

The use of neuroscientific evidence in the civil courts

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Project description:

Neuroscience is providing insights into a range of areas of great significance to the courts including capacity and responsibility, developmental maturity, memory, the cause of injury and the prognosis for those who suffer brain injuries. Initially much of the legal and philosophical research in the area focussed on the issue of freewill and theoretical assessments of whether neuroscience would be of value to the law. More recently attention has turned to the actual use of neuroscientific evidence in the courtroom. However, this research has focussed on criminal trials and in particular on the use of neuroscientific evidence by those accused of criminal offences. The use of neuroscientific evidence is more widespread in civil trials, but as yet no systematic analysis of its use in these courts has been undertaken.

The first element of the project would involve the examination of reported cases to ascertain the extent and manner in which neuroscientific evidence is being used in the civil courts. The methodology would mirror that adopted by two of the supervisors (Catley and Claydon) in their work on the use of neuroscientific evidence in the criminal courts. This approach has also been adopted in linked research in other jurisdictions (see the work of Farahany in the USA, Chambers in Canada, de Kogel in the Netherlands and Ho in Malaysia and Singapore). However, in all these cases the focus has been on the criminal courts. This project would have the potential to be the first systematic analysis of the use of neuroscience in the civil courts.

The second element of the project would involve identifying best practice and where applicable recommending changes to existing practice. Jurisdictions across the globe are facing questions as to when and for what purposes to admit neuroscientific evidence. Within this country the need for lawyers to develop greater understanding of neuroscience has been recognised by The Royal Society and by the judiciary. Worldwide the need for greater understanding of what the brain sciences can offer the law has been recognised notably in the USA, Italy and the Netherlands. The project would involve working with groups with whom the supervision team have strong links: such as the European Association for Neuroscience and Law and the International Neuroethics Society. These links would provide the researcher with the opportunity to learn from experts from a range of disciplines and jurisdictions and thereby will enable the development of robust proposals for best practice applicable potentially not just in the English courts but also in many other jurisdictions.