

The Doctrine of Stare Decisis

Name

Institutional Affiliations

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Define and discuss the Doctrine of Stare Decisis. What does this system do for the legal system, and may case precedent ever be overturned? Please explain.

Burns (1893) states that the doctrine of *Stare Decisis* is of ancient origin but determining the time it became a doctrine of English law is difficult. According to Re (1976), *Stare decisis* was received in the United States as part of the common law tradition. Derived from Latin Maxim *stare decisis et non quieta movere*, *Stare Decisis* means to stand by precedent and not to disturb what is settled. Burns (1893) asserts that the doctrine can also be referred to as the doctrine of precedent or of authority. *Stare Decisis* can be defined in simple terms as the legal doctrine that obligates courts of law to stick or follow cases that have been settled in the past (historical cases) when making a ruling on a case of the same nature. The doctrine requires cases to follow the precedents of earlier but similar cases and in the same jurisdiction. In the United States, Supreme Court precedents are followed across all states considering that it is the nation's highest court.

Though considered one of the most important doctrines in Western Law, *Stare Decisis* subverts the law in several ways (Roland, 2000). It is presumed that all precedents were well-founded and unbiased legal decisions. Also, the doctrine offers great weight to the opinion in the case and treating that opinion as if it was a law. This means that a poorly worded opinion can characterize legal positions over and above the bounds of the underlying constitutional enactments and become future precedents as if they were constitutionally enacted. According to Waldron (2012), *Stare Decisis* is still a controversial aspect of the United States legal system as well as other systems that uphold it. Some Jurists emphasizes that the doctrine goes against the

rule of law. For instance, in the United States federal court system, *Stare Decisis* allows a court to overturn its own prior decision (Kniffin, 1982). Similarly some jurists feel that there is a need for change and growth in the laws that are offered by overturning precedent in appropriate instances (Kniffin, 1982).

References

Burns, T. (1893). The Doctrine of Stare Decisis. Historical Theses and Dissertations Collection.

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Kniffin, M. N. (1982). Overruling Supreme Court Precedents: Anticipatory Action by United States Courts of Appeals. *Fordham L. Rev.*, 51, 53.

Re, E. D. (1976). Stare Decisis and the Judicial Process. *Cath. Law.*, 22, 38.

Roland, J. (2000). How stare decisis subverts the law.

Waldron, J. (2012). Stare decisis and the rule of law: a layered approach. *Mich. L. Rev.*, 111, 1.