

The Influence of Social Media on Judging

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Structure

- The normative judicial disposition,
- The judicial decision-making process
- Some psychological concepts
- What could go wrong with the judicial use of social media?
- What stance should judges take regarding social media

1. THE JUDICIAL DISPOSITION

- The task of a judge is, in any particular case, to do the right thing for the right reason in the right way at the right time and in the right words.
- The root expectation is that judges will be and will be seen to be impartial, objective, and independent.

Amartya Sen's idea of "open impartiality"

- Smith invoked the reflective device of the impartial spectator to go beyond reasoning that may – perhaps imperceptibly – be constrained by local conventions of thought, and to examine deliberately, as a procedure, what the accepted conventions would look like from the perspective of a "spectator" at a distance. Smith's justification of such a procedure of open impartiality is spelt out thus:

Amartya Sen's idea of "open impartiality"

- We can survey our own sentiments and motives, we can never form any judgment concerning them; unless we remove ourselves, as it were, from our own natural station, and endeavour to view them as at a certain distance from us. But we can do this in no other way than by endeavouring to review them with the eyes of other people, or as other people are likely to view them.

2. The Process of Deliberation

Bernard Lonergan

- Experiencing
- Understanding
- Reflecting
- Deciding

3. THE PSYCHOLOGY OF JUDGING

- System 1
- System 2

System 1

System 2

- **Intuition**

- Instinctive
- Inferential
- Unconscious
- Automatic
- Gullible and biased to believe
- Fast
- Emotional
- Inarticulate

- **Reasoning**

- Deliberative
- Argumentative
- Conscious
- Controlled
- Capable of doubting and disbelieving
- Slow, lazy
- Conceptual
- Loquacious

Biases

- The Framing Effect
- The Affect Bias: The Effect of Emotions
- The Confirmation Bias

The Rule of Law

- **The rule of law evolved in order to constrain the exercise of discretionary power by decision-makers like judges and tribunal members, in view of their basic human weaknesses and the lure of power.**
- **The rule manifests in a set of institutional features including the adversarial system, the rules of evidence, procedural codes, the legal context of disputes, and the obligation of judges and tribunals to give adequate reasons.**
- **We would be foolish to diminish, disrespect or abandon the restraining function of the rule of law, which is attuned to the psychology of decision-makers and rooted in human nature.**

The Beauty of Argument

- Lukianoff and Haidt
- Thinking is social. As lone individuals, each of us is not terribly smart, for we are all prone to cognitive distortions and the confirmation bias, but if you put people into the right sorts of groups and networks, where ideas can be shared, criticized, and improved, something better and truer can emerge.

4. WHY WORRY ABOUT SOCIAL MEDIA?

Social Media and Morality: Losing Our Self Control,
Lisa S. Nelson

- “Whether in the form of images or misrepresentations or the vilest of what our imagination might otherwise resist, social networking technologies deliver us a reality to which we react.”
- “social networking technologies interweave subjects and objects in the interpretation or constitution of reality and, in doing so, mediate human perceptions” of the real.

Sean Parker, the first president of Facebook

- The thought process that went into building these applications, Facebook being the first of them...was all about: “How do we consume as much of your time and conscious attention as possible?”...and that means that we need to sort of give you a little dopamine hit every once in a while, because someone liked or commented on a photo or a post or whatever. And that's going to get you to contribute more content, and that's going to get you...more likes and comments...it's a social – validation feedback loop...exactly the kind of thing that a hacker like myself would come up with, because you're exploiting a vulnerability in human psychology.

Professor Zeynep Tufekci

- Personality traits such as “openness” or “introversion” or “neuroticism” are traditionally measured by surveys, which have been developed and validated by psychologists and used on a large number of people for decades. [Researchers have demonstrated] that models based on Facebook likes were as good as scientific scales. In other words, without asking a single question, researchers were able to model psychological traits as accurately as a psychologist administering a standardized, validated instrument.

The big five personality traits

- openness,
- conscientiousness,
- extroversion,
- agreeableness, and
- neuroticism

5. WHAT STANCE SHOULD JUDGES TAKE REGARDING SOCIAL MEDIA?

- Some desiderata:
- Be reflective
- Be (reasonably) transparent
- Be pluralistic and heterodox
- Consider cultivating habits that adapt the traditional cardinal virtues to your participation in social media

Closing