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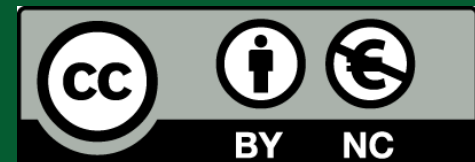


recognise  
Legal Reasoning  
& Cognitive Science

# 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.

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# Can Disgust Predict Legal Decisions?

Research on ex post rationalisation in legal-decision making

Michele Ubertone and Giuseppe Rocché

# Our Experiment

## *Rationalist model*

Eliciting situation → Reasoning → Judgement  
(*the case*)                      (*law-based*)    (*violation or not*)

## *Intuitionist model*

Eliciting situation → Intuition → Judgement → Reasoning  
(*the case*)                      (*e.g., disgust*)                      (*violation or not*)                      (*law-based*)



Can Jonathan Haidt's theory be applied to law?



Legal reasoning =  
exclusionary reasons?

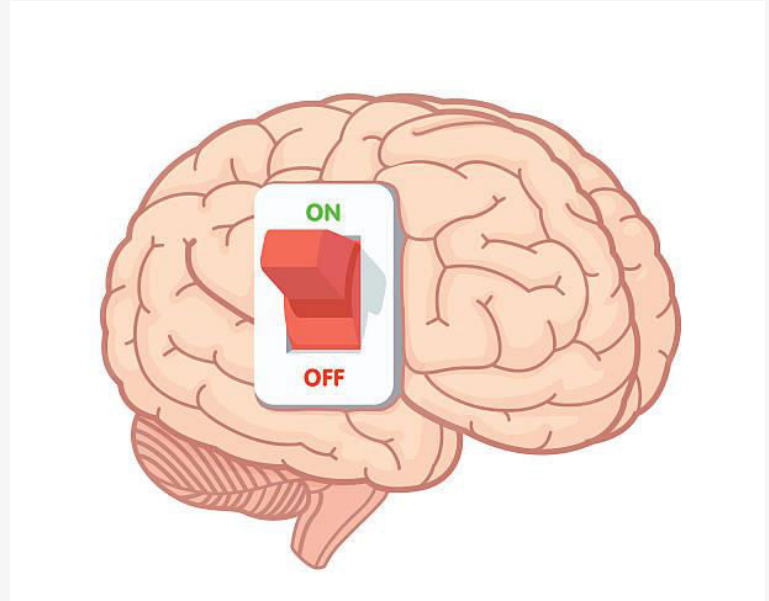
Accepting the **authority  
of the law** means  
accepting to act based  
on reasons that *exclude*  
the possibility to take  
other legally irrelevant  
(but otherwise relevant)  
reasons into account.

...but are we *able* to do that?



Can we blind ourselves and disregard *morally relevant* but *legally irrelevant* factors in this way when we take legal decisions?

Can we really *switch on our legal brain* and *switch off our moral brain* at will, as the legal tradition seems to suggest?





# Is legal reasoning affected by the phenomena Haidt describes?

## OPTION 1



If **yes**, this would have groundbreaking effects on our conception of law. It would mean that the **principle of legality** in a way requires the **impossible!**

## OPTION 2



If **not**, this would also be of great interest.

It may suggest that moral judgements and legalistic applications of rules may be two **distinct psychological natural kinds**.

Option 2 would allow for an experimental jurisprudence approach to the age-old debate about the connection between law and morals.

This would be the result of a *modus tollens syllogism*.

*Major premise:* If legal reasoning is a type of moral reasoning, then it occurs *ex post facto* (Haidt's scheme).

*Minor premise:* Legal reasoning does not occur *ex post facto*.

*Conclusion:* Legal reasoning is not a type of moral reasoning.

# Our general hypothesis about legal judgments

Legal judgements are intuitive and do not necessarily depend causally on the reasons with which we justify them in good faith.

Eliciting situation → Intuition → Judgement → Reasoning

The reasons we provide can actually be **ex post rationalisations**.

# Our specific hypotheses about disgust

1. *Causal effect of disgust on legal judgement.* Disgusting but legally irrelevant characteristics of a person or their behaviour may make decision-makers more inclined to attribute legal responsibility to that person or for that behaviour.
2. *Legal dumbfounding.* If the judgement is based on disgust, subjects will want to justify it on grounds other than disgust. If these are unavailable, they will either remain speechless or invent harmful or unlawful effects of the behaviour even if they are not present in the case.

# The twin case methodology

We asked two groups of subjects to solve legal cases.



- The cases presented to the **experimental group** described conducts containing legally irrelevant details that we had introduced for the sole purpose of arousing disgust in the subjects.



- The cases presented to the **control group** were identical in all legally relevant aspects but lacked these disgusting details.

# The twin case methodology



We expect subjects who show sensitivity to disgust in Haidt's moral cases (*second part of the questionnaire*) to also be more prone than the others to condemn in legal cases (*first part of the questionnaire*).

# The open question methodology



All subjects were then asked, in a second questionnaire, to indicate the legal reasons for their verdict.

# Control group

Robert looks after his old, blind and disabled mother. The son resents his mother because he believes she should bequeath more to him and less to his sister Anna. Out of rage, he decides to feed her seafood, for an extended period of time, passing them off as pasta in broth. The mother has always found seafood disgusting, but now she does not notice anything and does not suffer any negative health consequences. When Anna hears about this, she sues her brother on her mother's behalf for damages. Should Robert be condemned to pay compensation?



# Experimental group

Robert looks after his old, blind and disabled mother. The son resents his mother because he believes she should bequeath more to him and less to his sister Anna. Out of rage, he decides to feed her *flour worms and various insects*, for an extended period of time, passing them off as pasta in broth. The mother does not notice anything and does not suffer any negative health consequences. When Anna hears about this, she sues her brother on her mother's behalf for damages. Should Robert be condemned to pay compensation?

# Problems

- How can you tell that «disgusting cases» are actually disgusting?

We are testing the materials used for the experiment presenting them to a different group who must be asked to rate the cases based on how much they are disgusted by them (*third party disgust rating*).

# Problems

- Why do you think it is so obvious that the fact that the behaviour is disgusting is legally irrelevant?

If it weren't, open responses should explain us why not. If our second hypothesis is confirmed, though, subjects should not mention disgust as a reason for their decision.

# Problems

- Are legal cases *really alike* in all *other* relevant respects?

This is an assumption of our twin-case methodology. We intend to test this assumption by having the legal equivalence of cases assessed by **third parties** who 1) have low sensitivity to the moral foundation of sanctity and degradation, 2) are legal experts (*third party legal assessment*).

# Problems

- How do you diagnose *legal dumfounding*?

There are two main ways:

- 1) subjects in the experimental group leave the **open questions blank** more often than subjects in the control group;
- 2) subjects in the control group mention **details that are not present** in the case.

# Perspectives for future research

- Does disgust lead to a different reconstruction of *questions of law or of questions of fact* or both?
- Does *disgust* affect judgement even when it is *not caused by the person or behaviour being judged*? (e.g. respondents sit at a dirty table, the case is set in a disgusting scenario, etc.)
- Does *expertise* have an effect in legal reasoning on how much a person is affected by disgust?

# Thank you for your attention

- Giuseppe Rocchè [giuseppe.rocche@unipa.it](mailto:giuseppe.rocche@unipa.it)
- Michele Ubertone [michele.ubertone@maastrichtuniversity.nl](mailto:michele.ubertone@maastrichtuniversity.nl)