

What do we know so far about emotion and refugee law?

Jane Herlihy*

**Centre for the Study of Emotion and Law, London, and University College,
London**

and

Stuart Turner**

Centre for the Study of emotion and Law, London, and trauma Clinic, London

In this pioneering edition on emotion and law in the UK and Ireland it seems appropriate to return to Maroney's¹ 2006 review of the field and to start by clarifying where this paper will fit into her taxonomy.

Maroney proposes six areas of enquiry into how emotion is embedded in and drives the development of the legal circumscription of society. The first four are: (1) how a given emotion is reflected in the law (emotion-centred); (2) how particular mechanisms of emotion are reflected in the law (emotion-phenomenon); (3) how particular theories of emotion are reflected or utilised in law (emotion-theory) and (4) the study of how theories of emotion are reflected in legal theory ('theory of law'). This paper will address the other two, more applied questions, of how emotion is or should be reflected in doctrine or particular determinations (the 'legal doctrine' approach) and how particular legal actors' performances are – and where they perhaps should be – influenced by emotion (the 'legal actor' approach).

In this paper we will draw on studies examining what is loosely called 'refugee law'. We will outline the relevant aspects of the law available to people who flee situations of persecution and seek the protection of a state outside their own. We will then examine the way in which receiving states manage the decision to allow some people that protection, whilst at the same time managing their own state borders, which necessarily means a restriction on immigration. We will then look at the emotional aspects of this decision-making process, and where psychological science can be of use, both in the area of legal doctrine and in working with legal actors to ensure that this

¹* MPhil, DCLinPsych, CPsychol.

** MD, BChir, MA, FRCP, FRCPsych.

T A Maroney, 'Law and Emotion: A Proposed Taxonomy of an Emerging Field' (2006) 30 Law and Human Behavior 119.

crucial area of decision-making is based on the best available science of human behaviour.

What is a refugee?

The definition of a refugee was constructed by a group of states that came together after the Second World War to write the Convention for the Protection of Refugees.² It was approved in Geneva in 1951 (hence it is commonly called the Geneva Convention on refugees), and it came into force in 1954. In 2011, there were 148 signatories to the Geneva Convention.

A refugee, as defined by the Geneva Convention, is a person who

... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country . . .³

This definition has been broadened in respect of Africa, where the term 'refugee' has been extended in a more recent convention to apply also to every person who

owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.⁴

Similarly, the 1984 Cartagena Declaration extended the definition of refugees in the Americas to

... persons who have fled their country because their lives, safety, or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violations of human rights or other circumstances which have seriously disturbed public order.⁵

Refoulement and asylum

² Convention relating to the Status of Refugees 1951

³ Art 1(2).

⁴ Art 12.

⁵ Conclusion 3: see J Herlihy, C Ferstman and S Turner, 'Legal Issues in Work with Asylum Seekers' in J P Wilson and B Drozdek (eds), *Broken Spirits: The Treatment of Traumatized Asylum Seekers, Refugees, and War and Torture Victims* (Brunner-Routledge 2004).

The principle of non-refoulement is set out in art 33(1) of the 1951 Geneva Convention as follows:

No Contracting State shall expel or return [‘refouler’] a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

This principle applies not only to refugees, but to asylum seekers whose status has not yet been determined, and those seeking entry at a border.⁶ The principle of non-refoulement is also prohibited by the Convention against Torture, the European Convention on Human Rights, the American Convention on Human Rights and the African Charter on Human and Peoples’ Rights.⁷

The European Union Directive 2004/83/EC additionally provides for subsidiary protection for every third-country national who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned would, if returned to his or her country of origin, face a real risk of suffering serious harm. Furthermore, member states of the Council of Europe must consider art 3 of the European Convention on Human Rights which requires that: ‘No State Party shall expel, return [refouler] or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.’ Article 3 does not require a ‘Convention ground’. In practice in the UK, the Refugee Convention, subsidiary protection and art 3 are considered concurrently; in the Republic of Ireland, protection rights under the Refugee Convention must be exhausted before subsidiary protection is considered.⁸

Refugee receiving states which are signatories to the 1951 Geneva Convention relating to the status of refugees, whilst bound to offer protection to persons fitting the definition of a refugee, are free to assess claimants by their own procedures. The United Nations High Commission for Refugees (UNHCR) has issued a number of non-binding documents to guide the task. Thus, paragraph 195 of the UNHCR Handbook states:

The relevant facts of the individual case will have to be furnished in the first place by the applicant himself. It will then be up to the person charged with determining

⁶ UNHCR, *Conclusions of the Executive Committee* No 6 (XXVIII) (UNHCR 1977).

⁷ Herlihy et al (n 5).

⁸ European Communities (Eligibility for Protection) Regulations SI No 518 of 2006 (article 4 in particular).

his status (the examiner) to assess the validity of any evidence and the credibility of the applicant's statements.⁹

Such statements usually involve a history of persecution, which goes towards establishing their 'well-founded fear' of return for one of the five Convention reasons.

Decision-making in most receiving countries has two or more stages, allowing for an initial decision and the possibility of an appeal process. In the UK, the initial decision is taken by a state-employed case-owner, who interviews the claimant, reviews any paperwork and either allows the claim or writes a 'reasons for refusal' letter, addressed to the claimant and signed 'on behalf of the Secretary of State'. The claimant may then appeal to an independent tribunal, consisting of a single judge, usually with an oral hearing. Both the state and the judicial decision maker have an unusually difficult task. Unlike other areas of law there is often little or no corroborating evidence to the history given in support of the claim. The decision maker may draw on country evidence, that is, reports gathered about current situations in the alleged country of origin. Other than this, the judgment typically relies on an assessment of the credibility of the claimant and his or her account. All of this has to be performed within a highly politicised and media-dominated context of discussions about immigration, human rights and – rightly or wrongly – terrorism and crime.

This reliance on credibility makes refugee status determinations a particularly interesting area of law for psychological study. A recent report on the asylum process in the UK quoted immigration judges as saying that their task was to rely on 'common sense and experience'¹⁰ to decide the credibility of the people before them, the plausibility of the histories they allege and the reliability of their testimony. However, many authors have highlighted the subjectivity of this approach.¹¹ A US-wide survey of refugee status determinations shows widespread inconsistencies of decision-making according to which court hears the claim, which countries claimants come from, the gender of the claimant and the gender of the judge, amongst other factors,¹² showing that there are biases which come to the fore in the absence of some additional methodology alongside the 'common sense' of the judge.

⁹ UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees* (UNHCR 1979, re-edited 1992).

¹⁰ Independent Asylum Commission, *Fit for Purpose Yet? The Independent Asylum Commission's Interim Findings* (Independent Asylum Commission 2008).

¹¹ A Macklin, *The Truth about Credibility* (International Association for Study of Forced Migration 2006); S Kneebone, 'Believable Tales: Credibility and Proving a "Well-founded Fear of Persecution"' (Conference on Law and Mental Health, Sydney, 2003); G Coffey, 'The Credibility of the Credibility Evidence at the Refugee Review Tribunal' (2003) 15 *International Journal of Refugee Law* 377; M Kagan, 'Is Truth in the Eye of the Beholder? Objective Credibility Assessment in Refugee Status Determinations' (2003) 17 *Georgetown Law Journal* 1.

¹² Rami-Nogales, A Schoenholtz and P Schrag, *Refugee Roulette: Disparities in Asylum Adjudication and Proposals for Reform* (New York University Press 2009).

Jarvis¹³ undertook an investigation of the factors taken into account by UK immigration judges. She found a lack of methodology and consistency in approach:

The extent to which all judicial decisions rely upon the notion of ‘commonsense’ and, in turn, the meaning to a judge, of the term ‘commonsense’ (and the extent to which that is a fundamentally gendered concept) are matters that are not always apparent . . . even when they seem to be calling on it for aid when relying on myths and assumptions in decision making.¹⁴

In order to clarify some of the assumptions that immigration judges rely on in their decision-making, Herlihy, Gleeson and Turner¹⁵ conducted a qualitative study of a series of UK determinations. UK immigration judges are required to produce a written determination, outlining the claim before them, the law relied on and the decisions that go to make up the final judgment to allow or dismiss the appeal. A copy of this written determination is made available to the appellant. Using an initial sample of determinations, a coding structure was developed which defined assumptions about people’s behaviour, intentions, motivations, knowledge and the way they tell their stories. These definitions were used to build a data set of 117 assumptions, which were then subjected to an inductive – data-driven – thematic analysis.

Three major themes became apparent in the data. Firstly, assumptions were made about how a credible claimant ‘would have behaved’ in situations of fear or traumatic experience: for example, who makes decisions about what a family does following serious threat, or how threat is interpreted by individuals and families. For example, the husband who ‘sent [his wife] to this country ahead of anyone in his own family, including his sister, who had been raped’ was seen to be non-credible. This theme in the data also includes the notion of plausibility, which immigration judges draw upon to assess situations presumably outside of their own experience. In the words of one judge, for example: ‘I do consider it implausible that a family in fear, on seeing a man throw something over the fence and into their garden . . . would go to investigate it.’¹⁶

Secondly, assumptions were made about how people behave through the asylum-seeking process, knowing the correct procedures and, more interestingly from a psychological point of view, behaving appropriately. This included basing credibility judgments on the concrete behaviour of applying for asylum immediately upon arrival, as well as the less obvious assumptions that claimants will know and use appropriate language and behaviour in the court. For example, of a man alleging persecution on the

¹³ C Jarvis, ‘The Judge as Juror Re-visited’ [2003] Winter Immigration Law Digest 7.

¹⁴ Ibid 9.

¹⁵ J Herlihy, K Gleeson and S Turner, ‘What Assumptions about Human Behaviour Underlie Asylum Judgments’ (2010) 22 International Journal of Refugee Law 351.

¹⁶ Ibid 358.

grounds of his sexuality, from a country where homosexuality is illegal, the judge writes: ‘the appellant denies having slept with the sponsor, which the sponsor [a UK citizen] says has occurred’.¹⁷ Another judge noted that ‘none of the three witnesses testified about any of the hardships faced by the appellant and her family’.¹⁸ Both of these examples assume that the appellant and family or friends understand and have accepted both their role in the court and what they are expected to speak about. This theme also raises questions about the cross-cultural communication in the court and how well the ‘rules of conversation’ of the different cultures (of court and appellant) are understood by all parties.

The third theme identified was to do with assumptions about the nature of a truthful account. Internal consistency in details across repeated questioning, early disclosure of all material facts and lay assumptions about memory were all being relied upon to indicate a fabrication of accounts in order to make a false claim for protection. In the words of one judge, ‘given that rape is such a serious thing to happen to any woman, I would have expected a raped person to know when they were raped. This is not the type of event which I would expect a person to forget about or confuse.’¹⁹ In another case a judgment that an account was true was based on an assumption about the consistency of memory, the judge remarking that the applicant ‘was able to withstand a cross examination from Mr H that lasted for over one hour without any serious discrepancies coming to light’.²⁰

The important question raised by this study lies not in the individual examples, but in the assumptions on which they are based. All are questions of human behaviour, or intention, or response to situations. All are areas of psychological enquiry, some of which have an extensive knowledge base, built on the scientific hypothetico-deductive model. Some of the assumptions identified in this study were in line with the latest psychological research. Some were not. The contention raised by this study is that, in such a crucial area, decisions based on assumptions about people’s behaviour, intentions and motivation should draw on the latest and best available scientific knowledge about human behaviour, not least as the outcome could be a matter of life or death.

The Scientific background

In this section we will review some of the scientific investigations which have specifically aimed to illuminate aspects of refugee decision-making. These studies differ in their methodology both from legal research and from social research. In legal

¹⁷ Ibid 360.

¹⁸ Ibid.

¹⁹ Herlihy et al (n 15) 361.

²⁰ Ibid 362.

and social research, the discovery of one or more examples of a case or a principle is an important finding, as it demonstrates, for example, guidance being ignored, or a law being misapplied.²¹ Quantitative psychological research, on the other hand, relies on hypothesis-testing based in methods developed in the physical sciences. It sets out to test general theories of emotion and behaviour as applied to groups of people, for example, mechanisms of fear conditioning. This type of research, if valid, can be replicated in other settings. If similar results are found in a second study, by different researchers, we can be more confident that the construct we are measuring is something real ‘in the world’.²² Thus, these enquiries, despite sharing the language of ‘research’, fulfil different albeit complementary functions.

We shall now consider two key areas in which research of this nature can illuminate the ways in which decisions as to refugee status are taken, the first relating to the emotions of the claimant, and the second to those of the decision-maker.

The Emotions of the Claimant

The asylum claim relies very heavily on memory. Although the core of the claim is ‘future risk [of persecution]’, it is currently generally accepted that the best – possibly the only – way to establish this is by describing events which have already happened, giving rise to a ‘well-founded fear’ of what could happen in the future. Claimants thus have to describe to officials, lawyers, decision makers and sometimes expert witnesses, what are usually the worst moments of their lives, including torture, sexual torture, loss of loved ones and extreme hardship and survival. It is here that psychological research on memory can be of immense significance. We will first consider autobiographical memory generally, and then the more specific case of recalling and retelling traumatic experiences.

Autobiographical memory and seeking asylum

Autobiographical memory serves a number of functions.²³ First of all, the recalling and telling of episodes from the past helps us to develop, maintain and nurture social bonds. Secondly, our personal past is our guide to our behaviour in the present; it gives us examples of key events that helped to develop our morals and our emotional responses,

²¹ We are grateful to Debora Singer of Asylum Aid <www.asylumaid.org.uk> for articulating this distinction.

²² See <www.thepsychologist.org.uk/archive/archive_home.cfm?volumeID=25&editionID=213&ArticleID=2059> for a paper and discussion about the issues of replication in psychological studies.

²³ For a fuller review of autobiographical memory and the asylum process, see J Herlihy, L Jobson and S Turner, ‘Just Tell Us What Happened to You: Autobiographical Memory and Seeking Asylum’ 26 *Applied Cognitive Psychology* 661–76.

and it helps us explain to ourselves and others the decisions we make about life directions. Accordingly, our stories of the past will be updated and developed in the light of new understandings about ourselves and the world. Thirdly, our autobiographical memories guide our definition and expression of our own identities and sense of self, and the changing self, maintaining our sense of 'biographical identity'.²⁴ In the context of traumatic experiences, which challenge the self, memories can be modified and refined in order to protect, or rebuild, a sense of self. As a possible example, a young man interviewed twice about a police interrogation said on the first occasion 'we were slapped around', but on a later occasion 'we were badly beaten'.²⁵

In general, it seems that autobiographical memory is an exercise of reconstruction, not reproduction, as was once thought. As has been said:

contrary to common lay opinion, research over the last 50 years has provided compelling evidence to suggest that autobiographical remembering is not an exact replaying of an event. This type of memory is a reconstruction of events based on several elements and subject to distortion as well as failure (forgetting or false remembering).²⁶

Thus, we see a chasm of understanding between the demands of memory made by the asylum system – for reliable, legal evidence – and a psychological process, which has developed to be socially interactive, flexible and open to being updated and refined as needed.

Traumatic memory

In addition to autobiographical memories of adverse experiences, there may also be traumatic memories. When recounting a normal event, we are able voluntarily to retrieve a verbal narrative, with a beginning, middle and end, and a sense of being in the past. This narrative is updateable, as described above, should new information become available. However, traumatic memory has some quite different attributes. This is a sensory 'snapshot' of the traumatic moment – perhaps just the sound of screams, the image of a face, or a feeling of pain; it is without narrative structure and, crucially, does not have a sense of being in the past but is 're-experienced', as if it were happening in the present. These memories are not available for updating.²⁷ They are not voluntary,

²⁴ Ibid.

²⁵ J Herlihy, P Scragg and S Turner, 'Discrepancies in Autobiographical Memories: Implications for the Assessment of Asylum Seekers: Repeated Interviews Study' (2002) 324 *British Medical Journal* 327.

²⁶ Herlihy et al (n 23).

²⁷ Indeed one of the principal tasks of psychological therapy is to make such memories available in such a way that updating information can be incorporated, in order that the memory can be integrated into the rest of the person's identity and life story.

as normal memories, but triggered, by external or internal cues (such as the sight of someone in uniform, a pain, or a feeling of guilt).²⁸

Most people recover from traumatic experiences, given time and the right kinds of family and social support.²⁹ However, for some people³⁰ a pattern develops of persistent, sudden re-experiencing of traumatic memories, strong efforts to avoid the triggers of the memories, and a variety of symptoms of hyperarousal, such as sleep disturbance, irritability or anger, loss of concentration, an elevated startle response and hypervigilance. These comprise the symptoms of post-traumatic stress disorder (PTSD).³¹ However, even without reaching the threshold of a diagnosis, these symptoms can seriously impede the process of making a claim for protection. PTSD avoidance symptoms in particular may include conscious avoidance, such as an effort not to speak or think or have feelings about the traumatic event. However, they can also include symptoms which are not under the conscious control of the individual, such as emotional numbing, or dissociation – ‘cutting out’ – under even moderate stress. In addition to PTSD, refugees often develop symptoms of depression: persistent low mood; loss of pleasure or interest in activities previously enjoyed; changes in appetite; changes in weight; sleep problems; fatigue or loss of energy; diminished ability to think or concentrate or indecisiveness; feelings of worthlessness or excessive guilt and recurrent thoughts of death or of harming or killing themselves.³² However, it is not necessarily the diagnosis of depression which holds the key to understanding an asylum seeker’s possible difficulties with the legal processes he or she has to traverse. People are asked factual questions about their country, to establish their provenance, and feelings of worthlessness can lower a person’s confidence in their memory and knowledge, leaving them appearing unsure – and hence not credible. Similarly, poor concentration, or simply not having slept for more than a few hours together for many months, can make a person poorly equipped for lengthy, detailed interviews about their present and past circumstances.

²⁸ C Brewin, T Dalgleish and S Joseph, ‘A Dual Representation Theory of Posttraumatic Stress Disorder’ (1996) 103 *Psychological Review* 671; C Brewin, ‘A Cognitive Neuroscience Account of Posttraumatic Stress Disorder and its Treatment’ (2001) 39 *Behaviour Research and Therapy* 373; C Brewin et al, ‘Intrusive Images in Psychological Disorders: Characteristics, Neural Mechanisms and Treatment Implications’ (2010) 117 *Psychological Review* 210.

²⁹ B Andrews, C R Brewin and S Rose, ‘Gender, Social Support, and PTSD in Victims of Violent Crime’ (2003) 16 *Journal of Traumatic Stress* 421.

³⁰ PTSD is more likely after certain types of events, particularly interpersonal trauma, with torture being the most likely to give rise to PTSD: see, e.g. D Lee and K Young, ‘Post-traumatic Stress Disorder: Diagnostic Issues and Epidemiology in Adult Survivors of Traumatic Events’ (2001) 13 *International Review of Psychiatry* 150.

³¹ For the relevant diagnostic criteria, see American Psychiatric Association, *DSM-IV-TR: Diagnostic and Statistical Manual of Mental Disorders* (APA 2000).

³² *Ibid*; M Fazel, J Wheeler and J Danesh, ‘Prevalence of Serious Mental Disorder in 7000 Refugees resettled in Western Countries: A Systematic Review.’ (2005) 365 *Lancet* 1309.

Recall and disclosure of sexual violence

Following experiences of sexual torture, different patterns of psychological responses have been observed and, again, these are of great relevance to the process of claiming asylum. Whereas in survivors of torture generally intrusive memories are common, in survivors of sexual violence it is the avoidance symptoms that are more prevalent.³³ This effect has been replicated and linked to dissociation and shame. In a study of 27 asylum seekers in the UK,³⁴ Bogner et al found that, compared to participants with a history of non-sexual torture, those with a history of sexual torture scored higher on measures of PTSD avoidance symptoms, PTSD overall, dissociation, shame and difficulty in disclosing their histories at their immigration interview. Across both groups, there was a positive association between their difficulty in disclosing sexual violence and higher levels of total PTSD symptoms, PTSD avoidance symptoms, shame, depression and dissociation.

The importance of this study is that people who disclose sexual violence during the course of an asylum claim, but failed to do so at the first possible opportunity, are under suspicion, and are very often judged to be fabricating evidence in order to strengthen an otherwise unfounded claim for protection.³⁵ It thus supports, using scientific methodology, and drawing on psychological theory and empirical findings, what campaign and advocacy groups have long been demonstrating, namely that refugees who have been sexually assaulted are systematically at a disadvantage when it comes to claiming protection. Perhaps more importantly, the study begins to explain some of the mechanisms whereby people can have severe difficulties in fulfilling the requirements of the asylum process as it is currently implemented. A better understanding of these barriers could inform a better approach to decision-making which takes into account the theoretical and empirical science on the disclosure of experiences of persecution.

Recognising emotional distress

Given that PTSD is recognised as of importance in the assessment and treatment of asylum seekers, the question arises of how it is recognised by lawyers and other people involved in the assessment of asylum seekers. Psychiatrists and psychologists are

³³ C van Velsen, C Gorst-Unsworth and S Turner, 'Survivors of Torture and Organized Violence: Demography and Diagnosis' (1996) 9 *Journal of Traumatic Stress* 181.

³⁴ D Bogner, J Herlihy and C Brewin, 'Impact of Sexual Violence on Disclosure during Home Office Interviews' (2007) 191 *British Journal of Psychiatry* 75.

³⁵ H Muggeridge and C Maman, *Unsustainable: The Quality of Initial Decision-making in Women's Asylum Claims* (Asylum Aid 2011).

specifically trained to recognise, assess, diagnose and work with PTSD, but most actors in the asylum process do not have this background. When immigration lawyers have clients whom they suspect may be having psychological difficulties, they have the possibility (funding allowing) to commission a medico-legal assessment by a qualified mental health expert. A recent study³⁶ explored how immigration lawyers make this decision. In-depth interviews with a sample of immigration lawyers found that, as well as considering the legal decision about the utility of an expert report for the case, they relied on the presentation of the client identifying elevated levels of sadness, upset, aggression or withdrawal as possible indicators of a problem. The conclusion drawn was that:

representatives and decision makers may rely on lay understandings of distress that do not necessarily fit with all possible presentations of psychological disorder . . . presentations of PTSD which are less well-understood by lay decision makers may pass unrecognised.³⁷

The issue was further explored using an experimental design, in which an actor recounted the same asylum story employing four different sets of behavioural presentations.³⁸ In the first he showed the typical signs of having PTSD; in the second he exhibited cues indicating he was lying; in the third he presented both cues of PTSD and lying; and in the last he gave a neutral account. All of the behavioural expressions were derived from the literature on he was lying; in the third he presented both cues of PTSD and lying; and in the last he gave a neutral account. All of the behavioural expressions were derived from the literature on PTSD and on deception³⁹ and were validated by expert clinicians. Students instructed in asylum decision-making then rated each presentation (in counterbalanced sequence) as to their credibility. The presentation deemed most credible was the PTSD-alone account. However, further qualitative questions asked participants to explain their decision-making process and found that comments such as ‘he seemed understandably traumatised by events’ appeared most commonly with regard to the PTSD-alone account. This chimes with work done on rape trials, where it has been found that ‘emotional congruence’ can be crucial to witnesses

³⁶ L Wilson-Shaw, N Pistrang and J Herlihy (2012) ‘Non-clinicians’ Judgments about Asylum Seekers’ Mental Health: How do Legal Representatives of Asylum Seekers Decide when to Request Medico-legal Reports?’ 3 *European Journal of Psycho-traumatology*.

³⁷ L Wilson-Shaw, N Pistrang and J Herlihy (2012) ‘Non-clinicians’ Judgments about Asylum Seekers’ Mental Health: How do Legal Representatives of Asylum Seekers Decide when to Request Medico-legal Reports?’ 3 *European Journal of Psycho-traumatology*.

³⁸ H Rogers, S Fox and J Herlihy, ‘The Impact of the Behavioural Sequelae of Post-traumatic Stress Disorder on the Credibility of Asylum-seekers’ (submitted).

³⁹ E.g. A Vrij, *Detecting Lies and Deceit: Pitfalls and Opportunities* (2nd edn, John Wiley & Sons 2008). 40 G Kaufmann et al, ‘The Importance of Being Earnest: Displayed Emotions and Witness Credibility’ (2003) 17 *Applied Cognitive Psychology* 21.

being believed; for example, the perceived credibility of a (simulated) rape victim's statement increased when the 'victim' showed despair.⁴⁰

Overgeneral memory

Returning to memory, another of the consequences of both depression and PTSD according to a significant number of studies is overgeneral memory.⁴¹ This is measured by a test consisting of cue words – e.g. happy, sad, gate – to which the study participant is asked to give a memory of a personal event, specific in time and place (for instance, dancing at John's party last week). Overgeneral memory refers to memories which are either 'extended' in the sense that they last longer than one day (e.g. 'when we were on holiday') or 'categoric' in the sense that similar events are experienced several times (e.g. 'when I used to go Salsa dancing'). This is important because there is an assumption in asylum decision-making that detail is indicative of a true account. For instance, one judge reported that 'there was a texture and richness to the details of her evidence that indicates that this was true'.⁴²

However, a robust finding over many studies is that when people are depressed, they give more overgeneral memories.⁴³ The phenomenon has also been shown to be associated with PTSD. There are suggestions that there is also a cultural element to overgeneral memory, most of the studies in the literature having been conducted with participants of Western culture. In this connection, Hofstede⁴⁴ has distinguished cultures that are individual or independent from those that are collective or interdependent, and this has given rise to research on social and cognitive differences between people from those two backgrounds. Reviewing studies of the development of memory and, in particular, the specificity of memories, Jobson points out that 'cultures emphasizing interdependence do not value specificity of autobiographical memories because the aim of the relatedness self is to achieve interdependence, and the retrieving of specific autobiographical memory has the potential to undermine this objective'.⁴⁵

⁴⁰ Ibid.

⁴¹ For a fuller review see, J M G Williams et al, 'Autobiographical Memory Specificity and Emotional Disorder' (2007) 133 *Psychological Bulletin* 122.

⁴² Herlihy et al (n 15). This example did not appear in our published paper of this study, but was one of the data items analysed.

⁴³ Williams et al (n 41).

⁴⁴ G Hofstede, 'Geert Hofstede Cultural Dimensions' (2011) <www.cle.arylcultural.com/geert-hofstede-cultural-dimensions/> accessed 17 June 2012; G Hofstede and G J Hofstede, *Cultures and Organizations: Software of the Mind* (McGraw-Hill 2005).

⁴⁵ L Jobson, 'Cultural Differences in Specificity of Autobiographical Memories: Implications for Asylum Decisions' (2009) 16 *Psychiatry, Psychology and Law* 454.

Jobson's study asked people from a range of backgrounds to describe, in writing, an everyday memory and a trauma memory. Each memory was rated as 'specific' if it gave details such as date, time, people, location and suggested a specific episode, or 'general' if the event described occurred regularly or repeatedly, was difficult to date and could not be linked to a specific episode. Significantly, more of the participants from 'independent' countries (such as Australia, New Zealand, the United States, Canada and the countries of Western Europe) gave specific accounts compared to the group from 'interdependent' cultures (such as those from countries in Asia, Africa and South America). Given that the interdependent cultures in this study are often the refugee-producing areas of the world and the independent cultures are where the rules are mostly defined for access to refugee protection, Jobson warns that 'culture impacts on specificity and needs to be considered when deeming an autobiographical memory as credible or not in legal settings, such as in asylum decision-making processes'.⁴⁶

Overgeneral memory – and perhaps even this is too derogatory a term in the present context – is likely to be present for asylum seekers both because of their cultural background and because of PTSD.⁴⁷ This indicates that relying on memory of dates and other specific details to establish the credibility of people seeking protection is not in line with the psychological literature.⁴⁸

Consistency of memory

Another assumption which is commonly made in assessing the credibility of asylum claimants is that inconsistencies in an account are an indicator of fabrication. This continues to be documented in asylum claims,⁴⁹ despite being at odds with a burgeoning literature on the inconsistency of repeated recall. Thus, for instance, a series of studies on war veterans has shown that when they are asked to complete a checklist of traumatic experiences, on return from deployment and again after a number of months or years, the number of events they endorse changes.⁵⁰ The exact mechanisms remain unclear, but the literature does seem to be coming to the conclusion that specific and non-trivial trauma memories can be subject to significant distortion, alteration and discrepancies.⁵¹

⁴⁶ Jobson (n 45) 457.

⁴⁷ Belinda Graham, 'Overgeneral Memory in Asylum Seekers and Refugees: The Influences of PTSD and Cultural Background' (DClinPsych thesis, University College London 2012).

⁴⁸ See also Helen Cameron, 'Refugee Status Determinations and the Limits of Memory' (2010) 22 *International Journal of Refugee Law* 469.

⁴⁹ See, for example, J Pettitt, *Body of Evidence: Treatment of Medico-Legal Reports for Survivors of Torture in the UK Asylum Tribunal* (Freedom from Torture 2011).

⁵⁰ Herlihy et al (n 23).

⁵¹ *Ibid.*

Two further studies, which specifically focused on the consistency of refugees' memory, had complementary findings. In the first of these, 'UK programme' refugees – who had been given blanket permission to stay in the UK, thus not having to engage with individual asylum claims – were interviewed on two occasions about one traumatic and one non traumatic experience. These interviews were unrelated to any legal process and there was no obvious motivation for any deception. Approximately 30 per cent of the details they gave about these events changed between interviews. They were also asked to rate whether the details were central to the narrative or emotional gist of what happened, or if they were peripheral to the experience. Statistical analysis then showed that the highest rates of discrepancies between the interviews were for peripheral details of traumatic events, such as the exact date that a traumatic event happened – exactly the kinds of details that are required of a 'credible' asylum claimant. The other finding from this study was that for people with higher levels of PTSD symptoms a longer time between interviews was associated with a higher rate of discrepancies.⁵²

The second study, which involved 376 Bosnian refugees, used the checklist approach seen in studies of veterans.⁵³ Though the events investigated were by no means trivial — examples included 'present while bombs or other weapons exploded' and 'saw/heard beatings, injuries, or killings of family'— the answers once again changed over a three-year period. However, particularly notable in this study was the reporting of sexual abuse and rape. The item 'saw/heard the rape/sexual abuse (non-family)' was endorsed by 115 at the first interview, but by none at all three years later. It seems unlikely that these were events that had been merely forgotten. No one at all reported having been raped themselves, despite studies showing the prevalence of wartime rape in Bosnia.⁵⁴ This concurs with qualitative findings in the study described above, whose participants described 'cultural reasons' for the non-disclosure of rape and other sexual abuse.⁵⁵

In the light of these studies, there are clear implications for the reform of the asylum process. In the words of Herlihy et al:⁵⁶

⁵² Herlihy et al (n 25).

⁵³ R F Mollica, K R Caridad and M P Massagli, 'Longitudinal Study of Posttraumatic Stress Disorder, Depression, and Changes in Traumatic Memories Over Time in Bosnian Refugees' (2007) 195 *Journal of Nervous and Mental Disease* 572. The authors investigate the possible psychological reasons for this on the basis of previous studies on the effects of PTSD on memory.

⁵⁴ A Richters, 'Sexual Violence in Wartime' in P J Bracken and C Petty (eds), *Rethinking the Trauma of War* (Free Association Books 1998); D Kozaric-Kovacic et al, 'Rape, Torture and Traumatization of Bosnian and Croatian Women: Psychological Sequelae' (1995) 65 *American Journal of Orthopsychiatry* 428.

⁵⁵ Bogner et al (n 34); D Bogner, C Brewin and J Herlihy, 'Refugees' Experiences of Home Office Interviews: A Qualitative Study on the Disclosure of Sensitive Personal Information' (2009) 36 *Journal of Ethnic and Migration Studies* 519

⁵⁶ Herlihy et al (n 23).

These conclusions suggest that the asylum process might be improved in a number of ways: by realising that consistency can be enhanced by measuring broad inclusive categories of events rather than asking about more narrowly defined, specific events, about which people are less consistent in their answers; by realising that discrepancies are more likely for peripheral details of traumatic events . . . by understanding that a longer delay between interviews is associated with more discrepancies; and by appreciating that memory for traumatic experiences in refugee and asylum seeking groups is heavily influenced by the complexities of reporting certain experiences such as rape and the desire to consign experiences to the past.

We turn now to the other area where understanding of emotional processes could better inform the processes and procedures of refugee law.

The emotions of the decision maker

Much of the work on the making of decisions with regard to refugee status necessarily focuses on the emotion of the claimant, who is usually the only witness to events. However, the other side of the coin is the person making the decision, whether judge, tribunal member or state-employed first instance decision maker. Jarvis's examination of credibility assessment in the UK tribunal⁵⁷ cites Graycar, who states:

. . . we need to pay careful attention to what judges know about the world, how they know the things they do, and how the things they know translate into their activities as judges . . . Judicial notice may resemble a window that judges try to look through but that has reflective glass in it: so it is really a mirror. When judges look at it they see what they think is 'human nature', 'human experience' and 'ordinary or reasonable people'. What they are really seeing is the society they know. (And they do not see that they are looking in a mirror.)⁵⁸

Jarvis concludes from her survey of 27 UK immigration judges (including 10 extended follow-up interviews) that:

Some respondents realize that they are looking into a mirror and, recognizing the effect of who and what they are upon their ability to fairly assess credibility, try to look through the glass in order to carry out the exercise, whilst acknowledging that sometimes they forget that the mirror is there. Others have not yet seen the mirror; or if they have, are not admitting to its existence.⁵⁹

⁵⁷ Jarvis (n 13).

⁵⁸ R Graycar, 'The Gender of Judgments: An Introduction' in M Thornton (ed), *Public and Private Feminist Legal Debates* (OUP 1991) 262.

⁵⁹ Jarvis (n 13) 10.

Obviously it is not possible not to have any cultural background, or not to be alive at a certain historical moment, but the decision maker's task is to recognise this, and to be aware of the differences that might apply to the person about whom they must make judgments.

Emotion and Judging

It is not only the cultural and social background of judges that is important. The emotions of the decision maker are just as important here as in other courts and administrative offices. However, what is particular to only some areas of law is the extremity of the material which must be seen and heard. Maroney suggests that 'traditional legal theory either presumes that judges have no operative emotions . . . or mandates that any such emotions be actively suppressed'.⁶⁰ Asylum claims entail accounts of some of the most atrocious acts that humans perpetrate upon each other, usually in the name of the state or political ideology. The effects of working regularly with such material are not well known in the field of refugee law, but there are some indications that they are felt. Thus, a study of claims heard by the Refugee Review Board of Canada⁶¹ described highly emotionally charged hearings, with board members being sarcastic with claimants, expressing anger, dismissing or trivialising horrific events and laughing amongst themselves. A recent academic legal study of the UK Asylum and Immigration Tribunal reports strategies of detachment and distance as ways of coping with the emotional impact of asylum work.⁶²

Vicarious Traumatization

A useful construct here is vicarious traumatization (VT), an umbrella term often used to describe the psychological effects – well documented in therapists working with psychological trauma⁶³ – of exposure to other people's traumatic experiences. It can involve symptoms which mirror the symptoms of PTSD, such as having nightmares about a client's trauma, or forgetting particularly stressful parts of the account, or it can

⁶⁰ Maroney (n 1) 132.

⁶¹ C Rousseau, F Crepeau, P Foxen and F Houle, 'The Complexity of Determining Refugeehood: A Multidisciplinary Analysis of the Decision-making Process of the Canadian Immigration and Refugee Board' *Multidisciplinary Analysis of the Decision-making Process of the Canadian Immigration and Refugee Board* (2002) 15 *Journal of Refugee Studies* 43.

⁶² H Baillot, S Cowan and V E Munro, 'Hearing the Right Gaps: Enabling and Responding to Disclosures of Sexual Violence within the UK Asylum Process' 21(3) *Social and Legal Studies* 269-96.

⁶³ L McCann and L A Pearlman, 'Vicarious Traumatization: A Framework for Understanding Psychological Effects of Working with Victims' (1990) 3 *Journal of Traumatic Stress* 131; C R Figley (ed), *Compassion Fatigue: Coping with Secondary Traumatic Stress Disorder in Those who Treat the Traumatized* (Brunner-Routledge 1995); K W Saakvitne and L A Pearlman, *Transforming the Pain: A Workbook on Vicarious Traumatization* (WW Norton 1996).

mean a more pervasive change of beliefs and attitudes, seeing the world as a more dangerous, untrustworthy place. The important aspect of such effects where the sufferers have crucial decisions to make about the people in front of them are the resultant attempts that can be made – not necessarily deliberately – to avoid such distress, which can involve ‘trivialization of horror, cynicism, and lack of empathy’.⁶⁴ Similar effects have been observed in the recent war crimes tribunal in Cambodia – another locus of extremely distressing material – where the repeated interjections of President Nil Nonn in the first trial of Khmer Rouge leaders, instructing witnesses to ‘control their emotion’, have been widely cited as indications of his own struggle with the levels of emotion brought into the court.⁶⁵

Such responses to horrific material have been described as ‘psychological self protection’.⁶⁶ It is easy to see how they might have significant effects on the decisions made about people seeking asylum, although this has yet to be shown empirically.

One study which went beyond conjecture about judges’ managing of the effects of traumatic material interviewed 105 Family Court judges, and found indications of VT in 63 per cent of the group.⁶⁷ Other studies have examined lawyers; one of these compared criminal lawyers to non-criminal lawyers, finding that the criminal lawyers reported higher levels of subjective distress, VT, depression, stress and cognitive changes relating to safety and intimacy compared to their non-criminal colleagues.⁶⁸ In immigration lawyers, a recent qualitative study drew on a model of ‘emotional burden’ and highlighted the ways in which lawyers were attempting to balance conflicting roles of ‘empathic advocate’ with ‘objective fact-finder’.⁶⁹ However, no quantitative assessment of VT in immigration lawyers has been attempted. Nor have potential links between VT and decision-making been explored in this crucial area.

Tolerating Uncertainty

⁶⁴ Rousseau et al (n 61) 49.

⁶⁵ J D Ciorciari and A Heindel, ‘Trauma in the Courtroom’ in B van Schaak, D Reicherter and C Youk (eds), *Cambodia’s Hidden Scars: Trauma Psychology in the Wake of the Khmer Rouge* (Documentation Center of Cambodia 2011).

⁶⁶ Rousseau et al (n 61) 60.

⁶⁷ P Jaffe ‘Vicarious Trauma in Judges: The Personal Challenge of Dispensing Justice’ (2003) 54(4) *Juvenile and Family Court Journal* 1.

⁶⁸ L P Vrkleviski and J Franklin, ‘Vicarious Trauma: The Impact on Solicitors of Exposure to Traumatic Material’ (2008) 14(1) *Traumatology* 106.

⁶⁹ C Westaby, ‘“Feeling like a Sponge”: The Emotional Labour Produced by Solicitors in their Interactions with Clients Seeking Asylum’ (2010) 17 *International Journal of the Legal Profession* 153.

Legal professionals are taught to discover facts in order to uncover the truth, and to make binary decisions.⁷⁰ Nowhere is this clearer than in refugee or humanitarian protection decisions, where the outcomes of the decision may include either a wrongful return of an individual who may then face further torture or even death or a decision to allow individual immigrants to remain in the host country against a tide of social, governmental and media pressure.⁷¹ Thomas describes the unique nature of asylum decision-making in these words:

Asylum adjudication, as Sedley LJ once explained, does not involve a conventional lawyer's exercise of applying a litmus test to ascertained facts but 'a global appraisal of an individual's past and prospective situation in a particular cultural, social, political and legal milieu, judged by a test which, though it has legal and linguistic limits, has a broad humanitarian purpose'⁷² The task of prognosticating the risk of persecution or ill-treatment must usually be undertaken on the basis of incomplete, uncertain and limited evidence. Also, underlying the decision exercise are unusually high error costs which arise from the acute and pervasive tension between maintaining immigration control and protecting individual rights: asylum adjudication raises the constant problem of either refusing protection to the genuine claimant or affording protection to the non-genuine claimant.⁷³

In most cases the final outcome of such cases – especially where the individual is returned to his or her country of origin — is unknown. In terms of judging whether someone is lying in order to make a claim, such a lack of feedback precludes being able to learn from experience. In terms of the 'emotional burden' of the work, however, it means that decision makers have to learn to tolerate the uncertainty of never knowing whether or not their decision was correct, and whether or not it had disastrous consequences for the individual concerned. The very notion of a 'standard of proof', whether it be above or below 51 per cent, suggests a tolerance of uncertainty; however, this does not guarantee that in the culture and thinking of lawyers and judges it is easy to accept and live with the uncertainty inherent in making decisions to return people to what they claim will involve torture and possibly death.⁷⁴

⁷⁰ Michael Kagan (personal communication); see also the discussion at M-B Dembour and E Haslam, 'Silencing Hearings? Victim-Witnesses at War Crimes Trials' (2004) 15 *European Journal of International Law* 158, fns 24 and 163, as to what constitute facts in criminal law trials.

⁷¹ See, for example, <www.freemovement.org.uk/2012/07/19/judge-hung-out-to-dry/> for a discussion of two recent newspaper articles criticising UK immigration judges for their rulings.

⁷² *R v Immigration Appeal Tribunal and Secretary of State for the Home Department, ex parte Shah* [1997] Imm AR 145 (HC) 153 .

⁷³ R Thomas, 'Consistency in Asylum Adjudication: Country Guidance and the Asylum Process in the United Kingdom' (2008) 20 *International Journal of Refugee Law* 491.

⁷⁴ Michael Kagan (personal communication) 6 August 2013.

In the area of psychological therapy, Barry Mason⁷⁵ wrote about ‘tolerating uncertainty’, proposing a model of certainty/uncertainty crossed with safety/unsafety, giving a range of possible positions: (1) unsafe certainty (Mason’s example is of a father whose son is ‘out of control’ and who brings the son to therapy to be ‘fixed’); (2) unsafe uncertainty (the person who is lost and can see no way forward); (3) safe certainty (the ‘expert position’,⁷⁶ seen as important for surgeons and other professionals), and (4) safe uncertainty – where curiosity and change become possible. According to Mason, the fourth of these positions is to be preferred for the therapist, but what position can the immigration judge inhabit in order to do his or her job? The task of judges is to make a final decision, and their training and tradition say they must be certain – but as we have seen, certainty is often impossible in this area of decision-making. Thus, Maroney describes the – hopefully extreme – example of a judge who was removed from office in Florida, following his being ‘callous, rude, condescending, and abusive’:

By constantly ‘striving to demonstrate calm in difficult situations,’ [his psychiatrist] testified, the judge eventually ‘placed himself in’ a state of ‘emotional over-control.’ His drive to control his emotions became so strong that he was unable to ‘incorporate emotions into his life without worrying he would display inappropriate anger’ – which, inevitably and ironically, he did.⁷⁷

Requiring ‘safe certainty’ of judges in this impossible area of decision-making is to impose a burden which can be bad for judges⁷⁸ and bad for the people about whom the decisions must be made.⁷⁹ It may also be raising the stakes in terms of judges’ confidence, that is, requiring them to exude and if possible feel confidence, which ‘has its own downsides, perhaps because it discourages self-examination and learning’.⁸⁰ The importance of this issue does not lie in attacking or criticising those who are taking on one of our most difficult humanitarian tasks. Rather, Maroney⁸¹ proposes a model of ‘emotional regulation’, drawing on psychological research and parallels from the training of doctors (who also have to make important decisions in the face of gruesome

⁷⁵ B Mason, ‘Towards Positions of Safe Uncertainty’ (1993) 4 *Human Systems: The Journal of Systemic Consultation and Management* 189.

⁷⁶ H Anderson and H Goolishian, ‘The Client is the Expert: A Not-knowing Approach to Therapy’ in S cNamee and K Gergen (eds), *Social Construction and the Therapeutic Process* (Sage 1992).

⁷⁷ T Maroney, ‘Emotional Regulation and Judicial Behavior’ (2011) 99 *California Law Review* 1481.

⁷⁸ *Ibid.*

⁷⁹ Maroney (n 77); see also Rousseau et al (n 61); Baillot et al (n 62).

⁸⁰ Maroney (n 77) 1549 fn 389.

⁸¹ *Ibid.*

realities). Such a model could be integrated into training programmes, without prejudice or judgment about those participating.

The other frequent factor in asylum decision-making is the knowledge that at least some of the people before the decision maker may be using systems of humanitarian protection deceitfully. Without going into the structural and political reasons why this might be happening, the fact remains that some people do exaggerate accounts, use stories given to them by agents and hide or change details in order to protect themselves or others. Continually having to consider whether or not one is being lied to would test the most liberal of assessors and can lead some judges to become ‘hardened’.⁸²

Maroney’s proposed programme of ‘emotional regulation’ may well be a useful approach for actors in this area of law. In addressing consistency and methodology, Jarvis advocates ‘education and training delivered to judges with open minds’,⁸³ and this would be a good way forward to address the emotional burden of making protection decisions. However, given the ‘persistent cultural script of judicial dispassion’,⁸⁴ decision makers and emotion researchers and practitioners need to agree on the size and shape of the problem as a necessary prerequisite to any such proposals.

Conclusion

In a paper considering expert witness reports before immigration tribunals, John Barnes, a retired senior immigration judge in the UK, compared the two main sources of expert evidence available.⁸⁵ One is known as ‘country evidence’ and mostly comprises reports compiled by government bodies, or non-governmental groups such as Amnesty International, giving geographical details of the country and current political and social conditions. An expert – usually an anthropologist – might provide a report for the court going to the specific case but this can be ‘evaluated against other material’.⁸⁶ This is not the case, he explains, in the case of expert medical evidence, saying ‘there will be no similar breadth of evidence to assist in the evaluation of expert medical evidence’.⁸⁷ Accordingly, ‘medical evidence’ currently consists only of individual assessments, usually by a psychiatrist or psychologist, and which is usually expected to include a psychiatric diagnosis of the claimant. As Barnes also puts it: ‘In appeals where

⁸² Baillot et al (n 62).

⁸³ Jarvis (n 13) 16.

⁸⁴ T A Maroney, ‘The Persistent Cultural Script of Judicial Dispassion’ (2011) 99 California Law Review 629

⁸⁵ J Barnes, ‘Expert Evidence: The Judicial Perception in Asylum and Human Rights Appeals’ (2004) 16 International Journal of Refugee Law 349.

⁸⁶ Ibid 354.

⁸⁷ Ibid.

medical issues are raised, the occasion on which any medical evidence is introduced for the Secretary of State . . . are so rare that it is more sensible to say that there is no such input.⁸⁸ In other words, where any psychological information is introduced to this court, it is by means of a single expert witness report, comprising an assessment of the appellant. Unlike other areas of law, there is no contrasting report to enable decision makers to compare positions – they are left to decide what weight to give to a report commissioned by the appellant. This can lead to experts going beyond their duty as experts, being led into the temptation of advocating for what is often their clinical client. It has also given rise to ‘judges without appropriate expertise endeavour[ing] to interpret the medical evidence’.⁸⁹

In a recent paper, Herlihy and Turner⁹⁰ reviewed the process of claiming asylum, suggesting that, at each stage, there is, indeed, a wealth of general psychological knowledge that would help to illuminate and possibly improve the decision-making process. A better understanding of the situation of the client would involve considering not only the medical and psychiatric considerations of head injury, intellectual capacity and psychiatric diagnoses,⁹¹ but also the literatures on trust, decision-making under stress, autobiographical memory, eye-witness testimony and the effects of distress and, in particular, traumatic experience on memory. Interviewing draws on a different area of psychological literature, including accounts of the ways a narrative is constructed in context,⁹² the suggestibility of interviewees,⁹³ barriers to disclosure⁹⁴ and consistency across repeated interviews.⁹⁵ The psychology of the interviewer is also a key factor, and his or her ability to hear repeated stories of persecution under conditions of pressured decision-making.⁹⁶ Other material that can be of relevance in this context is the literature

⁸⁸ Barnes (n 85) 352.

⁸⁹ D Rhys Jones and Sally Verity Smith, ‘Medical Evidence in Asylum and Human Rights Appeals’ (2004) 16 *International Journal of Refugee Law* 389; D Rhys-Jones, ‘Important Judgment on Value of Medical Reports’ (2012) May *Fahamu Refugee Legal Aid Newsletter* <<http://frian.tumblr.com/post/24358917253/> important-judgment-on-the-value-of-medical-reports> accessed 23 November 2012.

⁹⁰ J Herlihy and S W Turner, ‘The Psychology of Seeking Protection’ (2009) 21 *International Journal of Refugee Law* 171.

⁹¹ J Cohen, ‘Errors of Recall and Credibility: Can Omissions and Discrepancies in Successive Statements Reasonably be Said to Undermine Credibility of Testimony’ (2001) 69 *Medico-Legal Journal* 25.

⁹² M Eastmond, ‘Stories as Lived Experience: Narratives in Forced Migration Research’ (2007) 20 *Journal of Refugee Studies* 248.

⁹³ See, for instance, J S Baxter, J C W Boon and C Marley, ‘Interrogative Pressure and Responses to Minimally Leading Questions’ (2006) 40 *Personality and Individual Differences* 87.

⁹⁴ Bogner et al (n 34).

⁹⁵ Herlihy et al (n 25).

⁹⁶ Maroney (n 77); Rousseau et al (n 61).

on decision-making and the use of heuristics,⁹⁷ the ‘story model’ of judging⁹⁸ and stereotyping.⁹⁹

We have shown here some of the ways in which the science of emotion has started to help illuminate some of the emotional processes at work within the legal processes and procedures concerned with state protection. It is not for psychology researchers nor practitioners to stray into the domain of legal decision-making, but it is essential that a role is carved out for collaboration, education, and working together towards ensuring that these crucial legal decisions are informed and underpinned by the best available scientific knowledge.

⁹⁷ D Kahneman and A Tversky, ‘Judgment under Uncertainty: Heuristics and Biases’ (1974) 185 *Science* 1124; T Gilovich, D Griffin and D Kahneman (eds), *Heuristics and Biases: The Psychology of Intuitive Judgment* (CUP 2002).

⁹⁸ R Hastie, *Inside the Juror: The Psychology of Juror Decision Making* (CUP 1993).

⁹⁹ See, for instance, P R Hinton, *The Psychology of Interpersonal Perception* (Routledge 1993).