

The Importance of Emotions in Social and Legal Regulation

DETAILS

What is the position of emotions in relation to law? In spite of its strong emphasis on rationality, law, in many ways, is not foreign to the experience of emotions. This emotional dimension seems more significant today, when we find two particular tendencies at work:

- the emergence of new kinds of government intervention which take the place of strict legality and imperative norms
- the proliferation of alternative models in the field of criminal justice

As an institution, the legal system fulfils various functions of a psychological and symbolic nature for its participants as it does for the public at large. Often given little thought in the past, the role of emotions in judicial proceedings has taken on a considerable importance of late. An area of study has developed having to do with the psychology of law, and particularly psychology *in* law (especially in the U.S.). These studies mainly aim to examine the psychological aspects of decision-making by participants in the justice system. On the other hand, the part played by emotions in judicial or social regulation has been little studied, considering that emotions stimulate, foster and legitimate the production of judicial norms or rules of social behaviour, and that they occupy a considerable place in the arguments of legislators themselves. This influence has acquired considerable importance in recent years due to strong emotional responses on the part of the public to events - ecological disasters, epidemics, miscarriages of justice, terrorism, genocide, and so on - which in turn have created new expectations of the political and legal system.

Research in the law project is centred on this aspect of the question. Researchers are studying the process of "emotionalization" of law under two headings:

- Law as a product of emotion, with a focus on the rise of the victim in the sphere of criminal law, and
- Emotion as a means of regulation or support of social behaviours, with a focus on analyzing the promotion of organ donation as an example of *soft law*.

Carried out in parallel, these two empirical sub-projects combine analysis of legislation with methods taken from the social sciences (interviews, discourse and content analysis). More broadly considered, these sub-projects deal with the same kind of basic issue: the increasingly important place of emotions in law provides an excellent opportunity to study the transformations of judicial and social regulation in contemporary societies.

Law as a product of emotion: the rise of the victim

A first important step in this sub-project has been to delimit the field of study with a review of the literature on the subject. In fact, the whole issue of the emergence of the victim on the social as well as on the judicial scene needs to be examined. Furthermore, 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. Finally, 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.

More precisely, it is hoped to find out if emotion has the role of catalyst

- in the perception of the law on assistance to victims of crime which has been in force in Switzerland since the beginning of 1993,
- in statutory regulation regarding the place of the victim, both in terms of institutional development (centres for consultation and aid to victims when aid and support are requested) and in terms of judicial development when – after a case of victimization – charges are brought and the matter comes to trial.
- in social regulation regarding the place and the status of the victim in society.

The research in progress in this area at the Centre will initially involve an evaluation of the effectiveness of the Swiss federal legislation on aid to victims since its promulgation in 1993.

A field study involving qualitative interviews with both victims and professionals of aid associations should lead to a better understanding of the individual expectations as regards listening, care, restitution, pressing charges, trial, etc. We will ask ourselves in particular what the process is whereby one moves from the *state* of victim to the *status* of victim, and what that status is: legal, social, or what? This question covers the entire issue of the victim's need for recognition and should allow us to explain this meaning-giving process which has both a sociopolitical and a symbolic dimension. If victims of crime need to be heard, to be compensated, to see their attacker sentenced, they also, perhaps most of all, need to be *recognized* as victims. This recognition should ensure them a place in society and promote the restoration of the damaged social nexus.

These interviews will also allow us to determine what emotions are related to the victim's experience of the crime, but also of the judicial system and their social world.

Specifically, we will aim to understand if and how the judicial system takes into account victims' needs for compassion, empathy and understanding and if this judicial response contributes to their emotional reconstruction and social reintegration. The role of social support will be assessed in terms of its potential for healing and restoring victims' lives.

The results will shed light on the impacts of social support and the experience of the criminal justice system on the victim's recovery.

Finally, considering the phenomenon of public empathy, which is becoming more and more powerful in the face of increasing lack of security and a growing risk of victimization associated with it, the researchers intend to complement this interview study with an analysis of media discourse in order to grasp how the figure of the victim is represented there. We will thus undertake a close examination of the emotional content of victims' representations in the written media. Far from objectively reflecting the reality of events, the media, through sensationalized and emotionally tainted portraits of victims, in fact participate in the construction of social reality.

Emotion as a regulatory instrument: the case of organ donation

The weakened effectiveness of traditional judicial instruments (obligatory norms), and governments' increasing recourse to sensitization or provision of information as a means of regulating social behaviours naturally lead to the question of the place and the role of emotions as an instrument of social and judicial regulation. Organ donation has been chosen as a case for the study and application of this approach, which is now referred to by the expression *soft law*. The concept of *soft law* is considered as the increasing recourse to a wide range of tools of social regulation which appeal to the subjectivity of the individual, responsibility, citizenship, and values like altruism, respect or solidarity - rather than to constraint or obedience. The legitimacy and effectiveness of such instruments of regulation is being studied in the second sub-project of the research. Identifying the values and norms underlying the key messages and arguments used, and specifying the rhetorical registers to which information and promotion discourses refer are core aims of this study.

The following empirical areas are investigated in order to analyze the place emotions have as a discursive tool of regulation :

- parliamentary debates during the federal law transplantation bill

The place of the emotional register in debates accompanying the federal legislative process will be analyzed. What types of arguments do the actors of the legislative process use in order to impose their point of view? What issues of the debates are more likely to be "emotionalized"? To what extent are emotions used by members of the Parliament, compared to other categories of arguments, such as economic, legal, scientific, etc.? How are emotions intertwined with rational argumentation? The analysis of the role played in particular by fear, empathy and guilt is linked with the categories of information and promotion within the context of the law's goals. The discourse analysis will be completed

by an international review of legislation in the area, so as to put the Swiss situation into a wider perspective.

- information and promotion discourses brought to the public by the media

In Switzerland, as in the majority of other worldwide countries, post-mortem organ procurement is ruled by the principle of individual consent. Moreover, Switzerland faces a gap between the number of cadaveric organs available and the number of people waiting for a transplantation. Consequently, public policies are urged to inform the population and to rise public awareness about organ donation. How can public communication about such a sensitive issue be achieved ? Based on a discourse and content analysis applied to a corpus of articles from the French-speaking written press covering a ten-years period, this study aims at identifying to what extent mediatic messages recourse to affective statements and emotional register in order to encourage individuals to become potential donors. Stressing among other issues on discourses about organs shortage and about recipients' testimonies, analysis examines in particular emotions such as empathy, compassion, guilt, shame, altruism. Analysis also examines underlying moral and values.

Recourse to emotions when informing and promoting organ donation brings up the problem of the efficiency and of the ethics of raising public awareness. Even if the determination of the impact of mediatic discourses on people's attitudes appears to be difficult, in particular in the long-term, the use (and abuse) of emotions may be a double-edged means of communication.

- qualitative interviews with ordinary people
- qualitative interviews with health and transplantation professionals

The qualitative study of the general population aims at better understanding perceptions and attitudes towards organ donation, in order to elicit the level of information and various features of attitudes (emotions, beliefs, norms and values, personal experience). This will allow us to understand better the various components of lay representations, especially the affective ones, that structure the general public views toward organ donation (refusal, reluctant and favorable lay positions). Finally, a field study with transplantation professionals that come into contact with the family of the deceased patient will be carried out in order to highlight the place of emotions in the removal decision.