

Sec. 2—Judicial Power and Jurisdiction

Cl. 1—Cases and Controversies

judicial function.”⁷⁴⁶ *Stare decisis* is a principle of policy, not a mechanical formula of adherence to the latest decision “however recent and questionable, when such adherence involves collision with a prior doctrine more embracing in its scope, intrinsically sounder, and verified by experience.”⁷⁴⁷ The limitation of *stare decisis* seems to have been progressively weakened since the Court proceeded to correct “a century of error” in *Pollock v. Farmers’ Loan & Trust Co.*⁷⁴⁸ Since then, more than 200 decisions have been overturned,⁷⁴⁹ and the merits of *stare decisis* seem more often celebrated in dissents

⁷⁴⁶ *Burnet v. Coronado Oil & Gas Co.*, 285 U.S. 393, 406–408 (1932) (Justice Brandeis dissenting). For recent arguments with respect to overruling or not overruling previous decisions, see the self-consciously elaborate opinion for a plurality in *Planned Parenthood v. Casey*, 505 U.S. 833, 854–69 (1992) (Justices O’Connor, Kennedy, and Souter) (acknowledging that as an original matter they would not have decided *Roe v. Wade*, 410 U.S. 113 (1973), as the Court did and that they might consider it wrongly decided, but nonetheless applying the principles of *stare decisis*—they stressed the workability of the case’s holding, the fact that no other line of precedent had undermined *Roe*, the vitality of that case’s factual underpinnings, the reliance on the precedent in society, and the effect upon the Court’s legitimacy of maintaining or overruling the case). See *id.* at 953–66 (Chief Justice Rehnquist concurring in part and dissenting in part), 993–1001 (Justice Scalia concurring in part and dissenting in part). See also *Payne v. Tennessee*, 501 U.S. 808, 827–30 (1991) (suggesting, *inter alia*, that reliance is relevant in contract and property cases), and *id.* at 835, 842–44 (Justice Souter concurring), 844, 848–56 (Justice Marshall dissenting).

⁷⁴⁷ *Helvering v. Hallock*, 309 U.S. 106, 110 (1940) (Justice Frankfurter for Court). See also *Coleman v. Alabama*, 399 U.S. 1, 22 (1970) (Chief Justice Burger dissenting). But see *id.* at 19 (Justice Harlan concurring in part and dissenting in part); *Williams v. Florida*, 399 U.S. 78, 117–119 (1970) (Justice Harlan concurring in part and dissenting in part). Recent discussions of and both applications of and refusals to apply *stare decisis* may be found in *Hohn v. United States*, 524 U.S. 236, 251–52 (1998), and *id.* at 260–63 (Justice Scalia dissenting); *State Oil Co. v. Khan*, 522 U.S. 3, 20–2 (1997); *Agostini v. Felton*, 521 U.S. 203, 235–36 (1997), and *id.* at 523–54 (Justice Souter dissenting); *United States v. IBM Corp.*, 517 U.S. 843, 854–56 (1996) (noting principles of following precedent and declining to consider overturning an old precedent when parties have not advanced arguments on the point), with which compare *id.* at 863 (Justice Kennedy dissenting) (arguing that the United States had presented the point and that the old case ought to be overturned); *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995) (plurality opinion) (discussing *stare decisis*, citing past instances of overrulings, and overruling 1990 decision), with which compare the dissents, *id.* at 242, 264, 271; *Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 61–73 (1996) (discussing policy of *stare decisis*, why it should not be followed with respect to a 1989 decision, and overruling that precedent), with which compare the dissents, *id.* at 76, 100. Justices Scalia and Thomas have argued for various departures from precedent. *E.g.*, *Oklahoma Tax Comm’n v. Jefferson Lines, Inc.*, 514 U.S. 175, 200–01 (1995) (Justice Scalia concurring) (negative commerce jurisprudence); *Colorado Republican Campaign Comm. v. FEC*, 518 U.S. 604, 631 (1996) (Justice Thomas concurring in part and dissenting in part) (rejecting framework of *Buckley v. Valeo* and calling for overruling of part of case). Compare *id.* at 626 (Court notes those issues not raised or argued).

⁷⁴⁸ 157 U.S. 429, 574–579 (1895).

⁷⁴⁹ See Appendix. The list encompasses both constitutional and statutory interpretation decisions. The Court adheres, at least formally, to the principle that *stare decisis* is a stricter rule for statutory interpretation, *Patterson v. McLean Credit Union*,