ARTSSCI 4MN1 / Theories of Decision-Making and Judgement:
A Practical Course for the Indecisive Artsci

Four sessions: Thursday January 28, February 4, 11 and 25, 2021 6:30-8:30pm (Zoom)

Introduction

This course explores how we, as interconnected individuals, make decisions and exercise judgement. Using law as a starting point, we will discuss legal reasoning as a formal mode of decision-making, and specifically, how judges come to their decisions. We will then branch off into lessons from psychology about making both major life decisions and small everyday choices. Next, we will study algorithms and critically consider the possibilities and pitfalls of outsourcing decisions to machines. Finally, we will reframe decision-making and judgement through an equality lens and use fiction to explore imaginative dimensions of the topic. One aim of this course is to explore theories of decision-making from a variety of disciplines in order to help you feel more comfortable making decisions and exercising judgement.

This detailed syllabus is designed to help guide you through the selected articles, chapters, and podcasts, and includes questions to reflect on.

Assignments (maximum 500 words each)

Please send to leannagkatz@gmail.com and dcnedelsky@gmail.com.

Before week one: Write a response to the first week's readings, based either on one or more of the reflection questions provided or on a different idea that interests you. Additionally, you are welcome to write about a decision that you hope to gain clarity on through the course. *Due Friday 22 January 2021.*

We encourage you to continue writing reflections as preparation to engage in class discussion, but we do not ask that you submit these to us.

After week four: Drawing on ideas from the course that resonated with you, reflect on the major ideas you will take from this course, consider how they will help with a decision you are facing, and/or develop a personal practice for exercising your decision-making abilities and judgement. *Due Sunday 28 February 2021.*

<u>**Module One: The Law**</u>

As a society, we have assigned judges to the role of professional decision-makers. By examining how judges decide, we consider one way our society has agreed to resolve intractable issues. You will read the reflections of two well-regarded judges on what is involved in judicial decision-making, as well as a case that serves as an example of an exercise of judgement. As you read, consider how well you think our judicial system fares as a formal and legitimized process for decision-making.

1) Good Judgement: Making Judicial Decisions by Justice Robert Sharpe
Chapter 6 Disciplined Judicial Decision-Making
Chapter 12 A Judicial State of Mind p. 249-252 and 264-269

Justice Sharpe writes about a judge's role based on his experience as a judge on the Ontario Court of Appeal. He describes the "discipline of reasons," that is, how writing reasons constrains decision-making. He also identifies core values for judging: integrity, independence, impartiality, and compassion.

What are your core values? Feel free to be inspired by the values Justice Sharpe identifies or come up with your own. Why do these values resonate with you?

2) Introduction to case law: [Seneca College v. Bhadauria](#), 1979 CanLII 71 (ONCA)

As optional background material, we suggest watching [What is Torts](#)? and reading [Precedent, Principle and Pragmatism: Justice Wilson and the Expansion of Canadian Tort Law](#) p. 133-137.

The legal question in this case is whether discrimination gives rise to a claim for damages. The plaintiff is suing because she believes she was repeatedly not hired due to her being Indian. Justice Wilson of the Ontario Court of Appeal ruled that the plaintiff had a legal claim, recognizing a new tort of discrimination at common law. The decision is significant as there is a human rights statute, the Ontario Human Rights Code, which presumptively governs the area of law, and does not provide for a tort of discrimination. The Supreme Court of Canada subsequently overturned Justice Wilson's decision (we have not assigned the latter decision, but if you are overcome by curiosity it is available [here](#)).

In what ways does this decision exemplify or depart from the ideals of judicial decision-making that Justice Sharpe discusses?

3) Strange Alchemy of Life by Justice Albie Sachs
Chapter 2 Tick Tock The Working of a Judicial Mind p. 47-58

Justice Sachs was appointed to the Constitutional Court of South Africa in 1994 by Nelson Mandela, just as apartheid was ending and the constitution was created. He gives a different take on a judge's role, and demystifies the role by discussing his far-from-linear thought process.

Contrast Justices Sharpe and Sachs' descriptions of how they reach a decision. Do you see your own thought patterns reflected more in the decision of one judge or the other?

Module 2: The Psychology of Decision-Making

We turn to psychology and behavioral economics to start exploring what other disciplines say about how we make decisions, and how we can make better decisions. These disciplines provide an empirically grounded approach, but there are limits to what they can tell us. Do these approaches confirm or contradict what we learned about legal decisions?

1) Heart Versus Head: Do Judges Follow the Law or Follow Their Feelings by Andrew J. Wistrich, Jeffrey J. Rachlinski and Chris Guthrie
Sections I and II p. 856-874, IV D and E p. 887-893, V A and C(iii) p. 898-900, 909-910, VI p. 911-912. Skip footnotes and pay particular attention to p. 862-874 on social psychology's findings on the effect of emotion on decision-making.

This article studies the role of emotions when judges make decisions. It bridges modules one and two by applying psychology to the legal context.

Consider to what extent the Heart vs. Head article agrees or disagrees with Justices Sharpe and Sachs' view of what judges do. How do emotions affect your decision-making on a routine and invisible basis?

2) Ted Radio Hour: Decisions decisions decisions hosted by Guy Raz with Malcolm Gladwell, Sheena Iyengar, Ruth Chang and Dan Ariely

This podcast covers four different approaches to making decisions. Malcolm Gladwell asks us to question whether more choices actually make us happier, and argues that sometimes the best decision is simply to choose and stop worrying about it. Sheena Iyengar explores the circumstances that cause some choices to feel paralyzing, and discusses the difference between determining what we want, and what we think we should choose. Ruth Chang describes how "hard choices," where there is no best option, offer a uniquely human opportunity to define ourselves and become the people we want to be. Dan Ariely discusses when our choices are already made for us by our circumstances, and how we can use this knowledge to adjust our circumstances and make better decisions.

Which suggestion did you find most useful for your own life? Do you feel the level of choice in your life is commensurate to the amount of choice you would like to have? In what areas would you prefer to have more choice? Less?

3) How Economic Inequality Inflicts Real Biological Harm by Robert Sapolsky
Introduction and the section titled "Out of Control"

This article discusses the neurological effects of poverty and explains a variety of ways that a low socio-economic status impairs decision-making.

How does stress affect your ability to make decisions? Consider how well you make decisions when you are late for an appointment or stuck in traffic. Are you "yourself" in these moments?

Module 3: Technology's Role in Decision-Making

Last week, we explored some of the ways in which human decision-making is influenced by emotions and circumstances. This week, we turn to how technology can help us make better decisions, and also consider reasons to be careful about relying on technology.

1) Prediction Machines: The Simple Economics of Artificial Intelligence by Ajay Agrawal, Joshua Gans and Avi Goldfarb
Chapter 7 Unpacking Decisions
Chapter 8 The Value of Judgment

Prediction is an aspect of decision-making that we can outsource to computers. Other aspects of decision-making such as data collection, judgement, and action are more effectively done by humans. The authors describe under what conditions judgement can be outsourced to machines, and when it remains a human endeavour.

Consider a few decisions you have made. Which aspects of the decisions involve prediction and which involve judgement? What are potential issues with outsourcing prediction and elements of judgement to machines?

2) Note to Self Podcast: Algorithms to Live hosted by Manoush Zamorodi with Brian Christian
Part 1: 6 Algorithms That Can Improve Your Life
Part 2 : When To Stop Looking for a Better Date or Restaurant

Part one discusses a number of practical lessons that we can learn from how computers "think." Part two puts these theories into practice, and tests how well the advice holds up against the challenges of picking a restaurant and a date.

What piece of advice did you find most helpful? What, if any, behaviour are you considering changing based on these suggestions?

3) Big Data's Disparate Impact by Solon Barocas and Andrew D. Selbst
First three paragraphs of the introduction p. 673-674, Section 1 p. 677-693, Section 3(a) p. 715-722

This paper provides a detailed breakdown of how bias, intentional and unintentional, affects algorithms. It usefully highlights where judgement is important in designing algorithms, and provides a basis to more meaningful critique how and when it is appropriate to use "big data" in making decisions.

Has this paper changed your belief in the reliability of "big data" algorithms to assist in good decision-making? How does this paper complicate the distinction between prediction and judgement described in the previous reading?

Module 4: Reframing Decision-Making and Judgement

For our final class, we reframe how we think about decision-making and judgement, and bring what is often invisible to the centre. We will first learn about the systemic failure to consider women when making design choices. We will then put ourselves in another's shoes to think about decision-making from a perspective beyond our own. Lastly, we will read a piece of fiction that allows us to imagine the intimate decisions and judgements the characters make in their personal lives and relationships. This piece invites us to connect the themes of psychology and technology covered in this course.

1) 99% Invisible Podcast: Invisible Women hosted by Roman Mars with Caroline Criado-Perez

Men are the default for designing all sorts of systems in society such as snow clearing, crash test dummies for testing seatbelts, drug trials, and countless other examples. The author advocates for making women visible as relevant data in designing societal systems, and including women in the design process.

Why might gender bias persist in design today? How might we achieve "universally" inclusive design?

2) The Reciprocal Relation of Judgement and Autonomy: Walking in Another's Shoes and Which Shoes to Walk In by Jennifer Nedelsky

Law Professor Jennifer Nedelsky reframes our thinking from an individualist mentality to a relational standpoint – that is, seeing ourselves in relation to others. She develops the idea of relational autonomy, understanding that we are self-governing agents who are constituted by our relationships with others. She introduces these ideas in the first part of the reading. In the second half, she applies them to a real-life decision about whether to wear high-heels.

How does this piece change your understanding of autonomy? Have you previously exercised an "enlarged mentality" when making a difficult decision?

3) The Truth of Fact, the Truth of Feeling by Ted Chiang

Creative writing can help break away from formal theories and their limits. This story explores ideas relating to memory, identity, concepts of "truth," and how technology can affect each of these.

Can fiction assist you in developing an "enlarged mentality"? What did you think of the parallel narratives in this story? What was gained by weaving these stories together? What links do you see between this story and other readings in the course?