

SOME QUESTIONS ABOUT EMOTIONS AND RISK EVALUATION

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In response to Dan M. Kahan, *Two Conceptions of Emotion in Risk Regulation*, 156 U. PA. L. REV. 741 (2008).

In this Response, I want to expand upon some of the central themes of Professor Dan Kahan's illuminating and forceful article.¹ My few disagreements with him are offered as friendly suggestions and requests for clarification. Most of my criticisms are directed at the accounts he too criticizes—the rational weigher and the irrational weigher accounts of risk evaluation. I will be concerned with these accounts as he presents them and will not question whether he presents them accurately. My focus will be further restricted to concerns about what he and these accounts say about emotions themselves; I will not address the very interesting connections he draws between emotions and political or social theory, such as liberalism, in other work.² My concern, then—as indicated in the title of my contribution—is with emotions and risk *evaluation*, not risk *regulation*.

I. THE RATIONAL WEIGHER THEORY: EMOTION AS BYPRODUCT

Professor Kahan writes,

Based on the premises of neoclassical economics, the *rational weigher theory* asserts that individuals, over time and in aggregate, process informa-

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¹ Dan M. Kahan, *Two Conceptions of Emotion in Risk Regulation*, 156 U. PA. L. REV. 741 (2008) [hereinafter Kahan, *Two Conceptions*]. I am pleased to acknowledge Professor Kahan's use of and generous references to VALUING EMOTIONS (1996), which I co-authored with Elizabeth Hegeman.

² See, e.g., Dan M. Kahan et al., *Fear of Democracy: A Cultural Evaluation of Sunstein on Risk*, 119 HARV. L. REV. 1071 (2006) (reviewing CASS R. SUNSTEIN, LAWS OF FEAR: BEYOND THE PRECAUTIONARY PRINCIPLE (2005) [hereinafter SUNSTEIN, LAWS OF FEAR]). For the full exchange between Professor Kahan and Professor Sunstein, see also Cass R. Sunstein, *Misfearing: A Reply*, 119 HARV. L. REV. 1110 (2006) (replying to Kahan et al., *Fear of Democracy, supra*), and Dan M. Kahan & Paul Slovic, *Cultural Evaluations of Risk: "Values" or "Blunders"?*, 119 HARV. L. REV. F. 166 (2006), http://www.harvardlawreview.org/forum/issues/119/feb06/kahan_slovic.pdf (replying to Sunstein, *Misfearing, supra*).

tion about risky undertakings in a way that maximizes their expected utility. The decision whether to accept hazardous occupations in exchange for higher wages, to engage in unhealthy forms of recreation in exchange for hedonic pleasure, to accept intrusive regulation to mitigate threats to national security or the environment, all turn on a utilitarian balancing of costs and benefits.

On this theory, emotions *don't* make any contribution to the cognition of risk. They enter into the process, if they do at all, only as reactive byproducts of individuals' processing of information: if a risk appears high relative to benefits, individuals will likely experience a negative emotion (perhaps fear, dread, or anger), whereas if the risk appears low, they will likely experience a positive one (such as hope or relief).³

More needs to be said about the sorts of contributions to the cognition of risk that emotions are said *not* to aid. Even byproducts can make *some* useful cognitive contributions. Let us suppose that a given episode of fear (perhaps fear quite generally) is a byproduct of some risk assessment. The fact that I am afraid can, nonetheless, contribute to my (cognitive state of) thinking that a given enterprise is risky. If I am afraid (e.g., of a cobra), that can show that I see and feel the risk. So too, being afraid can increase the salience of the risk factors and the risk. If I am not sufficiently afraid, that can suggest that I do not make or do not take seriously relevant evaluations (e.g., it is extremely dangerous to be struck by a cobra) or that I do not notice or use relevant facts (e.g., this particular cobra strikes without warning), or that I reason poorly, if at all, about these facts.

Further, my emotion can be studied, examined, and analyzed to help find out *what* I find risky or fearsome; to see what values or interests I find involved with those factors; to see how I think about those factors (e.g., bravely, manically, depressively); to see whether I exaggerate or, instead, am in denial; to see what sort of person I am; and so on.⁴

Rational weighers may have denied or simply ignored these contributions. Their "excuse" for not noting them could be that their attention was turned elsewhere, but I think they could agree that emotions can make these contributions.

Rational weighers might hold that such facts about people revealed by their emotions do not concern evaluations of the risk or the factors that are relevant to such evaluations. They might also hold

³ Kahan, *Two Conceptions*, *supra* note 1, at 745-46 (footnotes omitted).

⁴ As noted below, Professor Kahan's cultural evaluator account focuses on these cognitive contributions of emotions. *See infra* Part III.

that these factors can be characterized and used for evaluations without recourse to emotions. It thus might be said that in their different ways the manic and the depressive take up the very same risk (e.g., losing one's job). Most generally, this is to say that the interests and values involved in risk can be identified, characterized, and evaluated independently of emotions, moods, and the like.

We might allow that some hedonic states or values can be evaluated in purely cognitive ways (e.g., by holding that pain and its value, as these figure in risk evaluation, do not involve emotions). But many other interests and concerns that also figure in risk evaluation do involve emotions. Consider the risk of the loss of love to a rival. The rational weigher view would require that such a loss can be identified, characterized, and evaluated without recourse to emotions. (So too for the offenses of racism, slander, pornography, etc.) I think there is no chance of satisfying this requirement.⁵

II. THE IRRATIONAL WEIGHER THEORY

Professor Kahan writes,

The *irrational weigher theory* asserts that individuals lack the capacity to process information that maximizes their expected utility. Because of constraints on information, time, and computational power, ordinary individuals must resort to heuristic substitutes for considered analysis; those heuristics, moreover, invariably cause individuals' evaluations of risks to err in substantial and recurring ways.⁶

I certainly agree that hasty, rushed, difficult, and momentous judgments, especially of risk, can be inaccurate and, of course, affectively (emotionally) charged. Many people do not or cannot make *deliberate* and *calculated* judgments about risky matters.⁷

⁵ It might be objected that the rational weigher account is concerned with political issues confronting modern states about risk regulation, and thus is not concerned with regulating the risks of intangibles like love, which raise only personal issues, not political ones. To be sure, various modern states have been, and some still are, interested in regulating love relations such as adultery and other sexual and romantic relations. But neoclassical and liberal theorists might hold that states *should not* be concerned with these. Many "values advocates" and "conservatives" (as understood in contemporary American political discourse) disagree. Among other issues, this forces us to examine the adequacy and normative status of the neoclassical account and budget of values. I discuss this briefly at the end of this Response.

My thanks are owed to Charles Richard Booher for raising the issue about love; and to Booher, Kelly June McPherson, and Adam Wallwork for discussion.

⁶ Kahan, *Two Conceptions*, *supra* note 1, at 746.

⁷ According to Professor Kahan, Professor Sunstein argues that lawmaking should be left in the hands of "politically insulated experts," whose opinions he considers to

It might seem that the chain of reasoning running from emotions to the absence of deliberation and calculation to error proneness speaks strongly in favor of the irrational weigher account—that emotions make risk evaluations irrational—and against any role for emotions in sound risk evaluation. But so very much of what we do is done without deliberation and calculation. Perhaps when we were first learning to tie our shoes, cross a street, or order a cup of coffee, we had to deliberate and calculate. But most of us no longer need to pay close attention to such simple activities. In fact, many of us pay little attention to far more complex and momentous activities, such as driving, talking with a client, and so on. Some theorists—perhaps going too far in another direction—have suggested that we deliberate and calculate only when faced with a blockage, a problem.

My point here is that, were that chain of reasoning well taken, emotions might well be impugned. But so would most every element of our ordinary, daily flow of life—from our myriad nondeliberate, noncalculated thoughts, beliefs, and forms of reasoning, to our habitual and well-practiced ways of going about our lives. And we may not find refuge in the opinions of emotion-free experts. For experts, too, live much of their lives, even their expert professional lives, without deliberation and calculation. This “chain of reasoning” is intellectualism run mad.

In saying this I am not denying that emotions about risks can lead us astray. Many people—children as well as adults—are too readily carried away by their emotions when confronted with risk. Real and imagined risks are the staples of skillful orators: witness the Nuremberg rallies, or even some of our own political appeals. Many people have affectively engorged phobias, or emotionally charged and misleading hatreds and biases.

But this does not end matters in favor of the irrational weighers. Much remains to be investigated: for example, can people learn how to retain self-control, to think about risks without being carried away?⁸ Is “bracketing” or avoiding emotions—or turning the task over to uninvolved people—the only or the best way to do this? Clearly, dispassion or tamped-down coolness or lack of involvement is often useful

be more “deliberate and reasoned,” and consequently less error prone than the emotionally involved judgments criticized by the irrational weigher theory. Kahan, *Two Conceptions*, *supra* note 1, at 743 (citing SUNSTEIN, *LAWS OF FEAR*, *supra* note 2, at 126).

⁸ That question has been a recurrent theme in philosophy and psychology from at least Plato on. For recent versions, see various child-rearing and popular psychology works, such as DANIEL GOLEMAN, *EMOTIONAL INTELLIGENCE* (1995).

for judgment. But is it always? Can't it sometimes be harmful?

Here we might examine the claims of several recent philosophers and psychologists who argue that judging and other forms of thinking quite generally involve, and indeed require, affectivity.⁹ David Rapaport puts this very strongly: “[A]ffects . . . are just as indispensable a means of reality testing as thoughts. Indeed, they are more indispensable for reality testing in all except successfully intellectualizing and obsessional characters. Reality testing without the contribution of affect signal readily changes into obsessional or paranoid magic.”¹⁰

III. THE CULTURAL EVALUATOR ACCOUNT

I come now to Professor Kahan's favored view, the cultural evaluator account. He writes,

The cultural evaluator theory views emotions as enabling individuals to perceive what stance toward risks coheres with their values. Cultural norms obviously play a role in shaping the emotional reactions people form toward activities such as nuclear power, handgun possession, homosexuality, and the like. When people draw on their emotions to judge the risk that such an activity poses, they form an expressively rational attitude about what it would *mean* for their cultural worldviews for society to credit the claim that that activity is dangerous and worthy of regulation Persons who subscribe to an egalitarian ethic, for example, have been shown to be particularly sensitive to environmental and technological risks, the recognition of which coheres with condemnation of commercial activities that generate distinctions in wealth and status. Persons who hold individualist values, in contrast, tend to dismiss concerns about global warming, nuclear waste disposal, food additives, and the like—an attitude that expresses their commitment to the autonomy of markets and other private orderings. . . .

⁹ For philosophers, see, for example, Israel Scheffler, *In Praise of the Cognitive Emotions*, 79 TCHRS. C. REC. 171 (1977), *reprinted in* ISRAEL SCHEFFLER, *INQUIRIES: PHILOSOPHICAL STUDIES OF LANGUAGE, SCIENCE AND LEARNING* 347 (1986); Michael Stocker, *Intellectual Desire, Emotion, and Action*, *in* EXPLAINING EMOTIONS 323 (Amélie Oksenberg Rorty ed., 1980); and, as a bridge to psychology, PAUL THAGARD *IN COLLABORATION WITH FRED KROON ET AL.*, *HOT THOUGHT: MECHANISMS AND APPLICATIONS OF EMOTIONAL COGNITION* (2006). For a representative discussion of emotion by a brain-science-oriented *psychologist*, see ANTONIO R. DAMASIO, *DESCARTES' ERROR: EMOTION, REASON, AND THE HUMAN BRAIN* 150-155 (1994). For discussions by psychoanalytically oriented psychologists, see HENRY KRISTAL, *INTEGRATION AND SELF-HEALING: AFFECT—TRAUMA—ALEXITHYMIA* xi (1988), ERNEST G. SCHACHTEL, *METAMORPHOSIS: ON THE DEVELOPMENT OF AFFECT, PERCEPTION, ATTENTION, AND MEMORY* 20 (1959); and *THE COLLECTED PAPERS OF DAVID RAPAPORT* (Merton M. Gill ed., 1967).

¹⁰ David Rapaport, *On the Psychoanalytic Theory of Affects*, 34 INT'L J. PSYCHOANALYSIS 177 (1953), *reprinted in* *THE COLLECTED PAPERS OF DAVID RAPAPORT*, *supra* note 9, at 476, 508.

This account of emotion doesn't see its function as a heuristic one. That is, emotions don't just enable a person to latch onto a position in the absence of time to acquire and reflect on information. Rather, as a distinctive faculty of cognition, emotions perform a unique role in enabling her to identify the stance that is expressively rational for someone with her commitments. Without the contributions that emotion makes to her powers of expressive perception, she would be lacking this vital incident of rational agency, no matter how much information, no matter how much time, and no matter how much computational acumen she possessed.¹¹

There is much of importance in these claims. Many values are social in various ways. To a very large extent, our values—the values most of us live with and by—are those of our society. I do not mean that we accept all society's values: we accept some and work to change or even reject others. To a large extent, they are our evaluative focus. In addition, many of these values give expression to and help sustain society.

Further, for the most part values exist along with other values in "groups." Grouped values can be formed around a political or religious group, a profession, or a way of life. Some are interrelated thematically, some more historically, some by happenstance, and so on. (Here we can think of temporal order, harmonious development, synchronicity and mutual reinforcement, and their contraries.) The values help form and develop a life—that is, a life of meaning of the sort "offered" and recognized by our society.

One way to help illuminate what I am suggesting is by reference to Socrates' argument, early in the *Philebus*, that a life of pleasure without intelligence would be just one moment after another, with no order, no meaning. There could be episodes of pleasure. But not pleasure in any activity or relationship—activity and relationship require intelligence, e.g., planning, choosing, remembering, and the like. At best, this would be the life of a mollusk, not a person.¹² It would be a life (understood biologically, not socially) of scattered events which do not add up to anything, and which therefore have no meaning. So too, we could look at Plato's characterization, late in *The Republic*, of the "democratic man":¹³ He is not even a dilettante. He has no overall plan, no center. He flits from one thing to another. His is a wasted

¹¹ Kahan, *Two Conceptions*, *supra* note 1, at 750-52 (figure and footnotes omitted).

¹² PLATO, *Philebus*, in PLATO VIII 203, 235-37 (Jeffrey Henderson ed., Harold N. Fowler trans., 2001).

¹³ PLATO, THE REPUBLIC 274 (G.R.F. Ferrari ed., Tom Griffith trans., 2000).

life; it has no meaning.¹⁴

Now, of course, social values and socially recognized roles, belief systems, and so on can be too extensive and their application too strict: too much meaning, of heresy, betrayal, and the like, can be attached to even small deviations. This is not in question. What is important is the meaning and meaningfulness of some sort and degree of interconnected social values.

Professor Kahan and I are, at least in broad outline, in agreement first about these features of held values; second, about the usefulness and importance of a person's knowing what she values and how her values are arrayed, organized, and focused; and third, about the importance of the self-knowledge gained from emotions that register or express one's values and their meanings.

I do not know if we are in agreement about how necessary it is to use emotions to learn what one values and what one finds meaningful. I suspect that, as with most human accomplishments, there are many ways to learn these matters. I may be able to learn what values my society favors or disfavors—even what values I hold or reject—by studying, asking, and learning from other people who know my society and me.

We also agree that the rational and irrational weighers—as he presents them—seem not to describe values in terms of emotions, much less social meanings expressed by emotions. Their values are, after all, those of neoclassical economics and utilitarianism. They are, to a large extent, individualistic, not social. To be sure, as Professor Kahan presents these accounts, some of their values seem not to be individualistic, e.g., those involving national security and the environment. But for the most part, they involve what a person thinks is good or bad for herself, not society as a whole.

Further, the meaning-laden values Professor Kahan urges fit poorly within a maximizing or utilitarian framework. Charles Taylor and other philosophers argue that deep and strong evaluations should be seen through the model of hermeneutics and psychoanalytic inquiries, and that these values and meanings are missed or mangled by models cast in terms of weighing.¹⁵ These controversies are, of course, connected with those over the relations between rightness and goodness—whether those of one sort can be understood in terms of those

¹⁴ *See id.*

¹⁵ *See, e.g.,* CHARLES TAYLOR, *What Is Human Agency?*, in 1 HUMAN AGENCY AND LANGUAGE: PHILOSOPHICAL PAPERS 15, 15-33 (1985) (contrasting the “simple weigher” and the “strong evaluator”).

of the other—over consequentialism versus deontology, utilitarianism versus Kantian-inspired views, and so on.¹⁶

I do not think the neoclassical theories Professor Kahan presents can accept the values and meanings he and I hold are important. Indeed, many of their values seem open to challenges inspired by the *Philebus* or *The Republic*.

However, three related comments are in order. First, the problems these theories have with these other values do not concern (at least not directly) the role of emotions in discovering and characterizing values. Second, as suggested above, I think that neoclassical theorists could acknowledge these emotions and what they show about the nature and sorts of values held by the people in question and the social meanings expressed by their emotions. Third, it is misleading to say only that they *could* do this. Many of them in fact *did* do this in the psychology they attribute to people, seeing most every person—at least every *rational* person—as deeply and naturally self-interested (e.g., selfish, acquisitive, maximizing, and the like). Thomas Hobbes's work, *Leviathan*, immediately comes to mind here. But he is by no means alone. Instead of holding that neoclassical theorists failed to think in terms of social meanings as expressed by emotions, I think it is more accurate to say that they made serious mistakes about which meanings are or should be held by which people and which values these emotions reveal.

This leaves open how, if at all, these theorists see the cognitive relations between emotions and values. Neoclassical theorists might hold that values are not revealed by emotions but by some other means—e.g., “self-evidence,” rational intuition, or obsessional or paranoid or magical thought.

The irrational weigher theory has, I think, an easier job accommodating Professor Kahan's cultural values and the roles he sees for these emotions. For it is all too clear that deeply held social meanings can carry us away, distort our thinking, and lead us into all sorts of limited or persistent errors. Examples are all too easy to find—take, as only one example, the role “being an Aryan” has played. Further, meanings can be difficult to discern and detail—consider the difficulties psychoanalysts and their patients have. Meanings can also be used heuristically to avoid serious examination—witness the various claims

¹⁶ For a useful, very recent discussion, see R. JAY WALLACE, *The Rightness of Acts and the Goodness of Lives*, in *NORMATIVITY AND THE WILL: SELECTED PAPERS ON MORAL PSYCHOLOGY AND PRACTICAL REASON* 300 (2006).

that patriotism precludes questioning our political leaders' policies.

There is an additional worry about the extent to which Professor Kahan's cultural evaluator account avoids heuristics. The difference on this score between Professor Kahan and the irrational weigher may be more a matter of degree than a difference in kind. For in many cases, the social values expressed by these emotions are typically available only in outline. They may well be more than enigmatic signifiers, but they are themes, hints, promises-to-be-filled-in, unending projects, etc. Just consider how difficult it is—verging on impossible, really—to give a “full and final” account of what patriotism, love, being a good lawyer, etc., requires in general, or even in a particular case.¹⁷

CONCLUSION

At various places, often in criticism of accounts Professor Kahan also criticizes, I suggested how they could change or add to their accounts to come closer to Professor Kahan's. Whether or not they could do this, they have yet to do it. We are indebted to Professor Kahan for showing them and us what a more adequate account of risk evaluation requires.

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¹⁷ On enigmatic signifiers and values as unending projects, see JONATHAN LEAR, *RADICAL HOPE: ETHICS IN THE FACE OF CULTURAL DEVASTATION* (2006).