

Roe v. Wade / Precedent and Stare Decisis

Part One: Personal Reflection

Reflect on these questions alone or discuss them with a partner.

1. Think of a time when a parent/guardian or teacher made a decision about something based on a similar situation in the past.
2. Now think about whether their decision was fair. Why or why not?
3. Think about a time when your parent/guardian or teacher seemed to ignore their own previous decision. Did that seem fair? Why or why not?
4. Now think of a time when you believe your parent/guardian or teacher should not have applied the same rules or reasons to a new situation. Why should they have made a different decision in this instance?

Part Two: Class Discussion

Answer these questions with other students in your class:

1. What are the benefits and risks of applying the same rules every time a similar situation comes up?
2. What are the benefits and risks of changing the rules for new situations?

We have just been thinking and talking about something very similar to the term **precedent**: a court decision that guides future cases that ask similar questions.

The Supreme Court justices wrestle with the issue of precedent frequently, knowing that their decisions will affect not just the people in a particular case, but potentially millions of other Americans who could be in similar situations in the future. Their questions, like those in our reflection activity, are typically about when precedents should be honored and when they should be reversed. Justices often have different views on this—some even change their views over time.

The term ***stare decisis*** is a legal term that means “to stand by things decided” or to apply precedent when faced with similar legal issues.

Part Three: What the Justices Think About Precedent and Stare Decisis

Pair up with another student to complete this assignment.

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

1. **Justices Sandra Day O'Connor and Stephen G. Breyer** in a taped interview with students participating in a question and answer session. 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 *Plessey 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 *Plessey* said was all right. The members of this Court unanimously concluded that just was not valid and it overturned it [*Plessey*].

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 participating in a question and answer session. 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, 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:

4. **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:

Questions to Consider

1. Based on what you read, why is adhering to precedent (or *stare decisis*) important?
2. Based on what you read, what do you think would be acceptable reasons for reversing or overturning an existing precedent?
3. Given how divided the country is on the issue of abortion, in your opinion, is that a good reason to stick to precedent or to consider overturning the precedent it established? (*Note: This question is not asking whether you like the Roe decision or not, just whether the popularity of a decision should be considered when the Supreme Court decides whether to reconsider an established precedent.*)