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When Does a Defendant's Impulsivity Exculpate vs. Incriminate?

by Clayton R. Critcher, Ph. D. and
Yoel Inbar, Ph. D.

Don't miss our trial consultant responses at the end of this article: Susan Macpherson, Holly G. VanLeuven, and read the author's response here.

WHEN DETERMINING HOW MUCH BLAME someone deserves, jurors will care not only about what someone did, but how he or she went about it. The same action can lead to very different conclusions about blame and responsibility depending on what jurors infer about (among other things) the actor's beliefs, intentions, and state of mind (see Young & Tosi, 2013, for a review). The importance of these factors is formally encoded into legal and penal systems as well—for example, involuntary manslaughter is a less egregious offense than first-degree murder (Hart & Honore, 1959). More generally, the law's requirement of *mens rea* reflects a sense that the key to a wrongdoer's culpability lies not merely in the outcomes he or she is responsible for, but in the wrongdoer's corrupt mind.

In thinking about how jurors are likely to use information about defendants' states of mind in assessing their culpability, one may consider the case of *impulsivity*. For example, upon

learning that John killed a man in a bar fight, we would likely see him as violent and dangerous. But we might temper that assessment if we learned that he acted impulsively in response to a provocation. Here, jurors are likely to blame John less, because they believe that in his true heart of hearts, he likely did not *really* want to kill anyone (Pizarro, Uhlmann, & Salovey, 2003). John's impulses "got the better of him," leading him to do something that did not reflect the true John. And because jurors are swayed by their impressions of a defendant's underlying character ("Is John actually a good or a bad guy?"), John's impulsivity may persuade jurors that they should not rely on his bad actions in deciding whether (or to what degree) John is a bad person.

However, impulsivity does not always have this effect. Together with psychologist David Pizarro, we studied cases in which we expected that a wrongdoer's impulsivity would actually intensify, not lessen, moral condemnation. In particular, we considered circumstances in which transgressors behaved impulsively not because they were emotional, but instead because they were rash, deciding on a course of action extremely quickly. Consider Kara, who happened upon a cash-stuffed wallet in the parking

lot of her local grocery store. Kara ultimately keeps the wallet instead of turning it in. Would you judge Kara more harshly if you knew that it took her hours to decide what to do with the wallet, or if you knew that she made her decision immediately? Even though in the latter case Kara's is seen as more impulsive, research participants to whom we put this scenario were more likely to condemn impulsive Kara. It seems that even though emotional impulsivity may be seen to interfere with someone acting out his or her "true" intentions, speed-based impulsivity instead signals the unequivocal corruptness of one's moral character. That is, slow Kara may have ultimately done the wrong thing, but her decision speed indicates that she has good inside of her as well; there was no sign that quick, impulsive Kara even had moral qualms about her dishonesty.

In what follows, we summarize empirical evidence that supports our conception of impulsivity as both a mitigator and exacerbator of blame. We then describe four implications of our findings for legal contexts.

The Empirical Evidence

In brief, we are proposing that people treat emotionally impulsive decisions very differently from merely quick decisions—emotional impulsivity obscures one's true desires; rash actions reveal them. If this is true, then people should see emotionally impulsive actions as partly reflective of the situation one is in (for example, punching someone in anger might be due to provocation in addition to a surly disposition), whereas quick or rash acts should be seen as purer signals of a person's true character. Our first study tested this idea.

Study 1: What do impulsive acts reflect? We gave 246 participants 17 short descriptions that indicated a behavior was either emotionally impulsive (e.g., "had trouble controlling impulses") or quick (e.g., "made mind up without using careful reasoning"). We wanted to know whether different types of impulsive acts (emotion- or speed-based) were seen to provide relatively more information about a person's moral character versus the situation that person was in. Toward this end, participants indicated for each description whether the impulsivity described would imply that the behavior "is very strongly revealing of the kind of person s/he is" or is "definitely the result of the situation and does not reveal anything about the type of person s/he is." Participants made these ratings from 1 (situation) to 7 (person). As we predicted, when a behavior was described as quick, it was seen as statistically significantly more reflective of the person's character (*Mean* = 4.97) than when the behavior was described as emotionally impulsive (*Mean* = 4.58). In other words, even without specific information about the context, people assume that quick actions are more revealing of a person's moral character than are emotionally impulsive ones.

Study 2: Does emotionality exculpate, and quickness incriminate? Although Study 1's participants stated in the abstract that quick actions provide a stronger signal of character

than emotionally impulsive ones, a second study directly tested how impulsivity of each type influenced moral evaluations of a specific transgression. We asked 410 participants to consider Kathy, who learned from her husband that a friend of his had had an affair, which was over and which he now regretted. Kathy promised her husband not to tell anyone, since revealing the affair now would accomplish nothing other than hurting Anna, the adulterer's wife. Some participants learned that Kathy immediately called Anna and told her of her husband's affair (*quick decision*). Other participants learned that Kathy deliberated for a day about what to do; only much later did she call Anna to tell her of her husband's affair (*slow decision*). In two other conditions, participants were told that Anna made a snide remark to Kathy, which was said to either anger Kathy (*emotional*) or not anger Kathy (*non-emotional*). In both cases, Kathy then told Anna about her husband's affair.

Participants evaluated Kathy by indicating whether they would end a friendship with someone like Kathy, whether she was a good person, whether she should be morally blamed, and whether she did not deserve forgiveness. In general, participants thought Kathy was in the wrong, but they varied in how strongly they condemned her. The nature of Kathy's impulsivity determined whether it was a blame mitigator or exacerbator. Quick Kathy was seen as much morally worse than slow Kathy, but emotional Kathy was seen as somewhat morally better than non-emotional Kathy. That is, Kathy's quick actions were seen as especially revealing of her flawed character, but her emotionality signaled that her actions were a distorted sign of her underlying character.

Study 3: Do impulsivity's divergent effects extend to the real world? Of course, the story of Kathy is one (fictional) vignette, so skepticism is appropriate in considering whether quickness and emotionality tend to relate to blame exacerbation and blame reduction more generally. In a third study, we asked 215 participants to think of a time that a transgressor's impulsivity affected how much the person was blamed. Some participants were asked to think of a time the impulsivity led to less blame, whereas others were to recall a time the impulsivity led to more blame. We then had participants answer questions about their memories that would indicate that the impulsivity was speed-based (e.g., "The person was rash in considering how to proceed") or emotional ("The person was highly emotional"). Recalled episodes characterized by quickness were more likely to be associated with blame exacerbation, whereas recollections characterized by emotionality were more likely to be characterized by blame mitigation. Thus, the opposing influences of each type of impulsivity on blame seem to be a general phenomenon.

Study 4: Why does decision quickness amplify moral evaluations? Although previous research has explored why emotional impulsivity is blame-mitigating (Pizarro et al., 2003), we conducted a final study to more precisely understand why quickness influences moral evaluations. By our account, quick decisions reflect a certainty in one's moral (or perhaps,

immoral) conscience. Slow decisions reflect greater ambivalence, signaling a moral character that is filled with elements that push one both toward good and toward bad. Note that by this reasoning, it is not that all quick morally-relevant decisions are bad. Instead, quick moral (i.e., praiseworthy) decisions should receive especially glowing moral evaluations. After all, the quickness of the good decision should indicate the person did not even feel tempted to sin.

We told 553 participants about Pamela, a maid who struggled to earn enough money to provide for her two young children. Mr. Muir, the man for whom Pamela worked, took a suspiciously strong interest in one of Pamela's children. He approached Pamela with an unusual proposition: He would triple her salary if she permitted him to adopt her child, meaning the child would no longer be Pamela's legally and would instead live with Muir. We varied whether Pamela was said to have accepted or rejected Muir's offer, as well as whether it took her 3 seconds (*quick decision*) or 3 days (*slow decision*) to do so. Participants completed several measures, the last of which was a *moral evaluation* that asked whether Pamela was a person of good moral principles and standards.

Consistent with our earlier findings, Pamela was evaluated more harshly when she immediately accepted Muir's offer than when she accepted it after much thought. But also, Pamela was evaluated more positively when she immediately rejected the suggestion that she, in effect, sell her child, than when she turned down the request only after much thought. Additional analyses showed that Pamela's quickness was taken to reflect that she was highly certain and not-at-all conflicted about her choice. A Pamela that took 3 days to make her decision was seen as a mix of good and bad—a woman motivated to protect her child and to make money any way possible—whereas a Pamela who decided in 3 seconds was seen as possessing only pure or only corrupt motives. And when participants assessed her character, it was these inferred motives they were responding to: Crucially, her decision process revealed something about her that her behavior alone did not (Cricher, Inbar, & Pizarro, 2013).

Implications for Legal Contexts

Our research highlights that a wrongdoer's impulsivity is likely to have different, but predictable, effects on juries' willingness to ascribe blame. Although it has long been appreciated that emotion-based impulsivity can serve as a blame-mitigator, our findings show that speed-based impulsivity can amplify moral judgments. In our final section, we consider four implications of our findings and framework that should be considered when speaking about impulsivity in the courtroom.

Disambiguate ambiguous impulsivity. In the research presented here, we took pains to make sure that our experimental materials clearly identified impulsivity as being emotion-based or speed-based. But in actual situations, especially those that are reconstructed in the courtroom, there is likely to be ambiguity

about whether impulsive actions were characterized by reason-corrupting emotionality or by dispassionate quickness. Did the defendant decide to throw a brick through the plaintiff's car window "without hesitation" (speed-based) or "while in a fit of rage" (emotion-based)? Keeping in mind that not all impulsivity is created equal, one would do well—through one's questioning of witnesses and one's own presentation of the facts—to push for a characterization of impulsive actions in one way or the other.

Recognize that planfulness need not be a cue to responsibility. Our findings qualify Roberts et al.'s (1987) conclusion that the degree of planfulness in committing a crime leads to harsher criminal judgments, because planfulness is a cue to responsibility (Roberts & Golding, 1991). We instead find that wrongdoers who spend considerable time deliberating about their infractions, and thus could be characterized as more planful, are judged *less* harshly than those who pursue wrong more quickly. We think one resolution of this apparent contradiction is it matters whether there is uncertainty about whether a wrongdoer's actions reflect his own moral compass as opposed to the pressures of the situation. That is, if it is unclear whether Vivian's decision to maim her cheating husband stemmed from jealous rage or calculated malice, knowing that she injured her husband only after much planning and deliberation signals that her actions were reflective of her guilty disposition and not the corrupting situation. Given emotionality is seen as only a temporary corruptor (i.e., our tempers cool with time), added planning makes emotional impulsivity an implausible defense. If instead it is unambiguous that Vivian's decision to attack her husband was based on a dispassionate consideration of her options, then Vivian's quick settling on her plan is especially revealing of her blameworthy character.

Consider disentangling decision speed from action speed. Oftentimes there is a disconnect between when someone *decides* to carry out an action and when they actually *act*. When someone acts immediately, the ambiguity is resolved—both decision speed and action speed are quick. But when a person acts slowly, it is possible that the decision itself was arrived at quickly, but that it then took considerable time to act. Herein lies a second resolution to why a wrongdoer's planfulness sometimes enhances and sometimes diminishes culpability. The longer it takes one to reach a decision, the clearer it is that the person was ambivalent in their motives, which reflects a less blameworthy character. But once the decision has been made, the longer one takes to then carry out that action, it is clearer that the person is even more confident in her choice. If Barry decides quickly to participate in an embezzlement scheme, we learn that Barry's moral soul is no good and all bad. But if Barry must spend a year planning his crime, we learn even more about the firmness of his immoral resolve, which may explain why planfulness can prompt blame. In short, the lesson is that juries are likely to be more sympathetic with defendants who took considerable time before *deciding* to misbehave, but may be less sympathetic with defendants who spent considerable

time *plotting* how to carry out the action.

Appreciate that from the clarity of the courtroom, “quick” may seem “long.” When jurors consider someone else’s decision making process, they do so from a privileged position. In thinking about a defendant’s choice to behave badly, jurors will spend hours, days, or even weeks carefully considering the defendant’s decision—the options, the relative risks, the stakes. In contrast, when the defendant was actually confronted with this decision, there was likely greater ambiguity and uncertainty about the choice before him or her. Consider a defendant who is being prosecuted under a Good Samaritan Law because she failed to act in time to save a drowning woman. The jury may see the defendant’s choice as having been simple: to throw or not to throw the victim a life preserver. As a result, any delay in the defendant’s action is seen to reflect her moral callousness, thereby justifying a harsh punishment. But in the actual situation, there may have been ambiguity about whether the situation was an emergency, uncertainty about whether

the defendant or someone else would be the one to help, or a paralyzing confusion given the unusualness of the context. If jurors do not fully appreciate these factors, they may see a defendant’s action as delayed. In reality, once the defendant understood the decision with the cool clarity that the jurors take for granted, she may have acted quite quickly.

Conclusion

Juries are likely to be influenced by knowledge that a defendant behaved impulsively, but it matters whether that impulsivity reflects emotionality or mere decision speed. Although it has long been recognized that emotionally impulsive acts receive less blame than the same acts committed dispassionately, speed-based impulsivity (i.e., rashness) exacerbates blame. By considering our four implications for legal contexts, attorneys should be well-equipped to predict how juries are likely to respond to information about a defendant’s impulsivity. ©

Clayton R. Critcher, Ph.D., is an Assistant Professor in the Haas School of Business at the University of California, Berkeley. As a social psychologist, his research examines how people make judgments and decisions in consumer, moral, legal, political, and other everyday contexts. Often wishing that he had time to start a second career in the legal world, he has been known to indulge that fantasy by carrying along a constitutional law casebook for light, vacation reading. You can learn more about his research on his [website](#).

Yoel Inbar, Ph.D., is an Assistant Professor in the Department of Social Psychology at Tilburg University, Netherlands. He studies how intuition affects our choices; how our moral beliefs determine our own actions and our judgments of others; and how the emotion of disgust can predict our moral and political attitudes. Read more [here](#).

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We asked two trial consultants to respond to this article.

Susan Macpherson is a senior trial consultant with NJP Litigation Consulting’s Midwest office (smacpherson@njp.com) She has been conducting jury research, assisting with jury selection and consulting on presentation strategies for IP, complex commercial, employment, personal injury and criminal defense cases for over 30 years (see www.njp.com.)

Susan responds:

IT IS EASY TO OVERLOOK subtle but significant factors that can influence how jurors reconstruct and judge critical events in the courtroom. The work that Critcher and

Inbar have done in drilling down on factors that can drive opposing interpretations of impulsive behavior is a good example. Whether a defendant’s impulsive act is perceived as an aberration or as revealing his/her true character can change the outcome in many cases.

One could quarrel with their labeling of impulses as “emotion based” vs. “speed based,” in that all impulsive behavior by definition shares the element of speed. The dichotomy of impulses set up in their research seems to be more aptly described as “emotional vs. dispassionate.” Labeling aside, most attorneys trying criminal cases would already recognize the need to “disambiguate ambiguous impulsivity” when intent is an element of the charge. In my experience, the effect of

ambiguity is more likely to be underestimated when impulsive conduct plays a role in a civil case. For example, in a case where the dispute centers on what was said in the documents, jurors' perceptions of the impulse to write something down, to send an email, or to delete an email can result in very different judgments about that evidence and the person connected to it. Was the document written, sent or deleted due to an angry outburst, a snap judgment or a carefully calculated decision? We often hear jurors debate whether they should give any weight to "smoking gun" documents when the attorneys focus only on the content and allow the author's or sender's state of mind to remain ambiguous.

The discussion of whether evidence of planfulness does or does not cue responsibility and harsher judgments raises another labeling question. Is "deliberating about infractions" the same thing planning wrongful conduct? If the former is intended to mean struggling with the temptation to engage in wrongdoing, that seems quite different than planning.

Their explanation of the need to distinguish decision speed from acting speed is easier to follow. We've seen that detangling decisions and actions can make the difference between a guilty and not guilty verdict in cases involving women who have acted in self-defense to escape the threat of fatal harm from a violent spouse. If jurors perceive the woman's use of force as an impulsive act fueled by fear that can easily lead to a verdict of manslaughter rather than murder, as would be predicted by Critcher's and Inbar's research. But if the goal is a verdict of not guilty by reason of self-defense, jurors need to believe her fear was based on a reasonable or (in some states) an "objective" assessment of the potential threat. Focusing jurors only on the emotion driving her impulse to use force often results in her perception of the threat of harm being viewed as distorted by fear and unreliable. Her response is then seen as an unjustified overreaction rather than a necessary use of force. Separating the description of decision speed – how she developed the ability to discern the subtle cues and signs of escalating imminent danger – from the description of her acting speed is usually an essential step on the path to an acquittal.

Addressing why she stayed in the relationship is another issue that requires separating decision speed from acting speed. The defendant may have struggled over a long period of time with the decision to leave but that needs to be clearly separated from acting to defend herself in the face of an imminent threat. The failure to make that distinction invites a perception of her intent that is more consistent with the argument usually made by the prosecution: she finally had enough and just decided to kill him to put an end to the abuse.

Interviews with jurors who have decided self-defense cases illustrate the fourth point made by the authors: her "quick" move can appear to have taken a "long" time when recounted in the courtroom. They typically report that reaching a verdict required reconciling opposing views about whether the defendant had time to escape without using force. The defense

attorney has to anticipate this problem in helping his client prepare to testify, and take it head-on in the closing to prepare jurors for deliberations.

Again, the same principle can be applied to thinking about how jurors will evaluate conduct in civil cases. For example, when jurors are asked to judge whether the defendant(s) acted with deliberate or reckless disregard, the plaintiffs often frame the action that caused harm as quick and dispassionate to show that the defendants gave no thought at all to the obvious danger and foreseeable harm. Civil defendants in such cases can often escape punitive damages by painting the opposite picture. Isolating the harmful act and encouraging jurors to focus on the long period of uncertainty or mixed signals about whether there was any potential for harm can reduce the motivation to punish.

The evidence presented by Critcher and Inbar demonstrates how quickly jurors can form conclusions about a defendant's "true character" based on a very small amount of information. This has significant implications for crafting the story told in opening and describing decisions and actions in testimony. The specific words chosen to create the visual image and the context for a single act can set up the defendant to be excused or to be blamed for the outcome. ¹⁹

Sociologist Holly VanLeuven, President of Genesis Group, has been a practicing Trial Consultant since 1972, having left an established career in conflict management and civil disorder mediation when Trial Consulting was in its infancy. Currently located in Concord NH, VanLeuven's Genesis Group offers a full range of trial consulting services; her special interest is the relative power and influence of individuals in the group decision-making process.

Holly responds:

Critcher and Inbar examine the factors determining how much blame someone is likely to get from jurors, depending upon both *what* someone did and *how* they went about it. Missing in this paper is consideration of motive, the *why* of the act, although there is attention given to timing, the *when* of the act, whether it was immediate or the result of deliberation over time. The authors posit that jurors assess the underlying character of a person by means of interpreting that person's behavior...whether the behavior was impulsive or decisive and whether the speed of the action revealed a cold heart or a deliberative mind.

For centuries our culture has weighed in on these, and related issues:

"Fools rush in where Angels fear to tread" -Alexander Pope

"Quick decisions are unsafe decisions" -Sophocles

“A prince should be slow to punish and quick to reward”
-Ovid

etc..

Our sacred documents, our myths, our nursery rhymes, books and movies deal with these issues, coming down on one side or the other and everywhere in between.

Every functional human being, regardless of age and life experiences, regardless of religious beliefs, ethnicity, gender, national origin and other demographic factors, has a value system and has devised some method of sorting out the clues they have collected about the world around them. Jurors are no exception to this process. Critcher and Inbar are attempting to make some sense of this and in some ways they succeed.

As a Trial Consultant, my concern is to be able to discern who in a jury pool is likely to interpret the story of our case, the facts in our case, in a manner most favorable to our client. Does this research help me to do that? Not exactly. The research probes some kinds of responses people might have to different behaviors but doesn't suggest what responses are likely to come from people, jurors, with various characteristics. The research does a good job of raising the issues. It flunks at providing a route to a more effective jury selection.

But what about the usefulness of this study to our Attorney clients? Again, it does a good job of raising issues but I don't think that in its present form it would be particularly useful to attorneys. I am a Sociologist and should find it fascinating. However, sadly, I didn't. At the risk of being presumptuous, my guess is that it would be less so for an Attorney

A valuable book for anyone interested in reading more on this general subject is *Thinking, Fast and Slow*, written by psychologist Daniel Kahneman, in 2011. Kahneman won the 2002 Nobel Prize in Economic Science. His signature theme is human irrationality. 📖

Critcher and Inbar reply:

Our research emphasizes that, in the minds of jurors, all impulsivity is not created equal. As Ms. Macpherson's thought-provoking commentary implies, there are many nuances to address before achieving a more complete understanding of how impulsivity influences juror decision making.

First, Macpherson raises good points on nomenclature. She is correct to highlight that speed is common to both types of impulsivity, which is why she encourages us to relabel “speed-based” impulsivity *dispassionate* impulsivity. We chose “speed-based” given that the key feature that signals the unequivocal nature of the decision is its quick, not its dispassionate, nature.

But she is right that we should stress that when impulsivity is emotional, speed does not communicate certainty (because it is the emotion, not certainty, that is responsible for the rushed action). We also agree that terminological vagueness surrounding the term *planfulness* is a reason it seems to have varying effects on blame. It matters *what* one is planning or deliberating about—*which* course of action to take or *how* to go about the chosen course.

Second, Macpherson offers an example that illustrates the importance of certain temporal dynamics in impulsive episodes. In considering the domestic violence victim who attacked her partner while afraid, we imagine a core question for jurors is the temporal sequence of the woman's perception that she is in danger and her experience of fear. If the perception *precedes* the fear, then the fear is more likely seen to be legitimate, and thus a mitigating factor. But if the fear is seen to precede and thus *bias* her perception of her situation, then jurors are likely to be less sympathetic to her. More broadly, this highlights that emotional impulsivity is likely not an unconditional blame-mitigator; perhaps only “reasonable” emotionality is. We suspect that a defendant who committed a crime of passion would receive less juror sympathy if it were exposed that he was dispositionally quick-tempered. That is, his chronically short fuse calls into question the reasonableness of his emotionality in any particular episode. We think more research is needed to understand whether a belief that “most people would be upset by this situation” is actually a necessary condition for emotional impulsivity to attenuate blame.

Third, we think that Macpherson's point that plaintiffs “often frame the action that caused harm as quick and dispassionate to show that the defendants gave no thought at all to the obvious danger and foreseeable harm” raises an interesting issue. Our studies examined cases in which the foreseeable harm was clear, so decision quickness reflected a lack of concern about it. In other words, decision quickness signaled an actor with an inappropriately clean conscience. But when the harm is less obviously foreseeable, the influence of decision quickness is less clear. That is, if the person acted without even realizing he would perpetuate harm, his actions might seem less bad. On the other hand, this person might be blamed for negligence—acting without even understanding the situation at hand. Understanding when one or the other conclusion would be drawn is another fruitful avenue for future research.

The second commentator, Ms. VanLeuven, offers quotations on the wisdom or folly of making decisions quickly or slowly. Although our article did not address this intriguing question, we too recommend Daniel Kahneman's book, which identifies the relative strengths and shortcomings of relying on intuition (quick, effortless thought that is error-prone) versus reason (slow, effortful thought that is often a better guide to accuracy). For what it's worth, we find it both useful and fascinating. 📖