Narratives are powerful emotional devices. They can trigger our curiosity and make us suspicious, compassionate, empathic or even horrified. In this article, I focus on how Italian judges and prosecutors navigate their gut feelings evoked by written and oral narratives told by witnesses, defendants and victims in criminal cases. Fieldwork included observations of hearings and deliberations, shadowing and interviews with judges and prosecutors, and collection of written judgments. The article shows that gut feelings are experienced as intuitive knowledge – when judges and prosecutors feel they know ‘in their heart’ or ‘inside them’ the ‘true story’ of the crime, but they also contrast this type of knowledge with the ‘objective story’ based on the evidence available in a case. The analysis indicates two main emotional practices used to manage gut feelings. First, legal encoding – the translation of lay narratives into legal categories – constitutes an emotion management strategy that legal professionals can use, individually or collectively, to distance their gut feelings, restricting interest to aspects of the story validated by the evidence. Second, gut feelings can be endorsed, rather than constricted, when they generate suspicion that something ‘hidden’ has to be found out, or curiosity of knowing more about the story than what is strictly relevant under the legal frame. Gut feelings and curiosity mostly emerged in relation to the motive behind murder cases. By showing how legal professionals use their gut feelings, the article contributes to reinforcing an understanding of emotions and emotional reflexivity as necessary for rational decisions.

Key words gut feelings • emotional reflexivity • legal decision making • epistemic emotions • legal narratives

To cite this article: Minissale, A. (2023) Scrutinising gut feelings: emotional reflexive practices in Italian courts, Emotions and Society, XX(XX): 1–19, DOI: 10.1332/26316897Y2023D000000010
Introduction

In Western legal systems, emotions are conventionally considered the enemy of rationality (Maroney and Gross, 2014). Under this paradigm, emotional detachment is seen as guaranteeing the correct application of the law in the form of impartial and objective legal proceedings (Bladini and Bergman Blix, 2022). In recent decades, interdisciplinary scholars have criticised this long-standing view, showing that the ‘dispassionate lawgiver’ (Mindus, 2021: 2) is a myth that does not exist in real courtroom situations where judges and prosecutors continuously experience emotions and need to manage them to ‘facilitate justice’ (Snider et al, 2022: 256). Attention has been paid to specific emotions such as anger (Maroney, 2012), pride in procedural correctness and legal skills (Bergman Blix and Wettergren, 2018), un/certainty (Bergman Blix, 2022), and doubt (Törnqvist and Wettergren, 2023). These studies draw attention to the variety of ways in which emotions can come into play in judicial and prosecutorial work, eventually translating into a ‘positive judicial resource’ (Bergman Blix et al, 2019: 551).

This article seeks to fill a theoretical and empirical gap in the law and emotion literature by focusing on the role of gut feelings in legal decision making. Specifically, the article shows the epistemic function (de Sousa, 2009) of the gut feeling as an emotion that signals intuitive knowledge about the ‘true story’ of a crime; it centres on the way judges and prosecutors manage their gut feelings when deliberating and interacting with lay people in court. Attention to legal professionals’ gut feelings is crucial to understanding how intuitive knowledge and emotional reflexivity (Holmes, 2010) – monitoring one’s own and others’ emotions – are important components of judicial and prosecutorial decision-making practices. In this way, the article contributes to the growing body of research on law and emotions by reinforcing the view that emotional processes are necessary for rational decisions.

The analysis draws on data collected in Italian tribunals (that is, courts of first instance), courts of appeals and prosecution offices where I followed criminal cases. Tribunals have either a single judge in charge of the case or a panel of three judges, while appeal courts always have three judges. Assize courts, with two professional judges and six lay judges, decide murder cases. Trials take the form of a dispute between parties, adhering to adversarial-accusatorial models of criminal justice (Illuminati, 2010). Witnesses are cross-examined by the prosecutor, the defence and eventually the victim’s lawyer. Appeal courts can revise any part of the previous decision, partly or completely changing the judgment.

In the following, I review previous studies on gut feelings and objectivity in professional settings. I then illustrate the theoretical framework and methodology of the study, followed by the analysis. In conclusion, I highlight the contribution of my empirical findings to general sociological debates on epistemic emotions and emotional reflexivity in legal decision making, and I raise issues for further research.

Gut feelings and objectivity: a sociological perspective

Gut feeling-based decisions have attracted wide interdisciplinary interest during the past decades. In previous medical research, for instance, gut feelings are conceived of as spontaneous, visceral sensations or impressions, generating a ‘sense of alarm’ and helping doctors and nurses make diagnoses (Stolper et al, 2009; Baird et al, 2021).
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Studies in the field of managerial decision making have also emphasised the positive role of gut feelings as intuitions that help managers cope with complex issues – such as investment (Huang, 2018) or hiring decisions (Imdorf, 2010; Rivera, 2015; Hedenus and Backman, 2020) – accelerating decision making under conditions of time pressure and uncertainty. In contrast, based on experiments with trial judges, Guthrie et al (2007) point to the negative effects of intuition on judicial decisions. Employing heuristics-psychological theories, the authors emphasise that ‘judges are predominantly intuitive decision makers, and intuitive judgments are often flawed’ (p. 5), less reflexive and inaccurate.

Empirical investigations on gut feelings and legal decision making based on real court cases are lacking. Nevertheless, some interesting insights have emerged from studies conducted in other institutional settings similarly governed by expectations of impartiality and objectivity. For instance, Eggebø’s (2013) research on Norwegian immigration administrators’ decisions shows that when experiencing ‘gut feelings of what would be the correct decision’, participants use emotion management processes ‘influenced by the structure, rules, and norms of the organization’ (p. 308). Gut feelings emerge as intuitive and immediate emotions that are both exploited as sources ‘of valuable information’, reducing ‘time and resources spent on investigations’ but they are also regarded suspiciously because they ‘may threaten the objectivity and legitimacy of the decision-making process’ (p. 308). Barfoed and Jacobsson (2012) show a similar pattern in their study of Swedish social workers, who frame gut feeling-based decisions as incompatible with a desirable professional style based on objectivity. In contrast, Eliasson (2021) illustrates how Swedish police officers value their gut feelings positively, as emotions related to previous ‘experiences in the field’ (p. 8) that help them decide what type of knowledge to use. Eliasson further stresses that organisational norms cause participants to value legal knowledge higher than their intuitions, recreating a dichotomy between emotions and objectivity.

Overall, these studies suggest that reliance on gut feelings in institutional arenas is shaped by the ideal that objectivity is necessarily unemotional (cf. Rogers and Erez, 1999; Bergman Blix and Wettergren, 2019), which in turn prompts professionals to reflect on their gut feelings and align their actions with institutional rules and principles, distancing their intuitions. Notably, previous research has demonstrated that legal objectivity in practice entails emotional processes. Bergman Blix and Wettergren (2018) show that Swedish judges and prosecutors engage in ‘objectivity work’ (cf. Jacobsson, 2008: 47) by displaying emotional distance in the courtroom, which requires emotion management. The authors further show that emotional reflexivity sustains the objective evaluation of the evidence; for instance, when a judge experiences a moral emotion suggesting that the defendant is guilty, a simultaneous emotion of pride in the legal procedure enables her to distance the emotion of moral character. In other words, the method of legal evaluation requiring objectivity necessitates emotion work to cut off judgements that are not validated by the evidence.

Here, I continue to explore how legal objectivity as a ‘chief organizing principle’ (Bergman Blix and Wettergren, 2018: 141) is construed in practice using emotional processes, with a specific focus on judges’ and prosecutors’ gut feelings entering into play during the construction and interpretation of lay narratives for the purposes of decision making.
Emotional process of legal decision making

The theoretical departure of this research is the understanding that emotions and reason are intertwined phenomena (Barbalet, 1998). Previous literature has demonstrated that background emotions (Barbalet, 2011) – like confidence, commitment or doubt – are necessary to sustain focus, dismiss irrelevant information and ultimately take decisions. These emotions orient legal professionals’ reasoning despite having few physical signs and often operating below the threshold of awareness (Wallin et al, 2021).

Epistemic emotions are a group of background emotions pivotal for decision making as they provide information about the quality of one’s knowledge (de Sousa, 2009; Terpe, 2016). One example is the ‘feeling of certainty’ arising when an individual feels ‘the goodness of the inference’ (Hookway, 2003: 84). Certainty is felt as an embodied state or ‘internal clue’ (Tiedens and Linton, 2001: 975) signalling that we have found the answer we were looking for. Epistemic emotions influence decision making by affecting our courses of action (Frijda, 2004), such as when certainty blocks deliberations and ‘freezes the enquiry’ (de Sousa, 2009: 191), or when curiosity or doubt fosters the thinking process, motivating us to investigate further (Hookway, 2008; Törnqvist and Wettergren, 2023). Epistemic emotions are also situational, as they emerge out of and are influenced by the specific social setting where individuals carry out their activities. This links to the role of feeling rules (Hochschild, 1983) – tacit norms regarding appropriate emotions and emotional display – that determine how individuals attempt to manage their emotional responses in specific situations. In the legal setting, the dominant regime of judicial dispassion (Maroney, 2011) has an impact on how legal professionals try to control and silence their emotional experiences in line with the norm of unemotionality governing the legal system (Roach Anleu and Mack, 2021). That is, epistemic emotions require attention when they become problematic in the specific social setting where they are felt, demanding conscious thought and reflection (Wettergren, 2019). Gut feelings can be considered epistemic emotions, although in the literature they have often been discussed using the concept of ‘hunch’ – ‘a vague, not yet clearly-formed idea or belief about something’ (Terpe, 2016: 5) or a ‘feeling of knowing’ (Arango-Muñoz, 2014: 204). The colloquial gut feeling can be seen as an umbrella concept metaphorically describing all intuitive sensations (cf. Hedenus and Backman, 2020).

To explain the way gut feelings, and emotions in general, are dissected and problematised to account for institutional expectations, this article combines Holmes’ (2010) concept of emotional reflexivity as the relational process of monitoring one’s own emotions and consequent actions, and Scheer’s (2012: 209) concept of emotional practice as ‘habits, rituals, and everyday pastimes that aid us in achieving a certain emotional state’. The ‘striving for a desired feeling’ that Scheer places at the core of emotional practices incorporates emotional reflexivity as the tool to navigate and manage emotions and arrive at the desired emotional state. For legal professionals, this can be a feeling of pride in having applied the correct legal method, or satisfaction over a decision that is considered objective or resonates with previous jurisprudence.

Legal decision making requires maintaining one’s focus on legally relevant information through reflexivity, calibration and problematisation of the emotions that might come into play. Elsewhere, we describe this process as legal encoding, denoting how legal professionals translate lay narratives into lawful narratives that fit legal categories ‘to ensure objective and impartial evaluation’ (Bergman Blix and
Minissale, 2022: 3; see also Tilly, 2008). Legal categories – such as credibility, intent, negligence and self-defence, to name a few – are necessary to establish guilt and the punishment severity. Legal encoding allows ‘purification’ (Abbott, 1981: 825) of lay people’s stories for professional purposes, by delimiting interest in demarcated and fragmented narrative accounts that are relevant to categories applicable to the case. Demarcation and fragmentation are techniques used by legal professionals to encode lay narratives. The former refers to ‘the strict temporal and content boundaries of law stories’, whereas the latter ‘denotes the dissected way in which stories are presented’ (Bergman Blix and Minissale, 2022: 3). As shown in the analysis, these techniques function, often implicitly, as emotion management strategies used by judges and prosecutors to calibrate emotions.

In sum, the theoretical framework orienting this research considers legal decision making an emotive-cognitive activity centred on encoding lay narratives, which entails managing emotions, particularly epistemic emotions. It also encompasses emotional reflexivity as the practice of identifying and modifying emotions accounting for rules and principles governing the legal setting. These tools enable us to understand how gut feelings function in decision making and the way legal professionals scrutinise them.

The study

This article uses data collected within the Justemotions project (ERC-757625) investigating the role of emotions in the construction of judicial and prosecutorial objectivity in different countries. Combining different qualitative methods, we followed cases of fraud, domestic abuse and homicide, which we included in the original study design to guarantee variation in emotional experiences and types of evidence. Once in the field and while shadowing participants, we also observed trials concerning other crimes such as rape, theft and libel.

In Italy, after ethical approval, I collected data in a tribunal, a court of appeal and a prosecution office in the north, two tribunals and three prosecutor offices in the south, recruiting 40 judges and 34 prosecutors in total. I shadowed (Czarniawska, 2008) participants during their workday, capturing reflections on the decision-making process in each case. While observing trials, I focused on how legal professionals examined witnesses, victims and defendants, and on how emotions arose and were managed during interaction. When observing deliberations, I paid attention to the evaluation of the evidence, and of narratives more specifically, and to the reasoning leading to the final verdict. I took all field notes on my computer during court proceedings, which allowed for rapid typing resulting in detailed descriptions (for example, speech and turn taking, tone of voice). Taking notes on the computer did not disrupt participants’ activities due to the diffuse usage of tablets/computers in court.

Interviews were semi-structured with open-ended questions inviting participants to reflect on the narrative of the case and their emotional experiences. With the pre-hearing interviews, I captured how participants prepared for the trial, their expectations and emotions concerning the case. I used the longer, tape-recorded interviews at the end of the trial to explore how the reasoning evolved, how narratives constructed in court were interpreted/encoded, and participants’ emotions regarding their decisions. When it was not possible to make a pre-hearing interview, I conducted a longer follow-up interview. Last, I collected written judgments to analyse the final narrative.
The article builds on an analysis of field notes from 150 court hearings and 40 deliberations, and transcriptions of 95 interviews. The material, once anonymised by substituting fictitious for real names, was translated from Italian to English, to enable understanding across the project group. Translations were mostly done by a team of professional translators I continuously supervised, adding some of the original Italian words in brackets when necessary (that is, idioms, metaphors, dialects). I thematically coded the material using NVivo. Codes derived from a combination of inductive themes emerging from fieldwork, such as specific emotions and emotion management strategies related to decision making, and deductive codes linked to the theoretical framework of emotion theory and previous research. The deductive categories resulted from several meetings between the researchers working within the international project, to ensure reliability both within and between data sets.

As noted by Imdorf (2010: 97), gut feelings are ‘tricky to pin down in a research interview’, as they are ‘difficult to expand upon verbally’. Following Kövecses (2003), I paid attention to descriptive emotion words or expressions, such as ‘I feel in my heart’, ‘I have a sensation’, and to the non-verbal expressions and actions accompanying expressive statements, to grasp what a gut feeling meant in a specific situation. Triangulating data (Silverman, 1989) was essential to comprehend how gut feelings affected the process of narrative evaluation. For instance, if before the trial the judge expressed a gut feeling, in the analysis of the field notes from the trial and the deliberation I was alert to actions and emotional expressions that could be linked to that gut feeling, which then guided my analysis of the follow-up interview. By proceeding in this way, moving reflexively between different data sources, I interpreted how gut feelings were scrutinised, reflected on and ultimately influenced the decision-making process.

In the analysis, the excerpts are preceded by a fictitious name and age indicator for each participant. Words and sentences in italics indicate pronunciation with a higher pitch.

**Distancing the gut feeling**

Reading about the charges as well as listening to witnesses’ or defendants’ narratives can generate in judges and prosecutors a sense of knowing what truly happened in a case. Participants used miscellaneous words when referring to this sense of knowing the ‘true story’, henceforth described as a gut feeling. They talked about ‘sensations’, ‘intuitions’, ‘impressions’, ‘ideas’, an ‘inner conviction’, a ‘knowledge coming from the heart’, from ‘inside’. As mentioned earlier, the colloquial ‘gut feeling’ can be used as an umbrella concept encompassing all intuitive sensations, regardless of how participants labelled them. A common feature underlining experiences of gut feelings was the need to scrutinise them. This section focuses on a first type of emotional practice based on using legal encoding as an emotion management strategy to distance the gut feeling about the ‘true story’, restricting interest to the ‘objective story’ validated by the evidence. The following example is a murder case where a man is convicted for having killed his wife. Judge Chiara (60+) decides the case at the assize court. During the pre-hearing interview, Chiara contrasts her gut feeling with an objective judgement:
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‘And personally, I’m convinced that he killed her. Because, after all, who else could have done it? (…) But if I were alone, I’d acquit him, reluctantly (…) I’d acquit him. I must have the objective elements to say that this happened like this, rather than like that! (…) It’s an assertive judgement (…) It doesn’t say how she was killed, how the body was made to disappear… When (…) I mean, it follows the logic that “Only he could have killed her,” but there are lots of gaps, [the judgment] it’s patchy.’

In this quote, Chiara expresses an inner conviction that the defendant is guilty, presented as intuitive knowledge anchored in common sense. The judge seems certain of the problematic nature of her gut feeling unsupported by ‘objective elements’ and she is inclined to acquit ‘reluctantly’. Chiara’s certainty about the legal irrelevance of the ‘true story’ based on the gut feeling acts as a background, epistemic emotion aiding the judge in her emotional reflexive process. Even though her gut feeling aligns with the previous court’s decision, Chiara focuses on demarcated aspects of the story that are left unexplained in the appealed judgment (the method of the murder and disposing of the corpse). The judge thus detaches from her gut feeling by concentrating on relevant legal categories that must be included in a legitimate legal narrative. While the gut feeling initially emerges as a background emotion – an intuitive sense of knowing what really happened – reflecting on it makes it a foreground emotion (cf. Wettergren, 2019: 36) guiding the judge in evaluating the evidence. The reflexive scrutiny of her gut feeling enhances Chiara’s desire to construct an objective narrative that accounts for all the relevant legal categories.

Emotional reflexivity typically occurs when individuals bring ‘externally mediated knowledge to bear on the process of self-reflection and interpretation’, taking ‘a more distanced view’ in the monitoring of their actions (Burkitt, 2012: 470–1). As visible in this example, participants are emotionally reflexive when assessing the legitimacy of their gut feelings under the legal framework. By using legal encoding to demarcate the ‘objective story’ that goes against their intuitions, legal professionals scrutinise gut feelings in light of institutional demands.

While Chiara firmly dismisses her gut feeling, in other instances keeping intuitions at bay was an emotional reflexive practice adopted with hesitation. This mostly occurred when gut feelings signalled unclear aspects of the story, prompting legal professionals to inspect those issues more clearly, orienting their decision-making process accordingly. This is visible in the following quote from a follow-up interview in which Prosecutor Virginia (45+) presents her gut feeling in a case where a grandmother and her son are accused of domestic abuse against their grandchildren and children respectively:

‘Look… In this moment [sign of hesitation]… I still haven’t formed an idea… I need to re-read everything… It’s an evaluation that…When we hold the discussion, if I go, I’ll try to understand (…) We need to understand if… This, if it’s definitely… Let’s say… An intrusive… Behaviour? [of the grandmother]…. Eh [silence]… How much… How much was it endured… Objectively on the basis of what …What the offended party told us… Maybe there was more domestic abuse committed by the grandmother… Who… Taking the side of the husband [her son]… Who seems…Basically… He’s dominated by his mother certainly… But this is just an idea that came to me like that… Now we need to look at everything again…’
In the quote, Virginia describes a gut feeling about the behaviour of the grandmother both towards her nephews and her son, which she presents as an “idea”. By verbalising the gut feeling with hesitation, taking pauses (that is, the ellipses) and repeating words, Virginia is emotionally reflexive in dissecting the legitimacy of her intuition. There is a tension between the prosecutor wanting to keep an open mind (“I still haven’t formed an idea…I need to re-read everything”; “This is just an idea”), and the feeling of certainty emerging from her way of describing the story (“It’s definitely…An intrusive…Behaviour?”; “He’s dominated by his mother, certainly”). This tension underscores an inherent emotional struggle of distancing the ‘true story’ hinted at by the gut feeling, focusing on the ‘objective story’ that the prosecutor must demarcate from the victim’s narrative (“Objectively on the bases of what…What the offended party told us”). Hence, Italian prosecutors are a public party so their function is to act ‘objectively’ at trial (Fabri, 2016: 219), which helps explain prosecutors’ emphasis on the need to keep an open mind during the collection of evidence before the court.

In this example, we can see that, despite the effort to distance the gut feeling so as not to jeopardise objectivity, intuition nonetheless informs Virginia’s decision making, by indicating aspects of the story to inspect further (“I’ll try to understand”; “We need to understand”). This is the epistemic function of the gut feeling, signalling a lack of knowledge (Terpe, 2016) that the prosecutor considers relevant to taking a decision. While reflexivity is used to tone down the epistemic value of the gut feeling, prioritising the construction of an objective narrative that aligns with the institutional demands of the legal system, intuition is also exploited to decide which clues to follow. Reflexivity also involves interpreting the emotions of individuals taking part in the case, which is visible in the way Virginia reflects on the defendant being “dominated” by his mother. While the legal significance of this aspect remains unexplained in the quote, it nonetheless draws attention to how reflecting on lay people’s emotions is part of legal professionals’ interpretative process, which is aimed at achieving a complete understanding of the story.

The examples of Chiara and Virginia show that gut feelings are epistemic-backgrounded emotions that, when considered problematic due to their inconsistency with the evidence, are forced to the foreground by means of emotional reflexivity. This can also be a collective emotional practice carried out by judges deliberating in a panel. In these situations, verbalising a gut feeling did not pose challenges when judges’ intuitions matched, as in the case of the domestic abuse mentioned earlier by Virginia. Here the judges have a univocal gut feeling about the grandmother being guilty of domestic abuse against her two nephews. During the deliberation, Judge Enrico (60+) says that “the cruel grandmother was much crueler than the husband [her son-defendant]”, an evaluation implicitly accepted by the other judges Sonia (50+) and Beatrice (50+). Beatrice, however, redirects attention to the story based on the evidence. Indeed, Beatrice remarks that the statements of the victim “with regard to the abuse on the part of the grandmother” are “a bit generic” and “the grandmother’s position is not fathomed out”, causing her to suggest an acquittal that runs contrary to the shared gut feeling. The continuation of the deliberation shows how the judges quickly find consensus and dismiss the gut feeling by concentrating on the story based on the evidence:

Beatrice: No, but I’ve also reread all of it... And I can’t find sufficient evidence... This morning I reread...
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[Enrico sighs calmly.]

Beatrice: What do you say about that Enri?

[Enrico, Beatrice and Sonia all read their notes, silently.]

Enrico: Yes, we can say that we don’t have enough material on the grandmother. First, this grandmother wasn’t constantly present in the house. Then, she certainly has a strong character, she certainly had this severe attitude too, yet to reconstruct this arrangement, we don’t have sufficient evidence…

Beatrice: The problem is that we don’t have statements.

Gut feelings prompt the judges to look further into the evidence, as they search for elements validating their intuition. Gut feelings thus move the knowledge-seeking process forward, but at the same time, they are reflexively and collectively problematised on the heels of legal parameters (that is to say, the victim’s credibility). In this way, the three judges are doing joint objectivity work (Jacobsson, 2008), facilitated by the friendly tone adopted by Beatrice (“What do you say about that Enri”) generating a relaxed emotional atmosphere. Interest in legal encoding is visible in the judges’ effort to demarcate the ‘objective story’ from the narratives (“I can’t find sufficient evidence”; “this grandmother wasn’t constantly present in the house”; “we don’t have statements”).

When judges have different, or even competing gut feelings, using legal encoding translates into an emotion management strategy to find consensus by preferring the story that, regardless of the intuitions at stake, is validated by the evidence. In a fraud case, Appeal Judges Giorgio (65+), Michela (60+) and Monica (60+) have different gut feelings concerning who is guilty. The case involves two caregivers, a real estate agent and a notary accused of having circumvented an older man, taking advantage of his mental condition. During the deliberation, Michela says that she “would actually convict the real estate agent, but I think he will be acquitted”; Giorgio remarks that he “would convict the notary instead” echoed by Monica. All personal convictions are quickly dismissed as the judges use legal encoding to focus on the actions of the other two defendants. Giorgio, who is president of the panel and therefore has the highest status, initiates the discussion:

Giorgio: The two youngsters [defendants] have disinherited in a despicable manner. Now, let’s probe all the hypotheses: 1) the victim, Mr… hated his daughter but loved them, the two caregivers. Let’s remember that even if you are old, you can do whatever the heck you want. He [the victim], in the projection of being loved, can decide how to dispose of his assets.

Michela: What belies these hypotheses is that he divests himself of everything [serious tone]. If you are lucid, you don’t do that. At the end, he didn’t even have the money to renovate his home! [serious and confident tone]

Monica: Let’s focus on the July episode, he [the victim] was crying. Here, we have evidence of the misleading and the deceit. Real proof! I, caregiver, introduce myself as someone I’m not, and I introduce my husband as a doctor!
Michela: Yes, but even more than that, in the social workers’ report, the victim was terrified. Terrified! [serious tone] He was under their domination when they, the social workers, went there and saw how he was!

[Monica and Michela proceed in chronological order, examining one episode at a time, leafing through the documents included in the file, while Giorgio remains quiet.]

Giorgio’s insinuation of doubts can be read as a strategy to impose legal encoding over subjective interpretations, even going against his own gut feeling. Giorgio tries to demarcate the ‘objective story’, and this prompts joint objectivity work, as the judges smoothly assemble one segment of the story after the other, following an ordered reasoning. The fact that Giorgio, who has the highest status, problematises his own opinion, encouraging Monica and Michela to carefully reflect on the story together, constitutes a friendly invite to a collective reasoning that smooths the interaction, leading to a quick end of the deliberation (cf. Bergman Blix, 2022). Echoing the instances with one judge in the panel, reflexivity encompasses the distancing of the gut feeling, which here has a moral connotation (“The two youngsters [defendants] have disinherited in a despicable manner”), as well as the collective interpretation of the feelings of those in the case (love, hate, sadness, terror).

In sum, distancing and dissecting the gut feeling through reflexivity and legal encoding help legal professionals define which information is legitimate or missing, while they seek to demarcate the ‘objective story’ legitimately forming the basis of judgment. Similar, different or even competing gut feelings can emerge from the same narratives under evaluation. The collective scrutiny of gut feelings develops smoothly when legal encoding and emotional reflexivity are privileged, creating an emotional atmosphere that facilitates cooperation.

**Gut feeling, suspicion and normativity**

Judges and prosecutors participate actively in the construction of legal narratives (Hall and Rossmannith, 2016) and are expected to structure them around legal parameters, using an emotionally neutral form of questioning. In this section, I show that when gut feelings about the ‘true story’ generate suspicion that there is something ‘hidden’ to find out, they can be endorsed and manifested in the interaction with lay people. Participants sometimes displayed normativity through assertive statements, presenting their interpretation as the only possible interpretation of the events. In this way, they projected an already formed decision on the case, like in the following example from a murder case with Prosecutor Anna (30+). Here the defendant is accused of having killed his father. Before the hearing, Anna tells me that the motive for the murder “remained unclear”. It has emerged that the defendant “tried to approach a girl” and his father (the victim) might have obstructed this relationship. When the brother of the defendant mentions this circumstance in court, Anna tries to explore it further, facing resistance from the witness. This spurs suspicion and anger in the prosecutor as the examination progresses, leading her to adopt a normative stance:

Anna: Excuse me, but you talked about this matter involving your father and your brother’s girlfriend. I guess you have some knowledge of the kind of relationship we’re talking about. Let’s try to contextualise.
Witness: I didn’t know.
Anna: But then you got to know about that?
Witness: Yes.
Anna: So, which kind of relationship was it?
Witness: I don’t know. It didn’t last long. I didn’t have the chance to see
them together.
Anna: But they did see each other? How frequently? Give us some more
indications! [higher and disappointed tone of voice]
Witness: I don’t know. I knew that from this guy [name].
[…]
Anna: Why did the friend think that this could be the motive? [yelling] It
seems to be a bit weird that he mentioned this girl without knowing
anything else. (…) You referred before to a possible discussion
between your father and the girl. Explain this to us better.
Witness: I don’t know.
Anna: But you cannot say that they had a discussion and then that you
don’t know! [yelling]

We can see normativity when Anna formulates her suspicion in terms of
assumptions, rather than doubts, through conversational wording (“I guess you
have some knowledge”; “It seems to be a bit weird”). This can be explained by
Anna’s emotional reaction to the witness’s short and vague answers, leading her
to violate the feeling rules (Hochschild, 1983) of the courtroom by yelling and
projecting her conviction assertively. That is, when Anna gets angry, she seems to
focus less on translating her suspicion into legal formulas, as she wants to make
clear her disbelief about the witness’ narrative. Hence, the gut feeling can take over
the interaction when lay people’s narratives do not align with the story foreseen
by legal professionals, who, in turn, demand compliance with their assumptions
by foregrounding (cf. Barbalet, 2011) their gut feeling and emphasising the
righteousness of their intuitions.

In similar instances, participants reintroduced the legal framework in their reasoning
only at later stages of the decision-making process, when they found space to relieve
the emotional tension of the courtroom. During the interview after the hearing,
Anna reflects on the story and hesitantly communicates her gut feeling:

‘Uum … The idea I got [hesitant tone]… Because the defence did produce
some messages. Messages exchanged between the defendant and this girl. So,
the idea I got is that there was this sort of attempt, on his [defendant’s] part,
to approach this girl, in short, to … To have [hesitant tone] a relationship, but
this thing hadn’t materialised. So, it was a…let’s say, prodromal, preliminary
phase [smiles].’

Anna’s hesitation can be interpreted as a sign of reflexivity in action. The prosecutor
unpacks her gut feeling, revealing how she believes the events occurred, but she is
now downplaying the epistemic value of her intuition, reassessing her knowledge
in light of the evidence (“because the defence did produce some messages”).
Instead of the normativity displayed in the courtroom, here we can see a reflexive
dialogue (cf. Burkitt, 2012), where Anna is emotionally cautious when assessing the
epistemic quality of her knowledge, now diminished to an “idea”. Anna nonetheless conveys interest in the issue of the relationship between the defendant and the girl. Indeed, Anna’s gut feeling refers to the crime motive, to be searched for in the father’s interference in said relationship. The next section delves further into the intertwining between gut feelings, curiosity and the motive in murder cases.

**Gut feelings and curiosity about the motive to kill**

Participants experiencing gut feelings about the ‘true story’ sometimes developed an epistemic urge to know aspects of the story transcending the legal frame. This type of curiosity mostly arose when suspecting the motive in murder cases. Notably, in many criminal law systems, the defendants’ motives for offending have no bearing on the assessment of their liability (Kaufmann et al., 2003; Eldar and Laist, 2017), as it is only intent that matters. The motive refers to the ‘reason why’ the crime is committed, whereas intent is broadly understood as the ‘willingness’ to do something that the law determines as wrong (Hessick, 2006: 95). For instance, intent refers to a spouse’s will to kill the partner using a gun and shooting vital areas of the body, whereas the fact that the spouse decides to kill after finding out about an affair represents the motive for the murder. Having clarified this analytical distinction, we can return to Anna’s example. During the follow-up interview, she stresses the importance of understanding the motive:

‘But, first, we need to understand what are we talking about, that is, what is this motive, exactly? I mean, first, we need to sketch again the contours of this motive, whether it’s this issue of the relationship, of the father’s intervention, we’re still clearing this up.’

Anna’s gut feeling about the motive makes her curious to explore facets of the story related to it. Curiosity is an epistemic emotion that motivates ‘exploratory behaviours and knowledge acquisition’ (Arango-Muñoz and Michaelian, 2014: 102) which is visible in the way Anna presents her future actions as aimed at shedding light on the motive:

Anna: (...). During the next hearing we’ll examine the defendant’s mother (...). I doubt they’ve never talked about this story between them (...). That is, I’ll ask her whether she’s aware of this matter mentioned by her son, about the relationship of the defendant with this girl, and about the possible interference of her husband in this matter.

Interviewer: And how could these aspects of the story affect the qualification of the fact?

Anna: They cannot, in the end the motive isn’t relevant.

The gut feeling about the motive fuels Anna’s curiosity and affects her decision-making strategies. Indeed, Anna plans to follow her gut feeling when examining the next witness, while stressing that “the motive isn’t relevant”. This ambivalence suggests that when gut feelings generate curiosity, it is harder for legal professionals to keep their intuitions at bay. A legal evaluation needs to stick to social reality and not just to the simplified abstractions of legal codes. Curiosity about the crime
motive thus captures the intersection between the social and the legal process of knowing, manifested through the gut feeling. Furthermore, participants’ reflections on the possible emotional motivation leading to murderous actions reinforce the understanding that emotional reflexivity is a process encompassing both legal professionals’ own and lay people’s emotions.

For some judges and prosecutors, the gut feeling about the motive seemed to stem from the empathic attuning with individuals involved in the crime story. For example, in a murder case, Prosecutor Francesco (30+) was uncertain about the legal categorisation of the case as either manslaughter or murder. During the follow-up interview, Francesco points to the motive as “essential” to solving this case where the defendant was accused of having killed his brother, presenting his gut feeling as knowledge coming from “my heart”:

‘I’m sure this is not a premeditated murder [serious tone]. I mean, I don’t think that he [defendant] had decided to get rid of his brother. […] In my heart – hesitant, I don’t believe that he [defendant] came back from [city] to kill his brother. I believe that there might be something that made him exasperated, and I…I [hesitant] don’t exclude that there was a fight, which was never explored.’

In the quote, Francesco refers to his gut feeling about the motive with different levels of intensity, ranging from “I’m sure” to a more hesitant “I don’t think” and “I don’t exclude”. Reflexivity informs Francesco’s attempt to reduce the level of certainty attached to his gut feeling, whose source can be traced in the empathic attuning with the two main characters of the story:

‘The defendant was…A free spirit, he was a person that was on his own, this is clear. The victim was anarchic, whereas the defendant was more rigorous, he wanted to order and…Even though he lived far from here, he controlled all the properties, because he used to come, pick up the oil…’

Francesco’s reflections on the behavioural traits of the two brothers reveal how his gut feeling originates in empathic perspective-taking (Bergman Blix, 2019). This is opposite to the first type of emotional reflexive practice illustrated earlier, where attention was limited to facets of the narrative relevant to establishing guilt. Reconstructing a story that encompasses the crime motive and the emotions felt by the individuals involved reinforces legal professionals’ certainty regarding their decisions, as Judge Alice (50+) remarks in a follow-up interview:

Alice: (…) Very often I also have this anxiety… Of understanding… [silent] Things…That aren’t necessary to get to a judgment of conviction… If we think that the motive isn’t necessary to convict for murder… It’s more difficult to justify a judgment of murder without the motive, but if you succeed… [If] I don’t know why you did it, I can convict you anyway. But there’s always left some sense of… ’Eh?’ [smiles] Then maybe you don’t write what you have understood… But understanding… To trace back the fact that you saw as a judge, to a reality in which you [sign of hesitation]… Understand the dynamics a bit (…)
Interviewer: Even beyond what is strictly necessary?
Alice [interrupting]: That isn’t strictly necessary! [fast pace] Yes [hesitant tone-reflecting] (...) The judge, within [hesitates] herself... She always, strongly, wants to know that she hasn’t misjudged the matter, that she has come as close as possible to the factual truth.

In Alice’s account, knowing the crime motive is linked to the desire to come close to the “factual truth”. Participants often mentioned this type of truth, also called ‘historical’ or ‘substantive’, referring to what happened in a case. They stressed that this truth does not always align with the ‘procedural’ or ‘juridical truth’, meaning the ‘objective story’ based on the evidence. Knowing all facets of the story reinforces Alice’s certainty about not having “misjudged”. Alice knows that she does not need the motive to convict, but she also needs to feel certain about the final decision “within herself”. That is, knowing the motive enables legal professionals to achieve a complete understanding of the story, and this seems to reinforce the epistemic-emotional strength of their certainty and confidence in their decisions (cf. Barbalet, 1996), which they explain as ‘feeling certain as a human’, ‘within themselves’ or ‘inside them’.

Concluding discussion

The colloquial gut feeling is often described in lay accounts as an ‘experience-based as well as belief-based and biased’ form of judgement (Imdorf, 2010: 100), with negative effects on decision making, reinforcing inequality and discrimination (Guthrie et al, 2007). The empirical findings of the current study instead show that gut feelings are epistemic emotions signalling intuitive knowledge about the true crime story. The epistemic function is visible in the way gut feelings determine salience and interest (Morton, 2009) in specific facets of the narrative, generating motivation for knowledge acquisition and revision. Indeed, like Eggebø’s findings (2013), we have seen that gut feelings are often exploited as cues indicating that further knowledge is needed, or that something ‘hidden’ about the story has to be found out. Contrary to the arguments of Guthrie et al (2007), who equate intuition with bias, I showed that when gut feelings are foregrounded and reflexively scrutinised, they can be conducive to professional goals by fostering the ‘quest for knowledge and truth’ (cf. Hedenus and Backman, 2020: 47). As Candiotto (2020: 565) points out, emotions are epistemic ‘not only because they are embedded in the epistemic practice, but most fundamentally because their formal object is the truth’. This is particularly evident for the type of gut feelings discussed here, whose object is the ‘true story’ of a crime not based on the evidence, but tied to one’s intuition. In the legal setting, the ‘quest for truth’ has specific connotations due to the discrepancy between procedural and historical/substantive truth recalled by participants and largely debated in the literature (Lai Ho, 2021). That is, the procedural truth reconstructed at trial is shaped by exclusionary rules in the law of evidence determining how fact-finding occurs (Summers, 1999), and it may not match the substantive truth. When acting on their gut feelings about the ‘true story’, participants show interest in making the two forms of truth overlap, taking decisions that are both procedurally correct and coherent with the social reality
under evaluation. The effort to reconstruct the ‘true story’ while paying attention to legally relevant and objective aspects of the narratives at stake captures an inherent emotional struggle in legal decision making, that of balancing the legal and the social process of knowing. This emerged clearly in relation to the motive underlying murder cases. A crime narrative that conforms with social reality encompasses the ‘reason why’ the crime has been committed, despite this not being relevant for the legal system. By seeking to know all facets of the story, including the motive, participants express an emotional need to achieve a complete understanding of the case, which can reinforce their certainty and confidence in the final decision. In sum, gut feelings bring to the fore the pursuit of truth in legal decision making, and the need for emotional reflexivity to calibrate the social and legal epistemic process when deliberating. This arguably represents the first theoretical contribution of the current research, which expands sociological knowledge regarding epistemic emotions and decision making in institutional settings.

The second contribution refers to the role of emotional reflexivity in the form of practice, something that legal professionals learn to do by incorporating the institutional frame in their emotion management processes. While Holmes talks about practices when discussing emotional reflexivity (Holmes and Thomson, 2023), here I specifically rely on Scheer’s notion of emotional practice to describe the way emotional reflexivity encompasses ‘a learned, culturally specific and habitual distribution of attention to the inner processes of thought, feeling and perception’ (Scheer, 2012: 200). The reflexive scrutiny of the gut feeling through legal encoding captures the practised nature of emotional reflexivity in judicial and prosecutorial work, where emotions are dissected in line with the specific goals of the institutional–legal context, primarily that of objectivity (cf. Eliasson, 2021). This reinforces the view of objectivity as something that is construed by legal professionals through emotional processes (cf. Bergman Blix and Wettergren, 2019). Participants also used reflexivity to interpret the emotions of lay people participating in the trial. In this way, reflexivity appears to play a twofold role in legal decision making, encompassing the interpretation of both the legal professionals’ and lay people’s emotions. This can be an individual as well as a collective endeavour that judges jointly perform when deliberating in a panel, which supports an understanding of emotional reflexivity as an ‘interactive achievement, something that people do together’ (Holmes and Thomson, 2023). We have also seen that the emotional challenges of courtroom interaction can cause legal professionals to be less reflexive and disclose their gut feelings in a normative way. This was particularly evident when gut feelings generated suspicion or were linked to the motive in murder cases. In these situations, legal professionals might struggle to use an emotionally neutral form of questioning, to hide their gut feelings and to delimit attention to relevant legal categories. Hence, keeping gut feelings at bay is situationally dependent and displaying objectivity in practice ‘is a continuous and situated process requiring emotion management’ (Bergman Blix and Wettergren, 2019: 5).

Future research might continue to inspect the role of gut feelings in the legal field, by investigating different crime types, legal disputes and legal professions. More research on gut feelings and emotional reflexivity in the judiciary would also help reinforce the importance of emotional training in these settings. While emotions and emotion management are ‘at the heart of legal professional performance’ (Wettergren and Bergman Blix, 2022: 977), emotional preparation is mostly scarce in Western...
jurisdictions. The current study demonstrates that navigating gut feelings is an important emotional practice that judges and prosecutors tacitly learn by reflecting on and problematising their intuitions in an effort to construct objective, rational decisions while searching for a procedural and substantial truth.

Notes
1 In the article, the terms ‘emotions’ and ‘feelings’ are used interchangeably.
2 Within the Justemotions project, we followed judges and prosecutors due to our focus on legal professionals’ decision making.
3 Pre-trial interviews were recorded only in more legally complex cases.
4 The 95 interviews include pre-hearing and follow-up interviews with the same participant, as well as follow-up interviews with participants I could not interview pre-trial.

Funding
This work was supported by the European Research Council (ERC) under the European Union’s Horizon 2020 research and innovation programme (Grant no. 757625).

Acknowledgements
I want to thank Stina Bergman Blix, Åsa Wettergren, Mary Holmes, the EMOJI research group in Uppsala and two anonymous reviewers for constructive comments on earlier versions of the manuscript.

Conflict of interest
The author declares that there is no conflict of interest.

References


Scrutinising gut feelings


