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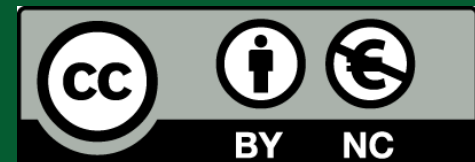


recognise
Legal Reasoning
& Cognitive Science

Materials from Recognise Video-Lectures

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Emotion and Criminal Law

Part II

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Emotions as normative elements of the criminal law rules

Section Sub-header

Emotions as normative elements of the criminal law rules

*„In the event the perpetrator has acted beyond the limits of justifiable self-defence, he or she may receive a more lenient sentence; when he or she acts due to **severe irritation** or **great fear** caused by attack, his or her punishment may be remitted“*

(Criminal Code of the Republic of Slovenia, Article 22/3)



Substantive criminal law

Rules on culpability and excuses:

- insanity/diminished capacity due to extreme emotional excitation

Emotions as distinctive elements between (modes of) criminal offences:

- e.g. murder vs. (voluntary) manslaughter

Emotions as (implicit) presuppositions of criminal offences:

- e.g. hate crimes, revenge pornography...

Emotions incited in the victim as constitutive elements of offences:

- e.g. fear in threat, extortion, stalking...

Emotion in sentencing

Emotions in perpetrator as motives for offence:

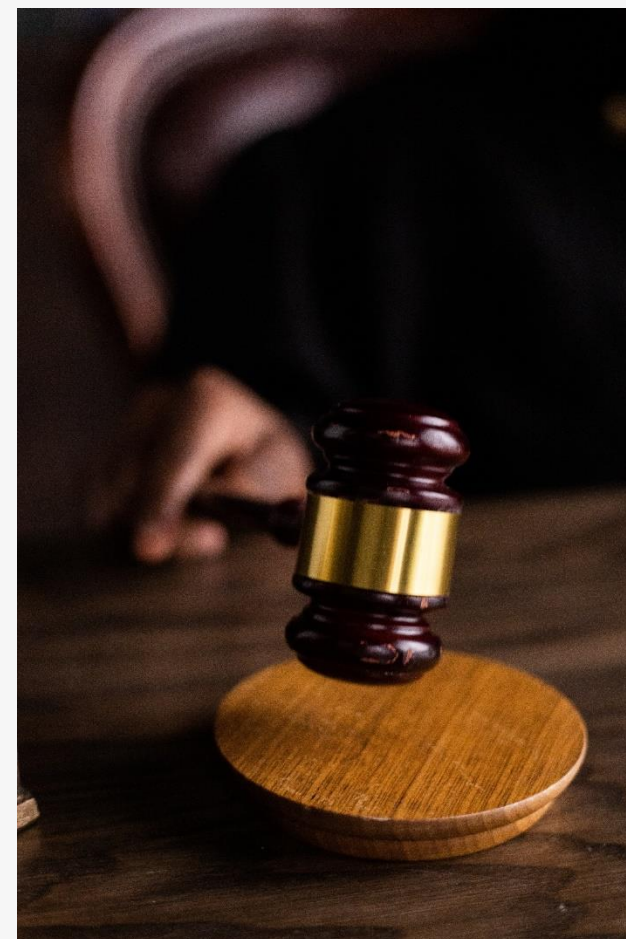
- aggravating factors (e.g. vengeance, jealousy, envy, hatred)
- mitigating factors (e.g. compassion, pity, love, provoked rage)

(The lack of) expected emotions in perpetrator after the committed offence:

- remorse, shame, regret, guilt

Emotions in victims as aggravating factors:

- fear, anxiety, other emotional distress
- victim impact statements



Emotion and procedural criminal law

Procedural regulations preventing emotional harm (secondary victimisation):

- protective measures for vulnerable victims, witnesses
- collision with defendant's fair trial rights

Invalidity of procedural acts motivated by emotions, e.g.:

- defendant's false admission of guilt out of fear,
- witness's perjury motivated by revenge

Emotions underlying oaths and affirmation

Emotions and other criminal law mechanisms

Restorative justice mechanisms:

- emotional discharging

Acts of clemency:

- reflecting public sentiments (e.g. sympathy, compassion, pity towards the convicted person)

Emotion from the socio- legal perspective

Emotion management in court

Influencing other court participants:

- e.g. judge uses warm, calm, and compassionate voice to address a nervous witness

Regulating jurist's own emotions:

- e.g. judge exhibits dispassion to convey the appearance of neutrality, impartiality, and procedural fairness
- a judge regulates her own emotion to avoid bias in decision making

Danger of instrumental use of emotion for illegitimate goals



Conclusion