

Psychological Aspects of Judging: From Objectivity to Subjectivity and Back Again

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Objectivity is one of the fundamental tenets of modern legal systems, all the more so when it comes to structuring law at the level of judicial decision-making. Throughout this article, we deconstruct the notion of objectivity and, even more so its opposite - subjectivity.

Through a comprehensive review of international and domestic literature, we present various theories and concepts about judicial decision-making: from legal formalism to attitudinalism and motivated cognition and motivated reasoning. Using Whitehead's typology, we examine four different types of judges according to their attitude towards the Rule of law, and determine what that means for their judicial decision-making. After conceptualizing ideas and theories, and deconstructing the notion of objectivity, we explore the question of whether any subjectivity is necessarily detrimental in judicial decision-making. In cases where our answer to the question is negative, we set criteria by which we can distinguish them from cases of harmful subjectivity. At the heart of the concept around which we base our thesis lie values; on one hand, the values that drive the judge's individual decision, while on the other, the values upon which the legal system is set.

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