



Co-funded by the
Erasmus+ Programme
of the European Union

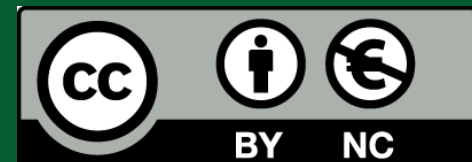


recognise
Legal Reasoning
& Cognitive Science

Materials from Recognise Video-Lectures

These materials were realized within the frame of the project Recognise-Legal Reasoning and Cognitive Science, co-funded by the Erasmus+ Programme of the European Union under the number 2020-1-IT02-KA203-079834.

The European Commission's support for the production of these materials does not constitute an endorsement of the contents, which reflect the views only of the authors, and the Commission cannot be held responsible for any use which may be made of the information contained therein.



Can Disgust Predict Legal Decisions?

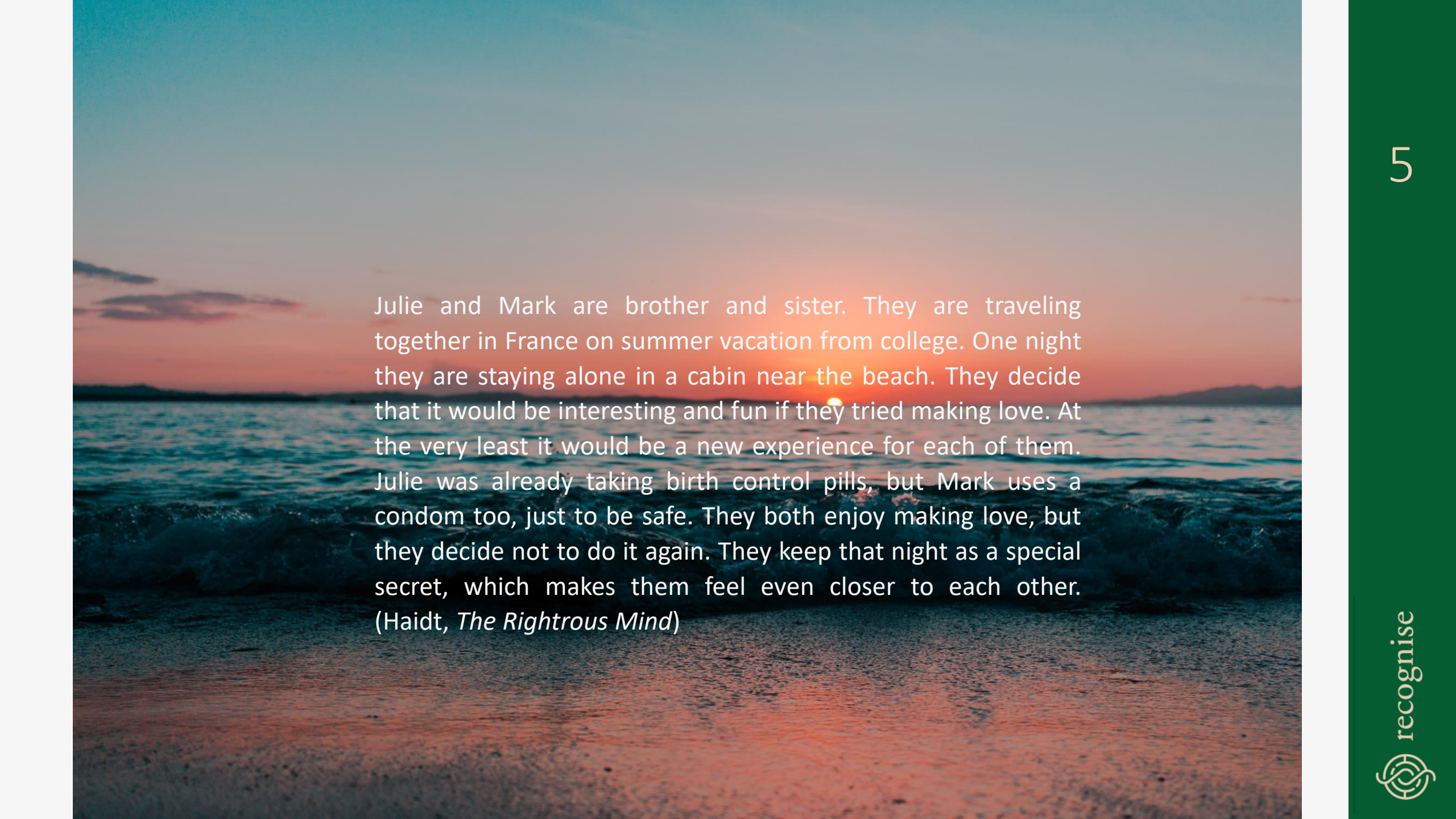
Research on ex post rationalisation in legal-decision making

Michele Ubertone and Giuseppe Rocché

General structure

- This talk deals with an experimental protocol that we have developed and informally tested during the RECOGNISE intensive study programmes.
- The experiment concerns legal reasoning and is inspired by Jonathan Haidt's famous experiments on moral judgement.
- The first part of the talk is about Haidt's experiment on moral judgement, while the second part describes our experimental proposal on legal reasoning.

The background: Haidt's experiments on moral judgment

A photograph of a sunset over a beach. The sun is low on the horizon, casting a warm orange glow across the sky and reflecting on the water. The waves are breaking on the shore, creating white foam. The sky transitions from a deep orange near the horizon to a pale blue at the top. The beach in the foreground is wet and reflects the colors of the sunset.

Julie and Mark are brother and sister. They are traveling together in France on summer vacation from college. One night they are staying alone in a cabin near the beach. They decide that it would be interesting and fun if they tried making love. At the very least it would be a new experience for each of them. Julie was already taking birth control pills, but Mark uses a condom too, just to be safe. They both enjoy making love, but they decide not to do it again. They keep that night as a special secret, which makes them feel even closer to each other. (Haidt, *The Righteous Mind*)

Haidt's experiments: harmless taboo violations

- Experiments carried out in the 90s and during the first decade of the XXI century
- Haidt sought to understand whether moral condemnation is triggered by the infliction of harm.
- Mark and July's story is an example of what we will call "harmless but disturbing behaviour", or "harmless taboo violation". A story that is carefully designed to shock, but in which it is difficult to find harm and victims.



A woman is cleaning out her closet, and she finds her old American flag. She doesn't want the flag anymore, so she cuts it up into pieces and uses the rags to clean her bathroom.

A scientific researcher, Jennifer, is vegetarian for moral reasons. One day she finds a human body donated to the lab where she works which will be incinerated. Jennifer thinks that the incineration would result in a waste of edible meat, so she cuts a slice of meat, goes home, cooks carefully the meat and eats it.

Haidt, The Righteous Mind



The questions and two patterns of answers

Haidt asks the interviewees

- (i) how they judge the conduct,
- (ii) what reasons they give for their judgment,
- (iii) whether they see a harm and therefore a victim.

Two interesting groups.

- The group of people who said that the disturbing conducts were not harmful but were still immoral.
- The group who said that the conducts were immoral because they were harmful.

“There’s More to Morality than Harm and Fairness”

- **First group of answers:** The conduct is wrong even if it is not harmful.
- Haidt concludes that cultural differences and - above all - social differences have a significant impact on the tendency to conceive of disturbing but non-harmful conducts as moral violations.

Haidt’s six moral foundations

- 1) The care/harm foundation
- 2) The fairness foundation
- 3) The liberty/oppression foundation
- 4) The loyalty/betrayal foundation
- 5) The authority/subversion foundation
- 6) Sanctity/degradation foundation (related to disgust)

Moral dumbfounding

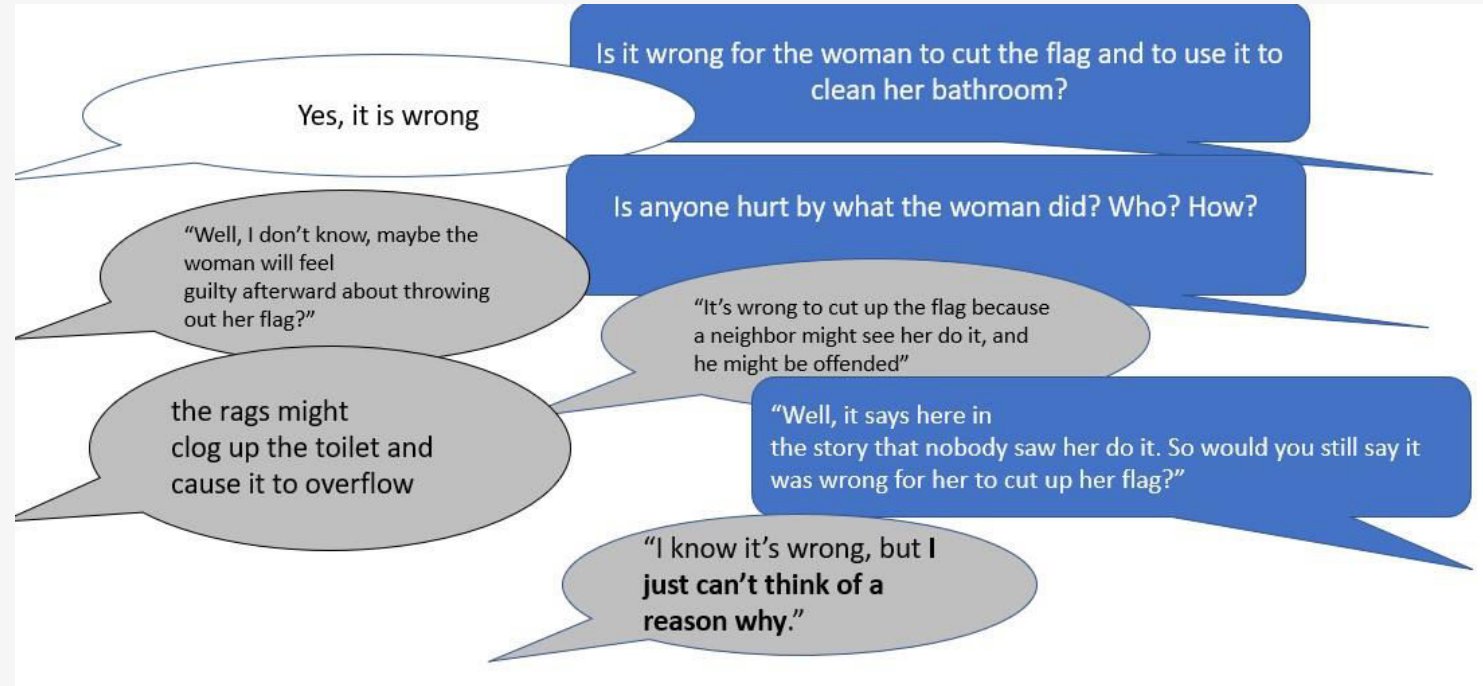
- **Second group of answers:** The conduct is wrong because it is harmful .
- Haidt's idea is that these respondents are "inventing victims."

Moral dumbfounding

Evidence that respondents invent victims is that, when corrected, they

- (i) accept the objections to their justifications,
- (ii) but do not change their original judgement,
- (iii) and remain speechless - dumbfounded.

Haidt refers to this as "moral dumbfounding".



Intuitionism and ex post rationalisation

12

Rationalist model

Eliciting situation → Reasoning → Judgement

Intuitionist model

Eliciting situation → Intuition → Judgement → Reasoning

Haidt's conclusion

Most of the time moral judgment is intuitive and not deductive, and that it does not depend causally on the reasons by which we justify it.

Bibliographical references

- Haidt J., 2001. *The Emotional Dog and Its Rational Tail: A Social Intuitionist Approach to Moral Judgment*
- Haidt J., 2012. *The Righteous Mind*
- Haidt J., Bjorklund F., 2008. *Social Intuitionists Answer Six Questions about Moral Psychology*
- Haidt J., Graham J., 2007. *When Morality Opposes Justice*
- Haidt J., Hershey M.A. 2001. *Sexual Morality*
- Haidt J., Koller S.H., Dias M.G, 1993. *Affect, Culture and Morality, or Is It Wrong to Eat Your Dog?*