

Julia Stanek

Associate Professor, prof. KAAFM, Andrzej Frycz Modrzewski Krakow University

orcid.org/0000-0001-8022-2196

jstanek@afm.edu.pl

The Concept of Legal Motivation¹

Introduction

Motivation is familiar to each of us. We feel motivated from within, by experiencing mental states that we can define as motivational states. We try to explain both our own motivation and the motivation of others in terms of folk psychology. There are many hypothetical explanations as to what lies behind behavior and what motives drive others. In this paper, we are focused on situations where the law stands behind the motivation, which is understood as internal states that direct one's behavior towards a certain effect. This effect may involve maintaining the current state, or transitioning to a subjectively better one. We will refer to the set of all internal states and the circumstances that affect them as the motivational process.

In law, the concept of motivation is often used alongside motive. The perpetrator's motives, the negotiator's motives, the defendant's motives or the motives of judges are analyzed. From legal perspective the motivation is considered only when legal rules or principles are violated. Fortunately, most of society obey most laws, and it is among them we should look for regularities and

¹ The article is funded by National Science Centre in Poland under the project no. 2019/33/B/H55/01521. The article is based on J. Stanek, *Motywacyjna podstawa prawa*, Kraków 2023.

study the mechanism of motivational processes. Meanwhile, in legal theory motivational aspects appear most often in association with the motivation of judges, and more precisely with the understanding of this motivation in the adjudication process². Narrowing our perspective is not justified. Motivation is a fundamental for every person's behavior, not just for individuals in a court of law.

In this paper we argue that the law has a motivational character, although its significance is not limited to this. In order to understand the motivational effect of law, we should adopt a psychological perspective in the study of law, and this is by no means a new claim. Interest in modern general psychology, evolutionary and social psychology, as well as other cognitive sciences has not diminished in the theory of law for at least a dozen or so years. For the majority of contemporary legal philosophers, the position is that law should in some sense take into account and reflect the achievements of science, in particular the achievements of non-legal sciences such as psychology, social psychology, sociology, cognitive science, neuroscience and many others³. Against this background, interdisciplinary projects to study the possibilities of naturalization of the law are becoming increasingly more popular⁴.

Although motivation is not a frequent subject of research by lawyers, many psychology scholars have tried to deal with this issue. The goal of this paper is not to provide a comprehensive review of

² R.A. Posner, *Overcoming Law*, Cambridge MA 1995; E. Ash, W.B. MacLeod, *Intrinsic Motivation in Public Service. Theory and Evidence from State Supreme Courts*, "The Journal of Law and Economics" 2015, vol. 58, no. 4, pp. 863–913; A. Partyk, *Czy sędziowie mają intuicję? Przyczynek do rozważań o sędziowskich mechanizmach decyzyjnych*, Sosnowiec 2023.

³ D. Patterson, M.S. Pardo, *Philosophical Foundations of Law and Neuroscience*, Oxford 2016; B.H. Bornstein, M.K. Miller, *Advances in Psychology and Law*, New York 2019; M. Freeman, *Law and Neuroscience*, "Current Legal Issues 13", Oxford 2011; L. Cominelli, *Cognition of the Law. Toward a Cognitive Sociology of Law and Behavior*, Cham 2018.

⁴ B. Leiter, *Naturalizing Jurisprudence. Essays on American Legal Realism and Naturalism in Legal Philosophy*, Oxford 2007; J. Stelmach, B. Brożek, Ł. Kurek, K. Eliaż, *Naturalizm prawniczy. Stanowiska*, Warszawa 2015; J. Stelmach, B. Brożek, Ł. Kurek, *The Province of Jurisprudence Naturalized*, Warszawa 2017.

the major theories of motivation. In the following section, the most influential approaches to the topic of motivation are indicated.

Motivation in psychology

In psychology, the concept of motivation is associated with orienting our behavior towards a specific goal⁵. Motivation is also understood as the process of controlling a person's behavior in order to lead to a specific effect⁶. The result may consist in changes in one's own life and social situation, as well as changes in one's surroundings.

While considering the phenomenon of motivation, qualitatively different factors should be taken into consideration, such as biological (i.e. the transmission of nerve signals and hormone actions), affective (i.e. the emergence of affect and emotions), cognitive (i.e. related to the formulation of goals, expectations, self-image, and self-control processes) and social (i.e. linked to the social environment, and our role in society). All these factors impact the process of motivation simultaneously. However, various theories of motivation tend to assign key importance to one of these factors and perceive motivation through this prism. The following approaches can be distinguished: evolutionary, behavioristic, humanistic and cognitive⁷.

From an evolutionary perspective, motivation mechanisms are connected with reference to the theory of instincts. One of the most influential theories was developed by W. McDougall⁸. For

⁵ E.A. Locke, G.P. Latham, *A Theory of Goal Setting & Task Performance*, Englewood Cliffs 1990.

⁶ T.R. Mitchell, *Motivation. New Directions for Theory, Research, and Practice*, "The Academy of Management Review" 1982, vol. 7, no. 1, pp. 80–88.

⁷ The works of S. Freud are undoubtedly of particular importance for the development of psychology, also for the theory of motivation. Freud's findings are not discussed in detail here, but it is necessary to point out that his approach became an impetus to look at motivation in terms of drive reduction. Thus, assuming that the origin of all behavior lies in inherent instincts, he understands motivation as a process of reducing the tension generated by them.

⁸ W. McDougall, *An Introduction to Social Psychology*, Kitchener 2001 [1919].

McDougall, the influence of instinct on behavior can be described as: (1) perceiving and paying attention to an object; (2) experiencing emotional arousal about it; and (3) acting in relation to it in a certain way, or at least experiencing an impulse to do so⁹. In this theory, emotions are an important element of motivation. They are considered to be adaptive mechanisms that have evolved due to their ability to motivate behavior and assist to achieve certain goals. A newer version emphasizing the evolutionary nature of motivation is proposed in sociobiology¹⁰.

The behavioristic approach is a relatively common approach to motivation, represented by a number of theories in this trend. One of the most comprehensive concept was proposed by C. Hull¹¹. Initially, he recognized tendencies for a specific behavior as a correlation between habit and drive. However, this approach failed to specify the element that activates behavior. The dependence of behavior solely on the strength of drive and habit has not been confirmed in research. It is necessary to take into account one more element: incentives. As a consequence, Hull modified his model by adding an external element, a sort of stimulus, which can also be the goal of a behavior.

The most widely recognized theory of motivation – not only within the humanistic approach – is the concept proposed by A. Maslow¹². It is based on two mechanisms of motivation: deficiency needs (D-needs) and being needs (B-needs), i.e. meta-needs. The deficiency needs are arranged hierarchically, which is why this theory is often referred to as Maslow's hierarchy of needs. The lowest, the most basic biological level includes physiological needs. Further tiers of needs are made up of safety, love and belongingness, and esteem. At the top of Maslow's hierarchy, we find self-actualization needs (e.g. using one's potential), such as cognitive needs: knowledge, understanding the world, aesthetic needs (e.g. symmetry,

⁹ *Ibidem*, p. 33.

¹⁰ D.S. Wilson, E.O. Wilson, *Rethinking the Theoretical Foundation of Sociobiology*, "The Quarterly Review of Biology" 2007, vol. 82, no. 4, pp. 327–348.

¹¹ C. Hull, *A Behavior System. An Introduction to Behavior Theory Concerning the Individual Organism*, New Haven 1958.

¹² A.H. Maslow, *Motivation and Personality*, New York 1987.

order, beauty). In this approach, the source of behavior is always internal cognitive processes and biological processes (linked to energy demand). At the same time, it is recognized that external stimuli do not affect the emergence of motivation, but only the formation and modification of behavior patterns. Maslow's theory has many supporters, as well as critics.

The last and currently the most dominant approach to motivation is the cognitive approach. In general, it is based on the assumption that cognitive processes, i.e. the result of information processing of the human brain, are responsible for triggering the motivation process. The beginnings of the cognitive approach to motivation can be found in the work of psychologists studying mainly the issues of learning (e.g. E. Tolman, K. Lewin, and J. Piaget). The fundamental assumption of these researches is the idea that internal mental representations play a central role in guiding behavior¹³. The internal cognitive representations of external reality that individuals use in the process of taking action, to interact with the world¹⁴. One of the well-known attempts to apply a cognitive approach to motivation is the theory of D. McClelland¹⁵.

The mechanism of legal motivation is based on a cognitive approach to motivation.

The mechanism of legal motivation

A theory of motivation in the context of law should include many factors, a substantial part of which is related to a highly complex phenomenon – social reality. Therefore, it is difficult, or even impossible, to consider every factor affecting motivation. It is necessary to simplify the social reality and isolate the essential elements of it. The different paths are possible when extracting these elements of social reality. In this paper, our path marked out by L. Petrażycki's

¹³ R.E. Franken, *Psychologia motywacji*, trans. M. Przyłipiak, Gdańsk 2006.

¹⁴ N.A.J. Jones, H. Ross, T. Lynam, P. Perez, A. Leitch, *Mental Models. An Interdisciplinary Synthesis of Theory and Methods*, "Ecology and Society" 2011, vol. 16, no. 1, p. 46.

¹⁵ D.C. McClelland, *Human Motivation*, Cambridge 1988.

psychological theory of law¹⁶: a theory that shaped the sociological school of law and influenced American and Scandinavian legal realism¹⁷. The psychological approach to law was developed in these trends, but none of the theories directly refers to the concept of motivation developed within L. Petrażycki's psychological theory of law¹⁸.

According to L. Petrażycki, the basic motivation of people's behavior in society are impulsions (also called emotions). Due to the fact that the concept of emotions used by Petrażycki may be misleading, the concept of impulsions is used in the context of his theory. There are two basic categories of impulsions: special and abstract. The first group include those that are correlated with the taking of a specific action, i.e. their effect is a certain action. Abstract impulsions, on the other hand, do not specify a specific action and their impact is not related to a specific type of conduct. They become a motive for action (an impulse for conduct), while not specifying the way of action.

From the perspective of the science of law, particular roles are played by ethical impulsions that belong to abstract impulsions. They play a fundamental role in our behavior, because they act as "motives of behavior, prompting to perform some tasks and refrain from others (motivational impact of ethical experiences)"¹⁹. Every ethical experience contains within itself an representation of certain conduct and an appulsive ethical impulsion (i.e. attracting, inviting to take a particular action) or a repulsive one (i.e. repulsing and restraining from taking action). This experience, however, may

¹⁶ L. Petrażycki, *Teoria państwa i prawa w związku z teorią moralności*, t. 1, Warszawa 1959; idem, *O nauce, prawie i moralności. Pisma wybrane*, Warszawa 1985.

¹⁷ A. Podgórecki, *Unrecognized Father of Sociology of Law. Leon Petrażycki. Reflections based on Jan Gorecki's Sociology and Jurisprudence of Leon Petrażycki*, "Law & Society Review" 1980–1981, vol. 15, no. 1, pp. 183–202; A. Polyakov, *Kommunikativnoje prawoponimaniye. Izbrannyje trudy*, Sankt Petersburg 2014.

¹⁸ J. Stanek, *Rosyjski realizm prawny*, Warszawa 2017; B. Brożek, J. Stanek, J. Stelmach, *Russian Legal Realism*, New York 2018.

¹⁹ L. Petrażycki, *Teorija prava i gosudarstva v svjazi s teoriej npravstvennosti*, Sankt Petersburg 2000 [1909–1910].

be enriched with additional elements such as, for example, ethically significant facts, the representation of the subject of duty and representations of normative facts. Ethical impulsions are characterized by having a mystical-authoritative character and that we experience them as an internal limitation of our freedom.

The way in which the law becomes an internal motivation for people by guiding their behavior, explains the functioning of intuitive and positive law. To put it simply, each of these laws is a set of legal impulsions. The criterion for differentiating between both types of laws is the existence (or not) of reference to external normative facts (e.g. regulations of the law). Legal impulsions which in their intellectual composition have representation of normative facts belong to the field of positive law, however, those which do not have them belong to intuitive law.

Due to the fact that intuitive law constantly changes and develops in comparison with positive law, it is inevitable that at some point, positive and intuitive law begin to diverge from one another in terms of content. Consequently, positive law loses its motivational strength in favor of intuitive law which acquires a greater authority. At the same time, the norms of positive law influence and tend to a certain degree to shape intuitive legal beliefs. Over time, legal experiences caused by the normative facts of positive law can turn into intuitive legal experiences. This is done by repeatedly colliding with the norms of positive law and the consolidation of a given pattern of behavior, which is ultimately perceived as an intuitive legal experience. Petrażycki indicates that the most common group of people in which such a process takes place are lawyers, who when examining and having continuous contact with positive law, at some point accept this law as their intuitive law. Of course, this process occurs to a lesser extent in all members of society. This idea is interesting and original, especially in the light of the now-widely popular theory of somatic markers by A. Damasio²⁰.

Regardless of the possible criticism of L. Petrażycki's approach, it is worth emphasizing its novelty and originality. For instance,

²⁰ A.R. Damasio, *The Somatic Marker Hypothesis and the Possible Functions of the Prefrontal Cortex*, "Philosophical Transactions of the Royal Society B: Biological Sciences" 1996, vol. 351, no. 1346, pp. 1413–1420.

the recognition of the influence of emotional and cognitive factors on the process of motivation, while in psychology for many years, it was believed that there was a strict distinction between cognitive and emotional processes. Only recent scientific evidence has highlighted the interdependence of these processes, especially in the matter of emotions. In the following sections, how the elements of the process of legal motivation can be explained based on the achievements of modern science, especially psychology, is considered.

The motivation process in law is grounded on mental representations and emotions. The motivation process is one in which mental representations (imaginings) evoke specific emotions. As a result of this process, a motive, which becomes the basis for behavior, is generated. In the further sections, key elements of this concept, i.e., representation, emotions, and legal motivation are discussed.

Mental representations

Imaginations are cognitive representation of reality in the mind. Certainly, this is not the only form of representation of the reality. The very concept of cognitive (or mental) representation means the mental equivalent of objects: both those that really exist and fictional ones. Mental representation essentially replaces those objects in the information processing in our minds²¹.

Imaginations are most often considered as mental representations, similar to perceptions, however, they differ in that what we are imagining at a given moment is beyond our senses. Imaginations are also often identified with mental simulations or imaginative representations²². Imaginations are sensory in nature, with terms that refer to the sense of sight being used most often to describe them, accordingly such terms are used as mental images, seeing with the mind's eye, images in the brain, and visual internal representations.

²¹ D. Pitt, *Mental Representation*, [in:] *The Stanford Encyclopedia of Philosophy*, eds E.N. Zalta, U. Nodelman, Fall 2022 Edition, Stanford 2022.

²² We must point out that some authors use intentionality as a differentiating criterion for mental representations and simulations. In the following section, however, we assume that all these concepts refer to the same phenomenon.

In other words, imaginations are mainly identified with visual mental imagery.

In psychology, there are at least several different classifications of mental representations. Most generally, we can distinguish visual mental imagery (mental images²³) and verbal representations (representations such as judgments or statements²⁴). The disagreement between the supporters of these approaches is still impossible to resolve. It now seems most likely that the mind uses both visual and verbal systems to represent reality²⁵.

Regardless of the dispute over the nature of mental representations, numerous types of a classification of imaginations according to various criteria (i.a. novelty, sense, nature) are proposed. For instance, mental representations about the future are called anticipatory, and those that refer to the past are called retrospective. For the concept of legal motivation the representations referring to the future are particularly important.

What influence do mental representations have for the law? We argue that they are the essential elements of the concept of legal motivation. However many types of mental representations can be distinguished, the most important ones are those that are directly connected with emotions, i.e. representations of behavior. Four very broad categories of representations are relevant to presented concept of legal motivation: representations of a situation, behavior, rules, and consequences.

Representations of a situation

The first category is representations of a situation. At the initial stage of the motivation process, the brain represents a situation, that is, the specific circumstances in which we find ourselves. It may be a task that we thought of and decided to do. It may be a task that we devised together or borrowed from others (e.g. by imitation). Alternatively, tasks can also be imposed on us by others.

²³ S.M. Kosslyn, W.L. Thompson, G. Ganis, *The Case for Mental Imagery*, Oxford 2006.

²⁴ A. Paivio, *Mental Representations. A Dual Coding Approach*, Oxford 1990.

²⁵ E. Nęcka, J. Orzechowski, B. Szymura, S. Wichary, *Psychologia poznawcza*, Warszawa 2020.

Most often, tasks are analyzed in terms of the end result we intend to achieve and the purpose of our behavior. In law, it is especially important to imagine the goal or result of behavior, that is, the representation of what we want to achieve. The very choice of a task or goal is a more complicated issue.

It is worth pointing out that the representations of a situation include representations of individuals that are related to a given behavior and they may both be connected with obligations and rights. Mental representations of a situation also include all representations relating to the date of performance of an action we are obliged to (pay within 14 days); an image of the place where this action will be performed (deliver to); an image of the characteristics of the action which we are obliged to perform (to be performed with due diligence, in the right order); representations of objects which a given action relates to (quantity and quality).

Representations of behavior

An image of behavior is a representation of actions that lead to the completion of a task or the achievement of a goal. In other words, imagining behavior involves imagining the course of action we are going to take.

The mental images in this group are representations of a program of behavior, which we can construe as a hypothesis about the course of action. We verify this hypothesis by taking action. In psychology, the following types of behavior programs are distinguished within the cognitive approach to motivation:

1. Innately determined programs. These are biologically imprinted programs that are responsible for reflexive behavior (unconditioned reflexes and tropisms). We have no influence on changing them and we cannot modify them.
2. Programs determined both innately and through learning. These are behavioral programs that govern our instincts. In fact, these are innate behavioral programs that we can change and modify in the process of learning (e.g., language behavior).
3. Programs acquired through learning. These are shaped only in the process of socialization through learning (e.g. writing).

4. Programs constructed by the individual ad hoc. They are action plans for intentional behavior, in line with contextual requirements²⁶.

Stated differently, the above classification implies a distinction between innate, habitual and volitional programs.

In the field of law, representations of behavior are one of the most important types of mental representations, the existence and substance of which directly affect one's motivation.

Representations of rules

The process of acting or pursuing a goal also includes a mental representation of the rules that are relevant in a particular context. Namely, the representation of a certain behavior is connected with representation of the rules for that behavior. These may be legal, moral, social or other standards applicable in our culture or community. The representations about the rules of behavior may have imperative character. It means that we perceive them as rules that oblige us to take certain actions in a particular situation. In addition, the mental representation of one's behavior may also have attributive character. It is related to the fact that our behavior could be associated with certain rights of others. For instance, when we take out a loan, we realize that we will have an obligation to repay it, and our representations have an imperative character. However, we also imagine that the lender has the right to demand repayment of the loan. More than that, we could imagine ourselves as the lender, who will behave in a certain way in a given situation.

Representations of the consequences

The last category of representations relevant to legal motivation are the images of the effects. This category of representations encompasses not only representations of the effect of conduct, but also representations of its further consequences. It can be also considered this sort of image as the final stage of an action plan being implemented. We first imagine the action, then the course of action,

²⁶ S. Kreitler, *Cognition and Motivation. Forging an Interdisciplinary Perspective*, Cambridge 2012, pp. 40–41.

and finally the effect and the aftermath of the action. As an example, suppose we decide not to pay our tax. We imagine that the result will be having more money than if we had paid the tax. At the same time, we realize that by not paying the tax, we are violating the law. We can also go a step further and imagine the consequences of violating these regulations, such as a tax audit and the obligation to pay a fine.

In the motivation mechanism, mental representations “provides a window on the future by enabling people to envision possibilities and develop plans for bringing those possibilities about”²⁷. The fundamental role of mental representations lies, therefore, in generating, based on past experience, specific predictions that allow us to clearly and easily imagine the likely consequences of being in a certain situation or taking certain actions²⁸. Using the possibilities that our imagination affords us, we can not only try to predict the near future, but also to consider different scenarios. A visualization of a situation approximates different solutions and sets more realistic expectations.

An essential attribute of mental representations is that they influence not only current individual’s choice of behavior, but also ones in the future. Research reveals that mental representation of possible interaction and action reduce prejudice and may favour pro-social behavior. Studies have shown that the mental image of us helping a specific person in need increases our overall willingness to help others. Moreover, even occasionally imagining that we are helping others reduces inter-group bias in social interactions²⁹.

I believe that imagination allows us to look not only into the future, but also into the past in order to consider, and sometimes evaluate, various possibilities for action.

²⁷ S.E. Taylor, L.B. Pham, I.D. Rivkin, D.A. Armor, *Harnessing the Imagination. Mental Simulation, Self-Regulation, and Coping*, “American Psychologist” 1998, vol. 53, p. 429.

²⁸ S.T. Moulton, S.M. Kosslyn, *Imagining predictions. Mental Imagery as Mental Emulation*, “Philosophical Transactions of the Royal Society B” 2009, vol. 364, pp. 1273–1280.

²⁹ B. Gaesser, Y. Shimura, M. Cikara, *Episodic Simulation Reduces Intergroup Bias in Prosocial Intentions and Behavior*, “Journal of Personality and Social Psychology: Interpersonal Relations and Group Processes” 2020, vol. 118, no. 4, pp. 683–705.

Mental representations not only help us visualize the future and the past, but they are also closely related to emotions. The literature often emphasizes the connection between mental representations and emotions³⁰.

Emotions

Emotions play a crucial role in the motivational process. This statement is quite obvious and raises no controversy. It is less obvious, however, how emotions are understood. There are plenty of theories relating to the mechanism of the emotions and their essence. The increase in the popularity of empirical research, in particularly in the field of cognitive science, has contributed to an increase in the number of projects aimed at understanding the mechanism of emotions³¹.

What aspect of an emotion determines that it is an emotion and not another phenomenon in our psyche? Depending on how we answer this question, we will find ourselves in the group of supporters of the theory of emotions as feelings, judgments or motivations³². These are quite broad categories that do not exhaust all possible perspectives for studying emotions. Moreover, the line between them is blurred³³. These are:

- emotions as feelings – in this view, the affective aspect of emotions is emphasized³⁴;
- emotions as judgments – according to this theory, all emotions are somehow related to cognitive evaluations. These can be

³⁰ I.a. L.J. Sanna, C.D. Parks, E.C. Chang, S.E. Carter, *The Hourglass Is Half Full or Half Empty. Temporal Framing and the Group Planning Fallacy*, "Group Dynamics: Theory, Research, and Practice" 2005, vol. 9, no. 3, pp. 173–188.

³¹ L.F. Barrett, M. Lewis, J. Haviland-Jones, *Handbook of Emotions*, New York–London 2016.

³² A. Scarantino, R. de Sousa, *Emotion*, [in:] *The Stanford Encyclopedia of Philosophy*, eds E.N. Zalta, Summer 2021 Edition, Stanford 2021.

³³ A. Scarantino, *The Philosophy of Emotions and Its Impact on Affective Science*, [in:] *Handbook of Emotions*, eds L.F. Barrett, M. Lewis, J.M. Haviland-Jones, New York–London 2016, pp. 3–48.

³⁴ W. James, *What is an Emotion?*, "Mind" 1884, vol. 9, no. 34, pp. 188–205; E. Fox, *Perspectives from Affective Science on Understanding the Nature of Emotion*, "Brain Neuroscience Advances" 2018, vol. 2.

evaluative judgments³⁵, evaluative feelings³⁶, and evaluative perceptions³⁷;

- emotions as motivational states – theories emerging in the last trend in research on emotions, do not negate either the evaluative or affective aspect of emotions, but marginalize them. They prioritise the motivational role of emotions in our behavior³⁸. Proponents of this approach recognize that “emotions are motivational states of a distinctive type, or patterns of behavior of a distinctive type”³⁹. One of the key theories in this approach, but also in the study of emotions in general is the theory of basic emotions⁴⁰. In this view, emotions are often seen as a product of an evolutionary process. They are adaptations that arose in response to the threats our ancestors faced⁴¹. In this trend, emotions are often perceived as constructs: psychological⁴² or social⁴³.

³⁵ R. Solomon, *Not Passion's Slave*, Oxford 2003; M. Nussbaum, *Upheavals of Thought. The Intelligence of Emotions*, Cambridge 2003.

³⁶ B.W. Helm, *Emotional Reason. Deliberation, Motivation, and the Nature of Value*, Cambridge 2001; P. Goldie, *The Emotions. A Philosophical Exploration*, Oxford 2000.

³⁷ C. Tappolet, *Emotions, Value, and Agency*, Oxford 2016; J. Prinz, *The Emotional Construction of Morals*, Oxford 2007; R. Roberts, *Emotions. An Essay in Aid of Moral Psychology*, Cambridge 2003.

³⁸ A. Scarantino, *The Motivational Theory of Emotions*, [in:] *Moral Psychology and Human Agency. Philosophical Essays on the Science of Ethics*, eds. J. D'Arms, D. Jacobson, Oxford 2014, pp. 156–185.

³⁹ *Idem*, *The Philosophy of Emotions*, *op. cit.*, p. 15.

⁴⁰ P. Ekman, *Basic Emotions*, [in:] *Handbook of Cognition and Emotion*, eds T. Dalgleish, New York 1999, pp. 45–60; S.S. Tomkins, *Affect Imagery Consciousness. The Positive Affects*, vol. 1, New York 1962.

⁴¹ R. Plutchik, *Emotion. A Psychoevolutionary Synthesis*, New York 1980; J. Tooby, L. Cosmides, *The Evolutionary Psychology of the Emotions and their Relationship to Internal Regulatory Variables*, [in:] *Handbook of Emotions*, eds M. Lewis, J.M. Haviland-Jones, L.F. Barrett, New York 2008, pp. 114–137.

⁴² L.F. Barrett, J.A. Russell, *The Psychological Construction of Emotion*, New York 2015.

⁴³ B. Mesquita, M. Boiger, *Emotions in Context. A Sociodynamic Model of Emotions*, “Emotion Review” 2014, vol. 6, no. 4, pp. 298–302; G.A. van Kleef, *Emotions as Agents of Social Influence. Insights from Emotions as Social Information (EASI) theory*, [in:] *The Oxford Handbook of Social Influence*, eds S.G. Harkins, K.D. Williams, J. Burger, Oxford 2017, pp. 237–255.

In recent years, the theory of basic emotions has been increasingly challenged, for example by L. Barrett's theory of constructed emotions. The theory, based on a number of studies in neuroscience and psychology, proposes a mechanism explaining how emotions are created⁴⁴. The undeniable merit of this theory is that it combines essential elements of other theories. The theory of constructed emotions comprises not only biological aspects, but also the role of culture and society. It takes into account the significance of linguistic concepts, the role of society in shaping our values, and the impact of our social roles on how we perceive the world. L. Barrett's theory is based on the premise that emotions are not biologically pre-programmed, but are constructed by the brain based on previous experience, within a person's conceptual grid. As L. Barrett argues, "emotions are constructions of the world, not reactions to it"⁴⁵.

Legal emotions

First of all, it is worth mentioning that legal emotions can be classified as social emotions. What are social emotions? According to a radical interpretation, all emotions should be considered as social emotions because they facilitated adaptation to life in society in the process of evolution. Undoubtedly, emotions are also the result of the influence of culture, social relations and other situational factors. The literature indicates that social emotions always refer to "a real or imagined social object that may be either another person or a socially constructed self. [...] social emotions are also socially constructed as they involve social rules and norms. [...] social emotions serve social regulatory functions [...]"⁴⁶.

Some scholars attempted not only to define social emotions, but also to indicate what criteria allow to distinguish social emotions

⁴⁴ K.A. Lindquist, T.D. Wager, E. Bliss-Moreau, L.F. Barrett, *The Brain Basis of Emotion. A Meta-analytic Review*, "Behavioral and Brain Sciences" 2012, vol. 35, no. 3, pp. 121–143.

⁴⁵ L.F. Barrett, *How Emotions are Made. The Secret Life of The Brain*, New York 2017.

⁴⁶ S. Hareli, B. Parkinson, *What's Social About Social Emotions?*, "Journal for the Theory of Social Behaviour" 2008, vol. 38, no. 2, p. 135.

from other emotions⁴⁷. Four criteria have been proposed. Firstly, social emotions are important from the perspective of communication and achieving goals. However, they are not directly related to the survival function. Secondly, the aforementioned goals are social goals. Third, social emotions are linked to the judgment of others, not just to our inner self. And finally, social emotions do not have a specific set of changes that we can observe in facial expressions.

In a similar vein, but going a step further, J. Haidt defines moral emotions. He recognizes that moral emotions "are linked to the interests or welfare either of society as a whole or at least of persons other than the judge or agent"⁴⁸.

In L. Petrażycki's theory of law, legal and moral emotions are distinguished⁴⁹. Legal emotions, on the one hand, have an imperative nature, meaning generate a sense of duty, while on the other hand, at the same time we feel that it gives others the right (the claim) to expect from us fulfilment of this obligation – an attributive nature. However, moral emotions are characterized only by their imperative nature. Due to the attributiveness of legal emotions, their impact is more motivating than moral emotions. I suggest that the same emotions come into play – be it social or moral emotions – both in the area of law and morality. The difference between law and morality is not in emotions, but in representations: we imagine attributivity within the representations of rules. There is no reason to believe that legal and moral emotions perform in different ways. I believe that the difference between law and morality lies in the nature of representations. For legal motivation to occur, it is important not only to imagine a specific behavior which we are obliged to, but also to realize that another person's right is connected with this obligation. It is an representation of attributiveness.

⁴⁷ K.C. Barrett, J.J. Campos, *Perspectives on Emotional Development II. A Functionalist Approach to Emotions*, [in:] *Handbook of Infant Development*, ed. J.D. Osofsky, Chichester–New York–Weinheim–Brisbane–Singapore–Toronto 1987, pp. 555–578.

⁴⁸ J. Haidt, *Elevation and the positive psychology of morality*, [in:] *Flourishing. Positive Psychology and the Life Well-lived*, ed. C.L.M. Keyes, Washington 2003, p. 276.

⁴⁹ L. Petrażycki, *Teorija prava i gosudarstva...*, *op. cit.*

An association of social emotions with specific representations results in the occurrence of legal motivation, which sets the direction and character of the undertaken actions. For example, the obligation to pay tax, e.g. VAT, in some cultural circles (including Polish society), coming up with clever ideas how to pay the least amount of VAT, and preferably not pay it at all, involves not only a sort of social acquiescence, but also admiration for the taxpayer's resourcefulness and intelligence. Therefore, the mental representation of not paying VAT, and in fact cheating the tax office and the state, is associated with positive emotions. Of course, in the context of the law, that is simply a tax crime. However, there are also countries (e.g. Scandinavian countries are often mentioned in this context) in which the mental representations of tax fraud will be associated with shame and the fear of social condemnation, which are generally negative emotions. Where do these differences come from? Why would what seems like the same representations of behavior be associated with such different emotions and, as a result, also cause differences in behavior? A number of factors are responsible for this, but at the heart of this is the process of selecting and associating representations with social emotions through the operation of emotional (intuition) or rational (reasoning) processes.

Intuitive and positive legal motivation

Regardless of what theory of emotions we adopt and what importance we assign to emotions in the motivation process, we must concern the problem of the correlations between intuition and rational reasoning (or – as it is referred to in various concepts – common sense, reason or rationality).

Two situations should be distinguished, on the one hand, when the emergence of motivation is influenced by the mental representations of normative principles/rules, and on the other, when these representations do not participate in the motivation process. In the case of positive legal motivation, it is most often through reasoning that we come to adhere to the rules of conduct as reflected in our mental representations. Most often, the

authority of positive (normative) rules, and consequently the fact that we conform to representations of rules, is the ultimate result of our rational reasoning. This does not imply that intuition does not appear in the case of positive legal motivation. Intuitive reasoning characterizes any type of legal motivation. However, unlike in intuitive legal motivation, which has no references to external normative facts or normative principles, there is no need to confront our intuitions with these principles. On the other hand, intuitive reasoning in positive legal motivation 'results' from the authority of an external normative fact that collides with rational reasoning. In other words, the difference is that in legal motivation based on intuition, and it has a definite advantage, but intuition can be suppressed or replaced by reasoning later in the motivational process. In legal motivation based on reasoning, this relationship is reversed. To summarize, it is considered that both intuition and reasoning are relevant to legal motivation.

Fig. 1. Legal motivation based on intuition

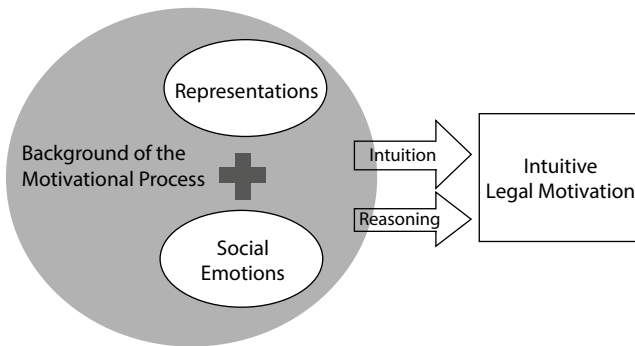
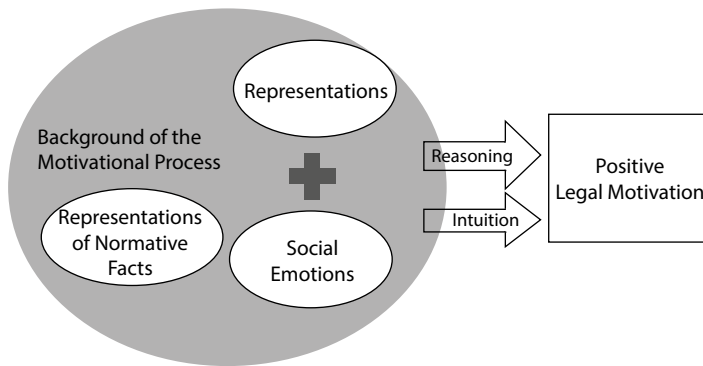


Fig. 2. Legal motivation based on reasoning



The above diagrams illustrate that representations, emotions, intuition and rational reasoning are important elements in the motivation process. These are the basic, but not the only, factors that influence the motivation process.

Motivation is a complex process influenced by many factors, and importantly, it also varies for different individuals, i.e. our traits, character, experience, and even memory affect our motivation and behavior. Moreover, all these factors work together, which creates a certain mixture of influences, which is referred to as the background of the motivation process, against which the interaction between representations and emotions, intuition and rational reasoning takes place. This background includes such internal factors as will and personality traits which vary in different individuals, as well as external factors such as penalties and rewards.

Concluding remarks

The motivational effect of law and the mechanism of motivation itself is not only an interesting theoretical and legal issue, but also has a relevant practical aspect. It can not only help us determine the motivation of those engaging in illegal behavior, but mainly to help us to specify the reasons why we comply with the law. Subsequently, this would allow us to construct new legal solutions that would

effectively influence the behavior of individuals. Is it possible to design legal solutions that take individuals' motivations into account? Is it possible to interfere with motivational processes? Is it possible to change one's motives of conduct? For now, these questions remain unanswered. In this paper it is claimed, however, that the research in this area will be significantly accelerated by the adoption of the three postulates proposed below.

Firstly, when examining the motivational effect of law, it is worth referring to the findings of non-legal sciences, in particular to psychology and its numerous subdisciplines, as well as to sociology and cognitive sciences. Moreover the outcomes of research in these areas of science could be applied in any area of law. They could, but in practice they aren't. As a result, current legal knowledge remains highly inconsistent with scholarly knowledge. We agree that this inconsistency should be minimized. But is it possible and how should the transition from non-legal knowledge to legal knowledge take place? What process will lead to the law increasingly reflecting the current advances in science? These issues remain yet unresolved, especially since lawyers are in no hurry to apply knowledge from non-legal sciences to law. In the practice of the judiciary system, psychological mechanisms are understood colloquially, and most often existing knowledge is not applied. The use of non-legal knowledge in law seems necessary to capture the reasons for our behavior, motives and factors conditioning it.

Secondly, in the study of law, including its motivational effects, more attention should be paid to empirical research that will allow for a more thorough understanding of the mechanisms of motivation and the foundations of human conduct.

Thirdly, in order to effectively study the motivational effect of law, it is worth developing a theoretical framework – concepts of motivation. In this paper it is outlined the concept of motivation, which is adapted to the needs of legal science. This is, as far as possible, a simplified model. In the proposed approach to the legal motivation, mental representations are the first element of the motivation process. Each type of representations is associated with emotions. The whole process is influenced by the factors that have been defined as the background of the motivation process.

Understanding the mechanisms of motivation is not only important for the law. This is a fundamental issue for all social sciences that study society and its rules. How can we use this theory of motivation in law? By knowing and understanding the processes behind the motivational action of law, we will be able to change and create law with maximum motivational effects. In other words, we will be able to create effective legal regulations.

References

- Ash E., MacLeod W.B., *Intrinsic Motivation in Public Service. Theory and Evidence from State Supreme Courts*, "The Journal of Law and Economics" 2015, vol. 58, no. 4, pp. 863–913.
- Barrett L.F., *How Emotions are Made. The Secret Life of The Brain*, New York 2017.
- Barrett L.F., Campos J.J., *Perspectives on Emotional Development II. A Functionalist Approach to Emotions*, [in:] *Handbook of Infant Development*, ed. J.D. Osofsky, Chichester–New York–Weinheim–Brisbane–Singapore–Toronto 1987, pp. 555–578.
- Barrett L.F., Lewis M., Haviland-Jones J., *Handbook of Emotions*, New York–London 2016.
- Barrett L.F., Russell J.A., *The Psychological Construction of Emotion*, New York 2015.
- Bornstein B.H., Miller M.K., *Advances in Psychology and Law*, New York 2019.
- Brożek B., Stanek J., Stelmach J., *Russian Legal Realism*, New York 2018.
- Cominelli L., *Cognition of the Law. Toward a Cognitive Sociology of Law and Behavior*, Cham 2018.
- Damasio A.R., *The Somatic Marker Hypothesis and the Possible Functions of the Prefrontal Cortex*, "Philosophical Transactions of the Royal Society B: Biological Sciences" 1996, vol. 351, no. 1346, pp. 1413–1420.
- Ekman P., *Basic Emotions*, [in:] *Handbook of Cognition and Emotion*, eds. T. Dalgleish, New York 1999, pp. 45–60.
- Fox E., *Perspectives from Affective Science on Understanding the Nature of Emotion*, "Brain Neuroscience Advances" 2018, vol. 2.
- Franken R.E., *Psychologia motywacji*, trans. M. Przyłipiak, Gdańsk 2006.
- Freeman M., *Law and Neuroscience*, "Current Legal Issues 13", Oxford 2011.
- Gaesser B., Shimura Y., Cikara M., *Episodic Simulation Reduces Intergroup Bias in Prosocial Intentions and Behavior*, "Journal of Personality and Social Psychology: Interpersonal Relations and Group Processes" 2020, vol. 118, no. 4, pp. 683–705.

- Goldie P., *The Emotions. A Philosophical Exploration*, Oxford 2000.
- Haidt J., *Elevation and the Positive Psychology of Morality*, [in:] *Flourishing. Positive Psychology and the Life Well-lived*, ed. C.L.M. Keyes, Washington 2003, pp. 275–289.
- Hareli S., Parkinson B., *What's Social About Social Emotions?*, "Journal for the Theory of Social Behaviour" 2008, vol. 38, no. 2, pp. 131–156.
- Helm B.W., *Emotional Reason. Deliberation, Motivation, and the Nature of Value*, Cambridge 2001.
- Hull C., *A Behavior System. An Introduction to Behavior Theory Concerning the Individual Organism*, New Haven 1958.
- James W., *What is an Emotion?*, "Mind" 1884, vol. 9, no. 34, pp. 188–205.
- Jones N.A.J., Ross H., Lynam T., Perez P., Leitch A., *Mental Models. An Interdisciplinary Synthesis of Theory and Methods*, "Ecology and Society" 2011, vol. 16, no. 1, p. 46.
- Kleef G.A. van, *Emotions as Agents of Social Influence. Insights from Emotions as Social Information (EASI) Theory*, [in:] *The Oxford Handbook of Social Influence*, eds S.G. Harkins, K.D. Williams, J. Burger, Oxford 2017, pp. 237–255.
- Kosslyn S.M., Thompson W.L., Ganis G., *The Case for Mental Imagery*, Oxford 2006.
- Kreitler S., *Cognition and Motivation. Forging an Interdisciplinary Perspective*, Cambridge 2012.
- Leiter B., *Naturalizing Jurisprudence. Essays on American Legal Realism and Naturalism in Legal Philosophy*, Oxford 2007.
- Lindquist K.A., Wager T.D., Bliss-Moreau E., Barrett L.F., *The Brain Basis of Emotion. A Meta-analytic Review*, "Behavioral and Brain Sciences" 2012, vol. 35, no. 3, pp. 121–143.
- Locke E.A., Latham G.P., *A Theory of Goal Setting & Task Performance*, Englewood Cliffs 1990.
- Maslow A.H., *Motivation and Personality*, New York 1987.
- McClelland D.C., *Human Motivation*, Cambridge 1988.
- McDougall W., *An Introduction to Social Psychology*, Kitchener 2001 [1919].
- Mesquita B., Boiger M., *Emotions in Context. A Sociodynamic Model of Emotions*, "Emotion Review" 2014, vol. 6, no. 4, pp. 298–302.
- Miles T.J., Sunstein C.R., *The New Legal Realism*, "University of Chicago Law Review" 2008, vol. 75, no. 2, p. 831–851.
- Mitchell T. R., *Motivation. New Directions for Theory, Research, and Practice*, "The Academy of Management Review" 1982, vol. 7, no. 1, pp. 80–88.
- Moulton S.T., Kosslyn S.M., *Imagining Predictions. Mental Imagery as Mental Emulation*, "Philosophical Transactions of the Royal Society B" 2009, vol. 364, pp. 1273–1280.

- Nęcka E., Orzechowski J., Szymura B., Wichary S., *Psychologia poznawcza*, Warszawa 2020.
- Nussbaum M., *Upheavals of Thought. The Intelligence of Emotions*, Cambridge 2003.
- Paivio A., *Mental Representations. A Dual Coding Approach*, Oxford 1990.
- Partyk A., *Czy sędziowie mają intuicję? Przyczynek do rozważań o sędziowskich mechanizmach decyzyjnych*, Sosnowiec 2023.
- Patterson D., Pardo M.S., *Philosophical Foundations of Law and Neuroscience*, Oxford 2016.
- Petrażycki L., *O nauce, prawie i moralności. Pisma wybrane*, Warszawa 1985.
- Petrażycki L., *Teoria państwa i prawa w związku z teorią moralności*, t. 1, Warszawa 1959.
- Petrażycki L., *Teorija prava i gosudarstva v svjazi s teoriej npravstvennosti*, Sankt Petersburg 2000 [1909–1910].
- Pitt D., *Mental Representation*, [in:] *The Stanford Encyclopedia of Philosophy*, eds E.N. Zalta, U. Nodelman, Fall 2022 Edition, Stanford 2022.
- Plutchik R., *Emotion. A Psychoevolutionary Synthesis*, New York 1980.
- Podgórecki A., *Unrecognized Father of Sociology of Law. Leon Petrażycki. Reflections based on Jan Gorecki's Sociology and Jurisprudence of Leon Petrażycki*, "Law & Society Review" 1980–1981, vol. 15, no. 1, pp. 183–202.
- Polyakov A., *Kommunikativnoje prawoponimanieje. Izbrannyje trudy*, Sankt Petersburg 2014.
- Posner R.A., *Overcoming Law*, Cambridge MA 1995.
- Prinz J., *The Emotional Construction of Morals*, Oxford 2007.
- Roberts R., *Emotions. An Essay in Aid of Moral Psychology*, Cambridge 2003.
- Sanna L.J., Parks C.D., Chang E.C., Carter S.E., *The Hourglass Is Half Full or Half Empty. Temporal Framing and the Group Planning Fallacy*, "Group Dynamics: Theory, Research, and Practice" 2005, vol. 9, no. 3, pp. 173–188.
- Scarantino A., *The Motivational Theory of Emotions*, [in:] *Moral Psychology and Human Agency. Philosophical Essays on the Science of Ethics*, eds J. D'Arms, D. Jacobson, Oxford 2014, pp. 156–185.
- Scarantino A., *The Philosophy of Emotions and Its Impact on Affective Science*, [in:] *Handbook of Emotions*, eds L.F. Barrett, M. Lewis, J.M. Havilland-Jones, New York–London 2016, pp. 3–48.
- Scarantino A., Sousa R. de, *Emotion*, [in:] *The Stanford Encyclopedia of Philosophy*, eds E.N. Zalta, Summer 2021 Edition, Stanford 2021.
- Solomon R., *Not Passion's Slave*, Oxford 2003.
- Stanek J., *Motywacyjna podstawa prawa*, Kraków 2023.
- Stanek J., *Rosyjski realizm prawny*, Warszawa 2017.
- Stelmach J., Brożek B., Kurek Ł., *The Province of Jurisprudence Naturalized*, Warszawa 2017.

- Stelmach J., Brożek B., Kurek Ł., Eliaż K., *Naturalizm prawniczy. Stanowiska*, Warszawa 2015.
- Suchman M.C., Mertz E., *Toward a New Legal Empiricism. Empirical Legal Studies and New Legal Realism*, "Annual Review of Law and Social Science" 2010, vol. 6, no. 1, pp. 555–579.
- Tappolet C., *Emotions, Value, and Agency*, Oxford 2016.
- Taylor S.E., Pham L.B., Rivkin I.D., Armor D.A., *Harnessing the Imagination. Mental Simulation, Self-Regulation, and Coping*, "American Psychologist" 1998, vol. 53, pp. 429–439.
- Tomkins S.S., *Affect Imagery Consciousness. The Positive Affects*, vol. 1, New York 1962.
- Tooby J., Cosmides L., *The Evolutionary Psychology of the Emotions and their Relationship to Internal Regulatory Variables*, [in:] *Handbook of Emotions*, New York 2008, pp. 114–137.
- Wilson D.S., Wilson E.O., *Rethinking the Theoretical Foundation of Sociobiology*, "The Quarterly Review of Biology" 2007, vol. 82, vol. 4, pp. 327–348.

Abstract

The concept of legal motivation⁵⁰

Understanding the motivational effect of the law and its mechanism is crucial for examining the impact of law on individual's behavior in society. In this paper a novel approach towards legal motivation is proposed. For this aim, the author first introduce the approach to motivation in psychology and law. In the following section the concept of legal motivation is outlined. The basic elements of the concept are analyzed, in particular representations and emotions. The proposed approach distinguishes between intuitive and positive legal motivation. Distinction of legal motivation is based on the possession or lack of representation of normative facts. The concept of legal motivation proposed in the this paper allows adopting a broader perspective on the motivational effect of law.

Key words: legal theory, legal motivation, intuition, emotions, representations

⁵⁰ The article is funded by National Science Centre in Poland under the project nr 2019/33/B/HS5/01521.

Streszczenie

Koncepcja motywacji prawnej⁵¹

Zrozumienie motywacyjnego charakteru prawa i jego mechanizmu jest kluczowe dla poznania wpływu prawa na zachowanie jednostek w społeczeństwie. W niniejszym artykule zaproponowano nowatorskie podejście do motywacji prawnej. W tym celu w pierwszej kolejności przeanalizowano podejście do motywacji w ramach psychologii i prawa. W dalszej części przedstawiono zarys koncepcji motywacji prawnej oraz przeanalizowano jej podstawowe elementy: wyobrażenia oraz emocje. W proponowanym podejściu zostały wyróżnione motywacja prawna intuicyjna i pozytywna. Podstawą rozróżnienia motywacji prawnej na intuicyjną oraz pozytywną jest posiadanie lub brak wyobrażeń zasad normatywnych. Proponowana w artykule koncepcja motywacji prawnej pozwala przyjąć szerszą perspektywę na motywacyjne działanie prawa.

Słowa kluczowe: teoria prawa, motywacja prawna, intuicja, emocje, wyobrażenia

⁵¹ Artykuł powstał dzięki projektowi Narodowego Centrum Nauki nr 2019/33/B/HS5/01521.