

## **Emotional Decision Making: Hardwired and Helpful<sup>1</sup>**

“Just take emotion out of it.” We have all probably been given, or have given, this advice when faced with a tough decision. But while we may try, doing so is not actually possible when it comes to how we make decisions.

We all grew up in different households, under different circumstances, in different demographics, and each one of us has endured different life experiences from childhood through adulthood that has shaped who we are today. But despite our vast differences, we all share the ability to express, feel, and understand four core emotions: joy, sadness, anger, and fear.<sup>2</sup> Our ability to share these core emotions allows us to fundamentally relate to one another despite our different life experiences. And that is an important thing to keep in mind when trying to convince a group of jurors who hail from all different walks of life that your position is the right one.

Dale Carnegie – a savvy salesman who wrote one of the best-selling books of all time called *How to Win Friends and Influence People*<sup>3</sup> – said, “When dealing with people, let us remember we are not dealing with creatures of logic. We are dealing with creatures of emotion...”<sup>4</sup> Why?

In the 1960’s, a neuroscientist named Paul MacLean introduced the concept of the “Triune Brain,” which posited that humans have one mind, but three brains:

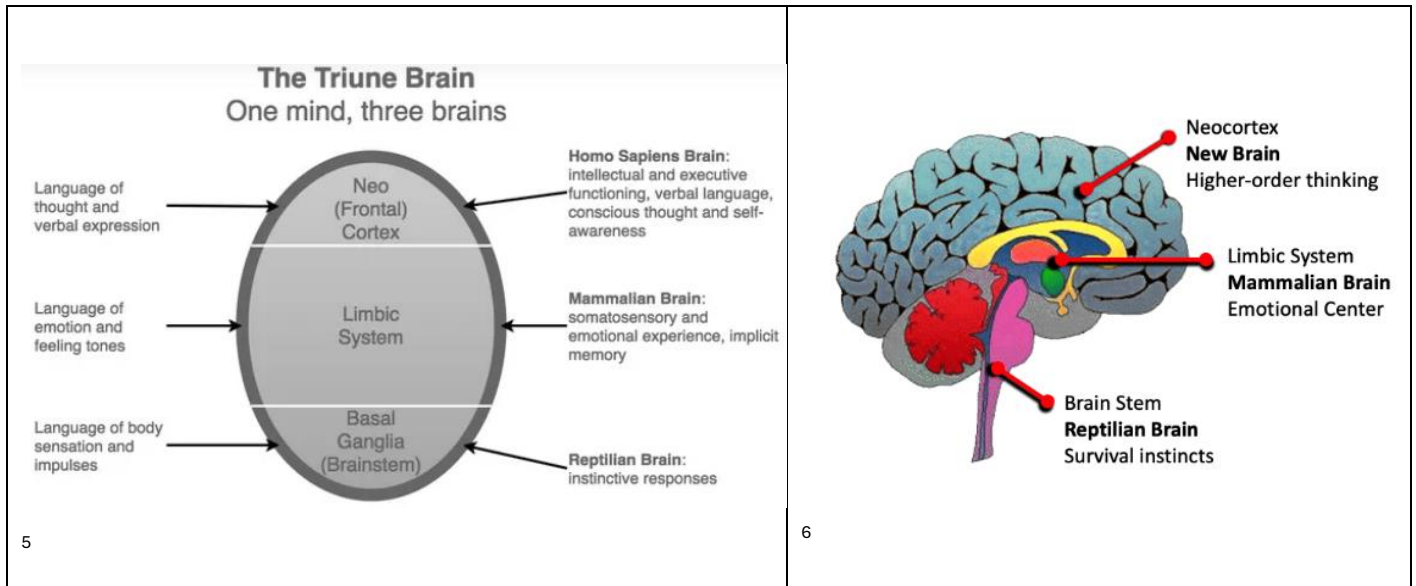
---

<sup>1</sup> By Kate Donoghue, Practitioner in Residence and Director, Advocacy LL.M. & Professional Development Programs, Stetson University College of Law.

<sup>2</sup> Simeng Gu, et al. *A Model for Basic Emotions Using Observations of Behavior in Drosophila*, NATIONAL INSTITUTES OF HEALTH (April 24, 2019), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6491740/> - B63.

<sup>3</sup> Nancy Shulins, ‘*How to Win Friends and Influence People*’: Best Seller Turns 50, but Its Advice Is Timeless, LOS ANGELES TIMES (August 24, 1986), <https://www.latimes.com/archives/la-xpm-1986-08-24-mn-17342-story.html>

<sup>4</sup> <https://www.dalecarnegie.com/en/courses/4114> (last visited August, 30 2024).



At the most basic level, the “Triune Brain” concept divides the human brain into three distinct areas that can be generally broken down as follows: our reptilian brain (brainstem) controls our basic survival functions such as breathing, digestion, and heart beat;<sup>7</sup> our neocortex governs our attention, logic, analysis, and perception;<sup>8</sup> and our limbic system manages our emotions, behaviors, memories, and motivations.<sup>9</sup> Of course, the human brain is not this simple and neuroscience has greatly evolved to recognize that all three “parts” of the brain work together to allow us to function as humans.<sup>10</sup>

<sup>5</sup> <https://www.interaction-design.org/literature/article/the-concept-of-the-triune-brain> (last visited August, 30 2024).

<sup>6</sup> Pam Rutledge, *The Persuasive Impact of Augmented Reality*, THE PSYCHOLOGY OF DIGITAL BEHAVIORS (2002), <https://www.pamelarutledge.com/resources/articles/the-persuasive-impact-of-augmented-reality/>.

<sup>7</sup> *Understanding the Reptilian Brain: Evolution’s Legacy*, NATIONAL HUMAN NEURAL STEM CELL RESOURCE (May 9, 2023), <https://www.nhnsr.org/blog/understanding-the-reptilian-brain-evolutions-legacy/>.

<sup>8</sup> Chloe Bennett, *What is the Neocortex?*, NEWS MEDICAL (March 13, 2023), <https://www.news-medical.net/health/What-is-the-Neocortex.aspx>.

<sup>9</sup> *Limbic System*, CLEVELAND CLINIC (April 6, 2024) <https://my.clevelandclinic.org/health/body/limbic-system>.

<sup>10</sup> *Supra*, note 5 (“Modern advances in brain-imaging have shown various regions of the brain are active during primal, emotional and rational experiences. These findings have led to the rejection of MacLean’s notion of a triune brain in neuroscience. However, while this model is undoubtedly an oversimplification, the concept of a

Key to this Brain Lesson though is to understand that our “emotional brain” plays a *big* role in our decision-making.<sup>11</sup> “Decisions are very much informed by our emotional state since this is what emotions are designed to do. Emotions quickly condense an experience, and evaluate it to inform our decision, so we can rapidly respond to the situation.”<sup>12</sup> We have probably all heard the phrase “trust your gut,” or likely said some iteration of the phrase, “I’m not sure why, it’s just a gut feeling” to justify or defend some decision we have made in our lives. Of course, our gut doesn’t make our decisions, but we can feel like our gut is telling us what to do. This is because:

[T]he limbic system has nerve pathways extending downward into the body, allowing it to influence many of our biological functions, including digestion, heart rate, breathing, and hormone production. This is why strong emotions (i.e., limbic system arousal) cause powerful physical sensations such as ‘butterflies in the stomach,’ and this is why we say we ‘feel it in our gut’ when we make judgments based on emotion.<sup>13</sup>

But how powerful really is our “emotional decision making”? Consider the following examples:

Consider what happens beneath the brain’s surface when people play the ultimatum game, a venerable economics experiment that pits participants against each other in a simple negotiation: One player has \$10 to split with a second player—let’s say you’re the recipient. She can offer you any amount, from zero to \$10, and she gets to keep the change—but only if you accept her offer. You are free to reject any offer, but if you do, neither of you gets anything. According to game theory, you should accept whatever she offers, however measly, because getting some money is better than getting none. Of course, it doesn’t work like that. In these experiments, when the offer dwindles to a few dollars, people on the receiving end consistently turn it down, forfeiting a

---

triumph brain provides us with a useful way of assessing *human analysis of sensory information*, in addition to the relationship between the structure and functions of the human brain (Gould, 2003).”).

<sup>11</sup> Gardiner Morse, *Decisions and Desire*, HARVARD BUSINESS REVIEW (January 2006), <https://hbr.org/2006/01/decisions-and-desire>.

<sup>12</sup> Moshe Ratson, *The Power of Emotions in Decision Making*, PSYCHOLOGY TODAY (August 7, 2023), <https://www.psychologytoday.com/us/blog/the-wisdom-of-anger/202308/the-power-of-emotions-in-decision-making>.

<sup>13</sup> Jeremy Shapiro, *Two Parts of the Brain Govern Much of Mental Life*, PSYCHOLOGY TODAY (November 5, 2021), <https://www.psychologytoday.com/us/blog/thinking-in-black-white-and-gray/202111/two-parts-the-brain-govern-much-mental-life>.

free couple of bucks for—well, for what, exactly? Ask these participants and they’ll tell you, in so many words, that they rejected the lowball offer because they were ticked off at the stingy partner (who, remember, loses her share, too). Not exactly a triumph of reason.<sup>14</sup>

Consider Clara Harris ... [a] Houston dentist who, upon encountering her husband and his receptionist-turned-mistress in a hotel parking lot in 2002, ran him down with her Mercedes. What was she *thinking*? According to an Associated Press report at the time of her murder conviction in 2003, Harris testified, ‘I didn’t know who was driving...everything seemed like a dream.’ As she put it, ‘I wasn’t thinking anything.’ No one can know exactly what was going on in Harris’s mind when she hit the accelerator. But her own testimony and the jury’s conclusion that she acted with ‘sudden passion’ suggest a woman in a vengeful rage whose emotional brain overwhelmed any rational deliberation. We do know that a desire to retaliate, to punish others’ bad behavior, however mild, even at personal cost, can skew decision making. Recall the ultimatum card game, in which a player could accept or reject another player’s offer of money. Alan Sanfey’s brain scans of people feeling vengeful in these games show how (at least in part) a sense of moral disgust manifests in the brain. But anyone who has settled a score knows that a desire for vengeance is more than an angry response to a bad feeling. Revenge, as they say, is sweet—even *contemplating* it is.<sup>15</sup>

These examples show that emotion plays a significant, even very powerful, role in the human decision-making process. But since we know this, why can’t we just make a conscious effort to ensure logic and rational choice always prevail when we make decisions? Can’t we just “take emotion out of it”? The short answer is no. Why? Because the human brain is hardwired to use emotion in the decision-making process:

The patient’s name is Elliott. Elliot had been an exemplary husband, father, and businessman. But he began to suffer from severe headaches and lose track of work responsibilities. Soon, his doctors discovered an orange-sized brain tumor that was pushing into his frontal lobes, and they carefully removed it, along with some damaged brain tissue. It was during his recovery that family and friends discovered (as [Neurologist Antonio] Damasio put it) that ‘Elliot was no longer Elliot.’ Though his language and intelligence were fully intact, at work he became distractible and couldn’t manage his schedule. Faced with an organizational task, he’d deliberate for an entire afternoon about how to

---

<sup>14</sup> *Supra*, note 11.

<sup>15</sup> *Id.* (emphasis in original).

approach the problem. Should he organize the papers he was working on by date? The size of the document? Relevance to the case? In effect, he was doing the organizational task too well, considering every possible option—but at the expense of achieving the larger goal. He could no longer effectively reach decisions, particularly personal and social ones, and despite being repeatedly shown this flaw, he could not correct it.

Though brain scans revealed isolated damage to the central (or ventromedial) portion of Elliot’s frontal lobes, tests showed that his IQ, memory, learning, language, and other capacities were fine. But when Elliot was tested for emotional responses, the true nature of his deficit emerged. After viewing emotionally charged images—pictures of injured people and burning houses—Elliot revealed that things that had once evoked strong emotions no longer stirred him. He felt nothing.

Damasio and his colleagues have since studied over 50 patients with brain damage like Elliot’s who share this combination of emotional and decision-making defects. And researchers have found that patients with injuries to parts of the limbic system, an ancient group of brain structures important in generating emotions, also struggle with making decisions. There’s something critical to decision making in the conversation between emotion and reason in the brain...<sup>16</sup>

So, because humans are emotional decision makers, when it comes to the art of persuasion that we engage in as trial lawyers, it’s important to make our audience *feel* in order to get them to *act*. In other words, if a jury feels your position is correct, they are more likely to decide in your favor. Of course, storytelling and narrative theory are rooted in this concept, but as you craft your stories try to think about how you can tell your story in a way that pulls on one (or more) of the four core human emotions. Doing so can be effective advocacy because despite our differences, since we all share those four core emotions – and since neuroscience has found that our decision-making is very much done by our “emotional brain” – presenting your case in a way that gets jurors to emotionally connect with the facts, and each other in the deliberation room, can push them toward a unanimous verdict in favor of your client.

---

<sup>16</sup> *Id.*