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I. INTRODUCTION

Ask any first-year law student one thing he or she learned in the first week of law school, and one will probably hear the words “stare decisis.” One might even hear the full phrase “stare decisis et non quieta movere.” In asking what such an odd Latin phrase means, the answer is quite simply “rely upon precedent” or “apply past decisions.” The principle of stare decisis, however, is not merely a rote application of past decisions. Stare decisis is the bedrock principle upon which American legal thought and practice are ultimately founded.

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I. INTRODUCTION

Ask any first-year law student one thing he or she learned in the first week of law school, and one will probably hear the words “stare decisis.” One might even hear the full phrase “stare decisis et non quieta movere.” In asking what such an odd Latin

phrase means, one might get a range of answers from, “let the decision stand,”2 to “to stand by things decided and ‘not to disturb what is settled,’”3 or even “a way of accumulating and passing down the learning of past generations, a font of established wisdom richer than what can be found in any single judge or panel of judges.”4 Ultimately, as Justice Kavanaugh has succinctly put it, “[s]tare decisis requires respect for the Court’s precedents and for the accumulated wisdom of judges who have previously addressed the same issue.”5 In other words, stare decisis stands for the judicial principle “that things decided should stay decided unless there is a very good reason for change.”6

But why? Why should judges respect the Court’s precedents? Is it certain the decisions previously made by judges surely “established wisdom richer than what can be found in any single judge or panel of judges”?7 If so, has every decision made by the Court manifested accumulated wisdom? Such questions likely occur in the classroom of most every first-year law student, and such questions are far from new.8 As Justice William O. Douglas wrote,

[i]t is easy . . . to overemphasize stare decisis as a principle in the lives of men. Even for the experts law is only a prediction of what judges will do under a given set of facts—a prediction that makes rules of law and decisions not logical deductions but functions of human behavior.9

William Blackstone also impliedly recognized the danger of overemphasizing the weight and authority of stare decisis when he wrote that some judicial decisions could be “manifestly absurd or unjust.”10 More recently, Fifth Circuit Judge Jerry Smith controversially criticized the majority for deciding an issue as if “[s]tare decisis is for suckers.”11

After enduring this unexpected storm of jurisprudential philosophies—which is always the danger of talking to a law student—one may be left wondering, “what now?” There is no question that the judiciary develops and forms laws through its interpretations of statutes and constitutions.12 Since the judiciary has the power to develop and form laws, the primary purpose for stare decisis has been to preserve a “principled and intelligible development of the law.”13 However, there is a perpetual tension between preserving intelligible principles and allowing legitimate developments.14 On one hand,

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5. Id. at 341 (Kavanaugh, J., concurring).
6. Id. at 363 (Breyer, Sotomayor, Kagan, JJ., dissenting).
7. Id. at 264 (dictum) (quoting NEIL GORSUCH, A REPUBLIC, IF YOU CAN KEEP IT 217 (2019)).
10. Ehrcke, supra note 8, at 849.
principles can become ossified, irrelevant doctrines.\textsuperscript{15} On the other hand, as implied by Judge Smith, developments, if left untethered, can become a relativistic disarray like a sail thrown to the wind.\textsuperscript{16} Accordingly, to secure “a government of laws, and not of men,”\textsuperscript{17} there must be principles that guide \textit{stare decisis} and the judiciary’s “principled and intelligible development of the law.”\textsuperscript{18} Only then can the judiciary follow a font of established wisdom.

Another entity that has long claimed to maintain both a continuity of principles and an openness to development is the Roman Catholic Church.\textsuperscript{19} In fact, whereas the doctrine of \textit{stare decisis} can be traced back to the nineteenth-century English Common Law, the Roman Catholic Church claims to have maintained a continuity of thought and teaching since around the year 26 A.D.\textsuperscript{20} Some might read this and fear encroachment upon notions of separation of Church and State.\textsuperscript{21} However, the argument this Comment presents is not a theological one, a moral one, or one that in any way seeks to subvert the State by means of a singular religious teaching. Rather, this Comment argues that princi-


\textsuperscript{16} See Consumer Fin. Prot. Bureau., 952 F.3d at 603 (Smith, J., dissenting).

\textsuperscript{17} 4 John Adams, \textit{Novanglus Papers, no. 7}, in \textit{The Works of John Adams} 230 (Charles Francis Adams, ed. 1851).


\textsuperscript{19} Pope Benedict XVI, Address of His Holiness Benedict XVI to the Roman Curia Offering Them His Christmas Greetings (Dec. 2005) (teaching “[o]n the one hand, there is an interpretation that I would call ‘a hermeneutic of discontinuity and rupture’; it has frequently availed itself of the sympathies of the mass media . . . On the other, there is the ‘hermeneutic of reform,’ of renewal in the continuity of the one subject-Church . . . She is a subject which increases in time and develops, yet always remaining the same . . .”). Pope Benedict XVI goes on to criticize a popular perspective at that time in which persons would treat the Second Vatican Council “as a sort of constituent that eliminates an old constitution and creates a new one.” Ultimately, he exhorted the other Roman Catholic bishops to remember “the continuity of principles proved not to have been abandoned” throughout the Roman Catholic Church’s history. He declared, rather, “[t]he Church, both before and after the Council, was and is the same Church . . . jourmeying on through time . . .”). In addition, a Roman Catholic monk who died before 450 A.D., Saint Vincent of Lerins, wrote, “Is there to be no development of religion in the Church of Christ? Certainly there is to be development and on the largest scale . . . But it must truly be development of the faith, not alteration of the faith. Development means that each thing expands to be itself, while alteration means that a thing is changed from one thing to another.” 4 Saint Vincent of Lerins, \textit{The Development of Doctrine, in The Liturgy of the Hours According to the Roman Rite: Ordinary Time, Weeks 18–34} 363, 363 (Int’l Comm’n on Eng. in the Culturry, trans., 1975); Joseph de Ghellinck, \textit{St. Vincent of Lerins, Cath. Encyclopedia}, https://www.newadvent.org/catha/15439h.htm (last visited Feb. 27, 2024).

\textsuperscript{20} Peter V. Armenio, \textit{The History of the Church: A Complete Course, in The Didache Series} 28 (James Sopocias, et. al., eds., 2015). Some historians are hesitant to put a date on the continuity of Catholic teaching for a number of different reasons. What can be said is that there is wide acceptance that a man named Jesus of Nazareth began teaching throughout modern Palestine in the year 26 A.D., he was known to pass this teaching on to twelve specific individuals at that time who were then sent to teach it to others, and there is strong evidence of his crucifixion dating to 33 A.D. What is also known is that a man named Paul of Tarsus wrote certain letters in his crucifixion dating to 33 A.D. What is also known is that a man named Paul of Tarsus wrote certain letters in the year 51 or 52 A.D. to organized communities who followed the teachings of Jesus of Nazareth in Corinth. Hubertus R. Dobrner, \textit{Literary Genres of Apostolic Literature, in The Fathers of the Church: A Comprehensive Introduction} 11 (Siegfried S. Schatitzmann, trans., 2007). In addition, the first person to document the followers of Jesus of Nazareth as a “catholic” community was a Roman Christian leader, referred to as a bishop, who died around the year 200 A.D., Saint Irenaeus of Lyon. Id. He also compiled “the first list of Roman bishops beginning with Peter.” Id. (citing \textit{St. Irenaeus of Lyons Against the Heresies} (D.J. Unger & J.J. Dillon, trans., 1992)). St. Irenaeus compiles this list of “bishops” to establish a “tradition derived from the apostles, of the very great, the very ancient, and universally (in Ln. “catholicus”) known Church founded and organized in Rome by the two most glorious apostles, Peter and Paul . . . which comes down to our time by means of the succession of the bishops.” 1 Irenaeus of Lyon, \textit{Against Heresies, in Anti-Nicene Fathers} (Alexander Roberts, et al., trans., 1885).

\textsuperscript{21} See U.S. Const. amend. I, § 1.
ples suggested by Saint John Henry Newman ("St. Newman") to have been the foundation for maintaining a continuity of doctrine since the beginning of the Roman Catholic Church are worthwhile for the American judiciary to maintain a "principled and intelligible development of the law."

Section II will explore the historical development of stare decisis throughout English Common Law history and into the American understanding of Article III judges. Along with exploring the history of stare decisis, this section will present various scholarly reasons for implementing and maintaining it within the American system of law. Following the historical background, this section will examine the modern debate surrounding the purpose, uses, and validity of stare decisis. This section will then conclude with reasons why stare decisis is fundamental to a just and stable continuity of law.

Section III will discuss why stare decisis must be allowed to develop and why the development of stare decisis must be tempered and guided by principles of continuity. This section will discuss the dangers of two potential extremes. The first dangerous extreme is one in which the doctrine of American law fails to address a continuously developing society. The other extreme is one in which the doctrine of American law becomes unpredictable, unintelligible, and untrustworthy. These two extremes frame the issue that will then be addressed through St. Newman’s principles.

Section IV will introduce St. Newman and his principles of doctrinal development. This section presents a quick biographical overview of St. Newman and seeks to establish why lawyers and judges should trust him as a reliable source on the philosophy of continuity within doctrinal development. It will then summarize each of St. Newman’s seven principles and give an overview as to why those principles are particularly worthwhile for the judicial understanding and use of stare decisis.

II. AMERICAN LAW UTILIZES STARE DECISIS TO PURSUE A PRINCIPLED AND INTELLIGIBLE DEVELOPMENT OF THE LAW

We can only fully understand certain facets of an institution or society by knowing its history along with its current context. Therefore, truly understanding stare decisis requires first knowing its history. Stare decisis occupies a prominent space in the history of the American legal system. How it came to be so prominent in American law is a long and winding road leading back to the American inheritance of the English Common Law.

22. Dobbs, 597 U.S. at 287 (quoting Russo, 140 S. Ct. at 2152 (Thomas, J., dissenting)).
25. See POUND, supra note 15, at 34.
27. See Newman, supra note 14, at 84–102.
30. See Connors, supra note 29, at 685 (quoting Consovoy, supra note 29, at 66).
A. America’s English Roots Reveal the Purpose of Stare Decisis

Dating an uncodified practice is always a tricky and precarious endeavor; practices—especially wide-sweeping, ancient practices—never rise in a vacuum resulting from sudden, uninfluenced genius. However, since others have made perilous efforts to date the practice of stare decisis in English Common Law, it is worth summarizing that effort for purposes of this Comment.

Some scholars trace the modern understanding of stare decisis, at least remotely, to the prudent words of Lord Eldon in 1803: “[t]he law should be certain than that every judge should speculate upon improvements in it.” Other scholars will point later to Beamish v. Beamish, decided in 1861. And some argue a much earlier date, citing the “royal justice” Bracton in the thirteenth century or even the influence of ancient Roman law. Yet, even those who refer to Bracton’s “five hundred cases from the judicial rolls” or the ancient Roman practice of examining distinguished lawyers’ opinions, admit that dating the principle of stare decisis to Bracton or Rome would “be assigning far too early a date for our modern ideas.” Even though Bracton would cite to many cases, he cited such cases not as authoritative on his decision but to avoid the “ignorant and uneducated” influence of his contemporaries. Furthermore, although thirteenth-century litigants were “already citing and ‘distinguishing’ previous cases,” generally, “judges . . . would regard themselves as having an implicit knowledge of the [customs of the court] and would not feel bound to argue about past cases.” Similarly, in ancient Roman law, the opinions that judges looked over in no way bound the judge, and oftentimes, were not considered to have persuasive strength equal to the judges’ own opinions.

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31. See Edward S. Corwin, The “Higher Law” Background of American Constitutional Law, 42 HARV. L. REV. 149, 153–64 (discussing the historical progression of natural law theory and positive law from Demosthenes around 384 BC to Cicero’s philosophy around 52 BC and to The Institutes in 533 AD. Corwin demonstrates the difficulty in dating the influences of natural law theory on the United States Constitution because of the several influences upon the theory as it influenced the writers of the American Constitution).


34. Clarke, supra note 1, at 191–92 (citing Pollock & Maitland, 1 HISTORY OF ENGLISH LAW 183–84 (1895)).

35. Clarke, supra note 1, at 186–87 (citing George Edward Sullivan, The Correct Doctrine of Stare Decisis, 55 CENT. L.J. 362, 363 (1902)).

36. Clarke, supra note 1, at 191 (citing Pollock & Maitland, supra note 34, at 183–84).


38. Clarke, supra note 1, at 191 (citing Pollock & Maitland, supra note 34, at 183–84).

39. Clarke, supra note 1, at 192 (citing Pollock & Maitland, supra note 34, at 183–84).

40. This bracketed phrase is originally in the Latin “consuetudo curiae” used by the judges in the thirteenth century. To make clear the point, this phrase has been translated using William Whitaker’s Words—an online translating program through University of Notre Dame. Consuetudo Curiae, WHITAKER’S WORDS ONLINE, https://latin-words.com/ (last visited Feb. 25, 2024).


42. Clarke, supra note 1, at 186–87 (citing Sullivan, supra note 35, at 363).
Some scholars argue that a pivotal moment for the contemporary use of *stare decisis* dates back to Lord Halsbury’s 1898 decision in *London Tramways Company v. London County Council*.43 Lord Halsbury held, “[a] decision of this House once given upon a point of law is conclusive, upon this House afterwards, and it is impossible to raise that question again as if it . . . could be reargued, and so the House be asked to reverse its own decision.” 44 However, focusing on the late nineteenth century overlooks the influence of English Common Law on the fledgling United States.45 Instead, several sources point to William Blackstone’s 1765 *Commentaries on the Laws of England* as the first formal expression of today’s *stare decisis*:

For it is an established rule to abide by former precedents, where the same points come again in litigation; as well to keep the scale of justice even and steady, and not liable to waver with every new judge’s opinion; as also because the law in that case being solemnly declared and determined, what before was uncertain, and perhaps indifferent, is now become a permanent rule . . . . 46

Thus, by the mid-eighteenth century, English Common Law jurisprudence certainly looked like the *stare decisis* that every first-year law student learns: a “respect for the Court’s precedents and for the accumulated wisdom of judges who have previously addressed the same issue.”47

The American system most certainly draws its principles of *stare decisis* from the source of English Common Law, and the English use of precedents was “firmly in place” at the time “the Founders were designing the U[nited] S[ates] judicial system.”48 Yet, the adoption of English Common Law did not occur seamlessly.49 Courts in the colonies and post-Revolution United States fought vigorously over the role of English precedents in the American judiciary.50 Nonetheless, scholars recognize that those ratifying the Constitution contemplated English Common Law and “supported some manner of its use.”51 For instance, James Madison, writing to Charles Jared Ingersoll, argued that “the rules of conduct” of a stable society “should be certain and known.”52 This goal of a sta-

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45. See Jordan Wilder Connors, *supra* note 29, at 685; see also Healy, *supra* note 41, at 89.
46. Ehrcke, *supra* note 8, at 848–49 (quoting Blackstone, *supra* note 8); see also Healy, *supra* note 41, at 68, 70 (citing Blackstone, *supra* note 8, at *69*).
49. See Healy, *supra* note 41, at 73–91. To summarize his well-documented historical analysis of the development of *stare decisis* in the American judiciary, Healy argued, “[D]uring the decades after independence, state courts discarded English and American precedents wholesale, while the Supreme Court paid little attention to decided cases, choosing instead to reason from principle.” Id. at 88. However, Healy also recognized, “[o]f course this conclusion is not indisputable. There is some evidence that American lawyers prior to and shortly after the framing of the Constitution recognized an obligation to follow precedents they disagreed with . . . . Alexander Hamilton thought it was ‘indispensable that they should be bound by strict rules and precedents.’” Id. at 89.
50. See id., at 73–91.
52. Id. (quoting Letter from James Madison to Charles Jared Ingersoll (June 25, 1831), in THE MIND OF THE FOUNDERS: SOURCES OF THE POLITICAL THOUGHT OF JAMES MADISON 497 (Marvin Meyers, ed. 1973)).
ble society, according to Madison, could not be achieved “if judges were allowed to individually interpret every law.”

Whether a historian opines that the newly independent United States largely rejected *stare decisis* or believes that the founders of the Constitution largely promoted *stare decisis*, by the mid-to-late nineteenth century, American courts document the consistent use of its principles. For instance, in an 1853 case, *McDowell v. Oyer*, Chief Justice Jeremiah Black held:

> When a point has been solemnly ruled by the tribunal of the last resort, after full argument and with the assent of all the judges, we have the highest evidence which can be produced in favor of the unwritten law. . . . [L]et it be remembered that *stare decisis* is itself a principle of great magnitude and importance.

Furthermore, Chief Justice Samuel Maxwell held in the 1881 case *Wilson v. Bumstead*, “[i]n the application of the principles of common law, where the precedents are unanimous in the support of a proposition, there is no safety but in the strict adherence to such precedents.”

In addition to state court decisions, in 1807, the United States’ highest court decided a case on the doctrine of *stare decisis*. In explaining its reasoning, the Court wrote, “[b]ut here is a precedent established under circumstances, which exclude all possibility of improper bias. This precedent is therefore more to be relied on than my judgment.” Ten years later, Justice John Marshall, in the famous 1819 *McCulloch v. Maryland* case, wrote, “[i]t has been truly said, [sic] that this can scarcely be considered as an open question, entirely unprijudiced by the former proceedings of the nation respecting it.” Justice Marshall went on to argue that the issue at hand—regarding a question of the nation’s Constitution—is too important for reliance simply on precedent. Therefore, although precedent must be respected, it requires the Court to readdress the issue and reason to proper conclusions once more. Still, in his nod to the significance of precedent, the Supreme Court Justice explained that a previous “exposition of the [C]onstitution, deliberately established by legislative acts . . . ought not to be lightly disregarded.” In other words, *stare decisis* should at least be held in high regard when making judicial decisions.

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53. Id.
57. Id. at 88 superseded by statute on other grounds, 28 U.S.C. § 1455.
59. Id.
61. ArtIII.S1.7.2.1 Historical Background on the Stare Decisis Doctrine, CONSTITUTION ANNOTATED, https://constitution.congress.gov/browse/essay/artIII-S1-5-1/ALDE_00001187/ (last visited Feb. 26, 2024) (quoting McCulloch v. Maryland, 17 U.S. 316, 401 (1819)).
Justice Marshall’s decision in McCulloch shows a definite recognition and regard for *stare decisis* in the early nineteenth century. However, it is obvious that Justice Marshall did not have the strictest regard for *stare decisis*. Similarly, although the Supreme Court in 1807 invoked *stare decisis*, some contest that the doctrine experienced fluctuating adherence throughout the early nineteenth century. Nonetheless, by 1853, the Supreme Court of the United States recognized a tradition of using *stare decisis*. The Court explained:

[in making the examination preparatory to this finding, this [C]ourt has followed two rules . . . . The first is the maxim of the common law, *stare decisis* . . . . [The rule the Court used in determining the case] has grown up and been held with constant reference to the other rule, *stare decisis*; and it is only so far and in such cases as this latter rule can operate, that the other has any effect.]

As such, the Court firmly held that *stare decisis* is so embedded in American law that it is an authoritative doctrine governing the exercise of other rules.

This Comment cannot put a firm date on the first consistent use of the principle of *stare decisis* in the American judiciary. Nonetheless, the mid-eighteenth-century English Common Law use of *stare decisis* certainly looked similar to the American use of *stare decisis*. Furthermore, at least some Founding Fathers—such as Madison and Hamilton—promoted the use of *stare decisis* inherited from England. By the mid-to-late-nineteenth century, states and the United States Supreme Court consistently referred to the doctrine of *stare decisis* as a source of authority. Moreover, a 2015 study shows that, since the early nineteenth century, the United States Supreme Court’s use of *stare decisis* has exponentially increased. Thus, the principle of *stare decisis* has its roots deeply implanted in the fields of early-American jurisprudence. Although its viability has been called into question, its controversial history indicates that *stare decisis* will stand the test of time.

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63. *Lee*, * supra* note 60, at 670–76.


66. *Id*.

67. *Id* at 286–87.

68. See *Clarke*, * supra* note 1, at 189–90 (1942) (quoting Blackstone, * supra* note 8, at *69–72*).

69. See *Connors*, * supra* note 29, at 685 (quoting Madison, * supra* note 51, at 497); see also *Healy*, * supra* note 41, at 89 (citing Hamilton, * supra* note 63).

70. *Healy*, * supra* note 41, at 87, 89; see also *Lee*, * supra* note 60, at 693–94.


B. The Principles Underlying Stare Decesis Establish Its Purpose as the Principled and Intelligible Development of the Law

Just as the historical development of *stare decisis* in the American judicial system is prone to ambiguity and differing legitimate historical interpretations, so too are the underlying principles of *stare decisis* prone to ambiguity and differing legitimate interpretations. This should not come as a surprise, though. Arguments over historical development and arguments over the development of ideas are intimately united. Although the underlying principles of *stare decisis* are prone to ambiguity, there must be some underlying axioms that every person can agree upon. For an institutional doctrine such as *stare decisis* cannot survive centuries without common ground. The United Nations’ international human rights treaties illustrate that, when a principle falls into mere relativism, relativism falls into disunity, and disunity cannot survive. As Justice Frankfurter held in his 1947 concurring opinion to *United States v. United Mine Workers of America*, “[i]f one man can be allowed to determine for himself what is law, every man can. That means first chaos, then tyranny.”

Relativism is another broad idea that has even more competing definitions and arguments than *stare decisis*. However, to criticize a principle falling into relativism also requires a clear definition of relativism. The Stanford Encyclopedia of Philosophy sums up the notion nicely. It states, “[a] standard way of defining . . . different types of relativism is to begin with the claim that a phenomenon x (e.g., values . . . judgments . . .) is somehow dependent on . . . some underlying independent variable y (e.g., paradigms, cultures . . . belief systems . . .).” Applying this to precedent, if *stare decisis* does not have axioms to rely on, then judgments (“x”) would depend simply on independent judicial belief systems and personal perspectives (“y”). As a result, there would be nothing to ground judicial decisions in a continuous and coherent body of law. If interpretation of the law in each case depended simply on a justice winning over the majority to his or her personal worldview, then every case could easily create a new body of law. In such a


77. See Elizabeth M. Zechenter, *In the Name of Culture: Cultural Relativism and the Abuse of the Individual*, 53 J. ANTHROPOLOGICAL RESCH. 319, 319–20, 322, 324, 328, 341–42 (1997) (arguing that the United Nations was created out of a global recognition that “certain human rights are universal, fundamental, and inalienable, and thus they cannot and should not be overridden by cultural and religious traditions.” Human rights cannot be protected without a universal recognition of certain moral rights, and therefore, relativism fails to offer a unified front for human flourishing.).


80. Id.

81. Id.
world, there can be no predictability, no consistency, and accordingly, no integrity and no equality.  

Although some have argued that *stare decisis* has fallen victim to mere relativism, the survival of *stare decisis* in American jurisprudence from at least the mid-to-late nineteenth century evidences otherwise. Since *stare decisis* continues as a major judicial doctrine, there must be some guiding principles underlying it that all, or most, can objectively rely upon. Scholars typically point to two prevailing theories steering the use of *stare decisis*. One prominent argument is that precedent “allows for advantageous predictability in the ordering of private conduct . . . . [I]t promotes the necessary perception that law is stable and relatively unchanging.” The other prominent theory is that *stare decisis* provides an adjudicative consistency that “is a good in itself” because it provides either “consistency as equality” or “consistency as integrity” to the Court’s decisions. Scholars who point to these two prevailing theories tend to separate them, typically because they wish to attack one or the other. Despite the academic tendency to separate the two theories, often they are intermingled when judges and legal scholars argue for the significance of *stare decisis* in the American legal system.

Blackstone offered one of the most historically significant arguments for the use of *stare decisis*, and his position promoted both theories stated above. In his defense of *stare decisis*, Blackstone highlights the importance of predictability. He argued that precedent prevents justice from the “liab[ility] to waver with every new judge’s opinion.” Alongside this stability, precedent encourages judges to maintain “the known laws and customs of the land.” Simultaneously, Blackstone’s defense demonstrates an argument for consistency as equality and integrity. He argued *stare decisis* “keep[s] the

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90. Clarke, *supra* note 1, at 185, 189–90 (quoting Blackstone, *supra* note 8, at *69–72). The full quote relevant to this analysis is as follows: For it is an established rule to abide by former precedents . . . as well to keep the scale of justice even and steady, and not liable to waver with every new judge’s opinion . . . what before was uncertain, and perhaps indifferent, is now become a permanent rule, which is not in the breast of any subsequent judge to alter or vary from according to his private sentiments: he being sworn to determine, not according to his own private judgment, but according to the known laws and customs of the land, not delegate to pronounce a new law, but to maintain and expound the old one . . . . The doctrine of the law then is this: that precedents and rules must be followed, unless flatly absurd or unjust; for though their reason be not obvious at first view yet we owe such a deference to former times as not to suppose that they acted wholly without consideration.
91. *Id.*
92. *Id.*
93. *Id.*
94. *Id.*
scale[s] of justice even and steady . . . not in the breast of any subsequent judge to alter or vary from according to his private sentiments.”

If, as Blackstone argued, precedent keeps the scales of justice even, then it provides equality among those who come before it. Additionally, if judges cannot simply change their interpretation of the law every time their private sentiment differs from what has come before, then precedent maintains the apolitical integrity of the Court. Furthermore, Blackstone wrote that precedents uphold the integrity of the courts by continuing what is reasonable and just. If a determination is not reasonable or just, then the doctrine of precedent will rid the body of law of a false determination masquerading as law. He argued that, “where the former determination is most evidently contrary to reason[,]” then a judge is not bound by its authority. “For if . . . the former decision is manifestly absurd or unjust, it is declared, not that such a sentence was a bad law, but that it was not law [at all].” Precedent, therefore, provides integrity by sustaining just laws while demanding the rejection of unjust aberrations.

More recently, several Supreme Court cases include arguments for both predictability and integrity to explain the significance of stare decisis. For instance, writing for the majority in Kisor v. Wilkie, Justice Elena Kagan wrote, “[a]dherence to precedent . . . ‘promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.’” Based on this reasoning, the Court held, “any departure from the doctrine of stare decisis demands ‘special justification.’” The Court further reasoned that stare decisis must hold authoritative weight because “the rare overruling . . . introduces so much instability into so many areas of law, all in one blow.” If the Court were to overturn its precedent when the rule is squarely on point, then it would “force[e] courts to ‘wrestle [with]’ whether [the preceding case] had actually made a difference.” In turn, the Court implies that forcing the courts to wrestle with this matter would cause a disparity in decisions, thereby creating inequality among parties. As a result, although the Court places greater emphasis on the significance of predictability and stability, it also argues that the Court’s integrity and ability to maintain equality through continuity depends on the doctrine of stare decisis.

Similarly, writing for the majority in Dobbs v. Jackson Women’s Health Organization, Justice Samuel Alito wrote:

Stare decisis plays an important role in our case law, and we have explained it serves many valuable ends. It protects the interests of those who have taken action in reliance on a past decision . . . . It reduces incentives for challenging settled precedents, saving parties and courts

95. Clarke, supra note 1, at 185, 189–90 (quoting Blackstone, supra note 8, at *69–72).
96. Id.
97. Id.
98. Id.
99. See id.
100. Clarke, supra note 1, at 185, 189–90 (quoting Blackstone, supra note 8, at *69–72).
101. Id.
103. Id.
104. Id.
105. Id.
106. Id.
expense of endless relitigation . . . . It fosters ‘evenhanded’ decision making by requiring that like cases be decided in like manner . . . . It ‘contributes to the actual and perceived integrity of the judicial process’ . . . . And it restrains judicial hubris and reminds us to respect the judgment of those who have grappled with important questions in the past.108

Although the majority in Dobbs overturned Roe v. Wade, Casey v. Planned Parenthood, and other cases relying on those precedents, the Court recognized both prevailing arguments that scholars have emphasized.109 In pointing to the argument from predictability, the Court stated, “[stare decisis] protects the interests of those who have taken action in reliance on a past decision.”110 And in highlighting the argument from consistency for integrity and equality, the Court stated, “[stare decisis] fosters ‘evenhanded’ decision making . . . . It ‘contributes to the actual and perceived integrity of the judicial process.’”111 Accordingly, in recent years, the Court has drifted away from any sort of competition between stare decisis philosophies and has pointed to both philosophies as legitimizing the use of stare decisis.112

Some scholars have separated the most prevalent arguments for the use of stare decisis into two overarching categories, and they have argued that the philosophical foundations of these arguments are at odds.113 However, from Blackstone to now, both predictability and integrity have been emphasized simultaneously, if not collaboratively.114 Justices concurrently emphasizing both judicial philosophies have found a greater unitary purpose.115 That common purpose of stare decisis is “the ‘principled and intelligible’ development of the law.”116 Together, predictability and the integrity of courts serve this greater purpose.117

Justice Kagan’s emphasis on legal principles demonstrated the importance of a principled development of the law.118 She emphasized “the consistent development of legal principles” that are both “evenhanded” and “predictable.”119 Her emphasis on predictability for evenhanded judgment demonstrated the importance of an intelligible development of the law.120 Predictability is “the state of knowing what something is like.”121 which is essentially the same as intelligibility.122 Thus, the Court held that the purpose of stare decisis is the principled and intelligible development of the law; simp-
ly used different words.123 Likewise, Justice Alito explicitly emphasized that all of the reasons given for stare decisis ultimately lead back to seeking “the ‘principled and intelligible’ development of the law.”124

Even if the two theories behind stare decisis truly diverge philosophically, both, at least, rely on a common underlying purpose. Predictability must be intelligible; one cannot anticipate what one does not understand. Furthermore, it must be principled because, as discussed above, principles are the foundation of uniform continuity—a necessary element for predictability.125 Similarly, principles, as the foundation of uniform continuity, allow for “like cases” to be “decided in a like manner.”126 If there are no uniform principles, there can be no uniform conclusions, which means no equality. Moreover, if there are no uniform, intelligible principles, then there is no standard by which to judge integrity. Integrity means for something to contain “soundness” or to have the “quality or state of being complete or undivided.”127 Something cannot be sound if it is not intelligible and cannot be complete if it does not have a unifying principle. Thus, no matter if a judge adheres to the argument from predictability, equality and integrity, or both, the underlying motive must be “the principled and intelligible” development of the law.”128

C. Why the Principled and Intelligible Development of the Law Is a Worthy Goal for American Jurisprudence

In the landmark case Marbury v. Madison, Chief Justice Marshall quoted John Adams from the Massachusetts Constitution: “[The] government of the United States has been emphatically termed a government of laws, and not of men.”129 Since Adams penned this famous line to the Massachusetts Constitution, the United States Supreme Court has quoted it over a dozen times, it has appeared in the highest court of every state, and it has been repeated throughout the federal district and circuit courts.130 Much later, in 1947, Justice Frankfurter famously explained,

There can be no free society without law administered through an independent judiciary. If one man can be allowed to determine for himself what is law, every man can. That means first chaos, then tyranny . . . . As the Nation’s ultimate judicial tribunal, this Court, beyond any other organ of society is the trustee of law and charged with the duty of securing obedience to it.131

123. Kisor, 139 S. Ct. at 2422.
125. See Maria Baghramian & J. Adam Carter, supra note 79.
If the United States is to be a government of laws, not of men, administered through an independent judiciary securing obedience to it, then that judiciary must preserve a principled, intelligible, and moral unity of the law.\textsuperscript{132} If relativism—that is to say individual or group values within a particular time—is to rule the judiciary instead of a principled, intelligible, and moral unity of law, then American law will fall into the dangerous realm of putting its “trust in persons rather than in arguments.”\textsuperscript{133} As Justice Thurgood Marshall put it in a scathing dissent, the problem of relativism is that “power, not reason” becomes “the new currency of the Court’s decision making.”\textsuperscript{134} By falling into this realm of a government ruled by men, American law “cannot escape the charge of a certain arbitrariness.”\textsuperscript{135} And yet the Court continuously holds that arbitrariness is unacceptable.\textsuperscript{136} Thus, \textit{stare decisis} in American law requires certain axioms guiding its practice in order to maintain an authentic government of laws and not of men.

### III. Two Extreme Sides of the Same Coin: Both Crystallization and Unfettered Discretion Undermine American Law

It has been argued thus far that the primary purpose for \textit{stare decisis} is a principled and intelligible development of the law. It has also been argued that the principled and intelligible development of the law is a worthy goal for the American judiciary. However, the meaning of “development of law” has been taken for granted up to this point. Nonetheless, the phrase can be understood in a variety of ways. Consequently, it is important at this juncture to define what is meant by the development of law.

The word “development” can have many different definitions. Merriam-Webster currently provides twenty-one different definitions for the word.\textsuperscript{137} In addition, it is always used in relation to something else, for example: economic development, social development, moral development, individual development, and so on.\textsuperscript{138} Therefore, development is a descriptor. The first definition offered by Merriam-Webster is “to set forth or make clear by degrees or in detail.”\textsuperscript{139} Another significant definition offered is “to cause to evolve or unfold gradually: to lead or conduct (something) through a succession of states or changes each of which is preparatory for the next.”\textsuperscript{140} Each of these definitions describes the goal of \textit{stare decisis}.

The word “law” can be equally as vague. When one speaks of the law, one could mean a particular theory of law, such as “the natural law theory, the theory of ra-
tionalism, and the theory of positivism.” Another way to speak about law is to speak about “government under the rule of law.” Dean Frederick C. Cronkite—Dean Emeritus of Law at the University of Saskatchewan—explains that law can mean, “[a] social organization in which people are not subjected to arbitrary decrees but where they live and conduct their affairs with reference to rules beyond the power of a dictator.” As with “development,” Merriam-Webster offers seventeen different definitions for the word “law.” Most notably, law is “a binding custom or practice of a community: a rule of conduct or action prescribed or formally recognized as binding or enforced by a controlling authority.

Referring to law as “a binding custom or practice . . . a rule of conduct or action” is the sense in which the Court has used it in referring to the “principled and intelligible development of the law.” Stare decisis is precisely meant to be a binding custom and a rule of conduct enforced by the courts as a controlling authority. This broad and general definition of the law is also most similar to that of doctrine. Doctrine is defined as “a principle or position or the body of principles in a branch of knowledge or system of belief.” In fact, doctrine can also be defined as “a principle of law established through past decisions.”

In this way, stare decisis is a doctrine of the binding customs of the nation.

When the Court speaks of a development of the law, stare decisis is meant to make clear by degrees or detail the binding customs or practices and rules of conduct or action in the American community. Stare decisis guides judges when they follow rules and decisions that have been previously made. Yet, judges also clarify binding rules by giving their own reasons for why a precedent applies or does not apply in a particular situation. For instance, in Vasquez v. Hillery, the Court upheld a rule dating back to 1880 “requiring the reversal of the conviction of any defendant indicted by a grand jury from which members of his own race were systematically excluded.” The Court presented a long line of cases establishing the binding rule that directed its decision. However, the Court did not leave its decision there. The Court went on to explain why the long line of precedent is still valid in its own time and why the current facts fit within the precedent it invoked. The Court held, “intentional discrimination in the selection of grand jurors is a grave constitutional trespass . . . . If grand jury discrimination becomes a thing of the past, no conviction will ever again be lost on account of it.” Hence, the Court contrib-

141. Zechenter, supra note 77, at 320.
144. F.C. Cronkite, supra note 142, at 40.
146. Id.
150. Id.
152. Id. at 261.
153. Id. at 262.
154. Id.
uted to the developing law by making clear what the precedent from 1880 meant and by giving more detail to its significance.155

On the other hand, the Court could mean that *stare decisis* causes the binding customs or practices and rules of conduct or action in the American community to unfold gradually. In such case, *stare decisis* leads the American community through a succession of binding practices and rules of conduct. Also in *Vasquez*, the Court presented an “unbroken line of case law,” establishing the precedential rule that the Court would not deviate from.156 This unbroken line included fifteen cases dating from 1881-1976, each case reaffirming and expanding on the cases before it.157 In doing so, the Court presented the gradual unfolding of the law in American society that it upheld.

It follows from *Vasquez* that either interpretation of the development of law is an acceptable interpretation.158 *Stare decisis* can contribute to the development of law both through clarifying the law with further detail or degree and through the gradual unfolding of binding practices. What is significant and consistent between the two slight distinctions in interpretation is a continuation of law rooted in a particular rule that is expanded or slightly altered over time through the technical skills of the judiciary. Yet, at the same time, the original rule of law is recognizable throughout this expansion or slight alteration.

There are two extremes, however, that must be cautioned against when a body of ideas, customs, practices, or rules develops over time. Each extreme attacks authentic development in some way. St. Newman, in his essay on the development of doctrine, calls these attacks against authentic development “corruptions.”159 On the one hand, there is the extreme rejection of change or movement.160 On the other hand, there is unfettered discretion: the constant change of law that perceives development as a continuous change and that sees change as continuously positive.161

The first extreme has been well described by Dean Roscoe Pound: “[w]hen law has been found judicially what is its place in the legal order? Is it something to stand fixed and unchangeable, resisting all efforts to replace or modify it until repealed or amended by legislation . . . ?”162 Pound goes on to question if this approach to judge-made law should continue “despite social and economic changes.”163 The problem with using *stare decisis* in this way is that there is no room for the recognition of change that occurs outside the law. A judicial perspective that resists all efforts for replacement or modification of what has come before fails to recognize that new inventions require a new, critical look at previous judicial mandates. Conflicts that arise from the Internet, direct-to-consumer marketing, or social media would not be adequately addressed from nineteenth century contract law or tort law. This perspective also abandons the opportunity for a new critical eye to reevaluate the principles of a previous decision.

*Palmer’s Administrators v. Mead* is one example of a decision that tends toward the extreme immutability of precedents.164 In *Palmer’s Administrators*, Chief Justice Hosmer, writing for the Supreme Court of Errors of Connecticut, ends his opinion with the staunch declaration, “if law well established may be annulled, by opinion, a founda-

155. Id.
157. Id. at 261.
158. See id. at 261–262.
163. Id. at 37.
164. Palmer’s Adm’rs v. Mead, 7 Conn. 149, 158 (1828).
tion is laid for the most restless instability.”165 This reasoning leads to his slippery-slope conclusion that judicial decisions will only have transient effects “until some future court, dissatisfied with them, shall substitute new principles in their place.”166 Hosmer then concludes, “[n]o system of inflexible adherence to established law can be as pernicious as such ceaseless and interminable fluctuations.”167 Hosmer’s reasoning exemplifies the staunch defense of precedential immutability. Under the reasoning of Palmer’s Administrators, the Court could never state, “stare decisis is ‘not an inexorable command . . . .’”168

The other extreme—unfettered discretion—is best explained by Judge J. Clifford Wallace. In his article, Judge Wallace explains that certain decisions “creat[e] rights,” decide cases based on “current social attitudes” and “shifting public opinion,” and perceive “the major role of the judiciary as a social instrument to effectuate change.”169 The problem with this judicial perspective is, as Wallace put it, that extreme discretion “has no . . . consistency.”170 The judiciary is most at risk of acting in a relativistic manner when it is acting without judicial restraint.

An example that leans toward extreme judicial discretion can be found in Helvering v. Hallock.171 In that case, Justice Frankfurter wrote for the Court, “stare decisis is a principle of policy and not a mechanical formula of adherence to the latest decision . . . .”172 Rather than a binding force, stare decisis as a principle of policy is characterized as a mere “psychologic need to satisfy reasonable expectations.”173 In linguistically downplaying stare decisis, Frankfurter emphasizes judicial discretion over the continuity of precedent.174 Although Justice Frankfurter calls it “important,” clothing stare decisis merely as a “social policy” and “psychologic need” greatly downplays the role of stare decisis and allows the Court to easily maneuver around its importance in order to shape public policy.175

As can be seen from Justice Frankfurter’s varying treatment of stare decisis in 1940 and 1947, either extreme surrounding the golden mean can be tempting for a judge to enter into depending on the issue at hand.176 A judge can employ extreme immutability if precedent favors his or her personal policy preferences.177 In either case, when the judiciary enters extreme positions regarding the development of stare decisis, it enters into the dangerous usurpation of the heralded separation of powers.178 It enters into the realm of “pure politics unattached to constitutional principles.”179 The greatest issue with such an approach to the judiciary is that the “judge’s ‘self’” and “personal preferences”

165. Id.
166. Id.
167. Id.
169. Wallace, supra note 26, at 11, 12, 14.
170. Id. at 15-16.
172. Id.
173. Id.
174. See id.
175. Id.
177. See Palmer’s Adm’rs v. Mead, 7 Conn. 149, 158 (1828).
begin to govern. Accordingly, each new era comes with new laws that align with whatever "preferred results" the judiciary holds. Whereas extreme immutability seeks to hold that *stare decisis* governs all things, extreme discretion seeks to hold that *stare decisis* is but a fleeting policy preference.

Either perspective introduces what St. Newman calls a “corruption” into the development of *stare decisis*. When the judiciary seeks to judge based on its own personal preferences, “the causes which stimulate the growth” of jurisprudence are in grave danger of “disturb[ing] and deform[ing]” healthy developments in American law. When a judge enters into either extreme mentioned above, the state of *stare decisis* either as an unchanging bulwark or a weak, fleeting idea becomes a sword for mere personal implementation of policy. In such cases, authentic development is cut down by the sword of personal judgment and the problems of relativism begin to cut away at a systematic and predictable body of law. St. Newman diagnosed such issues and offered a cure through his principles of authentic development.

IV. ST. NEWMAN PROVIDES NINETEENTH CENTURY WISDOM FOR A TWENTY-FIRST CENTURY COURT

St. Newman offers a cure to the dangers of personal judgment breaking down authentic development in his seminal work, *An Essay on the Development of Christian Doctrine*. He wrote his essay principally as an argument in defense of certain religious understandings. Nonetheless, the life and education of St. Newman, along with the universal applicability of his principles, will show how these principles are also relevant for the American system of law.

A. St. Newman’s Intellectual Prowess and Logical Principles Demonstrate the Oxford Saint’s Significance for the Theory of Development

St. Newman, born in February 1801, grew into a prominent and well-known intellectual of the nineteenth century. After having received a scholarship to Trinity College at Oxford, St. Newman graduated from Oxford in 1820, three years younger than the usual age others graduated. In the time leading up to his final examination, St. Newman had spent between eleven and fourteen hours a day studying and learning. When Oxford released the graduates’ rankings, St. Newman was disappointed in his position. Nonetheless, in 1821, he sought a fellowship at the renowned Oriel College at...
Oxford.\textsuperscript{191} Despite his disappointing performance on his final examinations, St. Newman’s prowess shined throughout his application for the fellowship.\textsuperscript{192} In turn, Oriel College granted him the fellowship.\textsuperscript{193}

Following his fellowship with Oxford, St. Newman went on to hold many high academic positions.\textsuperscript{194} In fact, he was the primary force in establishing a Catholic University in Ireland and became its first rector in 1854.\textsuperscript{195} Alongside his academic achievements, St. Newman’s name has arisen alongside some of the philosophical greats.\textsuperscript{196} Daniel J. Pratt Morris-Chapman, a research fellow at Oxford, gives an excellent historical overview of St. Newman’s intellectual significance in the nineteenth century.\textsuperscript{197} Importantly, St. Newman engaged with several “nineteenth-century professional philosophers.”\textsuperscript{198} Furthermore, James A. Picton, a twentieth-century author, includes St. Newman alongside great thinkers such as “Kepler, Newton, Descartes, Spinoza, and Leibniz”—all of which are common names in a philosopher’s handbook.\textsuperscript{199} An 1862 philosopher and lawyer named James Fitzjames Stephen called St. Newman “the man of genius,”\textsuperscript{200} and Professor Henry Sidgwich, a late-nineteenth-century Cambridge professor of moral philosophy, called St. Newman “a fine intellect.”\textsuperscript{201} Alongside these accolades, numerous journal articles of philosophy and psychology from the nineteenth century show St. Newman’s works discussed amongst academia.\textsuperscript{202}

Not only does St. Newman’s place among other great thinkers evidence his significance, but also his essay on The Development of Christian Doctrine itself evidences St. Newman’s intellect. This Comment focuses on Chapter V of Part II within The Development of Christian Doctrine.\textsuperscript{203} Within that chapter, St. Newman portrayed extensive knowledge of biological categories and processes, the laws of mathematics, secular and religious history, political philosophy, the history and study of language, sociology, and philosophy.\textsuperscript{204} St. Newman fully displayed, without arrogance, the breadth of his Oxford education within this essay. The multitude of examples and analogies he provided from the various fields of study show him to be a true “man of letters.”\textsuperscript{205} As such, St. Newman’s principles on authentic development apply not only to the development of Christian doctrine, but also to the development of any systematic doctrine. As has been shown, \textit{stare decisis} is precisely a systematic doctrine that the American judiciary uses to main-
tain “a ‘principled and intelligible’ development of the law.” Accordingly, St. Newman’s principles provide significant assistance to using stare decisis authentically and effectively.

B. St. Newman Provides Necessary Principles for Harmonizing Stability and Development

St. Newman published An Essay on the Development of Christian Doctrine in 1845, following his conversion from Anglicanism to Roman Catholicism. As a significant figure among Oxford scholars and tutors, his conversion had been particularly scandalous for the time. In turn, the scandal of his conversion led to great controversy throughout the rest of his life. St. Newman then wrote two seminal pieces in response to his critics. His Apologia Pro Vita Sua was autobiographical in nature and was meant to defend himself against claims that he had never been a true Anglican. He later wrote an essay about the development of doctrine to defend, in part, his reasoning for trusting Roman Catholic doctrine.

Although his principal argument in An Essay on the Development of Christian Doctrine is in defense of a particular religious idea, his principles need not be confined solely to religious doctrine. Throughout his essay, St. Newman offers analogies from every area of scholasticism: biology, sociology, psychology, mathematics, politics, and philosophy. Further, those who have studied St. Newman’s works emphasize that his primary goal in understanding the development of doctrine is to offer a holistic method of application, rather than simply a religious conclusion. Accordingly, although St. Newman’s work is religious and presents different religious arguments, it is not solely religious. The principles and analogies that St. Newman presents for recognizing and administering an authentic method of development apply not only to religious doctrines but to legal doctrines as well. In this way, St. Newman’s ideas are not theological or moral ideas sneaking past the invisible line between Church and State. Rather, he provides intellectual principles that are equally applicable to both Church and State.

i. An Overview of St. Newman’s Principles for Authentic Development

In An Essay on the Development of Christian Doctrine, St. Newman posits there must be “certain characteristics of faithful developments” for an organization to claim an unadulterated connection of ideas throughout more than a thousand years. These “characteristics,” or principles, “serve[] as a test to discriminate between [developments] and corruptions.” By corruption, St. Newman means an idea breaking off from the au-

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authentic development of the institution or doctrine. He illustrates this break from authentic development by analogizing it to organic matter. Organic matter, over time, begins to break down “into its component parts” and begins to lose “the traits and tokens of former years.” For instance, a banana left sitting out will turn from yellow and firm to brown and mushy as it continues in the process of biodegradation. However, if one puts a banana in the freezer, that path of biodegradation will be halted. Similarly, if a doctrine of ideas is not preserved in some manner, then that doctrine of ideas, too, will begin to break into separate component parts, wilting away from the original idea.

The analogy of the banana is not perfect—just as no analogy is perfect—because St. Newman did not wish to freeze doctrine in an undeveloped state. Another apt analogy may be the game of telephone, where one person whispers a phrase into another person’s ear. The second person then attempts to whisper the same phrase into the next person’s ear, and so on down a long line of persons. Normally, at the end of the long line, the phrase becomes something humorously different from the original phrase. However, if the persons are given certain helps down the line—such as the ability to write down the phrase—the phrase can remain intact. The principles St. Newman offered maintain an institution’s original identity throughout the “healthy development[] of an idea,” like writing down a phrase maintains its original identity.

St. Newman offers seven principles of “genuine development”: (1) preservation of type; (2) continuity of principles; (3) the power of assimilation; (4) logical sequence; (5) anticipation of the future; (6) conservative action upon the past; and (7) chronic vigor. These principles can be further categorized into three overarching ideas. A healthy development would do three things. First, it would retain the “same principles” and “same organization.” Second, it would cause the earlier ideas to “anticipate” later developments and the later developments to “protect and subserv[e]” the earlier ideas.
Third, it would include the powers of “assimilation and revival” with a “vigorous action from first to last.”

ii. Finding and Maintaining Core Values Creates the Foundation for Development

St. Newman called his first principle of authentic development “preservation of type.” He used the development of an organism throughout its various stages to illustrate this point. For instance, he explained “young birds do not grow into fishes.” Likewise, a baby’s small arms continue to be the same arms as the child grows and develops. Life is thereby marked by this continuity of development throughout the various stages. The late Professor Stephen Prickett offered a vivid example of this principle through an exercise he learned from Sir E.H. Gombrich. First, Sir Gombrich held up pictures of vastly different babies. Then Gombrich held up pictures of those same babies having become fully developed adults. As Prickett puts it, “extraordinarily enough, what came across in each case was not dissimilarity but recognizable likeness.” Thus, he concludes that a “fundamental organizing principle” becomes apparent throughout the developmental continuity of a human being.

St. Newman also analogizes this principle to the ideal of any particular calling or occupation. He gives the example of a nineteenth-century magistrate, who would be considered “corrupt” if guided in his decisions by bribery or the popularity of one of the parties at court. A magistrate is to be just and impartial, and to deviate from justice or impartiality is to lose the profession of the magistrate altogether. As such, there are certain characteristics for every profession that differentiates it from other professions. If those characteristics are lost, then the profession itself no longer exists. However, this does not mean that change or variation cannot occur.

234. Id.
236. Id. at 171–72.
237. Id.
238. Id. at 172.
239. See id. at 171–72.
240. Professor Prickett spent his career as a decorated intellectual, including his teaching career at the University of Sussex, the Austrian National University in Canberra, the University of Glasgow, and the University of Singapore. See David Jasper & Elisabeth Jay, In Memoriam: Stephen Prickett, INT’L SOC’Y FOR REL., LITERATURE, & CULTURE, https://isrlc.org/in-memoriam-stephen-prickett/ (last visited Feb. 27, 2024).
241. Prickett, supra note 215, at 267. Sir Gombrich lived an equally decorated life in academia, including his work as a Professor of the History and Classical Tradition at London University, a Slade Professor of Fine Art at Cambridge, a Lethaby Professor at the Royal College of Art, and a Visiting Professor of Fine Art at Harvard University. Lee Sorenson, Gombrich, E.H., DICTIONARY OF ART HISTORIANS, https://arthistorians.info/gombriche (last visited Feb. 27, 2024).
243. Id.
244. Id.
245. Id.
247. Id at 172.
248. Id.
249. See id.
250. Id.
more than . . . instruments or expressions of what he is inwardly from first to last.”

This is illustrated by the example of a politician who changed professions many times. Say a politician joined and switched political parties, and changed opinions on policies and choices throughout his or her life. This politician would exemplify authentic development and growth only if he or she came to a steady fulfillment of certain goals or maintained an “adherence to certain plain doctrines” giving unity to his or her career. Without such fulfillment of goals or adherence to doctrines, the politician would lack fidelity and consistency in his or her pursuits. Yet, as long as the goals set out from the beginning are accomplished or adherence to certain doctrines are maintained, the individual’s development remains authentic.

Thus, one can recognize the authentic development of a doctrine as long as “the continual presence of a main idea” remains “despite its changing external expression.” The full-grown bird looks vastly different from the egg from which it came, a child’s arms or face looks vastly different from the arms or face it had in the womb, and the politician’s opinions may look rather different later in a career than when he or she first started. Yet, within all of them, there is a cohesive, unchanging “type,” main idea, or principle that maintains the requisite continuity of authentic development.

However, St. Newman also explained that “real perversions and corruptions are often not so unlike externally to the doctrine from which they come.” What can appear to be authentic development can, in truth, be discontinuity and vice versa. In fact, he warns that holding on to past doctrines and refusing development altogether is itself a break from authentic development. Obstinately holding on to “the notions of the past” can fail to allow the truth of a development to be tested by growth in understanding and continuity over time. On that account, St. Newman concluded that his first principle is most recognized as developments unfold over time and are tested by whether they maintain unity or cause disunity.

Importantly, preservation of type is a retrospective principle. It presents a reason to pause, revisit, and judge anew ideas that have been presented as developments. If preservation of type was the only principle St. Newman offered, then one could not foresee whether a new idea would advance an authentic development. One could only recognize that a previously held development is in fact not a development. This lack of foresight is certainly why St. Newman’s first principle is only one among many. Nonetheless, if the judiciary were to follow this principle, it would occur through reanalyzing developments of the law through previous decisions.

252. Id. at 174–75.
253. Id. at 173.
254. Id.
255. Id.
257. Id.
260. Id.
261. Id. at 176.
262. Id.
263. Id at 177.
265. Id at 178.
266. Id. at 178.
Applying this principle to the judicial use of *stare decisis*, judges ought to compare an opinion to the historical foundation of our nation’s law. Through this principle, the judiciary ought to ask whether the new opinion maintains a continuity with the underlying main idea of the nation’s legal framework in its infancy.\textsuperscript{268} Does this determination maintain the separation of powers conceived by the Founding Fathers and ratified by the States in the Constitution? Has this determination sprouted from the individual rights intended throughout the Bill of Rights and the Reconstruction Amendments? Does the reasoning and impact of this decision look similar to the reasoning and historical impact of those Amendments? These are all questions that flow from St. Newman’s principle. In turn, the answer to these questions would help identify whether *stare decisis* ought to maintain a certain rule and whether a certain rule ought to enter the great body of law through the power of precedent.

If the Court seeks to preserve the “type”—the continuity of underlying central ideas—throughout its decisions, then the predictability purpose of *stare decisis* can emerge more clearly.\textsuperscript{269} Although discerning whether a particular decision preserves the type occurs retrospectively, consistency in maintaining certain centralized characteristics will produce predictability. As more decisions are shown to maintain the original image of American democracy, litigators will more readily see the similarities between the American image today and the American image of its infancy. The ability to see which distinguishing characteristics are inherent to American law, through *stare decisis* preserving such characteristics, will then bring about a greater predictability.

In turn, the preservation of type will also temper the personal judgments of individual judges. If judges perceive their role as maintaining a consistently recognizable system of ideas, then their personal judgments are tempered by the characteristics that are inherent in that system. If judges view the body of law like a developing human, to which one can still see particular characteristics of an infant after having developed into an adult, then judges will be careful to not cause an ever-changing body of law. In consequence, the preservation of type, analogized through the continuity of a human image, can be a significant deterrent from relativism seeping into a system that seeks to uphold equality and predictability.

iii. Sustainable Principles Provide for a Continuity of Identity

The second principle set forth by St. Newman, “continuity of principles,” follows logically from the “preservation of types.”\textsuperscript{270} Whereas the preservation of types is retrospective, continuity of principles is proactive. St. Newman began his explanation of this principle by teaching, “[a]s in mathematical creations [sic] figures are formed on distinct formulae, which are the laws under which they are developed, so it is in ethical and political subjects.”\textsuperscript{271} In other words, doctrines do not occur and develop in a vacuum without direction or purpose.\textsuperscript{272} Rather, they come into existence and expand within a specific subject.\textsuperscript{273} As such, the subject governs, directs, and protects the doctrine by providing certain guardrails.\textsuperscript{274} These guardrails are properly called “principles.”\textsuperscript{275}

\textsuperscript{268} See id.
\textsuperscript{269} Newman, supra note 14, at 173.
\textsuperscript{270} Newman, supra note 14, at 178.
\textsuperscript{271} Id. at 178.
\textsuperscript{272} Id. at 178–79, 186.
\textsuperscript{273} Id. at 178–79.
\textsuperscript{274} Id.
\textsuperscript{275} Newman, supra note 14, at 178–79.
Principles allow one to act proactively because “doctrines develop[] . . . and are enlarged,” whereas “principles are permanent.” Through the permanence of principles, “which are necessary for every stage of . . . development,” one can check doctrines and test them before the doctrines are enacted. For these principles to remain permanent and proactive, however, they must be definite and understood. If there is “no definite meaning,” then there can be nothing to develop. Without definite meaning to principles, people can then simply use the words that symbolize the principle “in their own sense and for their own ideas.” Therefore, development is destroyed because it lacks a foundation.

St. Newman easily identified for a reader how this principle might apply to a national government. He explained, “states have their respective policies, on which they move forward, and which are the conditions of their well-being.” Typically, “policies” today are thought of as differing opinions on how to approach a certain issue or topic, not a definite and universal principle. However, St. Newman used the word policy to express definite and universal principles. Thus, a nation loses its identity when “certain lines of thought or conduct by which it has grown great are abandoned.” To illustrate this point, St. Newman explained that the ancient Roman poets recognized that Rome was falling when its original morals and piety began to fail.

Many have argued, and will most likely continue to argue, about what are the fundamental principles—“policies”—of the United States of America. Due to the vastness of that debate, this Comment does not seek to enter the fray of that specific argument. Rather, it is enough to state that there must be certain universal and fundamental principles on which every judge can agree allows the nation to “move forward” with definite well-being. It is imperative for the Court to define with precision “a fundamental principle of liberty and justice which inheres in the very idea of free government and is the inalienable right of a citizen of such government” in a way that every judge can subscribe to it. For stare decisis to continue as a “‘principled and intelligible’ development of the law[,]” there must be established definite and universal principles that when altered or abandoned signify a break from American law, and these principles must be clearly defined.
v. One Must Anchor New Ideas to Perpetual Principles

St. Newman’s third principle, “the power of assimilation,” is marked by growth and the acquisition of new understanding within the guardrails of the universal principles set forth. In this way, St. Newman again compares development to living organisms. A living organism is “characterized by growth . . . taking into its own substance external materials.” Living humans are marked by development, not stagnation, and this development occurs through taking in external resources, such as nutrition and water. However, consuming these resources “do[es] not change who or what [humans] are in any meaningful way, . . . rather, they serve a valuable function in that they ensure [a human’s] continued growth and vitality.” Food and water, when consumed, help humans grow without destroying the continual identity of the human.

Likewise, an organization will grow, acquire new ideas, and expand understanding. However, within authentic development, this growth will occur while also maintaining the bedrock of its principles. As such, the nation can take in new ideas and new philosophies while retaining its specific identity. St. Newman uses the example of incorporating certain utilitarian ideas from Jeremy Bentham while still retaining his original identity. Jeremy Bentham’s philosophy, coming to fruition not long before St. Newman’s, was antithetical to many of St. Newman’s beliefs and ideas. Yet, St. Newman still would assimilate what he could from Bentham’s ideas while remaining true to his underlying principles.

Applying this principle to stare decisis, a mark of authentic development in the doctrine of precedent is the ability for American law to acquire new ideas and new understandings. However, as St. Newman emphasized, this must still be tempered by the underlying principles of the nation. After adopting a new idea or understanding through the doctrine of stare decisis, often in nuanced ways, one should still recognize the nation as something distinct and continuous from its infancy. The new idea or understanding ought not to create a totally new national identity. To prevent a completely new nation arising from the acquisition of new ideas, judges must adhere to the underlying principles and central ideas characteristic of the Constitution. In this way, the nation does not fall into either of the two extremes mentioned above: it does not become stagnant and unmoving, but it also does not become ever-changing and unrecognizable.

vi. Emphasizing Logic Protects Principles from Faulty New Ideas

St. Newman next proposes the importance of logic to ensure that a new idea or new understanding remains true to the continuous identity of an organization. Logic, according to St. Newman, “is the organization of thought” and “a security for the faith-

293. Id. at 185.
294. See Brendan Murphy, supra note 258.
295. Id.
296. Newman, supra note 14, at 188.
297. Id.
299. See generally id.; see also Barry, supra note 208.
300. Newman, supra note 14, at 188.
fulness of intellectual developments." As with the "preservation of type," St. Newman also holds this principle to be retrospective. Authentic development occurs only when it is "the logical outcome of the original teaching." However, logical outcomes are only recognized when an issue is presented and multiple answers are gradually and systematically drawn out in relation to the rest of the body of doctrine.

Logic, and its significance, is no stranger to the field of law. Typically, when learning how to write effectively in the legal profession, a first-year law student is directed to the ancient principles of rhetoric: ethos, pathos, and logos. Logos, otherwise known as logical reasoning, is always a central feature to a lawyer’s arguments and opinions. Therefore, it may seem redundant or unnecessary to present this principle in relation to stare decisis, because judges are already using logic when they put forth their opinions and determinations. Yet, it is still important to recognize the significance of logic in relation to St. Newman’s other principles. Logic is the glue that holds together St. Newman’s principles. Its specific placement as the fourth among seven principles points to its importance as the gluey principle.

Logic holds together all of the other principles through a method of systematically making sure the other principles have been used to temper one’s personal motives or biases. Deductive logic, which is what St. Newman focused on, always begins with certain first principles. In St. Newman’s estimation, one must ask whether a conclusion can be shown, step-by-step, to uphold what has already been discussed as the underlying type and principles of the institution. If another, more logical, idea or understanding is later presented that contradicts with the previous idea or understanding, then the more logical idea or understanding ought to be assimilated instead. Wherefore, what was previously accepted must now be rejected.

Applying this principle to stare decisis, if the Court is presented with an issue that revisits a previous determination, the Court must logically reaffirm the prior determination step-by-step. Otherwise, the Court must overturn that previous decision based on better reasoning. In this way, stare decisis as an argument from authority is not sufficient alone. A previous ruling may lack sufficient logic, and a more logical determination should overturn it. However, in such cases, the reasoning must clearly show step-by-step
why the new ruling or determination is better than the previous one in accord with the overall type and original principles that maintain the national identity. Thus, overruling a previous decision, in spite of stare decisis, is not incongruous with the doctrine of stare decisis. Rather, it ought to be a celebrated practice if the logic of the overturning case is more in line with the nation’s identity than the logic of the previous case.

vi. Anticipating Outcomes Further Refines the Continuity of New Ideas

St. Newman’s fifth principle clearly demonstrates why logic is the glue that holds together his suggested principles but also why logic is not the only principle.317 He called his fifth principle “anticipation of its future.”318 St. Newman summarized this principle succinctly when he wrote: “[a]nother evidence, then, of the faithfulness of an ultimate development is its definite anticipation at an early period in the history of the idea to which it belongs.”319 Therefore, an authentic development will be the fulfillment or completion of an earlier idea, and the fulfillment of that idea could have been at least roughly foreseen in the earlier idea.320 The previous principle emphasized that authentic development must be logically united with the rest of the body of doctrine.321 This principle suggests that an authentic development ought to have been at least vaguely recognized as a logical conclusion of an earlier idea within the body of doctrine.322

To illustrate this concept, St. Newman draws on how the development of the English parliamentary system could have been foreseen from the time of King James I.323 St. Newman offered that Lord Francis Bacon influenced the king to “fill[] the House” with certain individuals who could influence lawyers and draw “the chief constituent bodies of the assembly” together to influence the King’s decisions.324 This, then, “show[ed] the rise of a systematic parliamentary influence, which was one day to become the mainspring of government.”325 According to St. Newman, the parliamentary system is an authentic development of English politics because, among other things, it can be clearly traced back to an earlier understanding within the body of English political doctrine.326

In applying the fifth principle to stare decisis, the Court’s ruling ought to have been anticipated in an earlier ruling, the Constitution, or another fundamental characteristic of the nation to be an authentic development. So, if a decision comes about in which there is hardly any similarity between the decision and the body of law that came before it, then the decision should be held highly suspect. When the Court creates a new rule through its decision-making power, it should not be a surprise to the lower courts or lawyers. Rather they ought to have anticipated it from earlier decisions or fundamental standards. If the ruling does come as a great surprise and cannot be shown as a predictable logical fulfillment of prior rulings or national identity, then the ruling is not likely an authentic development through the doctrine of stare decisis. Where legislation might bring about novel legal concepts, judicial precedent maintains a consistent identity.

317. Id. at 195–96.
319. Id. at 199.
320. Id. at 195–96.
321. Id. at 383.
323. Id. at 196.
324. Id.
325. Id. at 197.
The fifth principle is particularly important to retaining the goal of a “‘princi-
pled and intelligible’ development of the law . . .” because it ought to provide greater
predictability and stability. If a particular rule can be seen as logically flowing from an
earlier ruling or fundamental principle, then lawyers who are advocating for their clients
can advise their clients on the probabilities of the Court’s decision. Clients in turn can
then make reasoned decisions based on the costs, benefits, and risks of the anticipated
ruling. Also, through this principle, lawyers can argue for the anticipated ruling and seek
to persuade the Court on how the anticipated ruling is the logical conclusion of past deci-
sions or fundamental principles. In turn, the “definite anticipation at an earl[er] period”
of the Court’s determinations provides predictability, stability in the Court’s decisions,
and equality for those affected by the decision.328

vii. Brash Acceptance of New Ideas Threatens Authentic Development

There is an important issue arising from the previous principle. Mainly, any
judge or lawyer, as intellectual and persuasive rhetoricians, could argue that previous rul-
ings anticipated a desired outcome. The principle could lead to greater subjectivity rather
than greater objectivity. Judge Smith, seeing an increased subjectivity based on “the
flimsiest of grounds,” lamented judges determining that “stare decisis is for suckers.” 329
For this reason, St. Newman added his sixth cautionary principle, “conservative action
upon its past.”330 Through this principle, St. Newman seeks to particularly guard against
unfettered discretion. 331

While elaborating on this principle, St. Newman emphasizes the ancient “gold-
en mean.”332 Since “[v]irtue . . . lie[s] in a mean, between vice and vice,” authentic de-
velopment can only occur when each person is cautioned by his or her own intellectual
limitations. 333 There is the grave danger of hastiness and rashness when an individual too
fervently seeks development. 334 In St. Newman’s words, “overwisdom is folly.”335 In or-
der to protect against the folly of rashness, authentic development seeks a slow and grad-
ual movement forward with an eye on what came before. 336 Authentic development does
not cause a sudden contradiction or reversal of antecedent ideas. 337 Nor does authentic
development stunt the legitimate competition of ideas. 338

St. Newman offers a test to identify whether a new idea is cautious and truly
connected to subsequent thought. 339 An authentic development further clarifies, con-

328. Id. at 199.
331. Id. at 199–200.
334. Id. at 199–200.
335. Id. at 199–200.
336. Id. at 200–01.
337. Id. at 201.
339. Id. at 202–03.
firms, and further supports established conclusions. On the other hand, a development that breaks from the body of doctrine would cause obscurity, confusion, and sudden change from what came before. In this way, an authentic development brings about an addition to the body of doctrine. It does not destroy prior deductions wholesale or the origination of the body of doctrine. Again, St. Newman uses the example of a human to illustrate this principle. He states that the body of an adult human is different from when that human was a child. The body of an adult has “add[ed] something of its own” to the body. Yet, at the same time, this increase in the body has not destroyed the body of the child that came before. Thus, likewise, an authentic development gradually increases the body of doctrine without destroying what came before.

It is important to note, again, the placement of this principle. It is St. Newman’s second-to-last principle. This placement indicates that he intends each of the previous five principles to have already been grappled with and applied while testing this sixth principle. One cannot be sure that a development is authentically and cautiously adding to the body of doctrine—without destroying it—if the fundamental characteristics, the guiding principles, and the anticipated progresses of that body of doctrine are unknown. It is important to remember this is a cautionary principle that is protecting the body of doctrine from an overemphasis on what has been anticipated.

In applying this principle to the doctrine of stare decisis and judicial interpretation, the Court ought to be sure that its decisions are adding to the body of law and allowing for a gradual growth in our understanding of American law. However, at the same time, the Court ought to be sure that laws produced by its decisions are not completely defacing the original identity of the United States. Therefore, if the Court, when deciding a proposed development of the law, dismisses the complexity of the issue at hand, chooses to issue a vast and major ruling despite continued legitimate argument, or creates greater confusion than clarity, then there is a strong possibility that it is not an authentic development.

It is important, also, to note that this principle is speaking to the authentic development of the law. Therefore, just because the Court is overruling a prior case, it does not necessarily follow that it is violating this principle. Overturning a prior case is not always intended to develop the law. Rather, it is a recognition that a prior ruling was not an authentic development of the law. In that instance, the case is overturned not because the Court is creating a development, but precisely because the Court should not have created the previous development in the first place. Since the new development that came about from the prior ruling has been determined an inauthentic development, the overturning case is now seeking to return the law to its original course. As such, what might appear as a wholesale break from the authentic development of law is in fact a return to the authentic development of the law.

340. Id. at 200.
341. Id. at 202.
342. Id. at 419–20.
344. Id.
345. Id.
346. Id.
347. Id. at 420.
349. Id. at 199–200.
350. Id. at 199–203.
viii. Enduring the Test of Time: Authentic Development Must Be Maintainable throughout Various Movements

St. Newman called his final principle of authentic development “chronic vigor.” By this, St. Newman meant that authentic development maintains an enduring nature. It is not quick to dissipate and is not a “violent and swift” movement within the body of doctrine. St. Newman emphasized that corruption always moves towards dissolution. Accordingly, a “corruption” of a body of doctrine cannot last long relative to authentic developments. Authentic developments will become lasting characteristics of the body of doctrine and will lead to further development, clarity, and understanding in accord with the previous principles. On the other hand, an idea that breaks from the body of doctrine will either be a short-lived, highly emotional experience, or it will be in a constant state of flux.

St. Newman recognized the possibility of doctrines that break from authentic development and yet remain for extended periods of time. However, in such cases, these ideas will be connected to a long-standing movement outside the body of doctrine, which in turn will eventually fade. He clarified that a lasting inauthentic development will typically be marked by one of two characteristics. One telling characteristic is an overwhelming call for return to the authentic doctrine. The inauthentic development will lead to an abundance of injustice, so much so, that the majority of people will cry out for a return to right doctrine. The other telling characteristic is that the inauthentic doctrine cannot withstand “the first rough influence from without.” In applying this principle to the use of stare decisis, authentic developments of precedent will become longstanding characteristics of our body of law. The developments will be able to withstand great political controversy and will outlast any violent opposition. A good example of chronic vigor within an authentic development of American precedent can be found in Brown v. Board of Education. In that landmark 1954 case, the Supreme Court of the United States overturned the previous Plessy v. Ferguson decision in which the Court considered the “separate but equal” doctrine constitutional. The Court in Brown held that “[s]eparate educational facilities are inherently unequal” because “the policy of separating the races” has the unconscionable effect of instil-

351. Id. at 203.
352. Id.
354. Id. at 204–05.
355. Id. at 203–05.
356. Id. at 206.
357. Id. at 204.
358. Id.
360. Id. at 204–05.
361. Id.
362. Id.
363. Id.
366. See Brown, 347 U.S. at 494; see also Plessy v. Ferguson, 163 U.S. 537, 540 (1896).
ling inferiority. Therefore, it is unlawful to discriminate who can attend a public education facility based on race.

The Plessy decision had lasted fifty-eight years and had been fraught with political controversy from the time it had been decided. The years following the Brown decision were not much different. Great political upheaval and national struggle followed the Brown decision, as evidenced by the Civil Rights Movement. However, around the fortieth anniversary of the Brown decision, a Gallup poll showed that eighty-seven percent of Americans approved the decision. In contrast to Plessy, the vast acceptance of the decision in Brown after the vigorous struggles that followed its ruling shows the enduring nature of its precedent. In turn, the endurance of that decision is telling of its authentic development of American law.

Thus, if the Court today wants to preserve authentic development in its precedent, one thing it must look to is the enduring nature of its decisions, like the Brown case. This principle, then, is also a retrospective principle. The Court must continue to be aware of the decisions it has made, the impact of those decisions throughout the course of history, and whether its decisions are able to endure the political turbulence that follows. A good sign of authentic development will occur if the Court can look back at a decision, see a later vast acceptance of the decision, and simultaneously see a surviving to the counter movement.

However, this cannot be the only sign of authentic development. As St. Newman notes, great movements can occur in favor of inauthentic developments. Further, it is difficult to recognize an inauthentic development while it is faltering. Accordingly, along with each of the other principles, this principle cannot be held definitive of authentic development by itself. Rather, each principle ought to be sought together throughout the process of development. If each of these principles can be recognized together as a new understanding develops from the Court’s precedents, then the Court and the American people can be confident that the development arising from stare decisis is authentic.

V. Conclusion

In conclusion, the doctrine of stare decisis has been an integral function of the American legal system from the beginning. Through the authority given to stare decisis and its binding nature on courts, judges can effectively form law through their interpretations and decisions. In recognizing the ability to develop law and the great re-

368. Id. at 495.
371. Id. at 521–22, 524–27.
373. See generally Brown, 347 U.S. 483.
375. Id. at 205.
376. Id. at 205–06.
377. Id. at 206.
378. Healy, supra note 41, at 89; see also Lee, supra note 60, at, 686–87.
379. Lile, supra note 12, at 530.
sponsibility that accompanies it, judges have sought to apply self-regulating restraints to their decisions by providing guiding purposes for the doctrine of \textit{stare decisis}.\footnote{Duxbury, \textit{supra} note 23, at 162, 167–70; Peters, \textit{supra} note 23, at 2039–50; Benditt, \textit{supra} note 85, at 93–98.} These purposes can be summed up in the Supreme Court’s goal to provide a “principled and intelligible development of the law.”\footnote{Dobbs v. Jackson Women’s Health Org., 597 U.S. 215, 287 (2022) (quoting June Med. Servs. L.L.C. v. Russo, 140 S. Ct. 2103, 2152 (2020) (Thomas, J., dissenting)).} However, it has been shown that in seeking such a development of the law, judges—like all humans—can be prone to inadvertently falling into one of two extremes.\footnote{See \textit{POUND}, \textit{supra} note 15, at 34–35; \textit{see also} Palmer’s Adm’rs v. Mead, 7 Conn. 149, 158 (1828); Wallace, \textit{supra} note 26, at 11; Helvering v. Hallock, 309 U.S. 106, 119 (1940).} Therefore, it is necessary to have certain guardrail principles that can allow for healthy and authentic development in the law.\footnote{See \textit{POUND}, \textit{supra} note 15, at 23, 34.} At the same time, these principles ought to help prevent judges from simply imposing their own personal preferences upon the American people.\footnote{Newman, \textit{supra} note 15, at 14, 20.}

If judges and the American public apply St. Newman’s principles to court decisions, then they can differentiate between an authentic development of the law and decisions highly influenced by personal political preferences. When St. Newman’s principles are present, “the unity and identity” of American law can be seen “through all stages of its development from first to last.”\footnote{Craig Green, \textit{An Intellectual History of Judicial Activism}, 58 EMORY L.J. 1195, 1224 (2009).} Through this continuous unity, the Court will have truly allowed the law to develop while authentically maintaining the American identity apart from any one individual judge’s motives. In such cases, the goal of a principled and intelligible \textit{stare decisis} will be fulfilled.

\textit{-Chad E. Thurman*}

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382. See \textit{POUND}, \textit{supra} note 15, at 34–35; \textit{see also} Palmer’s Adm’rs v. Mead, 7 Conn. 149, 158 (1828); Wallace, \textit{supra} note 26, at 11; Helvering v. Hallock, 309 U.S. 106, 119 (1940).
383. See \textit{POUND}, \textit{supra} note 15, at 23, 34.

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