

Stare Decisis - Conflicting Views

I found some interesting quotes on stare decisis and thought it would good to share them... I think it's quite a problematic issue in analyzing *Roe v. Wade* and the cases that followed it.

"Stare decisis is usually the wise policy, because in most matters it is more important that the applicable rule of law be settled than that it be settled right.... But in cases involving the Federal Constitution, where correction through legislative action is practically impossible, this Court has often overruled its earlier decisions.... This is strikingly true of cases under the due process clause". *Burnet v. Coronado Oil & Gas Co. (1932)* (Brandeis, J., dissenting).

"[W]hen convinced of former error, this Court has never felt constrained to follow precedent. In constitutional questions, where correction depends upon amendment, and not upon legislative action, this Court throughout its history has freely exercised its power to reexamine the basis of its constitutional decisions". *Smith v. Allwright (1944)*.

"I think overruling a case or reconsidering a case is a very serious matter. Certainly, you would have to be of the view that a case is incorrectly decided, but I think even that is not adequate. There are some cases that you may not agree with that should not be overruled. Stare decisis provides continuity to our system, it provides predictability, and in our process of case-by-case decision-making, I think it is a very important and critical concept. A judge that wants to reconsider a case and certainly one who wants to overrule a case has the burden of demonstrating that not only is the case incorrect, but that it would be appropriate, in view of stare decisis, to make that additional step of overruling that case". Thomas, Clarence (1991). *[U.S.] Senate Confirmation Hearings*. qtd. by Jan Crawford Greenburg on PBS (June 2003)

"American courts of last resort recognize a rebuttable presumption against overruling their own past decisions. In earlier eras, people often suggested that this presumption did not apply if the past decision, in the view of the court's current members, was demonstrably erroneous. But when the Supreme Court makes similar noises today, it is roundly criticized. At least within the academy, conventional wisdom now maintains that a purported demonstration of error is not enough to justify overruling a past decision. ...[T]he conventional wisdom is wrong to suggest that any coherent doctrine of stare decisis must include a presumption against overruling precedents that the current court deems demonstrably erroneous. The doctrine of stare decisis would indeed be no doctrine at all if courts were free to overrule a past decision simply because they would have reached a different decision as an original matter. But when a court says that a past decision is demonstrably erroneous, it is saying not only that it would have reached a different decision as an original matter, but also that the prior court went beyond the range of indeterminacy created by the relevant source of law. ... Americans from the Founding on believed that court decisions could help "liquidate" or settle the meaning of ambiguous provisions of written law. Later courts generally were supposed to abide by such "liquidations." ... To the extent that the underlying legal provision was determinate, however, courts were not thought to be similarly bound by precedents that misinterpreted it. ... Of the Court's current members, Justices Scalia and Thomas seem to have the most faith in the determinacy of the legal texts that come before the Court. It should come as no surprise that they also seem the most willing to overrule the Court's past decisions. ... Prominent journalists and other commentators suggest that there is some contradiction between these Justices' mantra of "judicial restraint" and any systematic re-examination of precedents. But if one believes in the determinacy of the underlying legal texts, one need not define "judicial restraint" solely in terms of fidelity to precedent; one can also speak of fidelity to the texts themselves". Nelson, Caleb (2001). "Stare Decisis and Demonstrably Erroneous Precedents" . *Virginia Law Review*, 84 Va L. Rev 2001.