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# LEGAL THEORY

11.01.2021

08:00-10:00

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## General notes:

- Please check at receipt of the exam the number of questions. The examination contains 5 questions.
- Write your answers directly into the document "Answer\_Module\_XXXXXXXXXX" and save it locally on your computer with your Student ID number.
- Write your Student ID number and your Examination serial number in the header on page 2.
- For submission/upload, save the document with your Student ID number as a PDF file according to the example and upload it. Example: Answer\_criminology\_17301002.pdf
- Take enough time for the submission (at least 5 min). Nothing can be uploaded after the examination time has expired.
- You are responsible for uploading the exam in time. You will not be made aware of this.

## Notes on marking

When marking the exam each question is weighted separately. Points are distributed to the individual questions as follows:

Question 1	10 points	10 % of total points
Question 2	30 points	30 % of total points
Question 3	20 points	20 % of total points
Question 4	20 points	20 % of total points
Question 5	20 points	20 % of total points
<b>Total</b>	<b>100 points</b>	<b>100%</b>

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We wish you a lot of success!

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**Please read the following excerpt from Pardo/Patterson's *Minds, Brains, and Law* (pp. 56-58) referring to Joshua Greene's work as discussed during the course, and answer the questions.**

The initial study and follow-up papers had explicitly descriptive aims and were cautious about normative conclusions. Nevertheless, Greene has since drawn more bold and wide-ranging normative conclusions about moral judgments based on the distinction he draws between emotional and cognitive processes. He argues that the distinction undermines deontological judgments and vindicates utilitarian judgments. Deontological judgments, he argues, are produced by the "emotional" psychological process rather than the "cognitive" process, and utilitarian judgments are produced by the cognitive process. The cognitive process is more likely to involve "genuine moral reasoning," as opposed to the "quick," "automatic," and "alarm-like" deontological judgments produced by emotional responses. This, Greene argues, undermines deontology as "a rationally coherent moral theory"; an "attempt to reach moral conclusions on the basis of moral reasoning"; "a school of normative moral thought"; and as reflecting any "dep, rationally discoverable moral truths." Rather, deontology is characterized as merely an attempt to rationalize our emotional responses, which are based on, and may have developed evolutionarily because of, nonmoral factors. By contrast, he contends that utilitarian principles "while not true, provide the best available standard for public decision making."

Legal scholars have followed Greene down this path, drawing normative implications for aspects of the law from Greene's studies. Many of the references to the Greene studies in the legal literature cite them for the (unobjectionable) proposition that emotions play some role in moral judgments. Most troubling from our perspective, however, is the inference that the studies show that the "emotional," deontological judgments are incorrect or unreliable. Consider two examples. In a recent article discussing international criminal law, Andrew Woods relies on the studies and contends that "(h)ow moral heuristic failure occurs has been shown using fMRI scans of the brain." According to Woods, when subjects "felt an emotional surge" in Footbridge, they relied on moral heuristics (for example, "Do no harm"), and when they did not feel this surge they engaged in utilitarian reasoning. Woods maintains this is relevant to international criminal law because "strong emotional intuitions may guide decision makers to outcomes that do not maximize utility." Similarly, Terrence Chorvat and Kevin McCabe contend that the studies are relevant to jury decision making at trial because juries will tend to make more "rational" decisions and "socially optimal choices when they keep the subject of the decision at a distance." Therefore, the law has an interest in "depersonalizing" jury decision making. They suggest that evidentiary rules ought to be designed with this consideration in mind.

**1 Please sum up the text. (10 %)**

**2. The text describes a theory of morality. Is this theory convincing? What is, in your view, the best analytical, descriptively adequate theory of morality? Please outline differences between your view and the theory described in the text. Is there common ground, too? (30 %)**

**3. The text describes some concrete consequences for the law that some scholars justify by the findings of neuroscience and moral psychology.**

**Are these conclusions justified? Please discuss one of the examples mentioned in the text (20 %)**

**4. Is the theory of evolution important for the understanding of ethics and law? (20 %)**

**5. Given the theories about the structure, origin and evolution of moral cognition that you know – what is, in your view, ultimately the role of moral understanding in human life and legal culture? (20 %)**