Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

OREGON *v.* ICE

CERTIORARI TO THE SUPREME COURT OF OREGON

No. 07–901. Argued October 14, 2008—Decided January 14, 2009

Respondent Ice twice entered an 11-year-old girl's residence and sexually assaulted her. For each of the incidents, an Oregon jury found Ice guilty of first-degree burglary for entering with the intent to commit sexual abuse; first-degree sexual assault for touching the victim's vagina; and first-degree sexual assault for touching her breasts. Ice was sentenced under a state statute providing, generally, for concurrent sentences, Ore. Rev. Stat. §137.123(1), but allowing the judge to impose consecutive sentences in these circumstances: (1) when "a defendant is simultaneously sentenced for . . . offenses that do not arise from the same . . . course of conduct," §137.123(2), and (2) when offenses arise from the same course of conduct, if the judge finds either "(a) [t]hat the . . . offense . . . was an indication of defendant's willingness to commit more than one criminal offense; or . . . "(b) [t]he . . . offense . . . caused or created a risk of causing greater or qualitatively different . . . harm to the victim," §137.123(5). The trial judge first found that the two burglaries constituted separate incidents and exercised his discretion to impose consecutive sentences for those crimes under §137.123(2). The court then found that each offense of touching the victim's vagina met §137.123(5)'s two criteria, giving the judge discretion to impose the sentences for those offenses consecutive to the two associated burglary sentences. The court elected to do so, but ordered that the sentences for touching the victim's breasts run concurrently with the other sentences. On appeal, Ice argued, *inter alia,* that the sentencing statute was unconstitutional under *Apprendi* v. *New Jersey*, 530 U. S. 466, 490, and *Blakely* v. *Washington*, 542 U. S. 296, holding that the Sixth Amendment's jury-trial guarantee requires that the jury, rather than the judge, determine any fact (other than the existence of a prior conviction) that increases the maximum punishment authorized for a particular crime. The appel-

Syllabus

late court affirmed, but the Oregon Supreme Court reversed, holding that the *Apprendi* rule applied because the imposition of consecutive sentences increased Ice's quantum of punishment.

Held: In light of historical practice and the States' authority over administration of their criminal justice systems, the Sixth Amendment does not inhibit States from assigning to judges, rather than to juries, the finding of facts necessary to the imposition of consecutive, rather than concurrent, sentences for multiple offenses. Pp. 5–11.

(a) The Court declines to extend the *Apprendi* and *Blakely* line of decisions beyond the offense-specific context that supplied the historic grounding for the decisions. The Court's application of *Apprendi*'s rule must honor the "longstanding common-law practice" in which the rule is rooted. *Cunningham* v. *California*, 549 U. S. 270, 281. The rule's animating principle is the preservation of the jury's historic role as a bulwark between the State and the accused at the trial for an alleged offense. See *Apprendi*, 530 U. S., at 477. Because the Sixth Amendment does not countenance legislative encroachment on the jury's traditional domain, see *id.,* at 497, the Court considers whether the finding of a particular fact was understood as within the jury's domain by the Bill of Rights' framers, *Harris* v. *United States*, 536 U. S. 545, 557. In so doing, the Court is also cognizant that administration of a discrete criminal justice system is among the basic sovereign prerogatives States retain. See, *e.g., Patterson* v. *New York,* 432 U. S. 197, 201. These twin considerations—historical practice and respect for state sovereignty—counsel against extending *Apprendi* to the imposition of sentences for discrete crimes. P. 6.

(b) The historical record demonstrates that both in England before this Nation's founding and in the early American States, the common law generally entrusted the decision whether sentences for discrete offenses should be served consecutively or concurrently to judges' unfettered discretion, assigning no role in the determination to the jury. Thus, legislative reforms regarding the imposition of multiple sentences do not implicate the core concerns that prompted the Court's decision in *Apprendi*. There is no encroachment here by the judge upon facts historically found by the jury, nor any threat to the jury's domain as a bulwark at trial between the State and the accused. Instead, the defendant—who historically may have faced consecutive sentences by default—has been granted by some modern legislatures statutory protections meant to temper the harshness of the historical practice. Ice's argument that he is "entitled" to concurrent sentences absent the factfindings Oregon law requires is rejected. Because the scope of the federal constitutional jury right must be informed by the jury's historical common-law role, that right does not attach to every contemporary state-law "entitlement" to predicate findings. For simi-

Syllabus

lar reasons, *Cunningham*, upon which Ice heavily relies, does not control here. In holding that the facts permitting imposition of an elevated "upper term" sentence for a particular crime fell within the jury's province rather than the sentencing judge's, 549 U. S., at 274, *Cunningham* had no occasion to consider the appropriate inquiry when no erosion of the jury's traditional role was at stake. Pp. 7–8.

(c) States' interest in the development of their penal systems, and their historic dominion in this area, also counsel against the extension of *Apprendi* that Ice requests. This Court should not diminish the States' sovereign authority over the administration of their criminal justice systems absent impelling reason to do so. Limiting judicial discretion to impose consecutive sentences serves the "salutary objectives" of promoting sentences proportionate to "the gravity of the offense," *Blakely,* 542 U. S.*,* at 308, and of reducing disparities in sentence length. All agree that a scheme making consecutive sentences the rule, and concurrent sentences the exception, encounters no Sixth Amendment shoal. To hem in States by holding that they may not choose to make concurrent sentences the rule, and consecutive sentences the exception, would make scant sense. Neither *Apprendi* nor the Court's Sixth Amendment traditions compel straitjacketing the States in that manner. Further, the potential intrusion of *Apprendi*'s rule into other state initiatives on sentencing choices or accoutrements—for example, permitting trial judges to find facts about the offense's nature or the defendant's character in determining the length of supervised release, required attendance at drug rehabilitation programs or terms of community service, and the imposition of fines and restitution—would cut the rule loose from its moorings. Moreover, the expansion Ice seeks would be difficult for States to administer, as the predicate facts for consecutive sentences could substantially prejudice the defense at the trial's guilt phase, potentially necessitating bifurcated or trifurcated trials. Pp. 9–10.

343 Ore. 248, 170 P. 3d 1049, reversed and remanded.

GINSBURG, J., delivered the opinion of the Court, in which STEVENS, KENNEDY, BREYER, and ALITO, JJ., joined. SCALIA, J., filed a dissenting opinion, in which ROBERTS, C. J., and SOUTER and THOMAS, JJ., joined.