

Judicial Personal Values and Decision-Making

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Abstract: This paper briefly describes the background of Justice Callinan’s view in the case of *Cattanach v Melchior*, subsequently exploring the existence and role of judicial personal values in sentencing from several legal theories, legal experiments, and specific case studies. The paper also illustrates the merits of judicial personal values and critiques some opposing views. Finally, it is concluded that expressing judicial personal values enhances persuasiveness and provides better guidance for the development of the law, which in turn fosters legal decision-making.

Keywords: Judicial personal values; Judicial decision-making; Legal decision-making process

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1. Introduction

In the case of *Cattanach v Melchior*, Justice Callinan raises a deeper issue “I cannot help observing that the repeated disavowal in the cases of recourse to public policy is not always convincing. It would be more helpful for the resolution of the controversy if judges frankly acknowledged their debt to their own social values, and the way in which these have in fact molded or influenced their judgments rather than the application of strict legal principle.” This paper agrees with him and this statement will be the thesis of this paper^[1].

2. The case of *Cattanach v Melchior*

2.1. Case introduction

A couple who already had two children decided not to expand their family further. The wife underwent sterilization under a doctor’s guidance. However, due to the doctor’s negligence, after the surgery, she still had an unwanted pregnancy and subsequently gave birth to a healthy child. The couple sought compensation from the doctor. The initial court ruling demanded that the doctor compensate for damages, including the costs of raising the child to the age of 18. Disagreeing with the verdict, the doctor appealed. The Court of Appeals rejected the appeal, leading the doctor to take the case to the Supreme Court which ruled that the appeal should be allowed on the issue of the child-rearing costs. This was a lengthy case, with plenty of opinions expressed by the justices, but there was relatively limited legal debate; instead, discussions centered around policy

considerations, human decency, morality, and their intersections with the law ^[1].

2.2. The views of Justice Callinan

The arguments for or against the compensation of child-rearing costs involve emotional and moral values, views on public policy, and citations from various cases. Judge Callinan stated that the arguments of the appellants should be rejected in this case. More importantly, Judge Callinan made a point that it would be more helpful for the resolution of controversy if judges frankly acknowledged their debt to their own social values ^[1].

3. The presence and role of judicial personal values in judicial decision-making

3.1. Scope definition

This paper defines the term “judicial personal values” to include a broad spectrum of values. It includes but is not limited to, a judge’s perspectives on societal policies, humanistic morals, and various dimensions like societal, educational, and religious values.

It might appear, at a surface level, that judges of the civil law system apply values to the law, while the judges of the common law system use the law based on personal values ^[2]. In the common law system, judges might lean more heavily on their preconceived beliefs, searching for appropriate justifications post hoc. It is undeniable that the common law system often lends more weight to individual judicial values during decision-making. This article examines the presence and influence of judicial personal values within the common law system. In the following, many legal theories attempt to understand and explain how personal values may influence judges and their decision-making process.

3.2. Legal theories

For a variety of reasons, many of us can realize that judging life requires a deep degree of sacrifice and dedication to the public good, and out of profound respect for the judiciary’s dedication, people and lawyers rarely discuss “judicial values”, particularly those of specific judges ^[3]. Discussing these matters might risk revealing the humanity of judges and the law, and the research on judicial personal values is few. But it is now widely accepted that judges have significant discretion and the exercise of this judicial discretion may be influenced by individual personal traits ^[4]. Indeed, this has been acknowledged by members of the High Court of Australia who recognize that although the law and the facts of the case are critical to the outcome, personal factors may play a role in decisions that lead to divided judicial opinions. The presence and role of the personal values of judges are also recognized in many well-known legal theories.

3.2.1. Legal realism

Indeed, Justice Callinan’s views are highly compatible with the core concepts of legal realism. Legal realism holds that the practice and interpretation of law is based not only on pure legal principles and logic, but is also shaped by the subjective judgment and experience of judges, lawyers, and other legal practitioners ^[5]. Many scholars have commented on legal realism, and the following is the view from legal scholar Sir Dennis Lloyd.

Judicial decisions, particularly in complex cases, are inevitably based on ideologies. People should acknowledge this, striving to understand the prevailing values of one’s communities and develop the law accordingly ^[6]. Such recognition is preferable to simply perceiving judicial decisions as purely logical exercises. Judges, like other members of society, are deeply influenced by the values of the society or group to which they belong. While they may try to be impartial and avoid emotional bias, the impact of these deep-rooted values on their judgments is unavoidable.

3.2.2. Hart's positivism

Hart HLA is perhaps the most prominent spokesperson for positivism. While his brand of positivism criticizes realism for its neglect of rules and emphasizes the central role of rules in legal decision-making, Hart also acknowledges that in any challenging case, various principles supporting competing analogies might present themselves. The judge then has to choose between them. In doing so, the judge relies on a conscientious sense of what is best, rather than on any already established order of priorities among principles already prescribed for him by the law.

Most legal questions can be clearly resolved by applying legislative standards, but these issues are often dealt with before entering litigation procedures. Hart's positivism explicitly acknowledges the significant influence of a judge's personal values, especially in complex cases where neither the language of the law nor the power of reasoning can make the outcome clear.

3.2.3. Critical legal studies

The critical legal studies (CLS) is a legal theory that strongly acknowledges the presence and role of a judge's personal values in the decision; they believe that the law is a tool of the ruling class and that the law's existence primarily supports the interests of the party or class that enacted it ^[7]. It is merely a collection of beliefs and prejudices which legitimize social injustices. The following is a typical statement from CLS, "In our society, the class of decision-makers is not representative enough to provide the assurances the public seeks. These decision-makers are always an elite, unrepresentative in demographic terms, and possess entrenched beliefs about society and technology that skew the balance they aim to achieve."

While this hardly touches the surface of the diverse thoughts represented by CLS, it is already clear that its proponents place significant emphasis on the values of individual judges in their decision-making. Of course, CLS will discuss the differences and relative importance of judicial personal values and legal system values. But for our purposes, it can be easily found that CLS recognizes the crucial role that judicial personal values play in judicial decision-making. Beyond theoretical discussion, empirical evidence is also presented. The subsequent section cites an experiment to further validate this point.

3.3. Legal experiment

The Schwartz model was proposed by psychologist Shalom H. Schwartz, who identified ten universal values, such as power, achievement, and stimulation ^[8]. While these values are universal, the Schwartz model explains why their priorities may vary among different cultures and individuals. The model explores how these values affect the behavior of individuals and groups.

An experiment at Cardiff University Law School applied the Schwartz model to a series of specific cases. In each vignette analyzed, a relevance was observed between the decision made and personal values. Even within a small sample, it can be found clearly that a relationship exists between personal values and legal decisions among these legal experts.

This experiment has also identified evidence of competing values within legal opinions. When making decisions, at least one factor is not bound by precedent, judges often prioritize some values over others and need to balance these values. Thus, this experiment not only confirmed the principles of legal realism but also expanded them. It implies that making decisions is not merely a choice between one stance and another; rather, it involves a delicate balance of various competing values that are more complex and multifaceted than just a political position. The study concluded that while law sets the framework and constraints for judicial discretion, in intricate cases at least, it is the judicial personal values that play a significant role in exercising discretion. In turn, the judicial values shape the direction of the law in the future.

3.4. In specific cases and philosophical perspective

In the case of *Cattanach v Melchior*, the focus of the case was the views of the judges on whether a parent could seek compensation from a doctor or healthcare provider for the cost of bringing up a child as a result of an unplanned childbirth. The views of individual judges, such as Justice Callinan agreed that the birth of a child in itself should not be considered as damage, even if it is an unintended child. If we see child as a damage, it may have adverse psychological and social impacts on the child and the family. Essentially, these views are the embodiments of the justices' personal values on this focal issue, which undoubtedly weighed more heavily in their personal values than the law provisions.

The contrasting views on this issue and the opposing decisions in these cases illustrate two points. Firstly, different judges not only have different perspectives on these facts but also have very different worldviews. These differences in values are crucial for them to arrive at opposite decisions. Given the complex facts involved in each case and the ambiguous standards of contention, even though a higher court might overturn any of the decisions and provide a resolution, it is hard to declare that one court's judgment is objectively erroneous. Secondly, in facing this issue, the law provides judges with a general principle of the best interests of the child, granting judges broad judicial discretion. To a large extent, their decisions rely on their personal values.

Each case has its unique characteristics, which may not be adequately taken into account by the generality of the law. Judges, during the trial process, often encounter blind spots where the law isn't explicit. This is the basis of the theory of judge's discretion. Within this free trial space, judicial personal values play a key role. Further, the law inherently allows judges to identify with and apply their own values. Therefore, judges need not conceal their thoughts. By openly acknowledging and explaining their values and legal reasoning in their judgments, they undoubtedly help the parties and the public better understand the rationale behind them.

4. The benefit of acknowledging judicial personal values

4.1. Arguments in favor

Judge Callinan argued that it would be more helpful for the resolution of controversy if judges frankly acknowledged their debt to their own social values. This paper agrees with him for the two main reasons.

First, it can increase transparency and thus further assurance of fairness in decisions, and making their reasons public would help to provide the public, lawyers, and other stakeholders with a clear view of the logic and motivation behind the decisions ^[9]. This clarity not only enhances the persuasiveness of the decision but also enhances the public's trust in the justice system. Transparency is also one of the requirements for a fair trial, and can also motivate judges to scrutinize their decisions more responsibly.

The second reason is to facilitate the evolution of the law, which always struggles to keep pace with rapid societal changes and technological advancements and needs to be constantly revised in response to changes in society, culture, and values. Personal values can be considered as enduring beliefs that a specific mode of conduct is personally or socially preferable to an opposite or converse mode of conduct influencing one's perspective on what is fair, moral, and conforms to society's values. These beliefs, sculpted through accumulative human experiences, serve as innate compasses, not only guiding our casual evaluation of objects and actions but also navigating the intricate principle of laws and societal norms. In the legal area, values subtly shape our interpretations and decisions, allowing us to instinctively assess actions, situations, and even legal principles based on these foundational beliefs.

It is hard to change someone's value. As they grow older, they know more, and their personal values tend to be more stable. However, people can learn and adopt new values. This is also a change that does not need

to have an opposite conduct of being used to. Like a person fell in love with someone, and can now accept something, for example, a personality trait, that they could not accept in someone else. So publicly articulating how their personal values shape their decisions, judges are actually promoting themselves and the evolution of the law. This openness allows people to understand better and assess whether current legal principles are still in line with the core views of society, and thus not only to see where the law is lacking but also to provide better guidance for the development of the law ^[10]. Moreover, such openness provides a good opportunity for legal researchers to learn and promote the further evolution of the law.

4.2. Objections to opposing views

People may expect judges to maintain a state of neutrality throughout the proceedings, expecting judges to act as typically neutral characters and display a relatively passive attitude. This often leads to the mistaken belief that a fair judge should have no views of right and wrong of their own, no intuition of moral judgment, no ties to the government, for example, and no policy preferences. However, the interpretation of laws, the application of concepts of reasonableness, and numerous similar situations all involve political, economic, social, and moral reasoning. The American legal scholar Herbert Wechsler, in his theory of neutral principles, suggests that judges should avoid making decisions based purely on their personal preferences or the specific circumstances of a case. While the law and various principles requirements may be able to limit a judge's decision-making to an acceptable range, the choice between values remains an unavoidable issue. Law and principles cannot replace judges' exploration through their own value system to determine which values should prevail.

Many critical arguments point out that the fairness and consistency of the law may be compromised when judges base their judgments on their personal values rather than strictly following clear legal principles. If judges rule based on their personal values, the same facts and situations may be decided differently by different judges, thus undermining the fairness of the law. However, the object of these criticisms is not actually intended to be with Judge Callinan's views. It is undeniable that a judge's decision indeed needs to be based on law, but recognizing the existence and role of judicial values in the judgment does not mean that the judge's values should dominate the decision. Instead, there is a need for open discussion and acknowledgment of the role of judicial values in the process of logical deduction based on facts and law.

5. Conclusion

This paper believes that personal values more or less influence the legal decision-making process, especially in difficult cases. Openly expressing one's own views and demonstrating one's own interpretation of the law and legal principles are not only more persuasive but also allow for reflection on the provisions of the law, which can help to a certain extent in the further development of the law. Any values that are important enough to influence the decision of a lawsuit should be robust enough to withstand public exposure and scrutiny. Moreover, unless judges can clearly and openly articulate the reasons for their decisions, including the values they draw upon, even the judges themselves should be skeptical about their confidence in these decisions ^[11].

Judges are becoming franker in acknowledging that their decision-making is infused with values, but providing a clear account of the role that these values play is a different matter. While credit should be given for openness about the influence of values, the challenging task of developing such an account lies ahead.

Disclosure statement

The author declares no conflict of interest.

References

- [1] Cattanaach v Melchior, 2003, 215 CLR 1, <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2003/38.html>
- [2] Maxeiner JR, 2008, Some Realism about Legal Certainty in the Globalization of the Rule of Law. *Houston Journal of International Law*, 31(1): 28–45. https://doi.org/10.1007/978-90-481-3749-7_4
- [3] Cohen DS, 1998, Chief Justice Nemetz’s Judicial Record: Judicial Decision-Making and Judicial Values. *University of British Columbia Law Review*, 23(1): 97–98.
- [4] Callaghan RJCO, 2013, The Influence of Personal Values on Legal Judgments. *Journal of Law and Society*, 40(4): 596–598. <https://doi.org/10.1111/j.1467-6478.2013.00642.x>
- [5] Kramer MH, 2009, Naturalizing Jurisprudence: Essays on American Legal Realism and Naturalism in Legal Philosophy Book Review. *Criminal Law and Philosophy*, 3(1): 107–110.
- [6] Biderman PL, 1996, Of Vulcans and Values: Judicial Decision-Making and Implications for Judicial Education. *Juvenile and Family Court Journal*, 47(3): 64. <https://doi.org/10.1111/j.1755-6988.1996.tb00838.x>
- [7] Gordon RW, 1986, Critical Legal Studies Symposium on Humanistic Legal Studies, Critical Legal Studies and the Marxist Sociology of Law. *Legal Studies Forum*, 10(3): 335–338.
- [8] Schwartz S, 2012, An Overview of the Schwartz Theory of Basic Values, *Online Readings in Psychology and Culture*. <https://scholarworks.gvsu.edu/orpc/vol2/iss1/11>
- [9] Waldron J, Cheng H, Chen C, 2009, The Core of the Case against Judicial Review Theoretical Discussion. *US-China Law Review*, 6(10): 30–33.
- [10] Black D, Unger RM, 1977, Rationalist and Normative Approaches to the Sociological Study of Law Review Essays. *Law & Society Review*, 12(1): 142–144. <https://doi.org/10.2307/3053323>
- [11] David Wood Associate, 2001, Community Values and Judicial Decisions. *Journal of Judicial Administration*, 11(1): 43–45.

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