Law and Policy Review (LPR)
Volume 4 Issue 2, Fall 2025
ISSN$_{(P)}$: 2076-5614, ISSN$_{(E)}$: 3007-4290
Homepage: https://journals.umt.edu.pk/index.php/lpr

Title:	**Effect of Precedent on Statutory Law: A Comprehensive Critique**
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DOI:	https://doi.org/10.5349/lpr.42.01
History:	Received: March 06, 2025, Revised: July 20, 2025, Accepted: September 17, 2025, Published: October 22, 2025
Citation:	Mohmand, S. S. S., Akbar, M. M., & Rashid, R. (2025). Effect of precedent on statutory law: A comprehensive critique. *Law and Policy Review*, *4*(2), 01-17. https://doi.org/10.5349/lpr.42.01
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Conflict of Interest:	Author(s) declared no conflict of interest

A publication of
School of Law and Policy
University of Management and Technology, Lahore, Pakistan

Effect of Precedent on Statutory Law: A Comprehensive Critique

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Abstract

An important legal rule that ties common law systems to statutory law is the doctrine of precedent. This article examines the relationship between case law and statutory law, focusing on how statutes are applied, altered, and expanded through judicial decisions. With reference to the identified functions, advantages, and disadvantages of departing from precedent, this article critically discusses both positive and negative implications of judicial dependence on precedent in the statute interpretation process and in the direction of legal comprehensibility and continuity. Drawing on the analysis of key cases and academic points of view to the subject, this article offers a critique of the impact of precedent on statutory law as well as proposes guidelines to improve the relationship between the two sources of law.

***Keywords*:** sources of law, Precedent, Legislation, common law system, statutory law

Introduction

Precedent is an unwritten component of common law which is kept in the form of decisions taken by superior courts and preserved in law reports. More precisely, they are formal expressions and declarations of rules contained in a court's decision. Precedent is classified as declaratory when it propounds principles on existing law and legislation. Conversely, it is original when it lays down a new rule of law in an area where there is silence. Precedent is authoritative when the principle laid down must be followed. This is called *Ratio Decindi*. On the other hand, it is persuasive when the principle laid down may or may not be followed. This is called *obiter dictum*. Precedent can be absolute when it lays down a principle which must be followed absolutely. It is binding, like a decision of the divisional bench on a single bench. Conditional Precedents can be identified as the principles which are binding but not in the absolute sense.

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In common law jurisdictions, the idea of stare decisis (Legal Information Institute, n.d.), or deference to court decisions, is fundamental. By ensuring that courts adhere to pre-existing findings from prior cases, the doctrine ensures uniformity and predictability in the process of making legal decisions. However, there is a complicated link between statutory law and precedent. Legislative bodies enact statutes, which are meant to give precise, codified guidelines. In contrast, judicial precedents are developed through case law and frequently include interpreting statutes when there are ambiguities or when new situations arise that the legislator may not have anticipated (Glendon et al., 2025).

Important questions are brought up by this interaction such as (i) to what extent does precedent influence the application of statutory law? (ii) Does reliance on judicial interpretation risk undermining legislative intent? This article seeks to explore these questions, offering a critical analysis of the effect of judicial precedent on statutory law.

The implications of precedents come from English common law where the courts first began publishing reports and making decisions that would control future decisions in other cases. With the binding effect of these precedents, a system in which lower courts would be expected to conform to decisions made by higher courts came into existence, creating a pyramid-like structure within that tier of government. The system was further formalized over time, particularly by the 19th century in England, which formed a unified court system across England and Wales (Pin, 2022). This tradition was borrowed and adapted in the United States (and in other common law countries), with precedent occupying a central role in legal reasoning (Tiersma, 2007).

Precedent offers the advantage of legal certainty, as it allows individuals and businesses to predict how the law is likely to be interpreted in future cases. With the proliferation of statutory law during the 19th and 20th centuries, judges were increasingly expected to interpret statutes in harmony with existing precedents. This resulted in legislative law and the existence of stagnant points of legal precedent (Pin, 2022).

The power of judges, however, is limited. They cannot override existing provisions of law and precedents cannot be extended to dissimilar cases by deduction, analogy, or reasoning. Only the ratio decidendi is binding, obiter dictum is not. Moreover, courts are generally bound by their previous

decisions. According to Gray, Bentham and Austin, he who has absolute authority to interpret law is the real lawgiver. Thus, according to them, legislature is the lawgiver and this is because a judge does not make law, but merely declares it. Judges ought not to make law. Their only job is to enforce the statutory law (legal code) as enacted by the legislature. They are "tutors" maintaining the public's expectations solely on the basis of this code. If a law results in suboptimal outcomes, the judges must recommend changes to the legislature – they cannot do it directly themselves with their decisions (Ferraro, 2013). The "declaratory theory of law", asserts that judges do not actually make the law, they only declare what everyone already knew of the law. As Sir William Blackstone wrote, judges are "not delegated to pronounce a new law, but to maintain and expound the old one" (Blackstone, 1770, p. 69). According to John William Salmond, Judges make law, declare law, administer law, as well as develop law.

Role of Precedent in Statutory Interpretation

Statutory interpretation represents one of the primary domains in which the influence of precedent is most profoundly experienced. Judges are frequently tasked with the interpretation of ambiguous statutory provisions; however, in executing this duty, they often depend on prior judicial interpretations. This reliance can, indeed, result in the entrenchment of interpretations of the law (even when those interpretations do not necessarily align with the original legislative intent). The principle of stare decisis compels courts to adhere to earlier decisions: once a specific interpretation of a statute is established, it becomes increasingly challenging to diverge from that interpretation in subsequent cases. Although such adherence is crucial for legal consistency, it raises questions about the adaptability of the law because it may hinder progressive interpretations (Spriggs & Hansford, 2002).

Stare decisis, which translates from Latin to stand by such things as were decided, is the cornerstone of equity and predictability in common law regimes. It essentially states that when resolving issues that are similar, courts must ensure that the outcomes are similar as well. This policy is not about convenience; rather, it is about making sure that the public can trust that the laws are consistent. When a court encounters a legal matter, it must consider how it has been handled in the past. The court's current decision will usually be bound by its past ruling if a similar issue was reviewed by a previous court, especially if it is by a superior Court. Orders from other

jurisdictions or from courts of congruent or subordinate jurisdiction are only persuasive (Legal Information Institute, n.d.). As the U.S. Supreme Court observed in Kimble v. Marvel Enterprises, stare decisis operates to promote the evenhanded, predictable, and consistent development of legal principles, fostering reliance on judicial decisions, and contributing to the actual and perceived integrity of the judicial process (Justia, n.d.).

Stare Decisis has two parts, one is authoritative which is called Ratio Decidendi and second is persuasive called Obiter Dictum. These are principles of law discussed in a judgment upon which the decision is based. Ratio Decidendi is binding on disputing parties and contains within it the force of law applicable to all citizens of the State. Sometimes decisions derive principles. This is done when questions are answered by the court purely based upon the case facts. The Judge employs the analogy of previous rulings and formulates a new principle. Other times decisions are taken on the authority of previous rulings, this one can see as questions answered by the Court based upon existing law as found in Judgments containing rule of law. This is based on the outcome of the court's interpretation of the existing statute (Mitidiero, 2025).

Obiter dicta are persuasive because they are influential but not legally binding. Obiter dicta are judicial remarks delivered by the way, or in addition to the main arguments of the case, in contrast to the ratio decidendi, which is the legally binding rule from which a judgement is drawn. Subordinate courts usually take these remarks into consideration and adopt them as persuasive legal counsel, even though they are not necessary for the court's conclusion (Britannica, 2018).

Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc. (1984), a landmark decision in the United States, set a key precedent for judicial deference to administrative agency interpretations of statutes. The way courts approach legislative interpretation has been significantly impacted by this decision, especially when dealing with complex regulatory frameworks. The Chevron doctrine (Ballotpedia, n.d.) has given courts a way (or tool) to resolve statutory ambiguity by setting a clear precedent, but it has also come under fire for giving agencies excessive discretion in how they interpret the law. This by itself clouds the commitment of the judiciary towards being protectors of the Rule of Law. While the doctrine is meant to streamline court rulings, its reliance by enforcement agencies has been a bit of a lightning rod. Critics argue that this kind of flexibility can complicate

the uniformity and predictability of law, which is so crucial for good governance, turning the law-regulation challenge into a dilemma.

The Supreme Court issued its landmark decision in Loper Bright Enterprises v. Raimondo and Relentless, Inc. v. Department of Commerce on June 28, 2024, which transformed American administrative law by eliminating Chevron deference. Since 1984, the theory required courts to give deference to federal administrative agencies when they interpreted ambiguous federal laws under their authority. Judges followed this practice for more than 40 years by accepting agency interpretations of ambiguous statutes even when they disagreed with the agency's reading (Oyez, n.d.).

In its ruling, the Court decided to abandon the principle of Chevron deference, citing multiple fundamental issues. The majority of the justices concluded that the deference doctrine encroached upon the judiciary's exclusive authority to interpret legal statutes under Article III of the Constitution and was inconsistent with the provisions of the Administrative Procedures Act (APA) of 1946 The Court determined that the Administrative Procedures Act (APA) 1946 required courts to decide all legal questions because Chevron's agency interpretation requirement conflicted with this mandate. The Court dismissed the theory that agencies have unique expertise to clarify statutory ambiguities because they believed courts possess superior legal interpretation abilities even when dealing with technical matters (American Bar Association [ABA], 2024).

Additionally, they rejected the idea that statutory ambiguity inevitably indicates that Congress has granted interpretive authority to agencies, seeing it more as a legislative oversight. Finally, because of its apparent basic defects and the Court's lack of consistent reliance in recent years, the Court concluded that Chevron was impractical and inconsistent in its application, and that its preservation was not required by stare decisis (respect for precedent). The Court clarified that Skidmore deference, which permits courts to give agency interpretations persuasive weight based on their knowledge without demanding full deference, is still legitimate even though Chevron deference has been overturned. Additionally, when Congress has specifically granted agencies interpretive authority, courts will nonetheless defer to those agencies. It is anticipated that this historic ruling will drastically alter the course of federal agency acts, resulting in

heightened court scrutiny and possibly more legal challenges to regulations in a variety of industries.

Simply put, the doctrine of precedent is designed to guarantee that people with like cases are treated alike rather than arbitrarily. Judges use this body of past decisions as a tool, effectively creating a new framework in the process called *stare decisis* when used in common law systems. When interpreting statutes, precedents play a very important role as the judges sometimes have to decide on what exactly is meant in the statutory provisions or where and how they can be utilized. This is especially the case when the language of a statute is unclear or does not speak of something head-on (Bamzai, 2017). For example, common law jurisdictions with a separated legal profession for its judiciary (the United States and Australia, being the most typical), the Supreme Court of the United States primarily interprets statutory law by reviewing case law (precedent) so that it is able to work within the theory. Essentially, one has to assume that the newest precedent is consistent with past ones (Edmundson, 2018).

Across many jurisdictions, the same courts follow several means of statutory interpretation namely- literal, purposive, contextual. The selection of interpretive method is often based on precedents but a reliance on prior decisions can lead to inconsistent outcomes. Courts may be literal in one case but purposive because of judicial statements in another, etc. This inconsistency is but a feature within the greater tension between precedent and statutory interpretation. Second is indicative of something larger: courts are bound by earlier decisions but that does not mean that they cannot decide cases differently based on an alternative analytic approach (Green, 2015).

The greatest problem with the system of precedent is that of judicial activism, in the sense that it makes up common law out of a whole cloth. When courts rely on precedent to interpret statutory law, they can legislate from the bench by establishing new legal principles or extending the interpretation of a statute beyond what was contemplated when it was enacted. This is especially the case when dealing with statutory provisions as was done in this appeal, often because statutes employ general or vague terms that judicial decisions have a huge effect on how (or if) they will operate (Legal Information Institute, n.d.).

There is an example of this in the U.K. case Pepper v Hart, where the House of Lords overruled a long-standing precedent that courts were not

legally able to use parliamentary debates about Hansard, itself. For this reason, the Pepper v Hart decision shattered the wall between precedent and statutory law by enabling courts to refer to Hansard for interpreting uncertain legislation. These reactions praise it for directing 'courts to interpret statutes in a purposive way and allow them to consider all relevant factors as an expression of the live tree doctrine', but also critique it for erasing the line between the judiciary and the legislature (Brudney, 2010).

When the word/phrase/sentence has more than one meaning, that is, one is given by the parliament and one is given by the judiciary; the one which resolves the dispute would be preferred and would prevail. Purposive construction or interpretation is same as mischief rule and its purpose is to advance purpose of the statute as the purpose of the mischief rule is to suppress the mischief, to advance the remedy, to advance the object of an enactment and to save the enactment from absurdity and unreason-ability (Falco, 2016).

The governing principle of the purposive approach as outlined in Ayr Farmers Mutual Insurance Co. v. Wright is that statutory schemes, especially wide-ranging alternative dispute resolution (ADR) procedures, need to be interpreted so as to comply with their general purpose and intention despite a more literal meaning of particular words potentially suggesting a contrary outcome. In the opinion of the Court, a restricted interpretation of such words as insured person that would occasion procedural inefficiencies or defeat the legislative purpose of simplifying claims must give way to the wider legislative purpose of creating an effective and integrated scheme of mediation for accident benefits disputes. The court virtually emphasized that the intention of the Act should govern its interpretation, avoiding interpretations which lead to absurd results (Ontario Reports, n.d.).

There is also the risk of leaving outdated or improper legal principles undisturbed by having too much faith in precedent. In some circumstances courts will be bound by precedent. This is concerning because at times, the decision in question is wrong enough to be considered bad law, in the sense that it is archaic and unnecessary! It is especially reckless and incompatible with some of the key cases where human rights or justice is at stake, as adhering rigidly to prior interpretations may leave unjust policies in place (Tiersma, 2007).

In the U.S. case Plessy v. Ferguson, for example, the Supreme Court rationalized state-sponsored racial segregation with its "separate but equal" doctrine (Volle, 2023). It was not until the landmark Brown v. Board of Education school desegregation case that this precedent was finally reversed on the grounds that segregation itself based on race is inherently unequal. The failure to abandon Plessy for so long reflects the role of stare decisis in preventing changes regardless of whether less discriminatory and fairer legal principles emerge (United States Courts, n.d.).

Judicial Activism and Precedent

A criticism of the doctrine of precedent is that it promotes judicial activism. This is when a judge, to be blunt, makes a decision based on their own personal preference or political biases disregarding the strict logic of the law. Judicial activism is a judicial philosophy in which judges actively interpret the law and make decisions that go beyond the strict letter of the law, often considering broader societal implications and policy considerations. This approach can involve striking down laws or government actions deemed unconstitutional, even if they are technically within the bounds of existing legislation. This may embolden judges to interpret statutes according to their sensibilities, rather than defer to the original purpose of the legislature. It is especially risky when the precedent at issue is on its face a contested reading of a statute (Kramer, 2004).

The power of judicial activism may be used positively, especially in cases that pertain to human rights or social justice but is also open to debate as it accepts the fact that whether they are properly in line and proportion with the proper boundaries of a legal system based on democracy. Critics contend that judges should construe statutes, and never allow their own vision of good government to serve as an implicit amendment of what the legislature has unambiguously written. Yet others argue that this kind of proactive decision-making may be needed when legislatures have failed to do their job, or to enable the law effectively to serve a quickly changing society (Matemba, 2010).

Whether a particular spate of decisions amounts to judicial activism is the subject of much dispute, with some arguments becoming particularly pronounced in constitutional cases. Justices typically face any number of loose, vague, or ambiguous constitutional provisions when they embark on the task of translating the Constitution into concrete rules governing our

lives. And in these instances, precedents can have a significant impact on the course of constitutional law. On the other hand, blind obedience to precedent in constitutional interpretation, if it cannot be overruled and overturned has a significant disadvantage of perpetuating outdated or problematic rulings (Spriggs & Hansford, 2001).

Further, the system of precedent promotes judicial restraint. The more judges feel constrained by prior decisions, the less occasions there are for their personal views or ideological preferences to influence the law. This is especially true in a democracy where the judiciary has been given the responsibility for interpreting and enforcing laws, not creating them. Precedent doctrine means the judge can always be limited by the legacy and wisdom of his predecessor, which becomes a hindrance to judicial activism and keeps the law's dignity (Garg, 2015).

Moreover, the system of precedents leads to judicial modesty. When judges follow past decisions, they impose their own view or ideology less on the law. It is most important in a democracy, where the judiciary has the task to interpret and apply the law and not to create it. The doctrine of precedent safeguards against judicial activism, which is the interpretation of law by judges to reflect their subjective opinion, which in turn, has the effect of injecting unnecessary and fraudulent ideas in the legal system. Use of precedent in statutory interpretation can also be a source of legitimacy by judges. A reliance on settled precedents also makes judicial decision not only more likely to be perceived as fair and impartial, but less arbitrary and capricious. The point is particularly important in cases concerning controversial or politically sensitive issues, where public trust in the judiciary might diminish if judges are seen exceeding their roles (Perry, 2023).

Balancing Precedent and Legislative Intent

One of the most important issues that arises in relation to form is considering where to draw the line between preceded and statutory interpretation this being the balance between how much legislative intent should trump when it's clear that there is a textual precedent, like our independent legal duties, and where we need judicially vetted discretion this is almost always when statutes are vague or incomplete. The status quo of staring at precedent too hard can make the legal system rigid and halt its ability to keep up with evolving social, economic, and technological

change. However, if there is too much judicial discretion, this can create a situation where the law is uncertain and unpredictable, and the courts are accused of making up the law as they go along (Every CRS Report, 2014).

To meet these challenges, some legal academics and higher court judges want the use of precedent to be more flexible, particularly regarding statutory interpretations. The living tree doctrine is one such way, to which the courts of Canada and Australia have adhered. This doctrine also takes a more progressive and flexible approach to interpret statutes, create new laws that consider evolving social norms and advances in technology (Centre for Constitutional Studies, 2019). The living tree doctrine is a principle of constitutional interpretation that holds that a constitution should be interpreted flexibly to adapt to changing social and political circumstances, rather than being rigidly bound to its original meaning. This approach recognizes that society evolves over time, and a constitution must be able to evolve with it to remain relevant and effective. This approach permits courts to alter the application of statutory law to current conditions, without undermining key premises in the legislation (French, 2008).

Another solution might be to only look at more distinguishing precedents that are especially helpful in differentiating between a new claim and the prior art. It enables the courts to vary from the earlier decision by showing that new consideration of fact or law in this instant can separate it from the precedent. It allows the courts to err on the side of not being bound by prior unwise or (for the purpose at hand) ancient contrary legal principles and yet, at the same time, not undermine a continuum in all but truly egregious circumstances which affect only profoundly unjust cases. (Lamond, 2016)

Judicial Activism v/s Judicial Restraint in Interpretation of Precedent

Judicial activism and judicial restraint are two contrasting philosophies regarding the role of judges in interpreting and applying the law. Judicial activism advocates for judges to actively interpret the law and consider broader societal implications when making decisions. This approach often involves striking down laws or government actions deemed unconstitutional, even if they are technically within the bounds of existing legislation. Proponents of judicial activism argue that it is necessary to protect individual rights and ensure that the law evolves with society (Roosevelt, 2010).

On the other hand, judicial restraint emphasizes a more deferential role for judges. It suggests that judges should primarily focus on interpreting the law as it is written, rather than imposing their own personal or political views. Proponents of judicial restraint argue that it respects the separation of powers and allows elected officials to make policy decisions. They believe that judicial activism can lead to an overreach of judicial power and undermine the democratic process.

The issue is very pertinent with reference to a debate between these two philosophies on the influence of precedent on statutory law. Supporters of judicial restraint say that the use of precedent helps to prevent judges from acting as moral arbiters and ensures that laws are interpreted according to what legislators intended. The flip side is that judicial restraint can be attacked for sowing rigidity and an inability of judges to effectively refine the law based on new facts (Nayak, 2016).

Perhaps the most significant case of judicial activism in the history of statutory law is Roe v Wade, a case at the U.S. Supreme Court that created a rule for state governments beyond their own legal codes based on an interpretation of the right to privacy within the Constitution. Thus creating standards far beyond any found elsewhere in governing documents. The decision, critics contend, was an example of the Court creating new rights that did not find a basis in the Constitution or statutory law (Temme, 2023).

Judicial restraint has a different side in cases like R (Miller) v The Prime Minister in the U.K. (Judiciary of England and Wales, 2019), where the Supreme Court was called upon to determine whether the Prime Minister could validly advise prorogation of Parliament during negotiations on Brexit. The Court decided on a narrow reading of constitutional precedent and the need to follow legal standards that had long been established. The decision caused a great controversy but showed that the Court was willing to back away from taking an active role in interpreting the Constitution when it involved a justiciable political issue and respect of Constitutional bounds meant staying out.

Judicial activism represents a judicial philosophy where judges tend to make rulings guided more by their personal policy views or broader societal implications rather than a strict, literal interpretation of existing law. This approach stands in contrast to judicial restraint, which emphasizes adherence to precedent (*stare decisis*) and a reluctance to reinterpret

established legal principles. The term "judicial activism" often carries a negative connotation, frequently wielded by judges and political commentators alike to accuse courts of exceeding their proper authority. Critics argue that such practices compromise judicial neutrality by implying a predetermined outcome, can be unjust by holding parties to novel interpretations, risk upsetting the delicate balance of power between government branches, and result in policies made by unelected officials that may lack broad public acceptance or reflect a lack of policy-making expertise (Legal Information Institute, n.d.).

Despite these critiques, judicial activism is not universally condemned; its proponents view it as an essential safeguard for individual rights and a necessary check on potential legislative overreach or inaction. This anti-majoritarian function allows courts to protect constitutional principles or minority rights, even when those are unpopular with the majority. Landmark cases frequently become flashpoints in this debate: *Brown v. Board of Education*, which dismantled school segregation, is widely celebrated as a crucial act of judicial activism for civil rights. However, other significant decisions such as *Obergefell v. Hodges* (same-sex marriage), *Griswold v. Connecticut* (right to privacy), *New York State Rifle & Pistol Ass'n, Inc. v. Bruen* (gun rights), *Roe v. Wade* (abortion rights), and *District of Columbia v. Heller* (gun rights) elicit polarized reactions, being either lauded as progressive advancements or decried as judicial overreach, depending on one's political perspective. These contentious examples underscore the complex and often politically charged role of judicial activism in shaping a nation's legal and social landscape.

Conclusion and Recommendations

The conflict between stability and adaptability is an eternal dilemma in common law systems that is reflected in the tension between precedent and statutory law. We need to have balance, as some forms of strict adherence toward precedent risk fossilizing statutory interpretation and in consequence divorcing the law from the world in motion and modified societal and sociopolitical conditions including the intent of the legislator. *Stare decisis* ensures both legal predictability and maintaining institutional consistency, therefore, a critical yet essential balance is the need of the hour.

The challenge presented to courts is how to maintain precedent that serves justice and how to create that which serves no purpose such as Brown

v. Board (overturning Plessy) and Chevron (administrative deference). Another consideration is that precedent should not be ignored and flexibility of precedent should be tailored so that legislation becomes an ever-changing instrument of rule without causing incoherence in the law. Finally, an overriding task of the judiciary in being a tutor of expectations (Bentham) means a balance must be achieved between the power to implement change cumulatively and the need to give supremacy to the legislature. The considerations of pragmatism must also be kept in mind, not as a theory which may one day substitute the entirety of the precedential system, but merely as a reminder that certain vestiges or landmark decisions are not as sacrosanct as once believed.

Authors Contribution

Syed Sikandar Shah: conceptualization, methodology, formal analysis, supervision, writing – review & editing. **Muhammad Muneeb Akbar:** conceptualization, data curation, writing – original draft, visualization. **Rameesha Rashid:** data curation, writing – review & editing, validation

Conflict of Interest

The authors of the manuscript have no financial or non-financial conflict of interest in the subject matter or materials discussed in this manuscript.

Data Availability Statement

The data associated with this study will be provided by the corresponding author upon request.

Funding Details

No funding has been received for this research.

Generative AI Disclosure Statement

The authors did not used any type of generative artificial intelligence software for this research.

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