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Within the Sound of Silence: Reassessing the Role of Reasoning in Judicial Decision-Making

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ABSTRACT

The growing reliance of the US Supreme Court on unexplained orders, commonly known as their 'shadow docket', has emerged as a major concern, generating strong criticism for undermining the traditional expectation that judges provide detailed justifications for their rulings. Without presuming to take a stance on the legitimacy of shadow dockets or the motivations that inform them, the increasing reliance on unexplained orders encourages a re-evaluation of the role and function of judicial reasoning within the broader spectrum of case law. This article re-examines the assumption that providing reasons for judicial judgments is inherently and universally desirable. It explores how providing reasons can sometimes conflict with other fundamental values underlying the legal process and argues for considering limits on judicial reasoning that extend beyond pragmatic concerns related to judicial economy (efficient management of judicial resources). The article highlights three key areas where such limits on reason-giving might be warranted. First, witness credibility assessments, in which the verbal articulation of the underlying reasons might distort the decision-making process. Secondly, 'hard cases', in which the risk of crafting detrimental precedents suggests a need to separate the resolution of specific cases from the development of broader legal doctrines, as illustrated by the US Supreme Court's handling of *Bush v Gore*. Thirdly, situations in which judicial silence speaks louder than the articulation of reasons and can serve as a catalyst for democratic deliberation, as manifested in the Supreme Court's handling of the 2014 same-sex marriage cases. Rather than advocating for Aristotelian intuition-based adjudication (where a judge's practical wisdom (*phronesis*) and cultivated sense of justice guide decisions, sometimes beyond explicit legal rules), the article emphasises the need to balance the benefits of judicial reason-giving with an awareness of its limitations and proposes a more strategic and deliberate approach to providing reasoned judgments.

Keywords: reasoned judgments, shadow docket, hard cases, constitutional dialogue, procedural justice

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I. INTRODUCTION

'*Judicial decisions are reasoned decisions.*'
Rita v United States[1]

The US Supreme Court is currently facing mounting criticism for its tendency to issue unsigned and unexplained orders, colloquially referred to as the Court's 'shadow docket'.[2] A substantial proportion of its judicial decisions are made without providing the reasoning behind them.[3] The resort to shadow docket practices, particularly in contentious areas like access to abortion, immigration restrictions, capital sentencing, COVID-19 policies, and election procedures, has recently sparked academic debate.[4] The issue came into the public spotlight during Justice Amy Coney Barrett's confirmation hearing, where she identified the Supreme Court's shadow docket as a 'hot topic in the last couple of years'.[5] Critics contend that the Court's decision to forego the detailed reasoning that characterises its formal merits docket, even in highly influential cases, circumvents an essential aspect of the act of judging.[6] An illustrative example is the January 2022 emergency order blocking the Occupational Safety and Health Administration's COVID-19 vaccination-or-testing mandate for large employers, a *per curiam* decision which directly impacted nearly one-quarter of the country's population.[7]

The COVID-19 pandemic marked the height of the US Supreme Court's reliance on shadow docket practices.[8] It also provided the context for another case that illuminates the issue of reasoned judicial decisions. In January 2021, during the height of the pandemic,

[1] *Rita v United States* 551 US 338, 356 (2007). See also *Chavez-Meza v United States* 585 US 109, 113 (2018).

[2] Stephen I Vladeck, 'Putting the "Shadow Docket" in Perspective' (2023) 17 Harvard Law & Policy Review 289, 289. The term 'shadow docket' was coined by William Baude: see William Baude, 'Foreword: The Supreme Court's Shadow Docket' (2015) 9 New York University Journal of Law and Liberty 1, 1.

[3] Richard J Pierce, 'The Supreme Court Should Eliminate Its Lawless Shadow Docket' (2022) 74 Administrative Law Review 1, 10 ('We now have a situation in which a high proportion of major judicial decisions are made by the Supreme Court without providing any reasons for the decisions.').

[4] A symposium dedicated to the Supreme Court's shadow docket was held in 2023: see Leslie C Griffin, 'The Shadow Docket: A Symposium' (2023) 23 Nevada Law Journal 669, 669 ('Everyone is talking about the Supreme Court's shadow docket.'); Stephen Vladeck, *The Shadow Docket: How the Supreme Court Uses Stealth Rulings to Amass Power and Undermine the Republic* (Hachette Book Group 2023); Caroline Fredrickson, 'Will American Democracy Last in Light of the Shadow Docket?' (2023) 23 Nevada Law Journal 727; Nicholas D Conway and Yana Gagloeva, 'Out of the Shadows: What Social Science Tells Us About the Shadow Docket' (2023) 23 Nevada Law Journal 673; Jenny-Brooke Condon, 'The Capital Shadow Docket and the Death of Judicial Restraint' (2023) 23 Nevada Law Journal 809; Rachael Houston, 'Does Anybody Really Know What Time It Is?: How the Supreme Court Defines "Time" Using the *Purcell* Principle' (2023) 23 Nevada Law Journal 769.

[5] See Andrew J Wistrich, 'Secret Shoals of the Shadow Docket' (2023) 23 Nevada Law Journal 863, 943, fn 4. Another major public encounter with the Court's shadow docket and practice of issuing sparsely explained orders was through the ruling on the Texas Heartbeat Act: see *Whole Woman's Health v Jackson* 141 S Ct 2494 (2021), cited in Vladeck, 'Putting the "Shadow Docket" in Perspective' (n 2) 290.

[6] Harvard Law Professor Nicholas Stephanopoulos has argued that unexplained, unreasoned court orders contradict fundamental judicial principles, equating them to displays of power rather than legal rulings: 'Missing from Supreme Court's Election Cases: Reasons for Its Rulings' (*National Freedom of Information Coalition*) <https://www.nfoic.org/blogs/missing-supreme-courts-election-cases-reasons-its-rulings/> accessed 24 March 2025. See also Chad M Oldfather, 'Writing, Cognition, and the Nature of the Judicial Function' (2008) 96 Georgetown Law Journal 1283, 1285 ('... preparation of a written opinion might be deemed an essential component of a legitimate judicial decision').

[7] *National Federation of Independent Business v Department of Labor, Occupational Safety and Health Administration* 142 S Ct 661, 662 (2022) (*per curiam*), cited in Vladeck, 'Putting the "Shadow Docket" in Perspective' (n 2) 294.

[8] See Thomas P Schmidt, 'Orders Without Law' (2024) 122 Michigan Law Review 1003.

Armando Sauseda filed a motion for compassionate release under 18 USC § 3582(c)(1).[9] Sauseda, who was serving a life sentence for murder, had health conditions that placed him at significant risk of severe COVID-19 complications. The provision allows a federal court to reduce a term of imprisonment if it finds that 'extraordinary and compelling reasons' warrant such a reduction, after considering the factors listed in 18 USC § 3553(a). Sauseda argued that his heightened health risk met these criteria. The District Court denied Sauseda's motion in a laconic, four-sentence order: 'After considering the applicable factors provided in 18 U.S.C. § 3553(a) and the applicable policy statements issued by the Sentencing Commission, the Court denies the Defendant's Motion[] on its merits'.[10] The Court did not address its consideration of the § 3553(a) factors nor did it indicate whether it found Sauseda's risk of contracting COVID-19 to be an extraordinary and compelling reason. Sauseda appealed, and the US Court of Appeals for the Fifth Circuit vacated and remanded the District Court's denial of Sauseda's motion, citing the District Court's failure to provide adequate justifications for its decision.[11] The appellate court held that the District Court was required to offer specific reasons for its factual ruling.[12]

The Anglo-American legal tradition firmly establishes the expectation that judges provide the reasons behind their decisions. Articulation of the reasons underlying judgment has been deemed 'always permissible, usually desirable and often obligatory'.[13] The literature and caselaw supply a variety of compelling justifications for judicial reasoning, assuming its universal value, with exceptions generally confined to pragmatic considerations of judicial economy (efficient management of judicial resources).[14]

The object of this article is to challenge the assumption that reasoned judgments are inherently and universally desirable and to explore potential conflicts between providing reasons and other values upheld by the legal process, beyond the efficient use of judicial resources. The article will propose delineating the limits of judicial reasoning not only according to pragmatic considerations, related to judicial economy, but also by identifying categories of cases where the interests underlying judicial reason-giving may warrant exempting—perhaps even prohibiting—courts from offering reasons.

It should be emphasised that the assumption that reason-giving is inherently beneficial is often treated as an axiomatic truth rather than as a proposition requiring justification. Rather than being the product of a rigorous normative balancing exercise, the preference for universal judicial reason-giving (subject to considerations of efficient use of judicial resources) frequently operates as an unexamined background assumption. However, this axiom should be subjected to critical scrutiny. My aim in this article is not to provide an exhaustive assessment of the normative trade-offs of judicial reasoning across all contexts, nor to engage in a mechanistic weighing of advantages and disadvantages. Rather than engaging in a mechanistic cost-benefit analysis, I seek to interrogate the foundational assumptions underlying the expectation of universal judicial reasoning, questioning when and why it advances the integrity of

[9] *United States v Sauseda* No 7:09-CR-252-1 (WD Tex 2013).
[10] *United States v Sauseda* No 21-50210, 2 (5th Cir, 1 April 2022).
[11] ibid 6.
[12] ibid 7.
[13] Michael Kirby, 'Reasons for Judgment: "Always Permissible, Usually Desirable and Often Obligatory"' (1994) 12 Australian Bar Review 121.
[14] Frederick Schauer, 'The Generality of Law' (2004) 107 West Virginia Law Review 217, 231–32 ('reason-giving is a pervasive and frequently praised feature of legal decision-making, and a legal decision-maker who provides reasons for her decisions is considered a better legal decision-maker than one who does not... All sorts of professions and human activities require the giving of reasons, but none obsess about it the way law does, and few – philosophy may be an exception – consider reason-giving a central feature of the enterprise').

adjudication and when it risks undermining it. The article highlights two key points. First, it challenges the presumption that judicial reasoning is always preferable, urging a more critical evaluation of the forces that shape it. Secondly, it identifies specific contexts in which there is an a priori reason to suspect that requiring reason-giving may be counterproductive—failing to serve, or even undermining, the teleological goals of reason-giving itself. It demonstrates that it does not suffice to assume that judicial reasoning invariably fosters legal soundness, accountability, or legitimacy. One must also consider the countervailing pressures it introduces, such as the risk of incentivising performative reasoning, reinforcing majoritarian biases, or constraining judicial discretion in ways that distort adjudication.

The article proceeds as follows: Section II will offer a detailed taxonomy of the key justifications for the requirement of judicial reason-giving, examining how the provision of reasons serves different purposes for various stakeholders, including litigants, appellate courts, and the public.[15] Section III will undertake a critical assessment of each of these justifications, evaluating their implications and effectiveness. This analysis will be translated and applied to contemporary legal doctrine, highlighting potential shortcomings and areas for reform.

II. A TAXONOMY OF THE JUSTIFICATIONS UNDERLYING REASONED JUDGMENTS

In his seminal article, 'The Forms and Limits of Adjudication', Lon Fuller argues that engagement in reasoned argument is a hallmark and unique domain of adjudication.[16] Delivering reasoned judgments functions as 'both the norm and the ideal' of adjudication.[17] But, despite judicial reason-giving's wide-scale endorsement, there is nothing 'natural' or 'pre-political' about this legal institution. In fact, many pre-modern courts operated without offering reasons for their decisions, viewing their role primarily in terms of rendering judgments.[18] To this day, the requirement to provide reasons does not apply to juries.[19] In certain judicial contexts, as well, judges issue decisions without providing the underlying reasons. This includes decisions regarding objections or juror dismissals, state supreme courts' refusals to review cases, denials of *certiorari* by the US Supreme Court, and numerous summary decisions by federal courts of appeals.[20]

The principal justifications for judicial reasoning can be broadly classified into five key arguments. These include enhancing the quality of judicial decision-making, developing legal precedents, fulfilling the expressive functions of trials, reinforcing democratic legitimacy, and protecting litigant autonomy and due process rights. The discussion will commence with the first argument.

[15] Hofit Wasserman-Rozen, Ran Gilad-Bachrach and Niva Elkin-Koren, 'Lost in Translation: The Limits of Explainability in AI' (2024) 42 Cardozo Arts & Entertainment LJ 391, 392.
[16] Lon L Fuller, 'The Forms and Limits of Adjudication' (1978) 92 Harvard Law Review 353, 368.
[17] Frederick Schauer, 'Giving Reasons' (1995) 47 Stanford Law Review 633, 633.
[18] 'Reason-giving is a typically modern idea. There have been historical moments when it was deemed valuable *not* to give reasons. For instance, Roman courts, ecclesiastical courts, and a number of aristocratic courts in premodern, continental Europe functioned without giving reasons for their decisions.': Mathilde Cohen, 'When Judges Have Reasons Not to Give Reasons: A Comparative Law Approach' (2015) 72 Washington & Lee Law Review 483, 486. See also Michael Akehurst, 'Statements of Reasons for Judicial and Administrative Decisions' (1970) 33 MLR 154, 154; Doron Menashe, 'The Requirement of Reasons for Findings of Fact' (2006) 8 International Community Law Review 223, 227.
[19] Bennett Capers, 'Evidence Without Rules' (2018) 94 Notre Dame Law Review 867, 896.
[20] Schauer (n 17) 634.

A. IMPROVING THE QUALITY OF JUDICIAL DECISION-MAKING

One line of argument, invoked to justify the institution of judicial reason-giving, is that providing reasons, especially in writing, polices and refines judicial decision-making.[21] This is supported by the following considerations: first, judicial reason-giving functions as a check on the exercise of judicial power. It facilitates transparency, allowing judicial decisions to be subjected to scrutiny by relevant stakeholders—including the litigating parties, appellate judges, the media, policymakers, legal scholars, and the broader public.[22] The 'opportunity to evaluate, scrutinize, and possibly assent to the reasons for a decision'[23] allows for ex post correction of judicial error, safeguarding the public from the detrimental effects of judicial rulings that might have been based on erroneous reasoning, personal biases, or judicial partiality.

Reason-giving not only facilitates the rectification of decisions ex post but may also enhance the quality of judicial rulings ex ante.[24] It is not merely a communication tool for what has already transpired but can also shape the decision-making process from the very outset. The anticipation of future scrutiny regarding the decision's underlying rationales may incentivise judges pre-emptively to take only legitimate considerations into account. Put differently, reasoned decision-making promotes accountability, which can have a transformative and debiasing effect on the decision-making process as it unfolds.[25] Research in cognitive psychology indicates that mechanisms of accountability, inherent in reason-giving, can reduce the impact of prejudice on judicial outcomes.[26] When decision-makers are required to provide reasons for their judgments, they are prompted to engage System II thinking—a slower, more analytical mode of cognition—rather than relying on System I thinking, which is fast, intuitive, and prone to bias. This shift reduces the influence of implicit biases.[27] As a result, reason-giving may serve as a de-biasing mechanism, counteracting prejudiced intuitions.

Lastly, the act of providing written reasons enhances the quality of judicial decisions through reflective introspection. Oscar Wilde's statement, 'How do I know what I think until I see what I say?',[28] encapsulates this understanding, suggesting that the process of articulating reasons fosters a more rigorous engagement with the factual and legal issues at hand. In the words of Mathilde Cohen, '[t]his process is often described as the "it won't write" phenomenon. In attempting to reason her decision, a judge discovers that she cannot find an appropriate legal justification, leading her to reconsider her initial ruling and make a more accurate

[21] Oldfather (n 6); Jason Bosland and Jonathan Gill, 'The Principle of Open Justice and the Judicial Duty to Give Public Reasons' (2014) 38 Melbourne University Law Review 482, 486; Eyal Zamir, 'With No Reason: Allowing Courts to Decide Cases without Explaining their Decisions' (2024) 43 Civil Justice Quarterly 290, 295 (the article proposes that litigants in civil disputes should be allowed mutually to consent to non-reasoned judgments, subject to the Court's approval).

[22] Glen Staszewski, 'Reason-Giving and Accountability' (2009) 93 Minnesota Law Review 1253, 1263 ('reason-giving facilitates transparency').

[23] Micah Schwartzman, 'Judicial Sincerity' (2008) 94 Virginia Law Review 987, 1005.

[24] Martha I Morgan, 'The Constitutional Right to Know Why' (1982) 17 Harvard Civil Rights-Civil Liberties Law Review 297, 300.

[25] Jennifer S Lerner and Philip E Tetlock, 'Bridging Individual, Interpersonal, and Institutional Approaches to Judgment and Decision Making: The Impact of Accountability on Cognitive Bias' in Sandra L Schneider and James Shanteau (eds), *Emerging Perspectives on Judgment and Decision Research* (CUP 2003) 431.

[26] Christoph Engel, 'The Psychological Case for Obliging Judges to Write Reasons' in Christoph Engel and Fritz Strack (eds), *The Impact of Court Procedure on the Psychology of Judicial Decision Making* (Nomos 2007) 71.

[27] For further discussion of System I and System II thinking, see Daniel Kahneman, *Thinking, Fast and Slow* (Penguin Books 2011). For further discussion of the debiasing effect of accountability, see Jennifer S Lerner and Philip E Tetlock, 'Accounting for the Effects of Accountability' (1999) 125 Psychological Bulletin 255.

[28] Oscar Wilde, *De Profundis* (Methuen and Co 1905) 19.

determination'.[29] The act of elaborating reasons can, thus, reveal new dimensions of understanding to the judge, refining the arguments and contributing to a more thoroughly considered ruling.

In summary, requiring judges to justify their decisions with reasoned arguments promotes transparency, thereby allowing for greater factual and normative accuracy within the adjudication system. In addition to transparency, the requirement to provide reasons also fosters judicial accountability, which operates as another control on judicial arbitrariness and bias. The potential for future scrutiny motivates judges to rely on relevant facts and sound legal principles from the outset, bearing transformative potential for both the judicial decision-making process and the decisions themselves. The transformative and debiasing capacity of judicial reason-giving is also rooted in the act of reflective introspection. These mechanisms collectively contribute to refining the decision-making process and the judicial outcome.

B. SUPPORTING PRECEDENTS AND THE PRINCIPLE OF *STARE DECISIS*

Another key justification for the institution of judicial reasoning lies in its crucial role within the domain of precedential authority. Reason-giving is instrumental in both the formation and reinforcement of legal precedents. In the context of setting precedents, reason-giving supports generalisation. As Frederick Schauer observes, by articulating reasoned explanations, judges facilitate the extrapolation of broader legal principles from the specific facts of individual cases, thereby elevating the level of abstraction and situating each case within a comprehensive framework of analogous cases.[30] This allows judges to extend their role beyond merely resolving the immediate legal dispute before them, converting specific decisions into general directives applicable to future cases. Law develops through such resolution of disputes, grounded on reasons that are both public and broadly applicable.[31] Even elements of judicial reasoning that do not constitute the formal *ratio decidendi* can impact the evolution of legal doctrine.[32]

Reason-giving not only facilitates the formation of new precedents but also demonstrates a court's adherence to existing ones and to the principle of *stare decisis*. By elucidating the rationale behind their decisions, courts enable their commitment to precedential authority to be scrutinised and can forge specific links between their current positions and past judgments. Beyond signalling compliance with prior decisions, reason-giving helps to construct a framework for future proceedings, guiding the judiciary and legal system along a principled and predictable trajectory. In other words, through adherence to the reasoning embedded in precedents and by offering reasons of their own, courts can perpetuate the consistent application of legal rules and facilitate the evolution of the law, both of which are crucial for upholding the rule of law.

[29] Cohen (n 18) 511–12.

[30] Schauer (n 17). Schauer asserts that the fundamental difference between decisions made without the obligation to provide reasons—such as those by voters and juries—and decisions that require reason-giving, like court judgments and many administrative rulings, is their adherence to the principle of generality. Only the latter are committed to ensuring that like cases in the future are treated alike. This commitment to generality distinguishes reasoned decisions by embedding them within a framework of normative consistency, which is essential for the rule of law. See also Zamir (n 21) 297.

[31] Robin J Effron, 'Reason Giving and Rule Making in Procedural Law' (2014) 65 Alabama Law Review 683, 713.

[32] For further discussion, see Judith M Stinson, 'Why Dicta Becomes Holding and Why It Matters' (2010) 76 Brooklyn Law Review 219.

In summary, reason-giving functions as an essential mechanism through which judges engage in an ongoing dialogue with other judges and shape the landscape of legal doctrine. Reason-giving ensures that precedents do not function as static or discrete judgments but, rather, become integrated into a cohesive, dynamic, and continually evolving corpus of law. This fosters a living, adaptive legal system.

C. Fulfilling the Expressive Functions of Trials and Fostering Public Trust

The role of reason-giving transcends providing interpretative guidance to future courts. It also serves as a means of communicating with the broader public. Another category of justifications for reasoned judgments is that, by articulating reasons, the judiciary fulfils the expressive functions of law, fosters trust in the courts and their judgments, and encourages compliance.

Expressive theories of law centre on the communication of collective attitudes through legal action and on the role of law in 'making statements'.[33] They emphasise the function of legal institutions in conveying normative messages to the public and shaping social values.[34] Trials are a critical component of this expressive endeavour, as they embody the intersection between the individual and the state apparatus and serve as arenas for the clarification of social norms and for the reification of moral commitments. Labelling certain behaviours as 'criminal' serves to grant one moral approach precedence over contradictory visions of justice.[35] Beyond their role in adjudicating disputes or proclaiming guilt and innocence, trials function as public rituals through which a moral stance on the behaviour in question and on all involved is formed and communicated.[36] Criminal convictions, for instance, are a locus of blame and stigma, intended to signal the community's condemnation of the offender and her actions. The punishment imposed, beyond fulfilling retributive and deterrent functions, serves as a mechanism for expressing the gravity of indignation.[37]

There is room to claim that a court's provision of reasons for its judgments is integral to the fulfilment of these expressive tasks. As Cass Sunstein asserts, 'for law to perform its expressive function well, it is important that law communicate well'.[38] Communicating well includes providing reasons, as failing to do so may result in the court's inability to articulate its moral directive clearly or persuasively. Public articulation of legal reasoning, in other words, is necessary to foster a shared understanding and moral standing within the community.

[33] Cass R Sunstein, 'On the Expressive Function of Law' (1996) 144 University of Pennsylvania Law Review 2021, 2024.
[34] See Elizabeth S Anderson and Richard H Pildes, 'Expressive Theories of Law: A General Restatement' (2000) 148 University of Pennsylvania Law Review 1503, 1510.
[35] Martin Sabelli and Stacey Leyton, 'Train Wrecks and Freeway Crashes: An Argument for Fairness and Against Self Representation in the Criminal Justice System' (2000) 91 Journal of Criminal Law and Criminology 161, 209.
[36] ibid.
[37] Dan M Kahan, 'What Do Alternative Sanctions Mean?' (1996) 63 University of Chicago Law Review 591, 593. The expressive argument primarily applies to criminal trials, as civil trials generally address conduct devoid of moral fault, and civil liability does not carry the same connotations of blame, stigma, or condemnation. That said, certain civil adjudications do carry a significant stigmatising effect. The termination of parental rights, for example, imposes a profound stigma on parents, reflecting an implicit judgment of blame underlying such determinations: David D Meyer, 'Family Ties: Solving the Constitutional Dilemma of the Faultless Father' (1999) 41 Arizona Law Review 753, 782. Likewise, punitive damages function as a key doctrinal tool for expressing moral disapproval. Nevertheless, the expressive dimension of judicial reasoning remains most closely associated with the criminal domain.
[38] Sunstein (n 33) 2050.

The process of reasoning also serves to foster public trust in the court's moral[39] and legal authority, by demonstrating that judgments are morally and legally grounded, rather than arbitrary or opaque.[40] Thus, the public trust of judicial rulings hinges not only on their bottom lines and substantive outcomes, but also on the underlying rationales and decision-making processes. Well-articulated reasoning can demonstrate to the public that decisions are anchored in legal principles and are a product of 'judgment' rather than subjective preferences and 'will'. The public is more likely to endorse moral and legal prescriptions they perceive as emanating from legitimate sources and processes. The public is also more inclined to comply with legal norms whose rationales it can comprehend and follow.[41] Research by Daphna Lewinsohn-Zamir, Eyal Zamir and Ori Katz indicates that elucidating the reasons behind legal norms fosters internal motivations to follow them.[42] This occurs because it enhances individuals' understanding of the norm's purpose, thereby increasing their sense of its legitimacy. Essentially, when people understand 'why' a rule exists, they are more likely to internalise it and adhere to it willingly. Providing reasons can thus complement traditional enforcement-based strategies for generating compliance, proving preferable given the high costs associated with enforcement.[43]

In conclusion, beyond its role in objectively improving the quality of decision-making, offering reasons for judicial decisions is also justified by its capacity to foster public acceptance and compliance. It is essential for the court's expressive and educative functions, allowing courts to refine their communicative messages.

D. Reinforcing Democratic Deliberation and Political Legitimacy

The role of judicial reason-giving extends beyond signalling moral blame to the public or informing future courts. It is also crucial for communication with other branches of government. This brings the discussion to the democratic virtues of reasoned judging.

The justifications provided thus far have predominantly been consequentialist. However, judicial reasoning can also be justified on intrinsic grounds. Accordingly, even if it were to be shown that certain unreasoned decisions are of higher quality than reasoned ones or that obscuring the judicial decision-making process might better foster public trust, this could not undermine the duty to provide reasons. The article will turn to discuss intrinsic arguments

[39] This refers to procedural morality rather than substantive morality, which concerns the inherent rightness or wrongness of the outcome.

[40] See Mathilde Cohen, 'Reasons for Reasons' in Dov M Gabbay and others (eds), *Approaches to Legal Rationality*, vol 20 (Springer 2010) 119.

[41] Tom R Tyler, *Why People Obey the Law* (Princeton University Press 1990) 63.

[42] Daphna Lewinsohn-Zamir, Eyal Zamir and Ori Katz, 'Giving Reasons as a Means to Enhance Compliance with Legal Norms' (2022) 72 University of Toronto Law Journal 316.

[43] ibid 353. For instance, consider traffic laws. Merely imposing fines (external enforcement) might deter some, but providing clear explanations about the safety benefits of speed limits can foster a sense of responsibility, leading to voluntary compliance. The 'high costs' of enforcement refer to a range of factors. First, there are direct financial costs: maintaining police forces, funding court systems, and administering prisons. Secondly, there are social costs: excessive enforcement can erode public trust, create adversarial relationships between law enforcement and communities, and lead to disproportionate impacts on marginalised groups. For example, overly aggressive policing in certain neighbourhoods can lead to community resentment and a breakdown of cooperation, hindering crime prevention efforts. Additionally, there are opportunity costs: resources spent on enforcement could be allocated to preventative measures, such as education or social programs, which might address the root causes of non-compliance. While it is true that providing reasons also entails costs, such as the time and effort required for judges to write detailed opinions or for policymakers to engage in public discourse, these costs are often outweighed by the long-term benefits of fostering a culture of voluntary compliance and reducing the need for costly enforcement measures.

for judicial reason-giving, emphasising courts' actual, rather than perceived, legitimacy. These arguments, which pertain to the democratic virtues of judicial reasoning and public reason, will be explored in two parts. The first will address the claim that the legitimacy of the judiciary in a democratic system is rooted in its ability to justify its decisions to other branches of government and the constituency. The second will explore the argument that the practice of judicial reason-giving is essential for transforming a judicial decision into one that is made in the name of the 'public'.

John Rawls is renowned for his thesis that public reason is a fundamental legitimising feature of the liberal-democratic state.[44] For Rawls, the legitimacy of state power, including judicial authority, hinges on the ability of public officials to justify their actions to other democratic actors, using reasons that are accessible and comprehensible, even if potentially objectionable.[45] This applies with special force to the Supreme Court.[46] In the words of Rawls, 'public reason applies... in a special way to the judiciary and *above all to a supreme court in a constitutional democracy with judicial review*... [T]he court's special role makes it the exemplar of public reason'.[47]

Ronald Dworkin's perspective on judicial reasoning complements that of Rawls by accentuating the judiciary's distinctive role in advancing reasoned argumentation, including outside the courtroom setting.[48] Dworkin highlights the fact that judicial decision-making is distinct from legislative processes, in that the latter often operate by way of applying sheer political power.[49] Critical of the scarcity of reasoned discourse in contemporary politics, Dworkin commends the quality of argumentation provided by courts, especially supreme courts.[50] He contends that constitutional adjudication and judicial reasoning enrich public debate, particularly on issues of political morality, by encouraging sustained public engagement and critical reflection on the courts' decisions and underlying rationales. According to both Rawls and Dworkin, in other words, the institution of judicial reasoning and its fusion with public reason are vital for the legitimacy and efficacy of democratic governance.[51]

The democratic rationale for judicial reasoning can also be approached from a different perspective by asserting that reason-giving is essential for transforming judicial decisions into those made in the name of 'the public'. In their book, *Reclaiming the Public*, Avihay Dorfman and Alon Harel argue that the legitimacy of decisions by public officials and institutions hinges on their public characteristics.[52] These are defined in the following terms: 'public decisions are decisions that can, at least in principle, be shaped by citizens' actions and values, be attributed to the public, and for which the public can ultimately be held responsible'.[53] Under this non-instrumental view, institutions and officials are deemed public not merely because they further the interests of, or act on behalf of, the public, but because they speak in the public's name. This distinction differentiates public institutions and actors from other entities that pursue collective interests and goals, like NGOs or businesses. Legitimacy, under this view, is achieved when public institutions genuinely adopt the perspective of those they

[44] Jeremy Waldron, 'Public Reason and "Justification" in the Courtroom' (2007) 1 Journal of Law, Philosophy and Culture 107, 107.
[45] ibid.
[46] John Rawls, *Political Liberalism* (Columbia University Press 1993) 231–39.
[47] ibid 215.
[48] Ronald Dworkin, *Law's Empire* (Harvard University Press 1986) 410.
[49] ibid.
[50] Cohen (n 18) 502.
[51] ibid 504.
[52] Avihay Dorfman and Alon Harel, *Reclaiming the Public* (CUP 2024).
[53] Alon Harel, Noam Kolt and Gadi Perl, *Automation as Privatization* (unpublished manuscript; on file with author) 15.

serve.[54] Within this framework, members of the political community can regard the binding decisions of the state and its judiciary as their own, reflecting the principle of self-governance and aligning political and judicial authority with freedom and equality.[55]

Judicial reason-giving is integral to this legitimisation process, as it allows decisions to be understood, scrutinised, and thereby 'authored' by the public. For the public to claim authorship and actively participate in the decision-making process, it must grasp the reasoning behind the decisions. In the words of Harel, Gadi Perl, and Noam Kolt, '[w]e further establish that for the public to be considered an author of a decision, the public must have an actual opportunity to participate in the decision-making process'.[56] By providing reasons, courts allow the public such effective participation and authorship over the judicial decisions, transforming them from mere mandates into public acts. Judicial reason-giving plays a fundamental role in turning judicial decisions into expressions of collective, democratic self-governance.[57] This transcends the instrumental role prescribed to reason-giving and to judicial transparency in the first part of this article, which focused on their de-biasing or quality-enhancing capacities.

In summary, judicial reasoning is essential to legitimising political and judicial authority. One perspective holds that this legitimacy is derived from integrating judicial decisions into the broader democratic framework of public reason, where courts justify their rulings to other political actors and branches of government. Another view posits that the legitimising power of judicial reasoning lies in transforming judicial decisions into acts of collective governance, authored by and made in the name of the public.

E. SECURING LITIGANT AUTONOMY AND PROCEDURAL JUSTICE

From the perspective of another crucial stakeholder, the litigating parties, reason-giving can be justified by its role in safeguarding their agency and autonomy within the judicial process. Autonomy, a core principle in the liberal tradition, literally means 'self-rule' or 'self-government'.[58] Although the notion of autonomy takes many forms, it is generally understood to include the granting of choice to individuals and the securing of their ability to shape their life stories.[59] Autonomy assumes particular significance in legal contexts, where decisions often have profound personal bearing.[60] The adversarial model is particularly occupied with party autonomy and control over the judicial process.[61] Under this model, litigants act as the sovereigns of trial. They are construed not merely as subjects of the legal process but as active agents delineating its borders and controlling legal trajectories. It is not enough that they are given their day in court. They must also be afforded control over how that day unfolds.

When courts provide reasons for their decisions, they facilitate this type and level of engagement. This is particularly potent in the criminal context, where conviction and punishment not only impose suffering but also carry the risk of moral condemnation that can

[54] Dorfman and Harel (n 52).
[55] ibid.
[56] Harel, Kolt and Perl (n 53).
[57] ibid.
[58] The term 'autonomy' is derived from the Greek words 'auto' (self) and 'nomos' (law), collectively meaning 'self-rule' or 'self-government'.
[59] Robert E Toone, 'The Incoherence of Defendant Autonomy' (2005) 83 North Carolina Law Review 621.
[60] Martin H Redish and Nathan D Larsen, 'Class Actions, Litigant Autonomy, and the Foundations of Procedural Due Process' (2007) 95 California Law Review 1573, 1579, arguing that litigant autonomy refers to the party's 'interest in having power to make choices about the protection of her own legally authorized or protected rights'.
[61] Rabeea Assy, *Injustice in Person: The Right to Self-Representation* (OUP 2015) 14.

dehumanise offenders.[62] By providing a reasoned explanation for punishment, courts affirm the status of offenders as autonomous moral agents and reasoning beings.[63] More broadly, courts' provision of reasons transforms the judicial process from a top-down, unilateral imposition of mandates to a participatory dialogue with the litigating parties. As Jack B Weinstein famously claimed, adjudication distinguishes itself from depersonalised bureaucratic processes by providing a platform where litigants' voices are heard and contribute to the integrity of the legal process.[64] Robin J Effron further noted that reason-giving benefits litigants by grounding decisions in accessible terms that account for their personal perspectives.[65] Reason-giving, in other words, grants litigants effective voice at trial, ensuring that their factual and legal narratives are meaningfully engaged with. Beyond merely giving litigants a voice, judicial reasoning enhances their ability to make meaningful choices and exercise control over their legal affairs.[66] When courts provide clear and reasoned justifications for their decisions, litigants can better understand the legal basis of the ruling. This transparency enables them to assess their options and make informed decisions concerning appeal proceedings and other forms of legal action, further solidifying their autonomy.

Reasoned judgments facilitate litigant autonomy not only in managing their personal legal affairs but also in their broader role within society. Autonomy principles emphasise that individuals should be seen as active participants in shaping their society's legal norms, whether through political engagement or legal proceedings. By providing clear reasoning, judicial decisions enable litigants to understand, contest, and contribute to the development of legal principles, reinforcing their role as agents in both the courtroom and the broader legal landscape.[67] Being subject to well-reasoned judicial authority affirms each litigant's role as an autonomous agent, rather than as merely a passive recipient of legal or political power (as also discussed earlier).[68] The provision of reasons further secures autonomy by ensuring that trials remain insulated from governmental overreach, thereby shielding the litigating parties from the arbitrary power of the state.[69] Reasoned justifications for rulings ensure that decisions are rooted in legal principles rather than political or administrative influence. This safeguard preserves judicial independence, preventing courts from becoming mere extensions of governmental authority.

Lastly, judicial reasoning also plays a pivotal role in upholding procedural justice and the parties' due process rights. Procedural justice theories emphasise that the fairness of a legal process is not only about reaching a correct substantive outcome but also about ensuring that the methods by which the decision is reached are just and equitable.[70] In this sense, the process itself becomes a determinant of the 'correctness' of the judicial outcome.[71] A basic

[62] RA Duff, *Punishment, Communication, and Community* (OUP 2001).
[63] Marah Stith McLeod, 'Communicating Punishment' (2020) 100 Boston University Law Review 2263, 2267.
[64] Jack B Weinstein, 'Compensation for Mass Private Delicts: Evolving Roles of Administrative, Criminal, and Tort Law' (2001) University of Illinois Law Review 947, 975.
[65] Effron (n 31).
[66] For a similar claim as to the general right to explanation, see Bram Vaassen, 'AI, Opacity and Personal Autonomy' (2022) 35 Philosophy and Technology 87.
[67] Cohen (n 18) 505.
[68] ibid.
[69] William B Rubenstein, 'Divided We Litigate: Addressing Disputes Among Group Members and Lawyers in Civil Rights Campaigns' (1997)106 Yale LJ 1623, 1644. See also Abram Chayes, 'The Role of the Judge in Public Law Litigation' (1976) 89 Harvard Law Review 1281.
[70] Lawrence B Solum, 'Procedural Justice' (2004) 78 Southern California Law Review 181, 238; Tom R Tyler and E Allan Lind, 'Procedural Justice' in Joseph Sanders and V Lee Hamilton (eds), *Handbook of Justice Research in Law* (Springer 2001) 65.
[71] Solum (n 70) 191.

tenet of procedural justice and due process is the right to be heard.[72] By offering reasoned judgments, courts demonstrate that they have effectively heard each of the litigants and seriously weighed their claims. Even when litigants do not prevail, the act of engaging with their arguments and providing a rationale reassures them that their concerns were not arbitrarily dismissed and allows for justice to be both seen and done.

In summary, by providing reasons for their judgments, courts effectively carve out a space for the parties in legal decision-making. This can reaffirm the parties' agency and autonomy, safeguard their due process rights, and reassure them that they have been treated in a manner that corresponds with the principles of procedural justice.

III. Reasoned Judging and its Discontents

The preceding discussion has outlined the five principal arguments commonly advanced in support of the requirement for judicial reason-giving. The focus now shifts to a critical evaluation of each of these arguments. This section will delve deeper into these justifications, aiming to uncover their intrinsic limitations and reveal the manners in which they fail adequately to account for prevailing practices.

A. The quality enhancement justification reconsidered

As previously discussed, the requirement to articulate reasons subjects judicial decisions to both appellate review and public scrutiny, which serves to identify and filter out decisions that are factually or legally flawed. Moreover, the shadow of future review incentivises courts to issue judgments that adhere to sound factual and normative standards from the outset. Thus, providing reasons exerts an ex ante debiasing and transformative effect on the decision-making process. This potential for transformation is further amplified by the fact that the requirement to give reasons has the capacity to encourage deeper introspection and more rigorous engagement with the factual and legal issues involved.

Upon closer scrutiny, however, there is room to challenge each of these justifications, starting with the policing effect of public review. While it is often the case that exposing judicial reasoning to public oversight fosters greater accountability and leads to legally and factually sound judgments, there can also be unintended adverse consequences. As evidenced by the growing body of literature on 'judicial populism' and 'popular constitutionalism', the awareness that judicial decisions and their underlying rationales will be subject to public scrutiny can paradoxically push courts to populist decision-making.[73] The pressure of anticipated public oversight may compel judges to conform their reasoning to biased public opinion and to prioritise political expediency over correct legal decision-making. This inclination towards populism threatens the court's independence. It risks compromising the precision of the act

[72] ibid 183.

[73] Monika Hanych, Hubert Smekal and Jaroslav Benák, 'The Influence of Public Opinion and Media on Judicial Decision-Making: Elite Judges' Perceptions and Strategies' (2023) 14 International Journal for Court Administration 1, 10–15 (discussing the intricate relationship between judicial decision-making and public opinion, and demonstrating how the transparency afforded by judicial reasoning may prompt some judges to take popular sentiments into account). For further discussion of 'judicial populism' or 'popular constitutionalism', see Lisa Hilbink, 'Judicial Populism: A Conceptual and Normative Inquiry' (2024) 49 Law & Social Inquiry 1.

of judging, resulting in judicial reasoning and rulings that, though aligned with public sentiment, lack robust legal foundations.[74]

In a similar vein, when judges perceive that their reasoning will be scrutinised by elite groups, such as legal academics, this too can skew their decisions in a different—but equally concerning—manner. Elite-driven oversight can compel judges to render decisions and justifications that cater to the preferences of more influential or informed factions of society, potentially undermining the broader public interest. By 'elite-driven oversight', I am referring not to any particular ideological or political stance but rather to the influence exerted by highly specialised or institutionally powerful groups, such as legal academics or influential practitioners, whose perspectives may carry disproportionate weight in shaping judicial reasoning. While it is true that legal academics and practitioners often advocate for minority interests, their institutional authority and intellectual influence can nevertheless create an environment in which judicial reasoning becomes oriented towards aligning with academically favoured frameworks or theoretical paradigms, rather than being shaped by broader public considerations. This dynamic does not necessarily produce an undesirable outcome in every instance, but it does introduce a particular kind of external pressure on judicial decision-making. In other words, judicial accountability and reason-giving, intended to secure the integrity of legal proceedings, could inadvertently foster judicial partisanship.

The concerns that reason-giving might paradoxically compromise the court's impartiality or become a vehicle for populism represent only part of the issue. Additional concerns emerge when considering that, while the articulation of reasons can guide a decision in one direction, it is equally plausible that it could sway the outcome in another direction. The transformative capacity to reduce bias may inherently carry the potential to introduce new forms of bias. Specifically, there is cause for concern that the requirement to provide reasons might distort judicial deliberation by privileging factors that are more readily articulated verbally, potentially at the expense of no less relevant considerations that are challenging to express in words.

As argued by Chad Oldfather, these concerns are also supported by research in cognitive psychology, which has identified the phenomenon of 'verbal overshadowing'.[75] Verbal overshadowing refers to a counterintuitive cognitive effect where attempts to verbalise aspects that are not easily captured in words can impair rather than enhance decision-making accuracy.[76] Introduced by Jonathan W Schooler and Tonya Y Engstler-Schooler, verbal overshadowing reveals that forcing verbal articulation can distort cognitive processing by recoding nonverbal memories into a linguistically biased format, often leading to less accurate judgments.[77]

A series of experiments on facial recognition provided a striking demonstration of this effect. In Schooler and Engstler-Schooler's study, participants were shown a face and later

[74] This argument aims to describe the forces and incentives that shape judicial decision-making rather than assert a deterministic outcome. Just as the claim that judges exercise independent reasoning is grounded in an understanding of the institutional and normative structures that guide their role, so too is the argument that public scrutiny can exert pressures that influence judicial reasoning. The emerging literature on judicial populism and popular constitutionalism demonstrates that heightened public oversight does not merely enhance accountability but can also create incentives for judges to align their reasoning with prevailing public sentiment. This is not to suggest that all judges inevitably succumb to such pressures, but rather that the act of judging does not occur in a vacuum—it is responsive to the institutional and sociopolitical context in which it takes place. The concern, then, is not that judicial reasoning will always be compromised by populist forces, but that the very conditions designed to ensure accountability may, in some instances, introduce competing incentives that challenge the ideal of independent adjudication.

[75] Oldfather (n 6) 1310.

[76] ibid.

[77] Jonathan W Schooler and Tonya Y Engstler-Schooler, 'Verbal Overshadowing of Visual Memories: Some Things Are Better Left Unsaid' (1990) 22 Cognitive Psychology 36.

asked to identify it from a lineup. Some participants were required to describe the face verbally before making their selection, while others proceeded directly to the recognition task without verbalisation. Counter to common intuition, those who described the face before attempting recognition performed significantly worse than those who did not. The researchers explained that the verbalisation process altered the way the memory was stored and retrieved—rather than preserving the original, perceptual memory, verbalisation biased participants towards features that were easier to describe in words. This verbal recoding, in turn, impaired their ability to recognise the face based on its actual visual features.[78]

Importantly, this effect was not limited to facial recognition. Additional experiments showed that verbal overshadowing also affected colour memory, reinforcing the conclusion that the phenomenon arises whenever individuals are forced to translate complex nonverbal information into words. The impairment was not temporary; participants continued to show reduced accuracy in recognition tasks even after a two-day delay, suggesting that once a verbally recoded memory replaces the original perceptual representation, the distortion persists. However, the study also revealed that verbal overshadowing does not entirely erase the original memory. When participants were required to make rapid recognition decisions—thus preventing them from relying on their altered, verbally recoded memory—they performed significantly better, suggesting that verbalisation does not destroy the original representation but rather overshadows it, making it less accessible when deliberation is involved.[79]

Similar findings emerged in Sean M Lane and Schooler's study on analogy judgments, which revealed that participants who articulated their reasoning were less successful in identifying deep structural analogies than those who did not.[80] To understand this phenomenon, it is important to distinguish between surface analogies and deep structural analogies. Surface analogies occur when two situations share obvious, readily observable similarities, such as the same type of characters, objects, or settings, even though they may not be meaningfully related at a deeper level. In contrast, deep structural analogies involve cases that share the same underlying logical structure or relational pattern, even if their superficial details are completely different. Recognising deep analogies requires individuals to abstract away from surface-level details and identify a common principle or reasoning pattern.

Lane and Schooler's study provides direct empirical support for the idea that verbalisation biases individuals towards surface features at the expense of deeper relational insights. In their experiment, participants first read a set of 16 short stories, each with a unique narrative structure. Later, they were given eight test stories, each of which had two possible matches from the original set: one that was a superficial match (i.e. it contained similar characters, objects, or settings but did not share the same deeper relational structure) and another that was a true deep analogy (i.e. it shared the same core reasoning pattern or moral structure but differed in surface details).

The results showed a clear verbal overshadowing effect: participants who were required to think aloud while making their analogy judgments were significantly more likely to select surface-level matches and significantly less likely to retrieve true deep analogies. This suggests that the act of verbalisation disrupts access to deeper relational processing, leading individuals to rely more heavily on information that is easily expressible in words rather than

[78] ibid.
[79] ibid.
[80] Sean M Lane and Jonathan W Schooler, 'Skimming the Surface: Verbal Overshadowing of Analogical Retrieval' (2004) 15 Psychological Science 715.

on abstract, relational reasoning that is more difficult to articulate.[81] These findings have been consistently validated by subsequent research.[82]

The research on verbal overshadowing offers an important cautionary note regarding the blanket application of a reasoning requirement in judicial decisions. Of course, translating the findings to the judicial context is complex. It requires pinpointing the types of decisions and case categories that correlate with tasks like facial recognition or analogy judgments in a manner which makes them particularly prone to verbal overshadowing. One category that can be hypothesised to share notable similarities is witness credibility assessments. In this context, a gap may be suspected between the court's ability to articulate overt credibility indicators, such as a witness's confidence while testifying, and more nuanced, elusive factors that inform judicial trust, but are difficult to verbalise. The author is currently investigating this further in a separate study aimed at exploring verbal overshadowing specifically in the context of assessing credibility based on impressionistic judgments. Early findings indicate that, in the evidentiary context of witness credibility assessments, verbalisation may introduce unintended biases.[83]

The verbal overshadowing phenomenon casts new light on Justice Stewart's widely criticised remarks in *Jacobellis v Ohio* regarding the definition of pornography:[84] '[C]riminal laws in this area are constitutionally limited to hard-core pornography. I shall not today attempt further to define the kinds of material I understand to be embraced within that shorthand description; and perhaps I could never succeed in intelligibly doing so. But I know it when I see it, and the motion picture involved in this case is not that'.[85] Justice Stewart's invocation of the subjective standard, 'I know it when I see it', has been disparaged, based on the sentiment that verbal articulation is a necessary condition for legality.[86] But, this criticism, along with its underlying assumption, may be misplaced when considered through the lens of verbal overshadowing. Verbal overshadowing research highlights the inherent difficulties in articulating certain intuitive judgments and their underlying rationales. Forcing such judgments into precise verbal terms and reasons can obscure rather than illuminate and impair rather than improve them, as the process of verbalisation can shift focus away from diagnostically relevant but hard-to-articulate features and towards aspects that are more easily verbalised, thereby distorting the original judgment. Justice Stewart's reluctance to provide a clear definition might, in fact, reflect a deeper awareness of the limitations of language in capturing subjective legal assessments.

In conclusion, mandating verbal justifications may undermine the quality of judicial decisions. The pressure to conform to public or elite expectations can prompt judges to render decisions that align more with prevailing opinions than with principled legal reasoning. Instead of enhancing the quality of judicial decision-making, the obligation to provide reasons may introduce external pressures that compromise judicial independence and detract from the court's commitment to impartiality. Furthermore, in judicial contexts that parallel facial recognition tasks, including witness credibility assessments based on impressionistic

[81] ibid.

[82] See for example Thomas Hugh Feeley and Melissa J Young, 'Self-Reported Cues about Deceptive and Truthful Communication: The Effects of Cognitive Capacity and Communicator Veracity' (2000) 48 Communication Quarterly 101; Christian A Meissner and John C Brigham, 'A Meta-Analysis of the Verbal Overshadowing Effect in Face Identification' (2001) 15 Applied Cognitive Psychology 603.

[83] While analogical reasoning is central to judicial decision-making, particularly in relation to *stare decisis* and the classification of legal categories, surface-level analogies may be more commonly employed than deeper structural analogies.

[84] See Oldfather (n 6) 1320.

[85] *Jacobellis v Ohio* 378 US 184, 197 (1964).

[86] See Oldfather (n 6) 1320.

judgments, the requirement to articulate reasons can adversely affect both accuracy and decision quality by disproportionately prioritising easily verbalised indicators of credibility.

B. THE PRECEDENT FORMATION JUSTIFICATION RECONSIDERED

The critical examination of the precedent-based justification for reasoned judgments will begin by revisiting its core argument: judicial reasoning is commonly viewed as vital for the development and evolution of legal precedents. By articulating the legal principles that underpin their decisions, judges convert specific rulings into general rules applicable to future cases, thus fostering a coherent legal system. Nonetheless, a more nuanced analysis reveals that, while judicial reasoning is central to the doctrine of precedent, it may also introduce considerable challenges to the broader evolution of the law.

Historical examples illustrate that legal development can occur with minimal reliance on judicial explanations. Roman law, in particular, operated under the assumption that providing reasons may impose constraints on the dynamic progression of legal doctrine. Modern critiques, like those of Michael Stokes Paulsen, argue that if the authority of precedents is based on the idea that judges impart meaning to the law, then contemporary judges should have the same interpretive power as their predecessors.[87] The notion that judicial authority diminishes over time, or that past decisions should bind current and future interpretations, may undermine the evolution of law and the adaptability of legal reasoning.

The problem is rooted not only in the principle of *stare decisis* or in the institution of legal precedent, as such, but also in the inherent tendency to overextend their reach. Due to structural reasons, courts are driven to overgeneralisation in their reasoning, risking the creation of rigid legal precedents that constrain too many future cases and stifle legal innovation. One reason is that the evolution of legal precedents is fundamentally rooted in the art of comparing and contrasting cases for the purpose of discerning patterns and guiding principles. But the case of highest relevance and significance for such comparative analysis is the 'next' case, the one that has yet to be brought before the court, the one that would arise in the future. Given that courts lack the foresight provided by such future cases, there is an inherent risk that the reasoning mechanisms they employ in the precedential case may lead to overgeneralisation. As Richard Posner argued, '[w]hat the judge has before him is the facts of the particular case, not the facts of future cases. He can try to imagine what those cases will be like, but the likelihood of error in such imaginative projection is great'.[88] Since courts operate without the full comparative perspective that future cases might offer, they risk shaping and reinterpreting prior and current rulings in ways that may unduly extend their scope, adversely affecting the development of law.

A compelling illustration is found in Jorge Luis Borges's article, 'Kafka and His Precursors', where he posits that 'every writer creates his own precursors'.[89] In this seminal work, Borges illustrates how writers, through their creative endeavours, not only influence contemporary and future discourse but also redefine and reinterpret past literary contributions. Borges supports his argument by demonstrating how earlier figures, such as Svevo Zeno and Søren Kierkegaard, laid the foundation for Franz Kafka's literary innovations. According to Borges, Kafka's work does more than merely echo previous ideas; it reconfigures them,

[87] Michael Stokes Paulsen, 'The Intrinsically Corrupting Influence of Precedent' (2005) 22 Constitutional Comment 289.

[88] Richard A Posner, *Law, Pragmatism, and Democracy* (Harvard University Press 2003) 80.

[89] Jorge Luis Borges, 'Kafka and His Precursors' in *Labyrinths* (New Directions Publishing Corporation 1964) 201.

providing new interpretations that transform our understanding of both Kafka and his precursors.[90]

These observations about literary creation are highly pertinent to the field of judicial writing and legal evolution. Meaning, whether in literature or law, is not fixed at the moment of creation but rather shaped and reshaped by future interpretations. Just as literary works acquire new significance through later readings and reinterpretations, judicial rulings too evolve as they are applied in new contexts. In the judicial context, as well, it is future judges, cases, and decisions that provide retrospective context and meaning to their predecessors. Just as Kafka's literary innovations redefine and reinterpret earlier works, future judicial decisions similarly reshape and imbue past rulings with new significance and legal relevance. This dynamic interplay between past and future underscores the necessity of maintaining flexibility in both literary and judicial creation, ensuring that new developments continue to evolve. Attempting to impose a fixed interpretation through judicial reasoning, without the benefit of knowing how future developments will unfold, can hinder the evolution of precedents and the optimal progression of legal doctrine.

Let it be emphasised; the point is not that judicial reasoning should be critiqued simply because future developments are unpredictable. Such unpredictability is, of course, an inherent feature of any legal system. Rather, the argument is that, while certain structural features of judicial reasoning facilitate the evolution of law, others impede it. Judicial reasongiving is often presumed to be a wholly progressive force, ensuring coherence and adaptability over time. However, by attempting to impose a fixed interpretation at a given moment, judicial reasoning can also create inertia in legal doctrine, making it more resistant to necessary adaptation.

The purpose of this critique is not to suggest that judicial reasoning should be abandoned. On the contrary, it is to highlight the often-overlooked negative effects of reason-giving that can, in certain contexts, hinder the organic evolution of legal principles. Recognising this duality allows for a more nuanced understanding of how judicial reasoning shapes legal development—not as an unequivocal good, but as a mechanism that operates both as an engine of change and a potential constraint.

The tendency toward overgeneralisation discussed hereto related to institutional or structural features of legal reasoning, rather than judges' personal motivations to amplify the future impact of their normative choices. The overgeneralisation problem is further amplified by judges' personal inclinations and ambitions to extend their normative reach. Schauer attributes judicial overgeneralisation in the act of providing reasons to psychological biases, particularly the 'availability bias'.[91] The availability bias relates to decision-makers' tendency to evaluate the frequency of a case based on how readily information about it can be retrieved from memory or imagination.[92] Consequently, judges may overestimate the typicality of the precedential case they are considering, which is naturally at the forefront of their attention. As a result, their reasoning might overextend the boundaries of their precedents to a broader range of future scenarios.

Another manifestation of the generalisation problem inherent in judicial reasoning becomes particularly pronounced in 'hard cases', where courts face the challenge of reconciling justice for the immediate parties with the creation of just legal principles for all. Justice

[90] ibid.
[91] Schauer (n 17) 657.
[92] Amos Tversky and Daniel Kahneman, 'Availability: A Heuristic for Judging Frequency and Probability' (1973) 5 Cognitive Psychology 207.

Oliver Wendell Holmes succinctly captured this dilemma with his observation that 'great cases like hard cases make bad law',[93] underscoring a fundamental characteristic of the common law system whereby legal principles are not formulated through hypothetical projections of future case variations, but rather through the adjudication of concrete cases. This introduces a tension between delivering a just resolution for the immediate case and formulating a fair or ideal general rule.[94]

The crux of the problem lies in the institution of judicial reasoning, which seeks to align the unique facts of a specific case with overarching legal principles. Legal reasons can inadvertently generate precedents that either impose undue hardship on the parties involved or extend legal doctrines inappropriately. To alleviate the tension, it may be advantageous for courts to decouple the resolution of the hard case from the establishment of broader precedents. This approach appears to have influenced the US Supreme Court's handling of *Bush v Gore*,[95] where the Court explicitly limited its decision to 'present circumstances', effectively signalling that its ruling was intended to apply only to the unique facts of that case.[96] Legal scholars have interpreted this as a deliberate attempt to prevent the decision from setting a lasting precedent, likening it to a 'one-day only' ticket.[97] This perspective suggests that the Court's decision was crafted to avoid broader implications, with some commentators viewing it as a strategic choice to contain the impact of the ruling and avoid extending its reach beyond the immediate context.

Perhaps a more straightforward method for achieving such a decoupling result may be to render decisions without providing reasons. By separating the resolution of the immediate case from the formulation of general legal principles, courts can address the specific justice concerns of the case without generating potentially problematic precedents. This approach can allow courts to resolve immediate issues effectively while avoiding the imposition of broad doctrines that could skew future legal outcomes. For such 'hard cases', in other words, issuing decisions without reasoning may be more advantageous than establishing 'bad law'.

In addressing the opposition to reason-giving from the lens of precedent-setting, another critical issue emerges that warrants caution: the contemporary judicial landscape is marked by a resurgence of *seriatim*-like tendencies and multiple separate opinions, which make the task of establishing clear precedents more and more difficult.[98] Fractured and plurality decisions represent instances of extreme dissensus, where no single legal rationale commands majority support. These decisions complicate judicial interpretation, weaken *stare decisis*, and undermine the Court's institutional authority. They lack a clear majority on every issue, thereby creating complications for the identification of (and therefore formation of) stable legal principles, compelling us to reconsider the boundaries of judicial reasoning in the context of the court's precedent-setting role.[99] This is not a call for forced unanimity among judges or for *per curiam* opinions. Rather, it is an acknowledgment of the challenges posed

[93] *Northern Securities Co v United States* 193 US 197, 364 (1904).
[94] For an innovative empirical study on how reason-giving affects the inclination to depart from formal legal rules in 'hard cases', see Ori Katz and Eyal Zamir, 'Law, Justice and Reason-Giving' (2025) Journal of Empirical Legal Studies (forthcoming).
[95] *Bush v Gore* 531 US 98, 109 (2000).
[96] Chad Flanders, 'Please Don't Cite This Case! The Precedential Value of Bush v. Gore' (2006) 116 Yale LJ Pocket Part 141.
[97] Samuel Issacharoff, 'Political Judgments' (2001) 68 University of Chicago Law Review 637, 650.
[98] Pamela C Corley and others, 'Extreme Dissensus: Explaining Plurality Decisions on the United States Supreme Court' (2010) 31 The Justice System Journal 180.
[99] ibid.

by a proliferation of individual reasoning that, while nuanced, may ultimately hinder the court's ability to articulate coherent legal doctrines. The Marshall Court's shift away from *seriatim* opinions was intended to address precisely these concerns by consolidating judicial authority through unified majority opinions, an approach that merits renewed consideration.[100]

In conclusion, several challenges confront the precedent-based justification for reasoned judicial decision-making. Courts often face pressures towards overgeneralisation in their reasoning, which can lead to the creation of rigid legal precedents that unnecessarily constrain future cases and legal evolution. This tendency arises from structural limitations inherent in the judicial process, particularly the court's inability to foresee future cases. Psychological factors, such as cognitive biases (like availability bias) and personal motivations to expand one's normative influence further contribute to this overgeneralisation and to the shaping of rulings in ways that may unduly broaden their reach. This generalisation problem permeates judicial reasoning but becomes especially acute in 'hard cases'. Another critical challenge to precedent-setting posed by providing reasons arises from the trend towards multiple, individual opinions within the court. As the frequency of split decisions—especially those without a dominant majority—grows, it becomes increasingly challenging to establish stable legal precedents. These issues prompt a reassessment of the scope and limits of judicial reasoning in relation to its impact on the court's role in setting precedents. Ultimately, a more selective approach to judicial reasoning may better support the law's evolution.

C. The Expressive Function and Public Trust Justifications Reconsidered

As previously discussed, another justification for judicial reason-giving relates to the court's expressive function. This rationale posits that judicial reasoning engages with the broader public, conveying messages about legality and morality and serving as a critical tool for upholding public trust in the judiciary. This justification, too, requires careful examination. The subsequent analysis will first challenge the role of judicial reasoning in its expressive capacity and then turn to the argument that detailed reasoning is essential for fostering public trust.

Legal reasoning is often marked by complexity, featuring specialised jargon (sometimes termed 'legalese') and intricate legal principles that may be inaccessible to the lay public.[101] This complexity may obscure, rather than illuminate, the court's expressive intent. The message might be more effectively communicated by resorting to the simple and straightforward 'language', characteristic of the 'bottom line' of the judicial ruling, rather than through convoluted legal reasoning. For instance, in criminal law, the very act of convicting a defendant conveys moral disapproval of the defendant's conduct. The severity of the punishment reflects the degree of moral condemnation.[102] Criminal verdicts, in and of themselves, can thus articulate and reinforce social and moral values in a manner that aligns more directly with public understanding.

[100] M Todd Henderson, 'From Seriatim to Consensus and Back Again: A Theory of Dissent' (2007) John M Olin and Economics Working Paper No 363 <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1217&context=law_and_economics> accessed 25 March 2025.

[101] See also Drury Stevenson, 'To Whom Is the Law Addressed?' (2003) 21 Yale Law & Policy Review 105.

[102] As Dan Kahan insightfully notes, '[w]hat a community chooses to punish and how severely tells us what (or whom) it values and how much.': Dan M Kahan, 'Social Meaning and the Economic Analysis of Crime' (1998) 27 Journal of Legal Studies 609, 615.

Additionally, judicial reasoning is vulnerable to strategic manipulation, whereby courts selectively disclose the rationales behind their rulings to align with broader institutional and political objectives.[103] The reasoning process can thus be subject to distortion, allowing courts to craft justifications that serve particular interests or mitigate perceived repercussions. In contrast, decisions that focus primarily on the ultimate outcome, without extensive elaboration of the underlying reasoning, are inherently less vulnerable to such strategic manipulations. This is because the essence of 'bottom line' decisions lies in their unambiguous nature. Consequently, while detailed judicial reasoning can provide depth, it may also undermine the effectiveness of the trial's expressive function. Extensive reasoning can sometimes obscure the core message of a decision, as complexity and opportunities for strategic interpretation may weaken the court's clarity. Prioritising the ultimate outcomes of judicial rulings often serves as a more effective way to communicate the court's legal, normative, and moral judgments, and to fulfil its expressive function.

The argument that a lack of articulated reasons undermines public trust in the legal system also merits critical evaluation. First, treating public trust as an intrinsic normative goal, in and of itself, is highly debatable. There is room to claim that the primary objective should be to ensure that the judicial system operates in a manner that merits public credence, that it ought to earn the public's trust through its effective performance.[104] But public trust should not be considered in isolation from the system's actual performance. Public trust can only be granted when the system is commendable of it. The question of public confidence in the system cannot be separated from the question of the judicial system's objective performance. Moreover, even if public trust were to be accepted as an intrinsic normative end, in and of itself, there is no empirical evidence to support the notion that providing detailed reasons for decisions is the most effective way to pursue it. The reasoning behind a judgment may inadvertently heighten public dissent, especially in the context of acute public controversies.[105] People may find themselves agreeing with the court's final decision while objecting to all or part of its underlying rationales, suggesting that, as an empirical matter, withholding detailed reasons can oftentimes prove more conducive to maintaining overall trust in the judiciary.[106] Lastly, even if articulating reasons for judgments were empirically to enhance public trust and even if public trust were deemed an appropriate normative endeavour, the ends do not always justify the means. In situations where providing detailed reasons could lead to verbal overshadowing or adversely affect the quality of judicial decisions, educating the public might be a more appropriate approach than succumbing to the public's biases. Ensuring that decisions are well-founded and legally sound should take precedence over providing reasons for the mere sake of fostering public trust.

D. THE DEMOCRATIC DELIBERATION JUSTIFICATIONS RECONSIDERED

Another line of justification presented in the article focused on the democratic virtues of judicial reasoning. This class of arguments can also be further addressed. While political and judicial authority should indeed be legitimised, there is room to claim that strategic silence

[103] See Lynn M LoPucki and Walter O Weyrauch, 'A Theory of Legal Strategy' (2000) 49 Duke LJ 1405, 1437.
[104] David Enoch and Talia Fisher, 'Sense and "Sensitivity": Epistemic and Instrumental Approaches to Statistical Evidence' (2015) 67 Stanford Law Review 557, 570.
[105] Cohen (n 18) 514.
[106] Moreover, opaque reasoning might also erode public trust if perceived as lacking transparency or credibility.

by the court can function as a form of deliberation and serve as a purposeful tool for democratic engagement. The discussion will now turn to formulate this claim, that judicial silence should not be perceived as merely a passive omission. Rather, it can act as a deliberate strategy designed to promote inter-branch communication and facilitate democratic deliberation.

For as long as there have been courts, there have been unexplained court decisions. And yet, as mentioned at the outset of this article, the Supreme Court's reliance on its shadow docket has recently come under public scrutiny, with its implications for judicial transparency and reason-giving becoming a central point of concern, a concern that was notably raised during Justice Amy Coney Barrett's confirmation hearing. As Justice Elena Kagan recently wrote in a dissenting opinion, 'the majority's decision is emblematic of too much of this Court's shadow-docket decision-making which every day becomes more unreasoned'.[107] And Richard Pierce argues, '[w]e now have a situation in which a high proportion of major judicial decisions are made by the Supreme Court without providing any reasons for decisions'.[108]

The phenomenon of unexplained judgments is much wider in scope than the Supreme Court's resort to its shadow docket. Courts at all levels exercise diverse forms of silence in their rulings, including by issuing decisions that deliberately avoid broader questions, by using summary dismissals, or through *per curiam* opinions with minimal explanation. Courts may also issue decisions without immediately providing comprehensive reasons, or withhold reasons for certain aspects of their decisions only to provide detailed explanations at a later time.

In his influential work, *The Supreme Court and the Idea of Progress*, Alexander Bickel highlights that many Supreme Court decisions serve as the start of a conversation between the Court and other branches of government, engaging in an ongoing dialogue rather than delivering a final verdict on complex issues.[109] This perspective underscores the role of judicial silence. The absence of definitive interpretation or guidance may serve to compel legislators and political institutions to deliberate more deeply, propose new legislation, or amend existing laws to address the concerns raised by the case. In this way, judicial silence can stimulate proactive legislative action and ensure that democratic processes remain robust and responsive. Moreover, when courts issue decisions with limited or no reasoning, they invite commentary from scholars and practitioners, thereby enhancing public engagement and contributing to a more informed and active citizenry. Refraining from detailed explanation may also help the judiciary avoid becoming entangled in political controversies, underscoring the judiciary's role in balancing powers and fostering a stable democratic system.

Such strategic use of silence was manifested in the Supreme Court's handling of same-sex marriage cases during its 2014 term.[110] When the Court declined to grant *certiorari* in several pivotal same-sex marriage appeals, thereby allowing state rulings permitting same-sex marriage to remain in effect, it did so without offering reasons, signifying a deliberate decision

[107] *Whole Woman's Health* (n 5), cited in Vladeck, 'Putting the "Shadow Docket" in Perspective' (n 2) 290.
[108] Pierce (n 3).
[109] Alexander M Bickel, *The Supreme Court and the Idea of Progress* (Yale University Press 1970).
[110] See for example *Bogan v Baskin* 135 S Ct 316 (2014) denying *certiorari* to 766 F3d 648 (7th Cir 2014) (Indiana); *Walker v Wolf* 135 S Ct 316 (2014) denying *certiorari sub nomine* to *Baskin v Bogan* 766 F3d 648 (7th Cir 2014) (Wisconsin); *Schaefer v Bostic* 135 S Ct 308 (2014) denying *certiorari* to 760 F3d 352 (4th Cir 2014) (Virginia); *McQuigg v Bostic* 135 S Ct 314 (2014) denying *certiorari sub nomine* to *Bostic v Schaefer* 760 F3d 352 (4th Cir 2014) (Virginia); *Rainey v Bostic* 135 S Ct 286 (2014) denying *certiorari sub nomine* to *Bostic v Schaefer*, 760 F3d 352 (4th Cir 2014) (Virginia); *Smith v Bishop* 135 S Ct 271 (2014) denying *certiorari* to 760 F3d 1070 (10th Cir 2014) (Oklahoma); *Herbert v Kitchen* 135 S Ct 265 (2014) denying *certiorari* to 755 F3d 1193 (10th Cir 2014) (Utah).

to maintain a degree of judicial silence.[111] This approach mirrors an historical pattern of using silence to facilitate ongoing deliberation.[112] As Chris Schmidt notes, after *Brown v Board of Education*,[113] the Court similarly employed *per curiam* decisions with minimal reasoning to extend its desegregation mandate to additional public institutions. These silent (or minimally reasoned) decisions were intended to advance civil rights discourse in society and allowed legislative and public discourse to evolve without being prematurely closed off.[114]

Judicial silence, in other words, is far from an empty void. It holds the potential to serve as a constructive element of democratic governance. By choosing not to provide extensive reasoning, courts can stimulate public and institutional dialogue, encourage legislative action, and prevent judicial overreach. Silence, in this context, can indeed speak volumes, facilitating democratic deliberation and strengthening the overall health of democratic institutions.

E. LITIGANT AUTONOMY JUSTIFICATIONS RECONSIDERED

The argument that judicial reason-giving enhances litigant autonomy and procedural justice is compelling, but it, too, merits further scrutiny. It is important to emphasise that, while judicial reasoning provides clarity and justification, it is the substantive outcomes of decisions that most directly shape a litigant's ability to influence their legal situation. Party autonomy and control are primarily determined by the concrete results of legal proceedings, the rulings that dictate real-world consequences, rather than by the explanatory narratives that courts provide. In this sense, the emphasis on judicial reasoning, while significant, should not obscure the fact that it is the decision itself that ultimately defines the litigant's legal reality.

Furthermore, while reason-giving is designed to amplify litigants' voices in trial, as mentioned earlier, it is essential to recognise that judicial reasoning is often constrained by the formalistic language and procedural strictures of the law. These constraints can obstruct the effective communication of individual narratives within the framework of legal reasoning. Litigants may find their opportunities to express their perspectives and engage substantively with the court restricted by the rigid structures and formalities that underpin judicial reasoning. This can lead to a perception that their agency is not genuinely affirmed, but rather diminished, by the judicial process. Additionally, the complexity and technical nature of legal reasoning can obscure the clarity necessary for litigants to comprehend fully how their rights were assessed by the court, potentially undermining their ability to protect them. Disadvantaged parties, in particular, may be adversely affected by the technical and legalistic nature of judicial reasoning.

This brings us to the last point: reliance on reason-giving as a mechanism to affirm litigants' agency may create only a superficial semblance of participatory justice, while concealing deeper substantive and systemic threats to litigant autonomy. Although reasoned judgments are intended to promote transparency, they do not inherently address, and may indeed obscure, underlying power imbalances or the inadequate access to legal remedies faced by marginalised groups and individuals. Disparities in legal representation can result in uneven

[111] Chris Geidner, 'Cert. Denied, Stays Denied, Marriage Equality Advanced: How the Supreme Court Used Nonprecedential Orders to Diminish the Drama of the Marriage Equality Decision' (2015) 76 Ohio State Law Journal Furthermore 161.

[112] Chris Schmidt, 'Some Thoughts on a "Silent" Supreme Court' (*SCOTUSnow*, 28 October 2014) <https://blogs.kentlaw.iit.edu/iscotus/thoughts-on-a-silent-supreme-court/> accessed 25 March 2025.

[113] *Brown v Board of Education* 347 US 483 (1954).

[114] ibid.

articulation within reasoned judgments, with less-resourced litigants frequently unable to advocate as effectively as their more advantaged counterparts.[115] Consequently, the reasoning provided may fail to capture fully or address the issues pertinent to less-resourced litigants, thereby perpetuating existing inequities in the legal system.

In closing, while the practice of providing reasons for judicial decisions is often seen as a hallmark of transparency and fairness, it does not necessarily guarantee that litigants can effectively shape their legal trajectory, assert their interests, or fully engage with the judicial process. A reasoned judgment does not automatically enhance an individual's ability to influence outcomes, participate meaningfully, or experience a fair and balanced process.

IV. Conclusion

The central aim of this article has been to demonstrate that the considerations against reasoned judgments extend well beyond issues of judicial economy. While the merits of reasoned judgments—such as enhancing transparency, ensuring judicial accountability, fostering a dynamic precedential and legal system, bolstering public trust, legitimising democratic governance, and safeguarding litigant autonomy—are well-founded, the case against reasoned judgments involves deeper, more nuanced critiques.

One illustrative example of the potentially self-defeating nature of universal reason-giving is the phenomenon of verbal overshadowing. This cognitive effect introduces the possibility that the verbal articulation of reasons may inadvertently distort the judicial decision-making process. It may be particularly salient in witness credibility assessments, where some of the underlying elements are challenging to convey accurately through verbal expressions. Future research should examine and identify additional areas of judicial decision-making that may be similarly affected.

Another example concerns hard cases at risk of creating bad law. The pressure to provide reasoned judgments in such scenarios may lead to the formulation of precedents that are misaligned with broader legal principles and interests. To mitigate this risk, it may be advisable for courts to decouple the resolution of individual 'hard' cases from the formulation of general legal doctrines. This approach is exemplified by the Supreme Court's handling of *Bush v Gore*.[116] A formal mechanism that allows courts systematically to forego reasoning in cases where there is a potential conflict between the adjudication of the immediate matter and the articulation of general legal principles could ensure that the specific complexities of individual cases do not unduly influence the creation of general rules intended to guide future cases.

A third instance where judicial reason-giving may be self-defeating relates to cases where the court's silence speaks louder than its articulation of reasons and contributes in a more profound manner to the democratic deliberation process. Judicial silence can serve as a catalyst for proactive legislative initiatives and bolster the effectiveness of democratic processes by keeping them adaptable and responsive. It can also prompt public debate and engagement. Such strategic use of silence was evident in the Supreme Court's handling of same-sex marriage cases during its 2014 term, where minimally reasoned or silent decisions were intended to allow legislative and public dialogue to evolve organically without being prematurely curtailed.

[115] Assy (n 61).
[116] *Bush* (n 95).

This analysis does not advocate for a return to Aristotelian intuition-based adjudication, an approach rooted in *phronesis* (practical wisdom), where judges rely on experience and contextual judgment rather than rigidly adhering to formal legal rules. Instead, it highlights the imperative to balance the benefits of judicial reasoning with critical awareness of inherent limitations. The article aspires to establish a more nuanced approach to judicial decision-making, one that fosters rigorous debate on the appropriate scope and application of reasoned judgments. It invites further discourse on the appropriate boundaries of the institution of judicial reason-giving. By advocating for a discerning and balanced approach, it aims to refine the use of reasoned judgments, ensuring their effectiveness while mitigating potential drawbacks.