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Willfully Forgetting Miranda's True Nature: Vega V. Tekoh Severs the Warnings Requirement From the Constitution

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WILLFULLY FORGETTING *MIRANDA*'S TRUE NATURE: *VEGA V. TEKOH* SEVERS THE WARNINGS REQUIREMENT FROM THE CONSTITUTION

GEORGE M. DERY III*

This Article analyzes Vega v. Tekoh, in which the Supreme Court ruled that a violation of Miranda was not a violation of the Fifth Amendment privilege against self-incrimination. This Article examines the original language of the Miranda opinion, the statements and intentions of the members of the Miranda Court, and subsequent precedent to determine Miranda's true nature. Further, this Article examines the reasoning of Vega and the dangers created by its pronouncements, especially in light of the Court's earlier characterization of Miranda as a constitutional rule in Dickerson v. United States. This Article asserts that the Justices who joined the Miranda opinion clearly and repeatedly explained that Miranda's warnings requirement was a constitutional right. Further, Miranda itself indicated that it was establishing a right included within the Fifth Amendment privilege against self-incrimination. Finally, this Article suggests that Vega's cramped reasoning rejecting Miranda's constitutional status, along with the Court's inconsistent interpretation of Miranda over the decades, has not only fatally weakened Miranda's warnings requirement but also undermined the Court's own authority.

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I. INTRODUCTION

The Supreme Court, in *Vega v. Tekoh*, held, "[A] violation of *Miranda* is not itself a violation of the Fifth Amendment."¹ While conceding that *Miranda* was a "constitutional decision" which created a "constitutional rule," *Vega* still contended that *Miranda* did not create a constitutional "right."² *Miranda*, according to *Vega*, was nothing more than a prophylactic rule meant to prevent constitutional violations rather than a right in itself.³ To reach such conclusions, *Vega* had to ignore not only the language in *Miranda*, but passages in later case law written by the Justices who had formed the *Miranda* majority.⁴ Further, *Vega* had to reinterpret language in *Dickerson v. United States*, which had rejected several of the arguments *Vega* resurrected.⁵ Such willful blindness, particularly to *Miranda*—the origin of the warnings requirement—is a striking

1. 597 U.S. 134, 152 (2022). The Fifth Amendment provides, in part, "No person . . . shall be compelled in any criminal case to be a witness against himself." U.S. CONST. amend. V.

2. *Vega*, 597 U.S. at 142, 149.

3. *Id.* at 141.

4. See *Miranda v. Arizona*, 384 U.S. 436, 439, 442 (1966); see also, e.g., *Jenkins v. Delaware*, 395 U.S. 213, 220 (1969).

5. See *infra* Part VI.

outlier for a Court that prides itself on remaining faithful to constitutional law's original meaning.⁶ *Vega's* ignorance of *Miranda's* constitutional nature is all the more surprising given the ready accessibility to *Miranda* and the views of the Warren Court which created it.⁷ *Vega's* demotion of *Miranda*, its strained reasoning, and the Court's history of inconsistency toward *Miranda's* status as a constitutional right not only weakened *Miranda*, perhaps fatally, but also damaged the Court's own authority as a constant and reliable interpreter of the Constitution. Why, a reader of *Vega* might ask, should we exclude relevant confessions from state courtrooms across the country for a rule the Court has clearly declared is not a constitutional right? Even more fundamentally, why heed a Court that protects *Miranda* in one case as a constitutional "rule" yet disparages it in another as not a constitutional "right"? Perhaps confessions—crucial evidence in deciding guilt or innocence—are too important to leave in the hands of such a fickle Court.

This Article, in Part II, explores the Court's approach to coerced confessions before its *Miranda* decision, its creation of the *Miranda* warnings requirement, and the changes in the Court's view of *Miranda* leading up to *Vega*. Part III examines *Vega*—its facts and the Court's opinion. Then, this Article considers *Miranda's* true nature by, in Part IV, examining the statements of the Justices who joined the *Miranda* opinion, and in Part V, the language of the *Miranda* decision. Finally, in Part VI, this work assesses the dangers stemming from *Vega's* ruling and analysis.

II. AFTER CREATING THE *MIRANDA* WARNINGS REQUIREMENT, THE COURT DEGRADED IT OVER THE DECADES, ONLY DEFENDING IT WHEN OTHERS ATTACKED THE AUTHORITY OF THE CASE AND THE COURT ITSELF

Imagine a young couple has a baby. The parents are so excited and overwhelmed by the birth that they invest in the baby their ardent hopes and expectations, several of which are perhaps impossible to fulfill. At first, the new parents shower praise on their newborn. Yet, eventually, inevitably, the child, being only human, disappoints. Frustrated with each new failing, the parents criticize their child, even denigrating their flesh and blood to others. The criticism becomes so negative and constant that family and friends finally feel free to join in. When the parents hear the criticisms they voiced in the mouths

6. An example of the Court's devotion to interpretations of law at the time of the creation of a constitutional right is offered in the term one year before that of *Vega's*, in *Torres v. Madrid*, 141 S. Ct. 989 (2021). In *Torres*, to fully understand a Fourth Amendment seizure of a person, the Court dissected *Countess of Rutland's Case*, (1605) 77 Eng. Rep. 332 (K.B.), a Star Chamber matter in 1605. *Id.* at 997.

7. Ronald J. Krotoszynski, Jr., *A Remembrance of Things Past?: Reflections on the Warren Court and the Struggle for Civil Rights*, 59 WASH. & LEE L. REV. 1055, 1057 (2002).

of others, they reflexively react with fury, defending their child. The parents are galled that anyone would say such hurtful things and see the criticism as an affront to their parenting skills. When the criticisms then die down, the parents then return to complaining about their own child. This story occurred when the Court gave birth to *Miranda*.

The Court handed down *Miranda* in hopes of solving a problem it had struggled with since at least 1884: coerced confessions. In *Hopt v. Utah*, the Court deemed a murder confession voluntary despite being given after police arrested the suspect and hurried him away when the victim's father possibly drew his revolver and a crowd gathered around.⁸ *Hopt* avoided any attempt to create a voluntariness rule "that will comprehend all cases" noting that voluntariness depended largely on "the special circumstances connected with the confession."⁹ In *Brown v. Mississippi*, the Court employed the Fourteenth Amendment Due Process Clause to prohibit confessions obtained by physical brutality.¹⁰ In *Brown*, the sheriff openly admitted that law enforcement obtained their murder confessions by hanging and whipping the defendants.¹¹ In response to such official brutality, the defendants not only confessed, but "changed or adjusted their confession in all particulars of detail so as to conform to the demands of their torturers."¹² Deeming the confessions involuntary under the Fourteenth Amendment, *Brown* declared, "It would be difficult to conceive of methods more revolting to the sense of justice than those taken to procure the confessions of these petitioners, and the use of the confessions thus obtained as the basis for conviction and sentence was a clear denial of due process."¹³

In *Brown*'s wake, police shifted away from physical violence to other forms of coercion. Over a century,¹⁴ the Court found itself having to forbid all sorts of official practices as coercive under the Fourteenth Amendment's Due Process Clause, noting that the "blood of the accused is not the only hallmark of an unconstitutional inquisition."¹⁵ In *Ward v. Texas*, law enforcement violated the Fourteenth Amendment by driving the defendant out of the county

8. 110 U.S. 574, 584–85 (1884).

9. *Id.* at 583. In time, *Hopt*'s rule regarding the "special circumstances" of a particular confession would evolve into the "totality of the circumstances" standard. For instance, in *Greenwald v. Wisconsin*, the Court deemed a confession involuntary because, in "[c]onsidering the totality of these circumstances, we do not think it credible that petitioner's statements were the product of his free and rational choice." 390 U.S. 519, 521 (1968).

10. 297 U.S. 278, 285–86 (1936).

11. *Id.* at 281–83.

12. *Id.* at 282.

13. *Id.* at 286.

14. The Court was still having to deal with involuntary confessions violating the Fourteenth Amendment in 1991 in *Arizona v. Fulminante*, 499 U.S. 279, 285 (1991).

15. *Reck v. Pate*, 367 U.S. 433, 440 (1961) (quoting *Blackburn v. Alabama*, 361 U.S. 199, 206 (1960)).

and placing him “in three different jails on three different days,” possibly to “obtain the confession from him more easily in a strange place,” and to avoid a petition for writ of habeas corpus.¹⁶ In *Malinski v. New York*, the Court found police obtained an involuntary confession by stripping an arrestee naked and leaving him in a state of undress for hours in a hotel room.¹⁷ In *Leyra v. Denno*, police, with a false offer of medical aid for a painful sinus attack, had a psychiatrist hypnotize the defendant into confessing, in violation of the Fourteenth Amendment.¹⁸ *Payne v. Arkansas* found that the Pine Bluff, Arkansas police chief induced an involuntary confession by threatening a suspect in jail with a lynch mob of up to forty people that were going to enter “in a few minutes” because it “wanted to get him.”¹⁹ In *Townsend v. Sain*, the Court confronted a case where police, pretending to aid a heroin addict in withdrawal, injected him with a substance supposedly having the properties of a “truth serum.”²⁰ In *Lynnum v. Illinois*, the Court found police coerced a confession from the defendant by threatening to take her three and four year-old children from her.²¹ The Court found involuntary a confession in *Ashcraft v. Tennessee* that resulted from thirty-six hours of relay questioning.²² In *Spano v. New York*, the Court found that the suspect’s will was overborne when an officer, who had been a school friend, indicated that his career, as well as the welfare of his pregnant wife and three children, could be ruined unless the suspect confessed.²³ The Fourteenth Amendment, with its “totality of the circumstances” test for voluntariness of the confession, seemed outmatched by police creativity in coercing confessions.²⁴

Thus, when the Court considered its ruling in *Miranda*, it had witnessed decades of shocking official misdeeds in coercing confessions as well as a long record of failure in preventing such police illegality.²⁵ Moreover, the *Miranda* Court, reviewing “modern” police manuals, understood that police departments

16. 316 U.S. 547, 549–53, 555 (1942).

17. 324 U.S. 401, 403 (1945).

18. 347 U.S. 556, 559, 561 (1954).

19. 356 U.S. 560, 562, 564–65, 567 (1958).

20. 372 U.S. 293, 298 (1963).

21. 372 U.S. 528, 531–32, 537 (1963).

22. 322 U.S. 143, 153–54 (1944).

23. 360 U.S. 315, 318–19, 323 (1959).

24. The Court has explained, “In resolving the issue all the circumstances attendant upon the confession must be taken into account.” *Reck v. Pate*, 367 U.S. 433, 440 (1961).

25. The *Miranda* Court specifically mentioned the Fourteenth Amendment Due Process cases, *Townsend v. Sain*, 372 U.S. 293 (1963), and *Lynnum v. Illinois*, 372 U.S. 528 (1963), in its criticism of police tactics. *Miranda v. Arizona*, 384 U.S. 436, 456 (1966).

persisted in psychologically manipulating suspects in custodial interrogation.²⁶ Therefore, the Court turned to the Fifth Amendment privilege against self-incrimination in hopes of finding a more effective way to protect those persons suffering incommunicado interrogation.²⁷ *Miranda* determined that “the very fact of custodial interrogation exacts a heavy toll on individual liberty and trades on the weakness of individuals.”²⁸ To preserve the privilege’s protection during custodial interrogation, *Miranda* ruled, “[T]he prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination.”²⁹ The Court mandated the following warnings as “an absolute prerequisite to interrogation”:³⁰ “Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed.”³¹

Moreover, the suspect’s invocation of these rights must be “scrupulously honored.”³² Finally, any statements police obtained in violation of these *Miranda* mandates would be suppressed at trial.³³

In less than a decade, the Court’s enthusiasm for *Miranda* had markedly cooled. In *Michigan v. Tucker*, the Court demoted *Miranda*’s warnings to “recommended” or “suggested” “procedural safeguards” that “were not themselves rights protected by the Constitution but were instead measures to insure that the right against compulsory self-incrimination was protected.”³⁴ *Tucker* distinguished between *Miranda*’s mere “prophylactic standards,” which

26. *Miranda* noted:

A valuable source of information about present police practices, however, may be found in various police manuals and texts which document procedures employed with success in the past, and which recommend various other effective tactics. These texts are used by law enforcement agencies themselves as guides. It should be noted that these texts professedly present the most enlightened and effective means presently used to obtain statements through custodial interrogation. By considering these texts and other data, it is possible to describe procedures observed and noted around the country.

Id. at 448–49 (footnotes omitted).

27. *Id.* at 446. *Miranda* was not the only right the Court had recognized to compensate for the weakness of Fourteenth Amendment Due Process. Two years before *Miranda*, the Court had employed the Sixth Amendment right to counsel against police questioning after formal charges in *Massiah v. United States*, 377 U.S. 201, 205 (1964).

28. *Miranda*, 384 U.S. at 455.

29. *Id.* at 444.

30. *Id.* at 471.

31. *Id.* at 444.

32. *Id.* at 479.

33. *Id.*

34. 417 U.S. 433, 443–44 (1974).

police violated in the case, and the suspect's "constitutional privilege against compulsory self-incrimination," which police did not abridge.³⁵ Deeming *Miranda* a "new doctrine," *Tucker* worried about the loss of "valuable evidence."³⁶ *Tucker* thus shifted its focus to *Miranda*'s costs, warning against holding police, who were working under pressure, to unrealistic expectations.³⁷ The *Tucker* Court advised against seeking perfection, arguing that the law "cannot realistically require that policeman investigating serious crimes make no errors whatsoever."³⁸ Therefore, the Court's new concern was not for the coerced suspect but for the harried officer.

The Court continued to prioritize the needs of the officer over those of the person subjected to custodial interrogation in *New York v. Quarles*, a case in which police asked a suspect in a supermarket where in the store he had placed his gun.³⁹ Concerned about the "kaleidoscopic situation" confronting the officers in the supermarket, *Quarles* asserted that such settings required "spontaneity rather than adherence to a police manual."⁴⁰ The Court refused to put police in the "untenable position" of deciding, within seconds, whether to protect the public by forgoing *Miranda* to secure the weapon, or to protect their case by supplying the warnings and ensuring evidence admissibility.⁴¹ In creating this public safety exception, *Quarles* echoed *Tucker* that *Miranda*'s warnings were "prophylactic" rules rather than "rights protected by the Constitution."⁴² Such "procedural safeguards" should be dispensed with when the cost of *Miranda* amounts to "something more than merely the failure to obtain" useful evidence.⁴³

The Court eroded *Miranda* still further in *Oregon v. Elstad*, where police first obtained an "unwarned admission" from a burglary suspect and then provided the suspect with his *Miranda* warnings before obtaining a second admission.⁴⁴ *Elstad* allowed the second statement to be cleansed of any taint caused by the first unwarned questioning, concluding that a "subsequent administration of *Miranda* warnings to a suspect who has given a voluntary but unwarned statement ordinarily should suffice to remove the conditions that precluded admission of the earlier statement."⁴⁵ *Miranda* could be limited

35. *Id.* at 445–46.

36. *Id.* at 443.

37. *Id.* at 446.

38. *Id.*

39. 467 U.S. 649, 652 (1984).

40. *Id.* at 656.

41. *Id.* at 657–58.

42. *Id.* at 654 (quoting *Tucker*, 417 U.S. at 444).

43. *Id.* at 655, 657.

44. 470 U.S. 298, 301–03 (1985).

45. *Id.* at 314.

because its exclusionary rule “sweeps more broadly than the Fifth Amendment itself.”⁴⁶ In fact, a *Miranda* violation could “be triggered even in the absence of a Fifth Amendment violation.”⁴⁷ This was because the Fifth Amendment only forbade “*compelled* testimony” while *Miranda* presumed compulsion with any failure of its warnings requirement.⁴⁸ *Miranda*, in excluding voluntary statements given without the warnings, provided “a remedy even to the defendant who has suffered no identifiable constitutional harm.”⁴⁹

Elstad’s language, undermining the Court’s power to impose its *Miranda* decision on the states, seemingly invited a challenge to *Miranda*’s authority.⁵⁰ Such a challenge came from the United States Court of Appeals for the Fourth Circuit in *Dickerson v. United States*.⁵¹ In *Dickerson*, the district court granted a robbery suspect’s motion to suppress because a Federal Bureau of Investigation (FBI) agent had failed to provide the required *Miranda* warnings before obtaining the statement.⁵² In its motion for reconsideration, the U.S. Attorney’s Office contended that even if the FBI obtained Dickerson’s confession “in technical violation of *Miranda*, it was nevertheless admissible under 18 U.S.C.A. § 3501.”⁵³ When the district court rejected the government’s motion, the government took an interlocutory appeal to the court of appeals, which reversed the trial court’s suppression order.⁵⁴ The Supreme Court then granted certiorari to consider whether § 3501 overruled *Miranda*.⁵⁵

Two years after the Court decided *Miranda*, Congress responded by enacting § 3501, which provided that in any federal prosecution, “a confession . . . shall be admissible in evidence if it is voluntarily given.”⁵⁶ Section 3501 further stated:

If the trial judge determines that the confession was voluntarily made it *shall be admitted* in evidence and the trial judge *shall permit the jury to hear* relevant evidence on the issue of voluntariness and shall instruct the jury to give such weight to the confession as the jury feels it deserves under all the

46. *Id.* at 306.

47. *Id.*

48. *Id.* at 306–07.

49. *Id.* at 307.

50. In his dissent, Justice Stevens warned, “This Court’s power to require state courts to exclude probative self-incriminatory statements rests entirely on the premise that the use of such evidence violates the Federal Constitution.” *Id.* at 370 (Stevens, J., dissenting).

51. 530 U.S. 428, 432 (2000).

52. *Id.* Dickerson drove the getaway car in the robbery. *United States v. Dickerson*, 166 F.3d 667, 674 (4th Cir. 1999), *rev’d sub nom.* *Dickerson v. United States*, 530 U.S. 428 (2000). The district court ruled in Dickerson’s favor because it found him more credible than the FBI agent. *Id.* at 675.

53. *Id.* at 678.

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

55. *Id.*

56. *Id.* at 435 (quoting 42 U.S.C. § 3501).

circumstances.⁵⁷

In this statute, Congress reduced *Miranda* to a mere factor to be considered in the totality of circumstances determining voluntariness, for § 3501 instructed:

The trial judge in determining the issue of voluntariness shall take into consideration all the circumstances surrounding the giving of the confession, including . . . (3) whether or not such defendant was advised or knew that he was not required to make any statement and that any such statement could be used against him, (4) whether or not such defendant had been advised prior to questioning of his right to the assistance of counsel.⁵⁸

Section 3501 resulted from a clash of views between the Court and Congress about *Miranda*. While the Warren Court created *Miranda* as a new constitutional protection after watching the Fourteenth Amendment voluntariness test consistently fail to stop coerced confessions,⁵⁹ Congress aimed to return to voluntariness by overturning *Miranda*.⁶⁰ Federal prosecutors in the executive branch were leery of even employing § 3501, as lamented by Justice Scalia in 1994:

This is not the first case in which the United States has declined to invoke § 3501 before us—nor even the first case in which that failure has been called to its attention. In fact, with limited exceptions the provision has been studiously avoided by every Administration, not only in this Court but in the lower courts, since its enactment more than 25 years ago.⁶¹

However, after the repeated drubbing the Court itself gave *Miranda* in cases such as *Tucker*, *Quarles*, and *Elstad*, the court of appeals in *Dickerson* decided to call the Court's bluff by ruling for admissibility under § 3501.⁶² Judge

57. *Id.* at 436 (emphasis added) (quoting 42 U.S.C. § 3501).

58. *Id.* (quoting 42 U.S.C. § 3501). To drive home the point that *Miranda* was not needed to admit a confession in federal court, § 3501 further provided, "The presence or absence of any of the above—mentioned factors to be taken into consideration by the judge need not be conclusive on the issue of voluntariness of the confession." *Id.* (quoting 42 U.S.C. § 3501).

59. *Miranda v. Arizona*, 384 U.S. 436, 464–65 (1966).

60. *Dickerson*, 530 U.S. at 436.

61. *Davis v. United States*, 512 U.S. 452, 463–64 (1994) (Scalia, J., concurring) (citation omitted).

62. The court of appeals held:

Congress, pursuant to its power to establish the rules of evidence and procedure in the federal courts, acted well within its authority in enacting § 3501. As a consequence, § 3501, rather than *Miranda*, governs the admissibility of confessions in federal court. Accordingly, the district court erred in suppressing *Dickerson's* voluntary confession on the grounds that it was obtained in technical violation of *Miranda*.

Williams, who wrote the court of appeals' opinion, chastised "the current Administration," who was then headed by Attorney General Janet Reno,⁶³ for "elevating politics over law" in failing to make use of § 3501.⁶⁴ Declaring itself "a court of law and not politics," the court of appeals weighed the constitutionality of § 3501 in light of *Miranda*.⁶⁵ The court of appeals noted that *Miranda*, "at no point," referred to its warnings as constitutional rights:

Indeed, the Court acknowledged that the Constitution did not require the warnings, disclaimed any intent to create a "constitutional straightjacket," referred to the warnings as "procedural safeguards," and invited Congress and the States "to develop their own safeguards for [protecting] the privilege."⁶⁶

Judge Williams then used the Court's own language against *Miranda*, noting that *Tucker* declared that the warnings were "not themselves rights protected by the Constitution," while *Quarles* found them to be merely "prophylactic" rules.⁶⁷ The court of appeals concluded that "*Miranda* was not a constitutional holding," and so Congress could "have the final say on the question of admissibility."⁶⁸ The court of appeals thus undermined the position of the Supreme Court in serving as the final say on constitutional issues, for it indicated that one of the Court's most significant decisions could be overturned by Congress and a lower court.

The Court in *Dickerson* bridled at the challenge to its power. *Dickerson*, in an opinion written by Chief Justice Rehnquist, accused Congress, in returning to voluntariness, of intending to "overrule *Miranda*."⁶⁹ Finding an "obvious conflict" between *Miranda* and § 3501, *Dickerson* denied that Congress had the authority to "supersede *Miranda*," declaring, "Congress may not legislatively supersede our decisions interpreting and applying the Constitution."⁷⁰ Therefore, § 3501 had to "yield to *Miranda*'s more specific requirements."⁷¹ *Dickerson* rehabilitated *Miranda* by explicitly declaring it a "constitutional rule," a "constitutional decision of this Court," and a case laying down

United States v. *Dickerson*, 166 F.3d 667, 671 (4th Cir. 1999), *rev'd sub nom.* *Dickerson v. United States*, 530 U.S. 428 (2000).

63. *Id.* at 672.

64. *Id.*

65. *Id.* at 672, 683.

66. *Id.* at 688–89 (alteration in original) (citations omitted).

67. *Id.* at 689.

68. *Dickerson v. United States*, 530 U.S. 428, 432 (2000).

69. *Id.* at 436.

70. *Id.* at 437. *Dickerson* criticized the court of appeals for claiming that "Congress could by statute have the final say on the question of admissibility." *Id.* at 432.

71. *Id.* at 437.

“concrete constitutional guidelines” for courts and police.⁷² *Dickerson* then declined to overrule *Miranda* itself, holding, “*Miranda* and its progeny in this Court govern the admissibility of statements made during custodial interrogation in both state and federal courts.”⁷³

The Court marshalled three arguments to prove *Miranda*'s constitutional status. First, *Dickerson* noted that *Miranda* had consistently imposed its warnings mandate on state courts, which the Court could only do if it was “enforcing the commands of the United States Constitution.”⁷⁴ Second, the Court considered habeas corpus petitions based on *Miranda* violations, and such proceedings were “available only for claims that a person ‘is in custody in violation of the Constitution or laws or treaties of the United States.’”⁷⁵ Third, *Dickerson* explained, *Miranda* itself announced its constitutional status by stating that it was “applying the privilege against self-incrimination to in-custody interrogation, and to give concrete constitutional guidelines for law enforcement agencies and courts to follow.”⁷⁶ *Dickerson* found the *Miranda* opinion to be “replete with statements indicating that the majority thought it was announcing a constitutional rule.”⁷⁷ Thus, Chief Justice Rehnquist, the author of the *Miranda*-is-merely-a-prophylactic-rule cases, *Tucker* and *Quarles*, rushed to support *Miranda*'s bonafides as a constitutional case—which stated the standards of the Fifth Amendment privilege against self-incrimination—when a co-equal branch of government and a lower court attacked the Court's authority as the last word on constitutional interpretation.

After the Court had successfully defended the attack on *Miranda*, it repeatedly relapsed into denigrating the warnings requirement. In *Montejo v. Louisiana*, the Court deemed *Miranda* to be one of “three layers of prophylaxis.”⁷⁸ *Maryland v. Shatzer* claimed, “[T]he Court adopted a set of prophylactic measures to protect a suspect's Fifth Amendment right.”⁷⁹ *J.D.B. v. North Carolina* asserted, “*Miranda* adopted a set of prophylactic measures

72. *Id.* at 432, 439, 444 (quoting *Miranda v. Arizona*, 384 U.S. 436, 441–42 (1966)).

73. *Id.* at 432.

74. *Id.* at 438. *Dickerson* further noted, “Federal judges . . . may not require the observance of any special procedures” in state courts “except when necessary to assure compliance with the dictates of the Federal Constitution.” *Id.* at 438–39 (quoting *Harris v. Rivera*, 454 U.S. 339, 344–45 (1981) (per curiam)).

75. *Id.* at 439 n.3 (quoting 28 U.S.C. § 2254(a)).

76. *Id.* at 439 (quoting *Miranda*, 384 U.S. at 441–42).

77. *Id.* Further, *Dickerson* declared that *Miranda*'s “ultimate conclusion was that the unwarned confessions obtained in the four cases before the Court in *Miranda* ‘were obtained from the defendant under circumstances that did not meet constitutional standards for protection of the privilege.’” *Id.* at 439–40 (quoting *Miranda*, 384 U.S. at 491).

78. 556 U.S. 778, 794 (2009).

79. 559 U.S. 98, 103 (2010).

designed to safeguard the constitutional guarantee against self-incrimination.”⁸⁰ *Howes v. Fields* contended that *Miranda* adopted a “set of prophylactic measures” designed to ward off the “‘inherently compelling pressures’ of custodial interrogation.”⁸¹ None of these post-*Dickerson* cases, however, assailed *Miranda* with the frontal attack that awaited this seminal case in *Vega v. Tekoh*.⁸²

III. VEGA V. TEKOH

A. Facts

In March 2014, a female patient at a hospital in Los Angeles accused Terence Tekoh, a certified nursing assistant, of sexually assaulting her.⁸³ Los Angeles County Sheriff Deputy Carlos Vega, responding to a report from the staff, questioned Tekoh “at length” at the hospital about the incident.⁸⁴ As a result, Tekoh gave a written statement “apologizing for inappropriately touching the patient’s genitals.”⁸⁵ Deputy Vega never provided Tekoh with his *Miranda* rights.⁸⁶ After his trials for unlawful sexual penetration ended first in a mistrial and then in an acquittal, Tekoh sued Deputy Vega and others under 42 U.S.C. § 1983 for violation of his Fifth Amendment right against self-incrimination.⁸⁷

B. The Court’s Opinion

The *Vega* Court considered whether a violation of *Miranda* created a basis for a § 1983 claim, since that statute only provided a cause of action when police deprived a person of “any rights, privileges, or immunities secured by the Constitution and laws.”⁸⁸ *Vega* held that *Miranda* provided no basis for such a claim because, even though it was “constitutionally based,” it was not a

80. 564 U.S. 261, 269 (2011).

81. 565 U.S. 499, 507 (2012) (quoting *Maryland v. Shatzer*, 559 U.S. 98, 103, 130 (2009)).

82. 597 U.S. 134 (2022).

83. *Id.* at 138.

84. *Id.* at 138–39.

85. *Id.* at 139.

86. *Id.* *Miranda* held that officers must inform a suspect in custodial interrogation that: [H]e 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.

Miranda v. Arizona, 384 U.S. 436, 479 (1966).

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

88. *Id.* at 138, 141 (quoting 42 U.S.C. § 1983).

constitutional right in itself.⁸⁹ *Vega* did not see *Miranda* as representing “an explanation of the meaning of the Fifth Amendment right,” but only “a set of rules designed to protect that right.”⁹⁰ Thus, *Miranda* only offered a series of “prophylactic rules” mandated by the Court to preemptively avoid a Fifth Amendment violation.⁹¹

Vega distinguished *Miranda* from the situations where it declared the Fifth Amendment right actually existed.⁹² The Fifth Amendment privilege permitted a person “to refuse to testify against himself at a criminal trial in which he is a defendant,” and to refuse “to answer official questions put to him in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings.”⁹³ Finally, the privilege against self-incrimination barred “the introduction against a criminal defendant of out-of-court statements obtained by compulsion.”⁹⁴

Vega asserted that *Miranda* went beyond these rights to offer “additional procedural protections”—the “now-familiar warnings”—to *prevent* a Fifth Amendment violation during custodial interrogation.⁹⁵ To enforce “these new rules,” *Miranda* declared that any statements obtained without warnings could not be used in the prosecution’s case-in-chief.⁹⁶ *Miranda* thus created only preventative medicine, “procedural safeguards,” or “adequate protective devices” to ward off a violation before it occurred.⁹⁷ Therefore, it was simply wrong to contend that a violation of *Miranda* “constituted a violation of the Fifth Amendment right against compelled self-incrimination.”⁹⁸

Vega asserted that *Miranda* itself did not hold that a violation of its rules necessarily constituted a Fifth Amendment violation.⁹⁹ *Vega* read *Miranda* as distinguishing between the Fifth Amendment itself and “procedures” which

89. *Id.* at 148–49. *Vega* asserted, “If a *Miranda* violation were tantamount to a violation of the Fifth Amendment, our answer would of course be different.” *Id.* at 141.

90. *Id.* at 144.

91. *Id.* at 142. Amazingly, the *Vega* Court mentions “prophylactic” twenty-four times in its opinion, causing the term to verge on a verbal tic. *Id.* at 139–40, 142–51.

92. *Id.* at 142.

93. *Id.* at 141 (quoting *Minnesota v. Murphy*, 465 U.S. 420, 426 (1984)).

94. *Id.*

95. *Id.*

96. *Id.* at 141–42.

97. *Id.* at 142 (quoting *Miranda v. Arizona*, 384 U.S. 436, 457, 467 (1966)).

98. *Id.*

99. *Vega* declared that “*Miranda* did not hold that a violation of the rules it established necessarily constitute a Fifth Amendment violation.” *Id.* The Court noted that the *Miranda* warnings included “components,” such as the right to presence of counsel during questioning, “that do not concern self-incrimination *per se* but are instead plainly designed to safeguard that right.” *Id.*

“safeguard that right.”¹⁰⁰ Since *Miranda* merely created a “judicially crafted rule,” such a tool should be employed only when its benefits outweighed its costs.¹⁰¹ Indeed, the post-*Miranda* cases *Vega* cited employed this cost-benefit balancing in applying *Miranda*’s prophylactic rules.¹⁰² Thus, all *Miranda* did was create a shield needed to protect the Fifth Amendment right against compelled self-incrimination.¹⁰³ Since *Miranda*’s warnings were “required to safeguard that constitutional right,” *Miranda* was, in this narrow sense only, a “constitutional decision” which adopted a “constitutional rule.”¹⁰⁴ This “constitutional prophylactic rule” had “the status of a ‘La[w] of the United States’ that is binding on the States under the Supremacy Clause.”¹⁰⁵ *Vega* had found in *Miranda* a rule creating the best of both worlds: the *Miranda* rule was vulnerable to the Court’s whim because it was not a constitutional right, but this same rule was impervious to challenge by the states because it fell within the Supremacy Clause.¹⁰⁶ Thus, *Vega* protected *Miranda* from meddling by any other court or government branch while opening the door to ending *Miranda* whenever it wished.¹⁰⁷

IV. DISCERNING *MIRANDA*’S ORIGINAL INTENT, BY APPRECIATING THE STATEMENTS OF THOSE WHO SIGNED ITS MAJORITY OPINION, ESTABLISHES THAT THE *MIRANDA* COURT MEANT TO CREATE A CONSTITUTIONAL RIGHT

When the Court has sought to fully understand a constitutional right, it has been known to consider its historical context. In *Marsh v. Chambers*, a case interpreting the Establishment Clause of the First Amendment, the Court explained, “An act ‘passed by the first Congress assembled under the Constitution, many of whose members had taken part in framing that instrument, . . . is contemporaneous and weighty evidence of its true

100. *Id.* *Vega* stated, “At no point in the opinion did the Court state that a violation of its new rules constituted a violation of the Fifth Amendment right against compelled self-incrimination. Instead, it claimed only that those rules were needed to safeguard that right during custodial interrogation.” *Id.*

101. *Vega* noted, “A judicially crafted rule is ‘justified only by reference to its prophylactic purpose,’ . . . and applies only where its benefits outweigh its costs.” *Id.* at 144 (quoting *Maryland v. Shatzer*, 559 U.S. 98, 106 (2009)).

102. *Vega* stated, “Thus, all the post-*Miranda* cases we have discussed acknowledged the prophylactic nature of the *Miranda* rules and engaged in cost-benefit analysis to define the scope of these prophylactic rules.” *Id.* at 148.

103. *Id.* at 149.

104. *Id.*

105. *Id.* (alteration in original) (quoting *Dickerson v. United States*, 530 U.S. 428, 491–94, 497–99 (2000)).

106. *Id.*

107. *Vega* ruled that “a violation of *Miranda* is not itself a violation of the Fifth Amendment.” *Id.* at 152.

meaning.”¹⁰⁸ The Justices have also studied the word choice and actions of the Constitution’s drafters and the members of the First Congress to interpret the Fifth Amendment privilege against self-incrimination. In *United States v. Hubble*, Justices Thomas and Scalia, advocates of originalism, scrutinized James Madison’s substitution of the phrase “to be a witness” in his drafting of the Fifth Amendment for the proposed language “to give evidence” and “to furnish evidence.”¹⁰⁹ Further, these Justices considered it significant that “Madison’s unique phrasing” failed to attract “attention, much less opposition, in Congress, the state legislatures that ratified the Bill of Rights, or anywhere else.”¹¹⁰ Here, the action—even the inaction—of drafters, other participants, and contemporaries was crucial to a true understanding of the Fifth Amendment privilege against self-incrimination. The Court, in *Kastigar v. United States*, had likewise assessed another Fifth Amendment issue, immunity, by studying the actions of the first Congress because it was populated by several framers.¹¹¹ As recently as 2021, Justice Gorsuch emphasized the importance of adhering to the “Constitution’s original and ordinary meaning.”¹¹²

It is therefore quite curious that the *Vega* Court did not take full advantage of the drafters’ actions, words, intent, and context when interpreting the historic decision, *Miranda v. Arizona*. *Vega*’s failure to study the original meaning of *Miranda* is all the more baffling when it is realized that evidence for *Miranda*, being only a half-century distant, is all the easier to access and comprehend than texts from the eighteenth century.¹¹³ Furthermore, members of the Court which decided *Miranda* hardly hid their views.

The Justice who presented the best evidence to aid *Vega* in understanding *Miranda* was William J. Brennan Jr.¹¹⁴ Justice Brennan was neither shy nor

108. *Id.* at 463 U.S. 783, 790 (1983) (quoting *Wisconsin v. Pelican Ins. Co.*, 127 U.S. 265, 297 (1888)).

109. 530 U.S. 27, 52–53 (2000) (Thomas, J. dissenting).

110. *Id.* at 53.

111. 406 U.S. 441, 444–45 (1972). A final example of the Court seeking guidance from actual participants when interpreting the law is offered in *Delaware v. Van Arsdall*, in which the Court considered the actions of “‘the first Congress assembled under the Constitution,’ whose members had ‘taken part in framing that instrument,’” to understand concerns regarding federal rights. 475 U.S. 673, 694–95 (1986) (quoting *Pelican Ins. Co.*, 127 U.S. at 297).

112. *Torres v. Madrid*, 141 S. Ct. 989, 1003 (2021) (Gorsuch, J., dissenting). Justice Alito, the author of *Vega*’s opinion, joined Justice Gorsuch’s dissent in *Torres*. *Id.*

113. The Supreme Court decided *Miranda* in 1966. *Miranda v. Arizona*, 384 U.S. 436 (1966).

114. See generally *Oregon v. Elstad*, 470 U.S. 298 (1985) (Brennan, J., dissenting). Justice Brennan was deeply involved in creating the *Miranda* decision. He had “the following exchange” with the Chief Justice about *Miranda*: “Earl Warren: ‘The root problem is the role society must assume, consistent with the federal constitution, in prosecuting individuals for crime.’ Justice Brennan: ‘I would suggest that the root issue is the restraints society must observe consistent with the federal constitution, in prosecuting individuals for crime.’” Deborah A. Roy, *Justice William J. Brennan, Jr.*, *James Wilson*,

subtle about his views on the nature of *Miranda*, for he explained them in detail in his dissenting opinion, spanning forty-six pages, in *Oregon v. Elstad*.¹¹⁵ Time and again, Justice Brennan clearly established that *Miranda* itself created a constitutional right.¹¹⁶ In *Elstad*, two officers holding an arrest warrant for burglary visited eighteen-year-old Michael Elstad at his home.¹¹⁷ While the first officer took Elstad's mother into the kitchen, the second officer questioned Elstad in the living room about the burglary, without *Miranda* warnings, obtaining incriminating statements.¹¹⁸ The officers then took Elstad to the station, provided him *Miranda* warnings, and obtained a second incriminating statement.¹¹⁹ In court, Elstad moved to suppress the second statement, contending that the first, unwarned statement had tainted it.¹²⁰ *Elstad* held, "[A] suspect who has once responded to unwarned yet uncoercive questioning is not thereby disabled from waiving his rights and confessing after he has been given the requisite *Miranda* warnings."¹²¹ *Elstad* thus allowed a statement tainted by a *Miranda* violation to be cleansed by a later rendition of the warnings and therefore be available to impeach a testifying defendant.¹²² Justice Brennan responded to *Elstad*'s ruling with incredulity, declaring that the Court, "faced with an obvious violation of *Miranda*," allowed in an *illegally* obtained confession, believing the police acted "legitimately" by avoiding "improper tactics."¹²³ In so ruling, the *Elstad* Court misunderstood *Miranda*.

To put the Court back on the right path, Justice Brennan started at the beginning, explaining, "The Self-Incrimination Clause of the Fifth Amendment guarantees every individual that, if taken into official custody, he shall be informed of important constitutional rights and be given the opportunity knowingly and voluntarily to waive those rights before being interrogated about

and the Pursuit of Equality and Liberty, 61 CLEV. ST. L. REV. 665, 687 (2013). In *Miranda*, Chief Justice Warren opened the opinion with Justice Brennan's words: "The cases before us raise questions which go to the roots of our concepts of American criminal jurisprudence: the restraints society must observe consistent with the Federal Constitution in prosecuting individuals for crime." *Id.* at 687 n.152 (quoting *Miranda*, 384 U.S. at 439).

115. *Elstad*, 470 U.S. at 318–64.

116. Justice Brennan explicitly stated, "The Fifth Amendment requires that an accused in custody be informed of important constitutional rights before the authorities interrogate him." *Id.* at 347. Further, he noted, "Far from serving merely as a prophylactic safeguard, "[t]he requirement of warnings and waiver of rights is a fundamental with respect to the Fifth Amendment privilege." *Id.* at 348 (quoting *Miranda*, 384 U.S. at 476).

117. *Id.* at 300–01.

118. *Id.*

119. *Id.* at 301.

120. *Id.* at 302.

121. *Id.* at 318.

122. *Id.*

123. *Id.* at 355.

suspected wrongdoing.”¹²⁴ Here, Justice Brennan explicitly characterized *Miranda* as part of the constitutional guarantee under the Fifth Amendment. *Miranda* was a necessary constitutional right because it served the fundamental purpose of preserving the nation’s adversarial system of justice.¹²⁵ In criticizing *Elstad*’s distortion of *Miranda*, Justice Brennan accused the Court of engaging in “a studied campaign to strip the *Miranda* decision piecemeal and to undermine the rights *Miranda* sought to secure,” a process *Vega* seemed eager to complete.¹²⁶

Justice Brennan condemned, as a “potentially crippling blow to *Miranda*,” *Elstad*’s removal of the remedy of exclusion for a *Miranda* violation.¹²⁷ He worried that if a violation of *Miranda* could “not be remedied through the well-established rules respecting derivative evidence,” then a constitutional right could be debased into “nothing more than a mere ‘form of words.’”¹²⁸ Justice Brennan made *Miranda*’s status as a constitutional right abundantly clear, declaring, “The Fifth Amendment requires that an accused in custody be informed of important constitutional rights before the authorities interrogate him.”¹²⁹ He emphatically rejected the notion that *Miranda* was “merely” a “prophylactic safeguard,” considering its requirements as “fundamental with respect to the Fifth Amendment privilege.”¹³⁰ Justice Brennan explained, “It is precisely because this requirement embraces rights that are deemed to serve a ‘central role in the preservation of basic liberties,’ that it is binding on the States through the Fourteenth Amendment.”¹³¹ He also addressed the arguments later advanced by *Vega* that *Miranda* was not itself a Fifth Amendment right because it provided only “‘recommended’ procedural safeguards ‘to provide practical reinforcement for the right against compulsory self-incrimination.’”¹³² He deemed such characterizations as “erroneous” because “*Miranda*’s requirement of warnings and an effective waiver was not merely an exercise of supervisory

124. *Id.* at 318–19.

125. “This guarantee embodies our society’s conviction that ‘no system of criminal justice can, or should, survive if it comes to depend for its continued effectiveness on the citizens’ abdication through unawareness of their constitutional rights.’” *Id.* at 319 (quoting *Escobedo v. Illinois*, 378 U.S. 478, 490 (1964)).

126. *Id.*

127. *Id.*

128. *Id.* at 320 (quoting *Silverthorne Lumber Co. v. United States*, 251 U.S. 385, 392 (1920)).

129. *Id.* at 347.

130. *Id.* at 348.

131. *Id.* (quoting *Malloy v. Hogan*, 378 U.S. 1, 5 (1964)).

132. *Id.* (quoting *Michigan v. Tucker*, 417 U.S. 433, 442–44 (1974)). *Vega* echoed these arguments by urging that *Miranda* was merely a procedural safeguard rather than a constitutional right. *Vega v. Tekoh*, 597 U.S. 134, 142, 149 (2022).

authority over interrogation practices.”¹³³ Justice Brennan concluded that since “the Fifth Amendment itself requires the exclusion of evidence proximately derived from a confession obtained in violation of *Miranda*,” *Elstad* “evaded this constitutional command.”¹³⁴ Further, Justice Brennan’s understanding of *Miranda*’s constitutional stature was not a newly formed notion. Early on, he saw *Miranda* as not only constitutional, but monumental.¹³⁵ In a memorandum Justice Brennan wrote while *Miranda* was being decided, he declared that *Miranda* “will be one of the most important opinions of our time.”¹³⁶

Justice Brennan identified another fundamental flaw in *Elstad*’s reasoning: the Court was startlingly unaware of the “practical realities” of police interrogation.¹³⁷ He found *Elstad*’s “marble-palace psychoanalysis” to be “completely out of tune with the experience of state and federal courts.”¹³⁸ The Court, Justice Brennan noted, chose to ignore the fact that custodial interrogation had supplanted questioning by the committing magistrate, creating compulsions to speak even greater than those in a courtroom due to the lack of “impartial observers to guard against intimidation or trickery.”¹³⁹ The Court that handed down the *Miranda* decision, in contrast, was all too aware of the practical realities of custodial interrogation. The *Miranda* opinion was authored by Chief Justice Warren, a former prosecutor.¹⁴⁰ In fact, “[b]efore becoming governor of California, Warren had spent twenty-two years in law enforcement: five as a deputy district attorney (1920-25), thirteen as head of the Alameda County District Attorney’s Office (1925-38), and four as state attorney general (1939-42).”¹⁴¹

Chief Justice Warren, when a prosecutor, personally interrogated suspects, once taking the witness stand to defend the confession he had obtained.¹⁴² Many

133. *Elstad*, 470 U.S. at 348. On these points, Justice Brennan quoted Justice Douglas, “*Miranda*’s purpose was not promulgation of judicially preferred standards for police interrogation, a function we are quite powerless to perform; the decision enunciated ‘constitutional standards for protection of the privilege’ against self-incrimination.” *Id.*

134. *Id.* at 354.

135. Bernard Schwartz, *Chief Justice Earl Warren: Super Chief in Action*, 33 TULSA L.J. 477, 495 (1997).

136. *Id.* (quoting BERNARD SCHWARTZ, *SUPER CHIEF: EARL WARREN AND HIS SUPREME COURT—A JUDICIAL BIOGRAPHY* 593 (1983)).

137. *Elstad*, 470 U.S. at 320, 324 (Brennan, J., dissenting). Justice Brennan referred to the “realities” or “experience” practicality undergirding *Miranda*, or escaping the *Elstad* Court, six times. *Id.* at 320, 324, 328, 329, 332, 353.

138. *Id.* at 324.

139. *Id.* at 353 (quoting *Miranda v. Arizona*, 382 U.S. 436, 461 (1966)).

140. Yale Kamisar, *How Earl Warren’s Twenty-Two Years in Law Enforcement Affected His Work as Chief Justice*, 3 OHIO ST. J. CRIM. L. 11, 24 (2005).

141. *Id.* at 11–12.

142. *Id.* at 12.

of his interrogations occurred during the 1930s, an “era of the third degree.”¹⁴³ “[A]s a result of his experiences as a prosecuting attorney,” confessions obtained during police interrogation “aroused Warren’s strongest emotions.”¹⁴⁴ The seeds of Chief Justice Warren’s *Miranda* opinion might have been his “own understanding of the decisive imbalance” between the professional questioner and the “isolated suspect.”¹⁴⁵ Chief Justice Warren, however, refused to base *Miranda* solely on balancing the power between suspect and officer. During oral argument, when Duane R. Nedrud, amicus curiae for the National District Attorneys Association, suggested that the Court might be aiming “to equalize, for example, the defendant’s right against the policemen,” the Chief Justice rejected the idea of “equalizing anything or balancing anything,” instead explicitly basing the issue “on protecting the Constitutional rights of the defendant, not to be compelled to convict himself on his own testimony.”¹⁴⁶ The issues involving custodial interrogation were so important to Chief Justice Warren that the case came to the Court as a result of his own initiative.¹⁴⁷ He had “instructed his law clerks that year to be on the lookout for a case raising the *Miranda* issue, saying, ‘I think we are going to end up taking [such a] case this year.’”¹⁴⁸ During argument, the Chief Justice stated that “this [case] is not much different from *Gideon*,” a case of unquestioned constitutional dimension.¹⁴⁹ When assigning *Miranda*, Chief Justice Warren chose himself to be the author of this historic opinion.¹⁵⁰

143. *Id.* at 23.

144. *Id.* at 24 (quoting G. EDWARD WHITE, EARL WARREN: A PUBLIC LIFE 266 (1982)).

145. *Id.* (quoting WHITE, *supra* note 144, at 272).

146. LIVA BAKER, MIRANDA: CRIME, LAW AND POLITICS 141 (1983). Duane R. Nerud was amicus curiae for the National District Attorneys Association. Brief of Nat’l Dist. Att’y Ass’n as Amici Curiae Supporting Respondents, *Miranda v. Arizona*, 384 U.S. 436 (1966), 1966 WL 100515.

147. Schwartz, *supra* note 135, at 493.

148. *Id.* (quoting ED CRAY, CHIEF JUSTICE: A BIOGRAPHY OF EARL WARREN 455 (1997)).

149. *Id.* at 495 (quoting SCHWARTZ, *supra* note 136, at 592).

150. Chief Justice Earl Warren, in retiring from the Court in 1969, three years after *Miranda*, did not have the opportunity to respond to the Court’s reinterpretation of *Miranda* in later decisions, such as *Elstad*. *Earl Warren*, OYEZ, https://www.oyez.org/justices/earl_warren [<https://perma.cc/BR6T-D4LV>]. Likewise, Justice Abe Fortas resigned from the Court in 1969. *Abe Fortas*, OYEZ, https://www.oyez.org/justices/abe_fortas [<https://perma.cc/9RE6-2BPC>]. Justice Fortas did express his view of the enormous stakes involved in *Miranda* during oral argument. He put the issues of *Miranda* in the context of the Magna Carta and the Bill of Rights:

I suppose that if one tries to look at this philosophically and morally in terms of the great human adventure toward some kind of truly civilized order, that these great provisions in the Magna Carta and in our own Bill of Rights were designed to do two things: one, to eliminate even the unusual case of an unjustified conviction, and, two, to lay out a standard for a relationship between the state, vis-à-vis the individual.

I think that perhaps one has to consider what we are dealing with here is not just the criminal in society, but it is the problem of the relationship of the state and

Finally, Justice Brennan, who served with Chief Justice Warren on the Supreme Court for thirteen years and considered him a “cherished friend,”¹⁵¹ understood that a “thread of concern for human dignity” ran through the Chief Justice’s “famous decisions.”¹⁵² Justice Brennan explained that Chief Justice Warren wrote *Miranda* “as a step toward enforcing a constitutional framework of criminal justice consistent with human dignity and democratic equality by mandating enlightened and civilized treatment by law enforcement officers of criminal suspects.”¹⁵³ Before serving as Chief Justice, Warren, as District Attorney of Alameda County in California, sought to professionalize deputy district attorneys and police officers.¹⁵⁴ District Attorney Warren’s deputies “were so hard-working and so determined to avoid any trickiness or any unfairness in dealing with defendants that they earned a reputation around the courthouse as the ‘Boy Scouts.’”¹⁵⁵ Thus, when Chief Justice Warren wrote *Miranda*, he likely aimed at a fundamental correction of constitutional interpretation that would help preserve the nation’s criminal justice system.

Justice Douglas, who also joined the *Miranda* opinion, explicitly declared that *Miranda* provided “constitutional guarantees.”¹⁵⁶ Justice Douglas offered this pronouncement when he dissented in *Michigan v. Tucker*, a case in which police questioned a rape suspect before the *Miranda* decision had been decided.¹⁵⁷ When officers questioned the suspect, he offered an alibi witness who later discredited him.¹⁵⁸ Since officers had failed to fully advise their suspect of his *Miranda* rights, his statement was excluded at trial.¹⁵⁹ However, the prosecution obtained a conviction by using the testimony at trial of the witness the suspect revealed to police in the unwarned statement.¹⁶⁰ The *Tucker* Court found no *Miranda* violation, finding, “the police conduct at issue here did not abridge respondent’s constitutional privilege against compulsory self-incrimination, but departed only from the prophylactic standards later laid down by this Court in *Miranda* to safeguard that privilege.”¹⁶¹

the individual, in the large and total philosophical sense, viewed in the light of the history of mankind, part of that history being the Magna Carta and the Bill of Rights.

BAKER, *supra* note 146, at 143.

151. Roy, *supra* note 114, at 687 n.152.

152. William J. Brennan, Jr., *Chief Justice Warren*, 88 HARV. L. REV. 1, 3 (1974).

153. *Id.*

154. Kamisar, *supra* note 140, at 12.

155. *Id.* (internal citations omitted).

156. *Michigan v. Tucker*, 417 U.S. 433, 465 (1974) (Douglas, J., dissenting).

157. *Id.* at 435.

158. *Id.* at 436.

159. *Id.* at 447–48. *Tucker* noted, “*Miranda* is applicable to this case.” *Id.* at 435.

160. *Id.* at 437.

161. *Id.* at 445–46.

Justice Douglas understood *Tucker* as contending that “the rule is not a right or privilege accorded to defendants charged with crime but is a sort of punishment against officers in order to keep them from depriving people of their constitutional rights.”¹⁶² He responded, “*Miranda*’s purpose was not promulgation of judicially preferred standards for police interrogation, a function we are quite powerless to perform; the decision enunciated ‘constitutional standards for protection of the privilege’ against self-incrimination.”¹⁶³

Justice Douglas saw *Tucker* as a person jailed with “unconstitutionally derived evidence.”¹⁶⁴ *Tucker* therefore was “entitled to a new trial, with the safeguards the Constitution provides.”¹⁶⁵ Justice Douglas, in directly confronting the claim that *Miranda* was merely a prophylactic rule, flatly rejected such a novel characterization, instead deeming *Miranda* a “constitutional guarantee[.]”¹⁶⁶ He declared:

I cannot agree when the Court says that the interrogation here ‘did not abridge respondent’s constitutional privilege against compulsory self-incrimination, but departed only from the prophylactic standards later laid down by this Court in *Miranda* to safeguard that privilege.’ The Court is not free to prescribe preferred modes of interrogation absent a constitutional basis. We held the ‘requirement of warnings and waiver of rights (to be) fundamental with respect to the Fifth Amendment privilege.’¹⁶⁷

This signer of *Miranda* therefore unequivocally announced, in clear and plain language, that the warnings requirement was a constitutional right. Justice Douglas’s insight offered a refreshing contrast to *Vega*’s dubious distinctions between a “constitutional right” and a “constitutional decision” or a “constitutional rule.”¹⁶⁸

162. *Id.* at 465 (Douglas, J., dissenting).

163. *Id.* at 465–66 (quoting *Miranda v. Arizona*, 384 U.S. 436, 491 (1966)).

164. *Id.* at 466.

165. *Id.*

166. *Id.* at 465.

167. *Id.* at 462 (quoting first *id.* at 446; then quoting *Miranda*, 384 U.S. at 476).

168. *Vega v. Tekoh*, 597 U.S. 134, 149 (2022). Justice Douglas referred to the constitutional stature of *Miranda* in other cases. In his concurring opinion in *Coleman v. Alabama*, Justice Douglas noted that *Miranda* was concerned with “the use of custodial interrogation to exact incriminating statements against the commands of the Fourteenth and Fifth Amendments.” 399 U.S. 1, 16–17 (1970) (Douglas, J., concurring) (footnote omitted). Further, in his dissent in *Riddell v. Rhay*, Justice Douglas explained, “It is undeniable that *Miranda* was predicated in part upon a deep concern for discouraging coercive police practices. Eleven pages of the opinion are devoted to an examination of police interrogation procedures.” 404 U.S. 974, 975 (1971) (Douglas, J., dissenting). “They compel the conclusion that ‘without proper safeguards the process of in-custody interrogation of persons suspected

Justice Black, another member of the *Miranda* Court, also declared *Miranda* a constitutional right.¹⁶⁹ Writing for the Court in *Orozco v. Texas*, Justice Black considered a case in which Orozco shot a man to death for speaking with his female companion.¹⁷⁰ At 4:00 a.m., officers entered Orozco's bedroom, arrested him, and then questioned him without providing *Miranda* warnings.¹⁷¹ Orozco then made incriminating statements leading officers to find the gun he used in the murder.¹⁷² *Orozco* found that *Miranda* precluded the admission of Orozco's statements.¹⁷³ Justice Black declared, "We . . . hold that the use of these admissions obtained in the absence of the required warnings was a flat violation of the Self-Incrimination Clause of the Fifth Amendment as construed in *Miranda*."¹⁷⁴ Thus, Justice Black, speaking in absolute terms, equated *Miranda* with the Fifth Amendment privilege against self-incrimination. Further, he considered the questions involving *Miranda* to be closed, noting the Court's decision in that case "was reached after careful consideration and lengthy opinions were announced by both the majority and dissenting Justices."¹⁷⁵ Therefore, "[t]here is no need to canvass those arguments again."¹⁷⁶ Justice White, who dissented in *Miranda*, again dissented in *Orozco*, claiming that the Court was extending *Miranda*'s rules.¹⁷⁷ Justice Black responded, "We do not, as the dissent implies, expand or extend to the slightest extent our *Miranda* decision. We do adhere to our well-considered holding in that case and therefore reverse the conviction below."¹⁷⁸ Thus, in the strongest terms, a member of the *Miranda* Court emphatically signaled that *Miranda* was a constitutional right and that, as early as 1969, he had grown tired of relitigating its decided issues.

The *Vega* Court, however, dismissed *Orozco* as "a three-paragraph opinion without any additional analysis."¹⁷⁹ *Vega* further disparaged the *Orozco* Court because it "did not purport to go beyond *Miranda*, which . . . does not support the proposition that a *Miranda* violation equates to a Fifth Amendment

or accused of crime contains inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely." *Id.* (quoting *Miranda*, 384 U.S. at 467). "It is, of course, just this kind of testimonial compulsion that the Fifth Amendment, made applicable to the States by the Fourteenth, proscribes." *Id.*

169. *Orozco v. Texas*, 394 U.S. 324, 326 (1969).

170. *Id.* at 325.

171. *Id.* at 325–26.

172. *Id.* at 325.

173. *Id.* at 325–26.

174. *Id.* at 326 (emphasis added).

175. *Id.* at 327.

176. *Id.*

177. *Id.* at 329 (White, J., dissenting).

178. *Id.* at 327 (footnote omitted).

179. *Vega v. Tekoh*, 597 U.S. 134, 143 n.2 (2022).

violation.”¹⁸⁰ Finally, *Vega* complained that *Orozco* had the temerity to hand down its decision before “the subsequent case law defining the scope of the *Miranda* rules.”¹⁸¹ The liberties that *Vega* took here with *Orozco* are both galling and breathtaking. As Justice Black clearly indicated, he wrote a three-page opinion because *Miranda* had been so carefully considered by all those involved that it did not need to be relished.¹⁸² The fact that *Orozco* “did not purport to go beyond *Miranda*,” rather than being a failing, is a benefit; the case has special importance as a true restatement of the original *Miranda* opinion.¹⁸³ The Justices signing *Vega*, who have prided themselves on respecting original intent and meaning, were effectively telling a member of the *Miranda* decision that they know more about what *Miranda* means than a person who read the briefs, heard oral arguments, participated in the conferences discussing the decision, and signed the *Miranda* opinion. Finally predating a later decision here should not be a weakness but a strength; to truly understand *Miranda*, one should consider cases that have not suffered the accretions of decades of misinterpretations. Perhaps understanding such concerns, *Vega* buried these arguments in a footnote rather than expose them in the body of its opinion.¹⁸⁴

The final Justice who possessed crucial insight into *Miranda*, Justice Marshall, was not a member of the *Miranda* Court. Justice Marshall, however, was intimately familiar with *Miranda* because, as Solicitor General, he made final arguments before the Court in the case.¹⁸⁵ Moreover, he served as an Associate Justice with Chief Justice Warren, the author of *Miranda*, as well as the Justices who joined the *Miranda* majority opinion, likely learning their views of *Miranda* firsthand.¹⁸⁶ Justice Marshall offered some of the most emphatic statements affirming *Miranda*'s constitutional status.¹⁸⁷ He resisted any restricted interpretation of *Miranda*, noting that “the privilege against self-incrimination ‘has always been as broad as the mischief against which it seeks

180. *Id.*

181. *Id.*

182. *Orozco*, 394 U.S. at 327. Likewise, in *Mathis v. United States*, Justice Black deemed *Miranda*'s conclusions to be “well-considered.” 391 U.S. 1, 4 (1968).

183. *See Vega*, 597 U.S. at 143 n.2.

184. *See id.*; *see also id.* at 146 n.3.

185. Memorandum from J. Edgar Hoover, FBI, Dir., to Thurgood Marshall, Solic. Gen. (Mar. 2, 1966), <https://www.loc.gov/static/research-centers/law-library-of-congress/images/libguides/miranda/j-edgar-hoover-memo-to-solicitor-general-thurgood-marshall.pdf> [https://perma.cc/RR3Y-HN8Y]; BAKER, *supra* note 146, at 145.

186. Justice Marshall served from 1967 to 1991. His service overlapped with the members who signed the *Miranda* opinion as follows: Chief Justice Warren (1953–1969), Justice Black (1937–1971), Justice Brennan (1956–1990), Justice Douglas (1939–1975), and Justice Fortas (1965–1969). *Justices 1789-Present*, SUP. CT. OF THE U.S., https://www.supremecourt.gov/about/members_text.aspx [https://perma.cc/8PPY-PQZJ].

187. *See Duckworth v. Eagan*, 492 U.S. 195, 214 (1989) (Marshall, J., dissenting).

to guard.”¹⁸⁸ He saw *Miranda* as a “constitutional claim,”¹⁸⁹ and referred to “*Miranda*’s protections against self-incrimination” as one of the “fundamental constitutional rights.”¹⁹⁰ In his dissent in *Duckworth v. Eagan*, Justice Marshall rejected the Court’s characterization of *Miranda* as a procedural rule lacking constitutional authority by declaring, “I have never accepted the proposition that there is any such a thing as a ‘nonconstitutional’ *Miranda* claim based on ‘voluntary’ statements.”¹⁹¹ He explained, “The explicit premise of *Miranda* is that, unless a suspect taken into custody is properly advised of his rights, ‘no statement obtained from the [suspect] can truly be the product of his free choice’ as a matter of federal constitutional law.”¹⁹² He concluded that, even though *Miranda* had generated “technical rules,” its protection involved “fundamental principles embodied in the Self-Incrimination Clause.”¹⁹³

V. *MIRANDA*’S OWN LANGUAGE CONFLICTS WITH *VEGA*’S CONCLUSION THAT THE WARNING REQUIREMENT WAS ONLY A PROPHYLACTIC RULE RATHER THAN A CONSTITUTIONAL RIGHT

A. *The Miranda Rule Was Crucial to Correcting the Relationship Between the Government and the People*

The *Vega* Court, from a fifty-six year distance, formed a curiously contracted view of *Miranda* as merely fashioning a “judicially crafted rule” which could only be used prophylactically when “its benefits outweigh its costs.”¹⁹⁴ In contrast, Chief Justice Warren, *Miranda*’s author, described the case, in his first line, as focusing on the fundamental relationship between the government and the individual.¹⁹⁵ *Miranda* explored “the roots of our concepts of American criminal jurisprudence” because it considered “the restraints society must observe consistent with the Federal Constitution in prosecuting individuals for crime.”¹⁹⁶ *Miranda* envisioned its ruling as one part of the great history of the Fifth Amendment privilege, “which groped for the proper scope of governmental power over the citizen.”¹⁹⁷ The Warren Court, repudiating the idea that the privilege against self-incrimination was “a mere rule of

188. *Oregon v. Mathiason*, 429 U.S. 492, 499 (1977) (Marshall, J., dissenting) (quoting *Miranda v. Arizona*, 384 U.S. 436, 459–60 (1966)).

189. *Oregon v. Hass*, 420 U.S. 741, 726 (1975) (Marshall, J., dissenting).

190. *Colorado v. Spring*, 479 U.S. 564, 578 (1987) (Marshall, J., dissenting).

191. 492 U.S. 195, 226 (1989) (Marshall, J., dissenting).

192. *Id.* (quoting *Miranda*, 384 U.S. at 458).

193. *Id.* at 226–27.

194. *Vega v. Tekoh*, 597 U.S. 134, 144 (2022) (quoting *Maryland v. Shatzer*, 559 U.S. 98, 106 (2010)).

195. *Miranda*, 384 U.S. at 439.

196. *Id.*

197. *Id.* at 460.

evidence,”¹⁹⁸ explained that the privilege involved “an unchangeable principle of universal justice,” because it was “one of the ‘principles of a free government.’”¹⁹⁹ The Chief Justice asserted “the constitutional foundation underlying the privilege is the respect a government—state or federal—must accord to the dignity and integrity of its citizens. To maintain a ‘fair state-individual balance,’ to require the government ‘to shoulder the entire load.’”²⁰⁰

Miranda was therefore linked to one of the most profound concerns of government, the “right to a private enclave where [a person] may lead a private life. That right is the hallmark of our democracy.”²⁰¹

B. Miranda Created a Constitutional Right Meant to be a Link in the Long Chain of History Interpreting the Privilege Against Self-Incrimination

Miranda saw itself as forging a link in a chain of fundamental rights stretching back to “ancient times.”²⁰² Chief Justice Warren declared, “It is fitting to turn to history and precedent underlying the Self-Incrimination Clause to determine its applicability in this situation.”²⁰³ This was because “[w]e sometimes forget how long it has taken to establish the privilege against self-incrimination, the sources from which it came and the fervor with which it was defended.”²⁰⁴ Rather than offer some “innovation” or craft merely a procedural rule, the Court granted certiorari to explore the application of “the privilege against self-incrimination to in-custody interrogation.”²⁰⁵ *Miranda*’s holding applied “long recognized” principles that the Court linked to past “centuries of persecution and struggle” as well as to future “ages to come.”²⁰⁶ Understanding that it was deciding a constitutional right that was “designed to approach immortality as nearly as human institutions can approach it,” *Miranda* reviewed

198. *Malloy v. Hogan*, 378 U.S. 1, 9 (1964).

199. *Id.* (quoting *Boyd v. United States*, 116 U.S. 616, 632 (1886)).

200. *Miranda*, 384 U.S. at 460 (quoting 8 JOHN HENRY WIGMORE, EVIDENCE IN TRIALS AT COMMON LAW § 2251, at 317 (John T. McNaughton ed., rev. ed. 1961)).

All these policies point to one overriding thought: . . . to respect the inviolability of the human personality, our accusatory system of criminal justice demands that the government seeking to punish an individual produce the evidence against him by its own independent labors, rather than by the cruel, simple expedient of compelling it from his own mouth. In sum, the privilege is fulfilled only when the person is guaranteed the right ‘to remain silent unless he chooses to speak in the unfettered exercise of his own will.’

Id. (citations omitted) (quoting *Malloy*, 378 U.S. at 8).

201. *Id.* (quoting *United States v. Grunewald*, 233 F. 2d 556, 579, 581–82 (2d Cir. 1956) (Frank, J. dissenting), *rev’d sub nom.* *Grunewald v. United States*, 353 U.S. 391 (1957)).

202. *Id.* at 458.

203. *Id.*

204. *Id.*

205. *Id.* at 441.

206. *Id.* at 442.

English jurisprudence and the American colonial experience.²⁰⁷ *Miranda* even delved into the Star Chamber proceedings against John Lilburn, who declared that “no man’s conscience ought to be racked by oaths imposed, to answer to questions concerning himself in matters criminal, or pretended to be so.”²⁰⁸ Far from crafting a rule of technical procedure to be used only when not too costly, the Court thus saw its holding as part of the “noble heritage” of Anglo-American jurisprudence.²⁰⁹

C. *Miranda Repeatedly Emphasized the Constitutional Nature of Its Holding*

In contrast to *Vega*’s claim that “a violation of *Miranda* is not itself a violation of the Fifth Amendment,”²¹⁰ Chief Justice Warren viewed *Miranda* as presenting “principles” which protected “the privilege against self-incrimination” when an individual was placed in custodial interrogation.²¹¹ *Miranda* declared its warnings as “concrete constitutional guidelines for law enforcement agencies and courts to follow,” and concerned itself with “the necessity for procedures which assure that the individual is accorded his privilege under the Fifth Amendment to the Constitution not to be compelled to incriminate himself.”²¹² While *Miranda* spoke in terms of “procedures,” such word choice could not somehow doom its ruling to a sub-constitutional-but-still-federal-law limbo.²¹³ Many of the constitutional rights housed in the Bill of Rights are procedural; such a designation does not somehow disqualify them from being constitutional rights.²¹⁴ *Miranda* created its procedural rule to prevent police from manipulating a person into abdicating a constitutional privilege.²¹⁵ The *Miranda* warnings acted as an integral part of the Fifth Amendment privilege because, without them, the right provided suspects nothing but a hollow promise rather than a genuine opportunity to choose “between silence and speech.”²¹⁶ Quite simply, “[u]nless adequate protective devices are employed to dispel the compulsion inherent in custodial surroundings, no statement obtained from the defendant can truly be the product

207. *Id.* *Miranda* further noted that the States “made a denial of the right to question an accused person a part of their fundamental law.” *Id.* at 443.

208. *Id.* at 459 (quoting THE LEVELLER TRACTS: 1647–1653, at 454 (William Haller & Godfrey Davies eds., 1944)).

209. *Id.* at 460.

210. *Vega v. Tekoh*, 597 U.S. 134, 152 (2022).

211. *Miranda*, 384 U.S. at 477.

212. *Id.* at 439, 442.

213. Timothy Zick, *Restroom Use, Civil Rights, and Free Speech “Opportunism,”* 78 OHIO ST. L.J. 963, 991 (2017).

214. Many of the Bill of Rights are “procedural” in nature, in the sense that they define and constrain the process by which governments can arrest, try, or punish individuals.” *Id.*

215. *Miranda*, 384 U.S. at 459, 465.

216. *Id.* at 469.

of his free choice.”²¹⁷ Further, the Court explicitly linked procedure with rights by noting that the framers themselves were aware that “illegitimate and unconstitutional practices get their first footing” through “silent approaches and slight deviations from legal modes of procedure.”²¹⁸ Finally, *Miranda* explicitly addressed the constitutional stakes involved in its case, noting, “The constitutional issue we decide . . . of statements obtained from a defendant questioned while in custody or otherwise deprived of his freedom of action in any significant way.”²¹⁹

Moreover, *Miranda* promoted a “spirit” of constitutional interpretation unheeded by *Vega*: to avoid the danger that the Constitution devolve over time into merely a “form of words,” its “meaning and vitality” must develop “against narrow and restrictive construction.”²²⁰ *Miranda* explained that the Court had accorded the Fifth Amendment privilege “a liberal construction” because the privilege must be “as broad as the mischief against which it seeks to guard.”²²¹ To make a constitutional right a daily reality rather than mere scratches on parchment, a citizen must, at minimum, know of its very existence.²²² Genuine access to the Fifth Amendment privilege therefore requires *Miranda*’s warnings because, “[f]or those unaware of the privilege, the warning is needed simply to make them aware of it—the threshold requirement for an intelligent decision as to its exercise.”²²³ A constitutional right only exists if it is actually available.²²⁴

D. Chief Justice Rehnquist, Who Authored Tucker and Quarles, Ultimately Interpreted Miranda’s Language as Announcing a Constitutional Rule

Chief Justice Rehnquist, who diminished *Miranda* as a “procedural safeguard” in *Tucker*,²²⁵ and its warnings as mere “prophylactic” rules rather than “themselves rights protected by the Constitution” in *Quarles*,²²⁶ later reversed himself in *Dickerson* by conceding that *Miranda* did have constitutional stature.²²⁷ Interestingly, Chief Justice Rehnquist, in *Dickerson*, grounded much of his view about *Miranda*’s constitutional status on the

217. *Id.* at 458.

218. *Id.* at 459 (quoting *Boyd v. United States*, 116 U.S. 616, 635 (1886)).

219. *Id.* at 445.

220. *Id.* at 443–44.

221. *Id.* at 461, 459–60 (quoting *Counselman v. Hitchcock*, 142 U.S. 547, 562 (1892)).

222. *Id.* at 467.

223. *Id.* at 468.

224. The Court explained, “In order to combat these pressures and to permit a full opportunity to exercise the privilege against self-incrimination, the accused must be adequately and effectively apprised of his rights and the exercise of those rights must be fully honored.” *Id.* at 467.

225. *Michigan v. Tucker*, 417 U.S. 433, 443–44 (1974).

226. *Id.* at 439; *New York v. Quarles*, 467 U.S. 649, 654 (1984) (quoting *Tucker*, 417 U.S. at 444).

227. *Dickerson v. United States*, 530 U.S. 428, 439 (2000).

original language of the decision. He noted that “[t]he *Miranda* opinion itself” applied “the privilege against self-incrimination to in-custody interrogation,” and gave “concrete constitutional guidelines for law enforcement agencies and courts to follow.”²²⁸ Indeed, Chief Justice Rehnquist found that “the majority opinion is replete with statements indicating that the majority thought it was announcing a constitutional rule.”²²⁹ He then cited specific passages in *Miranda* establishing its status as constitutional, including *Miranda*’s statement that “[t]he requirement of warnings and waiver of rights is . . . fundamental with respect to the Fifth Amendment privilege and not simply a preliminary ritual to existing methods of interrogation.”²³⁰

Chief Justice Rehnquist even established that *Miranda*’s underlying rationales supported the case’s constitutional status. He noted that *Miranda* was concerned that custodial interrogation, which exacted a “heavy toll” on isolated and pressured suspects, blurred the lines between voluntary and involuntary statements.²³¹ To counteract such coercion, *Miranda* limited admissibility of statements to those fulfilling *Miranda*’s warnings requirement.²³² Moreover, while Chief Justice Rehnquist noted that the Court had “supervisory authority” to prescribe “rules of evidence and procedure” on federal courts, such power to enforce “nonconstitutional rules” only existed in the absence of an act of Congress.²³³ Congress retained “the ultimate authority to modify or set aside any judicially created rules of evidence and procedure that are not required by the Constitution.”²³⁴ Congress, however, could “not legislatively supersede our

228. *Id.*

229. *Id.*

230. *Id.* at 439 n.4 (quoting *Miranda v. Arizona*, 384 U.S. 436, 476 (1966)). Chief Justice Rehnquist also quoted the following passages:

(“The constitutional issue we decide in each of these cases is the admissibility of statements obtained from a defendant questioned while in custody”), (stating that the *Miranda* Court was concerned with “adequate safeguards to protect precious Fifth Amendment rights”), (examining the “history and precedent underlying the Self-Incrimination Clause to determine its applicability in this situation”), . . . (“The whole thrust of our foregoing discussion demonstrates that the Constitution has prescribed the rights of the individual when confronted with the power of government when it provided in the Fifth Amendment that an individual cannot be compelled to be a witness against himself”), (stating that the Court dealt with “constitutional standards in relation to statements made”), (“[T]he issues presented are of constitutional dimensions and must be determined by the courts”), (stating that the *Miranda* Court was dealing “with rights grounded in a specific requirement of the Fifth Amendment of the Constitution”).

Id. (internal citations omitted) (quoting *Miranda*, 384 U.S. at 445, 457, 458, 479, 481 n.52, 490, 489).

231. *Id.* at 435.

232. *Id.*

233. *Id.* at 437.

234. *Id.*

decisions interpreting and applying the Constitution.”²³⁵ Confronted with the conflict between Congress’s enactment of 18 U.S.C.A. § 3501 and *Miranda*, *Dickerson* had to address whether Congress had the authority to overturn *Miranda*. This question turned “on whether the *Miranda* Court announced a constitutional rule or merely exercised its supervisory authority to regulate evidence in the absence of congressional direction.”²³⁶ The court of appeals, picking up on the Court’s prior characterizations of the *Miranda* warnings as “prophylactic” and “not themselves rights protected by the Constitution,” ruled that *Miranda* was not “constitutionally required.”²³⁷ *Dickerson* responded, “We disagree with the Court of Appeals’ conclusion” because “*Miranda* is a constitutional decision,” and therefore beyond Congress’s power.²³⁸ In support of its holding, *Dickerson* noted that *Miranda* itself explicitly ruled that its confessions “were obtained from the defendant under circumstances that did not meet constitutional standards for protection of the privilege.”²³⁹ Thus, *Miranda*’s own language proved that it was a constitutional decision applying the Fifth Amendment privilege, and so not subject to Congress’s overturning by statute.²⁴⁰ Section 3501, in conflicting with *Miranda*, was unconstitutional because it “cannot be sustained if *Miranda* is to remain the law.”²⁴¹

Chief Justice Rehnquist fended off still another argument he had advanced in *Tucker*. *Tucker* had demoted the warnings requirement by claiming that *Miranda*’s “procedural safeguards” were not themselves constitutional rights but only protective measures.²⁴² *Tucker* based this assertion on the fact that *Miranda*, to avoid creating a “constitutional straightjacket,” remarked, “[W]e cannot say that the Constitution necessarily requires adherence to any particular solution for the inherent compulsions of the interrogation process as it is presently conducted.”²⁴³ *Vega* would later pick up on this “straightjacket” argument in refusing to recognize *Miranda* as a constitutional right.²⁴⁴ *Vega*’s reliance on *Tucker* was in spite of Chief Justice Rehnquist’s explicit rejection, in *Dickerson*, of this line of reasoning: “a review of our opinion in *Miranda* clarifies that this disclaimer was intended to indicate that the Constitution does not require police to administer the particular *Miranda* warnings, not that the Constitution does not require a procedure that is effective in securing Fifth

235. *Id.*

236. *Id.*

237. *Id.* at 437–38.

238. *Id.* at 438.

239. *Id.* at 440 (quoting *Miranda v. Arizona* 384 U.S. 436, 491 (1966)).

240. *Id.* at 441.

241. *Id.* at 443.

242. *Michigan v. Tucker*, 417 U.S. 433, 444 (1974).

243. *Id.*; *Dickerson*, 530 U.S. at 440 n.6.

244. *Vega v. Tekoh*, 597 U.S. 134, 143 (2022).

Amendment rights.”²⁴⁵ In fact, *Dickerson* “found in the *Miranda* Court’s invitation for legislative action to protect the constitutional right against coerced self-incrimination” additional support for its conclusion that *Miranda* was “constitutionally based.”²⁴⁶ It is odd that *Vega* cherry picked Chief Justice Rehnquist’s language. The *Vega* Court cited Chief Justice Rehnquist’s statements in *Tucker* and *Quarles*, which diminish *Miranda*, but failed to acknowledge his reassessment and retraction of these assertions in *Dickerson*.²⁴⁷

VI. *VEGA*, IN DEMOTING *MIRANDA* FROM A CONSTITUTIONAL “RIGHT” TO A CONSTITUTIONAL “RULE,” DANGEROUSLY CREATED THE CONDITIONS TO OVERTURN *MIRANDA* AT SOME FUTURE DATE OF ITS OWN CHOOSING

Vega is concerning because it dramatically diminished *Miranda*, in the wake of *Dickerson*’s reassurances, based on what *Dickerson* supposedly did *not* say.²⁴⁸ *Vega*’s pronouncement, based as it was on questionable evidence, demonstrates the Court’s new fickleness about constitutional rights. *Vega* not only ruled that *Miranda* did not hold that a violation of its rules “necessarily” constituted “a Fifth Amendment violation,” the Court found it difficult to see how *Miranda* could even do so.²⁴⁹ *Vega* urged that *Dickerson*, by declaring that *Miranda* was “constitutionally based” and had “constitutional underpinnings,” was purposely avoiding stating that “a *Miranda* violation is the same as a violation of the Fifth Amendment right.”²⁵⁰ By *Vega*’s reasoning, *Dickerson*, challenged by a lower court and attacked by a coequal branch, defended *Miranda* only so far as was necessary to ensure its authority as the last word in interpreting the Constitution. Thus, *Dickerson* labeled *Miranda* a “constitutional decision” which adopted a “constitutional rule,” but held back on stating that *Miranda* was a constitutional “right” so that the Court could have its cake and eat it too.²⁵¹ By *Vega*’s reading, *Dickerson* gave the “prophylactic” *Miranda* rule the status only of a “La[w] of the United States,” doing just

245. *Dickerson*, 530 U.S. at 440 n.6.

246. *Id.* at 440.

247. *Vega* declared that *Tucker* “distinguished police conduct that ‘abridge[s] [a person’s] constitutional privilege against compulsory self-incrimination’ from conduct that ‘depart[s] only from the prophylactic standards later laid down by this Court in *Miranda* to safeguard that privilege.’” *Vega*, 597 U.S. at 145 (quoting *Tucker*, 417 U.S. at 445–46). Further, *Vega* quoted *Quarles* for the proposition that “*Miranda* warnings are ‘not themselves rights protected by the Constitution’ and that ‘the need for answers to questions in a situation posing a threat to the public safety outweigh[ed] the need for the prophylactic rule.’” *Id.* (quoting *New York v. Quarles*, 476 U.S. 469, 654, 657 (1984)).

248. *Id.* at 149.

249. *Id.* at 142.

250. *Id.* at 148–49.

251. *Id.* at 149.

enough to make it “binding on the States under the Supremacy Clause.”²⁵² By threading the needle of creating a federal “law” without making it a constitutional “right,” the Court could hold off Congress, impose *Miranda* on the states, and easily rid itself of *Miranda*’s mandates whenever it tired of them. Even *Vega* had to admit that, under its interpretation, *Dickerson* had made a “bold and controversial claim of authority.”²⁵³

Vega’s reasoning here was more a projection of its strategy onto *Dickerson* than a convincing analysis of precedent. To reach its strained result, *Vega* had to overlook *Dickerson*’s reliance on *Miranda*’s own language, such as Chief Justice Rehnquist’s conclusion that *Miranda*’s “opinion is replete with statements indicating that the majority thought it was announcing a constitutional rule.”²⁵⁴ Moreover, *Vega* had to turn a blind eye to Chief Justice Rehnquist’s disavowal of his statements in *Tucker* and *Quarles*, as explored *supra* in Part V.D. While *Vega*’s selective memory is troubling, the consequence of such reasoning is alarming. In a case handed down after *Dickerson*, where the Court had explicitly defended *Miranda*’s constitutional status to preserve it from Congressional attack, *Vega* categorically stated that *Miranda* is not a constitutional right.²⁵⁵ *Vega*’s erratic shift in interpreting *Miranda* undermines the stability and reliability of our constitutional rights. After *Vega*, *Miranda* is especially vulnerable to being overturned.

Moreover, *Vega*’s about-face comes at a cost to the Court’s own legitimacy. This is not the first time that the Court’s *Miranda* wordplay has endangered its own authority. Justice Stevens, dissenting in *Elstad*, worried about the Court’s ambivalence “on the question whether there was any constitutional violation” when police violated *Miranda* in that case.²⁵⁶ He deemed such ambivalence as “either disingenuous or completely lawless” because the Court’s very authority to “exclude probative self-incriminatory statements rests entirely on the premise that the use of such evidence violates the Federal Constitution.”²⁵⁷ Justice Stevens explained that *Elstad*’s analysis arguably caused “the *Miranda* case itself, as well as all of the federal jurisprudence that has evolved from that decision,” to be “nothing more than an illegitimate exercise of raw judicial power.”²⁵⁸ Justice Stevens explained that *Miranda* applied the Fifth Amendment privilege to the kind of custodial interrogation once used by the Star Chamber and “the Germans of the 1930’s and early 1940’s.”²⁵⁹ Either,

252. *Id.* at 148–49 (alteration in original).

253. *Id.* at 149.

254. *Dickerson v. United States*, 530 U.S. 428, 439 (2000).

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

256. *Oregon v. Elstad*, 470 U.S. 298, 370 (1985) (Stevens, J., dissenting).

257. *Id.*

258. *Id.* at 371.

259. *Id.*

as noted by Justice Stevens, “[c]ustodial interrogation that violates that provision of the Bill of Rights is a classic example of a violation of a constitutional right,” or the Court has been excluding relevant evidence from courtrooms across all fifty states based merely on its own say so.²⁶⁰ The stakes for the Court’s own authority and for the rights of those in custodial interrogation could hardly be higher.

VII. CONCLUSION

Vega, in denying that *Miranda* was a constitutional “right,” was delving into the fundamental question of identity. Humanity has struggled with questions about identity for millennia.²⁶¹ Plutarch, in his biography about the hero Theseus, pondered the question of identity in the story about the Ship of Theseus.²⁶² The Ship of Theseus played an important role in the myth about the Minotaur of Crete. Every nine years, the Athenians had to send a tribute of seven boys and seven girls to the Minotaur, who would kill them.²⁶³ Theseus saved the Athenians by volunteering to be one of the males sent as tribute and then killing the Minotaur.²⁶⁴ Athenians endeavored to maintain the ship Theseus sailed to commit this famous deed. They preserved it by taking “away the old timbers from time to time, and [putting] new and sound ones in their places.”²⁶⁵ The Ship of Theseus thus became a “standing illustration” about identity through time, with some philosophers declaring the ship to remain the same while others saw it as a different vessel.²⁶⁶

The current Court has not prized *Miranda* as the Athenians did the Ship of Theseus. Rather than seek to preserve the warnings mandate, the Court, over the decades, has attempted to replace many of its timbers as it continually reinterpreted it over a half century. *Vega*’s holding denying that *Miranda* created a constitutional right forces us to seek out this seminal case’s true nature: Is *Miranda* a constitutional right under the privilege against self-incrimination, or not? The Court has forced in some planks, from *Tucker*, *Quarles*, and *Elstad*, that fit awkwardly in *Miranda*’s ship. However, these later interpretations could not destroy *Miranda*’s original identity, for *Miranda*’s words, unlike the Ship of Theseus’s timbers, do not rot away. They are preserved and available should the Court ever wish to recognize them.

260. *Id.*

261. See PLUTARCH, THE COMPLETE WORKS OF PLUTARCH 22–23 (Delphi Classics 2013); *Ship of Theseus*, ENCYC. BRITANNICA (Nov. 9, 2023), <https://www.britannica.com/topic/ship-of-Theseus-philosophy> [<https://perma.cc/32MW-RMGU>].

262. PLUTARCH, *supra* note 261, at 22–23.

263. *Id.* at 15.

264. *Id.* at 17.

265. *Id.* at 23.

266. *Id.*

Vega seeks to obscure *Miranda*'s identity by reading its language in terms of later cases' representations rather than by directly viewing *Miranda*'s own words. Thus, *Vega* treated *Orozco*'s simple declaration that an admission at trial of an unwarned statement was a "flat violation of the Self-Incrimination Clause of the Fifth Amendment" as somehow suspect because it "predates the subsequent case law defining the scope of the *Miranda* rules."²⁶⁷ Disparaging *Orozco* as outdated is quite a departure for a Court whose members often pride themselves by focusing on original language for complete understanding.²⁶⁸ If *Vega* had instead respected *Miranda*'s original language, it would have been forced to come to a different conclusion. *Miranda* envisioned its warnings mandate as an answer to questions that went "to the roots of our concepts of American criminal jurisprudence."²⁶⁹ Further, *Miranda* clearly declared, "The requirement of warnings and waiver of rights is a fundamental with respect to the Fifth Amendment privilege and not simply a preliminary ritual to existing methods of interrogation."²⁷⁰

Ultimately, *Vega* aimed to reduce the scale of *Miranda*. In the current Court's view, *Miranda* has shrunken to merely a procedural rule rather than a right.²⁷¹ For *Vega*, *Miranda* is not fundamental but only prophylactic.²⁷² Such a view of *Miranda* would have been unrecognizable to its author, Chief Justice Warren, who instead understood the enormous stakes involved in these cases.²⁷³ He had witnessed the inability of the Fourteenth Amendment's Due Process Clause to prevent police abuse of suspects.²⁷⁴ He took law enforcement's involvement with wrongdoing so seriously that "[w]hen he learned that one of his own undercover agents had perjured himself in a criminal prosecution, he personally prosecuted him."²⁷⁵

Finally, Chief Justice Warren created the *Miranda* warnings despite fully appreciating the devastation crime victims' families experienced when justice was denied due to police wrongdoing. When he was Alameda County's District Attorney, Earl Warren learned that a robber had crushed the skull of his seventy-three-year-old father, Methias Warren, emptied his wallet, and fled.²⁷⁶ Warren's Chief of Detectives, Oscar Jahnsen, who was involved in the

267. *Vega v. Tekoh*, 597 U.S. 134, 143 n.2 (2022) (quoting *Orozco v. Texas*, 394 U.S. 324, 329 (1969)).

268. *United States v. Hubble*, 530 U.S. 27, 52–53 (2000) (Thomas, J., dissenting).

269. *Miranda v. Arizona*, 384 U.S. 436, 439 (1966).

270. *Id.* at 476.

271. *Vega*, 597 U.S. at 142.

272. *Id.* at 151.

273. See BAKER, *supra* note 146, at 141.

274. See *Miranda*, 384 U.S. at 456.

275. Kamisar, *supra* note 140, at 12.

276. BAKER, *supra* note 146, at 113.

subsequent murder investigation, later recalled Warren giving him pointed instructions: “[T]he boss told us all that we were investigating a murder and to act as we always had. There were rules to follow, rules he’d laid down a long time before. We were to go by those rules.”²⁷⁷

Despite such caution, in Detective Jahnsen’s absence, officers broke down the suspect of Methias Warren’s murder by “working on him” for hours until he was “on the verge of collapse.”²⁷⁸ Jahnsen then released the suspect, telling the officers that “they’d blown the case.”²⁷⁹ When Jahnsen reported his actions to his boss, Warren confirmed that he had “done the right thing.”²⁸⁰ When Warren supported the release of the likely murderer of his father, and when he mandated *Miranda*’s warnings before admitting confessions into court, he fully understood that the unspeakable agony of injustice in the individual case must sometimes be endured so that constitutional rights can meaningfully protect all of us. In contrast, *Vega*’s toying with distinctions between “rules” and “rights,” somehow missed the true meaning of *Miranda*.²⁸¹

277. *Id.* at 114.

278. *Id.* at 115.

279. *Id.*

280. *Id.* Earl Warren “loved his father and he wanted his murderer found, but he wouldn’t break any of his rules or take advantage of his position even to convict the guilty man if he couldn’t do it with solid evidence that was legally obtained.” *Id.*

281. *Vega v. Tekoh*, 597 U.S. 134, 149 (2022).