

# A Note on the Process of Introspection

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I begin by commenting on the failure of current strategies to help us understand the “actual” decision-making process in law. Then I use the work of Bernard Lonergan (1904-1984) and Philip McShane, two Canadian philosophers, to present a plausible method of introspection.

Will we ever be able to investigate the process of discovery in law? How can we investigate the “actual” legal decision-making process? Many legal theorists who study legal reasoning accept that there is a clear distinction between the process whereby legal decisions are actually reached and the process whereby they are publicly justified. Discovery is one thing, but the legal justification of an outcome is another matter. These theorists even claim that legal theorists need not bother examining the discovery process; their proper subject matter is legal justification. Joxe Bengoetxea (1993, 118-119) even doubts whether the discovery process can be studied.

Contemporary legal theorists, while claiming that it would be worthwhile to study the “actual” decision-making process, state that it is an activity that is very difficult to study. In his book called *The Judicial Application of Law*, Jerzy Wroblewski states that the psychology material is less accessible than written case reports. It is difficult to obtain data because discussions among judges about cases are confidential. Further, he believes that the method of investigation is restricted to introspection, meaning the self-analysis of the decision-maker. In fact it is generally accepted that investigations of the process of discovery, the process whereby legal decisions are “actually” reached, should be left to psychologists. However, the results of cognitive psychologists have not been encouraging. The psychologists themselves admit their work is more descriptive than it is explanatory.<sup>1</sup> Wroblewski captures the current situation in the legal context when he writes that “The psychology of decision-making is relatively

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<sup>1</sup> For a more detailed discussion of recent research by cognitive psychologists on decision-making see Anderson, B. 1996. “Discovery” in *Legal Decision-Making*. Dordrecht: Kluwer Academic Publishers, p. 52-59.

the least developed field of research concerning judicial decision-making, there is little available except for some reconstruction and some general psychology combined with discussion of the case material; there is nothing amounting to a special form of empirical research” (Wroblewski 1992, 14-16).

Despite these obstacles, legal theorists have investigated the discovery process using various methods. Let us briefly examine these methods and results. The American Legal Realists, particularly Jerome Frank (1949), relied on Judge Hutcheson’s written report of how he reaches decisions. Judge Hutcheson (1929, 274-288) wrote about how he broods about a case, has a hunch, and then searches for the legal rules and principles that would support his hunch. Jerome Frank and John Dewey (1927, 27) portrayed the judging process as a problem-solving procedure and identified five elements in that process: (1) puzzling and brooding over a case, (2) experiencing a tentative hunch of what would be the just solution to the case, (3) checking and testing that hunch against previous cases, rules of law, and imagined future cases, (4) reaching a solution or decision to the case, and (5) expressing that solution in the accepted way. Max Radin (also a legal realist) uses an imaginary judge, Judge Zurishaddi, to portray the judicial decision-making process as backward reasoning. His point is that judges work “... backward from a desirable conclusion to one or another of a stock of logical premises...” (Radin 1925, 359).

Contemporary legal theorists have also studied legal decision-making. Steven Burton (1992, 69) analyses adjudication from the point of view of a judge. He states that he is providing an ideal version of what judges are trying to do, not necessarily what, in fact, they do. As part of this project Burton describes how reason are weighed and judgements are reached. Duncan Kennedy (1986, 518-562) also wants to describe judging from the perspective of a judge. He places himself in the role of a judge in an imaginary case. He portrays judicial decision-making as an effort to bridge a gap between a particular rule or principle of law and the outcome he desires (the justice of the situation). “Judge” Kennedy begins his decision-process by experiencing an initial perception that the law is unfair to one party and so he must develop the best possible arguments for and against his intuition. He notes that his decision is constrained by law insofar as he wants to back up his decision with arguments that do not violate the law; he wants to avoid jeopardising his power or legitimacy as a judge; and he wants to avoid having his decision reversed by an appeal court. Neil MacCormick (1978) uses an analogy between science and law to illustrate the nature of discovery in law. Judicial insights are analogous to the famous insight experienced by Archimedes in the baths (when he discovered the connection between the volume of water displaced and mass) that resulted in him running naked through the streets of Syracuse. MacCormick recognised that insights or sudden flashes of illumination (what the realists called hunches) were a crucial part of the “actual” decision-making process. Because these flashes of insight were the outcome of unconscious, arbitrary, and irrational factors MacCormick claimed they must be subject to a process of legal justification before they are accepted.

In summary, the methods used to study decision-making have been self-reports, the creation of imaginary cases, imaginary judges and idealized cases, and drawing analogies between science and law. Although legal theorists have identified important aspects of the “actual” decision-making process, these

elements do not amount to much more than names: puzzling and brooding, hunches/insights, weighing reasons,<sup>2</sup> testing hunches, reaching judgements, expression. We do not know precisely how they operate or how they are related. For example, we do not even know whether insights are, in fact, irrational and arbitrary. We do not know the relation between insight and value judgement or how we weigh reasons. These aspects of legal decision-making have not been subject to a systematic analysis. In fact, we do not even have an effective method to study the “actual” decision-making process. Although Wroblewski’s words can be seen as overstating the problems involved in investigating the discovery process our knowledge of decision-making is rudimentary and our methods of investigation are crude.

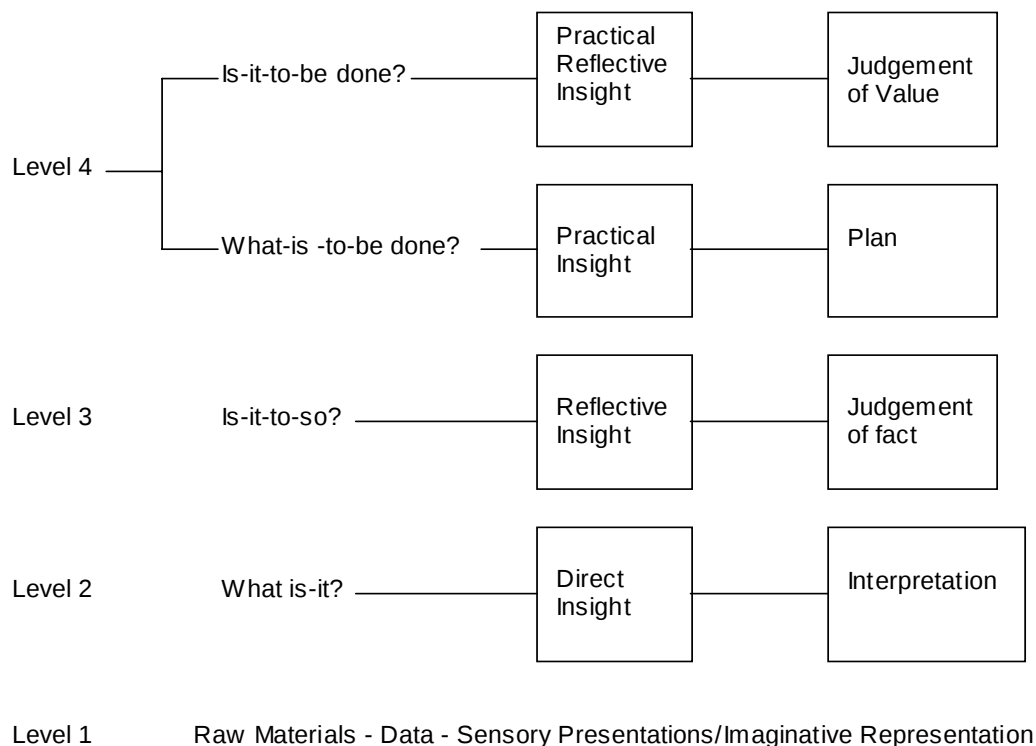
Is there a way forward? In my opinion, the work of two methodologists, Bernard Lonergan (1971, 1990, 1992) and Philip McShane (1975, 1980) on insight, offers us a line of solution to our methodological problems. But as we will soon discover adopting Lonergan’s method presents its own challenges.

For Lonergan, insight plays an essential role in all areas of human knowledge-mathematics, science, humanities, practical affairs. Hence it is worthwhile to begin an explanation of Lonergan’s and McShane’s method and findings by going to the heart of the decision process and then discussing their work. I begin by simply naming the thirteen elements they identify in the decision-making process: (1) sense experience, imaginings, memories, (2) What-questions, (3) direct insights, (4) definitions, explanations, interpretations, (5) Is-questions, (6) reflective insights, (7) judgments of fact, (8) What-is-to-be-done-questions, (9) practical insights, (10) plans, (11) Is-it-to-be-done-questions, (12) practical reflective insights, and (13) judgements of value.

The relations between these thirteen elements can be captured by the following diagram:

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<sup>2</sup> Readers familiar with Burton’s book will know that he does more than simply name elements in the judging process such as “weighing reasons” and “judgment.” However, in “*Discovery in Legal Decision-Making*” I argued that his analysis of these elements is weak in that he does not provide us with much more than the names of various elements in the judging process.



This structure<sup>3</sup> has thirteen elements in total. Notice that we ask four types of questions, achieve four types of insights, and make two types of judgments. But do we notice, and can we identify, any of these elements in our own efforts to reach decisions? Most people are aware that they see and hear and remember. We even talk about people being very observant, having an eye for detail, or a good ear, and judges who are sensitive to body language and tone of voice. We also differentiate between stupidity and intelligence. We can all name children who have driven us crazy by asking us questions and we have met lawyers who ask just the right questions and who “catch on” to things before their client has even finished their story. But noticing that we ask questions and have insights and identifying them as such does not occur spontaneously and is not at all obvious to us.

We talk about some judges being better than others. Lawyers talk about judgements that are fair and reasonable and others that are unreasonable and inappropriate. In various situations we notice that we are struggling “to know just what is going on’. Nobody wants to have the wool pulled over their eyes. But how many of us are aware that we ask a special type of question, an Is-question, before we judge the truth or falsity of a matter? How many can identify the moment when a judgement of fact is posited?

<sup>3</sup> This diagram is adapted from the diagram in McShane, P. 1975. *Wealth of Self and Wealth of Nations*. Exposition Press: New York, p. 15.

We also speak of people who rarely do the right thing and of trouble-shooters – people who know exactly what to do in particular situations – and in the extreme we call such people wise. But how many of us notice and can identify the particular type of question we ask and the judgment of value we make in order to judge that one plan of action is better or more worthwhile than another? Of course, lawyers and judges do not have to notice and identify the thirteen elements in order to do their jobs. The performance of the thirteen elements is spontaneous.<sup>4</sup>

By contrast, an analysis of these thirteen elements does not happen spontaneously. Even noticing and identifying the operation of the thirteen elements does not occur spontaneously. We notice and identify these activities by attending to them, by trying to identify them when we are engaged in efforts to understand, judge, decide. McShane captures the stance we must take when he writes that we must “detect detecting”. In other words, the first step is that we must detect the cognitional elements we use when we are answering questions and solving problems. The point that I cannot over-stress is that each person must deliberately notice, identify, and distinguish between their own questions, insights, judgments. We must consciously advert, and become familiar with, our questioning, our experience of direct insights, our reflective insights, our judgements, our decisions. These data will be revealed by our efforts to attend to them and asking questions about them and by doing puzzles and exercises. These activities occur in minds, not on paper.

But noticing and naming elements is not the same as understanding them. You may be able to identify your direct insights and reflective insights, but probably you cannot define or explain what they are. You have simply selected the data for your investigation. The second step, then, is to understand the nature of each element (or activity) that we have identified and named, and to understand the relations among all the elements. You must discover a definition or explanation of activities such as direct insight and reflective insight. You must also discover, for example, how reflective insight is related to sensible presentations, direct insight, and judgment of fact. To state it another way, you must ask questions such as What is a direct insight? What is a reflective insight? How is reflective insight related to sensible presentations, direct insight, and judgment of fact? Even though Lonergan and McShane both provide explanations of each of the elements identified<sup>5</sup> it is still necessary for each inquirer to engage in the type of investigation discussed above in order to move beyond simply naming elements and memorizing their properties.

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<sup>4</sup> Lonergan writes that the operation of the thirteen elements is spontaneous. We wonder about what we see and hear. Questions may lead to insights and further questions. And more questions may lead to a reflective insight and judgment and so on until, perhaps, a decision is reached. We ask questions, understand, judge, and decide spontaneously in the sense that the completion of one activity calls forth the next in the relational structure. We do not have to know the relational structure in order to understand, judge, and decide. We do not have to be experts in cognitional theory to perform as lawyers, judges, or jury members. Problems can be successfully solved without analyzing how, precisely, they are solved. However, we might do a better job if we knew how we reached value judgments and made decisions.

<sup>5</sup> For an analysis of these activities in the legal context see. Anderson, B “Discovery” in *Legal Decision-Making*.

Let us briefly consider direct insight. The question “What is it?” calls for direct insight. In Lonergan’s words, “The insight is the click, the grasp, the discovery, what is added to one’s knowledge when one sees the “must” in the “data” (Lonergan, 1940, 41). For example, a judge’s insight into events discovers how events “must be” linked together. But the must, the link, the connection, the relation(s) that is grasped or discovered is not concerned with truth. Rather, it is an explanation or interpretation that, as yet, is not even formulated and is not known to be true or false. Direct insight discovers relations immanent in data. Although insight depends on sensible presentations, it does not change or add anything to the presentations themselves. A judge’s direct insight into arguments and testimony does not alter what the judge has heard. Discovering the links among particular events that took place does not change the events.

Achieving direct insight is a conscious and deliberate activity. We consciously and deliberately ask questions in order to have direct insights. We even invent strategies such as court room procedures and rules of evidence to help us discover what, in fact, took place. Ultimately, direct insight is a creative activity; it is the source of new beginnings, yet it is a normal activity in all areas of legal inquiry. Witnesses grasp the pattern in events. Lawyers listen to their clients and by experiencing direct insights understand their clients’ points of views. Judges reach their interpretations of cases after listening to lawyers’ arguments and witnesses’ testimony and achieving direct insights.

It will be helpful to briefly consider how reflective insight is related to other elements. Lonergan (1992, 296-340) defines reflective insight as the activity that, in a single moment, discovers the relations among (1) a prospective judgment, (2) the conditions for its assertion and their link with the prospective judgment, and (3) whether or not the conditions are satisfied. To state it in simpler terms, reflective insight discovers or grasps the sufficiency of the evidence for a prospective judgment. But reflective insight is not an independent activity. It occurs in the context of other mental activities. A reflective insight is an answer to an *Is*-question such as “Is it so?” “Is it true?” And reflective insights lead to a judgement of fact. A reflective insight is correct if it is invulnerable and it is invulnerable if there are no further relevant questions. Reflective insight, then, depends on a particular type of questions, *Is-questions*. Reflective insight draws on previous activities and complements and completes them. Sensible presentations and imaginary representations provide the raw materials for direct insight, which in turn provides reflective insight with its content. But reflective insight also relies on sensible presentations when assessing whether or not the conditions for a prospective judgment of fact are fulfilled. There is a further contextual aspect of reflective insight. It depends on previous judgments insofar as present reflective insights build on, conflict with, or complement previous judgments.

A judge would have a reflective insight in the process of reaching a verdict. The judge must grasp the sufficiency of the evidence for a prospective judgment. The invulnerability of the reflective insight depends on the lawyers, and ultimately the judge, asking all the relevant questions and finding satisfactory answers. In fact, rules of evidence help them distinguish between relevant and irrelevant questions. Judges draw on what they have seen and heard (the

evidence) to determine whether or not the conditions for a prospective judgment of fact are fulfilled. And direct insight into the events provides reflective insight with its content, for example an interpretation of the situation. The reflective insight achieved would also be part of a larger context insofar as it complements or conflicts with the judge's previous knowledge of related situations.

The reader unfamiliar with Lonergan's and McShane's writing probably will not immediately understand the brief explanations of direct insight and the contextual nature of reflective insight above. This fact stresses the need for the reader to actively search for an understanding of the thirteen elements, a search that will be conscious and deliberate and initiated by asking questions such as "What is a direct insight?" and "How is reflective insight related to other mental activities?" A suitable place to begin the challenge of "detecting detecting" is to do the puzzles and exercises that McShane provides in his book *Wealth of Self and Wealth of Nations*. For example, he uses square roots and Pythagorus' Theorem to help people discover how they solve problems. However, the aim of this paper is not to provide a detailed explanation of decision-making. Rather, my aim is limited to offering a plausible method of introspection.

Presuming that you have completed Step One (identifying and naming the thirteen elements used when solving problems) and Step Two (understanding the operation of the thirteen elements and the relational structure), Step Three is to assess and to judge the truth or falsity, correctness or incorrectness of your understanding of the relational structure comprising your decision-making process. You might ask "Is my understanding of the way these operations occur correct or incorrect?" You might ask questions such as "Is my understanding of direct insight correct?" "Is it complete?" "Is my understanding of the relations between reflective insight and the other elements correct?" and so on. You might also ask "Do these operations occur in the manner in which I understand Lonergan and McShane say they do?" In short, you must discover the criteria for your judgment whether or not such a decision-making process exists and you must also discover the relevant evidence for your judgment. Notice that your inquiry is conscious and deliberate. The answer, of course, is a judgment of fact such as "Yes, I understand my thirteen elements correctly" or "No, I do not yet fully understand the relational structure" or "Yes, Lonergan's explanation is correct.."

Our grasp of what, in fact, is the particular situation can lead to further questions and answers concerning what we can and should do in light of the situation as we understand it. "Knowing" leads to "doing." According to Lonergan, "...the same intelligent and rational consciousness grounds the doing as well as the knowing; and from that identity of consciousness there springs inevitably an exigence for self-consistency in knowing and doing" (Lonergan 1992, 622). Sometimes a contradiction between what we know about a situation and what we do about it emerges. On such occasions we might suppress the inconsistency between knowing and doing and maintain the pretense of self-consistency by concentrating on performing so-called "worthwhile" activities, by rationalizing our actions (i.e. revising what we know), and by admitting our failure to do the right thing and not doing anything about it (Lonergan 1992, 581-582, 621-624, 650-653). In light of the need for consistency between what we know and what we do the relevant question in the current context is "What

sort of action does your knowledge of your decision-making process demand?” “How are you to meet the need for self-consistency between what you know about decision-making and the decisions you make?”

Step Four, then, involves deciding whether or not to operate fully in accord with the mental activities you experience and in accord with your understanding of these activities and your understanding of the relational structure which you have judged to be correct. You must decide whether or not to use your knowledge of your relational structure. Although this is not the place to consider this step in detail a few indications of the relevance of this step in law are appropriate. You might ask “What difference would an understanding of these thirteen elements make?” In the legal context, this step would include taking a stand on judges who blindly apply precedents rather than reach for accurate assessments of situations and the most suitable courses of action. It would also include taking a stand on the view that sees legal justification primarily in terms of acceptable modes of expression rather than as a judge’s performance of her mental activities at her best.<sup>6</sup> Legal decision-making would be seen fundamentally as a creative process in which judges must grasp the conditions for their judgments and must grasp whether or not the conditions for their judgments are satisfied. Judging would be understood and carried out as an open problem-solving activity rather than as an activity circumscribed by rules.

Let’s pause briefly to take our bearings. I began by naming five aspects – puzzling and brooding, achieving a hunch/insight, checking and testing hunches, reaching a judgment, and expressing the judgment – of the decision-making process identified by legal theorists. Next I named the thirteen elements that, according to Lonergan and McShane, make up the decision-making process. They discuss elements that the legal theorists do not notice. Four different types of questions (What is it? Is it so? What can I do? Is this plan suitable or more suitable than any other plan?) are specified, whereas the legal theorists notice only brooding and puzzling. Four types of insight (direct insight, reflective insight, practical insight, practical reflective insight) are identified and distinguished, whereas legal theorists simply give a name to an aspect of judging called hunches/insights. Two types of judgment (judgment of fact and judgment of value) are identified and explained, whereas the legal theorists simply recognize judgment as an aspect of the judging process. Also, Lonergan and McShane provide the reader with a plausible method (identify and name the thirteen elements, understand them and their operation, judge whether your understanding of them is correct, act in accord with your correct understanding of the thirteen elements), to discover the relational structure of the decision-making process.

I mentioned above that the decision-making process is a conscious and deliberate procedure. Lonergan says that such mental activities are conscious in two ways. The first way is that decision-making is conscious in that the thirteen elements are not performed by a person in a dreamless sleep or coma. Seeing, asking questions, achieving insights, making judgments is being conscious. The

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<sup>6</sup> Whether or not a decision is justified would depend on an assessment and evaluation by individual readers of whether the decision is intelligent and reasonable in the circumstances, not on whether some abstract legal criteria have been satisfied.

thirteen elements, then are intrinsically conscious. They occur consciously and by them we are conscious. Lonergan even distinguishes between modes of being conscious in terms of four levels of consciousness. First, we are empirically conscious when we sense, perceive, imagine, remember, speak, move. Secondly, we are intellectually conscious when we inquire, come to understand, express what we have understood, and work out the presuppositions and implications of our expression. Thirdly, we are rationally conscious when we reflect, marshal the evidence, pass judgment on the truth or falsity, certainty or probability of a statement. Fourthly, we are responsibly conscious when we are "...concerned with ourselves, our own operations, our goals, and so deliberate about possible courses of action, evaluate them, decide, and carry out our decisions" (Lonergan 1971, 9). These four ways of being conscious suggest increasing levels of personal responsibility: for instance, we are accountable for our actions, but not for our memories.

The second way we are conscious is that we may not devote our full attention to the particular problem. We may also be aware that we are puzzled and haven't got a clue about the solution to some problem. We may also notice that we solved the problem when the solution "jumped" into our head. This is heightened consciousness. So, not only do we spontaneously solve problems, we can also attend to, be aware of, or be conscious of ourselves asking and answering questions, solving problems, and reaching decisions. We can even identify and name elements in our decision-making process. Lonergan and McShane named thirteen of them. Such noticing of our efforts to solve problems and reach decisions is not another mental activity or process over and above the operations (the thirteen elements) we normally perform. Rather, this "noticing," this "being conscious" of the operations of our relational structure is a particular focusing of these activities on ourselves as a performer. Lonergan captures this type of "being conscious" when he summarizes the four steps in the process of introspection. Introspective analysis entails "(1) experiencing one's experiencing, understanding, judging, and deciding; (2) understanding the unity and relations of one's experienced experiencing, understanding, judging, and deciding; (3) affirming the reality of one's experienced and understood experiencing, understanding, judging, and deciding; and (4) deciding to operate in accord with the norms immanent in the spontaneous relatedness of one's experienced, understood, affirmed experiencing, understanding, judging, and deciding" (Lonergan, 1971, 14-15). The process of introspection is a very complex self-attentive methodology.

This conscious activity, however, is not spontaneous. The inquirer must deliberately set out to study the process of decision-making. The legal theorists' methods were deliberate strategies employed to understand the decision-making process, but the most they were able to do was to name aspects of the judging process. A method of inquiry is required. You must deliberately identify and distinguish mental activities. You must deliberately pay attention to acts of experiencing, understanding, judging, deciding. You must deliberately ask "What is a direct insight?" "What is a judgment of fact?" You must deliberately try to understand the unity and relations among the activities comprising the decision-making process and ask questions such as "How is reflective insight related to sensible presentations, direct insight, and judgment of fact?" You must

deliberately ask “Is my explanation of a direct insight correct?” “Is my definition of a judgment of fact complete?” You must deliberately search for the criteria for your judgments. You must also ask “Will I attempt to act in accord with my understanding of my relational structure?” These questions and their answers do not arise spontaneously. A method is required to guide our inquiry once it leaves subject matter and contexts with which you are familiar. The process or method of introspection names such a method. Introspection is not a looking, but a heightening, a shift in consciousness.

I have not been inviting the reader to engage in some sort of special look in at the problem-solving process or to engage in some sort of inward inspection. I have not created judges or cases to study decision-making. I have not described mental activity that is above or beyond the mental activities we experienced, noticed, named. Rather, this method of introspection (the way we investigated decision-making) is the same method we would use to investigate any unknown that we want to correctly understand. We select the data – we notice, identify, and name thirteen elements. We ask *What-questions* about the data – “What exactly is a direct insight?” “What precisely is a reflective insight?” “What is a judgment of value?” We devise methods to find answers to questions and we discover answers by achieving direct insights. We ask *Is-questions* and test our answers until we are satisfied we have asked and answered all the relevant questions. Our data is the decision-making process itself and our method is to apply our problem-solving process to the problem of understanding our decision-making process. We use the thirteen elements comprising our relational structure to understand legal decision-making. In this way, we “detect detecting.” The process of introspection is one of enlarge interest, identification, naming, questioning, discovery, discernment, comparison, distinction, testing.

How can this method of introspection be applied to legal decision-making? I have been inviting the reader to notice, identify, name their thirteen elements, to understand the elements themselves and their relations to each other, to judge whether their understanding is correct, and to decide whether or not to operate in light of their understanding of the relational structure. It is worth stressing that our focus has been on our mental operations, not on expression. But we are faced with a problem when we want to investigate the decision-making process of another person in the legal context. It is impossible for you or me to experience what another individual witness, lawyer, judge, jury member, or arbitrator saw and heard, the questions they asked, the insights they achieved, the judgments they made, the decisions they reached. We are not able to climb into someone’s mind. Hence when investigating the decision-making process of another person we must initially focus on expression. We can recognize by spoken and written words the mental activities that the other person experienced and, by our own efforts, reproduce these mental activities in order to answer the same question or solve the same problem the lawyer, judge, or arbitrator posed. Here expression is the raw material for the analysis. The link between expression and the thirteen elements is that different types of expression correspond to, and depend on, particular mental activities. Further, we can attend to the decision-making procedure that we follow in order to answer the same question or solve

the same problem as another person in order to understand, assess, and evaluate the decision-making process of the other person.<sup>7</sup>

There are, then, three key concerns: (1) understanding the other's expression, that is grasping the problem and the line of solution taken by the decision-maker and reproducing that problem-solving procedure, (2) identifying, understanding and evaluating the operation of the thirteen elements in the reproduced decision-making process, and (3) inventing potential lines of solution and comparing and contrasting them with the reproduced decision-making procedures in order to evaluate the other person's decision process. This method provides a plausible way to study legal decision-making.

The key to this method of inquiry is self-discovery. The investigator must correctly understand the relational structure of the thirteen elements. The transition from expression to understanding the operation of another person's thirteen elements cannot be made unless the investigator understands their own relational structure. In written legal opinions, for example, we can detect explanations of the discoveries of various mental activities. Interpretations of situations and definitions of legal terms are often explicitly provided by judges. Judgments of fact are presented as verdicts. In so-called hard cases, alternative courses of action (plans) may be presented and the pros and cons of each option identified and evaluated. That a judgment of value was made might be evident when the judge writes that one option is more appropriate than another. Some judges may even write the legal issue in the form of a question. By taking the expression of a judgment of fact and reproducing it ourselves plus the corresponding Is-question and the elements of the reflective insight that preceded it we would be reaching toward an understanding of the judgment of fact reached by an judge. Not only is expression an invitation for the legal theorist to understand, assess, and evaluate legal problems and their solutions, but by introspective analysis expression can also be seen as an invitation to understand and evaluate the decision-making process of others in the legal context.

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<sup>7</sup> For a discussion of the decision process of an arbitrator see Anderson, B. *"Discovery" in Legal Decision-Making*, Chapter Four. In that analysis I did not observe the arbitrator actually solving the problem. I did not imagine how he solved the problem. Rather, I reproduced the data of inquiry – the particular situation and the search for, and discovery of, a solution. I reproduced the problem in my own consciousness and attended to the successes and failures of my own efforts to search for a solution. In this way, I was able to study the arbitrator's efforts to discover a legal solution.

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