recognise
Legal Reasoning
& Cognitive Science

Materials from Recognise Video-Lectures

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Legal Reasoning
& Cognitive Science
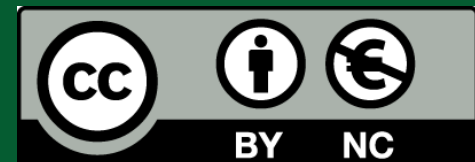
Emotion and Criminal Law

Part I

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What is emotion?

Different disciplines, different approaches

Different terminology: emotion vs. feeling, sentiment, affect, mood, passion, temperament, affective state…

What usually defines emotion?
- reaction to an important stimulus,
- cognitive appraisal,
- action tendency,
- physiological changes,
- subjective experience – feeling.

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What are moral emotions?

Emotions generally

Evoked by events that directly affect one's self

- hate, anger, fear...

- sadness, jealousy

- love, happiness

- excitement

Moral emotions

Linked to interests of other people or society as a whole

Promote prosocial behaviour

- contempt, righteous anger, disgust,

- shame, embarrassment, guilt,

- compassion,

- gratitude, elevation.

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Emotion and general decision making
Human cognition according to Kahneman

System 1

- quick,
- intuitive,
- effortless,
- draws from emotion

Processes most of our every-day decisions

Examples:

- deciding what to have for lunch
- calculating 3 x 5

System 2

- slow,
- analytical,
- determined,
- effortful

Processes only a small share of our every-day decisions.

Examples:

- navigating your way in a new city
- calculating 1.772 x 368

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Dilemmas on emotion and legal decision making

- How do, and how should, emotions integrate into legal decision making?

- What is the relation between emotion and the so-called rational reasoning?

- Does emotion inevitably obscure rationality in legal reasoning?

- Are there some (types of) emotions that are more desirable than the others?

- Is the instigator of the emotion relevant (defendant, victim, criminal offence itself...)?

- How do different emotions influence different decisions in a criminal trial (e.g. guilt vs. sentencing decision)?

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How emotion influences legal decision making

1) Influencing individual's **strategies for processing information**:
   - e.g., anger, disgust, and happiness → higher certainty of a decision maker

2) **Mood-congruency effect**:
   - people in positive mood → positive evaluations of ambiguous information
   - people in negative mood → negative evaluations of ambiguous information

3) Providing **informational cues**:
   - e.g. juror using her anger as an informational cue on defendant's blameworthiness

Research on emotion in criminal law decision making
The example of anger

- Anger in decision makers increases their punitiveness towards the defendant

- Angry mock jurors attributed more criminal intent to the defendant compared to neutral and sad ones

- In a capital crime case, the angrier the jurors were, the more likely it was for them to decide for a death sentence

However:

- experimental scenarios vs. real cases?

- lay decision makers vs. professional jurists?

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The influence of emotion on professional legal decision makers

Very little research on legal professionals (judges, prosecutors, attorneys, law enforcement officers)

Legal reasoning is very specific: complex set of substantive and procedural legal rules, legal principles, and rules of interpretation

Jurists trained and professionally socialised in applying legal reasoning

Methodologically the influence of emotion in real-life judicial decisions difficult to evaluate

Conclusions from available data:

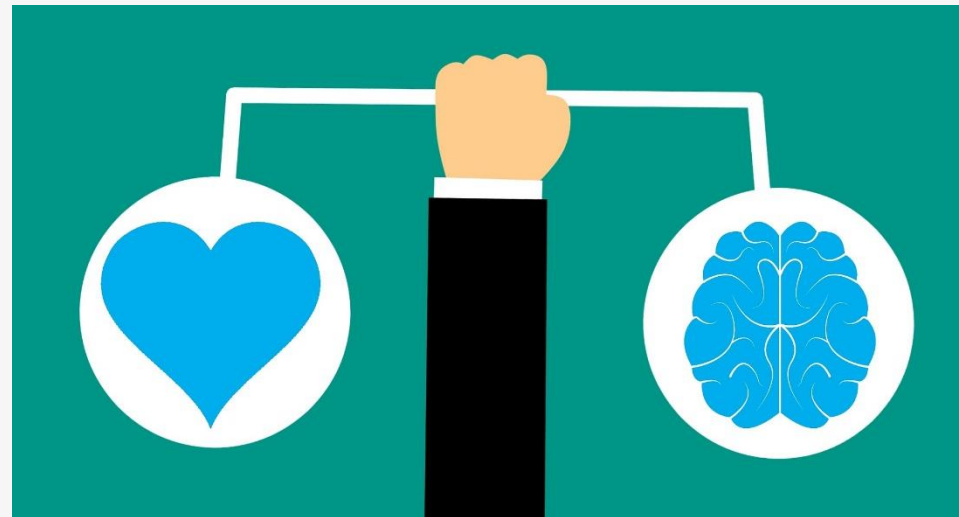• emotion influences decisions of different criminal law professionals differently

Empathy

Affective empathy

- a person is in a similar emotional state as another person as a result of perceiving her situation

Cognitive empathy

- a person understands another person's (emotional) state

- a person uses cognitive perspective taking

Empathy in legal decision-making

Pro

- Enable judges to understand other people's conduct → valuable source of information

- Useful in discovering a conclusion & justifying this decision

Contra

- Empathic imagination has no normative significance in judging

- Threat to impartiality and objectivity

- Danger of „selective empathy"

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