

How to do Law and Emotion

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Despite the growing body of literature in the field, it is still a moot point as to what extent law and emotion can be called a recognised 'discipline' in its own right, akin to law and medicine or law and economics. One of the reasons for this is said to be the wide variety of approaches to the scientific and empirical study of emotion, and the lack of consensus among those engaged in the field as to what 'counts' as law and emotion scholarship [1]. One particular challenge in this area is the need to write with precision and to ensure that what is said is rooted in evidence [2].

Of course, it is perfectly possible to write about law and emotion in purely abstract terms, as where one considers the role of a particular emotion in the context of some legal doctrine, or the extent to which the law allows a remedy for the infliction of emotional distress. Other cases however require empirical data, and this gives rise to question as to how it is to be acquired.

One possible way is by introspection. This is said to have the advantages of privileged access, immediacy, infallibility and transparency [3]. However, given the known capacity of human beings for self-deception, the accuracy of insights of this sort is open to doubt, all the more so when they concern complex emotional states [4]. And even if it were possible to get an accurate picture of one's own emotions at a given time, how is one to know whether others would react in the same way?

Another possible approach is to engage in media analysis. Given the widely acknowledged influence of media representation both in reflecting and in shaping public opinion [5], some attempt to analyse this from an emotional perspective would be a project well worth pursuing [6]. However, such a project would have to avoid certain misconceptions, most notably the assumption of a simple causal link between media representation and the development of the law, and the even more dangerous temptation to confuse opinions expressed in the media with those of the public at large. And to what extent can emotions expressed in the media really be emotions at all, in the absence of any subject to which they can be attributed?

Public opinion surveys can also have a part to play, not least because

if properly conducted they can provide a much more nuanced picture than is provided by the popular media [7]. However, it goes without saying that the proper conduct of such surveys is of the essence; a researcher who is ignorant of the pitfalls posed by surveys of this sort will come up with findings that are at best uninformative and at worst positively misleading [8].

Last but not least, law and emotions scholars can draw on precise psychological experiments conducted in a laboratory context. In the past difficulty would have been experienced both in finding material that was relevant and in interpreting it when it was found, but in recent years efforts have been made to conduct research of this kind with a specific legal focus [9].

Of course, all of these methods presuppose a degree of expertise that few law and emotions scholars would have. This only serves to illustrate the need for cross-disciplinary collaboration in this area. Only in this way can the study of law and emotion be helped to develop firmer methodological and epistemological roots.

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