than in majority opinions.[750] Of lesser formal effect than outright overruling but with roughly the same result is a Court practice of "distinguishing" precedents, which often leads to an overturning of the principle enunciated in a case while leaving the actual case more or less alive.[751]

Conclusion.—The common denominator of all these maxims of prudence is the concept of judicial restraint. "We do not sit," said Justice Frankfurter, "like a kadi under a tree dispensing justice according to considerations of individual expediency."[752] "[A] jurist is not to innovate at pleasure," wrote Justice Cardozo. "He is not a knight-errant, roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to the primordial necessity of order in the social life."[753] All Justices will, of course, claim adherence to proper restraint,[754] but in some cases at least, such as Justice Frankfurter's dissent in the *Flag Salute Case*,[755] the practice can be readily observed. The degree of restraint, however, the degree to which legislative enactments should be subjected to judicial scrutiny, is a matter of uncertain and shifting opinion

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491 U.S. 164, 171–175 (1989), at least in part since Congress may much more easily revise those decisions, *but compare* id. at 175 n.1, *with* id. at 190–205 (Justice Brennan concurring in the judgment in part and dissenting in part). *See also* Flood v. Kuhn, 407 U.S. 258 (1972).

[750] *E.g.*, United States v. Rabinowitz, 339 U.S. 56, 86 (1950) (Justice Frankfurter dissenting); Baker v. Carr, 369 U.S. 186, 339–340 (1962) (Justice Harlan dissenting); Gray v. Sanders, 372 U.S. 368, 383 (1963) (Justice Harlan dissenting). *But see* Green v. United States, 356 U.S. 165, 195 (1958) (Justice Black dissenting). *Compare* Justice Harlan's views in Mapp v. Ohio, 367 U.S. 643 (1961) (dissenting), *with* Glidden Co. v. Zdanok, 370 U.S. 530 (1962) (opinion of the Court).

[751] Note that, in Planned Parenthood v. Casey, 505 U.S. 833 (1992), while the Court purported to uphold and retain the "central meaning" of Roe v. Wade, it overruled several aspects of that case's requirements. *See also*, *e.g.*, the Court's treatment of Pope v. Williams, 193 U.S. 621 (1904), in Dunn v. Blumstein, 405 U.S. 330, 337, n.7 (1972). *See also* id. at 361 (Justice Blackmun concurring.)

[752] Terminiello v. City of Chicago, 337 U.S. 1, 11 (1949) (dissenting).

[753] B. Cardozo, The Nature of the Judicial Process 141 (1921).

[754] *Compare* Griswold v. Connecticut, 381 U.S. 479, 482 (1965) (Justice Douglas), *with* id. at 507 (Justice Black).

[755] West Virginia State Bd. of Educ. v. Barnette, 319 U.S. 624, 646 (1943) (dissenting).