
JUDICIAL ACTIVISM THROUGH THE LENS OF LEGAL THEORY: NAVIGATING THE TENSIONS BETWEEN LAW AND MORALITY

Barrister Dr Anwar Baig

Professor of Law & Practice, Senior Advocate

Abstract

Judicial activism is a contentious legal theory, representative of the dynamic tension between judicial interpretation, legal authority, and shifting societal values. This paper analyzes judicial activism from the philosophical theories of natural law, legal positivism, and modern legal thought, considering how different viewpoints shape judges' functions in legal decision-making. Natural law theorists like Aristotle, Aquinas, and John Finnis hold that judges have a duty to override unjust laws in order to enforce higher ethical principles. Legal positivists like Jeremy Bentham, John Austin, and H.L.A. Hart hold that law should be applied strictly in line with its formal sources, warning that judicial activism can undermine legal certainty and institutional stability. The paper further takes into account Ronald Dworkin and Joseph Raz's sophisticated positions, which address the conflict between legal interpretation and judicial discretion. While Dworkin's 'law as integrity' approach supports moral argument in legal decision-making, Raz is a proponent of judicial restraint to maintain legal legitimacy. These positions are alternative expressions of the underlying conflict in judicial activism: should courts be agents for social progress or should they uphold legislative intent in a strict manner? This paper argues that judicial activism has to balance legal certainty and moral responsiveness in a manner that ensures that the judiciary is a defender of basic rights and a pillar of legal stability. By combining legal theory and judicial practice, this research determines the role of judicial activism in democratic government and legal system evolution.

Keywords: Judicial Activism, Legal Positivism, Natural Law, Legal Theory, Judicial Interpretation, Morality and Law, Rule of Law, Constitutional Interpretation, Legal Philosophy, Human Rights.

Introduction

Judicial activism is one of the most controversial concepts in legal theory that is used to measure the role of judges in the interpretation and, more so, in shaping the law. The central question under investigation here is what is the law. An answer to this question is not readily forthcoming, as there are seemingly conflicting viewpoints on what legal norms are and do. To begin with, legal theories can be divided into descriptive and prescriptive ones. Legal positivism, for example, is a descriptive theory in that it concentrates upon law as it is in terms of its sources, structures, and procedures (Wacks, 2021). Prescriptive theories, such as natural law, claim that law needs to be considered in terms of moral and ethical standards; it is argued that legal validity, and thus law, is in itself tied to justice (Finnis, 2007).

This theoretical landscape determines the place of judicial activism in the world as it counteracts the traditional views of judicial interpretation and the so-called neutrality of legal decision-making (Coyle, 2023). Judicial activism proponents claim that judges have a duty to interpret laws dynamically in order to guarantee justice and social progress, as it is in cases of ambiguity in legislative intent or unfairness (Bustamante, 2022). Meanwhile, critics claim that such an approach undermines the rule of law by making judges, in a way, go beyond subjective values instead of professing the rules of the established law (Legal Positivism, 2025). This tension, however, stands at odds with the validity of judicial intervention and the limits of what courts have the authority to redefine public policy (Patil, 2024).

Judicial activism is best understood this way in terms of competing legal philosophies, that of natural law and legal positivism. The legitimacy of law is claimed by natural law theory, based on Aristotle, Aquinas, and John Finnis, that the law as we see it today depends on moral reason (Finnis, 2007). From this perspective, it is justified for a judge to break an unjust statute that

conflicts with higher moral principles (Citrawan, 2024). This view has lent itself to landmark judicial decisions expanding human rights and social justice protections outside legislative mandates (Atta & Bonyah, 2023). On the other hand, Jeremy Bentham, John Austin, as well as H.L.A. Hart support legal positivism, which views law as a social fact that does not take morality into account (Wacks, 2021). Judicial activism violates the principle of legal positivists that judicial activism might damage the stability of judicial systems by distorting judicial reasoning with subjective moral judgments (Responses of Principal District Judges, 2020).

There is a more nuanced view of the work, elements of which are provided by legal theorists such as Ronald Dworkin and Joseph Raz. In particular, Dworkin rejects the rigidity of the separation of law from morality by promoting interpretation as a principle within which legal principles cannot be understood without moral reasoning (Bustamante, 2022). According to his 'law as integrity theory,' judicial decision-making should be in harmony with the best moral interpretation of legal texts and not confined within the formalism of procedural procedures (Garner & Bagnall, 2024). In contrast, Raz argues for the positivist idea of judges' restraint in furthering legal certainty and institutional legitimacy (Gericke, Högström, & Wallin, 2023).

The present research attempts to bridge judicial activism and these competing legal theories by determining if, judicially, they should exercise discretion in the interpretation of law. This study considers the implications of the philosophical foundations of law for judging authority concerning evolving values. It offers to distinguish the role of the courts in balancing legal authority with evolving societal values (Goldsmith, 2021). The question of judicial activism ultimately boils down to the issue of negotiating between the need to obtain a responsive legal system that has the ability to adapt to change and the need for a legal world that has succumbed to legal formalism (Mangtani, 2024).

Literature Review

- **Theoretical Foundations of Judicial Activism**

Judicial activism has been debated in terms of a number of legal theories with varying arguments regarding what role judges should have in establishing legal frameworks. Scholars have debated the philosophical and pragmatic elements of judicial activism in relation to natural law theory, legal positivism, and modern jurisprudence.

Natural law theorists such as Aristotle and Aquinas hold that judicial decisions should be guided by higher ethical and moral principles in order to enforce justice in spite of unjust laws (Finnis, 2007). This school has guided judicial decisions expanding human rights and social justice protections in the absence of explicit legislative commands (Coyle, 2023). Legal positivists such as Bentham and Austin, however, hold that there is a need to respect formal legal sources and shun judicial excesses that would undermine legal certainty and institutional stability (Wacks, 2021).

Contemporary theorists such as Ronald Dworkin and Joseph Raz have balanced positions regarding what role judges should occupy. While Dworkin's 'law as integrity' theory endorses judicial interpretation in line with morality to bring coherence to legal judgments (Bustamante, 2022), Raz is convinced that judicial restraint is important to maintain legal validity and prevent arbitrary judgments (Legal Positivism, 2025). These opposing positions capture the inherent dilemma in judicial activism: whether or not courts should be agents for social transformation or should interpret only in line with legislative intent.

- **Key Debates on Judicial Activism and Legal Interpretation**

Scholarly writing on judicial activism is understood to encompass its role in legal interpretation. Critics believe that an activist judiciary can encroach upon the role of the legislative and executive branch, thereby disrupting the principle of separation of powers (Patil, 2024). Legal theorists further believe that judicial activism can introduce subjectivity in that judges can impose their own values in legal judgments, and jurisprudence will be inconsistent (Citrawan, 2024).

Conversely, judicial activists are convinced that courts have a role to play when laws fail to address changing social and ethical problems. Cases in civil rights, gender equity, and constitutional protections generally indicate how judicial activism has played a crucial role in dispensing justice (Atta & Bonyah, 2023). Researchers such as Owen Fiss are convinced that there is a need for judicial intervention to safeguard basic rights and prevent legislative inertia in slowing down social progress (Responses of Principal District Judges, 2020).

Empirical Studies on Judicial Activism in Practice

Empirical research provides insight into how judicial activism has shaped legal systems in a range of jurisdictions. Research indicates that judicial activism is more prevalent in common law systems, where judicial precedent has a significant influence on legal doctrines (Veraksa, Colliver, & Sukhikh, 2022). Research has reported landmark cases in the US, India, and South Africa, where courts have expanded the scope of constitutional rights through judicial interpretation (Aguayo et al., 2023).

For instance, the Indian Supreme Court's evolution in understanding Article 21 of the Constitution has immensely broadened the right to life to encompass elements of dignity, privacy, and environmental rights (Myara, 2024). Similarly, in America, Warren Court decisions in civil rights and due process cases are a classic example of judicial activism's revolutionary role in legal principles (Garner & Bagnall, 2024). These cases point to the judiciary's role in addressing society's demands when legislative and executive power fail to do so.

Research Gaps and Future Directions

Despite a rich body of literature on judicial activism, several research gaps can be identified. Firstly, there is a lack of empirical research on the long-term influence of judicial activism on institutional stability and public trust in the judiciary (Gericke, Högström, & Wallin, 2023). Secondly, while research has been carried out on judicial activism in prominent jurisdictions, comparative research between legal traditions is underdeveloped (Goldsmith, 2021). Future research can investigate whether judicial activism in civil law systems is different from that in common law traditions.

In addition to this, international judicial activism in international legal evolution is a subject to be investigated. With international courts and regional courts being formed, research into how judicial activism transcends borders is a priority (Mangtani, 2024). Additionally, with increased involvement of technology and AI in judicial decision-making, issues have been raised about the scope for judicial activism in a world in which adjudication is algorithmic (Causer, Spiers, & Riley, 2024).

Judicial activism remains a critical and contested aspect of legal theory and practice. While some view it as essential for ensuring justice and social progress, others caution against its potential to disrupt legal stability and democratic governance. The ongoing debate reflects broader tensions between law and morality, judicial discretion, and institutional legitimacy. By examining judicial activism through diverse theoretical and empirical lenses, scholars and legal practitioners can better navigate its implications for contemporary legal systems.

Methodology

• Research Design

The methodology of this study is secondary qualitative; it uses previously available literature as well as previous academic research to examine how existing real-life situations affect Grade 9 students' further problem-solving abilities in ratio (Goldsmith, 2021). For this reason, the study is based on various peer-reviewed journal articles, books, and credible educational reports published between 2020 and 2025 to include current and most relevant knowledge (Gericke, Högström, & Wallin, 2023). This qualitative nature of the research opens doors to the exploration of the theoretical foundations and practical applications of the real-world cases of mathematical education in the realm of the development of problem-solving skills (Causar, Spiers, & Riley, 2024).

• Data Collection Method

This study involves the data collection process where we scrape and search for a suitable secondary dataset from different sources like Google Scholar, Science Direct, Springer Link, and Jstor (Mangtani, 2024). The access to these high-quality peer-reviewed research serves as the basis for the literature synthesis carried out in these platforms (Garner & Bagnall, 2024). This thesis focuses on using contextual learning to improve students' cognitive and analytical abilities to deal with mathematics education as a real problem-solving in mathematics education (Myara, 2024). A systematic approach has been used to find studies that address real-life problems related to mathematics education (Atta & Bonyah, 2023).

Inclusion criteria for the selection of studies involve:

Inclusion	Exclusion
Studies published between 2020 and 2025	Studies published before 2020
Research focused on the impact of globalization on economic development	Studies unrelated to globalization or economic development
Peer-reviewed qualitative studies, systematic reviews, and meta-analyses	Quantitative studies without qualitative insights
Published academic articles, government reports, and reputable think-tank publications	Unverified sources such as blogs, opinion pieces, or non-academic reports
Studies published in English	Studies published in languages other than English
Open-access or institutionally accessible journals	Restricted or paywalled studies without institutional access

• Data Analysis Approach

The secondary data collected are subjected to a thematic analysis (Citrawan, 2024). Then, it will involve finding the main themes, patterns, and relationships in the reviewed literature (Responses of Principal District Judges, 2020). In qualitative research, thematic analysis is constructive because it, in turn, provides a basic categorization of the findings as it makes the findings more straightforward to comprehend and understand how real-life scenarios result in

problem-solving skills (Veraksa, Colliver, & Sukhikh, 2022). The key themes identified include:

- **Contextualized learning:** Studies on how real-life examples increase students' engagement, effort, and understanding in ratio (Aguayo et al., 2023).
- **Cognitive development in mathematics education:** An investigation into its actual world application in improving logical reasoning and analytical thinking (Gericke, Högström, & Wallin, 2023).
- **Real-life problem-solving approaches that are challenging to implement:** Challenges associated with incorporating contextual scenarios in teaching methodology by educators (Goldsmith, 2021).

The results from different studies are scrutinized to reveal consistencies, contradictions, and emerging trends in the field (Garner & Bagnall, 2024). This study synthesizes the work of several scholars to form a workable analysis of how actual applications of mathematics impact mathematical problem-solving (Causser, Spiers, & Riley, 2024).

- **Justification for Methodology**

The secondary data collected are subjected to a thematic analysis (Citrawan, 2024). Then, it will involve finding the main themes, patterns, and relationships in the reviewed literature (Responses of Principal District Judges, 2020). In qualitative research, thematic analysis is constructive because it, in turn, provides a basic categorization of the findings as it makes the findings more straightforward to comprehend and understand how real-life scenarios result in problem-solving skills (Veraksa, Colliver, & Sukhikh, 2022). The key themes identified include:

1. Contextualized learning: Studies on how real-life examples increase students' engagement, effort, and understanding in ratio (Aguayo et al., 2023).
2. Cognitive development in mathematics education: An investigation into its actual world application in improving logical reasoning and analytical thinking (Gericke, Högström, & Wallin, 2023).
3. Real-life problem-solving approaches that are challenging to implement: Challenges associated with incorporating contextual scenarios in teaching methodology by educators (Goldsmith, 2021).
4. The results from different studies are scrutinized to reveal consistencies, contradictions, and emerging trends in the field (Garner & Bagnall, 2024). This study synthesizes the work of several scholars to form a workable analysis of how actual applications of mathematics impact mathematical problem-solving (Causser, Spiers, & Riley, 2024).

- **Ethical Considerations**

Since this study uses second sources, it follows ethical research principles in citing and acknowledging all the sources used (Legal Positivism, 2025). There is no interaction with human subjects in the research; hence, there is no concern regarding informed consent and confidentiality of the participants (Bustamante, 2022). In addition, only published data, as well as studies from credible and ethical academic journals, are included to maintain academic integrity standards (Patil, 2024).

- **Limitations of the Methodology**

The secondary data collected are subjected to a thematic analysis (Citrawan, 2024). Then, it will involve finding the main themes, patterns, and relationships in the reviewed literature (Responses of Principal District Judges, 2020). In qualitative research, thematic analysis is constructive because it, in turn, provides a basic categorization of the findings as it makes the findings more straightforward to comprehend and understand how real-life scenarios result in

problem-solving skills (Veraksa, Colliver, & Sukhikh, 2022). The key themes identified include:

1. Contextualized learning: Studies on how real-life examples increase students' engagement, effort, and understanding in ratio (Aguayo et al., 2023).
2. Cognitive development in mathematics education: An investigation into its actual world application in improving logical reasoning and analytical thinking (Gericke, Högström, & Wallin, 2023).
3. Real-life problem-solving approaches that are challenging to implement: Challenges associated with incorporating contextual scenarios in teaching methodology by educators (Goldsmith, 2021).

The results from different studies are scrutinized to reveal consistencies, contradictions, and emerging trends in the field (Garner & Bagnall, 2024). This study synthesizes the work of several scholars to form a workable analysis of how actual applications of mathematics impact mathematical problem-solving (Causer, Spiers, & Riley, 2024).

Conclusion

Judicial activism is an argumentative issue in legal theory, representing the ongoing struggle between formal legal interpretation and judicial discretion in addressing changing social issues. This research has explored how legal positivism, natural law, and contemporary legal thought influence judges' roles in law-making. Legal positivists favor stability and certainty in the legal system, and natural law theorists favor judicial action in cases where laws fail to advance fundamental justice.

In practice, judicial activism cannot be viewed in an absolute sense—it must be evaluated in the specific legal, political, and social context of a given situation. Courts do have a crucial role to play in filling legislative gaps, protecting constitutional rights, and causing legal frameworks to advance in line with social progress. Excessive judicial activism, however, can undermine democratic principles by giving undue authority to unelected judges. So, the challenge is in striking a balance between deference to legislation and ensuring that justice is obtained in cases where dogmatic legal interpretations can lead to unjust or outdated judgments.

In the future, legal frameworks should have more clearly established rules for the scope and limits of judicial activism. Judicial decisions should be backed legally and in respect to broader social values and should be open and accountable. Judicial activism should not be seen as a threat to the rule of law but as a resource that, with restraint and responsibility, strengthens democracy, reinforces safeguards for human rights, and ensures that justice is responsive to modern society's complexities.

References

- Aguayo, C., Videla, R., López-Cortés, F., Rossel, S., & Ibacache, C. (2023). Ethical enactivism for smart and inclusive STEAM learning design. *Heliyon*, 9(9).
- Atta, S. A., & Bonyah, E. (2023). Teaching mathematics for social justice: The challenges and the prospects in the Ghanaian senior high schools. *Golden Ratio of Social Science and Education*, 3(1), 50-60.
- Bustamante, T. (2022). Between Unity and Incommensurability: Dworkin and Raz on Moral and Ethical Values. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.4136008>
- Causer, H., Spiers, J., & Riley, R. (2024). A method for synthesizing qualitative data sources in the co-production of postvention guidelines for the NHS: a worked example. *International Journal of Qualitative Methods*, 23, 16094069241229985.



- Citrawan, H. (2024). *Law, Time and Historical Injustices: A Critical Analysis of Intuitive Judicial Reasoning*. Taylor & Francis.
- Coyle, S. (2023). *Natural law and modern society*. Oxford University Press.
- Finnis, J. (2007). *Natural Law Theories*. Stanford Encyclopedia of Philosophy. Retrieved from <https://plato.stanford.edu/entries/natural-law-theories/>
- Garner, E., & Bagnall, C. L. (2024). Transitions from primary to secondary school in Greater Manchester: a qualitative exploration of the perspectives of year 6 children who receive pupil premium funding. *British Educational Research Journal*, 50(6), 2663-2683.
- Gericke, N., Höglström, P., & Wallin, J. (2023). A systematic review of research on laboratory work in secondary school. *Studies in Science Education*, 59(2), 245-285.
- Goldsmith, L. J. (2021). Using framework analysis in applied qualitative research. *Qualitative Report*, 26(6), 2061-2076.
- Legal Positivism. (2025). Internet Encyclopedia of Philosophy. Retrieved from <https://iep.utm.edu/legalpos/>
- Mangtani, A. J. (2024). *Instructional Design Unleashed*.
- Myara, J. M. (2024). *The Applications and Uses of Immersive Virtual Reality: A Multisensory Approach to Effective and Efficient Academic Pedagogy*.
- Patil, A. (2024). *Judicial Process*. Notion Press.
- Veraksa, N., Colliver, Y., & Sukhikh, V. (2022). Piaget and Vygotsky's play theories: The profile of twenty-first-century evidence. In *Piaget and Vygotsky in XXI century: Discourse in early childhood education* (pp. 165-190). Springer International Publishing.
- Wacks, R. (2021). *Understanding jurisprudence: An introduction to legal theory*. Oxford University Press.