THE HUMAN FAMILY
RESEARCH CENTER

Every Human Being
Leaves a Fingerprint on the Universe

Roe v. Wade 410 U.S. 113 (1973)

(The 'Holding')

Part XI

To summarize and to repeat:

1. A state criminal abortion statute of the current Texas type, that excepts from criminality only a lifesaving procedure on behalf of the mother, without regard to pregnancy stage and without recognition of the other interests involved, is violative of the Due Process Clause of the **Fourteenth Amendment**.

(a) For the stage prior to approximately the end of the first trimester, the abortion decision and its effectuation must be left to the medical judgment of the pregnant woman's attending physician.

(b) For the stage subsequent to approximately the end of the first trimester, the State, in promoting its interest in the health of the mother, may, if it chooses, regulate the abortion procedure in ways that are reasonably related to maternal health.

(c) For the stage subsequent to viability, the State in promoting its interest in the potentiality of human life **[p165]** may, if it chooses, regulate, and even proscribe, abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother.

2. The State may define the term "physician," as it has been employed in the preceding paragraphs of this Part XI of this opinion, to mean only a physician currently licensed by the State, and may proscribe any abortion by a person who is not a physician as so defined.

Part X

All this, together with our observation, *supra,* that, throughout the major portion of the 19th century, prevailing legal abortion practices were far freer than they are today, persuades us that the word "person," as used in the **Fourteenth Amendment**, does not include the unborn.[n55]

Other Relevant Exerpts

Part VIII

This right of privacy, whether it be founded in the **Fourteenth Amendment**'s concept of personal liberty and restrictions upon state action, as we feel it is, or, as the District Court determined, in the **Ninth Amendment**'s reservation of rights to the people, is broad enough to encompass a woman's decision whether or not to terminate her pregnancy. The detriment that the State would impose upon the pregnant woman by denying this choice altogether is apparent. Specific and direct harm medically diagnosable even in early pregnancy may be involved. Maternity, or additional offspring, may force upon the woman a distressful life and future. Psychological harm may be imminent. Mental and physical health may be taxed by child care. There is also the distress, for all concerned, associated with the unwanted child, and there is the problem of bringing a child into a family already unable, psychologically and otherwise, to care for it. In other cases, as in this one, the additional difficulties and continuing stigma of unwed motherhood may be involved. All these are factors the woman and her responsible physician necessarily will consider in consultation.

Part X

The Constitution does not define "person" in so many words. Section 1 of the **Fourteenth Amendment** contains three references to "person." The first, in defining "citizens," speaks of "persons born or naturalized in the United States." The word also appears both in the Due Process Clause and in the Equal Protection Clause. "Person" is used in other places in the Constitution: in the listing of qualifications for Representatives and Senators, Art. I, § 2, cl. 2, and § 3, cl. 3; in the Apportionment Clause, Art. I, § 2, cl. 3;[n53] in the Migration and Importation provision, Art. I, § 9, cl. 1; in the Emolument Clause, Art. I, § 9, cl. 8; in the Electors provisions, Art. II, § 1, cl. 2, and the superseded cl. 3; in the provision outlining qualifications for the office of President, Art. II, § 1, cl. 5; in the Extradition provisions, Art. IV, § 2, cl. 2, and the superseded Fugitive Slave Clause 3; and in the Fifth, Twelfth, and Twenty-second Amendments, as well as in §§ 2 and 3 of the **Fourteenth Amendment**. But in nearly all these instances, the use of the word is such that it has application only post-natally. None indicates, with any assurance, that it has any possible pre-natal application.[n54] **[p158]**

All this, together with our observation, *supra,* that, throughout the major portion of the 19th century, prevailing legal abortion practices were far freer than they are today, persuades us that the word "person," as used in the **Fourteenth Amendment**, does not include the unborn.[n55] This is in accord with the results reached in those few cases where the issue has been squarely presented. *McGarvey v. Magee-Womens Hospital,* 340 F.Supp. 751 (WD Pa.1972); *Byrn v. New York City Health & Hospitals Corp.,* 31 N.Y.2d 194, 286 N.E.2d 887 (1972), *appeal docketed,* No. 72-434; *Abele v. Markle,* 351 F.Supp. 224 (Conn.1972), *appeal docketed,* No. 72-730. *Cf. Cheaney v. State,* ___ Ind. at ___, 285 N.E.2d at 270; *Montana v. Rogers,* 278 F.2d 68, 72 (CA7 1960), *aff'd sub nom. Montana v. Kennedy,* **366 U.S. 308** (1961); *Keeler v. Superior Court,* 2 Cal.3d 619, 470 P.2d 617 (1970); *State v. Dickinson,* 28 **[p159]** Ohio St.2d 65, 275 N.E.2d 599 (1971). Indeed, our decision in *United States v. Vuitch,* **402 U.S. 62** (1971), inferentially is to the same effect, for we there would not have indulged in statutory interpretation favorable to abortion in specified circumstances if the necessary consequence was the termination of life entitled to **Fourteenth Amendment** protection.

Doe V. Bolton 410 U.S. 192 (1973)

In the companion case of *Doe v. Bolton*, the Court defined the scope of the health exception, relying on its earlier opinion in *United States v. Vuitch*, 402 U.S. 62 (1971): [T]he medical judgment may be exercised in the 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. *Doe*, 410 U.S. at 192