to its importance, also highlight the kind of broad social policy-making that the current Court views with skepticism.²⁰⁵ Finally, while *Miranda* has become deeply embedded in American legal culture, *Dobbs* demonstrates that cultural entrenchment provides surprisingly little protection for precedents lacking explicit constitutional foundations.²⁰⁶ The Court seems increasingly willing to tell Americans that their understanding of constitutional rights, no matter how longstanding, was built on judicial quicksand.

Dickerson's preservation of *Miranda* might have inadvertently hastened its eventual demise. The majority opinion's careful stating, "[w]hether or not we would agree with *Miranda*'s reasoning and its resulting rule . . . in the first instance, the principles of *stare decisis* weigh heavily against overruling it now" looks increasingly like a stay of execution rather than a full pardon.²⁰⁷ Those words, meant to shield *Miranda* through institutional respect for precedent, now reads like an invitation to reconsider its foundation entirely. The *Dobbs* Court demonstrated that when it believes a precedent was "egregiously wrong," neither decades of reliance nor cultural entrenchment can save it.²⁰⁸ In this new era, *Miranda*'s famous warnings face a profound silence, not from the bark of a gun, as in *Quarles*, nor from the tactical maneuvering of two-step interrogations, but from judicial pens prepared to write that the Warren Court simply demanded too much.²⁰⁹ Perhaps most fitting for a doctrine born from the constitutional right to remain silent, *Miranda*'s own silence is approaching, as it joins *Roe* in the gathering dust of rejected constitutional landmarks that reached beyond their textual foundations to grasp at rights that, however vital, found no explicit home in the Constitution's text.

202. *Id.* at 454; *Dobbs*, 597 U.S. at 231.

203. *Miranda v. Arizona*, 384 U.S. 463, 545 (1966); see *New York v. Quarles*, 467 U.S. 649, 657 (1984); *Oregon v. Elstad*, 470 U.S. 298, 318 (1985); *Missouri v. Seibert*, 542 U.S. 600, 617 (2004); *Vega v. Tekoh*, 597 U.S. 134, 138 (2022).

204. *Miranda*, 384 U.S. at 531–32 (White, J., dissenting); *Elstad*, 470 U.S. at 318; *Seibert*, 542 U.S. at 617.

205. *Dickerson*, 530 U.S. at 454 (Scalia, J., dissenting); *Dobbs*, 597 U.S. at 231.

206. *Dobbs*, 597 U.S. at 231.

207. See *Dickerson*, 530 U.S. at 443 (citing *Rhode Island v. Innis*, 446 U.S. 291, 304 (1980)).

208. See *Dobbs*, 597 U.S. at 231.

209. *Miranda*, 384 U.S. at 545; See *New York v. Quarles*, 467 U.S. 649, 657 (1984); *Elstad*, 470 U.S. at 318; *Seibert*, 542 U.S. at 617; *Vega v. Tekoh*, 597 U.S. 134, 138 (2022).

IV. FROM JUDICIAL MANDATE TO DEMOCRATIC CHOICE:
SAVING *MIRANDA*'S PROTECTIONS

Miranda's constitutional weakness demands a legislative solution. Unlike the post-*Dobbs* landscape for abortion rights, where state-by-state variation was inevitable, *Miranda*'s protections can and should be preserved through uniform federal legislation. Congress must act to codify *Miranda*'s warnings before the Court completes its dismantling of this essential safeguard.

Miranda's departure could finally return these crucial policy decisions to their proper forum: the legislative branch. As Justice Harlan presciently noted in his *Miranda* dissent, legislatures possess the aforementioned "advantage of empirical data and comprehensive study" that courts inherently lack.²¹⁰ Congress's earlier attempt to modify *Miranda* through § 3501, while ultimately struck down, demonstrated both the legislature's interest in shaping interrogation practices and its capacity to craft detailed regulatory frameworks. Freed from *Miranda*'s constitutional constraints, Congress should develop comprehensive legislation that better balances individual rights with law enforcement needs.

Congressional codification would offer several distinct advantages over the current judicially-created framework. First, it would place *Miranda*'s protections on firm legal ground, immune from judicial reconsideration of constitutional doctrine. Second, it would provide an opportunity to refine and improve *Miranda*'s protections based on decades of practical experience. Congress could conduct thorough hearings, gathering evidence about modern interrogation practices and their effects on both law enforcement and individual rights. It could craft nuanced requirements that account for technological advances, varying suspect vulnerabilities, and specific investigative challenges. Third, it would restore the proper constitutional balance by returning policymaking authority to the legislative branch while preserving the judiciary's role in interpreting and applying these protections.

The content of such legislation should include, at minimum, the core *Miranda* warnings: the right to remain silent, the warning that statements can be used against the suspect, the right to an attorney, and the provision of counsel for those who cannot afford it.²¹¹ Additionally, Congress should consider codifying exceptions like the public safety exception while providing clear guidelines for their application to prevent abuse.

While federal legislation represents the optimal solution, state-level protections provide an essential backstop against *Miranda*'s demise. Several states have already incorporated *Miranda*-like protections into their constitutions or statutes, creating a layer of protection that would survive even if the Supreme Court overturns *Miranda* entirely.²¹² States without such

210. *Miranda*, 384 U.S. at 524 (Harlan, J., dissenting).

211. Ahsan, *supra* note 15, at 1479.

212. *Id.*

protections should act quickly to adopt them, either through constitutional amendments or comprehensive legislation. These state-level protections could potentially offer even stronger safeguards than *Miranda* itself, tailored to local needs and concerns. This legislative diversity could generate valuable empirical evidence about the effectiveness of different approaches, leading to more informed policy choices at both state and federal levels, just as Justice Harlan's dissent in *Miranda* envisioned.²¹³ For example, states might require video recording of all custodial interrogations, provide enhanced protections for vulnerable populations, or create stronger remedies for violations than those currently available under federal law. The development of state protections would create a laboratory of democracy in criminal procedure, allowing different approaches to be tested and refined. This diversity of approaches could ultimately lead to more effective protections than *Miranda*'s one-size-fits-all federal standard.

The codification of *Miranda* protections would provide much-needed stability in criminal practice. Defense attorneys, prosecutors, and law enforcement would benefit from clear, consistent rules that are not subject to judicial reinterpretation with each new Supreme Court term. This stability would improve efficiency in the criminal justice system and reduce litigation over the admissibility of confessions. Moreover, legislative codification could address many of the practical problems that have emerged in *Miranda*'s implementation. The complex web of exceptions and qualifications that has developed through case law could be replaced with clearer statutory guidelines. The focus could shift from technical compliance with judicially-created rules to ensuring meaningful protection of suspects' rights. The end result would be a system that better serves both law enforcement and individual rights. Police officers would have clearer guidance about permissible interrogation practices, reducing the risk of inadvertently violating suspects' rights. Suspects would have more consistent protection against coercive interrogation techniques, particularly those who are most vulnerable to pressure.

In essence, the end of *Miranda*'s constitutional status need not signal a retreat from protecting against self-incrimination. Instead, as Justice Scalia consistently argued, it could mark a return to the proper constitutional order where the will of the people, expressed through their elected representatives, shapes the specific contours of criminal procedure protections.²¹⁴ His criticism of *Miranda*'s "antidemocratic" power to override legislative judgment finds particular resonance in today's debate over judicial authority.²¹⁵ This rebalancing of institutional roles, returning power to the people's representatives while preserving courts' role in protecting fundamental rights, might ultimately produce more effective and democratically legitimate protections than *Miranda*'s judicially created framework ever achieved. This

213. *Miranda*, 384 U.S. at 524.

214. *Dickerson v. United States*, 530 U.S. 428, 446 (2000) (Scalia, J., dissenting).

215. *Id.*

approach would not only secure these rights against future Court reversals but would also enhance their legitimacy by anchoring them in democratic processes rather than judicial decree.

CONCLUSION

The convergence of *Vega* and *Dobbs* represents a watershed moment in American criminal procedure, creating an unprecedented vulnerability in *Miranda*'s constitutional foundation. While *Miranda* warnings have become deeply woven into the fabric of American legal culture over the past half-century, recent Supreme Court decisions suggest that such cultural entrenchment provides increasingly tenuous protection. The Court's decisive action in *Dobbs* to overturn long-standing precedent, coupled with its explicit questioning of *Miranda*'s constitutional status in *Vega*, creates a clear pathway for reconsidering one of criminal procedure's most fundamental protections.

The theoretical weakness at the heart of *Dickerson*'s preservation of *Miranda* now appears particularly vulnerable to the Roberts Court's more exacting approach to precedent. *Dickerson*'s attempt to secure *Miranda*'s future, while well-intentioned, may have inadvertently created the very vulnerability that now threatens its existence. This tension between judicial protection and constitutional foundation illustrates a broader challenge in preserving fundamental rights through judicial doctrine alone.

The implications of *Miranda*'s potential dismantling extend far beyond technical shifts in criminal procedure. Such a change would fundamentally alter the balance of power between individuals and law enforcement during custodial interrogations, potentially leaving vulnerable populations—including the young, mentally ill, and non-English speakers—particularly exposed without standardized warnings to protect their interests. The vital protections that *Miranda* provides deserve a more secure foundation than the shifting sands of judicial interpretation.

Congress must act decisively to codify *Miranda*'s protections before the Court completes its dismantling of this essential safeguard. As this Note has demonstrated, legislative action represents the most promising path forward for preserving these crucial rights. Congressional codification would offer several distinct advantages: placing *Miranda*'s protections on firm legal ground, providing an opportunity to refine and improve these protections based on decades of practical experience, and restoring the proper constitutional balance by returning policymaking authority to the legislative branch while preserving the judiciary's role in interpreting these protections. State constitutional and statutory frameworks offer an important backstop, but federal legislation can ensure uniform protection nationwide. The challenge lies not in whether these protections can survive *Miranda*'s potential demise but in how they can be secured through democratic processes to better serve both individual rights and law enforcement needs in contemporary society.

The future of constitutional criminal procedure thus stands at a critical juncture where the very foundations of long-accepted protections face unprecedented scrutiny. Justice Scalia's daunting dissent in *Dickerson* may prove prophetic, where he declared that the decision "converts *Miranda* from a milestone of judicial overreaching into the very Cheops' Pyramid (or perhaps the Sphinx would be a better analogue) of judicial arrogance."²¹⁶ Like the ancient Sphinx, *Miranda* stands as a guardian of constitutional rights, its warnings etched into American law as deeply as hieroglyphs in stone. Yet even the Sphinx eventually succumbed to the relentless erosion of time and sand. The same fate may await *Miranda* if its constitutional foundations prove to be built on nothing more than the judicial hubris Justice Scalia recognized. As Justice Harlan warned in his *Miranda* dissent, "the Court's new regime proves so dubious that there can be no due compensation for its weakness in constitutional law."²¹⁷ To preserve the protections pulled from the Fifth Amendment's right against self-incrimination, the legislative branch should build *Miranda* a new foundation. Otherwise, this constitutional Sphinx may find itself joining *Roe* in the graveyard of overturned precedents, ultimately forgotten like § 3501—the very statute that once dared to challenge its authority.

216. *Id.* at 465.

217. *Miranda*, 384 U.S. at 514–15 (Harlan, J., dissenting).