



ISSN: 2583-7753

LAWFOYER INTERNATIONAL JOURNAL OF DOCTRINAL LEGAL RESEARCH

[ISSN: 2583-7753]

Volume 3 | Issue 3

2025

DOI: <https://doi.org/10.70183/lijdlr.2025.v03.84>

© 2025 LawFoyer International Journal of Doctrinal Legal Research

Follow this and additional research works at: www.lijdlr.com

Under the Platform of LawFoyer – www.lawfoyer.in

After careful consideration, the editorial board of LawFoyer International Journal of Doctrinal Legal Research has decided to publish this submission as part of the publication.

In case of any suggestions or complaints, kindly contact (info.lijdlr@gmail.com)

To submit your Manuscript for Publication in the LawFoyer International Journal of Doctrinal Legal Research, To submit your Manuscript [Click here](#)

JUDICIAL PRECEDENTS AND THE ONTOLOGY OF LAW

Emmanuel Iniobong Archibong¹, Gloria Oluchukwu Igalawuye², Bar. Emmanuel

Ekwuoba Emeka³ & Barr. Abel Okafor-Nduka⁴

I. ABSTRACT

The doctrine of judicial precedent occupies a central place in legal systems based on consistency, continuity, and structured legal reasoning. However, the ontological status of precedent, which translate to “what kind of legal being it constitutes or projects” remains under-theorised. This study examined judicial precedent not simply as a doctrine of rule-following, but as an ontological construct that shapes the “being and evolution” of law. Drawing on Hans-Georg Gadamer’s legal hermeneutics, the study employs a philosophical-interpretive framework to analyse how precedents bring law into “being” and how their authority transforms across historical and normative contexts. The analysis revealed that precedent is not a neutral repository of legal knowledge but an interpretive ritual that both stabilises and reshaped law’s ontological footprint. Through a hermeneutic reading of jurisprudential texts and selective case illustrations, the study identified a dialectic between precedent’s formal binding force and its capacity for normative reconstruction. The findings challenged the view that precedent is not merely constraining but constitutive, reflective of and generative of law’s identity. This study offered a reconceptualization of precedent as a site of ontological performance, contributing to legal theory by shifting focus from doctrinal continuity to interpretive and philosophical responsibility.

II. KEYWORDS

Judicial Precedent, Ontology of Law, Legal Hermeneutics, Legal Theory, Judicial Decision-Making, Legal Interpretation, Nature of Law.

¹ Department of Philosophy, University of Uyo, Uyo, Nigeria. E-mail : emmaiarchibong@uniuyo.edu.ng.

² Department of Law, School of Law and Security Studies, Babcock University, Ilishan Remo, Nigeria. E-mail : igalawuye@gmail.com.

³ University of Fribourg, Fribourg Switzerland, Department of Int’l Business Law (IBL), E-mail: taiwostreet@gmail.com

⁴ Private Legal Practitioner and Independent Researcher, Nigeria.

III. INTRODUCTION

The doctrine of judicial precedent plays a foundational role in shaping legal discourse and structure within common law jurisdictions offering a system of reasoning based on consistency, enabling courts to follow past decisions when deliberating similar cases. Beyond this functional portrayal however, lies a more complex and less examined dimension which is the ontological implications of precedent. What kind of law does precedent enact and what does its invocation reveal or conceal about the nature of law itself? It is a truism that judicial decisions do more than simply resolve disputes.

Therefore, through the practice of citing precedent, they generate normative continuity, though this continuity is not neutral as it reflects interpretive decisions about which past rulings to apply, how to apply them, and when to depart. Lamond (2006) notes that, precedent enables legal systems to function with a measure of internal coherence and consistency, but such coherence is achieved through a dynamic and often contested interpretive process.

This study engages with the concept of judicial precedent not merely as a rule-following mechanism but as a performative tool that shapes law's ontological status. The focus here is not on whether courts correctly apply precedent, but on how the act of applying precedent influences what law is understood to be. Legal hermeneutics, especially the work of Hans-Georg Gadamer offers a helpful theoretical framework for interrogating this phenomenon.

Gadamer's view that understanding is always historically and contextually situated serves as a point of departure for analysing how precedent contributes to the ontological construction of law. In this light, the ontology of law cannot be separated from the hermeneutical frameworks through which legal meaning is produced and reproduced. Dworkin's (1986) principle of integrity attempts to reconcile the continuity of law with its evolving ethical commitments, suggesting that judges should interpret legal materials in the best moral light. However, this approach, while illuminating, also opens questions about which moral narratives prevail in precedent and why.

More broadly then, the study builds on Marmor's (2019) observation that debates over the nature of law often reflect deeper contestations about legal ontology. Precedent, in this context, is not simply an evidentiary tool or a procedural norm but a key site where law's identity is both asserted and negotiated. This study thus approaches precedent not from a doctrinal perspective alone, but as a philosophical phenomenon that warrants ontological re-examination.

A. Conceptual Clarifications

1. **Judicial Precedent:** This refers to the principle whereby decisions made in higher courts are binding on lower courts when similar legal questions arise. The doctrine is deeply tied to the idea of legal stability and continuity. Its function lies in ensuring predictability in law, a value central to both legal administration and normative legitimacy. However, precedent is not just a rule-following mechanism but also a site of reasoning and interpretation. Lamond (2006) suggests that precedent involves analogical reasoning where decisions are rarely replicated in mechanical fashion but are assessed through interpretive engagement with past rulings.
2. **Ontology:** Contextually, this refers not to abstract metaphysical speculation but to the philosophical inquiry into the being or nature of law itself, its structure, constitution, and existence as a normative system. The legal ontology invoked here concerns itself with how law comes into being through interpretive practices, institutions, and doctrines like precedent. This moves the discussion beyond jurisprudential typologies and into questions about how law is constituted in action and meaning. Marmor (2019 p.198) frames this as a shift from debates about legal sources to the deeper question of how law "emerges and operates as a mode of social reality".
3. **Natural Law Theory:** This posits that legal norms are grounded in a higher moral order or reason, and that unjust laws are not truly law in the fullest sense. This historical approach is rooted in classical thought and finds contemporary

expression in the writings of scholars such as John Finnis (2007) who reasserts the Thomistic tradition, emphasizing that law derives its authority from practical reason and its service to the common good. He maintains that unjust laws may possess factual validity but fail the moral conditions of legal authority.

4. **Positive Law:** By contrast, this treats law as a system of enacted rules and institutional structures, largely independent of moral content. This tradition is classically represented by theorists such as H.L.A. Hart, but also by contemporary legal positivists like Moore. Moore (2002) advocates for a “naturalist” legal ontology, where law is understood as a real phenomenon composed of formal properties such as rules, commands, procedures and not reducible to moral claims. However, Moore also acknowledges that even within a positivist frame, law’s identity may involve degrees of social meaning that affect its normative force.

B. Literature Review

This section examines existing literature in four thematic strands which are: (i) classical theories of precedent, (ii) precedent and ontological philosophy, (iii) legal hermeneutics and interpretive models, and (iv) critiques of legal regularity and judicial authority.

1. Classical Theories of Precedent

Much of the traditional literature on precedent focuses on its stabilizing and normative force. Perry (1987) offers one of the most influential accounts, arguing that precedent imposes a judicial obligation grounded in institutional justification. For Perry, the authority of precedent lies in its ability to constrain discretionary judgment, not necessarily in its moral soundness. This doctrinal lens treats precedent as a necessary device for maintaining fidelity to prior law, irrespective of contemporary values. Similarly, Schauer (1987) views precedent as a second-best reasoning mechanism, one that favours predictability over perfection. This approach defends legal reasoning by analogy as a legitimate, albeit imperfect, method of decision-making. In this line of

thought, precedent becomes a form of legal memory, one that disciplines interpretation by deferring to the past.

2. Precedent and Ontological Philosophy

Recent jurisprudential works have reoriented the conversation by focusing on the ontological implications of precedent. Cho (2021) positions precedent as a socially constructed structure of meaning, arguing that the citation of precedent is itself a discursive act that both produces and reifies legal reality. Rather than a static set of rules, precedent is presented as an evolving framework through which the law constitutes itself. Cho's sociological insight reframes judicial decisions as moments of ontological assertion, where law is not merely applied but projected.

Marmor (2019), adopting a more conceptual approach, critiques the flattening of legal debates into source-based taxonomies. He contends that understanding law requires examining how it operates as a structured normative reality. In this sense, precedent cannot be understood in isolation from the ontological commitments embedded in judicial reasoning as they do not merely follow law but they form law, functioning as rituals of interpretive continuation.

3. Legal Hermeneutics and Interpretive Methodologies

The hermeneutical tradition offers useful tools for rethinking precedent. Gadamer's concept of the fusion of horizons suggests that understanding arises from an interplay between the interpreter's perspective and the text's historical context. This resonates in judicial contexts, where judges engage with prior rulings not as fixed commands but as dialogical engagements. Griffiths (2013) applies Gadamer's framework to law, emphasizing that precedent should be interpreted as an evolving conversation rather than an inert reference point. This challenge both originalism and doctrinal positivism by foregrounding the interpreter's situatedness. According to this view, legal reasoning is less about discovering rules and more about negotiating meaning across time. This interpretive flexibility becomes essential in addressing precedents that have lost moral or political legitimacy. Precedent, under a Gadamerian lens, may still command respect but

must also face hermeneutical re-evaluation which is an act that reveals its ontological status as contingent and mutable rather than absolute.

4. Critiques of Legal Regularity and Judicial Authority

Other scholars have questioned whether precedent truly delivers the consistency and legitimacy it promises. Siltala (2000) contends that the logic of precedent masks a deeper instability in legal reasoning. His post-analytic critique reels out how appeals to past rulings often conceal normative choices. In his view, precedent provides not objectivity, but a rhetorical justification for authority. Similarly, Schlag (1996) approaches legal discourse as a performative exercise. He argues that the use of precedent is less about fidelity to past decisions and more about staging legal continuity. Law, in this formulation, becomes not a stable entity but a site of interpretive struggle. The act of citing precedent is an ontological claim about what counts as law at a particular moment. These critiques point toward a broader conclusion which is that precedent is not simply legal data to be retrieved but a living form of legal enactment. Its ontological implications cannot be overlooked or under-theorized.

C. Theoretical Framework

This study draws on the legal hermeneutics of Hans-Georg Gadamer as its principal theoretical framework. Gadamer's seminal work, *Truth and Method* (2004), provides a philosophical lens through which the practice of precedent can be understood not merely as legal continuity but as an ongoing act of meaning-making. His concept of the "fusion of horizons" posits that interpretation arises from the dialogue between the historical meaning of a text and the contemporary context of the interpreter.

This dialectic underpins much of how precedent is engaged in judicial reasoning. The relevance of Gadamerian hermeneutics to law lies in its rejection of purely objective or mechanical readings of text. For Gadamer, understanding is not a methodological procedure but an ontological event; it happens as a coming into meaning between interpreter and tradition (Gadamer, 2004). In legal settings, this means that precedent is not applied in a vacuum; rather, it is interpreted, contextualized, and reconstituted in the

light of new realities. Law is therefore not static but dynamically produced through this interpretive act.

This hermeneutic model aligns with how judges cite, distinguish, or depart from precedent in their rulings. Each citation of precedent involves a retrieval of past meaning, but also a transformation. As such, precedent is not simply a rule to be obeyed but a dialogical partner in the making of legal decisions. Judges bring their own perspectives, shaped by the political, cultural, and moral conditions of their time, into conversation with prior legal formulations. This conversation is itself constitutive of legal being.

Unlike formalist approaches that treat precedent as binding by virtue of institutional hierarchy, Gadamer's framework emphasizes that understanding cannot be divorced from history, context, and subjectivity. This means legal meaning is always provisional, incomplete, and re-negotiated through each act of interpretation. Such a model rejects the binary of judicial activism versus restraint; instead, it sees interpretation as inevitable and foundational to law's ontology.

It is important to contrast this with other interpretive theories so that while Dworkin (1986) emphasizes "integrity" in legal reasoning, arguing that judges must decide cases in a way that fits and justifies the legal system as a whole, Gadamer provides a less prescriptive but more ontologically grounded account. Where Dworkin seeks coherence across time, Gadamer focuses on the event of understanding as historically mediated and ethically situated. This distinction is critical because Gadamer's approach does not prescribe a single moral reading but opens space for diverse readings grounded in lived tradition.

Furthermore, legal hermeneutics also helps us understand how precedents become authoritative, not merely through legal hierarchy but through perceived legitimacy, in tune with current values, and interpretive plausibility. This challenges the narrow positivist assumption that judicial authority derives solely from procedural status. Instead, law's authority is seen as hermeneutically sustained produced through ongoing engagement with legal texts and traditions.

D. Methodology

This study adopts a hermeneutic-philosophical methodology, rooted in Hans-Georg Gadamer's theory of interpretation as elaborated in his seminal work, *Truth and Method*. Rather than relying on empirical data or doctrinal surveys, this approach prioritizes the interpretive logic of legal texts, especially judicial opinions and jurisprudential theory. The aim is to examine how legal meaning is constituted through the practice of citing and engaging with precedents.

The method is guided by three critical assumptions viz:

1. Law is ontologically constituted through interpretation, not merely administered through rules
2. Precedent is a dialogical rather than deterministic tool, shaped by context, legal tradition, and judicial reasoning and,
3. Legal authority is sustained through hermeneutic coherence, not just institutional hierarchy.

This methodological orientation informs how the research was conducted through judicial decisions, philosophical treatises, and key theoretical commentaries read not as isolated artefacts but as dialogical entries into the interpretive tradition of law. Priority was given to how precedent is framed, how meaning is attributed, and how interpretive legitimacy is established within decisions and scholarship.

The Gadamerian framework served not only as a theoretical guide but also as a tool for reading. The analysis employed Gadamer's idea of the "fusion of horizons" which has to do with interpreting precedent as a site where the historical meanings embedded in a case encounter the judge's situated understanding. This allowed for close reading of case law and theory with attention to how precedent performs ontological work, shaping what law is understood to be in a given moment. The structure of the study thus follows a critical interpretive sequence. Key legal concepts such as precedent, law, justice, and legitimacy are problematized through philosophical engagement, followed by thematic

analysis of selected case examples and theoretical debates. The approach is iterative rather than deductive, allowing for reflexivity and conceptual movement as each layer of interpretation unfolds.

It is also important to clarify what this methodology does not do. It does not attempt to track judicial behaviour through empirical methods, nor does it make statistical claims about precedent use across jurisdictions. Instead, its focus is philosophical-analytical, asking what precedent means within the normative structure of law, and how it contributes to law's identity. A final methodological consideration involves acknowledging limitations. Hermeneutic methods are by nature interpretively rich but empirically narrow.

They offer depth of insight into meaning-making processes but do not claim generalizability or quantitative robustness. This study therefore, limits itself to conceptual reconstruction and philosophical inquiry, while pointing to future research that might integrate doctrinal or empirical analysis for broader application. However, before the study proceeds to the findings section, some critical engagements will be done on some fundamental relational issues giving more insights into the subject matter on precedents.

IV. JUDICIAL PRECEDENT AND THE SANCTITY OF LAW

Judicial precedent holds a revered position within legal systems structured around the principle of *stare decisis*, which ensures continuity, predictability, and legitimacy in legal reasoning. The sanctity often attributed to precedent is bound up with this stability. However, this sanctity is not inherent as it is conferred, interpreted, and sometimes contested. The invocation of precedent as sacrosanct merits scrutiny, particularly where it obscures the normative and interpretive practices that sustain its authority.

The conventional account of precedent sees it as an instrument of legal fidelity a commitment to past rulings as binding sources of law. This fidelity, however, is not morally neutral as the U.S. Supreme Court noted in *Planned Parenthood v. Casey* (1992).

The doctrine of *stare decisis* "is a principle of policy" rather than an "inexorable command." This recognition exposes the conditional nature of precedent's sanctity because it can be preserved, adjusted, or overturned in light of shifting constitutional, ethical, or political considerations.

A case in point is of *Brown v. Board of Education* (1954), which famously overturned *Plessy v. Ferguson* (1896), repudiating the "separate but equal" doctrine. The judicial courage to abandon precedent in this instance reveals that sanctity is sometimes subordinated to justice. What matters is not the age or repetition of a precedent but its moral and jurisprudential resonance in a given context. Cho (2021, p. 417) observes that, "legal legitimacy is as much a function of social normativity as of doctrinal stability."

When precedent loses its ethical standing, its sanctity becomes questionable. This does not render the concept of precedent obsolete. Rather, it invites us to interrogate the conditions under which precedent deserves to be preserved. Lamond (2005) distinguishes between followed precedent and binding precedent, emphasizing that the force of a prior decision derives not just from institutional obligation but from a chain of interpretive justification. A precedent becomes binding because it is treated as such by subsequent courts not simply because it was declared law, but because it is treated as law again and again.

This repetition, however, is not merely mechanical as it involves interpretive affirmation. Judges do not cite precedent blindly but weigh, distinguish and reshape it. In *R v. Shivpuri* (1987), the House of Lords overruled its earlier decision in *Anderton v. Ryan* (1985) within the span of a year, acknowledging that adherence to an incorrect precedent can lead to deeper doctrinal confusion.

Here, sanctity gave way to self-correction. What these examples reveal is that judicial precedent functions within a hermeneutical tradition, where its sanctity is performative rather than foundational. It is not that precedent is sacred in and of itself, but that it becomes sacred through ongoing acts of affirmation, repetition, and recognition. Gadamer's view that tradition is never static but always interpreted is key here. Law is

not transmitted but re-enacted through each judicial engagement with precedent (Gadamer, 2004).

This understanding challenges the positivist claim that precedent merely signals the law as it is. Instead, it positions precedent as an act of legal becoming, wherein courts not only declare what the law was but participate in what the law is and what it should become. The sanctity of precedent, therefore, must remain open to ethical and philosophical interrogation. When precedent obstructs justice or entrenches outdated norms, it loses not only its sanctity but also its legitimacy.

V. THE ONTOLOGY OF LAW: LETTER AND SPIRIT

The distinction is central to any ontological inquiry into legal meaning. While the letter of the law denotes its textual formulation, the words enacted by legislative authority or recorded in precedent. the spirit gestures toward purpose, intention, and interpretive ethos. This distinction becomes more than a semantic divide when judicial decisions are involved as it becomes an ontological site where law is either constrained or liberated by the frameworks used to interpret it.

Legal positivists have historically prioritized the letter. For them, law's identity is inseparable from its formal sources and linguistic clarity. In contrast, purposivist and natural law theorists argue that legal meaning cannot be separated from moral reasoning and societal aims making Finnis (2007) to contend that, law cannot merely be "what is written"; it must also aim at the common good, with unjust laws falling short of legal completeness.

This binary however often collapses in actual jurisprudence as judges rarely adhere strictly to the letter or the spirit; rather, they navigate both in a dynamic interpretive field. In *Riggs v. Palmer* (1889), for example, the New York Court of Appeals denied inheritance to a grandson who murdered his grandfather, even though the statute did not explicitly bar such a claim. The court held that a murderer should not profit from wrongdoing. The textual letter permitted inheritance while the judicial spirit prevented it. The ruling

exemplified that legal ontology cannot be reduced to text alone as it must be responsive to ethical coherence.

This interplay is further complicated in constitutional interpretation so that in *District of Columbia v. Heller* (2008), the U.S. Supreme Court interpreted the Second Amendment as protecting an individual's right to bear arms, relying heavily on textual originalism. Justice Scalia's majority opinion held closely to the semantic content of the text. Yet dissenting justices emphasized the historical and civic purpose of the amendment, arguing it was tied to militia service. The ontology of the law in this case hinged on whether the "letter" or the "spirit" was given interpretive priority. The same constitutional text yielded opposing legal realities.

Such rigidities reflect Gadamer's hermeneutic principle that meaning arises in the encounter between the interpreter and the text's tradition and not from the text alone (Gadamer, 2004). In legal interpretation, this means that no judicial reading is "objective" in a metaphysical sense as each is the result of an interpretive act grounded in legal culture, precedent, and institutional context. Therefore, the ontology of law which is what law is emerges through interpretation, not before it.

In *Minister of Home Affairs v. Fisher* (1979), Lord Wilberforce famously applied a purposive approach in interpreting the Bermuda Constitution, stating that constitutional documents should be read as "a living tree capable of growth and expansion." Here, the court departed from strict textual analysis in favour of a moral-political reading of rights. The ruling made clear that precedent and textual fidelity do not exhaust the legal reality of a document. Instead, interpretive imagination guided by the spirit extends the law's ontological boundaries.

What these decisions illustrate is that law is not merely a compilation of texts or past decisions but the practice of interpretation that negotiates the tension between formal language and evolving moral insight. When precedent affirms rigid textualism at the expense of evolving justice, it risks hardening the law's identity. Conversely, when the spirit of the law becomes detached from its letter, judicial authority risks appearing

arbitrary. Thus, the ontology of law unfolds in the space between letter and spirit in the act of interpretation itself. It is not that the law possesses one essence and judges either reveal or obscure it. Rather, legal meaning is made possible by judicial encounters with the text, and by the choice to interpret in ways that either constrain or liberate its potential.

VI. FINDINGS AND DISCUSSION

This study set out to re-examine the ontology of law through the practice of judicial precedent. The findings point toward a more fluid and contested understanding of law than traditionally acknowledged. Precedent then is not merely a procedural tool for consistency but an ontological mechanism through which law is constituted, shaped, and transformed. One of the most critical findings is that, precedent is performative. It does not simply reference prior rulings but actively participates in the constitution of legal meaning. Each citation of precedent is an interpretive act that frames how legal principles apply to new contexts. In *Brown v. Board of Education* (1954), the rejection of *Plessy v. Ferguson* did not just change the law but redefined the normative terrain upon which racial equality claims could be made. The past was not merely corrected as it was reconceptualized, and with it, law's very identity shifted.

This performative role of precedent reveals the tension between law's stabilizing function and its adaptive necessity. On one hand, precedent offers continuity, a promise that like cases will be treated alike. On the other hand, it carries within it the capacity for rupture and transformation. The ruling in *R v. Shivpuri* (1987), which reversed the House of Lords' own decision from a year earlier, exemplifies this duality. Law's identity is not secured by repetition alone but by the ongoing re-affirmation or critique of precedent in light of evolving reason. A second key finding is that precedent is deeply embedded in hermeneutic processes, not just doctrinal logic. Judges interpret past decisions through their own horizons of understanding, shaped by social context, legal training, and institutional culture. Gadamer's insight that interpretation always occurs through a "fusion of horizons" (2004) resonates strongly here. Precedent becomes meaningful not

because it dictates action but because it engages a contemporary reader, a judge who reconstructs its relevance for present disputes.

This leads to a third finding which is that law is ontologically incomplete without interpretation. Legal positivism, with its emphasis on formal sources, cannot fully account for the life of law as lived and practiced. The example of *Riggs v. Palmer* (1889) shows that even where the text permits a certain result, interpretive judgment may override it in the name of justice. This demonstrates that legal ontology is not exhausted by texts, rules, or procedures. It is enacted situationally, contextually, and normatively.

Furthermore, the sanctity of precedent is contingent, not absolute. It is not preserved because it is old, but because it continues to resonate. The ability of courts to overturn precedent sometimes with explicit reasoning, as in *Casey* (1992), or with abrupt clarity, as in *Shivpuri* reflects a legal tradition that values both stability and critical responsiveness. This undermines the positivist idea that precedent operates as mechanical logic.

Importantly, the study finds that judicial decisions reflect ontological choices about what law is, what it means, and how it should be projected into the future. These choices are not rarely acknowledged but are evident in landmark cases involving rights, justice, and social change. The use of precedent in such cases is less about consistency and more about interpretive framework, where past decisions are either elevated, limited, or discarded based on current normative commitments.

The implications of these findings therefore, are both philosophical and practical. Philosophically, the law must be seen as a tradition of ongoing interpretation, not a fixed repository of rules. Practically, this shifts how we understand legal training, judicial responsibility, and the function of courts. Judges are not neutral conduits of past wisdom but active participants in law's becoming. The authority of precedent, therefore, lies not just in its origin but in its continued justification through interpretive fidelity and ethical responsiveness.

VII. CONCLUSION

This study has sought to interrogate the ontology of law through a critical re-examination of judicial precedent, uncovering the ways in which precedent shapes, sustains, and at times redefines what the law is. The findings make clear that law's "being" is neither fixed nor self-evident but ontologically constituted through interpretive engagements where judicial precedent stands as a vital site where that constitution takes place. The analysis revealed that judicial precedent is not simply a vehicle of legal repetition but a creative and ontological process. Courts do not merely cite precedent but animate, interpreting, distinguishing, affirming, or overturning it based on present contexts and evolving values. This process confirms that law is not an archive but a living tradition, constantly reconstructed through acts of interpretation.

Moreover, the sanctity of precedent was shown to be conditional rather than intrinsic. It is affirmed not by age or authority alone but by its resonance with evolving social values and its capacity to remain normatively coherent. When precedents lose this coherence as in the shift from *Plessy* to *Brown*, or from *Anderton v. Ryan* to *Shivpuri*, they are discarded in favour of principles more attuned to justice, legitimacy, and rational consistency. The Gadamerian hermeneutic framework provided a philosophical foundation for this inquiry as it helped illuminate how legal meaning emerges through a "fusion of horizons," where judges situated within their historical and institutional contexts, engage with prior decisions not as rigid commands, but as dialogical encounters. Through this engagement, law is not merely interpreted but reinterpreted into being.

This study also challenges the adequacy of legal positivism in accounting for law's ontological depth. While positivism offers useful clarity about sources and rules, it fails to explain how law acquires meaning, legitimacy, or moral coherence. In contrast, a hermeneutical account acknowledges that legal meaning is contingent, historical, and ethically loaded, shaped by interpretive choices that cannot be reduced to formalism. It is on this note that one of the study's critical contributions lies in re-framing precedent as a site of normative possibility rather than doctrinal rigidity. In this view, precedent does

not merely constrain judicial reasoning but creates the very conditions under which legal reasoning becomes meaningful. As such, this study provides both a theoretical and practical lens for understanding the evolving nature of law in systems that rely heavily on case law.

The implications for legal theory are that, it reinforces the need for ontological models of law that account for interpretation, tradition, and meaning not merely rules and sources. For judicial practice, it reels out the ethical responsibility of judges not only to apply precedent, but to critically assess its relevance, moral weight, and interpretive integrity. Hence, the study reaffirms that law is not a closed system but an open interpretive tradition, where precedent serves as both anchor and compass. Understanding this duality enriches our comprehension of legal reasoning, challenging oversimplified accounts of *stare decisis*, and opens up fertile ground for future debates on the interplay between legal authority, judicial discretion, and the ontology of law itself.

VIII. RECOMMENDATIONS

The findings of this study invite a reassessment of how judicial precedent is taught, practiced, and theorized, especially within systems that regard *stare decisis* as a central legal norm. The interpretive, ontological nature of precedent necessitates a shift from rigid application toward reflective legal reasoning. The following recommendations are therefore proposed for scholars, judges, and legal institutions.

1. Integrating Hermeneutics in Judicial Education

Legal education and judicial training should incorporate hermeneutic theory, particularly the work of thinkers like Hans-Georg Gadamer, into the study of precedent and legal interpretation. Judicial decision-making is not value-neutral, and judges should be aware that engaging with precedent is not merely procedural but interpretive and philosophical. This includes encouraging a deeper understanding of how meaning is shaped by history, institutional context, and the interpreter's position within a legal

tradition. Judges trained in such methods are better equipped to navigate complex cases where moral and legal demands appear to conflict.

2. Courts Transparency About Interpretive Moves

Judicial opinions should make explicit not only which precedents are cited, but why and how they are interpreted. Acknowledging the philosophical and moral weight of precedent rather than masking it in technical formalism would enhance transparency and legitimacy. In cases where precedent is overturned or distinguished, courts should clearly articulate the normative reasoning behind the shift. This would reinforce the idea that precedent is not merely a rule but a dialogue with the past that requires accountability.

3. Doctrinalism Shift

Legal theory should deepen its engagement with legal ontology, using tools from continental philosophy, hermeneutics, and interpretive theory. Much of current jurisprudence remains too focused on rules and sources, neglecting the interpretive practices that give law its ontological shape. Scholars are encouraged to further explore how precedent functions as a medium of legal being, rather than treating it as an instrument of legal stability. This would allow for a richer, more holistic account of how law evolves through practice.

4. Comparative Studies on Precedent Use

Future research should explore how different legal systems particularly common law and civil law jurisdictions conceive precedent's authority and ontological role. While *stare decisis* is formalized in the common law, civil law systems also engage in interpretive dialogue with past decisions, albeit in less doctrinally explicit ways. Such comparative studies would uncover shared philosophical patterns and reveal alternative models of judicial reasoning that could enrich each tradition.

5. Reevaluate the Doctrine of Stare Decisis

Legal institutions should reflect on whether the doctrine of *stare decisis*, as currently practiced, sufficiently accommodates the evolving and interpretive nature of law. There

is a danger that precedent, when treated as dogma, can petrify legal thought and inhibit moral and social progress. This calls for a more flexible, philosophically grounded approach, one that respects legal continuity while remaining open to ethical reformulation. Such a model aligns better with law's ontological character as an evolving tradition of meaning.

IX. REFERENCES

1. *Anderton v. Ryan* [1985] AC 560 (HL)
2. *Brown v. Board of Education*, 347 U.S. 483 (1954)
3. *Brown v. Board of Education*, 347 U.S. 483 (1954)
4. Cho, S. (2021). A social theory of legal precedent. *Southern California Interdisciplinary Law Journal*, 31(2), 403–429.
<https://gould.usc.edu/students/journals/ilj/assets/docs/volume31/Sungjoon.pdf>
5. *District of Columbia v. Heller*, 554 U.S. 570 (2008)
6. Dworkin, R. (1986). *Law's Empire*. Harvard University Press.
7. Finnis, J. (2007). *Natural law theories*. Stanford Encyclopedia of Philosophy. <http://seop.illc.uva.nl/entries/natural-law-theories/> (accessed 21 July 2025).
8. Gadamer, H.-G. (2004). *Truth and Method* (2nd rev. ed., trans. J. Weinsheimer & D.G. Marshall). Continuum. ["Fusion of horizons" discussed pp. 305–306]
9. Griffiths, J. (2013). Legal hermeneutics and the epistemology of precedent. *Legal Theory*, 19(3), 201–228. <https://doi.org/10.1017/S1352325213000071>
10. Lamond, G. (2005). Do precedents create rules? *Legal Theory*, 11(1), 1–26. <https://doi.org/10.1017/S1352325205050011>
11. Lamond, G. (2006). Precedent and analogy in legal reasoning. *Stanford Encyclopedia of Philosophy*. <https://plato.stanford.edu/entries/legal-reas-prec/> (accessed 21 July 2025).
12. Marmor, A. (2019). What's left of general jurisprudence? On law's ontology and content. *Jurisprudence*, 10(2), 197–212. <https://doi.org/10.1080/20403313.2018.1545457>

13. Minister of Home Affairs v. Fisher [1979] 3 All ER 21 (PC)
14. Moore, M. (2002). Legal reality: A naturalist approach to legal ontology. *Law and Philosophy*, 21(5), 619–665. <https://doi.org/10.1023/A:1021266820357>
15. Perry, S. R. (1987). Judicial obligation, precedent and the common law. *Oxford Journal of Legal Studies*, 7(2), 215–257. <https://academic.oup.com/ojls/article-abstract/7/2/215/1507207>
16. Perry, S. R. (1987). Judicial obligation, precedent and the common law. *Oxford Journal of Legal Studies*, 7(2), 215–257. <https://doi.org/10.1093/ojls/7.2.215>
17. Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833 (1992)
18. Plessy v. Ferguson, 163 U.S. 537 (1896). Available at: <https://supreme.justia.com/cases/federal/us/163/537/> (accessed 21 July 2025).
19. *R v. Shivpuri* [1987] AC 1 (HL)
20. Riggs v. Palmer, 115 N.Y. 506 (1889)
21. Schauer, F. (1987). Precedent. *Stanford Law Review*, 39(3), 571–605. <https://doi.org/10.2307/1228583>
22. Schlag, P. (1996). Normativity and legal discourse. *University of Pennsylvania Law Review*, 139(1), 199–233. <https://doi.org/10.2307/3312516>
23. Siltala, R. (2000). *A theory of precedent: From analytical positivism to a post-analytical philosophy of law*. Hart Publishing.