

**The Failed Legal and Moral Neutrality of *Roe* and *Casey***

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In *Roe v. Wade* (1973), Justice Blackmun created a framework in which the State had no ability to protect the unborn prior to viability and even thereafter was only permitted (but not required to) protect unborn life. Some, such as Paul D. Simmons, claim that this presents a legally and morally neutral methodology, free from metaphysical presuppositions. However, not only do the legal and moral arguments fail, but the viability standard necessarily includes metaphysical assumptions.

Blackmun argued that the unborn is not a “person” protected by the Fourteenth amendment, claiming constitutional provisions apply only to *already existing* persons. For example, “citizens” are defined as “all persons born or naturalized in the United States.” However, if being “born” is what makes someone a “person,” then the citizenship provision would be duplicative, akin to saying, “All persons who are persons...”. The fact that “born” modifies “persons” demonstrates that they are not synonymous.

*Planned Parenthood v. Casey* (1992)<sup>1</sup> created a new “undue burden” standard, finding unconstitutional any regulation that “has the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus,” reaffirming the viability standard (*Planned Parenthood*, 877). However, if “viability” means “ability to survive outside the womb,” then it is not an inherent quality of the organism itself, but rather a statement of the quality of medical care available. The same unborn child may be viable at Johns Hopkins Hospital in Baltimore but not in the remote regions of central Africa. Nothing has inherently changed about the unborn, only its medical environment.

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<sup>1</sup> The textbook mistakenly identifies the caption of this case as *Casey v. Planned Parenthood*. However, by the time the case reached the Supreme Court the short-form caption was *Planned Parenthood v. Casey*. While cross-petitions were filed, the Court’s opinion lists Planned Parenthood as the first identified party.

Finally, any attempt to justify unfettered abortion prior to viability but permit restrictions thereafter necessarily draws a metaphysical line. As Beckwith explains, it states that prior to viability fetuses “lack a property which, if present, would make them persons” (Beckwith 2007, 47). This is a metaphysical claim. The alleged neutrality advocated by *Roe*, *Planned Parenthood* and *Simmons* is not neutral at all. The choice to permit abortion necessarily adopts the view that the unborn is unworthy of protection, precisely the position of the pro-abortion side of the debate.

#### REFERENCES

Beckwith, Francis J. 2007. *Defending Life: A Moral and Legal Case Against Abortion Choice*. New York: Cambridge University Press.

*Planned Parenthood v. Casey*, 505 U.S. 833 (1992)

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