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On Mechanical Justice

HU Changming

Abstract: When judges make judgments, they lack the meaning of legal norms and the consideration of legislative intent, rigidly apply legal provisions, and make judicial judgments that deviate from social reality or public cognition, which is mechanical justice. In recent years, the mechanical judicial phenomenon becomes a common occurrence, especially in the difficult and complicated cases, first instance procedure, and the course of criminal proceedings. The abstractness, fuzziness and hysteresis of law itself, the excessively detailed judicial interpretation, as well as the excessive emphasis on the formalistic judicial view that restricts judges' discretion, the lack of life experience of judges themselves, the lack of judicial interpretation ability and the avoidance of responsibility for avoiding disadvantages are the main reasons leading to the emergence of mechanical justice. Only by strengthening the concept of active justice, improving judges' ability, establishing and perfecting the system of exemption from judges' responsibility and perfecting the system of jurors, can we overcome the obstinacy of mechanical justice and seek a balance between formalistic justice and realistic justice.

Keywords: Mechanical Justice; Judicial Activism; Judicial Formalism; Judicial Realism; Discretion; Theory of Judge Behavior