



The European Journal of Psychology Applied to Legal Context

www.elsevier.es/ejpal



'I know how they must feel': Empathy and judging defendants

Jane L Wood*, Mark James, and Caoilte Ó Ciardha

School of Psychology, University of Kent, UK

ARTICLE INFORMATION

Manuscript received: 11/09/2013
Revision received: 23/10/2013
Accepted: 25/10/2013

Key words:

Empathy
State
Trait
Remorse
Judgments

ABSTRACT

The current study investigated the effects of state and trait empathy in legal judgments and tested the relationship between trait and state emotion in one hundred and fifty eight students aged 18-59. Assessments were taken of participants' trait empathy and then state empathy was induced in half the sample. Following this all participants read a trial transcript and made judgments regarding: the verdict decision; the defendant's responsibility for the offense; what would be an appropriate punishment; the likelihood that the offender would offend in the future; and whether the defendant felt remorse for committing the offense. Findings showed that both trait and state empathy predicted attributions of offender remorse. State empathy also predicted judgments of offender responsibility and agreement with verdict decisions in a lenient direction. Findings also showed that state and trait empathy did not interact. The results indicate that trait and state empathy work independently to influence legal judgments and that inducing empathy in decision-makers can impact on trial outcomes above and beyond the facts of the case.

© 2014 Colegio Oficial de Psicólogos de Madrid. All rights reserved.

'Sé cómo se deben sentir': Empatía y juicio de los acusados

RESUMEN

Se analizaron los efectos de la empatía estado y rasgo en los juicios legales, y se examinó la relación entre la emoción estado y rasgo. Participaron en el estudio ciento cincuenta y ocho estudiantes de entre 18 y 59 años. Se evaluó la empatía-rasgo de los participantes, y posteriormente se indujo la empatía como estado a la mitad de la muestra. Todos los participantes leyeron la transcripción de un juicio sobre el que se les pidió que dictaminaran: el veredicto; la responsabilidad del acusado en el delito; cuál sería un castigo apropiado; la probabilidad de que el acusado reincidiera en el futuro; y si el acusado había sentido remordimientos por el delito cometido. Los resultados mostraron que, tanto la empatía estado como la empatía rasgo, predecían atribuciones de remordimiento en el acusado. La empatía como estado también predecía juicios más indulgentes sobre la responsabilidad del acusado y el acuerdo con el veredicto. Además, los resultados también pusieron de manifiesto que la empatía estado y la empatía rasgo no interactuaban. Los resultados indicaron que la empatía estado y rasgo actúan de manera independiente influenciando los juicios legales, y que la inducción de empatía en las personas que toman decisiones puede influir en los resultados del juicio más allá de los hechos.

© 2014 Colegio Oficial de Psicólogos de Madrid. Todos los derechos reservados.

Palabras clave:

Empatía
Estado
Rasgo
Remordimiento
Juicios

In the UK, a crown court Judge suspended an offender's six-month prison sentence when the defendant cried in the dock. This was, the Judge stated, because the offender's tears demonstrated his remorse for committing the offense. However, the offender later admitted that he felt no remorse and had cried because he feared imprisonment (BBC News, 2006). If even experienced professionals erroneously attribute emotions to others and use these to make important

judgments, it seems unlikely that lay legal decision-makers, such as jurors, can be expected to make more "accurate" decisions. This study examined the role of empathy and attributions of remorse to an offender in case-related judgments.

Affect control theory (ACT; Heise, 1979) explains how people make misguided attributions of emotions, such as remorse, to others. ACT asserts that people strive to maintain self-associated meaning. That is, people tend to behave consistently across situations unless situations create temporary deviations from personal meanings and create uncharacteristic responses. For example, someone who is generally considerate of others may, due to situational influences, behave uncharacteristically and fail to consider others' feelings.

*Correspondence concerning this article should be sent to Jane L. Wood, University of Kent, Canterbury, Kent, United Kingdom. E-mail: J.L.Wood@kent.ac.uk

Observers of this uncharacteristic behavior might expect that the target would subsequently experience and show remorse for their actions. ACT maintains that observers will use such negative emotional displays to inform judgments about the type of person they are.

Since members of a jury cannot legally actually know a defendant, they may use a defendant's emotional demeanor as a guide to their subsequent judgments of the type of person she/he is and his/her role in the offense. For instance, negative emotional displays may generate more positive judgments of a defendant (i.e. she/he is a fundamentally good person; that the crime resulted from situational not intrapersonal factors; that the defendant feels remorse for their part in the offense). Research using ACT supports this by showing that when a defendant appears to be sad, observers evaluate his/her identity more positively. The result of this positive evaluation is that observers may recommend shorter sentences and are less inclined to believe that the defendant will commit a similar offense in the future (MacLin, Downs, MacLin, & Caspers, 2009). However, what is not clear from previous work is whether these more lenient judgments result solely from the defendant's emotional display or whether other factors such as an observer's empathy also influences judgments.

Empathy has many definitions but for the purposes of this study Davis' definition was used. This definition claims that empathy is a multidimensional construct involving taking the perspective of another resulting in a cognitive adoption and emotional understanding of his/her perspective (Davis, 1983). The observer also experiences an emotional reaction to the target's emotional display and uses this as a basis for decisions regarding the target (Davis, 1983). So, in the case of the judge outlined above, the defendant's emotional display may have generated an emotional response in the judge who used this to inform his decision regarding the defendant's sentence.

Empathy and Legal Decisions

Empathy has two forms: Trait empathy is a stable personality characteristic whilst state empathy is temporary and can be induced. The value of inducing state empathy in jurors is recognized by lawyers who urge that empathy may be manipulated via attorneys' statements and during cross-examination of witnesses (Stevenson, Najdowski, Bottoms, & Haegerich, 2009). However, it remains unclear whether it is trait, state or a combination of both forms of empathy that influences judgments in a court case.

So far, little work has been conducted to examine the role of trait empathy in judgments of defendants. Research findings suggest that when judging others, high trait empathizers hold defendants less responsible for an offense and favour lenient punishments (Colby, 2012; Chin, 2012). High trait empathizers also interpret offenders' displays of remorse as arising from concern for the victim, recognition of personal responsibility for events and acceptance that punishment will follow (Brooks & Reddon, 2003). In contrast, low trait empathizers interpret an offender's remorse as an indication of the offender's knowledge that she/he has violated other people's values and standards. Low trait empathizers also see an offender's remorse as emanating from a fear of punishment rather than from concern for the victim (Brooks & Reddon, 2003).

Far more research has examined state empathy. This may be justified since, as noted above, state empathy can be induced in jurors via courtroom processes, whilst identifying trait empathy in potential jurors is more problematic (Plumm & Terrance, 2009). Inducing state empathy, typically via attorneys' opening statements, is easily done and may have an enduring influence on jurors' preferences for the defense or the prosecution from the start of a trial (Pyszczynski & Wrightsman, 1981). Mock juror studies show how state empathy for a defendant results in the crime being

attributed to situational rather than dispositional factors (Archer, Foushee, Davis, & Aderman, 1979). Mock jurors who make situational rather than dispositional judgments also attribute less responsibility to the defendant, and make fewer judgments of guilt (Haegerich & Bottoms, 2000).

Trait and State Empathy Interaction

Since the examination of trait empathy in judicial judgments is so limited, its role, if any, in initiating state empathy is not clear. So, since it cannot be verified that state empathy stands alone, it may be that trait and state empathy work in concert to influence judgments. The relationship between state and trait empathy is likely to act in accordance with one of Rusting's (1998, 1999) three theoretical frameworks of trait and mood congruency in judgments, where: 1) state empathy (temporary emotion) and trait empathy (stable disposition) have *independent effects* (i.e. neither influences the other); 2) trait empathy *moderates* state empathy (i.e. judgments are either state empathy congruent or incongruent due to trait empathy's influence); and 3) the effect of trait empathy on processing emotional cues are *mediated* by state empathy (i.e. state empathy enables trait empathy to be expressed).

Research examining emotions has shown that emotional traits generally correlate positively with emotional states, and generate a propensity to experience related emotional states (Rusting, 1999). Consequently, the robust effects of state empathy observed in research may actually stem from the underlying influence of trait empathy and in trials that last for weeks or even months the enduring influence of traits on decisions may be even more important. However, research also shows that people may behave 'out of character' with their personality traits (Fleeson & Wilt, 2010) and so it can be expected that they may also make judgments that are 'out of character' with their underlying traits. So, it is important that the relationship between trait and state emotions and their relationship to people's judgments is examined more closely. As Rusting sensibly advocates, research including both states and traits will offer a more reliable picture of how emotions work to influence decisions (Rusting, 1999).

To date there is little research that has examined both trait and state empathy in legal judgments. One study showed how state empathy influenced judgments and that high - compared to low - trait empathizers attributed the crime to more situational causes and held the offender less responsible for the offense (Archer et al., 1979). However, as stated earlier, there are problems associated with attempts to assess trait empathy in potential jurors. Nonetheless many lawyers have recognised the potential value of trait empathy. As Archer et al. (1979) comment, one successful lawyer preferred emotionally-inclined jurors because this would help him to elicit empathy for his clients. More recently, researchers in the U.S.A. note that attorneys may employ the voir dire process to select jurors who empathize with their client since they are likely to make judgments in the client's favour (Eagle, 2013). If such tactics are used in court by attorneys, it becomes even more imperative that researchers gain a clearer understanding of the individual and collective influence of trait and state empathy in judgments and how these two important influences on legal judgments work together.

The Current Study

This study used an individual mock juror paradigm. This was partly because it is not legal to interview actual jurors in the U.K. and partly because laboratory-based work enables the manipulation of variables whilst controlling for extraneous influences on judgments (Devine, 2012). The study aimed to assess: 1) the importance of empathy in judgments of a defendant; 2) whether trait or state empathy exerts a greater influence in legal judgments; and 3)

whether trait and state empathy work together or independently to influence judgments.

Mock juror research often focuses on very serious offenses such as homicide following sexual or domestic abuse (Plumm & Terrance, 2009). However, such crimes are relatively rare and their content may elicit strong emotions in jurors. This study aimed to see if empathy can influence judgments in more commonplace, and less emotive crimes. If it does then it can be said, with a degree of certainty, that decision-makers' empathy is potentially important to most court cases. For the purpose of this research a case involving physical assault was used to examine empathy's relevance.

To understand more of the effects of empathy its influence was examined when the defendant shows no emotion. Previous work has relied on trials with emotional content to elicit empathic responses in mock jurors. However, research shows that when tasks are ambiguous, judgments are likely to become more trait congruent (Rusting, 1998). So, this study aimed to clarify this process by assessing if empathy inclines people to attribute emotions to an emotionally expressionless defendant.

For theoretical purposes this research also aimed to understand more of the relationship between trait and state empathy by examining if trait and state empathy interact act in accordance with one of Rusting's (1998, 1999) three theoretical frameworks (see above) in a mock jury context.

Expectations were that: high levels of empathy (trait and/or state) would a) predict attributions of remorse to an emotionally expressionless defendant, and b) predict leniency in punishment, responsibility, future offending judgments and disagreement with a guilty verdict. No predictions were made regarding the relationship between trait and state empathy: this part of the study was purely exploratory.

Method

Participants

One hundred and fifty eight undergraduate students participated for course credit. Twenty-six were male and 132 were female. Participants' ages ranged from 18 to 59 years ($M = 20.37$, $SD = 5.82$). All were required to be native English speakers to guarantee comprehension of the colloquial English used by scenario characters.

Design

The study used an individual mock juror design, similar to that used by Haegerich and Bottoms (2000). Power analysis showed that a sample size of 68 was necessary to identify a medium effect and a sample of 485 for a small effect. Consequently, this study's sample size of 158 was sufficient to identify a small to medium effect (Cohen's $f^2 = .062$).

Procedure

The study was advertised via a university research participation website which asked for native English speakers to volunteer to participate. Once participants had volunteered, data collection took place in a quiet laboratory in groups of 6. Participants were seated apart to prevent collaboration and the researcher stayed in the room throughout. Participants were provided with an information sheet which provided researchers' details and an outline of the study's aims. They were then given the chance to ask questions and, if happy to continue (none refused), they were informed of their rights to anonymity, confidentiality and to withdraw at any time without repercussions. They were then asked to sign a consent form. All participants were provided with a unique participation number, for potential identification purposes, on all their materials

except the consent form which was kept separate from questionnaires.

In the first part of data collection participants completed a questionnaire (IRI; Davis, 1983) to assess their trait empathy. Following this, they were randomly presented with one of two separate versions of the trial; one containing state empathy induction (experimental condition, $n = 79$), the other did not (controls, $n = 79$). State empathy was induced in the experimental condition by adding dialogue to the defense attorney's opening and closing statements (see below). After reading the transcript, participants completed a questionnaire to assess their judgments of the case. Each data collection session lasted approximately 35 minutes. Following completion of the study participants received a verbal and written debrief and were able again to ask questions.

Materials and Measurements

The first questionnaire included a series of demographic questions that assessed each participant's age (measured as actual age) their gender and whether they had ever been a victim of assault (measured as yes or no) since this may impact on their perception of the defendant. The second questionnaire was the Interpersonal Reactivity Index (IRI; Davis, 1983) which comprises 28 items to assess trait empathy. Example questions include: "I believe that there are two sides to every question and try to look at them both", and "When I am reading an interesting story or novel, I imagine how I would feel if the events in the story were happening to me" and "I often have tender, concerned feelings for people less fortunate than me." Nine items were reverse-scored to prevent biased responding (e.g. "I sometimes find it difficult to see things from the 'other guys' point of view", "Other people's misfortunes do not usually disturb me a great deal"). All items were measured using a five-point scale, ranging from one (Doesn't describe me very well) to five (Describes me very well). Internal consistency for this scale was good (Cronbach's $\alpha = .81$). The trial scenario materials (DPP v Hopper & Lush, 2002) were presented in a 20-page booklet explaining how an offender had been charged with assaulting a colleague, causing a permanent and debilitating injury. After admitting hitting the victim during an argument over the offender's girlfriend, the offender pleaded Not Guilty due to provocation. Participants read the defense and prosecution attorneys' opening and closing statements and evidence from four witnesses: two defense (the offender and his girlfriend) and two prosecution (the investigating police officer and the victim). State empathy was induced in the experimental condition via the defense attorney's opening and closing statements. The opening statement ended with:

"I ask you, please, members of the jury, that as you consider the evidence about to be presented, imagine how you would feel if you were in the defendant's shoes. Here was a man whose good friend had betrayed his trust, and then attacked him. How would you have felt and reacted if you had been in his place?"

The closing statement ended with:

"I ask you, members of the jury, to consider how you would feel if you were to be told that a trusted friend had been making advances on your partner. I ask you to consider how you would feel if you needed to pick up a baseball bat in order to protect yourself and your partner. And I ask you to consider how you would feel if you were then the one to find yourself facing criminal prosecution."

In the control condition, these statements were omitted.

At the end of each transcript participants read that the offender had been found guilty by a majority verdict. More commonly, participants' views on offender guilt are assessed using a continuous guilt probability scale, but this technique has been questioned

(Mitchell, Haw, Pfeifer, & Meissner, 2005). Also, dichotomous verdict judgments provide only limited testable information. For example, those judging the offender to be Not Guilty have no need to provide punishment judgments since punishment does not follow acquittal. By providing the trial outcome it was possible to examine participants' attitudes toward the verdict and their recommendation of punishment without losing any data. The description of the verdict being returned by a majority verdict aimed to emphasize to participants that at least some of the real jurors disagreed with the guilty verdict and thus discourage participant inclinations to socially conform to a unanimous verdict an effect demonstrated by Pennington & Hastie (1992). Providing participants with a verdict enabled them to see their own judgments in context of others' whilst also assessing their punishment decisions without losing data.

In line with previous experimental work (Haegerich & Bottoms, 2000), participants were asked to write a short paragraph after reading the trial transcript: experimental participants wrote a brief paragraph describing how they believed they would feel if they were in the offender's position, whilst controls wrote about their general thoughts and feelings about the case. This served to reinforce the transcripts' empathy inductions. All participants then completed an identical series of case-related items:

1. A state empathy scale (adapted from Haegerich & Bottoms, 2000) assessed empathy with the offender. Internal consistency for this scale was excellent (Cronbach's $\alpha = .87$). This scale was also used to test empathy induction. The scale had seven items (e.g. *I can really imagine what Pete, the offender, must have been feeling the night of the crime*), and was scored using a seven-point Likert scale ranging from one (*Strongly disagree*) to seven (*Strongly agree*).
2. Participants' attributions of remorse to the offender were assessed using two items (e.g., How genuinely remorseful do you believe Pete, the offender, feels for committing the offence?), and was scored on a seven-point Likert scale, ranging from one (*Not at all*) to seven (*Extremely*). Internal consistency for these two items was excellent (Cronbach's $\alpha = .85$). The trial transcript contained no reference to any emotions expressed or felt by the offender, so any attributions of remorse originated solely from participants' own interpretations of his behavior.
3. A responsibility scale (adapted from Haegerich & Bottoms, 2000) assessed evaluations of the offender's responsibility for the offence. The scale had three items (e.g. "Please rate the degree to which you believe Pete, the offender, is to blame for Chris's injury"), and was scored on a seven-point Likert scale, ranging from one (*Not at all*) to seven (*Completely*). Internal consistency for this scale was also excellent (Cronbach's $\alpha = .86$).
4. Finally, participants were asked to make three case judgments. The first asked if participants agreed with the guilty verdict (0 = no, 1 = yes). The second asked for an appropriate offender punishment, with options ranging from zero (*Community Punishment*) to seven (*11+ years in prison*). The final item asked for participants' beliefs as to whether the offender would commit a similar offence in the future, on a Likert scale ranging from one (*Not at all likely*) to seven (*Extremely likely*).

Results

Preliminary Analysis

Descriptive data for the variables of the study may be seen at Table 1. A *t* test assuming unequal variances (Levene's test of equal variances, $F = 5.39$, $p < .05$) showed that empathy induction was successful. Experimental participants, reported higher levels of state empathy with the defendant ($M = 4.34$, $SD = 1.02$) than did controls ($M = 3.87$, $SD = 1.21$), $t(151.1) = -2.60$, $p < .01$, $d = 0.42$, 95% CI [-0.73, -0.79].

Table 1

Descriptive statistics for all variables: Control and experimental groups

Variable	Control Group		Experimental Group	
	<i>M</i>	<i>SD</i>	<i>M</i>	<i>SD</i>
Trait empathy (IRI total)	70.63	9.25	68.30	11.87
State empathy (empathy with defendant)	27.11	8.50	30.40	7.13
Perceived defendant remorse	8.70	3.07	9.35	2.84
Perceived defendant responsibility	16.80	3.40	15.91	3.30
Likelihood that defendant will commit similar offense in future	3.08	1.50	3.15	1.41

Defendant Remorse and Responsibility

Trait and state empathy together with the demographic variables, age, gender (dummy coded as 0 & 1) and ever been a victim of assault (dummy coded as 0 & 1) were entered as independent variables (IVs) in a series of multiple regressions to examine their effects on judgments. This was necessary to identify if demographics had any effect on participants' responses.

The first regression used attributions of defendant remorse as the dependent variable (DV). The model was significant, accounting for 11% of the variance, power $(1-\beta) = .88$ (see Table 2). The significant predictors as shown by the regression analysis were age (older participants were more likely to attribute remorse to the defendant), and state and trait empathy (higher state and/or trait empathizers attributed more remorse to the defendant).

The second regression used judgments of defendant responsibility for the offence. The model was significant, and accounted for 4.4% of the variance, power $(1-\beta) = .90$ (see Table 2). The regression analysis showed that state empathy was a significant predictor as shown by and showed that participants highest in state empathy judged the defendant to be less responsible for the offence.

Table 2

Multiple regression analyses predicting attributions of remorse and responsibility

	DV: Attributions of remorse			DV: Attributions of responsibility		
	β	<i>t</i>	<i>p</i>	β	<i>t</i>	<i>p</i>
Trait empathy	.18	2.09	.038	-.05	-0.57	.571
State empathy	.26	3.25	.001	-.26	-3.15	.002
Age	.20	2.59	.011	.03	0.40	.689
Gender	.01	0.14	.887	-.05	-0.64	.527
Victim of assault	.13	1.57	.118	.03	0.36	.721

Note. Remorse $R^2 = .110$, $F(5, 149) = 4.83$, $p < .001$, $N = 155$. Responsibility $R^2 = .044$, $F(5, 150) = 2.44$, $p < .05$, $N = 156$.

Punishment, Future Offending and Verdict

Subsequent regression models predicting punishment decisions, $F(5, 150) = 0.77$, *ns*, power $(1-\beta) = .30$ and future offending beliefs, $F(5, 150) = 0.22$, *ns*, power $(1-\beta) = .30$, were not significant.

A logistic regression was used to see if participants agreed with the verdict. Trait and state empathy and demographic variables were entered as IVs and verdict agreement as the DV. Results (see Table 3) produced a reliable model, $\chi^2(1) = 14.85$, $p < .001$, accounting for

between 9.1% and 13.5% of the variance, power $(1-\beta) = .90$ and classifying correctly, 73.7% of cases who disagreed with the jury's verdict and 95.8% of cases who agreed with the jury's verdict. Only state empathy was an important predictor and showed that each unit increase in state empathy was associated with a decrease in the odds of agreeing with the guilty verdict. Raw data showed that 82.3% of participants in the empathy not induced group (controls) agreed with the guilty verdict, whereas 69.2% of participants in the empathy induced group (experimental group) agreed with the guilty verdict. This suggests that participants higher in state empathy - regardless of whether they were in the control or experimental group - were less likely to agree with the guilty verdict.

Table 3

Logistic regression predicting mock juror's agreement with trial verdict from trait and state empathy, age, gender and victim status

	B	Wald	OR
Trait empathy	-.009	.191	.991
State empathy	-.630***	10.149	.532
Age	.018	.176	1.018
Gender	-.019	.001	1.019
Victim of Assault	-.181	.073	1.199

Note. *** $p < .001$. Block $c^2(1) = 14.85$, $p < .01$.

Trait and State Empathy Relationship

Since defendant remorse was the only DV predicted by both trait and state empathy, it was sensible to use this to test for an interaction between trait and state empathy.

Trait Empathy as a Moderator of State Empathy

Trait and state empathy scores were centered (using $X - M$ procedure) and an interaction term calculated from their product. The centered and interaction terms for trait and state empathy were entered into a regression to predict defendant remorse. Results showed a non-significant main effect of centered trait empathy ($\beta = .085$, $p = .276$), a significant main effect of centered state empathy ($\beta = .263$, $p < .001$) and a non-significant interaction term ($\beta = .141$, $p = .07$), accounting for 9.1% of the variance, $F(3, 154) = 6.13$, $p < .001$, power $(1-\beta) = .87$. This suggests that trait empathy does not moderate state empathy's effects on remorse attributions.

State Empathy as a Mediator of Trait Empathy

To examine whether the relationship between trait empathy and defendant remorse was mediated by state empathy, it was first necessary to examine whether the hypothesised causal variable (trait empathy) was correlated with the hypothesised mediator (state empathy; Baron & Kenny, 1986). A regression analysis indicated that this first requirement was not satisfied ($\beta = .116$, $p = .148$). Thus, state empathy cannot act as a mediator for the effects of trait empathy.

To explore these findings further the role of gender in trait and state empathy was examined. Gender was not an important predictor in any of the regression analyses. This seemed odd since research supports that women have higher levels of empathy than do men (Eisenberg & Lennon, 1983). To examine this further an equal variance t test was performed (Levene's tests for equality of variance were not significant for state empathy, $p = .86$, and for trait empathy, $p = .35$) to compare male and female trait and state empathy. Results showed that, similar to previous findings, women ($M = 70.63$, $SD = 10.06$) compared to men ($M = 63.62$, $SD = 11.83$), did indeed have

higher levels of trait empathy, $t(154) = -3.15$, $p < .01$, $d = 0.51$, 95% CI [-11.41, -2.62]. However, further analysis showed that men ($M = 33.11$, $SD = 8.17$) compared to women ($M = 27.86$, $SD = 7.68$) had higher levels of state empathy with the defendant, $t(155) = 3.15$, $p < .01$, $d = 0.51$, 95% CI [1.95, 8.55].

Discussion

This study aimed to assess: 1) empathy's importance in judgments of a defendant; 2) whether trait or state empathy exerts more influence in legal judgments; and 3) whether trait and state empathy work together or independently to influence judgments of a defendant.

The expectation that empathy would predict attributions of defendant remorse and responsibility was upheld. Participants with higher levels of trait and/or state empathy believed the defendant felt remorse even though he showed no emotion. Participants with higher state empathy also held the defendant less responsible for the offense. This finding is unique and important. It suggests that high empathizers may believe that a defendant is remorseful, even if she/he shows no emotion. They then use this assumption to attribute lower responsibility to the defendant for the offense.

The expectation that empathy would lead to lenient punishment decisions and beliefs that the defendant would not offend again was not upheld. However, state, but not trait empathy, successfully predicted disagreement with the guilty verdict. Thus, the current findings suggest that even when participants knew that 10 out of 12 other jurors found the defendant guilty, social conformity effects found in previous work (Pennington & Hastie, 1992), did not influence them to agree. Rather, it seems that their state empathy may have influenced their disagreement with the guilty verdict. This is important since it suggests that state empathy may act to reduce social conformity effects in legal judgments.

These findings show that it is state and not trait empathy that has most relevance in legal judgments. It is not clear why trait empathy was important only in predicting defendant remorse. Perhaps high trait empathizers are predisposed to expect others to feel as they would in a similar situation and so they attribute emotions to others that they would expect to feel but this effect is not strong enough to influence other judgments too. This question cannot be answered from the current data, but future work could certainly test this effect.

For theoretical purposes the relationship between trait and state empathy was examined and no interaction was found. This finding may seem counterintuitive since trait and state emotions often interact (Rusting, 1999). The current findings also show that even though females had higher levels of trait empathy, males had the highest levels of state empathy with the defendant. This result contradicts previous findings that females are more inclined to empathize with others (Eisenberg & Lennon, 1983) and so why males had higher levels of state empathy for the defendant is not clear.

However, as noted already, people may behave in ways that are inconsistent with their underlying personality traits - and feel comfortable doing so (Fleeson & Wilt, 2010). It could be that in the current study males, but not females, perceived a similarity between the defendant and themselves and that this elicited their state empathy for the defendant. Although previous work (Haegerich & Bottoms, 2000) has shown that empathy works independently of feelings of similarity to the defendant it seems likely that males in this study related to, and thus empathized with, the *situational* factors of the case rather than seeing the defendant as a similar other. As Fleeson and Wilt (2010) explain, state-content significance means that some behaviors feel more authentic because of their content and consequences and this is regardless of the individual's traits. The defendant was a male involved in a violent altercation with a former friend who had apparently made sexual advances to the defendant's partner. It may be that this situation generated a

greater social understanding in male participants than it did in female participants and that this social understanding induced feelings of state empathy for the defendant in males (see also Terrance, Plumm & Kehn, 2013, for a discussion on social understanding and gender). And, as Pennington and Hastie (1993) note, when a story has relevance to the listener's personal social understanding it has greater credibility with listeners.

This finding also contrasts with previous work suggesting that women make more lenient judgments than do men (Haegerich & Bottoms, 2000) since it was the state empathizers (i.e. predominantly men) who disagreed with the guilty verdict. However, as noted earlier, many mock juror studies focus on emotive crimes (Haegerich & Bottoms, 2000; Plumm & Terrance, 2009). Such crimes may well generate a greater social understanding and hence, state empathy, in women. Equally, female participants in the current study may also have been responding to the state-content significance of the information and so responded in a way that is inconsistent with their trait inclinations. The current data cannot attest to this so more research is needed to understand more about this idea.

It can be concluded from the current data that when judging a defendant, trait and state emotions act independently. This has theoretical significance since it provides empirical support for Rusting's (1998; 1999) first theoretical framework that state and trait empathy have *independent effects* on judgments. However, this finding is not conclusive since the power attached to the current analyses was not ideal and only a larger sample size could attest to the strength of this finding. Nonetheless, the fact that females had higher levels of trait empathy and males had higher levels of state empathy suggests that an interaction between trait and state empathy, even with a larger sample size, is unlikely. Future work could definitely examine this possibility.

This study is vulnerable to the usual vagaries of mock jury research with student populations (i.e. a lack of ecological validity). Despite participants attending carefully to the trial scenario, this study could not replicate the reality of a courtroom. However, as noted above, laboratory studies allow researchers to manipulate variables whilst controlling for extraneous effects on judgments (Devine, 2012). Research also shows that although student populations are unique, this does not adversely affect the validity of research conducted with them (Wiecko, 2010). Another limitation is the induction of empathy solely for the defendant. In reality, both sides would compete for jurors' empathy, and this prevents broader conclusions. Future work could induce empathy for both defendant and victim. Most importantly, empathy must be explored in a design that includes deliberation. The current data cannot speak to the endurance of empathy during deliberation processes. Finally, future work could examine if empathy can be induced by using attorneys' statements alone and examine responses to these tactics by seeing if low empathizers are more skeptical or more immune to empathy induction attempts. However, the aim of this study was to improve understanding of empathy's effects primarily for theoretical purposes and since the empathy-induction was successful it seems that participants genuinely engaged with the trial transcript and that their judgments were sincerely delivered.

Conclusion

The research emphasis has mostly been on state empathy and so the examination of both trait and state empathy in legal judgments is novel. This study's findings provide important implications for theory and courtroom practices. By including state *and* trait empathy the findings from this study show that the research emphasis on state rather than trait empathy is valid. The finding that whilst females had higher levels of trait empathy, males had higher levels of state empathy, suggests that gender differences in empathy are inconsistent and that situational factors may elicit state empathy

regardless of existing trait empathy levels. Findings also show that attorneys' statements can generate state empathy which, in turn, leads to attributions of emotions to others even when none is shown, fewer attributions of defendant responsibility for the offense, and disagreement with guilty verdicts returned by others. Importantly, since most court cases are more run-of-the-mill than the emotive cases favored by previous work, the current findings show that empathy is influential in lower-level court cases. Finally, although data was collected in a snap-shot of time many legal judgments are made over short periods (e.g. parole boards, magistrates' courts) and so the current findings may be especially relevant to these contexts. From the current findings, it can be concluded that it is possible to induce empathy via attorney tactics and that empathy influences legal decisions and causes people to infer others' emotions. And, from the rationale expressed by the judge above, this may result in misconceptions and hence bias in the courtroom.

Conflict of interest

The authors of this article declare no conflict of interest.

Acknowledgements

This work was supported by the Economic and Social Research Council [grant number RES-000-22-2847].

References

- Archer, R. L., Foushee, H. C., Davis, M. H., & Aderman, D. (1979). Emotional empathy in a courtroom simulation: A person-situation interaction. *Journal of Applied Social Psychology, 9*, 275–291. Doi: 10.1111/j.1559-1816.1979.tb02711.x
- Baron, R. M., & Kenny, D. A. (1986). The moderator-mediator variable distinction in social psychological research: Conceptual, strategic, and statistical considerations. *Journal of Personality and Social Psychology, 51*, 1173–1182. Doi: 10.1037/0022-3514.51.6.1173
- BBC News (2006, July 6). *No jail term for weeping criminal*. Retrieved from <http://news.bbc.co.uk/1/hi/england/manchester/5153600.stm>
- Brooks, J. H., & Reddon, J. R. (2003). The two dimensional nature of remorse: An empirical inquiry into internal and external aspects. *Journal of Offender Rehabilitation, 38*(2), 1–15. Doi: 10.1300/J076v38n02_01
- Chin, D. (2012). Sentencing: A role for empathy. *University of Pennsylvania Law Review, 160*, 1561–1584.
- Colby, T. (2012). In defense of judicial empathy. *Minnesota Law Review, 96*, 1944.
- Davis, M. H. (1983). Measuring individual differences in empathy: Evidence for a multidimensional approach. *Journal of Personality and Social Psychology, 44*, 113–126. Doi: 10.1037/0022-3514.44.1.113
- Devine, D. J. (2012). *Jury decision making: The state of the science*. New York, NY: New York University Press.
- DPP v Hopper and Lush, (2002). *The courts administration authority*. Retrieved from <http://www.courts.sa.gov.au/Community/ForSchools/Resources/Lists/Mock%20Court%20MultiDocuments/Attachments/2/R%20v%20Hopper.pdf>
- Eagle, M. M. (2013). *Assessment of juror reasoning for compensatory damage award allocation in sexual harassment cases* (Master's thesis). Retrieved from <http://repositories.tdl.org/uh-ir/bitstream/handle/10657/ETD-UH-2012-05-460/EAGLE-.pdf?sequence=2>
- Eisenberg, N., & Lennon, R. (1983). Sex differences in empathy and related capacities. *Psychological Bulletin, 94*, 100–131. Doi: 10.1037/0033-2909.94.1.100
- Fleeson, W., & Wilt, J. (2010). The relevance of big five trait content in behavior to subjective authenticity: Do high levels of within-person behavioral variability undermine or enable authenticity achievement? *Journal of Personality, 78*, 1353–1382. Doi: 10.1111/j.1467-6494.2010.00653.x
- Haegerich, T. M., & Bottoms, B. L. (2000). Empathy and jurors' decisions in patricide trials involving child sexual assault allegations. *Law and Human Behavior, 24*, 421–448. Doi: 10.1023/A:1005592213294
- Heise, D. R. (1979). *Understanding events: Affect and the construction of social action*. New York, NY: Cambridge University Press.
- MacLin, M. K., Downs, C., MacLin, O. H., & Caspers, H. M. (2009). The effect of defendant facial expression on mock juror decision-making: The power of remorse. *North American Journal of Psychology, 11*, 323–332.
- Mitchell, T. L., Haw, R. M., Pfeifer, J. E., & Meissner, C. A. (2005). Racial bias in mock juror decision-making: A meta-analytic review of defendant treatment. *Law and Human Behavior, 29*, 621–637. Doi: 10.1007/s10979-005-8122-9
- Pennington, N., & Hastie, R. (1992). Explaining the evidence: Tests of the story model for juror decision-making. *Journal of Personality and Social Psychology, 62*, 189–206. Doi: 10.1037/0022-3514.62.2.189
- Plumm, K. M., & Terrance, C. A. (2009). Battered women who kill: The impact of expert testimony and empathy induction in the courtroom. *Violence against Women, 15*, 186–205. Doi: 10.1177/1077801208329145
- Pyszczynski, T. A., & Wrightsman, L. S. (1981). The effects of opening statements on

- mock jurors' verdicts in a simulated criminal trial. *Journal of Applied Social Psychology*, 11, 301-313. Doi: 10.1111/j.1559-1816.1981.tb00826.x
- Rusting, C. L. (1998). Personality, mood, and cognitive processing of emotional information: Three conceptual frameworks. *Psychological Bulletin*, 124, 165-196. Doi: 10.1037/0033-2909.124.2.165
- Rusting, C. L. (1999). Interactive effects of personality and mood on emotion-congruent memory and judgment. *Journal of Personality and Social Psychology*, 77, 1073-1086. Doi: 10.1037/0022-3514.77.5.1073
- Stevenson, M. C., Najdowski, C. J., Bottoms, B. L., & Haegerich, T. M. (2009). Understanding adults' perceptions of juvenile offenders. In B. L. Bottoms, G. S. Goodman, & C. J. Najdowski (Eds.), *Child victims, child offenders: Psychology and law* (pp. 349-368). New York, NY: Guilford Press.
- Terrance, C. A., Plumm, K. M., & Kehn, A. (2013). Battered women who kill: Impact of expert testimony type and timing. *Psychiatry, Psychology and Law*. Advance online publication. Doi: 10.1080/13218719.2013.773846
- Wiecko, F. M. (2010). Research note: Assessing the validity of college samples: Are students really that different? *Journal of Criminal Justice*, 38, 1186-1190.