Judging Theories
A Survey in Honor of Christoph Engel

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A. A Personal Introduction and Dedication

I first met Christoph Engel in 2014 at a workshop in Jerusalem, where we engaged with each other's papers. I must have done something right – shortly afterward, he invited me to one of the vibrant Journal of Institutional and Theoretical Economics (JITE) symposia. There, he became particularly intrigued by a dataset I had constructed for the symposium paper. While I initially conceived of it as a resource for studying class actions, Christoph – true to his creative and original thinking – reimagined it entirely. In his hands, it became a dataset for exploring how legal innovations spread, both theoretically and empirically. If you are curious to see how this transformation unfolded, I invite you to read the two articles we co-authored on the subject (Engel et al. 2018, Engel and Weinshall 2022).

We enjoyed the collaboration so much that we went on to write another paper together – this time on a completely different topic: the effects of judicial workload, using a natural experiment approach.

From these experiences, I've drawn two key insights about working with Christoph. First, you always know where a project begins, but never where it will lead. The breadth of Christoph's interests, his intellectual curiosity, and his deep knowledge make the possibilities virtually limitless. Second, the journey itself is always a joy. Working with Christoph is a deeply rewarding intellectual and personal experience.

It is with these sentiments in mind that I dedicate this chapter on judicial decision-making to Christoph, in deep appreciation of his scholarship, mentorship, and – above all – his friendship.

The broader literature on judicial behavior seeks to illuminate why and how judges make the choices they do, and what consequences those choices have for society (Epstein et al. 2023). Within this field, studies of judicial decision-making focus on the former question: what motivates judges? What and how do they maximize? In this chapter, I review the current state of the literature and highlight Christoph Engel's contributions to it.

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The chapter is structured as follows. The next section introduces the scholarly field of judicial decision-making and maps seven prominent theoretical approaches to its study. The following section elaborates on each approach – its origins and development – demonstrating how Christoph Engel's intellectual versatility has enabled him to make meaningful contributions across all seven. The final section concludes with reflections on the significance of Engel's scholarship for the comparative study of judicial behavior and the inspiration it offers for future research.

B. Mapping the Field: Seven Approaches to Judicial Decision-Making

Why do judges decide cases the way they do? What motivates their decisions, and what considerations guide them when resolving legal disputes? For nearly a century, scholars from law, political science, economics, sociology, and psychology have advanced distinct theoretical paradigms and approaches to answer this question. These approaches reflect different assumptions about what the law is, institutional constraints, and methodological priorities. Some approaches view judges as neutral appliers of legal rules, others see them as political actors, strategic players, or socially embedded individuals.

This survey maps seven prominent paradigms in the study of judicial decision-making, as summarized in Table 1: the Legal Model (often referred to as "old legalism"); the Attitudinal Model; Identity-Based Approaches; Strategic Judging; the Labor Market Model; the Neo-Institutional Approach (also known as "new legalism"); and Cognitive Theories (sometimes labeled "thinking fast judging"). While originally developed in distinct disciplinary contexts, these approaches are increasingly applied across legal systems, court types, and national contexts.

The mapping offered here draws on and extends earlier efforts to classify the field (Epstein, Šadl & Weinshall 2021, 2023; Epstein et al. 2024). My aim is to present the core assumptions, disciplinary foundations, and distinctive contributions of each paradigm to our understanding of judicial decision-making – and, in doing so, to provide a framework for situating Christoph Engel's rich and wide-ranging contributions across these theoretical perspectives.

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Table 1. Approaches to Judicial Decision-Making

Approach	Legal (old)	Attitudinal	Identity	Strategic	Labor Market	New- institutional	Cognitive
Discipline (main)	Law	Political science, psychology	Sociology, psychology	Economics, political science	Economics	Law & political science	Psychology, behavioral economics
Foundational Years	–	1960s	1970s	1980s	1980s	Late 1990s	Late 2000s
Scientific Approach	Legal Positivism	Behavioralism	Behavioralism	Rational Choice Theory	Rational Choice Theory	New Institutionalism	Cognitive Psychology
Common Methodology	Legal Analysis	Quantitative – Observational	Quantitative, Qualitative, Network & Text Analysis	Econometric Modeling	Integrated	Integrated	Experimental
Judges' Choices Are Affected By	Legal Rules	Ideological Attitudes Toward Case Facts	Personal Characteristics	Anticipated Actions of Other Actors	Personal Motivations	Legal Norms	Heuristics and Biases

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C. The Legal Model

The legal model evolved from the legal formalism and positivism of the early 19th century, which viewed legal logic as internally coherent and self-contained in its perfection. This tradition held that judges could apply a quasi-mathematical reasoning process to the facts of a case in order to arrive at the "correct" legal outcome (Cross 1997). The legal model thus asserts that judges decide cases by neutrally applying legal rules. According to this model, judges are apolitical decision-makers whose rulings are determined by "the law" – that is, statutes, precedents, and legislative intent – as applied to the facts of the case. This conception portrays judges primarily as rule-appliers, not as policymakers or moral agents.

Importantly, the legal model functioned for a long time as an unquestioned baseline: it was not even framed as a "model" until the rise of alternative accounts, particularly the attitudinal model. Until then, the notion that judges (in a democratic system) simply follow the law was seen as self-evident, rather than as a theory to be interrogated.

Although traditional legalism has lost ground among empirically oriented scholars, it remains central to judicial self-understanding, legal education, and constitutional discourse. Its influence endures particularly in jurisdictions shaped by the German legal tradition, where it continues to dominate both legal education and judicial reasoning (Morell 2023). As will be discussed later, neo-institutionalist scholarship has revived legalism in a more nuanced and dynamic form – emphasizing law not as a static set of rules but as a constraining institutional framework that shapes and channels judicial behavior.

This chapter is dedicated to Christoph Engel, who was educated in German universities and has spent his career working in – and often leading – research institutions embedded in jurisdictions shaped by the German legal tradition. For Engel, too, this legalist perspective was a natural point of departure. As the chapter will show, his scholarship has developed in innovative ways that both engage with and transcend this foundational orientation.

D. The Attitudinal Model

The attitudinal model emerged in the 1960s, shaped by the rise of behavioralism in social sciences, realism in legal theory, and early developments

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in social psychology (e.g., Schubert 1965). Behavioral scholars – particularly in the United States – began systematically analyzing judicial voting patterns and found a strong correlation between U.S. Supreme Court justices' decisions and the political party of the appointing president. This early insight evolved into increasingly sophisticated methods for measuring judicial ideology, partisanship, and voting behavior. In essence, the attitudinal model posits that judges decide cases primarily based on their personal ideological attitudes rather than legal rules or neutral principles. According to this view, the factual patterns in legal disputes serve as heuristic "cues" that trigger judges' preexisting preferences. Judicial decisions are thus best explained by the alignment between case facts and the judge's ideological or partisan orientation (Segal & Spaeth 2002). Within this framework, law is seen not as a constraining or guiding force, but as a flexible rhetorical tool – used to justify a wide range of outcomes and to legitimize decisions that are, at their core, ideologically driven.

The attitudinal model gained prominence through studies of the U.S. Supreme Court, where institutional features such as political appointment prosses, life tenure, control over the docket, and limited external accountability create favorable conditions for value-driven judging. Among the various approaches outlined in Table 1, it remains the dominant paradigm in U.S. scholarship. However, unlike many other theories of law and courts, the attitudinal model has traveled slowly beyond the American context. Although it originated in the 1960s, it is only in the past two decades that systematic efforts have been made to test its assumptions in apex courts of other democracies. These comparative studies are particularly important because they help to isolate the institutional conditions under which attitudinal voting is more or less likely to emerge (Weinshall, Sommer, and Ritov 2018).

A recent paper by Christoph Engel makes a significant contribution to this emerging comparative literature (Engel 2024). the study provides a rigorous empirical examination of whether attitudinal assumptions hold in the context of the German Federal Constitutional Court. Despite its strong powers and the openly political nature of judicial appointments, the German Court is widely perceived as ideologically neutral. Engel investigates this perception using the full set of publicly available data and exploits two independent sources of quasi-random variation to identify causal effects. His findings offer no clear evidence of partisan influence: while some specifications suggest that justices nominated by the FDP and SPD exhibit greater judicial activism, this tendency does not align with the

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ideological agendas of the nominating parties. The study thus underscores both the empirical limits of the attitudinal model outside the U.S. context and the potential pitfalls of directly transplanting theoretical frameworks across distinct institutional environments.

E. Identity-Based Approaches

Building on – and at times critiquing – the attitudinal model, identity-based approaches examine how judges' social backgrounds, life experiences, education, and personal characteristics shape their judicial behavior. The central insight is that judges are not disembodied legal reasoners or politicians-in-robes, but individuals whose decisions are influenced by their social identities.

Early research in this tradition focused primarily on professional biographies, asking, for instance, whether former corporate lawyers were more likely to favor powerful economic actors (Tate & Sittiwong 1989). As judicial appointments in many countries have become more socially diverse, the range of identity characteristics studied has expanded to include gender (Weinshall 2021), religion (Koev 2019), race (Sen 2015), ethnicity (Shayo & Zussman 2011), and nationality (Voeten 2008). In some studies, scholars also examine how the identities of litigants or lawyers interact with those of judges to influence outcomes (e.g. Shayo & Zussman 2011).

Here too, Engel's work has advanced the field. In a 2013 paper, Engel and Glöckner employ an experimental design to investigate the mechanisms underlying the effects of professional background. They show that merely assuming the role of a defense attorney or prosecutor produces lasting, role-induced inclinations to acquit or convict. Remarkably, the effect persists even when participants are later asked to predict how a court would rule – after having exited the assigned role – and even when accuracy is incentivized through financial rewards. Engel and Glöckner attribute this effect to "coherence-based reasoning": a tendency to selectively process information in favor of the outcome aligned with one's role, primarily by downplaying contradictory evidence. Although their experiments involved lay participants rather than judges, the findings have clear implications for judicial decision-making and for policy debates on the value of professional diversity in judicial appointments.

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F. Strategic Approach

The strategic approach emerged in the early 1980s, drawing heavily on economics and game theory. It builds on rational choice theory and portrays judges as strategic actors who make calculated decisions to advance their goals and maximize expected outcomes. According to this approach, judges do not make decisions in a vacuum, but rather attend to the preferences and likely actions of other actors, including their judicial colleagues, superiors, politicians, and the public (Epstein & Weinshall 2021). Strategic judges consider the reactions of these actors when making decisions, often modifying their votes or opinions to secure desired outcomes or preserve court legitimacy.

Strategic accounts of judging typically rest on three core assumptions. First, judges are goal-oriented actors who seek to maximize their preferences. These goals may include advancing their policy preferences (as emphasized by the attitudinal model), protecting institutional interests such as the court's public legitimacy, or pursuing personal objectives – some of which are further explored in the labor market model. Second, judges are strategic or interdependent decision-makers: they understand that achieving their goals requires anticipating and responding to the preferences and likely actions of other relevant actors. Third, institutional structures shape and constrain judges' interactions with these actors, influencing both the opportunities and constrains of strategic behaviour.

As a scholar grounded in law and economics, Engel has made numerous contributions to the strategic approach. One example is his work on panel effects – the idea that judges anticipate the preferences of their fellow panel members and adjust their behavior accordingly. In a study of the German Federal Constitutional Court, Engel (2022A) extends the theory of panel effects beyond final votes on the merits. He finds that familiarity among justices significantly influences decisions not only on substantive outcomes but also on procedural matters and on requests for preliminary rulings.

At the same time, as a leading scholar in the application of behavioral economics to legal decision-making, Engel is acutely aware of the limits of purely strategic accounts of judging. As discussed further in Section 9 on the cognitive approach, Engel and Güth (2018) challenge the assumption that judges consistently act in ways that maximize their goals. Instead, they propose a more plausible model of the "satisficing judge" – a decision-maker who aims not for optimal outcomes, but for

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decisions that meet a threshold of confidence in avoiding significant error.

G. The Labor Market Account

As shown in Table 1, labor market accounts can be understood as a subtheory within the broader strategic approach. Emerging at roughly the same time, this model draws from economic theory to suggest that judges are utility-maximizing actors. However, the labor market account emphasizes personal utility, proposing that judges, like other professionals, are motivated and constrained by a range of primarily nonpecuniary costs and benefits – such as effort, esteem, criticism, and influence.

While most theories of judicial decision-making incorporate preferences to some degree, they differ in the types of motivations they emphasize. Attitudinal and strategic models focus on ideology and partisanship, whereas the legal and neo-institutional models highlight legal norms and institutional constraints. The labor market approach complements these perspectives by foregrounding personal motivations – those rooted in judges' individual goals and self-perceptions – without dismissing legal or political influences.

According to these accounts, judicial behavior is shaped by judges' efforts to maximize utility across five broad personal dimensions:

a. Internal job satisfaction – the internal fulfillment of doing meaningful legal work and maintaining positive relationships with colleagues, clerks, and court staff.
b. External satisfactions – such as prestige, reputation, influence, power, and public recognition (Garoupa & Ginsburg 2015).
c. Leisure – the desire to manage workload and avoid excessive effort.
d. Salary and income – all else equal, judges – like most professionals – prefer higher income and greater material comfort.
e. Promotion – the aspiration to be appointed or elected to a more prestigious judicial or public office.

In two influential papers, Engel has demonstrated the significant impact of internal job satisfaction – particularly the aspiration to perform meaningful legal work – on judicial decision-making. In a quasi-natural experiment, Engel and Weinshall (2020) studied a policy reform that reduced judges' caseloads by 12 to 16 percent. They found that judges used the

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additional time to improve the quality of their work: they wrote longer and more detailed judgments, heard more witnesses, and employed more labor-intensive methods of evidence collection. Similar insights emerge from a laboratory experiment by Engel and Zhurakhovska (2017), in which participants assigned the role of a judge exhibited a stronger inclination to decide objectively. The study highlights what the authors term the "office motive" – a commitment to fulfilling the normative expectations associated with an assigned task.

H. The New Institutional Approach

By the late 20th century, scholars in the neo-institutionalist branch of political science began advocating a shift in focus from individual judicial preferences to the institutional context in which judges operate. This "new institutional" approach emphasizes how the structure, norms, and dynamics of courts as institutions shape judicial behavior. Rather than viewing judges solely as policy/personal-driven actors, it asks how institutional features – such as life tenure, organizational norms, and the judiciary's relationship to other branches of government – condition both the preferences and the choices of judges (Gillman and Clayton 1999).

A key insight of the neo-institutionalist approach is that institutional norms influence not only the strategic calculations of judges but also their identity and sense of role. In contrast to earlier theories, which generally accept institutional constraints as background conditions, neo-institutionalism foregrounds the institution itself as a driver of behavior. It holds that judges internalize institutional logics – including legal norms – which then shape their motivations, not merely limit them.

Moreover, the neo-institutionalist approach emphasizes an informal and expansive conceptualization of institutions, viewing not only formal organizations but also normative frameworks as institutional structures. Within this view, the law itself is understood as an institution – not merely as a set of rules derived from plain meaning, legislative intent, or precedent, but as a shared mindset, language, and reasoning process among jurists. In contrast to the legal model, which treats law as a determinate guide, neo-institutionalism – drawing on legal realism – acknowledges the indeterminacy of law while maintaining that legal norms still meaningfully constrain and shape judicial decision-making.

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These insights resonate with Engel's empirical findings discussed above. In both a laboratory experiment (Engel and Zhurakhovska 2017) and a quasi-natural experiment (Engel and Weinshall 2020), Engel shows that judges – and even lay participants assigned the role of judge – are strongly motivated by the perceived expectations of their office. In particular, they exhibit a pronounced inclination to decide cases objectively and conscientiously, consistent with internalized legal norms. These studies also offer behavioral evidence for the neo-institutionalist claim that judges are not merely constrained by institutional frameworks, but actively shaped by them.

I. Cognitive Theories (Thinking-Fast Judging)

A wave of research in social psychology and behavioral economics gained prominence in the 2000s, challenging the rationalist assumptions underpinning both strategic and legalist models of judicial behavior. Drawing on dual-process theories of cognition (Kahneman 2011), this scholarship emphasizes that human decision-making often relies on mental shortcuts – heuristics, intuitions, and emotions – that facilitate fast and effortless judgments. When applied to judicial behavior, this perspective suggests that even highly trained judges, regardless of their preferences or goals, are not immune to the cognitive limitations. Cognitive approaches thus offer an alternative account: judicial decisions may be shaped less by deliberate legal reasoning or strategic calculation and more by heuristics, intuitions, and biases, particularly under conditions of time pressure or cognitive load.

Experimental studies have demonstrated that judges, like laypeople, are subject to systematic cognitive biases, including anchoring effects, framing effects, and racial bias (Spamann and Klöhn 2016, Guthrie et al. 2000). These findings underscore the psychological dimensions of judicial decision-making, challenging the ideal of the purely rational or neutral judge.

As noted above, Engel is a pioneer in the study of behavioral legal decision-making, particularly through his role as one of the founding figures in applying experimental methods to legal scholarship. In several papers, he demonstrates how judges are vulnerable to cognitive biases (see the overview in his lecture on the topic: Engel 2022). What I find most compelling, however, is his research on how institutional safeguards,

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procedural rules, and judicial norms or training can help mitigate these biases. A key example is his paper on the psychological case for requiring judges to provide reasons for their decisions, published in a volume he co-edited titled *The Impact of Court Procedure on the Psychology of Judicial Decision Making* (Engel 2007).

J. Conclusion: Reflections on a Versatile Scholar and a Dynamic Field

What motivates judges? The answer depends on whom you ask – and when. Scholars working within the legal model argue that judicial decisions are grounded in the law, understood as a combination of plain meaning, legislative intent, and binding precedent. By contrast, proponents of the attitudinal model contend that the law often serves as a veneer, concealing the judge's personal policy preferences and ideological leanings as the true drivers of decisions. Researchers emphasizing identity-based approaches highlight the influence of a judge's background. Strategic models may incorporate attitudinal or identity-based motivations but add a further layer: judges are also strategic actors who anticipate how their decisions will be received by other judges, institutions, or the public, and adjust their decisions to maximize the likelihood that their preferences will be implemented.

The labor market model shifts attention to judges' personal and career-related motivations. Neo-institutionalist theories incorporate many of the above motivations but emphasize the role of institutional legal norms and structures. In this account, "the law" is not a static set of rules but a dynamic interpretive framework. Finally, cognitive theories remind us that judges are not only legal, political, and strategic actors – but also human beings. As such, they are subject to the same cognitive biases and limitations as all individuals.

As demonstrated, Christoph Engel's contributions span the full range of approaches to judicial decision-making. In particular, his work brings a vital comparative perspective to the field and has advanced both strategic and cognitive accounts in innovative and empirically grounded ways. Yet Engel's scholarship does not stop there – he is also leading the field into its future. All the approaches discussed in this chapter assume that judges are human. But as Engel has begun to explore in his recent work, the future may involve hybrid systems of human–machine legal decision-making, and perhaps even fully automated "robot-judges." In a new study (Engel

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et al. 2025), he empirically examines algorithmic decision-making in the criminal context, revealing systematic biases – such as a tendency to favor detention over release – and arguing that normative judgments must not be hidden in the code. This is precisely the kind of work we have come to expect from Christoph Engel: creative, forward-looking, and always grounded in rigorous empirical inquiry. I can only hope – for the field's sake more than his – that he continues to lead us into the next generation of research.

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