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The Supreme Court should adhere to precedent. Unless it's bad precedent.

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The doctrine that court precedents should have momentum for respect — the predictability of settled law gives citizens due notice of what is required or proscribed — is called stare decisis. This Latin translates as: "To stand by things decided." The translation is not: "If a precedent was produced by bad reasoning and has produced irrational and unjust results, do not correct the error, just shrug, say, 'well, to err is human,' and continue adhering to the mistake."

Last week, the Supreme Court was roiled by an unusually pointed disagreement about stare decisis. It occurred in a case that demonstrated how, when judicial review works well, Americans' rights can be buttressed and American liberty enlarged by a process that begins when the denial of a right is challenged by someone who thinks that precedents, although important, are not graven in granite by the finger of God. Someone such as Rose Mary Knick.

This 70-year-old got her dander up and challenged a 34-year-old Supreme Court precedentthat substantially impeded her ability to contest a township ordinance that significantly burdened her property rights over her 90 rural acres in eastern Pennsylvania. In the past, that state had many burials on private land, and in 2012 Knick's township decreed that all cemeteries (defined as any land ever used for burials) must be open to the public during daylight, and that township personnel could enter such properties to look for violations. There is some evidence that long ago there might have been a small burial plot on Knick's property.

The Fifth Amendment's takings clause says that "private property [shall not] be taken for public use, without just compensation." Knick, who was exposed to cascading fines for resisting the township's ordinance, wished to challenge the ordinance as a taking. But because of a 1985 court ruling, she was confronted with what Chief Justice John G. Roberts Jr. last week called a "Catch-22."

That ruling held that before having access to federal courts, a plaintiff must first achieve a state court decision on the takings claims. But, wrote Roberts, if after the time and expense of the state process the plaintiff receives an adverse ruling there concerning just compensation, that ruling generally precludes a subsequent federal suit. So the court ruled 5 to 4 (Roberts with Justices Clarence Thomas, Samuel A. Alito Jr., Neil M. Gorsuch and Brett M. Kavanaugh in the majority) that the 1985 ruling should not stand as a burden on plaintiffs seeking a federal remedy for state infringements of their constitutional rights.

Writing for the minority (joined by Justices Ruth Bader Ginsburg, Stephen G. Breyer and Sonia Sotomayor), Elena Kagan, making what Roberts rightly termed "extreme assertions," said the

court's decision "smashes a hundred-plus years of legal rulings to smithereens." It does not, but suppose it did. What if those supposedly pertinent prior rulings — prior to 1985 — also were wrong?

A brief filed with the court on Knick's behalf by Washington's Cato Institute and others argued that the 1985 decision was an anomaly that effectively consigned "Takings Clause claims to second-class status. No other individual constitutional rights claim is systematically excluded from federal court in the same way." The post-Civil War 14th Amendment was enacted to secure federal rights for all citizens, which requires access to federal courts "to vindicate their federal rights." Congress wrote that amendment and other laws because, according to the brief, it worried that "state courts could not be trusted to adequately enforce the federal Constitution against the coordinate branches of state government."

In the court's long and often luminous history, there is no nobler episode than the protracted, piecemeal erosion — most dramatically, with the 1954 *Brown* decision concerning school desegregation — of the now completely overturned 1896 *Plessy v. Ferguson* precedent upholding the constitutionality of (supposedly) "separate but equal" segregated public facilities. Also, in 1943, in a 6-to-3 ruling, the court reversed an 8-to-1 ruling from just three years earlier that had upheld the constitutionality of laws requiring school pupils to salute the U.S. flag, regardless of deeply held religious objections to the practice.

More recently, the court has held (in 2003, when overturning a 1986 precedent upholding the constitutionality of anti-sodomy laws) that stare decisis is not "an inexorable command." Quite right. The inexorable command is to reason correctly so that justice is done, especially when constitutional rights are at stake.

"Fiat justitia, ruat caelum" is Latin for "Let justice be done, though the heavens fall." Perhaps *that* would not be prudent. However, when a flawed precedent falls, this is hardly equivalent to the heavens falling.