

It may be argued that the principle of statutory interpretation diminishes the status of legislation as the primary source of law in the UK. Discuss.

This essay will be examining statutory interpretation and its relationship with legislation. It will cover what it is, how judges interpret the law, and what restrictions are in place. The different rules add a sense of uniformity regarding interpretations. The power of Parliament and why their legislation is written so vaguely, and if that is a positive or not. Then the final section will touch upon delegated legislation and a brief comparison between that and statutory interpretation.

What is Statutory interpretation? In short, it is the way in which a member of the judiciary, or judge in short, analyses a piece of legislation and decides how it should work in practice. However, when interpreting statutes and legislation judges are confined regarding how much they interpret. An example of a case that presents statutory interpretation is ('Fitzpatrick v Sterling Housing Association 1999') this displays how despite the words of legislation not changing the societal meaning and understanding does. In short, a piece of legislation was passed that in the 1940s entitled blood relatives to inherit the right of property after the owner passes away. As time went on the concept of next of kin changed to the point in the 90s where a same sex partner gained the same rights.

In a way statutory interpretation is necessary due to how legislation is written within the UK. It is necessary due to the way in which language works. Words can be ambiguous and what one word means to you will mean something different to another. This ambiguity arises through the structure and phrasing of legislation. The meaning of words also changes depending on societal progress, a good example is the case of Fitzpatrick shown above. (Partington 2021 p47) Judges may indeed have some freedom regarding how they interpret legislation, however they are unable to stray too far from the wording. As seen in the (Interpretation act 1978).

Section 5 of the act states that 'In any Act, unless the contrary intention appears, words and expressions listed in Schedule 1 to this Act are to be construed according to that Schedule' and schedule 1 states 'Every section of an Act takes effect as a substantive enactment without introductory words'. When judges are interpreting statutes for use in legal cases, they in fact have certain rules that are used to ensure that the precedent set is viable. These rules are the Literal rule, Golden Rule and Mischief rule. There is also legislation surrounding statutory interpretation (Interpretation act 1978). Firstly, as the name displays the literal rule pertains to the idea that judges should interpret the legislation precisely how it was written. This rule wants to dissuade judges from trying to think about the intention behind the legislation and to try and stay as literal as possible. Moving on the Golden Rule is to only be used if the literal rule would lead to absurdity. The final rule which is in fact important regarding the question is the mischief rule. This rule asks the judge while interpreting to consider what the intention of this act is supposed to be and to not intervene in that. The first aspect of this rule that affects the status of legislation is the fact that it is making the judiciary lose independence by having them do parliament's job. The second issue is the idea that the judiciary could intentionally interpret the act in the wrong way which would affect the idea that parliament is the primary law-making institute (Cownie, Bradney and Burton 2013 p105)

So how do the courts create laws? In essence they don't create laws, instead they help expand them. They give precedents and acts of legal authority, which can easily be overruled by a new act written by the legislative or formal piece of legislation. There are two types of laws, statutes passed by parliament and the second is the decision of courts when no other common law proceeded it. (Partington 2021 p67) This is not say that Judge made law goes by uncriticized, in 1991 when the law that removed a womans consent to sex through marriage was overturned it took several pages worth of judgements and examinations from officials for it to completely take effect.

Now it is time to look at parliament. Parliament within the UK has the supreme power of law making. Despite that however it is not exactly how lay people perceive it. A legal theorists of 1900 Austin quoted another scholar called Bentham who wrote approvingly on 'judge made law' through ' That part of law of every country which was made by the judges has been far better made than the part that which consists of statutes enacted by the legislature'((Partington 2021 p67). Another good quote which is longer is 'The only rule for the construction of acts of parliament, is that they should be constructed according to the intent of the parliament which passed the act. If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in that natural and ordinary sense. The words themselves alone dp, in such a case, best declare the intention of the lawgiver.' Per Tindal CJ in Sussex Peerage Case (1884) 11 Cl and Fin at p.143. This quote states that when parliament is drafting an act they should only be focused upon what they want this act to do. Not how it will work in practice, they should leave that to the judiciary.

Following on from this when the legislation creates new statutes, they do create them to be as vague as possible to allow the judiciary as much scope for interpretation as possible. There are two arguments when it comes to this. Firstly, it is a good thing as when creating new statutes parliament is unable to and does not have enough time to consider all the possibilities that could occur with this new statute. So if left vague this allows the judiciary to interpret It in the best way possible when used in practice. Secondly, it is negative as it could be seen as diminishing parliaments place as top law maker by giving judges the possibility to interpret their statute in negative ways. The idea of being able to understand Parliament's intention is rather difficult. For a bill to pass and become a statute the house of lords, commons and the monarch must all agree on the bill. Due to this if one is able to understand the ambiguity of words and how they mean different things to different people how are we able to accept that judges, can uniformly interpret and understand the meaning of statutes. (Partington 2021 p47)

Finally, regarding parliament, there is the concept of delegated legislation. In short, delegated legislation is a body that is given the right to craft bills by the legislative. Under S.10 of the HRA 1998 gives ministers the power to amend primary legislation. This is important as it could be argued that it is somewhat like how judges operate, apart from the fact that judges can only interpret, not create bills and judges are part of the judiciary. The output of delegated legislation greatly outnumbers the number of acts of parliament in a year. A good example of this is that in 2012 only 23 acts were passed by parliament against 3,002 statutory instruments by delegated legislation. In pure statistical terms it could be argued that delegated legislation is more important than acts of parliament. (Cownie, Bradney and Burton 2013 p105)

In conclusion does statutory interpretation diminish the status of legislation as the primary source of law in the UK. The answer to that is a tentative no. Statutory interpretation is an incredibly important process within the English legal system which translates legislation into a piece of law that effects daily life. The way in which bills, statutes and acts are written necessitates this approach. Even the concept that statutory interpretation 'creates laws' needlessly inflates what it really is. Judges do not create laws they take already created ones and translate them into what best suits their current case and society. If anything was to diminish the legislative as a primary source of law the concept of delegated legislation would fit. However due to those bodies being anointed that power it most likely would not be seen that way. Overall while there may be arguments that statutory interpretation diminishes the status of legislation as the primary source of legislation, it does not, if anything it translates legislation in a way that affects our daily lives for the better.

Case references

- 'Fitzpatrick v Sterling Housing Association' (1999) 3WLR 1113, HL

Reference list

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