

Why is it legal to ignore the law in court?

Stare Decisis:

Most people think the U.S. Constitution and our laws (Statutes, Codes, Regulations, Ordinances) are important. They must be important, or our city councils, state legislatures and the U.S. Congress would not spend so much time writing them. However, if you have had any experience in court, you know lawyers and judges often ignore the clear wording of the Constitutions and the laws. Instead, they practice the ancient doctrine of *Stare Decisis* (It means, “The decision has been made already. Don't make the decision over again. Look to past decisions and apply them today, with the most recent decision having the force of law.”) This legal doctrine was in common use in courtrooms before the U.S. Constitution was written. The practice of citing earlier court decisions as “precedence” began in about the 1400's as Great Britain was transitioning from a verbal to a written culture.

When courts ignore the U.S. Constitution the reason is Stare Decisis. In court, lawyers like to save time so through the centuries they developed the practice of honoring past decisions by appropriate courts of like jurisdiction. Past decisions, thus, are sometimes more pertinent as law than the written laws themselves, so today the Constitution is sometimes barred from court because lawyers believe it is better to discuss court cases where constitutional issues were discussed earlier. That way, they believe they are applying the law with consistency, with fewer contradictions.

A sincere lawyer will observe that the historic function of Stare Decisis is intended to go beyond convenience and efficiency. The law needs to be applied with precision, he correctly asserts. What does the written law really mean? This meaning is so important that it deserves intense study. Also, there is a need for consistency in the application of law. What a law means today needs to be applied in the same way tomorrow. These are good reasons that can be applied with noble intent. However, there is a philosophical problem. The philosophical problem can be illustrated by the parlor game called “telephone.” Before the days of television when people gathered for social events, they sat in a circle and looked at each other. They talked to each other. Somebody thought up a revealing game to be played around this circle. This “telephone” exercise showed how easy it is for gossip to spread lies. The lead person would whisper into the ear of the person next to him something like: “Sally was wearing a yellow apron Thursday in the kitchen while baking bread.” By the time the whisper went through twenty “interpreters” it might come out “Sammy was wearing a purple onion on his head.” It's about the same length and the sounds are similar, but the meaning is quite different. Here is the point: the further you get from the original, the more difficult it is to be faithful to those first-spoken or written words.

This is not only a psychological observation. It demonstrates a philosophical fact: there is no way to mean unless the meaning is known. There is no way to know until the knowing is meaningful. So, to possess meaning, we must know without knowing. This knowing without knowing is the root of knowledge and meaning. It is called faith. We exercise faith when we try to interpret any written statement. Robert Nozick writes in his *Invariances: The Structure of the Objective world*, (Harvard University Press, 2001) “The history of philosophy is abundant with unsuccessful attempts to establish a firm basis for ethical truths. Inductively, we infer that the task is unpromising.” (Page 236).

The point is that we do not know what motivated lawmakers to set their words to paper, and we may not attach the same definitions to their words as did the lawmakers. A semanticist would enlarge upon this philosophical difficulty by listing the layers of possible misunderstanding involved in any human communication. The word you use in talking to me means one thing to you and another to me, and still another definition could rest in the dictionary. We can't use this space to delve any deeper than this into the psychological, philosophical, semantic difficulties involved in the interpretation of law. There is no need for it. What we need instead is to recognize that the more uncertain words piled upon uncertain words, the more difficult it is to find the meaning of the

original words. The practice of Stare Decisis, developed by those intending to clarify meaning has resulted only in complicating and distorting the meaning of the originally written law and constitutions.

A case by case application of the facts of a case up against the true plumb line of the originally written words that apply to that case should be tools enough in the hands of a fair judiciary, or better, a common-sense-driven jury to reach the most just conclusion possible within our human resources.

Instead, today, written law tends to be viewed as meaning nothing unless and until a court has issued a decision regarding its meaning, application and implications. Therefore, today the law is not necessarily the friend of a person appearing in court. Stare Decisis, though, is clearly the enemy of someone who unjustly loses in court. What this means is that when we deal with government agents, especially those who are lawyers, we must speak about court decisions, viewing written law as inferior, setting aside Codes, forgetting the significance of statutes and turning our back upon the words of the state and federal Constitutions. Unless we speak the convoluted language, of "the winner vs the loser" we will not speak the language spoken by lawyers. We will instead be looked upon with disdain for our naiveté.

All jurisprudence since before the founding of our nation has rested upon this principle of Stare Decisis. The U.S. Constitution itself was born into the doctrine of Stare Decisis. The Constitution is subject to Stare Decisis. Nothing in the U.S. Constitution negates or modifies the practice. So, if a president violates the Constitution and gets away with it, if he does something contrary to law and he is unchallenged, what he did stands in jurisprudence with more power than law itself. That presidential practice in violation of the Constitution means that he who rules under our Constitution has the right to rule in violation of the Constitution. Why? Because his behavior was unchallenged, so "it has been decided."

Abraham Lincoln:

The federal government had its authority challenged in the mid-1800's. Eleven southern states wanted out of the union they helped create. The so-called "Civil War" set down some important precedents. There are many examples of separation caused by that war. When the battles of the war are recalled, historians refer to brothers at war against brothers and northern men battling their southern cousins. The war also severed the relationship between the southern states and the District of Columbia. It cut the relationships between southern Congressional representatives and the House and Senate. It caused northern leaders to look upon southern states as no longer being states. It, thus, cut off the people of those states from their national citizenship. Of course, one of the central issues of the war was the pre-existing problem of the black slave being cut off from citizen status. The too often ignored relationship that was severed by the war, however, was the relationship of the U.S. Constitutional authority over the federal government. The relationship between the Constitution and the presidency was severed. Lincoln viewed his breach of the Constitution as a violation of the "relation between the People and the Constitution." He rightly understood that when a president violates the Constitution, he cuts off the People from their sovereign control of government as structured by the U.S. Constitution. He violated the provisions of the Constitution in his effort to preserve and defend it. He knew what he was doing and he knew that after the war he would have to make things right again.

Lincoln started the war himself, preventing Congress from convening for three months, so there would be no argument keeping soldiers from the field of battle. Men came from all over the northern states and congregated in D.C. to be trained for "protecting the Union." There was no declaration of war as demanded by the Constitution. Lincoln jailed Maryland legislators, refusing them Habeas Corpus, to prevent them from convening to join the South. He jailed 300 newspaper editors whose editorials disagreed with northern policy. He shut down those newspapers, in direct offense to the First Amendment. However, he also said he would "restore the relation between the Constitution and the People" when the war was over. We must assume his heart was in the right

place. Lincoln's acts during the "Civil War," though, were not challenged, and the relation between the People and the Constitution was not restored. This is why the courts (and of course Congress) are able to continue ignoring what the U.S. Constitution clearly says. It is not just because the Constitution is supposed to be a "living document." The culprit is Stare Decisis. In Lincoln's unchallenged acts we have the historic prime "decision" upon which all Stare Decisis-based violations of the U.S. Constitution rest. Lincoln waged war openly violating the Constitution he swore to defend in order to defend his concept of the Constitutional relationship between the states and the federal government.

Lincoln was a strong man with a single purpose: save the Union, restore the federal government's tax base, and force the southern states to quit their plans and continue supporting the central government. He knew he had violated the Constitution, and he intended to set things right. But that never has happened. Lincoln was assassinated.

When Lincoln was killed, Congress went ballistic and would not allow President Johnson to carry out Honest Abe's good intentions. That is the act. That Congressional act of negligence stands under the Stare Decisis rule as the pivotal Constitutional precedent in U.S. history. In Reconstruction, duress and the rule of force took the place of the concepts expressed in the Constitution. Yet, duress and the rule of force have legitimacy today because the Constitution is subject to Stare Decisis. So, it became constitutional for government to violate the U.S. Constitution. That's how the 14th and 15th Amendments were "ratified" as Northern soldiers forced the "correct" vote in Southern legislatures. Congress did the act. Congress was not challenged. Therefore, duress became a legal, Constitutional method for establishing contracts involving government agencies. Force, rather than common sense, became common and appropriate legal behavior whenever one of us faces a government agency in court. Are you threatened by the power of the IRS? Beware. Their power is real and it has the force of law because of this convolution of history.

President Andrew Johnson was too strong in his views and too weak in his character to persuade an angry Congress to restore the relation between the People and the Constitution. Instead, Congress used "Reconstruction" under the power of the rifle, to send northern troops into southern legislatures to force passage of laws required by the northern conquerors under the provisions of bills like the one passed February 20, 1867, entitled "An Act to Provide For The More Efficient Government of the Rebel States," authored by Senator John Sherman. The will of the victor was impressed upon the behavior of the vanquished, contrary to the plan originally suggested by Lincoln.

These exercised rights of conquest allowed several levels of broken relationships to be healed. Cousins could again embrace each other across the Mason-Dixon Line. The southern states related again to the District of Columbia. The southern Congressional representatives were slowly restored to the House and Senate. Northern leaders were able again to view southern states as states. The people of the south regained their national citizenship through offering an oath of loyalty, regaining their right to vote. Finally, the black slaves gained citizen status and after several years the right to vote. However, no action was taken to restore the relationship between the People and the U.S. Constitution. No formal action was taken to recognize that Lincoln violated of the Constitutional limits of the powers of the presidency.

No peace treaty has ever been struck to end the "Civil" War. The Congress, under military power, broke the law and used military force during peacetime against southern legislatures, whose representatives were not allowed to take their seats in Washington until stern conditions were met. The southern states were treated like mere territories. Then, ironically, state legislators at the same time were forced to behave as though they had all the powers of statehood, the nation depending upon their agreement under duress to ratify the Fourteenth Amendment. Because nothing has been done to abrogate these unlawful acts, and because Lincoln's promise to "restore the relation..." has never been kept, we in the states and we as a nation as a whole continue to live under military rule, not under the concepts expressed in the U.S. Constitution, but nevertheless under the Constitution

as degraded by Stare Decisis. The symbol of this military bondage edges in military gold the flags displayed in our courtrooms.

Presidents after Lincoln:

Abraham Lincoln preserved the Union by violating the Constitution. Lincoln shot his way to victory, causing the formerly independent sovereign states desiring to withdraw from the union to remain within the union. Lincoln used force, military dominance not only on southern battlefields, but at home in violation of the U.S. Constitution. This war-force was unchallenged by legislation or judicial action at the end of the war. Under the principle of Stare Decisis, what Lincoln did subjects us to the way courts work today. The Constitution has never been restored to its proper place. Thus, any president since Lincoln has had the legal right to use whatever power he desires. Stare Decisis rules: "Lincoln did it. Nobody undid what Lincoln did. It was done. Therefore, it was 'decided.' It is okay. It is lawful." What was decided was that the Federal government's violation of the right of a state to secede trumps the Constitution. Guns trump law. Violence trumps Constitution. We, thus, live (strangely within the historic Constitution) under a Federal government whose powers have negated the foundation of our nation. Lincoln's promise to "restore the relation..." has never been kept. So we operate today under military rule legitimized by the U.S. Constitution. Lincoln did it, under his oath to defend the Constitution. That makes violation of the Constitution perfectly legal under Stare Decisis. What Lincoln did was made legal by the silence of Congress and the acquiescence of the Supreme Court.

Lincoln's acquired powers have ascended to the Presidents who followed him. The balance of power is distorted and jurisprudence supports that distortion. Herman Goehring testified at his Nuremberg trial that Hitler's powers were patterned after the powers of the U.S. Presidency. Lincoln's presidential powers gave pattern to the powers of Der Fuhrer. Here at home, Washington knows Lincoln did it, so now Bush can do it, as did Roosevelt, to say nothing of the elder-Bush in the Gulf war and the Kennedy, Johnson, Nixon Viet Nam War scam and the Clinton "Wag the Dog" bombing of Bosnia.

Effect upon jurisprudence today:

Because Lincoln died before he could "un-violate" the Constitution, every judge since then has had the right -- the legal, Constitutional right -- to live within and at the same time to violate the Constitution. The principle of Stare Decisis has distorted the accurate application of law and Constitution. Yet, because of the Constitution's historic resting upon the principle of Stare Decisis, all laws passed in D.C. have the Constitutional legitimacy of law even though they are forced upon us by military rule now in the same way the Congress forced upon the south the passage of the 14th Amendment and later the 15th Amendment. The reason: the pernicious use by the judiciary of Stare Decisis instead of law-and-Constitution-as-written. Go to court and you will hear: "In the case Smithers vs. Delaware the court said ..." or "The Court found in Caldwell vs. Jones ..." and those sometimes badly drawn decisions are law. The Codes, the statutes and all aspects of law, even sometimes common sense, are often set aside in court in preference for what other courts have decided. Those court decisions tend, with some exceptions, as in the recent Texas "People vs Lopez" case, to give primacy to the federal government over the state authorities. Why? Because we live under the rule of the gun, given authority by Stare Decisis -- not the rule of law.

Recent decision provides solution:

The good news, however, is that in the mid-1990's the U.S. Supreme Court modified the application of Stare Decisis in a way that could bring a re-birth of the application of written law back to our courtrooms. The Court issued a judgment authored by Sandra Day O'Connor that makes it possible to set aside the Stare Decisis method of adjudication. See **Adarand Constructors, Inc. v Peña 515 U.S. 200 (1995)**. O'Connor writes, "**Remaining true to an 'intrinsically sounder' doctrine established in prior cases better serves the values of Stare Decisis than would following a more recently decided case inconsistent with the decisions that came before it; the latter course would simply compound the recent error, and would likely make the unjustified break from previously established doctrine complete. In such a situation, 'special justification' exists to**

depart from the recently decided case.” Translated, this means, “If we are to be true to the idea of Stare Decisis, we must be free to abandon it.” The decision makes it entirely proper under the Stare Decisis doctrine for a lawyer or judge to ignore the whole idea presented by recently decided cases and reach back to earlier cases, even to the law and Constitution themselves for guidance in reaching a just decision.

This decision changed the process of citing precedence into a whirlwind of subjectivity. The correct application of this Supreme Court decision demands a return to the objectivity of the citation of the law itself, showing how that law relates to Constitutional provisions. At very least, it means that any citation of a court case offered before a judge can now legally be viewed as not necessarily relevant. The Supreme Court has cast a shadow of uncertainty over all case citations. If case citations cannot be relied upon with certainty as in the past, isn't it possible that courts will rely to a greater degree upon the plain wording of laws? The law profession has been told by the U.S. Supreme Court that they may look elsewhere for justice than to pleadings based upon previous cases. The power to destroy this negative anti-law anti-Constitutional practice is in our hands. If we could get the legal profession to follow the Supreme Court's advice and to look first to the written law and to the actual Constitutions there could be a new birth of genuine justice.

The WORD:

The point I am making is that even though we are under military rule, and people who know how to think are justified in becoming frustrated and angry when they are refused justice; nevertheless, military violence is not the solution to our problem. The solution is the word. The Word had the power to create the universe. Why shouldn't the word have the power to recreate our free nation? Unrealistic expectations cause depression. Our first duty, socially, under the Lord, is to think realistically. Here is the reality:

1. Our nation started as a Constitutional Republic with We the People as the sovereign.
2. “The People” tested the validity of the founding principle in the mid-1800's, lead by Jefferson Davis.
3. The power of the gun overran “We the People,” subordinating the sovereignty of the People to the Federal Government, preserving the Union but confusing Constitutional structuring.
4. Since the end of Lincoln/Davis war “We the People” have been held in military captivity. Under the Fourteenth Amendment, we are all merely citizens, no longer sovereign.
5. Lincoln's desire to restore the U.S. Constitution in its "relation to the People" has never been fulfilled.
6. The People are alienated from their proper position guaranteed by the Constitution, and our natural rights are no longer ours.
7. The government is sovereign.

If you want to help restore the original intent of the Founders, then work to:

1. Expose the above facts.
2. Encourage Congress to apologize to the Southern states for using military force in the legislatures of the South, abrogating the use of force in the establishment of law, getting Congress to acknowledge that it was the anger of Congress over the suspected actions of John Wilkes Booth and Congress' disrespect for the unsavory character of President Andrew Johnson that caused their errors.
3. Ask Congress and the judiciary to do what Lincoln wanted to do and "Restore the relation between the People and the U.S. Constitution."
4. In the meanwhile, in all relevant instances, use the recent U.S. Supreme Court decision negating the mandatory use of Stare Decisis, causing courts to base decisions upon written law and the words of the Constitution in the interests of justice (the concept expressed in the Supreme Court decision written by Sandra Day O'Connor.)

5. In all minor instances cooperate with government authorities, seeing they operate by the force of the gun, thus allowing yourself to live in peace.

With these thoughts in mind, we can be less frustrated and more focused upon our central problem which ironically has already potentially been solved. Our solution is to get back to written law and Constitution in our courts. Remember, though, people who stand for what is right often suffer the punishment that only truth can bring. Think of Galileo's treatment by the so-called Church.

SPEECH

*All objects of creative power have speech ...
The countless atoms threaten or beseech...
Yet man, with heart afire, may beauty preach...
Let no one thy sovereign word impeach.*

-- By Frank Channing Haddock, M.S., PhD, 1907
(Shortened and adapted.)

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