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PSYCHOLOGICAL DETERMINANTS OF ERRONEOUS CRIMINALIZATION: THE INTUITIVE DIMENSION

Abstract. *Criminalization doctrine describes the legislator's decision as a sequence of rational steps: an assessment of social harm, a check against ultima ratio, a weighing of proportionality yet the decision is frequently made at a pre-verbal, affective level long before it receives formal justification. This gap becomes especially consequential under martial law, when chronic stress and collective trauma intensify intuitive over analytical judgment, and when organized informational operations can deliberately manufacture the affective climate that legislators later ratify as spontaneous public sentiment. The article identifies the psychological mechanisms generating the four established types of erroneous criminalization (unjustified, excessive, incomplete, incorrect) and shows how cognitive biases operate simultaneously as native distortions of legislative judgment and as levers of cognitive-informational operations. The study combines doctrinal-dogmatic legal analysis with an interdisciplinary synthesis of dual-process theory, the affect heuristic, motivated reasoning, character-accentuation theory, and moral-panic sociology, illustrated by Ukrainian wartime security legislation adopted in 2022–2025. Four psychological modalities are distinguished (visceral, anxious-obsessive, strategically cunning, performatively absurd) each mapped onto a corresponding error type, and thirteen cognitive biases, from confirmation bias and the availability heuristic to loss aversion and survivorship bias, are shown to constitute the operational mechanics of this typology, converging with the author's Risk – Justice Paradox and Collective Intuitive Criminal Policy frameworks. The taxonomy equips legislators and policy analysts with a diagnostic vocabulary for recognizing intuitively driven criminalization proposals and a conceptual basis for institutional debiasing mechanisms in legislative drafting under hybrid informational warfare.*

Keywords: *intuitive criminal policy; erroneous criminalization; cognitive bias; affect heuristic; moral panic; criminal non-law; Risk-Justice Paradox.*

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ПСИХОЛОГІЧНІ ДЕТЕРМІНАНТИ ПОМИЛКОВОЇ КРИМІНАЛІЗАЦІЇ: ІНТУЇТИВНИЙ ВИМІР

Анотація. Доктрина криміналізації описує рішення законодавця як послідовність раціональних кроків: оцінку суспільної небезпечності, перевірку на відповідність *ultima ratio*, зважування пропорційності, проте рішення найчастіше ухвалюється на довербальному, афективному рівні задовго до формального обґрунтування. Цей розрив набуває особливого значення в умовах воєнного стану, коли хронічний стрес і колективна травма посилюють перевагу інтуїтивних суджень над аналітичними, а організовані інформаційні операції здатні свідомо конструювати афективний клімат, який законодавець згодом ратифікує як нібито спонтанний суспільний настрій. Стаття виявляє психологічні механізми, що породжують чотири усталені типи помилкової криміналізації (необґрунтовану, надмірну, неповну, некоректну), та показує, як когнітивні викривлення діють водночас як природне спотворення законодавчого судження і як інструмент когнітивно-інформаційних операцій. Дослідження поєднує доктринально-догматичний аналіз із міждисциплінарним синтезом теорії подвійних процесів мислення, афективної евристики, мотивованого міркування, теорії акцентуацій характеру та соціології моральної паніки, ілюстрованим воєнним законодавством України у сфері безпеки, ухваленим у 2022–2025 роках. Виокремлено чотири психологічні модальності (вісцеральну, тривожно-обсесивну, стратегічно-хитру, перформативно-абсурдну): кожна співвіднесена з відповідним типом помилки, а тринадцять когнітивних викривлень, від підтверджувального упередження й евристики доступності до втратуникнення й упередження вижившого, становлять операційний механізм цієї типології, конвергуючи з концепціями Парадоксу ризику та справедливості й Колективної інтуїтивної кримінальної політики. Таксономія дає законодавцям і аналітикам політики діагностичний інструментарій для розпізнавання інтуїтивно вмотивованих пропозицій щодо криміналізації та концептуальну основу для інституційних механізмів дебіасингу в законотворчості в умовах гібридної інформаційної війни.

Ключові слова: інтуїтивна кримінальна політика; помилкова криміналізація; когнітивні викривлення; афективна евристика; моральна паніка; кримінальне неправо; парадокс ризику та справедливості.

INTRODUCTION

Human intelligence differs from artificial intelligence not only in its capacity for rational analysis but also in the existence of a psychic dimension that is difficult to make explicit

and that, at present, does not lend itself to full algorithmization. This dimension encompasses intuition, implicit knowledge, affective impulses, heuristic thinking, personality accentuations, neurotic mechanisms, cognitive biases, as well as individual forms of strategic adaptability and behavioural unpredictability. It is precisely this dimension that often constitutes the hidden psychological foundation of human choice and that explains why the motivation behind a decision does not always coincide with the rational justificatory construction subsequently built around it.

The doctrine of criminalization traditionally describes the legislator's decision as a sequence of rational steps: an assessment of social harm, a check against the *ultima ratio* principle, a weighing of the proportionality of intervention. Beyond this official picture, however, there exists a hidden, far less reflected-upon layer – the level of pre-verbal, affective judgment, which in fact determines the moment and the shape of the criminalizing decision well before that decision receives its rational justification. It is precisely this layer that is proposed here to be designated as intuitive criminal policy.

In the scholarly literature devoted to this subject, one of the established classifications of the categories of erroneous criminalization in Ukrainian criminal-law-policy doctrine is the division into four basic types: unjustified; excessive; incomplete; incorrect [4, p. 118–121]. This classification makes it possible to show that each of the four types of error has its own psychological genesis, one that rarely falls within the field of vision of doctrinal analysis. It is this gap (between an established legal typology and its unexamined psychological substratum) that defines the aim of the present study: to identify the specific psychological mechanisms and cognitive biases that generate each error type, and to show how the same mechanisms function as levers of cognitive-informational operations under conditions of hybrid warfare.

1. MATERIALS AND METHODS

This is a theoretical-doctrinal study; it does not involve human subjects, empirical sampling, or the statistical processing of primary data. The research method combines: (a) doctrinal-dogmatic analysis of the four-fold typology of erroneous criminalization established in Ukrainian criminal-law-policy scholarship; (b) an interdisciplinary literature synthesis drawing on dual-process theory, the affect heuristic, motivated-reasoning research, the sociology of moral panic and symbolic criminal law, clinical typologies of character accentuation, and the behavioural-economic and social-psychological literature on cognitive bias and its exploitation in informational operations; and (c) a qualitative, illustrative analysis of Ukrainian wartime security legislation adopted between 2022 and 2025, used not as a statistically representative sample but as an illustrative case cluster demonstrating the operation of the mechanisms identified. Each of the four established error types was matched against a corresponding psychological modality and against the specific cognitive biases most directly implicated in its genesis, following a conceptual-mapping procedure methodologically anchored

to the author's previously published Risk-Justice Paradox and Collective Intuitive Criminal Policy frameworks.

2. RESULTS AND DISCUSSION

Each of the named types of error has its own psychological mechanism of generation, and this mechanism is amenable to separate identification in the terms of cognitive and social psychology. The legislator's intuitive heuristic corresponds to what cognitive science designates as «System 1» – a fast, automatic, affectively loaded judgment which, unlike slow analytical thinking («System 2»), does not rely on a sequential assessment of probability and consequences [7, p. 20–24]. For the legislator, as for the «moral entrepreneur» who initiates criminalization, this heuristic most often substitutes for absent or inconvenient empirical evidence: in the absence of criminological statistics, the decision is made on the basis of the sense that «this ought to be a crime.» The psychological foundation of this shift is the affect heuristic – a regularity whereby the intensity of the emotional reaction to a phenomenon determines the subjective assessment of its riskiness independently of its objective frequency or severity [23]. This directly explains the gap between the declared actuarial rationality of criminal policy and its actual affective genealogy: the rational justification of a criminalizing decision is most often constructed only after the decision has, in fact, already been made at the level of affect.

In other words, a rationale is not a motive

A somewhat deeper, pre-verbal layer (a visceral state, not yet articulated as a judgment of rejection or acceptance of a phenomenon) is subsequently rationalized by the legislator, after the fact, in the form of legal argumentation; in psychology this mechanism is described as motivated reasoning, whereby the conclusion is formed first and the evidence in its support is selected afterward [10]. The legislator's strategic cunning, by contrast, is not a cognitive error but a deliberate political instrumentalism disguised as spontaneous reaction: a mechanism described in continental doctrine by the concept of symbolic criminal law, whereby a norm is adopted not for the sake of its regulatory effect but for the sake of a demonstrative function capable of securing political capital for its initiator [6]. Belonging to the same register, though in a somewhat different modality, is what is proposed here, for the first time, as the performative absurdity of law-making: the adoption of a technically inapplicable norm as a carnivalesque, theatrical gesture, calculated not for law enforcement but for media resonance; this is a distinct mode, different both from affect and from strategic calculation, bordering on what the sociology of mass behavior describes as the ritualized demonstration of principle.

The anxious-obsessive type of law-making appears as an institutionalized form of what the sociology of deviance has described as moral panic: the collective anxiety generated by a resonant crime or a moral shock is discharged not through analytical reflection but through an act of expanding the circle of prohibitions [1].

At the individual level, this mechanism is superimposed upon the character accentuations of particular initiators of draft legislation (stable personality traits that do not reach the level of pathology, which, according to Leonhard's classification and its subsequent clinical elaboration in adolescent psychiatry, determine a typical pattern of response [12; 14]): an epileptoid accentuation systematically gravitates toward punitive maximalism and hypertrophied elaboration of offense definitions; a demonstrative accentuation, toward loud, symbolic prohibitions; an anxious accentuation, toward the preventive expansion of the circle of prohibitions «just in case.» This micro-level of analysis of the criminalizing decisions of elected representatives practically never falls within the field of vision of doctrinal theory, although it is precisely this level that often determines which phenomenon, and at what moment, presents itself to the legislator as «ripe» for criminalization.

Unjustified criminalization most often arises as a consequence of what, in everyday usage, is called «gut feeling» – a pre-verbal, visceral rejection of a phenomenon, which is only afterward dressed up in quasi-rational argumentation. This is not a fault of logic but a fault of order: an affective objection arises first, and only afterward is a legal construction of harm assembled beneath it.

Excessive criminalization is for the most part connected with the anxious-obsessive type of law-making (with what may loosely be called the neurosis of norm-makers): after a resonant event, collective anxiety is discharged not through analysis but through the expansion of the circle of prohibitions «just in case.» To this same mechanism is added an individual-level factor: the character accentuations of particular initiators of draft legislation, where, for example, an anxious or epileptoid accentuation systematically gravitates toward punitive maximalism and the hypertrophied elaboration of offense definitions.

Incomplete criminalization is frequently not an error of cognition but a product of deliberate political calculation disguised as spontaneity: what may be designated as the legislator's strategic cunning: the phenomenon is criminalized partially, selectively, only to the extent that is politically convenient, rather than to the extent required by the structure of social harm and the violation of individual rights.

Incorrect criminalization not infrequently arises as the result of the performative absurdity of law-making described above: the adoption of a norm that is not designed for actual enforcement but instead performs a purely symbolic, «carnavalesque» function, demonstrating the legislator's principled stance before a media audience. The technical inapplicability of such a norm is not a side effect but is, in fact, a condition of its adoption.

What unites all four cases is that the resulting body of norms loses its connection to the properly legal nature of prohibition (where the legislator's intuitive, affective, or strategic impulse fails to pass the test of reason, the criminal statute degenerates into a form that should be designated as *criminal non-law*) that is, a body of norms that

formally belongs to criminal law but has, in fact, lost its substantive legitimating foundation [25, p. 652–659].

This psychological dimension acquires particular significance under conditions of war. Chronic stress, the experience of shelling, prolonged exposure to existential danger, and the widespread manifestation of post-traumatic stress disorder (PTSD) substantially alter the cognitive and emotional mechanisms of decision-making. Heightened anxiety, hypervigilance, a propensity toward the catastrophizing of risk, a narrowing of temporal perspective, and an intensified need for rapid and forceful responses may all contribute to the predominance of intuitive, affectively coloured judgments over analytical deliberation. Within the sphere of criminal-law policy, this creates an additional risk that criminalizing decisions will be adopted under the influence of collective trauma, whereby the psychological need to restore a sense of security displaces the requirements of empirical justification, the *ultima ratio* principle, and the proportionality of criminal-law intervention.

Martial law, systematic missile strikes, the prolonged exposure of society to chronic stress, and the widespread prevalence of trauma symptoms create a psychological environment in which legislative decisions may increasingly be oriented toward the immediate elimination of a sense of danger rather than toward the traditional criteria of criminalization. Illustrative of this tendency are the accelerated criminalization of collaborationist activity, the repeated expansion of offences against the foundations of national security, the criminalization of the dissemination of information on the movement of military formations, and other legislative changes enacted between 2022 and 2025. In all of these cases, the priority accorded to the logic of security over the logic of *ultima ratio* does not, in itself, indicate that the resulting decisions were mistaken; it does, however, attest to the substantial influence of an affective-traumatic context on criminal-policy choice.

In this sense, the intuitive dimension of criminalization is not a marginal subject of criminal-law psychology – it is one of the genetic sources of criminal non-law, and the deconstruction of this idea is impossible without acknowledging that the criminalizing decision is born not at the moment of the vote, but far earlier.

If the foregoing is drawn together into a single frame, what emerges is precisely what should be designated as *intuitive criminal policy* in the narrow sense: a layer of decision-making about criminalization that lies below the level of formal legitimation (harm, proportionality, *ultima ratio*) and that official doctrine systematically fails to acknowledge, even though it is often precisely this layer that proves decisive. Hence the gap between the declared actuarial rationality of criminal policy and its actual affective-visceral genealogy – the very core of the Risk-Justice Paradox, only unfolded not at the level of the system, but at the level of the psychology of the individual law-maker [26].

Cognitive Biases as Micro-Foundations of Intuitive Criminalization and as Levers of Cognitive-Informational Operations

The affect heuristic and motivated reasoning already identified above are not isolated mechanisms but instances of a far wider catalogue of cognitive biases described within behavioural decision theory and social psychology. Bringing this catalogue explicitly into the analysis of intuitive criminal policy serves two purposes at once. First, it supplies the four-fold typology of erroneous criminalization, and the four psychological modalities already distinguished (the visceral, the anxious-obsessive, the strategically cunning, and the performatively absurd) with a more granular operational mechanics: each named bias marks a specific pressure point at which an intuitive judgment is formed and then defended. Second, and more consequentially under present conditions, this same catalogue constitutes part of the working toolkit of cognitive-informational operations, understood as the deliberate manufacture, by state or non-state actors, of the affective climate that a legislator subsequently ratifies as if it were spontaneous public sentiment. The behavioural literature on the psychology of misinformation has developed this connection mainly at the level of individual belief formation rather than in relation to legislative processes specifically [19]; the analysis that follows extends the same mechanisms, by direct inference rather than by empirical demonstration, to the legislative setting. The two functions are not independent: a bias that distorts the legislator's own perception is, by the same token, the lever that an external informational operation can pull in order to produce a desired legislative outcome without ever making an explicit, falsifiable argument.

Confirmation bias (the tendency to seek out, interpret, and recall information in a manner that confirms a pre-existing belief while discounting disconfirming evidence) [17] operates at the drafting stage of both unjustified and excessive criminalization: a moral entrepreneur or a parliamentary committee that has already, at the affective level, decided that a phenomenon *ought* to be a crime will characteristically cite the isolated study or the anecdote that supports this conviction while passing over the larger body of criminological evidence that does not. Because the bias is symmetrical between the legislator and the audience being addressed, it is also one of the most exploitable biases in an informational campaign: a narrative need not be true, only compatible with what the target audience already suspects.

The availability heuristic (the tendency to judge the frequency or probability of an event by the ease with which instances of it come to mind) [28] is amplified by the negativity bias, the well-documented asymmetry whereby negative information is weighted more heavily, processed more quickly, and retained longer than positive information of equal objective magnitude [21]. Jointly, these two biases constitute the direct psychological engine of the anxious-obsessive type of law-making described above: a single resonant, extensively covered crime becomes, through sheer cognitive salience, disproportionately representative of the true base rate, and it is precisely this circuit that moral-panic entrepreneurs and hostile informational campaigns instrumentalize

when they seed, amplify, or simply repeat coverage of a single case until it is perceived as a trend rather than an outlier.

Anchoring (the well-established finding that an initial numerical or definitional reference point exerts a disproportionate and insufficiently corrected influence on all subsequent judgments) [29] explains a recurrent pattern in the legislative process: the maximalist scope or the maximalist sentence proposed in the first reading of a bill functions as an anchor from which the final, adopted text is only cosmetically adjusted downward, so that a text originally drafted under the influence of punitive-maximalist, epileptoid accentuation retains its disproportion even after formal deliberation has, in appearance, moderated it.

The illusory truth effect (the finding that the mere repetition of a statement increases its perceived truthfulness independently of its actual veracity or of any new corroborating evidence) [5; 13] is distinct from, though it frequently co-occurs with, the bandwagon effect, whereby an individual's support for a position increases with the perceived number of others who already hold it [11]. Coordinated repetition across ostensibly independent channels can trigger both mechanisms at once, manufacturing the appearance of a pre-existing social consensus without ever requiring a single verifiable claim. A cognitive-informational operation rarely needs to fabricate evidence for a demand for criminalization; it is generally sufficient to repeat the demand, through multiple nominally unconnected voices, until both the public and the legislator infer falsely that the repetition reflects an independent convergence of opinion rather than a single coordinated source.

Authority bias (the disproportionate weight assigned to a claim once it is attributed to a source perceived as authoritative, independently of the claim's own evidentiary merit) is illustrated, at the level of behavioural compliance, by Milgram's classical findings on obedience to a perceived authority [16]; the persuasion-science literature has since generalized the underlying deference mechanism into the authority heuristic proper, identifying it as one of the standard levers of social influence [2]. The halo effect, whereby a favourable impression in one respect (rank, uniform, decoration, foreign credential) is allowed to colour the assessment of unrelated claims made by the same source [18], operates alongside it. Together they explain why the testimony of a single credentialed or symbolically potent witness at a committee hearing not infrequently substitutes for, rather than supplements, an independent empirical assessment: a mechanism of particular relevance to incorrect criminalization, since a norm adopted on the strength of an authority's symbolic endorsement answers to that authority's stance rather than to the structural requirements of enforceability.

The fundamental attribution error (the tendency to explain another person's conduct by reference to stable dispositional traits while underweighting the situational factors that a fully informed observer would recognize) [20] supplies a further, and doctrinally consequential, mechanism: legislators, like the public whose anxieties they intuitively

register, are disposed to explain deviance by the offender's character rather than by the situational and structural conditions that produce it, so that criminalization is directed at a stigmatized category of persons rather than at the conditions generating the harm. This is the same distortion that the anti-stigmatisation strand of the Risk – Justice Paradox was developed to counteract [26], and cognitive-informational operations that personalize blame onto a named group rather than onto systemic causes are, in this precise sense, exploiting a pre-existing cognitive default rather than introducing a foreign one.

A further cluster of biases operates chiefly, though not exclusively, at the level of the legislator's own risk calculus rather than as an externally manipulated lever. Loss aversion (the finding that losses are experienced as psychologically more significant than objectively equivalent gains) [8] inflates the subjective cost of a harm left uncriminalized relative to the (structurally invisible) cost of an unnecessary criminal-law intervention, systematically biasing the legislator's calculus toward action. Status quo bias (the general preference for the currently prevailing state of affairs even where an alternative would be objectively preferable) [22] cuts in both directions: it can entrench an inherited pattern of under-criminalization, but once a punitive baseline has itself become the status quo, the same bias entrenches over-criminalization, since decriminalization then appears as the risky departure. Overconfidence bias, the well-documented tendency to overestimate the accuracy of one's own judgments and predictions, and its self-assessment corollary described in the literature on the Dunning – Kruger pattern, whereby the least competent assessors of a domain hold disproportionately confident views of their own competence [3; 9], jointly predict that legislators with the weakest command of empirical criminology will often hold the most confident views regarding the deterrent efficacy of a proposed norm. Finally, survivorship bias (the systematic error of drawing conclusions from a visible subset of successful or salient cases while disregarding the far larger, less visible population of cases that did not succeed or were never reported, classically illustrated by Abraham Wald's wartime analysis of aircraft-damage patterns) [15] narrows the evidentiary base invoked in support of a norm to the small number of prosecutions presented as vindicating it, while the far larger number of instances in which criminalization produced no measurable preventive effect remains, by construction, outside the field of legislative vision.

None of the biases canvassed here competes with the four-fold typology of erroneous criminalization or with the four psychological modalities already proposed; rather, each identifies a specific mechanism through which an internally generated intuitive judgment and an externally engineered informational operation can converge upon the same legislative outcome. It is precisely this point of convergence (where individual cognitive vulnerability meets organized informational effort) that the collective-level architecture of Collective Intuitive Criminal Policy (CICP) has been developed to formalize, integrating the micro-level mechanisms examined here into a three-tier micro/meso/

macro model of parliamentary decision-making under conditions of bounded rationality [27].

Under conditions of martial law, the amplifying effect described above in relation to war-time trauma applies with particular force to this expanded catalogue of biases: chronic stress and hypervigilance do not merely intensify the affect heuristic in general terms but specifically heighten the availability heuristic, the negativity bias, and the authority bias, while narrowing the cognitive resources available for the effortful correction that would otherwise counteract anchoring and the illusory truth effect. Under such conditions, the boundary between an organically generated moral panic and a deliberately orchestrated cognitive-informational operation becomes correspondingly difficult to draw: a difficulty that is not an incidental methodological complication but a structural feature of intuitive criminal policy under conditions of hybrid warfare, and one that any institutional debiasing mechanism proposed as a response to the Risk-Justice Paradox must take as a design constraint rather than as an exceptional case.

CONCLUSIONS

The erroneous-criminalization typology long recognized in criminal-law-policy doctrine rests on a psychological substratum that doctrinal analysis has largely left unexamined. Each of the four established error types (unjustified, excessive, incomplete, incorrect) corresponds to a distinct psychological modality (visceral affect, anxious-obsessive moral panic, strategic cunning, performative absurdity) and is, in turn, generated and sustained by an identifiable set of cognitive biases operating at the level of the individual legislator. Because these same biases are the mechanisms through which cognitive-informational operations manufacture the appearance of spontaneous public consensus, the boundary between organically generated moral panic and deliberately engineered informational pressure is not always sharply drawn: a difficulty that intensifies under conditions of martial law and chronic collective trauma. Recognizing this psychological substratum does not discredit criminalizing decisions taken under such conditions, nor does it substitute for empirical criminological assessment; it does, however, make visible a layer of legislative decision-making that the declared actuarial rationality of criminal policy has systematically failed to acknowledge. Further research should test the diagnostic taxonomy proposed here against a systematic corpus of legislative debates and explanatory notes accompanying draft criminal-law amendments, and should extend the institutional-debiasing implications of the Collective Intuitive Criminal Policy framework into concrete procedural safeguards for legislative drafting under wartime conditions.

BEYOND THE MIRROR: NEXT STEPS

Collective Intuitive Criminal Policy (CICP) is a pre-doctrinal mode of criminal-law policy formation in which collective affect, cognitive heuristics, group dynamics, institutional incentives and symbolic political communication systematically precede

and shape legal reasoning concerning criminalization. Classical criminalization theory asks when criminalization is justified: under what conditions a criminal prohibition satisfies the harm principle, ultima ratio and proportionality, and cannot be replaced by less intrusive regulatory instruments. CICP asks a different, and prior, question: how legislatures actually arrive at criminalization decisions before doctrinal justification begins, and how political, cognitive and emotional preconditions frame the eventual legal argument. In this sense CICP does not compete with the orthodox harm-based doctrine or with constitutional tests of necessity and proportionality; it operates at an earlier stage, reconstructing the pre-doctrinal architecture within which those tests are later invoked.

To avoid any impression of psychological determinism, CICP explicitly rejects the idea that psychological processes determine criminalization. It argues instead that collective affect, cognitive heuristics, group dynamics, institutional incentives and symbolic political communication systematically shape, constrain and channel legal reasoning under conditions of bounded rationality. In Herbert Simon's terms, legislators are not ideally rational actors but agents with limited time, information and cognitive resources whose rationality is structured by emotions and institutions. CICP therefore presents a realistic description of how criminal-law decisions are normally made under complexity, rather than a pathology of «irrational parliaments». The model should be structured on three analytically connected levels: micro, meso and macro. At the micro level, the focus is on the individual cognitive processes and affective states of particular legislators: intuition, affect heuristic, availability and anchoring, confirmation bias, loss aversion, status quo bias, overconfidence and survivorship bias, as well as personal trauma and value commitments. At the meso level, CICP examines the collective dynamics of parliamentary bodies: conformity, group polarization, groupthink under emergency conditions, party discipline, de-individualization and the diffusion of responsibility. At the macro level, it considers political institutions, media ecology and the constitutional order, including elections, ratings, party-system structure, war and security crises, international pressure, budgetary constraints and mechanisms of constitutional review. The distinctive claim of CICP is that only by linking these three levels into a single explanatory frame can one understand why doctrinal safeguards so frequently fail to prevent overcriminalization in practice. Within this multi-level structure, CICP describes criminalization not as a linear sequence of rational steps but as a cyclical, institutionally embedded cascade: political crisis → collective cognition → legislative behaviour → criminalization → judicial review → political feedback → new collective cognition. Political crises such as war, terrorist attacks, systemic corruption or humanitarian catastrophes trigger collective affects and heuristics that shape shared perceptions of risk, blame and threat. These cognitive-emotional structures are translated into legislative behaviour: the choice of response channels (criminal law, administrative measures, political declarations), styles of debate, and patterns of party discipline.

The result is criminalization (a set of norms that formally invoke doctrinal principles but are in fact born in the field of collective intuition).

Courts then enter as more than mere rationalisers of parliamentary output: through judicial filtering and judicial recalibration they can legitimise, neutralise, restrict or intensify criminalization, transmitting constitutional, international and doctrinal standards back into the legislative process. Judicial practice and political reaction in turn generate new feedback: court decisions, social and international criticism or support, shifts in ratings and agendas, all of which contribute to a new cycle of collective cognition and legislative response.

For analytical compactness, CICP groups the psychological and social mechanisms that drive this cascade into three blocks: affective, cognitive and group processes.

Affective processes (collective fear, indignation, emotional contagion) explain why resonant events produce a sense of «urgent necessity» of criminalization.

Cognitive processes (availability, representativeness, affect heuristic, anchoring, confirmation bias, framing and intuitive reasoning) show how perceptions of danger and appropriateness of criminalization are formed via short mental shortcuts rather than through full data analysis.

Group processes (conformity, group polarization, groupthink under emergency, de-individualization and diffusion of responsibility) demonstrate how individual positions are aggregated into collective decisions, often with a shift towards more extreme punitive options.

Morality-driven entrepreneurship occupies a special place in this scheme as a bridge between psychology and politics. Collective emotions are translated into moral entrepreneurship; moral entrepreneurship structures political framing; political framing, in turn, shapes criminalization. In this sequence, criminal law is used not only to regulate behaviour but also to mark moral boundaries of the community, define «us» and «them», and cement symbolic divisions between insiders and outsiders. For this reason, moral entrepreneurship should not be treated as a mere psychological effect; it is a key link connecting affective processes with the political economy of criminalization.

The theory of normative protection of consciousness developed by Nataliia Savynova [24] organically complements CICP while starting from a different point of departure. CICP examines the process by which criminalization emerges; Savynova's concept addresses what increasingly becomes the object of criminal-law protection in the informational age. She has argued that contemporary criminal law is gradually shifting its focus from material goods to informational processes, communication and consciousness: whereas traditional criminal law protected life, bodily integrity, property or state order, in conditions of informational warfare it increasingly seeks to protect individual and collective consciousness from targeted manipulative influences. In this perspective, her concept describes the object of criminalization; CICP explains the mechanism of its genesis.

Within an integrated model consciousness thus performs two functions simultaneously. First, it is the object of criminal-law protection when legislators seek to shield individuals or society from propaganda, disinformation, informational aggression or other forms of deliberate psychological influence. Second, it is the medium in which criminal-law policy itself is formed: it is through the collective consciousness of legislatures that affect, heuristics, moral entrepreneurship, political framing and institutional incentives pass before criminalizing decisions are taken. Consciousness becomes both that which criminal law seeks to protect and that through which criminal law is formed. This duality constitutes the main theoretical bridge between Savynova's concept and CICP.

The resulting process is recursive: informational influence → change in collective consciousness → political framing → criminalization of influence on consciousness → new informational regime → new influence on collective consciousness.

Criminal law reacts to a process that simultaneously transforms the mechanism of criminalization itself: informational operations affect the consciousness of legislators; in conditions of bounded, emotionally mediated and institutionally structured rationality legislators adopt criminalizing decisions; those decisions reshape the informational environment, which then initiates a new cycle of influence. Savynova's theory shows why consciousness ought to become an object of criminal-law protection; CICP explains why decisions about such criminalization themselves are made under the influence of processes acting upon the legislator's consciousness. In other words, the legislator protects consciousness using his or her own consciousness as the principal instrument of criminalization.

This integration raises a central question: who will protect effective and rational criminal policy from cognitive distortions if criminalization itself is formed under the influence of the very informational processes against which it is directed?

The question shifts CICP into the domain of metatheory, which deals not only with erroneous laws but with the internal vulnerability of the mechanism of criminalization.

In an integrated model the classical principles of legality, necessity, proportionality and ultima ratio acquire a new meaning: they cease to be only criteria for evaluating criminal prohibitions and simultaneously function as institutional debiasing mechanisms in relation to the criminalization of informational influences on consciousness. The more intense public fear is in the face of informational threats, the greater the importance of these principles as safeguards against excessive, symbolic or politically motivated criminalization of communication.

From this vantage point the harm principle, ultima ratio, necessity, proportionality and subsidiarity can be recast as tools of cognitive «de-biasing». Ultima ratio ceases to be an abstract moral slogan and becomes a procedural instrument against availability and affect heuristics: criminalization is permissible only once it has been demonstrated that other, less repressive instruments are ineffective or clearly insufficient. Proportionality protects not only against obvious disproportions between harm and sanction but also

against anchoring and group polarization by forcing comparisons with the existing sanction system rather than with the most radical proposals. Subsidiarity restrains moral entrepreneurship by insisting that not every political or moral problem should be transformed into a criminal offence; legality creates a barrier against selective and symbolic criminalization as products of conformity and diffusion of responsibility.

To prevent the psychological analysis from reductionism bias into psychologisation or psychiatrisation of politics, the integrated model incorporates a methodological caution.

CICP and the cognitive theory of the criminal protection of consciousness must remain explanatory frameworks, adding an institutional-cognitive layer to classical doctrine rather than replacing legal evaluation of norms or recasting parliament as a «patient». Psychological categories should not serve as a universal excuse («this norm was adopted in affect, therefore it is illegitimate») or as a stigma for political actors. Beyond a certain threshold theoretical abstraction risks sliding into a regime in which legal and political responsibility is displaced by diagnostic labels of trauma, conformity or emotional contagion.

In this integrated form CICP ceases to be merely a description of «parliamentary psychology» and becomes a metatheory of criminal-law policy formation. It explains why, even in the presence of established doctrinal safeguards (necessity, proportionality, ultima ratio, legality and evidence-based legislation) legislators structurally produce excessive, unjustified and symbolic criminalization.

This is no longer a critique of isolated statutes but an account of system-level regularities, and it is precisely at this level that the most promising space opens for criminal-policy reform.

By treating doctrinal principles as institutional debiasing devices within a three-level micro/meso/macro model, and by linking them to the normative protection of consciousness in an informational age, CICP offers a cognitive theory of how criminal law policy should operate under conditions of informational warfare: protecting consciousness while being formed through its vulnerable mechanisms.

RECOMMENDATIONS

On the basis of the foregoing analysis, it is recommended that: (1) explanatory notes accompanying draft criminal-law amendments include a mandatory empirical-evidence section distinct from the statement of legislative intent, so as to make the affective and the evidentiary components of a criminalizing proposal separately visible; (2) parliamentary legal-expert units be equipped with a checklist derived from the bias taxonomy proposed here, to be applied at first reading; (3) further comparative research examine whether the same bias-driven mechanisms operate with comparable intensity in the criminal-law-making processes of other jurisdictions confronting prolonged security crises, so as to test the generalizability of the present, Ukraine-focused analysis beyond the wartime context in which it was developed.

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CONFLICT OF INTEREST

The author declares no conflict of interest.

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