

Roe v. Wade / What the Justices Think about Precedent and Stare Decisis

Instructions:

1. Pair up with another student to complete this activity.
 2. Divide up the **Quotes** below so you each have three quotes to work with.
 3. Read your quotes silently. Underline passages you think are particularly important. Circle words or sentences you have questions about. Then try to put the quote in your own words or summarize it. Explain your quotes to your partner.
 4. Work together to answer the **Questions to Consider** (page 5).
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Quotes

1. **Justices Sandra Day O'Connor and Stephen G. Breyer** in a taped interview with students in June 2005. When asked about what might influence the justices to overturn a precedent, **Justice O'Connor** said:

Well I think you have to be able to persuade at least five members of this nine-member Court that an earlier judgment and opinion decided by this Court is now clearly wrong. That is possible to do. We can be persuaded at times that something we decided earlier has become, over time, no longer defensible.

And the most clear big example of that was in *Brown v. Board of Education* when the Supreme Court decided to overrule the old *Plessy v. Ferguson* principle that you could have separate public facilities for people based on race provided they were roughly the same. You know, the same school, one for people of the black race, one for people of the white race. That's what *Plessy* said was all right. The members of this Court unanimously concluded that just was not valid and it overturned it [*Plessy*].

So what standard is required? It's just a standard of persuading at least five members of the Court that an earlier precedent is clearly wrong and shouldn't remain the law of the nation.

Put this quote in your own words:

2. **Justices Sandra Day O'Connor and Stephen G. Breyer** in a taped interview with students in June 2005. After Justice O'Connor's answer about what might influence the justices to overturn a precedent, **Justice Breyer** added:

That last phrase [persuading at least five members of the Court that an earlier precedent is clearly wrong and shouldn't remain the law of the nation] is very important. Every one of us understands that if you change the law too often, even when it was wrong before, people cannot live their lives. They can't plan how to live; they can't plan their societies. So no one thinks just because a case is wrong that you are going to overturn it. They have to both think it was wrong and think it's harmful and causing a lot of trouble.

Now, if you said never overturn a case, we'd still live in a society that had racial segregation. That would be terrible. So, of course, sometimes you have to overturn a case. But five people [justices] have to agree it was wrong then and it's wrong now and it's causing a lot of harm to the point where even though people have to plan their lives, we better get rid of it. That happens very rarely.

Put this quote in your own words:

3. **Chief Justice John Roberts** at his Senate confirmation hearing in September 2005:

The principles of *stare decisis* look at a number of factors. Settled expectations is one of them... Whether or not particular precedents have proved to be unworkable is another consideration on the other side ... I do think it is a jolt to the legal system when you overrule a precedent. Precedent plays an important role in promoting stability and evenhandedness.

Put this quote in your own words:

5. **Justice Stephen Breyer**, writing for the Court in *Randall v. Sorrell*, the 2006 Vermont campaign finance reform decision:

The Court has often recognized the “fundamental importance of *stare decisis*, the basic legal principle that commands judicial respect for a court’s earlier decisions and the rules of law they embody.” The court has pointed out that *stare decisis* “promotes the evenhanded, predictable and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.”

Stare decisis thereby avoids the instability and unfairness that accompany disruption of settled legal expectations. For this reason, the rule of law demands that adhering to our prior case law be the norm. Departure from precedent is exceptional and requires special justification.

Put this quote in your own words:

6. **Justice Samuel Alito**, writing for the Court in *Dobbs v. Jackson Women’s Health Organization*, the 2022 decision that overruled *Roe v. Wade* (1973), which had established a constitutional right to abortion:

Stare decisis plays an important role and protects the interests of those who have taken action in reliance on a past decision. It “reduces incentives for challenging settled precedents, saving parties and courts the expense of endless relitigation [taking a case to court more than one time].”... It “contributes to the actual and perceived integrity of the judicial process.” ... And it restrains judicial hubris by respecting the judgment of those who grappled with important questions in the past. But *stare decisis* is not an inexorable command... and “is at its weakest when [the Court] interpret[s] the Constitution,”... Some of the Court’s most important constitutional decisions have overruled prior precedents. See, e.g., *Brown v. Board of Education*... overruling the infamous decision in *Plessy v. Ferguson*...

Put this quote in your own words:

7. **Justice Steven Breyer**, writing for the dissent in *Dobbs v. Jackson Women’s Health Organization*, the 2022 decision that overruled *Roe v. Wade* (1973), which had established a constitutional right to abortion:

“*Stare decisis*” means “to stand by things decided.” Black’s Law Dictionary 1696. Blackstone called it the “established rule to abide by former precedents.” *Stare decisis* “promotes the evenhanded, predictable, and consistent development of legal principles.” It maintains a stability that allows people to order their lives under the law.

Stare decisis also “contributes to the integrity of our constitutional system of government” by ensuring that decisions “are founded in the law rather than in the [preferences] of individuals.” As Hamilton wrote: It “avoid[s] an arbitrary discretion in the courts.” And as Blackstone said before him: It “keep[s] the scale of justice even and steady, and not liable to waver with every new judge’s opinion.” The “glory” of our legal system is that it “gives preference to precedent rather than . . . jurists.” That is why, the story goes, Chief Justice John Marshall donned a plain black robe when he swore the oath of office. That act personified an American tradition. Judges’ personal preferences do not make law; rather, the law speaks through them.

That means the Court may not overrule a decision, even a constitutional one, without a “special justification.” *Stare decisis* is, of course, not an “inexorable command”; it is sometimes appropriate to overrule an earlier decision. But the Court must have a good reason to do so over and above the belief “that the precedent was wrongly decided.” “[I]t is not alone sufficient that we would decide a case differently now than we did then.”

Put this quote in your own words:

Questions to Consider

1. Based on what you read in the quotes, why is adhering to precedent (or *stare decisis*) important?
2. Based on what you read in the quotes, what do you think would be acceptable reasons for reversing or overturning an existing precedent?
3. Which quote comes closest to your opinion about how the Court should apply *stare decisis*? Explain.