



## Unit 2 Emotions and Adjudication

### SELECTED READINGS

Traditional legal research has been for a long time somewhat reserved in acknowledging the role human emotions play in the shaping of, applying and studying the law. The literature devoted to these topics is therefore scarce and haphazard. Only in recent times, has there been a more sustained effort to address the plethora of topics stemming from the interplay between law and emotions. The presented bibliography is divided in two sections. The first comprises of a selection of some *general readings* on the emotions in general (Ekman and Davidson; Barrett, Lewis, and Haviland-Jones; Barrett) and some introductory overviews of the law and emotions field (Abrams and Hila; Roach Anleu and Mack; Bandes). The selected works aim to provide a general framework for students and scholars embarking on the study of this field. The second section provides a tentative overview of those books and scholarly articles that are more narrowly focused on the role emotions play in *adjudication*. Whereas the role of emotions has been grudgingly admitted in the legislative domain, the realm of judicial decision-making has been for a long time consistently depicted as a (predominantly) logical, deductive or at least dispassionate activity (for a critical assessment see: Maroney; Maroney and Gross). This understanding of judicial decision-making is coming under renewed criticism from several quarters. Some authors have enlisted the help of *neuroscience* to challenge this myth (Casebeer and Churchland; Friedland; Greene et al.), others offer critique from a more *philosophically informed point of view* (Nussbaum). Different authors argue that the emotional component is *fundamental* to very processes that inform our decision-making (Feigenson and Park) and emphasise the role *empathy* (Deigh), *legal and moral emotions* (Brozek) and *intuition* (Haidt; Haidt, and Craig) play in moral and judicial reasoning. Finally, the problem of *objectivity of emotions* is brought to the fore, with some authors arguing that the mere reliance on emotional thinking and decision-making does not necessarily lead to an abandonment of objectivity (Grossi) and others casting some doubt on the accuracy with which assess emotions (Blumenthal).

#### GENERAL READINGS:

1. Ekman P., Davidson R.J. (eds), *The Nature of Emotion: Fundamental Questions*, Oxford University Press, 1994.
2. Feldman Barrett L., Lewis M., Haviland-Jones J.M. (eds), *Handbook of Emotions*, 4th Edition, The Guilford Press, 2016.
3. Feldman Barrett L., *How Emotions Are Made: The Secret Life of the Brain*, Houghton Mifflin Harcourt, 2017.
4. Abrams K., Keren H., "Who's Afraid of Law and the Emotions", *Minnesota Law Review*, 94, 6, 2010: 1997-2074.
5. Roach Anleu S., Mack K., *Judging and Emotion: A Socio-Legal Analysis*, Routledge, 2021.
6. Bandes S., *The Passions of Law*, New York University Press, 2000.

#### EMOTIONS AND ADJUDICATION:

7. Bandes S., Blumenthal J.A., "Emotion and the Law", *Annual Review of Law and Social Science*, 8, 1, 2012: 161-81.
8. Casebeer W.D., Churchland P.S., "The Neural Mechanisms of Moral Cognition: A Multiple-Aspect Approach to Moral Judgment and Decision Making", *Biology and Philosophy*, 18, 1, 2003: 169-94.
9. Feigenson, N., Park J., "Emotions and Attributions of Legal Responsibility and Blame: A Research Review", *Law and Human Behavior*, 30, 2, 2006: 143-61.
10. Maroney T.A., "The Persistent Cultural Script of Judicial Dispassion", *California Law Review*, 99, 2, 2011: 629-81.

11. Brożek B., "Morality, Law and Emotions", In Dębiec J., Heller M., Brożek B., LeDoux J. (eds), *The Emotional Brain Revisited*, Copernicus Center Press, 2014.
12. Cotterrell R., "Law, Emotion and Affective Community", SSRN Scholarly Paper, Rochester, NY, Social Science Research Network, July 12, 2018. <https://papers.ssrn.com/abstract=3212860>
13. Deigh J., "Empathy, Justice, and Jurisprudence", *The Southern Journal of Philosophy*, 49, 1, 2011: 73-90.
14. Blumenthal J.A., "Law and the Emotions: The Problems of Affective Forecasting", *Indiana Law Journal*, 80, 2005: 155-238.
15. Friedland S.I., "Fire and Ice: Reframing Emotion and Cognition in the Law", *Wake Forest Law Review*, 54, 4, 2019: 1001-48.
16. Greene J.D., Sommerville R.B., Nystrom L.E., Darley J.M., Cohen J.D., "An FMRI Investigation of Emotional Engagement in Moral Judgment", *Science (New York, N.Y.)*, 293, 5537, 2001: 2105-8.
17. Grossi R., "Law, Emotion and the Objectivity Debate", *Griffith Law Review*, 28, 1, 2019: 23-36.
18. Haidt J., Craig J., "Intuitive Ethics: How Innately Prepared Intuitions Generate Culturally Variable Virtues", *Daedalus*, 133, 4, 2004: 55-66.
19. Maroney T.A., Gross J.J., "The Ideal of the Dispassionate Judge: An Emotion Regulation Perspective", *Emotion Review*, 6, 2, 2014: 142-151.
20. Nussbaum M., "Emotion in the Language of Judging", *St. John's Law Review*, 70, 1, 2012.
21. Haidt J., "The Emotional Dog and Its Rational Tail: A Social Intuitionist Approach to Moral Judgment", *Psychological Review*, 108, 4, 2001: 814-834.