Unconscious Bias in Judicial Decisions: Legal Genealogy and Disgust in Cases of Private, Adult, Consensual Sexual Acts Leading to Injury

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Abstract : 'Unconscious' bias is widespread, affecting society on all levels of decision-making and beyond. Placed in the law context, this study will explore the direct effect of the psycho-social and cultural evolution of unconscious bias on how a judicial decision was made. The aim of this study is to contribute to socio-legal scholarship by examining the formation of unconscious bias and its influence on the creation of legal rules that judges believe reflect social solidarity and protect against violence. The study seeks to understand how concepts like criminalization and unlawfulness are constructed by the common law. The study methodology follows two theoretical approaches: historical genealogy and emotions as sociocultural phenomena. Both methods have the 'tracing back' of the original formation of a social way of seeing and doing things in common. The significance of this study lies in the importance of reflecting on the ways unconscious bias may be formed; placing judges' decisions under this spotlight forces us to challenge the status quo, interrogate justice, and seek refinement of the law.
Keywords : legal geneology, emotions, disgust, criminal law
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