

What is overruling?

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SFFA v. Harvard

“[R]espondents’ programs tolerate the very thing that *Grutter* foreswore.”

“[T]he Court's decision today ... follows from ... the Court's precedents.”

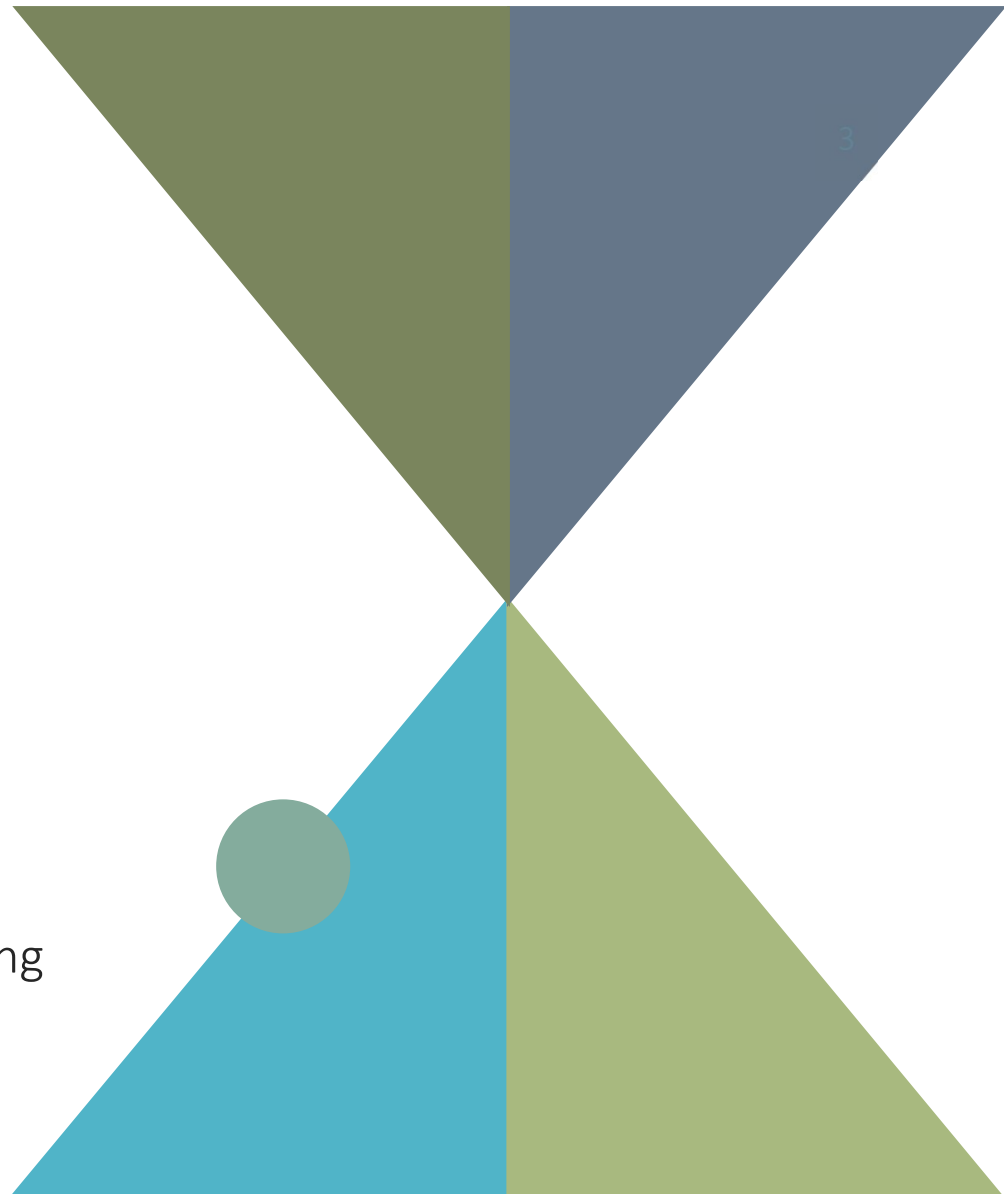
“*Grutter* is, for all intents and purposes, overruled.”

“Today, this Court overrules decades of precedent.”



Here's the plan ...

1. Overruling in American Legal Practice
2. A Rule Model of Precedential Constraint
3. The Rule Model's Account of Overruling
4. The Reason Model's Account of Overruling



Overruling in American Legal Practice

- An overruled precedent is not (a source of) law.
- Overruling is different from distinguishing.
- Overruling can be explicit or implicit.
- Overruling can be full or partial.

A Rule Model of Precedential Constraint

Case

P

Facts

a_1, b_1, c_1, d_1, e_1

Conclusion

x_1

Rule

“If A, B, C, then X”

A Rule Model of Precedential Constraint

<u>Case</u>	<u>Facts</u>	<u>Conclusion</u>	<u>Rule</u>
P	a_1, b_1, c_1, d_1, e_1	x_1	"If A, B, C, then X"
S	a_2, b_2, c_2, d_2	_____	_____

P governs S: Antecedent of P's rule is instantiated in S.

A Rule Model of Precedential Constraint

<u>Case</u>	<u>Facts</u>	<u>Conclusion</u>	<u>Rule</u>
P	a_1, b_1, c_1, d_1, e_1	x_1	“If A, B, C, then X”
S	a_2, b_2, c_2, d_2	x_2	“If A, B, C, then X”

P governs S: Antecedent of P’s rule is instantiated in S.

S follows P: P (arguably) governs S and S reaches the same type of conclusion as P.

A Rule Model of Precedential Constraint

<u>Case</u>	<u>Facts</u>	<u>Conclusion</u>	<u>Rule</u>
P	a_1, b_1, c_1, d_1, e_1	x_1	“If A, B, C, then X”
S	a_2, b_2, c_2, d_2	$\neg x_2$	“If A, B, C, E, then X” / “If A, B, C, then $\neg X$ ”

P governs S: Antecedent of P’s rule is instantiated in S.

S follows P: P (arguably) governs S and S reaches the same type of conclusion as P.

S distinguishes P: P (arguably) governs S, there’s a fact type instantiated in P but not in S, and that fact type warrants a different conclusion in S than in P.

- Freeing amendment: “If A, B, C, E, then X” | Justifying rule: “If A, B, C, then $\neg X$ ”

A Rule Model of Precedential Constraint

<u>Case</u>	<u>Facts</u>	<u>Conclusion</u>	<u>Rule</u>
P	a_1, b_1, c_1, d_1, e_1	x_1	“If A, B, C, then X”
S	a_2, b_2, c_2, d_2	$-x_2$	“If A, B, C, E, then X” / “If A, B, C, then $-X$ ”

P governs S: Antecedent of P’s rule is instantiated in S.

S follows P: P (arguably) governs S and S reaches the same type of conclusion as P.

S distinguishes P: P (arguably) governs S, there’s a fact type instantiated in P but not in S, and that fact type warrants a different conclusion in S than in P.

- Freeing amendment: “If A, B, C, E, then X” | Justifying rule: “If A, B, C, then $-X$ ”
- Narrowing constraint: S can only add fact types to the antecedent of P’s rule; S cannot modify or remove fact types from the antecedent (e.g., S cannot amend the rule to be “If A, B, E, then X”).

A Rule Model of Precedential Constraint

<u>Case</u>	<u>Facts</u>	<u>Conclusion</u>	<u>Rule</u>
P	a_1, b_1, c_1, d_1, e_1	x_1	"If A, B, C, then X"
S	a_2, b_2, c_2, d_2	$\neg x_2$	"If A, B, C, E, then X" / "If A, B, C, then $\neg X$ "

P governs S: Antecedent of P's rule is instantiated in S.

S follows P: P (arguably) governs S and S reaches the same type of conclusion as P.

S distinguishes P: P (arguably) governs S, there's a fact type instantiated in P but not in S, and that fact type warrants a different conclusion in S than in P.

- Freeing amendment: "If A, B, C, E, then X" | Justifying rule: "If A, B, C, then $\neg X$ "
- Narrowing constraint: S can only add fact types to the antecedent of P's rule; S cannot modify or remove fact types from the antecedent (e.g., S cannot amend the rule to be "If A, B, E, then X").
- Conservation constraint: S cannot alter P's rule in such a way that the rule ceases to justify P's conclusion (e.g., S cannot amend the rule to be "If A, B, F, then X").

The Rule Model's Account of Overruling

Overruling repeals one or more of P's rules.

- Explicit: Court says that S overrules P.
- Implicit: Court does not say that S overrules P, but applying S's rule to P would require a different conclusion in P.
- Full: S repeals all of P's rules.
- Partial 1: S repeals some but not all of P's rules.
- Partial 2: S violates narrowing, but not conservation, constraint.

The Reason Model's Account of Overruling

Overruling reweights the reasons justifying one or more of P's conclusions.

- Explicit: Court says that S overrules P.
- Implicit: Court does not say that S overrules P, but S weights the reasons bearing on one of P's conclusions differently than P did.

Bivens v. Six Unknown Named Agents:

{**vindicate rights**; separate powers} → x

Egbert v. Boule:

{**vindicate rights**; separate powers; national security} → x

Miranda v. Arizona:

{**coercion**; truth} → x

Harris v. New York:

{**coercion**; truth; catch perjury} → x

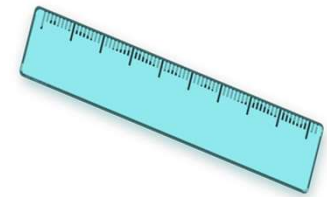
The Reason Model's Account of Overruling

Overruling reweights the reasons justifying one or more of P's conclusions.

- Explicit: Court says that S overrules P.
- Implicit: Court does not say that S overrules P, but S weights the reasons bearing on one of P's conclusions differently than P did.
- Full: S reweights reasons as to each of P's conclusions.
- Partial 1: S reweights reasons as to some but not all of P's conclusions.
- Partial 2: ?

Two Perspectives on Overruling

1. Overruling repeals rules
(overruling proper).



2. Overruling reweights reasons
(basis for criticism).





Thank You

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