

Emotion and the Law

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Abstract

The field of law and emotion draws from a range of disciplines in the sciences, social sciences, and humanities to shed light on the emotions that pervade the legal system. It utilizes insights from these disciplines to illuminate and assess the implicit and explicit assumptions about emotion that animate legal reasoning, legal doctrine, the behavior of legal actors, and the structure of legal institutions. In light of law's focus on influencing social norms and on structuring effective and just institutions, one development that holds enormous promise is the growing interdisciplinary interest in collective decision making and in the emotional dynamics of groups. Work in the affective sciences on how emotion and cognition interact is another rich vein for legal scholars interested in the assessment of responsibility and blame, the role of morality in law, and a host of other areas. Another important frontier is exploration of concrete solutions to the problems identified by law and emotion scholars.

THE PROJECT IN BRIEF

The field of law and emotion draws from a range of disciplines in the sciences, social sciences, and humanities to shed light on the emotions that pervade the legal system. It utilizes insights from these disciplines to illuminate and assess the implicit and explicit assumptions about emotion that are found in every area of law. By reevaluating legal doctrine and policy in light of these insights, law and emotion scholarship contributes to a more informed, realistic, and effective framework for refining legal doctrine and reforming legal institutions.

The study of law and emotion is, in one respect, simply one of many interdisciplinary efforts to bring a measure of behavioral realism to the legal realm. Yet the field faces a challenge that sets it apart from other law and social science endeavors. Although the debate about the relationship between emotion and reason dates back to ancient times, there is a hardy folk knowledge portraying emotions as quick, hot, irrational bursts of feeling that short-circuit rational deliberation and that are impervious to study or correction (Maroney 2009). In the legal realm, the term has long functioned as a catchall category for much of what law aspires to avoid or counteract: that which is subjective, irrational, prejudicial, intangible, partial, and impervious to reason. Therefore, one recurring task of law and emotion theorists is to counter the misconception that acknowledging and investigating the role of emotion in law is an illegitimate endeavor and one that will have a destabilizing effect on the rule of law (Bandes 2009c, pp. 491–95; Abrams & Keren 2010).

Law and emotion scholarship enriches understanding of the law on multiple overlapping levels:

1. First, it poses a challenge to standard accounts of rational deliberation and legal reasoning.¹ On the descriptive level,

¹Even the cognitive psychological literature on judgment under uncertainty and the behavioral law and economics work that grew out of it make little reference to emotion, except to identify it generally as a distorting influence. This is so even

it rejects the fiction of pure, emotionless rationality and explores precisely how emotion and cognition interact. On the normative level, it explores the appropriate role of emotion in the identification and implementation of legal norms and in the deliberative process for juries, judges, and other legal actors.

2. Second, at the level of specific doctrine, law rests on myriad assumptions, both explicit and implicit, about how emotion influences behavior and about how to channel emotion to influence decision making in desirable ways. Law and emotion scholarship scrutinizes these assumptions in light of evolving knowledge about the role of emotion in decision making across a range of disciplines.
3. Finally, the field increasingly focuses on emotion not only as an internal and individual phenomenon but also as an essential component of social and institutional dynamics. It thus sheds light on collective decision making, on the conditions that lead to legal change, and on the dynamics of institutional behavior and institutional reform.

This review begins with a brief history of the field, followed by a definition of emotion and some caveats about terminology. We then turn to a necessarily selective overview of the current range of scholarship. Finally, we suggest directions for future study.

A SHORT HISTORY

The emergence of modern law and emotion scholarship was fueled by several interrelated trends. First, beginning in the 1980s and early 1990s, the topic of emotion began attracting renewed scholarly attention in fields such as

when emotionally salient issues such as the role of fear in risk assessment are at issue (Moran 2002). Given that emotions help shape the heuristics and other cognitive tools that are essential to the task of information processing (Forgas & East 2003, English & Soder 2009), the literature would benefit from greater attention to emotional dynamics.

philosophy (Murphy & Hampton 1990, Nussbaum 1990), psychology (Clare et al. 1994), and sociology (Thoits 1989). Second, legal scholarship took an interdisciplinary turn—rejecting the notion that all its questions could be answered internally and seeking to incorporate insights from other fields. Finally, epistemological challenges to notions of judicial objectivity first raised by the legal realists were renewed and extended by feminists, critical race theorists, and other scholars (Abrams & Keren 2010, pp. 2005–6). Feminist jurisprudence in particular was an important force behind emergent law and emotion scholarship, arguing that law tended to privilege a version of reason that exiled important qualities such as empathy and compassion—qualities that were traditionally dismissed as feminine and therefore not sufficiently rigorous (Henderson 1987, Minow & Spelman 1988).

The necessary next steps in developing the field, as Bandes (1996) argued, were to move beyond the rehabilitation of certain emotions, clarify that no particular emotional stance is likely to be uniformly desirable or undesirable, and turn to a more specific consideration of the value of emotions, whether positive or negative, in defined contexts. As Maroney (2006, p. 122) described it: “[T]his stage of the movement reached a high-water mark with *The Passions of Law* (Bandes 2000), which brought together scholars from several corners of the academy. . . with a series of essays on the relationship between law and a select group of emotions, ranging from disgust to romantic love. . . . *Passions* . . . prompted several book reviews, the first publications in legal journals to describe the emerging field as such, as well as multiple conferences and symposia on law and emotion.” Such symposia have become increasingly common (see symposia listed in the Related Resources section at the end of this article; specific symposium articles are also cited throughout). For more in-depth histories, see Maroney (2006, pp. 120–23), Bandes (2009c, pp. 506–9), Abrams & Keren (2010, pp. 2003–8); for excellent summaries of the development of emotion studies across dis-

ciplines more generally, see Hochschild (1983, pp. 201–22) and Kagan (2007, pp. 10–20).

From an early focus on rehabilitating certain positive emotions, on the field of criminal law, and on the insights of psychology and philosophy, the scope of law and emotion scholarship has expanded considerably. It now covers the range of positive and negative emotions;² doctrinal areas such as securities (Huang 2003), risk regulation (Kahan 2008), foreclosure (White 2010), family law (Huntington 2008), and trademark (Bradford 2008); and the insights of a wide range of disciplines, including political science, sociology, and anthropology. One galvanizing development has been the growth of the affective sciences in the wake of unprecedented scientific access to the neural underpinnings of social cognition and human emotions.

DEFINITIONAL ISSUES: WHAT IS EMOTION? WHAT ARE EMOTIONS?

One continual challenge of this emerging field is defining its central term: emotion (see generally ISRE 2007). Ideally, those who deploy the category “emotion” or terms describing emotions in the legal realm will clarify their working definitions, the context in which the terms are being used (Kagan 2007, p. 41), and what legal consequences flow from the use of the terms. Clarity about working definitions is a more achievable goal than attempting to generate abstract universal definitions for complex, elusive, and nonstandardized concepts. With that caveat in mind, here is a provisional definition, distilled from current research across several disciplines: Emotions are a set of evaluative and motivational processes, distributed throughout the brain, that assist us in appraising and reacting to stimuli and that are formed, interpreted, and communicated in social and cultural context. They influence the way we

²There has been a recent resurgence of interest in the positive emotions and in their application to policy (see, e.g., Huang’s 2010 overview of happiness studies and legal policy; see also Abrams & Keren 2007, Huang & Blumenthal 2009).

Affective sciences: an emerging interdisciplinary field composed of psychologists, neuroscientists, anthropologists, and other researchers concerned with the role of emotion in human behavior and decision making

Mood: affective state that tends to be more transient and diffuse and less attributable to a particular source

screen, categorize, and interpret information; influence our evaluations of the intentions or credibility of others; and help us decide what is important or valuable. Perhaps most important, they drive us to care about the outcome of our decision making and motivate us to take action, or refrain from taking action, on the situations we evaluate.

In short, the current consensus across disciplines is that emotions are not, as folk knowledge would have it, occasional, intense, unpredictable moods that interfere with a steady state of rationality. They are dynamic processes that are integral to decision making (LeDoux 1996). Whether and when emotions play a desirable role in decision making is a separate question, as discussed below.

Terms for particular emotions, such as remorse, disgust, or fear, likewise elude fixed definitions, both across and within disciplines. As Kagan (1998, pp. 14–38) points out, for example, a neuroscientist seeking to measure fear responses in lab rats, an anthropologist studying fear responses to the approach of strangers, and a child psychologist studying separation anxiety all use the term fear but describe different agents, targets, contexts, methodologies, and research goals, and these need to be specified to facilitate interdisciplinary interchange. One seductive trap for jurists and legal scholars is to deploy such terms as if they have stable meanings not only within individual disciplines but also when transported to the legal realm (see Bandes 2009d, pp. 8–13). Massaro (2000) eloquently critiques this tendency in her discussion of scholarship advocating the deployment of shame to alter undesirable social norms. As Massaro points out, the psychological literature on shame “betrays very little consensus, other than that this emotion is complex and central to a person’s sense of self” (p. 84). Nevertheless, as she argues, the ambiguities and nuances of the literature are “underplayed in the social norm model in order to make universal claims about human behavior” that are then relied upon to impose legal sanctions (p. 84).

One model of scholarship that avoids this definitional pitfall is an exchange between

Nussbaum (2000) and Kahan (2000) on the role of disgust in the law. Nussbaum takes the view that disgust plays no salutary role in law and leads mainly to discrimination against reviled groups, whereas Kahan argues that disgust helps demarcate areas in which law should recognize strong moral opprobrium. Their disagreement rests in part on their different notions of the nature of disgust, which Nussbaum defines, drawing from Rozin & Fallon (1987), as an aversive reaction to animality and bodily functions, and which Kahan views as more akin to moral outrage. Readers are aided in this debate by the fact that both authors clarify their definitions of the term (Kahan 2000, p. 64; Nussbaum 2000, pp. 24–26).

Conversely, for an example of the legal consequences of definitional imprecision, consider remorse. The legal system tends to behave as if remorse is a monolithic property and, moreover, one that can be reliably measured in a legal setting. A perceived lack of remorse may lead to a longer sentence, a denial of parole, or even a death sentence, and yet the legal system has paid scant attention to determining what an appropriate display of remorse ought to look like, to evaluating the ability of various fact finders to ascertain whether a defendant is remorseful, or to considering how displays and interpretations of remorse might vary depending on age, race, ethnicity, or other variables (Duncan 2002, Murphy 2007, Weisman 2009).

Scholars must remain alert to the perils of imprecision in transporting terminology and conclusions from one field to another. Maroney’s (2006) law and emotion taxonomy provides a valuable organizing framework for scholars across the range of disciplines.

ILLUMINATION, INVESTIGATION, AND INTEGRATION

ILLuminating and Investigating Law’s Affective Dimensions

As Abrams & Keren (2010, p. 2033) usefully describe, law and emotion scholarship seeks,

first, to illuminate the affective features of legal problems; second, to investigate these features through interdisciplinary analysis; and finally, to integrate understanding into practical, normative proposals. Here we focus on the illumination and investigation stages of the inquiry, turning in the next section to how law and emotion insights might be integrated and implemented.

In some contexts, the affective dimensions of a legal problem are at least partially explicit. Shaming punishments, for example, explicitly seek to invoke the emotion of shame (Massaro 2000). Sentencing judges, jurors, and parole boards emphasize the importance of a defendant's display of remorse (Haney et al. 1994, p. 163). Anti-sympathy instructions command juries to put the emotion of sympathy aside (*California v. Brown* 1986). Tort law seeks to measure emotional distress (Madeira 2006). Criminal law regards homicides committed in the heat of passion as less culpable than cold-blooded murders (Lee 2003, Finkel & Parrott 2006).

More often, the affective component of law is far less transparent. The illumination dimension therefore includes "the task of highlighting the unacknowledged ways that emotions are implicated in a particular legal setting" (Abrams & Keren 2010, pp. 2033–34), as described in the next section.

The role of emotion in doctrine. Doctrines often rest on implicit assumptions about emotion. For example, Calhoun (2000) argues that objections to same-sex marriage rest upon implicit assumptions about who is capable of romantic love. Bagenstos & Schlanger (2007) argue that disability law is based on unstated misapprehensions about the likely level of happiness and enjoyment of life attained by those who become disabled. Or relatedly, doctrines may fail to acknowledge emotional effects or their consequences. Sanger (2009, p. 414) argues that humiliation is the unexamined by-product of the requirement of judicial bypass hearings for minors. Fisk (2001) argues that employment law lacks a coherent theory of the

harms of workplace humiliation. Blumenthal (2008, pp. 20–26) argues that abortion jurisprudence fails to consider whether the fear or anxiety generated by informed consent warnings interferes with autonomous decision making.

More subtly, assumptions about what counts as emotion may influence legal doctrine in ways that go undetected. For example, appeals for mercy may be coded as emotional and off-limits, whereas appeals for vengeance or retribution may be coded as garden-variety legal arguments (Bandes 2009c, pp. 497–98). Much of the importance of the scholarship on law and emotion lies in exploring the ways in which the categories of reason and emotion are deployed and in "challenging the notion of a neutral, emotionless baseline" in legal theory and practice (Bandes 1996, p. 370).

The role of emotion for various legal actors.

There has long been a robust empirical literature on jury decision making, albeit one that has not had enough to say specifically about juror emotion (but see Hastie 2001, Sundby 2003, Kerr 2010) or about how the collective dynamics of the jury room differ from the emotions of individual jurors (but see Sunwolf 2004, Sundby 2005, Lynch & Haney 2011). It is more recently joined by a literature on the role of emotion in negotiation (e.g., Ryan 2005). Nevertheless, the question of how emotion ought to figure in the reasoning process of particular legal actors or legal entities—for example, jurors as a collective entity, legislators (see Sanger 2012), or judges—is ripe for investigation.

The emotions of judges have generally received scant attention, which is unsurprising in light of the tenacity of the belief that the jurist must rise above particular influences to dispense blind justice. Recently, however, the emotional dynamics of judicial decision making have attracted substantial attention, prompted in part by controversy over the role of empathy in judging (Bandes 2009a, Abrams 2010, West 2012). Scholarship has focused both on how judges deliberate (see, e.g., Posner 2008) and on how the emotional dynamics of judicial deliberation affect judges (see, e.g., Maroney 2011b,

discussing how judges do and should regulate their emotions).

Scholars have used a variety of methods to investigate the cognitive processes, emotions, and intuitions of judges (in addition to the time-honored methods of parsing judicial opinions and reading judicial biography; see, e.g., Pillsbury 2000). These methods include interviews (see Maroney 2011b); paper and pencil tests administered to test judicial intuitions and the interaction between intuitive and deliberative thinking (Rachlinski et al. 2007) and also to test judges' implicit biases (Rachlinski et al. 2009); empirical studies of the decisional dynamics of three-judge panels (Sunstein et al. 2006); linguistic coding of the emotional tenor of Supreme Court justices' questions at oral argument (Black et al. 2011); and, at least potentially, the use of neural imaging technology (Maroney 2011b, pp. 678–79).

The role of emotion in the reasoning process. Emotion influences not only “the *content* of cognition” but also “*how* people think” (Forgas 2001, pp. xiv, emphasis in original). Cognitive science has progressed in its understanding of the role of emotion in the decision-making process by studying patients with brain abnormalities or injuries that impair emotional functions (e.g., Damasio 1994, 1999; Bechara et al. 2000). More recently, the field of cognitive neuroscience has employed powerful neuroimaging technology to investigate the dynamics of reasoning and emotion's role in the process of judgment (see, generally, Sinnott-Armstrong 2008a,b and summaries by Aronson 2010 and Goodenough & Tucker 2010). These new research tools supplement existing paper-and-pencil tests, courtroom mock-juror studies, and laboratory and field studies on the interplay between emotion and cognition (see Forgas 2001, pp. 1–23, for a summary of foundational research).

The legal literature is mining this rich vein to delve more deeply into precisely how emotion influences legal judgment. We highlight two strands of this research here: studies of the effects of emotion and mood on judgment (with

a discussion of the application of that research to the issue of victim impact statements) and work in cognitive science on emotion and moral decision making, with additional attention to the subject of empathy.

Emotion and judgment. Substantial empirical evidence shows that emotion affects judgment in a variety of ways. On the most basic level, emotion helps sort, evaluate, highlight, and prioritize information and provides an impetus to act upon it. It is “like an unseen lens that colors all our thoughts, actions, perceptions, and judgments” (Goodwin et al. 2001, p. 10). Studies show that emotion affects individuals' perceptions of probability and risk and their perceptions of fact more generally (e.g., Loewenstein et al. 2001; Bandes 2008a; Kahn 2008, 2011). Further, affective influences often occur outside of conscious awareness, and people tend to minimize their effects (Haidt 2001). Recent studies on affective forecasting also suggest that people tend to inaccurately predict how they or others will be emotionally affected in the future by negative events such as harm or injury or by positive events such as a monetary award (see Blumenthal 2005b, Bronsteen et al. 2008).

As part of an extensive body of work on the role of emotion in assessing legal responsibility and blame, Feigenson (2010, pp. 46–47) identifies four ways in which emotions can influence legal judgments: (a) by affecting people's strategies for processing information; (b) by biasing the perception, recall, or evaluation of facts in a particular direction; (c) by providing informational cues to proper attribution of blame; and (d) by anticipating future emotions that might follow from a judgment (see also Feigenson & Park 2006).

Several examples illustrate these paths. Researchers are focusing on distinguishing between the effects of sadness and anger on evidentiary judgments (Semmler & Brewer 2002), and on the impact of emotion during different phases of litigation, for example, assessment of blame versus assessment of damages (Feigenson et al. 2001). More vivid depictions of trial events (i.e., videotape versus written

presentation) have been linked to increased mood change and to different liability judgments (Fishfader et al. 1996). Studies show that gruesome photographic evidence increases mock jurors' negative emotional state and usually leads to increased conviction rates (e.g., Bright & Goodman-Delahunty 2006). Edwards & Bryan (1997) have shown that mock jurors are unable to disregard emotionally charged evidence when instructed to and that the emotional content of such evidence leads mock jurors to reach more guilty verdicts and impose longer sentences. Blumenthal (2005a,b), Feigenson & Park (2006), and Maroney (2006) summarize many other studies of emotion's impact on legal judgments.

The example of victim impact statements.

Twenty years ago, the US Supreme Court rejected an Eighth Amendment challenge to the use of victim impact testimony (testimony by family members and others close to the victim) in capital trials (*Payne v. Tennessee* 1991). Victim impact statements usefully illustrate both how assumptions about emotion lead to concrete legal consequences and how researchers might investigate the validity of these assumptions.

In *Payne v. Tennessee*, the Court assumed that victim impact statements serve an informational rather than an emotional purpose. It found that without such evidence, the victim may be turned into a "faceless stranger," depriving "the State of the full moral force of its evidence and [preventing] the jury from having before it all the information necessary to determine the proper punishment for a first-degree murder" (p. 825). Victim impact statements, in the Court's view, provide information about the uniqueness of the life lost and the impact of the murder on the family (p. 825). The *Payne* Court also assumed that hearing the statements would not encourage jurors to engage in the comparative valuation of victims and would not lead to arbitrary judgments based on legally irrelevant characteristics of the victim, the victim's family members, or the defendant (p. 823). More recently, the Court declined to decide whether the use of video victim impact

evidence, accompanied by music and narration, merited reconsideration of its decision to permit victim impact testimony (*Kelly v. California* 2008). Justices Stevens, Breyer, and Souter would have considered the issue, arguing that the powerful emotional impact of the statements rendered them especially prejudicial. Indeed, for Justice Stevens, the only effect of the statements was to "rouse jurors' sympathy for the victims[,]...invit[ing] a verdict based on sentiment, rather than reasoned judgment" (pp. 567–68). Justice Stevens thus assumed both that emotion is irrational and that emotion in this context has a causal effect on judgment.

Courts and commentators alike have criticized the use of victim impact statements, arguing that the emotion they generate, whether favorable toward the witness or the victim or unfavorable toward the defendant, undermines the capital sentencing process and improperly influences capital juries toward a death sentence (*Booth v. Maryland* 1987, Bandes 1996, Logan 1999). But the debate about victim impact statements is poorly served by a discourse that either denies the presence of emotion entirely (as the *Payne* decision does in classifying the statements as merely informational) or equates "emotional" with "prejudicial" (as Justice Stevens does in the opinion quoted above). A better approach is to acknowledge that victim impact statements evoke emotion, investigate the emotional dynamics they engender, and inquire whether the emotions they evoke are consistent with the goals of capital sentencing and with constitutional safeguards against arbitrary or unequal punishment. As Salerno & Bottoms (2009, p. 279) observe in a recent review of the literature, "the Court's assumptions in those decisions are ripe for empirical testing, and they have been tested, in a growing number of studies that have produced mixed findings" (see Wevodau & Blumenthal 2009 for a meta-analysis of studies).

More than a decade of empirical research has shown that victim impact statements increase punitiveness in jurors. Studies consistently, though not invariably, show that hearing these

statements increases the probability of mock jurors rendering a death sentence, at times more than doubling the likelihood (Myers & Arbuthnot 1999, Wevodau & Blumenthal 2009). The limited study of actual capital juries also suggests an effect (Aguirre et al. 1999).

Whether this punitive effect is a prejudicial effect is ultimately a legal question, but one that should be evaluated in light of social-scientific findings on how victim impact statements operate in practice. Some scholars (e.g., Myers & Greene 2004) suggest that the punitive effect of victim impact evidence is the result of deeper processing, of more considered rational decision making that incorporates emotion, in line with a long line of research showing that negative mood is conducive to less superficial thinking than positive or neutral moods (e.g., Schwarz et al. 1991). (An important caveat here is the distinction between mood and emotion.) Others suggest, in line with Feigenson & Park's (2006) model discussed above [and also with Haidt's (2001) social intuitionist model discussed below], that the anger the statements arouse in jurors may activate a desire to impose blame and a biased search for evidence to validate that desire (Nadler & Rose 2003, pp. 443–48; Salerno & Bottoms 2009, pp. 284–85).

Thus more research is necessary to identify the emotions evoked by victim impact evidence and their causal effect on judgment (Myers et al. 2002, Blumenthal 2009). Researchers should better isolate which emotional experience is at work, such as, for example, sympathy for a witness, grief at the loss, or anger or disgust toward the defendant. In addition, they should explore the differential effects of anger and sadness on the deliberative process (Lerner & Keltner 2000, Blumenthal 2005a) and the emotional impact of various forms of victim impact evidence (Wevodau et al. 2012). They should also investigate whether strong negative emotions toward the defendant interfere with the jury's ability to remain open to the defendant's mitigation evidence. Finally, researchers should continue to explore the dynamics of empathy for various types of victims (Greene

1999, Sundby 2003) to determine whether the statements encourage the comparative valuation of victims and whether selective empathy toward particular victims or their family members affects sentencing.

Significantly—and connecting with our discussion of interpersonal emotion below—virtually no research has traced the effect of victim impact statements on the jury and its deliberative processes. Only one of the mock-juror studies (Myers & Arbuthnot 1999) seems to have considered jury deliberation, and it is still unclear how group deliberation affects individual emotions (Blumenthal 2012). As Bandes (2009d, p. 18) points out, “given how much there is to learn generally about group emotion, there is a particular need to focus on how victim impact statements affect the emotions of the jury as a collective entity.”

Finally, victim impact statements in capital cases have more recently been defended for their role in providing closure to victims' families. This assumption, too, is ripe for empirical testing (see Bandes 2009d, pp. 18–19; Madeira 2010).

The role of emotion in moral decision making.

Legal scholars have long debated the role of “moral” emotions and capacities, such as moral indignation, outrage, disgust, compassion, and empathy, in norm creation and decision making (Kahan 2000, Nussbaum 2006, Sunstein 2009). Scientific studies lend increasing support to the conclusion that emotion is integrally involved in moral judgment, and substantial research is underway on precisely how emotion, cognition, and morality interact. Most current theories adopt a version of a dual-process model, involving some combination of quick, intuitive judgments and slower, more deliberative judgments. Much of the debate centers on how the two processes interact.

One pitfall to watch for in the dual-process model literature is slippage between the concepts of intuition and emotion. Scholarship in law, political science, and other disciplines, to some extent abetted by the neuroscientific literature itself, too often displays a tendency

to equate intuitive with emotional and deliberative with reasonable, replicating the problematic dichotomy between emotion and reason. Not all quick, intuitive judgments are emotional in nature, and emotion influences slow, deliberative judgments in addition to quick intuitive ones (Bandes 2008a, 2012).

In Haidt's (2001) social-intuitionist theory, moral decision making is intuitive, fast, unconscious, and automatic. According to this approach, moral judgments are like aesthetic judgments—stimuli lead to instant, affect-laden feelings of moral approval or disapproval—and involve a causal link: "Moral intuitions (including moral emotions) come first and directly cause moral judgments" (p. 814).

In contrast, moral grammarians (e.g., Hauser 2006, Mikhail 2007) suggest that individuals have innate templates that establish the potential for a variety of moral systems. The precepts and rules guiding these moral systems yield judgments of stimuli's moral rightness or wrongness, just as language rules identify whether a particular sentence is grammatically proper. As in Haidt's approach, these moral judgments (like linguistic judgments) are automatic and unconscious; unlike in Haidt's model, however, they do not involve emotion—indeed, they generate emotions (Hauser 2006).

Greene and colleagues (e.g., Greene et al. 2001, p. 2106) suggest that some moral decisions "engage emotional processing to a greater extent than other[s], and these differences in emotional engagement affect people's judgments" (see also Ugazio et al. 2012). They argue that emotion automatically and unconsciously influences personal but not impersonal moral decisions. They suggest that fast, automatic, intuitive moral responses tend to involve retributive reasoning, though that retributive reasoning may be subsequently revised or overridden by slower, more controlled processing.

The implications of powerful neuroimaging techniques such as fMRI and PET scans and other cognitive psychology and neuroscience findings for law are the subject of lively debate (for a thorough, somewhat skeptical review, see Pardo & Patterson 2010). Neurosci-

entific findings offer insights into long-standing philosophical and jurisprudential puzzles about the nature of reason and emotion (see, e.g., Goodenough & Tucker 2010, p. 76) and raise a host of questions as well. As Blumenthal (2010, p. 203) notes, they raise "at least two vital research questions for law and emotion scholars." First, which sorts of legal judgments fall into the intuitive category? (See, e.g., Darley et al. 2000, Darley 2009, arguing that notions of just punishment are intuitive and tend to be retributive in nature; and see MacCoun 2012, exploring the role of disgust and moral outrage in the formation of attitudes toward drug policy and other policies involving risky behaviors.)

Second, what is the connection between "neuron-level moral judgments and legal judgments" (Blumenthal 2010, p. 204)? For example, if Greene is correct that moral reasoning in personal decisions triggers a different and more emotional cognitive process from moral reasoning in decisions regarded as abstract and impersonal, this conclusion has interesting implications for jury decision making in general, for more specific issues like the use of videotaped testimony, and for the validity of mock-jury studies, among other issues. If Haidt is correct that moral judgment comes first, followed by a reasoning process that is designed to explain rather than revise the initial intuition, his model has, at minimum, important descriptive implications for our understanding of how judging and other deliberative processes occur. It may also have prescriptive implications. Along these lines, Sunstein (2009) has explored the emotion of moral indignation as a species of intuitive processing that provides valuable information to the legal system but that often needs to be tempered by more reflective reasoning, and has considered how various legal institutions and processes (including homicide trials, administrative and legislative risk regulation, and punitive damage assessments) ought to be structured to ensure that both intuition and deliberation play their appropriate roles.

Moreover, Haidt (2001), Bloom (2010), and others argue that moral judgment flourishes not in splendid isolation but in situations of social

Affect: general term subsuming emotion and mood

interchange, particularly with those who hold different perspectives. The implications of this model for the structure of deliberative institutions such as the jury and the judicial system are well worth exploring (see, e.g., Bandes 2011, discussing implications for judging).

Empathy. A related research area is the cognitive science of empathy, which sheds light on how individuals understand the minds, desires, and motivations of others (for an excellent compendium, see Decety & Ickes 2009). The role of empathy in law has been much discussed recently, specifically in the judicial context, as mentioned above. The debate has been bedeviled by definitional ambiguities (Bandes 2009a), ambiguities that are not unique to law. Neuroscientific studies of empathy are helping to disambiguate the neural underpinnings of various types of empathy, some of which also go by such names as sympathy and compassion (Batson 2009). For example, “among philosophers, coming to feel as the other feels has often been called ‘sympathy,’ not empathy. . . . Among psychologists, it has been called ‘emotional contagion,’ ‘affective empathy’ and ‘automatic emotional empathy. . . .’” (p. 6).

These definitional ambiguities are relevant to legal and political debates over the role of empathy in judging. For example, some concerns about judicial use of empathy are based on the notion that empathy entails a sentimental attachment to—or a desire to offer assistance to—one of the parties in a controversy and is thus inconsistent with impartiality. This concern may be well-founded if empathy means an “impulse to respond with sensitivity and care to the suffering of another” (Batson 2009, p. 9). However, if empathy consists of understanding the thoughts and feelings of another (Batson 2009, p. 4), then it is, arguably, an essential capacity for judges (Posner 2008, p. 117; West 2012).

Moreover, the dynamics of empathy are relevant to law in much broader contexts. If empathy is the capacity to understand the thoughts and feelings of another, it becomes clear that it is not an occasionally employed

sentiment or a sentiment directed solely at those less fortunate, but a tool that is in constant (albeit not always accurate) use in legal decision making. Once empathy is understood in this light, it becomes possible—and essential—to investigate how empathy is employed in a variety of legal contexts. For example, studies suggest not only that juries have difficulty empathizing with defendants from other racial and demographic backgrounds (Haney 2005, pp. 189–209; Lynch & Haney 2011) but also that juries in homicide cases tend to feel more empathetic toward some homicide victims than others and that this selective empathy influences their verdicts (Sundby 2003). The science and social science of empathy also point the way toward the possibility of addressing empathy deficits or selective empathy; empathy appears to be a capacity that is eminently trainable (Goleman 2006, pp. 314–15; Feshbach & Feshbach 2009).

Implications for Implementation and Reform

As the foregoing discussion illustrates, the relationship between law and emotion is multifaceted. Therefore, the reforms to which insights from law and emotion scholarship point may take many forms, including revising doctrine, reconsidering the design of legal institutions or the allocation of institutional roles, revisiting policy objectives or their means of implementation, and rethinking means of communication and persuasion. Abrams & Keren (2010, pp. 2049–68) present a thorough analysis of these approaches; we offer some examples here.

Doctrinal revision is the most straightforward type of reform, at least in theory. Where legal doctrine relies on erroneous assumptions about emotions or emotional dynamics, it ought to be reconsidered. For example, shaming sanctions are meant to deter and rehabilitate, and if it turns out that they not only serve neither purpose but also actually stigmatize and marginalize offenders in a way that interferes with both these goals, then shaming

sanctions serve no legitimate penal purpose and should no longer be imposed (Massaro 2000).³

But the reform implications of law and emotion scholarship extend well beyond doctrinal revision. Two key points about implementation must be emphasized. First, although much remains to be learned about how emotion and cognition interact, it is clear that the folk concept of emotions as unknowable and untamable is incorrect. Not only can emotions be studied, from the neurobiological to the individual to the interpersonal level, but there is growing evidence that they can also be guided, channeled, and educated.

On the individual level, numerous studies show that people are able to regulate or manage the emotions they experience, whether by reconstructing aspects of a situation, shifting attention, reappraising reactions to a situation, or avoiding situations that might elicit a particular emotion altogether (see Maroney 2011a, reviewing the literature and applying it to judicial emotion). Much of the primary emotion regulation and management research thus far has developed in the context of coping strategies and psychological health. Thus, an important avenue for law and emotion research will be to move this line of research into decision making generally and legal decision making in particular.

Not only can emotions be managed, they can be educated. Emotion-based capacities such as empathy (Feshbach & Feshbach 2009), as discussed above, appear to be highly educable. There is some evidence that this educative capacity exists not only for emotions in conscious awareness, but even for intuitive, unconscious emotions; implicit biases; and stereotypes (Goleman 2006, pp. 300–4; Blumenthal

2010, pp. 196–98; Kang & Lane 2010).⁴ It appears that people can be educated to make subconscious operations accessible (Gigerenzer 2007) and that initial automatic reactions can be regulated by higher-order cognitive processes (Berkowitz et al. 2001). This work has important implications for a range of legal decision makers (see, e.g., Rachlinski et al. 2009, discussing how judges' implicit biases might be ameliorated; Haney 2005, pp. 189–209, discussing the role of the capital system in exacerbating or ameliorating “empathic divides” based on race). However, much remains to be learned about the dynamics of bias correction. Once inappropriate or harmful influences on decision making are identified, the question for researchers is how the legal system can effectively address them, correct for them, and guide decision making into more appropriate channels (Blumenthal 2007; see also Jolls & Sunstein 2006).

The second key point, discussed in more detail in the next section, is that the conventional focus across disciplines on emotions as private, internal feelings has been enormously limiting, both in general and in the legal context. Emotions are dynamic processes that are shaped and guided by social and institutional context, and thus it is crucial to pay attention to how legal context affects emotions and emotional capacities.

Research by Robbennolt (2003) and Etienne & Robbennolt (2007) provides a good illustration of the importance of attention to context, demonstrating that apologies and their emotional effects can have salutary consequences in some situations but not in others. Robbennolt has shown that in civil litigation, a full apology from the offender can reduce the victim's anger and increase sympathy for the

³We do not suggest that the mere presence of a disconnect between legal standards and knowledge in the sciences or social sciences should lead automatically to revision of doctrine or policy. Law has requisites that may weigh against changing doctrine, including rule-of-law values such as notice and predictability. This is a tension that exists in any area of law informed by knowledge from evolving fields, not a problem unique to questions of emotion and law (Blumenthal 2002).

⁴The emotional dimensions of bias and prejudice remain an underexplored aspect of the implicit bias literature. Goleman (2006, pp. 298–300) describes the creation of us-them categories as heavily influenced by fear, uneasiness, anxiety, and other emotions and the mutation of subtle biases into full-fledged prejudices as a process in which fear, anger, and hatred are deeply implicated. See also Parkinson et al. (2005, pp. 119–20).

tortfeasor; indeed, a full apology also makes it more likely that a settlement offer will be accepted (Robbennolt 2003). However, in the criminal context, Etienne & Robbennolt (2007) found that even though apologies should work similarly—reducing anger, ameliorating an offender’s feelings of guilt, increasing sympathy for the offender—the dynamics of plea bargaining in the criminal justice system (e.g., the fact that attorneys negotiate and parties do not meet face-to-face) nevertheless reduce the effectiveness of apologies. Wohl et al. (2011) made similar findings regarding the effects of apology at the intergroup level.

Just as emotions are shaped by social and institutional context, institutions are constructed in light of assumptions about emotional dynamics. In the legal realm, as elsewhere, these assumptions are ripe for scrutiny in light of a growing body of interdisciplinary knowledge about emotion in group and institutional settings (Bandes 2009b, p. 394), as discussed in the next section.

EMOTION IN GROUP AND INSTITUTIONAL SETTINGS

Nearly 30 years ago, sociologist Arlie Hochschild (1983, pp. 201–3) identified the tendency to treat emotions as private and internal as one of the major barriers to serious inquiry into the nature of emotions. Nevertheless, until recently, the social sciences continued to study individual subjects and their individual emotions (Bandes 2009d, p. 4 n.12) and then assume that the knowledge had broad application to emotions in diverse contexts, including settings that involved complex group and institutional dynamics. For law, with its focus on structuring effective institutions to guide and channel human behavior, this narrow focus on private, individual emotions has been problematic. Emotions are social processes that arise, in part, through interactions or anticipated interactions with others (Salovey 2003). They both influence and are influenced by social, cultural, and institutional context.

Recently, a number of disciplines have begun to focus on emotion in social context. The sociology of emotion is now a burgeoning field (Lange 2002, Turner & Stets 2005). Psychologists are increasingly interested in emotion and social cognition and emotional dynamics in group settings (Parkinson et al. 2005) and in the interaction between emotion and culture (Niedenthal et al. 2006), an interest they share with anthropologists (Lutz & White 1986). Political scientists are exploring the role of emotion in democratic deliberation (Marcus 2002, Westen 2007, Krause 2008, Lakoff 2008, Sajo 2011). The emerging field of affective neuroscience is examining the neural dynamics of emotional interchange (Davidson & Sutton 1995, Goleman 2006). Criminologists are looking at the role of emotion in a variety of contexts, including the formation of punitive attitudes, the dynamics of violence, and the structure of criminal justice institutions such as police departments and prisons (Karstedt et al. 2011). Viewing emotions in their broader social and cultural context permits a fuller understanding of their role in the law and points the way toward a rich set of questions for future scholars in the field of law and emotion:

1. **Emotion and social norms:** Emotions such as shame, fear, trust, and the desire for approval are intimately involved in the development, communication, and enforcement of the norms animating law. Legal scholars have engaged with the emotional aspects of norm creation in a few discrete areas, notably on the topic of why and how we punish (see, e.g., Braithwaite 1989, Garvey 2003, Markel 2004, Bandes 2008b, Berman & Bibas 2008, Darley 2009). But emotions are implicated in a wide array of basic social norm questions, such as the creation of familial norms (see Huntington 2010) or norms of respect for intellectual property (see Goodenough 2009, pp. 400–1), or questions of why citizens obey the law or feel themselves part of a polity (Deigh 2000, Dubber 2006, Gewirtzman 2009).

2. **Emotion cultures:** Law is permeated with implicit social and cultural expectations about the feeling and display of emotion (for discussion generally of emotion cultures, feeling norms, and expression norms, see Hochschild 1983, Thoits 1989, Clark 1998). These include, for example, expectations about who is capable of romantic love and therefore marriage (Calhoun 2000), or about what rape victims or domestic violence victims ought to feel and how they ought to express their feelings (Schuster & Proppen 2011), or about what pregnant women ought to feel toward their unborn babies (Guthrie 2008). The study of emotion cultures also encompasses the culture of particular legal institutions, such as the bench (Maroney 2011a), the courtroom (Haney 2005), the law school classroom (Harris & Shultz 1993), and the law firm (Levit & Linder 2010).⁵
3. **Effects of group dynamics on the emotions of individuals:** What effect does group participation have on the emotions of individuals? For instance, does jury deliberation increase or decrease the emotional effect of gruesome photographic evidence or victim impact statements? The results of the empirical research are mixed (see Blumenthal 2012); for example, some studies suggest that group discussion diminishes negative but not positive mood effects (Forgas 1990); others suggest that group deliberation increases punitiveness in jurors (Myers & Arbuthnot 1999, pp. 99–100). The area is ripe for jury researchers.
4. **The unique dynamics of group-level emotion:** The study of group-level or collective emotion has been hampered by

two types of misconceptions. From a descriptive standpoint, the decision making of deliberative bodies has too often been approached as merely the aggregate of the decision making of a number of individuals. A collective body, however, is an entity with its own characteristics (Tavuchis 1991, pp. 99–100; Krause 2008, pp. 144–45). Thus, for example, jury studies that focus on the deliberation of individual jurors fail to capture the complex emotional dynamics of the jury room and how such dynamics affect the formation of collective mood. In the realm of political science, as Krause (2008, pp. 144–45) argues in her examination of the role of moral sentiments in democratic deliberation, the focus on decision making as an aggregation of individual preferences fails to capture the dynamics of the “process of forming common judgments.” From a normative standpoint, collective emotion and collective judgment have too often been dismissed with pejoratives such as mob action, group think, and crowd dynamics (Banes 2012) rather than studied in all their complexity. In a salutary trend, increasing empirical research is under way on group-level emotion, intergroup emotion, and emotional contagion (Barsade 2002; Parkinson et al. 2005, pp. 87–143; Goleman 2006, pp. 13–26; Smith et al. 2007). One area of particular relevance to law is research on the conditions conducive to informed deliberation and on the relationship between informed deliberation and the heterogeneity of the decision-making body (see, e.g., Sommers 2006).

5. **Emotion and institutional structure:** Institutions are, inevitably, constructed in light of assumptions about emotional dynamics, and these assumptions should be illuminated and evaluated. Knowledge of emotional dynamics can be utilized to restructure incentive systems (see Gigerenzer 2007, pp. 157–58) and construct more effective legal institutions.

⁵The issue of emotion cultures in law school classrooms and in the practice of law is an important aspect of the field of therapeutic jurisprudence, which is concerned with the therapeutic (or countertherapeutic) impact of the legal system on legal actors, litigants, and others affected by its operation (see, e.g., Wexler & Winick 2003).

For example, Minow (2000) has examined the respective roles of divorce courts, mediation and arbitration tribunals, and truth and reconciliation commissions in channeling, educating, exacerbating, and responding to emotions. Bades (2006a) has criticized the incentive structure of some prosecutors' offices that place a high premium on group loyalty at the expense of accountability and respect for the rule of law. Ahmed & Braithwaite (2011) have investigated how institutional management of shame and pride affects bullying in the workplace.

6. **Emotion and the role of government:** Emotion theory offers insight into how citizens make essential decisions about health, finance, safety, marriage, family, and other issues related to well-being. First, what role might government have in promoting or discouraging various emotions in order to help citizens flourish in these or other areas (Blumenthal 2007, Huang & Blumenthal 2009)? Second, what role do emotions play in the shaping and communication of citizens' values on issues of public importance, such as governance and collective welfare (Marcus 2002, Westen 2007, Krause 2008, Lakoff 2008)? Finally, what is the appropriate role of citizens' emotional commitments and moral sentiments in shaping governmental (Krause 2008) and constitutional (Gewirtzman 2009, pp. 679–81; Sajo 2011) goals and values?
7. **Emotion and the mobilization of rights:** Emotion theory can shed important light on how rights are conceived, how perceptions of fairness and unfairness arise, how political persuasion works (Marcus 2002, Westen 2007, Krause 2008, Lakoff 2008), and what drives and sustains legal change and reform. Emotion can bind commitments to social and legal structures or provoke or sustain a challenge to those

structures (Goodwin et al. 2001, Turner & Stets 2005). Conversely, legal developments can create emotional momentum that leads to social change (see, e.g., Gould 2001, discussing the mobilizing effect of the US Supreme Court's decision in *Bowers v. Hardwick* 1986). Abrams (2011, pp. 553–62) recently offered an "exploratory typology" of issues concerning the relationship between emotions and the mobilization of rights. These include the affective dimension of the initial recognition of injury through moral shock; the affective connections that influence how an injury is understood and communicated; the anger, grief, or other emotions that lead to ascribing responsibility or blame; and the emotions that motivate the rights mobilization and those that sustain it or cause it to lose momentum.

CONCLUSION

The law offers an unparalleled opportunity for emotion researchers: a rich occasion to explore emotion as it operates in a complex set of institutions designed to reflect, channel, and educate human behavior. Legal theory and practice stand to benefit tremendously from this body of knowledge, and indeed, we proceed without this essential insight into human behavior at our peril, constructing and maintaining legal institutions and crafting legal doctrines that too frequently rest on unexamined or demonstrably faulty assumptions about emotion and its effects on human behavior. Law and emotion scholarship has often focused on illuminating the role of emotion in law, which is an essential aspect of the project, but one that must be increasingly accompanied by interdisciplinary investigation, by debate about whether the disconnect between assumptions and evidence interferes with the administration of justice, and by concrete proposals for implementation and reform.

FUTURE ISSUES

1. Underexplored doctrines: These include First Amendment issues such as the regulation of offensive speech; the emotional dynamics animating the separation of powers doctrine; the role of emotional attachment to property in the measure of just compensation or in adverse possession doctrine; the role of trust in contract law (Hill & O'Hara 2007); and assumptions about affective bonds undergirding the law of wills and trusts.
2. Underexplored legal actors: Studies of juries should move beyond the focus on individual jurors and take increasing account of the dynamics of the jury as a collective entity. The salutary trend toward studying judicial emotion should be expanded to include studies of how emotion affects decision making by legislators, regulators, attorneys (Smith 2004, Bandes 2006b), and other legal actors.
3. Emotion and persuasion: Emotion's role in rhetoric and persuasion is often dismissed as a form of manipulation or pandering, yet emotion plays an essential role in effective communication and persuasion. What role does, and should, emotion play in the persuasiveness of various forms of legal argument, including judicial opinions and dissents (Ray 2002), the arguments of advocates, and jury deliberation?
4. Emotion and legislation: In addition to studying legislators, scholars might focus on the relationship between emotion and legislation. For example, what is the appropriate role of emotion in providing an impetus for legislation? What is the role of legislation in acknowledging or giving voice to constituent emotion? [See, for example, Sanger's (2012) discussion of legislation requiring the provision of stillborn birth certificates.]
5. Strategies for educating emotion: In light of increasing evidence that institutions can be structured to promote a range of values and emotional attributes, debate about the structure and function of legal institutions should encompass the question of which values and attributes are worth promoting in particular contexts and how to do so. For example, institutions can be structured to increase participation, to increase awareness of or empathy for diverse viewpoints, to encourage more thorough and informed deliberation, and to work toward other goals that are consistent with participatory democracy and informed citizenry. Moreover, there is mounting evidence that emotion cannot be cordoned off from ethical and moral judgment without impairing both ethical judgment and well-being; such evidence has broad implications for the teaching and practice of law.

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LITERATURE CITED

- Abrams KR. 2010. Empathy and experience in the Sotomayor hearings. *Ohio North. Univ. Law Rev.* 36:263–86
- Abrams KR. 2011. Emotions in the mobilization of rights. *Harv. Civ. Rights–Civ. Lib. Law Rev.* 46:551–89
- Abrams KR, Keren H. 2007. Law in the cultivation of hope. *Calif. Law Rev.* 95:319–81
- Abrams KR, Keren H. 2010. Who’s afraid of law and the emotions? *Minn. Law Rev.* 94:1997–2074
- Aguirre A, Davin R, Baker D, Lee K. 1999. Sentencing outcomes, race, and victim impact evidence in California: a pre- and post-*Payne* comparison. *Justice Prof.* 11(3):297–310
- Ahmed E, Braithwaite J. 2011. Shame, pride and workplace bullying. See Karstedt et al. 2011, pp. 55–79
- Aronson JD. 2010. The law’s use of brain evidence. *Annu. Rev. Law Soc. Sci.* 6:93–108
- Bagenstos S, Schlanger M. 2007. Hedonic damages, hedonic adaptation, and disability. *Vanderbilt Law Rev.* 60:745–97
- Bandes SA. 1996. Empathy, narrative, and victim impact statements. *Univ. Chic. Law Rev.* 63:361–412
- Bandes SA, ed. 2000. *The Passions of Law*. New York: New York Univ. Press
- Bandes SA. 2006a. Loyalty to one’s convictions: the prosecutor and tunnel vision. *Howard Law J.* 49:475–94
- Bandes SA. 2006b. Repression and denial in criminal lawyering. *Buffalo Crim. Law Rev.* 9:339–89
- Bandes SA. 2008a. Emotions, values, and the construction of risk. *Univ. Pa. Law Rev. Pennumbra* 156:421–34. <http://www.pennumbra.com/responses/03-2008/Bandes.pdf>
- Bandes SA. 2008b. The heart has its reasons: examining the strange persistence of the American death penalty. *Stud. Law Polit. Soc.* 42(1):21–52
- Bandes SA. 2009a. Empathetic judges and the rule of law. *Cardozo Law Rev. Novo* 2009:133–48
- Bandes SA. 2009b. Foreword. *Vt. Law Rev.* 33:387–94
- Bandes SA. 2009c. Repellent crimes and rational deliberation: emotion and the death penalty. *Vt. Law Rev.* 33:489–518
- Bandes SA. 2009d. Victims, “closure,” and the sociology of emotion. *Law Contemp. Probl.* 72(2):1–26
- Bandes SA. 2011. Moral imagination in judging. *Wasburn Law Rev.* 51:101–2
- Bandes SA. 2012. Emotion and deliberation: the autonomous citizen in the social world. In *Passions and Emotions: NOMOS LIII*, ed. JE Fleming. New York: New York Univ. Press
- Barsade S. 2002. The ripple effect: emotional contagion and its influence on group behavior. *Adm. Sci. Q.* 47(4):644–75
- Batson CD. 2009. These things called empathy: eight related but distinct phenomena. See Decety & Ickes 2009, pp. 3–15
- Bechara A, Tranel D, Damasio H. 2000. Characterization of the decision-making deficits of patients with ventromedial prefrontal cortex lesions. *Brain* 123(11):2189–202
- Berkowitz L, Jaffee S, Jo E, Troccoli BT. 2001. On the correction of feeling-induced judgmental biases. See Forgas 2001, pp. 132–33
- Berman DA, Bibas S. 2008. Engaging capital emotions. *Northwest. Univ. Law Rev. Colloquy* 102:355–64
- Black RC, Treul SA, Johnson TR, Goldman J. 2011. Emotions, oral arguments, and Supreme Court decision making. *J. Polit.* 73(2):572–81
- Bloom P. 2010. How do morals change? *Nature* 464(7288):490
- Blumenthal JA. 2002. Law and social science in the twenty-first century. *South. Calif. Interdiscip. Law J.* 12:1–53
- Blumenthal JA. 2005a. Does mood influence moral judgment? An empirical test with legal and policy implications. *Law Psychol. Rev.* 29:1–28
- Blumenthal JA. 2005b. Law and the emotions: the problems of affective forecasting. *Ind. Law J.* 80:155–238
- Blumenthal JA. 2007. Emotional paternalism. *Fla. State Univ. Law Rev.* 35:1–72
- Blumenthal JA. 2008. Abortion, persuasion, and emotion: implications of social science research on emotion for reading *Casey*. *Wash. Law Rev.* 83:1–38
- Blumenthal JA. 2009. Affective forecasting and capital sentencing: reducing the effect of victim impact statements. *Am. Crim. Law Rev.* 46:107–25
- Blumenthal JA. 2010. A moody view of the law: looking back and looking ahead at law and the emotions. See Bornstein & Wiener 2010, pp. 185–210
- Blumenthal JA. 2012. Group deliberation and the endowment effect: an experimental study. *Hous. Law Rev.* 50:In press

- Booth v. Maryland*, 482 U.S. 496 (1987)
- Bornstein B, Wiener R, eds. 2010. *Emotion and the Law: Psychological Perspectives*. New York: Springer
- Bowers v. Hardwick*, 478 U.S. 186 (1986)
- Bradford LR. 2008. Emotion, dilution, and the trademark consumer. *Berkeley Technol. Law J.* 23:1227–98
- Braithwaite J. 1989. *Crime, Shame, and Reintegration*. Cambridge, UK: Cambridge University Press
- Bright DA, Goodman-Delahunty J. 2006. Gruesome evidence and emotion: anger, blame, and jury decision-making. *Law Hum. Behav.* 30(2):183–202
- Bronsteen J, Buccafusco C, Masur JS. 2008. Hedonic adaptation and the settlement of civil lawsuits. *Columbia Law Rev.* 108:1516–49
- Calhoun C. 2000. Making up emotional people. See Bandes 2000, pp. 217–40
- California v. Brown*, 479 U.S. 538 (1986)
- Clark C. 1998. *Misery and Company: Sympathy in Everyday Life*. Chicago: Univ. Chicago Press
- Clore GL, Schwarz N, Conway M. 1994. Affective cognitive causes and consequences of social information processing. In *Handbook of Social Cognition*, ed. RS Wyer, TK Srull, 1:323–418. Hillsdale, NJ: Erlbaum. 2nd ed.
- Damasio A. 1994. *Descartes' Error: Emotion, Reason, and the Human Brain*. New York: Penguin Putnam
- Damasio A. 1999. *The Feeling of What Happens: Body and Emotion in the Making of Consciousness*. Orlando, FL: Harcourt
- Darley JM. 2009. Morality in the law: the psychological foundations of citizens' desires to punish transgressions. *Annu. Rev. Law Soc. Sci.* 5:1–23
- Darley JM, Carlsmith KM, Robinson PH. 2000. Incapacitation and just deserts as motives for punishment. *Law Hum. Behav.* 24:659–83
- Davidson RJ, Sutton SK. 1995. Affective neuroscience: the emergence of a discipline. *Curr. Opin. Neurobiol.* 5(2):217–24
- Decety J, Ickes W, eds. 2009. *The Social Neuroscience of Empathy*. Cambridge, MA: MIT Press
- Deigh J. 2000. Emotion and the authority of law: variation on themes in Bentham and Austin. See Bandes 2000, pp. 285–308
- Dubber MD. 2006. *The Sense of Justice: Empathy in Law and Punishment*. New York: New York Univ. Press
- Duncan MG. 2002. "So young and so untender": remorseless children and the expectations of the law. *Columbia Law Rev.* 102:1469–526
- Edwards K, Bryan TS. 1997. Judgmental biases produced by instructions to disregard: the (paradoxical) case of emotional information. *Personal. Soc. Psychol. Bull.* 23(8):849–64
- Englich B, Soder K. 2009. Moody experts—how mood and expertise influence judgmental anchoring. *Judgm. Decis. Mak.* 4(1):41–50
- Etienne M, Robbenolt JK. 2007. Apologies and plea bargaining. *Marq. Law Rev.* 91:295–322
- Feigenson N. 2010. Emotional influences on judgments of legal blame: how they happen, whether they should, and what to do about it. See Bornstein & Wiener 2010, pp. 45–96
- Feigenson N, Park J. 2006. Emotions and attributions of legal responsibility and blame: a research review. *Law Hum. Behav.* 30(2):43–161
- Feigenson N, Park J, Salovey P. 2001. The role of emotions in comparative negligence judgments. *J. Appl. Soc. Psychol.* 31(3):576–603
- Feshbach ND, Feshbach S. 2009. Empathy and education. See Decety & Ickes 2009, pp. 85–97
- Finkel NJ, Parrott WG. 2006. *Emotions and Culpability: How the Law Is at Odds with Psychology, Jurors, and Itself*. Washington, DC: Am. Psychol. Assoc.
- Fishfader VL, Howells GN, Katz RC, Terisi PS. 1996. Evidential and extralegal factors in juror decisions: presentation mode, retention, and level of emotionality. *Law Hum. Behav.* 20(5):565–72
- Fisk CL. 2001. Humiliation at work. *Wm. Mary J. Women Law* 8:73–95
- Forgas JP. 1990. Affective influences on individual and group judgments. *Eur. J. Soc. Psychol.* 20(5):441–53
- Forgas JP, ed. 2001. *Feeling and Thinking: The Role of Affect in Social Cognition*. Cambridge, UK: Cambridge Univ. Press
- Forgas JP, East R. 2003. Affective influences on social judgments and decisions: implicit and explicit processes. In *Social Judgments: Implicit and Explicit Processes*, ed. JP Forgas, KD Williams, WV von Hippel, pp. 198–226. Cambridge, UK: Cambridge Univ. Press

- Garvey SP. 2003. The moral emotions of the criminal law. *Quinnipiac Law Rev.* 22:145–64
- Gewirtzman DN. 2009. Our founding feelings: emotion, commitment, and imagination in constitutional culture. *Univ. Richmond Law Rev.* 43:623–83
- Gigerenzer G. 2007. *Gut Feelings. The Intelligence of the Unconscious.* New York: Viking
- Goleman D. 2006. *Social Intelligence: The New Science of Human Relationships.* New York: Bantam Dell
- Goodenough OR. 2009. Institutions, emotions, and law: a Goldilocks problem for mechanism design. *Vt. Law Rev.* 33:395–404
- Goodenough OR, Tucker M. 2010. Law and cognitive neuroscience. *Annu. Rev. Law Soc. Sci.* 6:61–92
- Goodwin J, Jasper J, Polletta F, eds. 2001. *Passionate Politics: Emotions and Social Movements.* Chicago: Univ. Chicago Press
- Gould D. 2001. Rock the boat, don't rock the boat, baby: ambivalence and the emergence of militant AIDS activism. See Goodwin et al. 2001, pp. 135–57
- Greene E. 1999. The many guises of victim impact evidence and effects on jurors' judgments. *Psychol. Crime Law* 5(4):331–48
- Greene JD, Sommerville RB, Nystrom LE, Darley JM, Cohen JD. 2001. An fMRI investigation of emotional engagement in moral judgment. *Science* 293(5537):2105–8
- Guthrie C. 2008. Constitutional rights and the psychology of regret. *South. Calif. Law Rev.* 81:877–903
- Haidt J. 2001. The emotional dog and its rational tail: a social intuitionist approach to moral judgment. *Psychol. Rev.* 108(4):814–34
- Haney C. 2005. *Death by Design: Capital Punishment as a Social-Psychological System.* New York: Oxford Univ. Press
- Haney C, Sontag L, Constanzo S. 1994. Deciding to take a life: capital juries, sentencing instructions, and the jurisprudence of death. *J. Soc. Issues* 50(2):149–76
- Harris AP, Shultz M. 1993. "A(nother) critique of pure reason": toward civic virtue in legal education. *Stanf. Law Rev.* 45(6):1773–806
- Hastie R. 2001. Emotions in jurors' decisions. *Brooklyn Law Rev.* 66:991–1009
- Hauser MD. 2006. *Moral Minds: How Nature Designed Our Universal Sense of Right and Wrong.* New York: Ecco/HarperCollins
- Henderson L. 1987. Legality and empathy. *Mich. Law Rev.* 85:1574–653
- Hill CA, O'Hara EA. 2007. A cognitive theory of trust. *Wash. Univ. Law Rev.* 84:1717–96
- Hochschild AR. 1983. *The Managed Heart: Commercialization of Human Feeling.* Berkeley/Los Angeles: Univ. Calif. Press
- Huang PH. 2003. Trust, guilt, and securities regulation. *Univ. Pa. Law Rev.* 151:1059–95
- Huang PH. 2010. Happiness studies and legal policy. *Annu. Rev. Law Soc. Sci.* 6:405–32
- Huang PH, Blumenthal JA. 2009. Positive law and policy. In *Encyclopedia of Positive Psychology*, ed. J Shane, Lopez, 2:730–32. West Sussex, UK: Blackwell. 2nd ed.
- Huntington C. 2008. Repairing family law. *Duke Law J.* 57:1245–319
- Huntington C. 2010. Familial norms and normality. *Emory Law J.* 59:1103–69
- ISRE (Int. Soc. Res. Emot.). 2007. The definition issue. *Emot. Res.* 22:1–16
- Jolls C, Sunstein CR. 2006. The laws of implicit bias. *Calif. Law Rev.* 94:969–96
- Kagan J. 1998. *Three Seductive Ideas.* Cambridge, MA: Harvard Univ. Press
- Kagan J. 2007. *What Is Emotion? History, Measures, and Meanings.* New Haven, CT: Yale Univ. Press
- Kahan DM. 2000. The progressive appropriation of disgust. See Bandes 2000, pp. 63–79
- Kahan DM. 2008. Two conceptions of emotion in risk regulation. *Univ. Pa. Law Rev.* 156:741–66
- Kahan DM. 2011. The Supreme Court 2010 term—foreword: neutral principles, motivated cognition, and some problems for constitutional law. *Harv. Law Rev.* 125:1–77
- Kang J, Lane K. 2010. Seeing through colorblindness: implicit bias and the law. *UCLA Law Rev.* 58:465–520
- Karstedt S, Loader I, Strang H. 2011. *Emotions, Crime and Justice.* Oxford, UK: Hart
- Kelly v. California*, 555 U.S. 1020 (2008)
- Kerr NL. 2010. Explorations in juror emotion and juror judgment. See Bornstein & Wiener 2010, pp. 185–210
- Krause S. 2008. *Civil Passions: Moral Sentiment and Democratic Deliberation.* Princeton, NJ: Princeton Univ. Press

- Lakoff G. 2008. *The Political Mind: Why You Can't Understand 21st-Century Politics with an 18th-Century Brain*. New York: Penguin
- Lange B. 2002. The emotional dimension in legal regulation. *J. Law Soc.* 29:197–225
- LeDoux J. 1996. *The Emotional Brain: The Mysterious Underpinnings of Emotional Life*. New York: Touchstone
- Lee C. 2003. *Murder and the Reasonable Man: Passion and Fear in the Criminal Courtroom*. New York: New York Univ. Press
- Lerner JS, Keltner D. 2000. Beyond valence: toward a model of emotion-specific influences on judgment and choice. *Cogn. Emot.* 14(4):473–93
- Levit N, Linder DO. 2010. *The Happy Lawyer: Making a Good Life in the Law*. New York: Oxford Univ. Press
- Loewenstein GF, Weber EU, Hsee CK, Welch N. 2001. Risk as feelings. *Psychol. Bull.* 127(2):267–86
- Logan WA. 1999. Through the past darkly: a survey of the uses and abuses of victim impact evidence in capital trials. *Ariz. Law Rev.* 41:143–92
- Lutz C, White GM. 1986. The anthropology of emotions. *Annu. Rev. Anthropol.* 15:405–36
- Lynch M, Haney C. 2011. Mapping the racial bias of the white male capital juror: jury composition and the “empathic divide.” *Law Soc. Rev.* 45(1):69–102
- MacCoun RJ. 2012. Moral outrage and opposition to harm reduction. *Crim. Law Philos.* 6:In press. <http://rd.springer.com/article/10.1007/s11572-012-9154-0>
- Madeira JL. 2006. Lashing reason to the mast: understanding judicial constraints on emotion in personal injury litigation. *UC Davis Law Rev.* 40:137–97
- Madeira JL. 2010. “Why rebottle the genie?” Capitalizing on closure in death penalty proceedings. *Indiana Law J.* 85:1477–525
- Marcus GE. 2002. *The Sentimental Citizen: Emotion in Democratic Politics*. University Park: Univ. Pa. Press
- Markel D. 2004. Against mercy. *Minn. Law Rev.* 88:1421–80
- Maroney TA. 2006. Law and emotion: a proposed taxonomy of an emerging field. *Law Hum. Behav.* 30(2):119–42
- Maroney TA. 2009. Emotional common sense as constitutional law. *Vanderbilt Law Rev.* 62:851–917
- Maroney TA. 2011a. Emotional regulation and judicial behavior. *Calif. Law Rev.* 99:1485–555
- Maroney TA. 2011b. The persistent cultural script of judicial dispassion. *Calif. Law Rev.* 99:629–81
- Massaro T. 2000. Show (some) emotions. See Bandes 2000, pp. 80–120
- Mikhail J. 2007. Universal moral grammar: theory, evidence, and the future. *Trends Cogn. Sci.* 11(4):143–52
- Minow ML. 2000. Institutions and emotions: redressing mass violence. See Bandes 2000, pp. 265–84
- Minow ML, Spelman EV. 1988. Passion for justice. *Cardozo Law Rev.* 10:37–76
- Moran R. 2002. Fear unbound: a reply to Professor Sunstein. *Wasburn Law J.* 42:1–30
- Murphy JG. 2007. Remorse, apology, and mercy. *Ohio State J. Crim. Law.* 4:423–53
- Murphy JG, Hampton J. 1990. *Forgiveness and Mercy*. Cambridge, UK: Cambridge Univ. Press
- Myers B, Arbuthnot J. 1999. The effect of victim impact evidence on the verdicts and sentencing judgments of mock jurors. *J. Offender Rehabil.* 29(3–4):95–112
- Myers B, Greene E. 2004. The prejudicial nature of victim impact statements. *Psychol. Public Law* 10(4):492–515
- Myers B, Lynn SJ, Arbuthnot J. 2002. Victim impact testimony and juror judgments: the effects of harm information and witness demeanor. *J. Appl. Soc. Psychol.* 32:2393–412
- Nadler J, Rose MR. 2003. Victim impact testimony and the psychology of punishment. *Cornell Law Rev.* 88:419–56
- Niedenthal PM, Krauth-Gruber S, Ric F. 2006. *Psychology of Emotion: Interpersonal, Experiential and Cognitive Approaches*. New York: Psychol. Press
- Nussbaum MC. 1990. *Love's Knowledge: Essays on Philosophy and Literature*. New York: Oxford Univ. Press
- Nussbaum MC. 2000. “Secret sewers of vice”: disgust, bodies and the law. See Bandes 2000, pp. 19–62
- Nussbaum MC. 2006. *Hiding from Humanity: Disgust, Shame and the Law*. Princeton, NJ: Princeton Univ. Press
- Pardo MS, Patterson D. 2010. Philosophical foundations of law and neuroscience. *Univ. Ill. Law Rev.* 2010:1211–50
- Parkinson B, Fischer AH, Manstead ASR. 2005. *Emotions in Social Relations: Cultural, Group, and Interpersonal Processes*. New York: Psychol. Press

- Payne v. Tennessee*, 501 U.S. 808 (1991)
- Pillsbury S. 2000. Harlan, Holmes, and the passions of justice. See Bandes 2000, pp. 330–62
- Posner RA. 2008. *How Judges Think*. Cambridge, MA: Harvard Univ. Press
- Rachlinski JJ, Guthrie C, Wistrich A. 2007. Blinking on the bench: how judges decide cases. *Cornell Law Rev.* 93:1–43
- Rachlinski JJ, Johnson S, Wistrich AJ, Guthrie C. 2009. Does unconscious bias affect trial judges? *Notre Dame Law Rev.* 84:1195–246
- Ray LK. 2002. Judicial personality: rhetoric and emotion in Supreme Court opinions. *Wash. Lee Law Rev.* 59:193–234
- Robbenolt JK. 2003. Apologies and legal settlement: an empirical examination. *Mich. Law Rev.* 102:460–516
- Rozin P, Fallon A. 1987. A perspective on disgust. *Psychol. Rev.* 94(1):23–41
- Ryan E. 2005. The discourse beneath: emotional epistemology in legal deliberation and negotiation. *Harv. Negot. Law Rev.* 10:231–85
- Sajo A. 2011. *Constitutional Sentiments*. New Haven, CT: Yale Univ. Press
- Salerno JM, Bottoms BL. 2009. Emotional evidence and jurors' judgments: the promise of neuroscience for informing psychology and law. *Behav. Sci. Law.* 27(2):273–96
- Salovey P. 2003. Introduction: emotion and social processes. In *Handbook of Affective Sciences*, ed. RJ Davidson, KR Scherer, H Goldsmith, pp. 747–51. New York: Oxford Univ. Press
- Sanger C. 2009. Decisional dignity: teen abortion, bypass hearings, and the misuse of law. *Columbia J. Gen. Law.* 18:409–99
- Sanger C. 2012. "The birth of death": stillborn birth certificates and the problem for law. *Calif. Law Rev.* 100:269–312
- Schuster ML, Proten AD. 2011. *Victim Advocacy in the Courtroom: Persuasive Practices in Domestic Violence and Child Protection Cases*. Boston: Northeastern Univ. Press
- Schwarz N, Bless H, Bohner G. 1991. Mood and persuasion: affective states influence the processing of persuasive communications. *Adv. Exp. Soc. Psychol.* 24:161–99
- Semmler C, Brewer N. 2002. Effects of mood and emotion on juror processing and judgments. *Behav. Sci. Law* 20(4):423–36
- Sinott-Armstrong W. 2008a. *Moral Psychology, Vol. 2: The Cognitive Science of Morality: Intuition and Diversity*. Cambridge, MA: MIT Press
- Sinott-Armstrong W. 2008b. *Moral Psychology, Vol. 3: The Neuroscience of Morality: Emotion, Brain Disorders, and Development*. Cambridge, MA: MIT Press
- Smith A. 2004. Too much heart and not enough heat: the short life and fractured ego of the empathic, heroic public defender. *U.C. Davis Law Rev.* 37:1203–65
- Smith ER, Seger CR, Mackie DM. 2007. Can emotions be truly group level? Evidence regarding four conceptual criteria. *J. Personal. Soc. Psychol.* 93(3):431–46
- Sommers S. 2006. On racial diversity and group decision-making: identifying multiple effects of racial composition on jury deliberations. *J. Personal. Soc. Psychol.* 90(4):597–612
- Sundby SE. 2003. The capital jury and empathy: the problem of worthy and unworthy victims. *Cornell Law Rev.* 88:343–81
- Sundby SE. 2005. *A Life and Death Decision: A Jury Weighs the Death Penalty*. New York: Palgrave Macmillan
- Sunstein CR. 2009. Some effects of moral indignation on law. *Vt. Law Rev.* 33:405–33
- Sunstein CR, Schkade D, Ellman LM, Sawicki A. 2006. *Are Judges Political? An Empirical Analysis of the Federal Judiciary*. Washington, DC: Brookings Inst. Press
- SunWolf JD. 2004. *Practical Jury Dynamics: From One Juror's Trial Perceptions to the Group's Decision-Making Process*. Charlottesville, VA: Matthew Bender/LexisNexis
- Tavuchis N. 1991. *Mea Culpa: A Sociology of Apology and Reconciliation*. Stanford, CA: Stanford Univ. Press
- Thoits P. 1989. The sociology of emotions. *Annu. Rev. Sociol.* 15:317–42
- Turner JH, Stets JE. 2005. *The Sociology of Emotions*. New York: Cambridge Univ. Press
- Ugazio G, Lamm C, Singer T. 2012. The role of emotions for moral judgments depends on the type of emotion and moral scenario. *Emotion* 12:579–90
- Weisman R. 2009. Being and doing: the judicial use of remorse to construct character and community. *Soc. Leg. Stud.* 18(1):47–69

- West R. 2012. The empathetic turn. In *Passions and Emotions: NOMOS LIII*, ed. JE Fleming. New York: New York Univ. Press
- Westen D. 2007. *The Political Brain: The Role of Emotion in Deciding the Fate of the Nation*. New York: PublicAffairs
- Wevodau A, Blumenthal JA. 2009. *The effect of victim impact statements: a meta-analytic review*. Presented at Am. Psychol./Law Soc. Conf., San Antonio, TX
- Wevodau A, Cramer RJ, Clark JW. 2012. *Appealing to juror cognition and emotion: Do victim impact statements matter?* Presented at Am. Psychol./Law Soc. Conf. San Juan, PR
- Wexler D, Winick BJ. 2003. *Judging in a Therapeutic Key: Therapeutic Jurisprudence and the Courts*. Durham, NC: Carolina Acad.
- White BT. 2010. Underwater and not walking away: shame, fear, and the social management of the housing crisis. *Wake For. Law Rev.* 45:971–1023
- Wohl MJ, Hornsey MJ, Bennett SH. 2011. Why group apologies succeed and fail: intergroup forgiveness and the role of primary and secondary emotions. *J. Personal. Soc. Psychol.* 102:306–322

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Contents

Legacies of Legal Realism: The Sociology of Criminal Law and Criminal Justice <i>Jerome H. Skolnick</i>	1
Mass Imprisonment and Inequality in Health and Family Life <i>Christopher Wildeman and Christopher Muller</i>	11
After Critical Legal History: Scope, Scale, Structure <i>Christopher Tomlins</i>	31
Paying Attention to What Judges Say: New Directions in the Study of Judicial Decision Making <i>Keith J. Bybee</i>	69
Behavioral Ethics: Toward a Deeper Understanding of Moral Judgment and Dishonesty <i>Max H. Bazerman and Francesca Gino</i>	85
Varieties of Transition from Authoritarianism to Democracy <i>Jiří Přibáň</i>	105
Substance, Scale, and Salience: The Recent Historiography of Human Rights <i>Samuel Moyn</i>	123
Immigration, Crime, and Victimization: Rhetoric and Reality <i>Marjorie S. Zatz and Hilary Smith</i>	141
Emotion and the Law <i>Susan A. Bandes and Jeremy A. Blumenthal</i>	161
Law, Environment, and the “Nondismal” Social Sciences <i>William Boyd, Douglas A. Kysar, and Jeffrey J. Rachlinski</i>	183
Bullying <i>Eve M. Brank, Lori A. Hoetger, and Katherine P. Hazen</i>	213
Pro Se Litigation <i>Stephan Landsman</i>	231

Regulating Sex Work: Heterogeneity in Legal Strategies <i>Bill McCarthy, Cecilia Benoit, Mikael Jansson, and Kat Kolar</i>	255
History Trials: Can Law Decide History? <i>Costas Douzinas</i>	273
Empirical Studies of Contract <i>Zev J. Eigen</i>	291
Sociolegal Studies on Mexico <i>Julio Ríos-Figueroa</i>	307
Mind the Gap: The Place of Gap Studies in Sociolegal Scholarship <i>Jon B. Gould and Scott Barclay</i>	323
Law's Archive <i>Renisa Mawani</i>	337
International Human Rights Law and Social Movements: States' Resistance and Civil Society's Insistence <i>Kiyoteru Tsutsui, Claire Whitlinger, and Alwyn Lim</i>	367
Law and Economics of Intellectual Property: In Search of First Principles <i>Dan L. Burk</i>	397
Legal History of Money <i>Roy Kreitner</i>	415
The Force of Law and Lawyers: Pierre Bourdieu and the Reflexive Sociology of Law <i>Yves Dezalay and Mikael Rask Madsen</i>	433
Rethinking Corruption in an Age of Ambiguity <i>Janine R. Wedel</i>	453
Indexes	
Cumulative Index of Contributing Authors, Volumes 1–8	499
Cumulative Index of Chapter Titles, Volumes 1–8	502

Errata

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