INTUITION: GOOD, BAD, AND UGLY
INTUITION IN LEGAL DECISION MAKING

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Intuition – what is it?

- Direct **perception** without rational thought
- Immediate **knowledge or belief**
- Sympathetic or empathetic **understanding** of others
- “**Gut feelings**” without evidence
- Ethical or moral **certainty**
- “**Fast thought**” (“System 1” thinking)
Processes of intuitive thinking: from information retrieval to integration of ideas

• “Associative” (learning through reinforcement and emotional activation – “feels good”)
• “Matching” (familiarity and comparison with prototypes and schemas – “seems familiar”)
• “Accumulative” (evidence assembled and evaluated holistically and quickly – “checks out”)
• “Constructive or creative” (mental representation of relevant problem and solution emerges – “right fit”)
The good – recognition and expertise

• Speed
• Little cognitive effort
• Feeling of certainty
• Accurate in some situations

“Intuition” as an effect of expertise
Intuition as recognition - 1
Intuition as recognition - 2
Intuition as recognition - 3
Requirements for intuitive expertise

“Complex domain – relevant schemas” for intuitive use comprising substantive and procedural knowledge

Development and acquisition of such schemas requires “deliberate, motivated, and repetitive practice over the long-term in simulated and field settings with expert feedback”
The bad – quick wrong answers

For some problems the results of “System 1” (fast, intuitive) thinking processes require correction through reflection, deliberation, and “System 2” (slow, logical, analytical) processes of thought.

“System 1” thinking is spontaneous, effortless, and the default process, while “System 2” entails deliberate mental work.
CRT quiz question 1 (30 seconds)

A TV and a DVD together cost $110.

The TV costs $100 more than the DVD.

How much does the DVD cost?
CRT quiz question 2 (30 seconds)

If it takes 5 hens 5 days to lay 5 eggs,

how long would it take 100 hens to lay 100 eggs?
A computer virus is spreading through the system of a computer. Every minute the number of infected files doubles.

If it takes 48 minutes for the virus to infect all of the system, how long would it take for the virus to infect half of the system?
## Cognitive reflection test (CRT) scores (3.0 = all correct)

<table>
<thead>
<tr>
<th>Group</th>
<th>Average CRT score</th>
</tr>
</thead>
<tbody>
<tr>
<td>MIT students</td>
<td>2.18</td>
</tr>
<tr>
<td>Dutch trial Judges</td>
<td>1.91</td>
</tr>
<tr>
<td>Military judges (US)</td>
<td>1.64</td>
</tr>
<tr>
<td>Canadian trial judges</td>
<td>1.64</td>
</tr>
<tr>
<td>Boston fireworks audience</td>
<td>1.53</td>
</tr>
<tr>
<td>Carnegie Mellon students</td>
<td>1.51</td>
</tr>
<tr>
<td>Harvard students</td>
<td>1.43</td>
</tr>
<tr>
<td>Administrative law judges (US)</td>
<td>1.33</td>
</tr>
<tr>
<td>Web study participants</td>
<td>1.10</td>
</tr>
<tr>
<td>US State appellate judges</td>
<td>0.95</td>
</tr>
</tbody>
</table>
Disadvantages of intuition

• Prone to biases, faulty heuristics, and emotional associations
• Unexplainable
• Extensive experience may be required
• Inaccurate in some situations

“Intuition” as an effect of bigotry or prejudice
The ugly – bias and prejudice in intuition

- **Stereotypes** and “base rate” blindness
- Testing learned experience with **logic**
- Culturally shaped **moral and social intuition**
In a study 100 people were tested. Among the participants there were 5 people who voted for a left-wing environmentalist party and 95 who voted for a right-wing nationalist party.

Lucia is a randomly selected participant of the study. She is 67 years old, believes in traditional values, and lives in a high crime area.

What is most likely?
A. She votes left-wing.  B. She votes right-wing.
Assessing the evidence - 2

In a study 100 people were tested. Among the participants there were 95 Muslims and 5 Buddhists.

Sara is a randomly selected participant of the study. She is 19 years old, likes to philosophize, and hates materialism. Sara wears secondhand clothes and would like to go to India one day.

What is most likely?
A. Sara is a Buddhist.  B. Sara is a Muslim.
Overcoming assumptions - 1

Assume the first statement is true.

Is the final statement a logical conclusion?

All flowers need water.
Roses need water.
Therefore, roses are flowers.
Overcoming assumptions - 2

Assume the first statement is true.

Is the final statement a logical conclusion?

All mammals can walk.
Whales are mammals.
Therefore, whales can walk.
Before his nomination, Warren G. Harding declared, "America's present need is not heroics, but healing; not nostrums, but normalcy; not revolution, but restoration; not agitation, but adjustment; not surgery, but serenity; ..."

A Democratic leader, William Gibbs McAdoo, called Harding's speeches "an army of pompous phrases moving across the landscape in search of an idea."
A Republican contender in 2016?

Abraham Lincoln
(Republican Party)

16th President of the United States
Culture and intuition

Social intuition: “the rapid and automatic evaluation of another person’s cognitive or affective state through the perception and nonconscious processing of verbal or nonverbal indicators”

Moral intuition: “the automatic, rapid, affect [emotion]-based judgment made in response to an ethical dilemma, arrived at nonconsciously, rationalized post hoc, and relatively impervious to disconfirmation”
Intuition in legal decision making

- Requirement of reasons
- Formalist conception of judging
- Realist critique of judging
- Reasoning or justification?
- Decision making as choice of reasons in adversarial proceedings
- Decision making as original thinking in inquisitorial proceedings
- Disadvantage of self represented parties
References and further reading


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Questions and comments