

Collective Intuitive Criminal Policy: Toward an Institutional-Cognitive Theory in Criminalization

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Abstract

Classical criminalization theory asks when criminalization is justified. This article asks how legislatures actually arrive at criminalization decisions before doctrinal justification begins. It develops Collective Intuitive Criminal Policy (CICP) — reconceived here not merely as a cluster of psychological mechanisms but as a pre-doctrinal, institutional-cognitive mode of criminal policy formation in which collective affect, cognitive heuristics, group dynamics, institutional incentives, and symbolic political communication systematically shape, constrain, and channel legal reasoning about criminalization. Building on bounded-rationality theory (H. Simon) and on the heuristics-and-biases tradition (D. Kahneman, A. Tversky), the article organizes the relevant mechanisms into three interconnected levels — micro (individual heuristics and affect), meso (parliamentary group dynamics), and macro (political economy, media ecology, and constitutional order) — linked in a cyclical rather than linear structure: political crisis → collective cognition → legislative behaviour → criminalization → judicial review → political feedback → new collective cognition.

Moral entrepreneurship (H. Becker) is identified as the structural bridge between affective-cognitive processes and the political economy of criminalization. The article further proposes reinterpreting the classical doctrinal principles of legality, necessity, proportionality, and subsidiarity — as developed in Western scholarship (J. Feinberg, D. Husak, R. A. Duff et al., A. P. Simester and A. von Hirsch, V. Tadros) and in Ukrainian doctrine (V. Navrotskyi, P. Frys, O. Vodiannikov, D. Balobanova, Yu. Kolomiets, V. Hatseliuk, N. Slotvinska) — not merely as normative requirements but as institutional debiasing mechanisms designed to counteract the predictable cognitive distortions of collective legislative decision-making. Under this reading, *ultima ratio* ceases to be simply a principle of criminal law and becomes a procedural safeguard against the availability and affect heuristics operating within parliament.

CICP is presented as a metatheoretical layer connecting criminal-law doctrine with cognitive psychology, political science, and institutional theory — not competing with the doctrines of harm, *ultima ratio*, or proportionality, but explaining why these principles so often prove insufficient to restrain overcriminalization in actual law-making. The article closes with a set of conventional and counterintuitive institutional proposals and a methodological self-critique of the limits of psychologizing criminal-law theory.

Keywords: *criminalization; collective law-maker; collective intuitive criminal policy; bounded rationality; cognitive heuristics; institutional debiasing; moral entrepreneurship; political economy of criminal law; groupthink; ultima ratio; behavioural economics of law.*

1. Introduction

Contemporary criminalization theory has long developed a robust normative framework within which criminal law is understood as a strictly limited instrument for protecting against serious harm, rather than a universal tool of moralizing or political symbolism. Formally, everything is in place: the harm principle, *ultima ratio*, proportionality, evidence-based legislation, constitutional control. Empirically, however, a different picture emerges: excessive, symbolic, and selective

criminalization appears not as an accidental malfunction but as a regular product of parliamentary practice.

Classical criminalization theory asks when criminalization is justified. This article asks a different question: how do legislatures actually arrive at criminalization decisions before doctrinal justification begins? The point is not to compete with established doctrines of harm, ultima ratio, or proportionality, but to shift the analysis to a pre-doctrinal stage at which the political, cognitive, and emotional preconditions of future criminal-law decisions are formed. This develops the previously proposed concept of intuitive criminal policy¹ toward a fully institutional-cognitive, multi-level theory of the collective law-maker.

Aim and novelty

The aim of this article is to reconstruct Collective Intuitive Criminal Policy (CICP) as a second-order, institutional-cognitive model rather than a mere inventory of psychological mechanisms; to organize its constituent processes into a coherent micro-meso-macro architecture; to reposition moral entrepreneurship as the structural bridge between cognition and political economy; and to reinterpret classical doctrinal principles as institutional debiasing devices. Only from this vantage point does it become clear why well-formulated principles so often prove insufficient to restrain overcriminalization.

2. The Doctrine of Criminalization: The Normative Model of the Rational Legislator

2.1. Western criminalization theory

Joel Feinberg's harm principle in *Harm to Others* sets the basic perspective: criminal prohibition is justified where it is aimed at preventing serious harm to others and where no less repressive regulatory mechanism is available². Douglas Husak, in *Overcriminalization*, shows how real legal systems systematically accumulate "excess" offences and proposes a minimalist theory of criminal liability as a set of internal and external constraints on the legislature³. The *Boundaries of the Criminal Law* project (R. A. Duff, L. Farmer, S. E. Marshall, M. Renzo, and V. Tadros) delineates the limits of permissible criminal prohibition: which goods may and should be protected by criminal law, and which must be left to other branches of law and policy⁴. A. P. Simester and A. von Hirsch, in *Crimes, Harms, and Wrongs*, develop the idea that justified criminalization is possible only where wrongful conduct, relevant harm, and the absence of less burdensome means of protection all converge⁵. V. Tadros, in *The Ends of Harm*, adds a duty-based view of punishment, in which criminal law imposes specific duties to repair harm and limits its own legitimacy by the structure of those duties⁶.

2.2. Ukrainian criminalization theory

¹Tuliakov, V. O. (2026b). The risk–justice paradox in contemporary criminal law: Desistance, stigmatisation, and the anti-stigmatisation doctrine of criminal profiling. SSRN. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6963142

²Feinberg, J. (1984). *The moral limits of the criminal law*, Vol. 1: Harm to others. Oxford University Press.

³Husak, D. (2008). *Overcriminalization: The limits of the criminal law*. Oxford University Press.

⁴Duff, R. A., Farmer, L., Marshall, S. E., Renzo, M., & Tadros, V. (Eds.). (2010). *The boundaries of the criminal law*. Oxford University Press.

⁵Simester, A. P., & von Hirsch, A. (2011). *Crimes, harms, and wrongs: On the principles of criminalisation*. Hart Publishing.

⁶Tadros, V. (2011). *The ends of harm: The moral foundations of criminal law*. Oxford University Press.

Ukrainian doctrine moves in the same direction. V. Navrotskyi treats criminalization and decriminalization as competing tendencies of criminal-law policy⁷. P. Frys systematizes the theoretical, historical, and legal foundations of criminalization and decriminalization within the criminal-law policy of the Ukrainian state⁸. O. Vodiannikov embeds the harm principle within constitutional review through a constitutional ultima ratio test — legitimate aim, suitability, necessity, proportionality, and subsidiarity⁹. D. Balobanova systematizes the factors and principles shaping the criminal-law prohibition¹⁰. Yu. Kolomiiets shows how political framings — security, order, anti-corruption, patriotism — shape criminal-law ideology and, through it, the content of criminalization¹¹. V. Hatseliuk clarifies, through the principle of legality, the limits of the legislator's permissible "criminalizing activity"¹². N. Slotvinska's typology of mistaken criminalization — unsubstantiated, excessive, incomplete, incorrect — reveals its recurring causal mechanisms and practical effects¹³.

2.3. The gap between doctrine and practice

Formally, the normative apparatus is complete: the harm principle, ultima ratio, proportionality, evidence-based legislation, constitutional control. Empirically, a different picture emerges: excessive, symbolic, and selective criminalization recurs not as an accidental malfunction but as a regular product of parliamentary practice. CICIP does not claim that criminal legislation is irrational; rather, it argues that legislative rationality is bounded, emotionally mediated, and institutionally structured — and that it is precisely this structure, rather than any failure of doctrine as such, that produces the persistent gap between the normative model and the observed pattern of criminalization.

3. From Individual Psychology Toward an Institutional-Cognitive Theory

3.1. Bounded rationality and the pre-doctrinal level

The relevant theoretical starting point is Herbert Simon's concept of bounded rationality: legislators do not act as ideally rational agents but as actors with limited time, information, and cognitive resources, whose rationality is structured by emotions and institutions¹⁴. CICIP thus appears not as a critique of parliaments but as a realistic description of how decisions are normally made under complex conditions. To capture this pre-legal level, CICIP is defined here in an expanded, institutionally cognitive form:

⁷Navrotskyi, V. O. (n.d.). Dekryminalizatsiia yak odyin iz sposobiv humanizatsii ta liberalizatsii u sferi kryminalnoho prava. New Criminal Code of Ukraine Project (EUAM Ukraine).

⁸Frys, P. L. (2005). Kryminalno-pravova polityka Ukrainskoi derzhavy: teoretychni, istorychni ta pravovi problemy. Atika.

⁹Vodiannikov, O. Yu. (2022). Konstytutsiia i zlochyn: teoriia kryminalizatsii v svitli konstytutsiinoi kontseptsii ultima ratio. Aktualni problemy derzhavy i prava, (96), 14–35.

¹⁰Balobanova, D. O. (2007). Teoriia kryminalizatsii [Unpublished doctoral dissertation abstract]. Odesa National Law Academy.

¹¹Kolomiiets, Yu. Yu. (2020). Kryminalno-pravova ideolohiia v yurydychnii doktryni ta kryminalnomu zakonodavstvi Ukrainy [Unpublished doctoral dissertation]. National University "Odesa Law Academy".

¹²Hatseliuk, V. O. (2004). Realizatsiia pryntsypu zakonnosti kryminalnoho prava Ukrainy (zahalni zasady kontseptsii) [Unpublished candidate dissertation]. Luhansk.

¹³Slotvinska, N. (2022). Prychyny, vydy ta naslidky pomylkovoï kryminalizatsii. Bulletin of Lviv Polytechnic National University. Series: Legal Sciences, 9(1(33)), 206–211. <https://doi.org/10.23939/law2022.33.206>

¹⁴Simon, H. A. (1957). Models of man: Social and rational. Wiley.

Collective Intuitive Criminal Policy is a pre-doctrinal mode of criminal policy formation in which collective affect, cognitive heuristics, group dynamics, institutional incentives, and symbolic political communication systematically shape, constrain, and channel legal reasoning concerning criminalization.

It is essential to avoid psychological determinism at this point: these factors do not "determine" criminalization; they calibrate it, frame it, and narrow the range of decisions that appear available to the legislator.

3.2. A three-level architecture: micro, meso, macro

The model operates on three interconnected levels. At the micro level, individual cognitive processes and affective states affect particular legislators — heuristics, emotions, personal traumas, value commitments. At the meso level, collective parliamentary dynamics are at work — conformity, polarization, elements of groupthink under emergency conditions, party discipline, deindividuation, diffusion of responsibility. At the macro level, political institutions, media ecology, and the constitutional order intervene — elections, approval ratings, party-system structure, war, international pressure, budgetary constraints, mechanisms of constitutional review. CICIP is a multi-level theory precisely because it connects micro-, meso-, and macro-processes within a single explanatory frame: from the way an individual member of parliament experiences trauma to the way these experiences are aggregated into a parliamentary vote and then filtered by courts.

3.3. Micro level: intuition and cognitive heuristics

Within cognitive psychology, the "dual-process" model is central: System 1 operates through fast, automatic judgments, heuristics, and affects, while System 2 is responsible for slow, analytical reasoning¹⁵. A. Tversky and D. Kahneman's foundational work identifies the availability, representativeness, and anchoring heuristics as systematic sources of departure from rational judgment under uncertainty¹⁶: the availability heuristic leads legislators to overweight vivid, recently reported events; representativeness leads them to judge a phenomenon's danger by how well it matches a stereotype of "crime" rather than by its actual frequency; anchoring leads early proposed sanctions to distort the entire subsequent range of debate. The affect heuristic adds an evaluative shortcut of its own — the intensity of the emotional reaction to a phenomenon determines the subjective assessment of its riskiness independently of its objective frequency or severity¹⁷. Confirmation bias compounds these effects: legislators disproportionately seek and credit information consistent with a criminalizing judgment already formed¹⁸, while framing effects show that the same substantive proposal can generate radically different levels of parliamentary support depending on whether it is presented in terms of protecting victims or in terms of restricting liberty¹⁹. Together, these heuristics explain why the perception of danger and the perceived appropriateness of criminalization are formed through short mental shortcuts rather than through a full analysis of available data.

3.4. The behavioural economics of law and the "paradox of consequences"

¹⁵Kahneman, D. (2011). Thinking, fast and slow. Farrar, Straus and Giroux.

¹⁶Tversky, A., & Kahneman, D. (1974). Judgment under uncertainty: Heuristics and biases. *Science*, 185(4157), 1124–1131.

¹⁷Slovic, P., Finucane, M. L., Peters, E., & MacGregor, D. G. (2007). The affect heuristic. *European Journal of Operational Research*, 177(3), 1333–1352.

¹⁸Nickerson, R. S. (1998). Confirmation bias: A ubiquitous phenomenon in many guises. *Review of General Psychology*, 2(2), 175–220.

¹⁹Tversky, A., & Kahneman, D. (1981). The framing of decisions and the psychology of choice. *Science*, 211(4481), 453–458.

A methodological parallel to this micro-level analysis can be found in constitutional and administrative law, where behavioural economics — founded on the work of Kahneman and Tversky on decision under risk²⁰ — has been fruitfully applied for several decades, most notably in R. Thaler and C. Sunstein's concept of "libertarian paternalism" and "nudging"²¹. Whereas in constitutional and administrative law this conclusion has mostly been applied to consumer protection, taxation, and regulatory policy, CICP extends it to the most repressive branch of law — criminal law — where the cost of an irrational regulatory decision is highest.

A related idea, here termed the paradox of consequences, traces back to M. Weber's classical distinction between the "ethic of conviction" (*Gesinnungsethik*) and the "ethic of responsibility" (*Verantwortungsethik*)²². A legislator guided exclusively by the ethic of conviction — by the unconditional moral rightness of a position, indifferent to practical consequences — systematically produces outcomes opposite to the declared aim: the excessive moralization of a criminal statute most often results in the devaluation of its regulatory effect, through unenforceability, selective enforcement, the "inflation" of criminal repression, and the erosion of trust in criminal law as such.

3.5. War trauma and character accentuations

These micro-level mechanisms acquire particular weight in the context of war trauma and post-traumatic stress disorder. 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 response²³ — intensify the need for a "tough" legal response: an epileptoid accentuation gravitates toward punitive maximalism, a demonstrative accentuation toward loud symbolic prohibitions, an anxious accentuation toward the preventive expansion of the circle of prohibitions "just in case."

4. The Meso Level: Parliament as a Collective Psychological Subject

For analytical clarity, the socio-psychological mechanisms operating at the meso level are grouped into two blocks: affective processes and group processes. This grouping, together with the cognitive processes already discussed at the micro level, follows the tripartite organization common in contemporary social psychology and behavioural decision-making research.

4.1. Affective processes: fear, outrage, contagion

Collective fear and moral outrage explain why, after high-salience events, there arises a pervasive sense of "urgent need" for criminalization. G. Le Bon showed that an individual within a crowd behaves differently than when alone: emotions are transmitted and amplified faster than arguments, and critical thinking weakens²⁴. Emotional contagion transfers affects from the media space directly into the parliamentary chamber, creating an atmosphere of urgency around resonant

²⁰Kahneman, D., & Tversky, A. (1979). Prospect theory: An analysis of decision under risk. *Econometrica*, 47(2), 263–291.

²¹Thaler, R. H., & Sunstein, C. R. (2008). *Nudge: Improving decisions about health, wealth, and happiness*. Yale University Press.

²²Weber, M. (2004). The vocation lectures: 'Science as a vocation', 'Politics as a vocation' (R. Livingstone, Trans.; D. Owen & T. B. Strong, Eds.). Hackett Publishing. (Original work published 1919)

²³Leonhard, K. (1968). *Akzentuierte Persönlichkeiten*. Volk und Gesundheit; Lichko, A. E. (1977). *Psikhopatii i aktsentuatsii kharaktera u podrostkov*. Meditsina.

²⁴Le Bon, G. (1895). *Psychologie des foules* [The crowd: A study of the popular mind]. Félix Alcan.

events²⁵. In parliament, this means that at large plenary sittings, moral outrage and affect can determine the dynamics of debate, and criminalization becomes a means of collective emotional self-defence — a symbolic gesture intended to reassure both society and the legislator itself.

4.2. Group processes: conformity, groupthink, polarization, deindividuation, diffusion of responsibility

S. Asch's classic experiments demonstrate individuals' willingness to agree with an obviously mistaken majority position²⁶; in parliament, a member votes "for" criminalization not because convinced of its necessity but because "that is how one's own side votes." I. Janis's groupthink — a state of highly cohesive groups oriented toward unanimity, in which criticism and alternatives are suppressed²⁷ — should not, however, be treated as a general feature of ordinary parliamentary law-making. In Janis's own account, groupthink emerges only under specific conditions: high group cohesion, insulation from outside opinion, directive leadership, and strong external stress. It is therefore more precise, and more consistent with the original theory, to present groupthink as characteristic specifically of emergency, wartime, or security-related legislation, where these conditions are jointly satisfied, rather than as a description of parliamentary decision-making in general.

Group polarization intensifies initial inclinations: if the majority initially leans toward severe punishment, deliberation itself tends to push it toward an even more severe position²⁸ — an empirical regularity that calls into question the intuitive assumption that collective discussion as such improves the quality of a decision. Deindividuation describes how an individual ceases to perceive himself as an autonomous decision-making subject and instead acts as an anonymous member of the group²⁹, while the diffusion of responsibility documented by J. Darley and B. Latané adds that the more participants there are in a decision, the less responsibility each individually feels³⁰. Party discipline institutionalizes both mechanisms by attaching formal sanctions to any deviation from the party line.

4.3. Moral entrepreneurship: the bridge to political economy

Moral entrepreneurship occupies a special place in this scheme: it is the structural bridge between the psychological processes described above and the political economy discussed in Section 5. H. Becker's classic account describes "moral entrepreneurs" as actors who create new rules and initiate moral panics³¹. The underlying sequence runs: collective emotions → moral entrepreneurship → political framing → criminalization. This sequence shows how experiences of fear and outrage are transformed into the construction of "moral enemies" and "problem groups," how political actors frame these figures in public discourse, and how that framing is then entrenched in criminal law. Criminalization is thus used not only to regulate conduct but also to mark the moral boundaries of the community, distinguishing "us" from "them." For this reason,

²⁵Hatfield, E., Cacioppo, J. T., & Rapson, R. L. (1994). Emotional contagion. Cambridge University Press.

²⁶Asch, S. E. (1956). Studies of independence and conformity: A minority of one against a unanimous majority. *Psychological Monographs*, 70(9), 1–70.

²⁷Janis, I. L. (1972). Victims of groupthink: A psychological study of foreign-policy decisions and fiascos. Houghton Mifflin.

²⁸Sunstein, C. R. (2002). The law of group polarization. *Journal of Political Philosophy*, 10(2), 175–195.

²⁹Zimbardo, P. G. (1969). The human choice: Individuation, reason, and order versus deindividuation, impulse, and chaos. *Nebraska Symposium on Motivation*, 17, 237–307.

³⁰Darley, J. M., & Latané, B. (1968). Bystander intervention in emergencies: Diffusion of responsibility. *Journal of Personality and Social Psychology*, 8(4, Pt. 1), 377–383.

³¹Becker, H. S. (1963). *Outsiders: Studies in the sociology of deviance*. Free Press.

moral entrepreneurship should not be treated as merely one more item in a list of psychological mechanisms; it is the key link connecting affective and cognitive processes with the political economy of criminalization.

5. The Macro Level: Political Economy and the Limits of Psychological Explanation

Criminalization is shaped not only by psychology but also by structural political incentives: electoral competition, public approval ratings, media pressure, international obligations, wartime conditions, and fiscal constraints³². These macro-level factors do not operate independently of the micro- and meso-level mechanisms described above; rather, they supply the incentive structure within which collective emotions are activated, heuristics are triggered, and group dynamics unfold. A government under electoral pressure has a structural incentive to reward moral entrepreneurship with rapid criminalization; a media ecology built around salience and outrage systematically amplifies availability and affect heuristics; international obligations and wartime conditions supply the "trigger events" from which collective cognition is formed.

It follows that CICP should not be understood as a substitute for political explanations of criminalization but as an intermediate analytical layer connecting structural political incentives with doctrinal criminal law.

6. The Structure of CICP: A Cyclical, Not Linear, Model

The structure of CICP is best described as a cyclical rather than linear cascade:

*political crisis → collective cognition → legislative behaviour →
criminalization → judicial review → political feedback → new collective cognition*

A political crisis — war, a terrorist attack, systemic corruption, a humanitarian catastrophe — triggers collective affects and heuristics, forming collective cognition: shared perceptions of risks, enemies, and threats. These cognitive-emotional structures translate into legislative behaviour: the choice of response channel (criminal law, administrative measures, political declarations), the style of debate, and the regime of party discipline. The result is criminalization — a set of norms that formally rest on doctrinal principles but are in fact born in the field of collective intuition. Courts then intervene: they do not merely rationalize the parliamentary product but filter and recalibrate it, sometimes reinforcing it, sometimes neutralizing or restricting it, as constitutional, international, and doctrinal standards are brought to bear on its substance and application. Finally, case law and political reactions generate new political feedback — judicial decisions, public and international support or criticism, shifting ratings and agendas — and this new feedback forms the collective cognition from which the next cycle begins.

Two levels must therefore be distinguished throughout: the normative (official) level, at which the decision is described and argued for in the language of social danger, ultima ratio, and proportionality, and the deep (latent) level, at which the decision in fact arises from intuition, affect, collective psychology, political identity, and group dynamics, with legal argumentation at the official level frequently only rationalizing what has already been decided at the latent level.

7. CICP as a Source of Erroneous Criminalization

³²Beckett, K. (1997). *Making crime pay: Law and order in contemporary American politics*. Oxford University Press.

Drawing on N. Slotvinska's classification³³, CICIP connects specific forms of erroneous criminalization with the mechanisms described above.

Unjustified criminalization: adopted without sufficient empirical or doctrinal analysis, under the influence of moral panic, emotional contagion, and the availability heuristic.

Excessive criminalization: sanctions and scope exceed what is necessary, correlating with group polarization, moral entrepreneurship, and the Weberian paradox of consequences, whereby conviction displaces calculation.

Incomplete criminalization: only particular manifestations of a phenomenon are criminalized while its structural causes remain unaddressed, reflecting conformity and diffusion of responsibility that block systemic solutions.

Incorrect criminalization: the object of criminalization becomes a symbolic "guilty party" rather than the real source of harm, a product of moral entrepreneurship and collective stereotyping.

8. Martial Law and the Psychology of Criminalization

In the context of martial law and full-scale aggression against Ukraine, several micro- and meso-level mechanisms described above operate simultaneously and at heightened intensity. Chronic stress, the experience of shelling, prolonged exposure to existential danger, and the widespread manifestation of post-traumatic stress disorder alter the cognitive and emotional mechanisms of decision-making, while the conditions that Janis identifies as necessary for groupthink — high cohesion, insulation, directive leadership, external stress — are jointly satisfied in a way rarely seen in ordinary peacetime law-making. 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, and it illustrates why groupthink is better understood as a condition-specific rather than a general feature of legislative behaviour.

9. Doctrinal Principles as Institutional Debiasing Mechanisms

CICIP does not assert that criminal law is "nothing but psychology"; it asserts that legislative rationality is bounded, emotionally mediated, and institutionally organized. For that reason, the doctrinal principles of legality, necessity, proportionality, and subsidiarity ought to be reinterpreted not merely as normative requirements but as institutional debiasing devices³⁴ — instruments for counteracting collective cognitive distortions of parliaments and courts.

Ultima ratio ceases to be a purely moral slogan and becomes a procedural tool against the availability and affect heuristics: criminalization is used only once it has been shown that other, less repressive tools do not work or are clearly insufficient.

³³Slotvinska, N. (2022). Prychyny, vydy ta naslidky pomylkovoï kryminalizatsii. Bulletin of Lviv Polytechnic National University. Series: Legal Sciences, 9(1(33)), 206–211.

³⁴Larrick, R. P. (2004). Debiasing. In D. J. Koehler & N. Harvey (Eds.), *Blackwell handbook of judgment and decision making* (pp. 316–338). Blackwell.

Proportionality protects not only against obvious disproportion between harm and sanction, but also against anchoring and group polarization, by forcing comparison of a new sanction with the existing system rather than with the most radical proposal on the table.

Subsidiarity restrains moral entrepreneurship, reminding the legislator that not every political or moral problem is properly translated into criminal law.

Legality creates a barrier against selective and symbolic criminalization as products of conformity and diffusion of responsibility.

Under this reading, the traditional safeguards retain their conventional institutional forms as well: mandatory criminological and constitutional review of bills; "cooling-off" procedures establishing a minimum interval between a resonant event and a vote; independent analysis of the proportionality of sanctions; guarantees of parliamentary dissensus; and systematic impact assessment of new criminalizing norms. What changes is their theoretical justification — from abstract normative postulates to targeted responses against specifically identified cognitive and group distortions.

10. Counterintuitive Proposals: What Is to Be Done

If CICP is not an anomaly but a structural property of the collective law-maker, confronting it head-on through additional expertise and procedure alone may prove as ineffective as attempting to prohibit affect as such. The following proposals proceed from the opposite premise: not to suppress collective intuition, but to redirect and structurally harness it.

Institutionalizing the symbolic gesture apart from the criminal statute. Granting parliament an official, publicly visible channel of response that carries no criminal-law consequences — such as a formalized resolution of condemnation — allows the affective impulse to be discharged through a moral gesture without infecting the system of criminal prohibitions.

An obligation to justify the rejected, rather than the adopted, bill. Requiring a written justification for bills a committee rejects without substantive consideration shifts conformist pressure away from voting "yes" and onto the explanation of a silent refusal — a channel less vulnerable to groupthink.

Deliberate competition of frames rather than their elimination. Mandatory parallel presentation of two competing frames — a victim-protection frame and a long-term fiscal and enforcement-consequences frame — allows intuitive reactions to counterbalance one another rather than leaving one frame dominant.

Independent aggregation instead of additional deliberation. Since deliberation itself often worsens rather than improves the quality of a collective decision³⁵, an independent, anonymous preliminary poll of members in arbitrary small subgroups, aggregated statistically on the "wisdom of crowds" principle before public debate begins, offers a counterintuitive alternative to further discussion.

Automatic sunset clauses for norms adopted in affect. Limiting the operation of a criminalizing norm adopted under acute societal shock to a predetermined term, after which it lapses unless parliament reaffirms it outside the pressure of crisis affect, treats the affect as legitimate at the moment of adoption while structurally bounding its long-term legal consequences.

³⁵Surowiecki, J. (2004). The wisdom of crowds. Doubleday; Sunstein, C. R. (2002). The law of group polarization. Journal of Political Philosophy, 10(2), 175–195.

11. Critiques and Limitations

A section of critique is essential to the maturity of the concept, and methodological restraint here is not a concession but part of the argument itself.

— **The danger of psychologizing law:** CICP must not substitute for legal analysis. The criteria of ultima ratio, proportionality, social danger, and legal certainty remain the normative foundation; psychology only explains the mechanisms of deviation from it.

— **The limits of the psychological register:** *where psychology ceases to function as an instrument of critical analysis and instead becomes a universal justification, law ends and the psychiatrization of politics begins.*

— **The impossibility of full empirical verification:** it cannot be established with certainty that a particular member of parliament voted precisely because of conformity or PTSD; CICP is an explanatory, reconstructive model, not a causal diagnosis of individual motives.

— **Normative risk:** even a statute adopted under the influence of affect remains law and must be assessed on the legal plane; psychological analysis does not delegitimize parliament as an institution.

— **The risk of reductionism:** parliament is not psychology alone but also politics, economics, lobbying, and geopolitics; CICP describes one dimension, not the whole of causation — which is precisely why Section 5 situates it as an intermediate layer rather than a substitute for political-economy explanations.

— **A socio-ontological problem:** the "collective law-maker" is an analytical model resting on the concepts of collective intentionality and emergent institutional actors; the question of its ontological status requires a separate philosophical discussion.

12. Conclusions

Seen in this light, CICP emerges as a metatheoretical model connecting criminal-law doctrine with cognitive psychology, political science, and institutional theory. It does not compete with the doctrines of harm, ultima ratio, or proportionality; it explains why these principles so often prove insufficient to restrain overcriminalization in actual law-making processes. The underlying logic may be summarized as: political crisis → collective cognition → legislative behaviour → criminalization → judicial rationalization.

This is where the model holds the greatest potential for international academic debate: instead of yet another theory of how things should be, it offers a multi-level explanatory account of how criminalization actually forms before doctrinal justification begins — moving the discussion beyond the criticism of individual statutes toward an explanation of a structural pattern of legislative behaviour, at the intersection of criminal law, criminology, behavioural public policy, and socio-legal studies.

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