research highlights

DECISION-MAKING

Judges' decisions not so legal

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It is well known that judges utilize extra-legal information when deciding cases. What is notable from a recent experimental investigation is that precedent, a core precept of the legal model of judicial decision-making, seems to have no detectable effect on judgment when weak, while defendant characteristics play an outsized role.

Holger Spamann, of Harvard Law School, and Lars Klöhn, of Humboldt-University Berlin, report the results of an experiment that asked 32 US federal judges to decide a real appeals case from an international tribunal. The judges were presented cases with contrasting weak precedents and two fictitious defendants that varied by nationality, biography and attitude. The proportion of judges upholding the trial conviction was indistinguishable across precedents, but differed significantly by defendants. Strikingly, although perhaps not surprisingly, the judges' written reasons disregarded defendant characteristics and instead focused on precedent. *Prima facie*, their decisions adhered to the legal model, obscuring strategic and attitudinal factors that influenced their decisions.

The authors are hesitant to draw strong policy conclusions at this stage, and instead call for replication and refinement. Further research will be needed to obtain a broader understanding of when legally irrelevant information takes blind precedence.

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