

The Importance of Emotions in Social and Legal Regulation

OVERVIEW

Law is often regarded as a rather unsentimental institution. Legal regulation of social behaviour has traditionally eschewed sensitivity to affect and individual suffering, focusing rather on sanctions and tools of deterrence to compel compliance. However, this is changing: law is increasingly sensitive to emotion, both as a factor in legal proceedings and as itself a tool in the regulation of social behaviour. The project research group is studying these burgeoning developments in the making and application of law.

i) The rise of the victim

A first sub-project focuses on the increasing prominence of the victim and his or her individual suffering in criminal law. The study involves three parts. Firstly, there is a retrospective evaluation of the Swiss federal legislation on assistance to victims of crime. Secondly, the implementation of the law is being studied through qualitative interviews of the professionals and the victims involved in its institutional processes. Emotional reactions, both general (those that affect all victims whoever they are) and specific (those affecting individual victims) examined by research need to be documented. Institutional responses that have developed in the areas of restitution, recognition and participation in traditional criminal proceedings (trials) or alternatives (mediation, restorative justice) are to be described. Lastly, the empirical study will be combined with an examination of media discourse in order to grasp how the figure of the victim is represented.

ii) Organ donation as a case of soft law

A second sub-project focuses on social and legal regulation that does not rest on compulsion, but on ways of informing and exhorting the public. The promotion of organ donation as a particular example of 'soft law' will be examined. The legislative processes and parliamentary debates are being analysed with an emphasis on the role of emotional factors. Also, the public communication through mediatic discourses aiming at informing and encouraging the public to be donor are being studied to see how emotion is harnessed. These analyses will be completed with qualitative interviews with health professionals and with lay people in order to highlight the place of emotions in the concrete removal decision, and to highlight how emotional issue is related to people's attitudes and representations towards organ donation.

These two empirical sub-projects combine legislative analysis with methods borrowed from the social sciences (interviews, content and discourse analysis). Their findings will

contribute to an understanding of the juridical and sociopolitical impact of the new prominence of emotion in legal proceedings and will offer a better idea of the limitations of 'soft law' methods of social regulation.

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