



# Emotions and Sentiments in Judicial Deliberation

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Published online: 16 October 2019  
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## Abstract

The traditional perspective on emotions, anchored in the Western philosophical tradition, assumes an irretrievable dualism between emotions and reason. Emotions are assumed as forces, which can blind a person's view and lead them to do terrible things. For this reason, emotions must be put aside during rational deliberation. For common sense, including legal common sense, emotions are dangerous and are unrelated to rational decision-making. Nevertheless, Aristotelian's perspective on the relationship between emotions, reason and practical deliberation is enlightening. Emotions are not blind forces completely divorced from reason. Aristotle did not develop a complete theory of emotions but recognized a strong covariance between emotions/passions/sentiments and thoughts. This research is based on three theoretical pillars: Aristotle's perspective on the relationship between reason and emotions drawn on *Nicomachean Ethics* and *Rethoric*, the jurisprudentialism, a jurisphilosophical approach elaborated by António Castanheira Neves, and Terry Maroney's model for judicial emotion regulation. The power of judgement is assumed mainly as a practical task, which involves the excellence of phronesis, virtues and emotions/sentiments/passions.

**Keywords** Aristotle on emotions · Jurisprudentialism · Terry Maroney's model for judicial emotion regulation

Law and emotions are understood, in more traditional circles, as two distinct and unique areas, which occasionally crossover, such as in crimes of passion, sexual crimes, or marital separations. The encounter between law and emotions does, in fact, demand according to this traditional perspective, a corrective action to be taken by the law in relation to emotions. Emotions are considered as a fickle and willful

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dimension of human beings, who are not committed to reason and also have the power to blind and muddy rational thought. Specifically, regarding judicial decision-making, law and the emotions have traditionally been considered to be oil and water, completely immiscible. A good legal decision should resist the appeal of the emotions, either rendering them impotent or minimizing their influence.

The emotions, however, are not wild beasts, nor are they simply a dimension of the human soul which should be dominated by the rational faculty in favor of a happier life [11]. Aristotle long understood that the emotions are a non-rational part of the human nature, which is able to listen to what the rational part of the soul says. In addition, it is essential to reflect on the emotions, and on the education of the emotions in the context of practical deliberation. Can this reflection on the emotions, however, offer a contribution to law? Is a judicial decision exclusively rational or could it be a special kind of practical decision? Might the judge be considered a moral agent or not? What is the importance of reflecting on the emotions, virtue and prudence for the judge? These are questions which will be addressed throughout this paper.

Initially, Aristotle's "theory" of the emotions, which is sketched out in book II of the Rhetoric, will be presented. Secondly, the relationship between the emotions and reason in the sphere of "what it is but it could be otherwise" will be explored. Subsequently, some of the core concepts of a jurisphilosophical perspective on law and adjudication entitled jurisprudentialism, elaborated by António Castanheira Neves, will be investigated. Finally, some ideas from Terry Maroney's model for judicial emotion regulation shall be considered.

## 1 Aristotle on the Emotions: A Brief Overview

What are emotions according to Aristotle? Aristotle defined emotions in distinct ways in his works. This is due to the fact that the each definition of emotion is related to a specific scientific intention. In Rhetoric, Aristotle defines emotions as "all those feelings that so change men as to affect their judgments, and that are also attended by pain or pleasure" [3: 1378a20–25]. In the Nicomachean Ethics, he explains the meaning of passions/emotions as: "appetite, anger, fear, confidence, envy, joy, friendly feeling, hatred, longing, emulation, pity, and in general the feelings that are accompanied by pleasure or pain" [2: 1105b20–25]. Neither definitions present a full account of emotions in Aristotle's mind, as the former concerns the specific aims of rhetoric and the latter is a list of cases, which cannot be taken as a complete definition of the emotions, along with the statement that they are accompanied by pleasure and pain.

The decisive element of the emotions does not appear in the previous definitions but it is deeply explored in Rhetoric: the emotions are based on thoughts, opinions or evaluative judgments. "This element is not only a part of the emotions: it is the

decisive element” (free translation).<sup>1</sup> If I assume there is a lion in the same place that I am, I will feel fear because the lion may attack me, however if I assume that the same lion is not dangerous, I may feel joy instead of fear. “The agent has an opinion and the emotion is felt according to this opinion” (free translation).<sup>2</sup>

Aristotle realized that the emotions are not an auxiliary element of persuasion but are rather intimately connected with (a) states of pleasure and pain; (b) our opinions and evaluative judgments, and with the objects to which they are directed; (c) our desires; (d) certain cognitive efforts, such as having beliefs and making judgments [14: 443–444]. The emotions express our evaluative judgments and can be educated, but never (completely) eliminated from the decision-making process.

If the emotions are able to change the way we see facts as we perceive them, so a good speaker, in order to convince the public, must present arguments (regarding the law, the customs etc.) and be endeavor to create an appropriate emotional state.

Aristotle realized that the emotions are not an auxiliary element of persuasion, as the ancient tradition used to assume, rather they are important because they affect the judgment of the audience or, in other words, the emotions change the way one perceives and evaluates situations. Emotional arguments are much more complex than we normally perceive them to be. According to Aristotle, emotions are the causes that make humans amend and introduce changes in their judgments, insofar as they involve pain and pleasure [3: 1378a].

Emotions are based on impressions, thoughts or opinions, which can be altered by arguments. A good speaker should take this into account, but the importance of the emotions, in Aristotle’s thought, is not restricted to rhetoric. The study of emotions is also reflected in the need for rethinking the role of tragedy and music in the development of a theory of benefits through purgation (*katharsis*)<sup>3</sup> and, with regard to our main concern in this text, it culminated in an enlightened approach to ethics.

## 1.1 The Education of Desire and Practical Deliberation

In Book VI of the *Nicomachean Ethics*, Aristotle begins his reflection by stating that there are two dimensions of the human soul: one that engages in reasoning and the other that cannot itself reason but is nonetheless capable of following reason. The first one may be split into two: (a) a contemplative part, which studies the invariable truths of science and mathematics (the scientific faculty); (b) one that deals with the practical matters of human life (the calculative faculty) [2: 1139a 5–10].

Ethics is not governed by well-defined accessible principles but it studies/investigates right and the wrong under specific and particular situations. The objects of ethics are things/situations/events ruled by principles that could be otherwise. Ethical principles do not apply to everyone and every situation in the same way, rather it

<sup>1</sup> “Na verdade, este elemento não é somente uma parte da emoção: ele é seu elemento decisivo” [16: 152].

<sup>2</sup> “O agente tem então uma opinião e a emoção é sentida conforme a esta opinião”.

<sup>3</sup> For the contributions of the analysis of emotions to Aristotle’s poetics, politics and ethics. See [6].

is necessary to reflect in concrete situations on what the right thing to do is, and the answer to this question does not completely exclude other possible answers.

To make progress in this sphere we must have already come to enjoy doing what is just, courageous, generous and the like. We must experience these activities not as burdensome constraints, but as noble, worthwhile, and enjoyable in themselves (...) we approach ethical theory with a disorganized bundle of likes and dislikes based on habit and experience [8].

The calculative faculty and desire are the basis of the choice which constitutes the efficient cause of the action. The human being, constituted by thought and desires, is the origin and the efficient cause of the action: good actions if you have true thought and the right desires, and bad actions if you have false thought and the wrong desires.

*Phronesis* is the excellence of the calculative faculty of the soul [2: 1140b 25–30]. According to Zingano, for someone to be considered prudent, this person should be virtuous, i.e., he or she should possess (at least) some virtues. It can therefore be understood that virtue is not given by nature but it is the result of a moral process which starts in childhood (and is never concluded). Emotions and desires are closely related. In dangerous situations, fear arises and one will be urged to run (moved by the desire to run) but people can deal with fear in many different ways. One can surrender to fear and start running from it, or one can face it. The more one faces the fear, the more one will be willing to face it. Human beings are not victims of their emotions and desires, they can decide (at least in many occasions) what the adequate action is in every given moral situation. Desire can be educated through habituation and, above all, through action guided by deliberation. The goal of moral education is to educate desire, in order to make it pursue what is good—and the good in practical issues, in general, is the mean between excess and lack.

The whole problem lies precisely in the relationship between desiring and thinking in the concrete moment of decision. Moral virtue is a disposition on the choice/election (...) so the thinking has to be right and the desire straight in order for *proairesis* to be good. There has to be a correspondence between what reason says and what desire pursues, so that *proairesis* is serious (free translation).<sup>4</sup>

Nuno Coelho goes on to say that:

In acting, one mobilizes the whole soul. The different dimensions of the soul (whether rational or irrational, each has its different dimensions) are mobilized in the actions of a serious man, for this is because only he, being serious, constitutes his own character (free translation).<sup>5</sup>

Habituation precedes the rational deliberation of the wise man. We start to do what is right in childhood, if we have wise parents and are influenced by wise

<sup>4</sup> “Todo o problema radica exatamente na relação entre o desejar e o pensar no momento concreto da decisão. A virtude moral é uma disposição relativa à escolha/eleição (...) logo o pensamento tem que ser correto e o desejo reto para que a *proairesis* seja boa. Tem que haver coincidência entre o que a razão diz e o desejo persegue para que a *proairesis* seja séria”. [4: 97].

<sup>5</sup> “No agir, dá-se a mobilização de toda a alma. As diferentes dimensões da alma (seja a racional, seja a irracional, cada qual também com suas diferentes dimensões) mobilizam-se no agir do homem sério até porque apenas assim é que ele, enquanto sério, constitui o seu próprio caráter” [4: 97–98].

people, before understanding and reflecting on what is good and bad. “First the allogical half is habituated correctly and then this habituation is confirmed by the reflections on the logical half” [8: 49]. In childhood we become used to acting in accordance with what is right and, at the beginning, there is no deliberation over this. As we grow and face practical situations alone, we need to decide what is the right thing to do in practice [2: 1106b 5].

Habituation and previous deliberation will not solve the real problem of doing the right thing in a practical situation. Notwithstanding, the more one acts in accordance with what is right, the more habituated one becomes to acting in that way. Action on “what is, but could be otherwise” constitutes the dispositions of character. This understanding of the challenges of practical life is very realistic because it is not focused on the avoidance or the rejection of emotions in practice, but rather on the education of desire by reason in practice. The excellence of *phronesis* predisposes the *phronimos*, the person with practical wisdom, to act in one way and not in the other [2: 1106a 1–5].

Affirming that desire is persuaded by reason is quite different from saying that desire is chosen by reason. If it could be chosen rationally i.e. in a deliberate way, then there would be no need for habit as a formative practice of desire. Desire cannot be immediately and directly determined by reason. It must be prepared, cultivated and accustomed to obeying reason. If we could choose what to desire, there would be no need to educate desire and even less to maintain this education of desire through the regular practice of the virtuous actions (...) Therefore, it is not possible to choose desire deliberately. And even if it were possible, it would make no sense for Aristotelian ethics (free translation) [1: 6–7].

Good deliberation in practical life includes the emotions, and the wise man, rather than suffocating or avoiding the emotional experience in practical deliberation, should be concerned with educating desire in order to feel emotions in the right way. Aristotle states that the following advice must guide the emotional experience of the wise man in practical situations: “feel [emotions] at the right times, with reference to the right objects, towards the right people, with the right motive, and in the right way, is what is both intermediate and best, and this is characteristic of virtue” [2: 1106b 20].

However, not every action, nor every passion can have a mean between two extremes. Adultery, theft, murder, envy are examples of actions and passions that are bad in themselves [2: 1107a 9]. Once the actions are performed, they cannot be right. It is not possible to intentionally murder the right person, at the right time, and in the right way: simply to perform the action is to do something wrong [2: 1107a 15].

## 2 Law and the Excellence of *Phronesis*

Is law a strictly theoretical science? Law is a science which is called upon to solve problems arising in praxis. At all times, new cases arise which require an adequate juridical response and old legal problems may require new responses. “This is because problematic experience, as well as historical experience, tends to broaden

and to deepen itself in terms of demanding new questions and other meanings for its answers”.<sup>6</sup>

Each legal case is always unique and unrepeatable, and the judicial response should essentially take this into consideration so as to offer the most appropriate response. However, what should we understand about “the law”? It is crucial to answer this question in order to move forward and reflect on the legal decision-making process and the relationship between the emotions and reason in adjudication.

In this essay, as earlier mentioned, the jurisprudential understanding of law is assumed. According to Castanheira Neves, put briefly, the judicial system is open and it consists of principles (positive, suprapositive and transpositive), norms, jurisprudence and doctrine [12: 155–157]. Between the problematic intentionality of the legal system and the problematic intentionality of the concrete legal case, a circular relationship is established, which leads us to affirm that law is an open and incomplete task. “The intentionality of the question influences the intentionality of the answer, and at the same time, the intentionality of the answer influences the very intentionality of the question”(free translation).<sup>7</sup>

The judge cannot excuse himself from providing an adequate response to legal cases. The legal answer is not previously defined in the legal system but is rather the result of a dialectical process in which the judge plays a crucial role. The methodological dimension of the practical realization of law aims to establish the conditions, assumptions and requirements of this methodological exercise. However, it does not solve the practical realization of law challenges on its own.

## 2.1 The Dialectical Relationship Between Legal System and Legal Cases, and the Role of *Phronesis*

According to Castanheira Neves, the realization of law is composed of two dialectically intertwined dimensions: the legal system and the juridically relevant problem-*case*.

The meaning of the legal system is not static. Despite existing knowledge available on positive norms, precedents, doctrines and jurisprudence, a legal problem is always “the expression of an obstacle, of perplexity, of a doubt born in the relation between an intentional presupposition, with its specific requirements of fulfillment, and a real situation that resists or is opaque to that fulfillment”.<sup>8</sup> The normativity of

<sup>6</sup> “Isto porque a experiência problemática, enquanto também experiência histórica, vem sempre a alargar-se e a aprofundar-se, em termos de exigir novas perguntas (problemas) e outro sentido para as respostas” [13: 157].

<sup>7</sup> “A intencionalidade da pergunta já influencia a intencionalidade da resposta, ao mesmo tempo em que a intencionalidade da resposta já influencia a própria intencionalidade da pergunta” [15: 443].

<sup>8</sup> According to Castanheira Neves, “um problema é sempre a expressão de um obstáculo, de uma perplexidade, de uma dúvida nascida na relação entre uma intencional pressuposição, com as suas exigências específicas de cumprimento, e uma situação real que resiste ou é opaca a esse cumprimento” [13: 159–160].

the legal system<sup>9</sup> is an open *constituens* due to the aim to overcome the legal problems in a practical-normative way<sup>10</sup> (the result of which could be the resignification of the legal system) and due to its other constitutive dimension, axiological-normative validity.

If we assume a concrete case to be the methodological *prius* of the practical realization of law, and the axiological dimension of law to be “the validity” (the ensemble of foundations and warrants) which we simultaneously “assume and problematize in the very realization of law”,<sup>11</sup> then we are able to conclude that legal adjudication demands more than scientific knowledge and it should be treated as a judicative decision.<sup>12</sup> This leads us to assert that legal adjudication requires the excellence of Aristotle’s *phronesis* and also some virtues.

In judgment there is a decision, even though it is desirable that the dimension of the *voluntas* into *ratio*<sup>13</sup> should be reversed. There are certainly relevant differences between the judge, who decides a case, and the classic moral agent (making virtuous decisions concerning his/her own life). The process of deciding a case, however, is not ruled by fixed norms and principles in theoretical terms. “Since a judge has to reflect on what works and what does not in legal interpretation and application, the professional quality of *phronesis* is crucial” [7: 8]. The judge is engaged in the task of having to “bridge the gap between the generality of the rule and the particularity of the situation” [7: 8]. The *phronimos* and virtuous judge is concerned about good practical decisions in the future (*prohairesis*) which will impact someone else’s life, her own life and also the community’s life.

However, are judges properly prepared for practical engagement with the challenges of law by the jurisprudentialist approach and Aristotle’s theory of practical reason?

<sup>9</sup> When we talk about the “legal system”, we are not talking about a closed system of normativity, but an open one which is largely being constituted through the questioning of legal cases. Certainly the legal system begins by enclosing and predetermining the field and the type of problems. Nevertheless, this statement does not necessarily lead us to the conclusion that “legal issues” are just the problems and facts previously assumed by the legal system as legal problems. The stabilized normativity reflects the intentional assimilation of a given concrete, unique and unrepeatable legal experience. See [13: 158].

<sup>10</sup> The meaning of the legal system is not constituted in advance. The normative dimension of the legal system is immediately intertwined with the dimension of the concrete legal problem. Between the legal system and the legal problem a dialectical relationship is established. You could say that normativity is provisionally stabilized due to the questions or queries addressed by the concrete problem to the legal system. However, new problems that have arisen in the world of life can pose new questions or reveal the inadequacy of old ones. New problems can bring new intentions (valuations, principles) that may require the relativization of the previously established intentions of the legal system. See [13: 158].

<sup>11</sup> “O direito (...) é uma validade a assumir e a problematizar na sua realização” [12: 396].

<sup>12</sup> Aroso Linhares clarifies the distinction between a decision and judicative decision. The latter should be assumed, in jurisprudential terms, as “an adequate treatment-assimilation of a concrete controversy which is also and inseparably a unique realization of systemic intentions and claims, whose experience is permanently renewed” [9: 27].

<sup>13</sup> When the legal problem interrogates the legal system unanswered, the relationship between the legal system and the legal case turns into an aporetic one. The legal system ceases to be the expression of an available hypothetical solution to reveal itself as an uncomplete task. By the questioning of a situated legal case, as an aporetic experience—because the practical queries and problems posed by the concrete legal case have not yet been absorbed by a fundamental systematic-dogmatic exercise. [13: 158].

We understand that judges would be more realistically prepared to judge if, among other things: (a) the decision-making dimension of the judicial deliberation process was assumed, rather than artificially eliminated by judicial methods and judicial procedures—jurisprudentialism proposes a methodological approach which does not aim to eliminate (because it is impossible) the decision-making dimension of the judicial deliberative process, reverting a decision into a *ratio*, as we stated before; (b) they were allowed to recognize the presence of the emotions in the judicial decision-making process and that the best way to deal with the emotions is to educate them in practice. The education of the emotions is an important part of a “virtuous” judicial process (“acting and responding as a virtuous judge (...) requires a set of practices that adequately engage dispositions, affections, emotions and demands for concrete virtuous behavior” [5: 244]).

The only way to be a virtuous person is to be confronted with reality. We can, however, deal with reality in very different ways. Since childhood we have learned how to deal with our emotions, first by imitating our parents and then by deciding in the practical situations of life. Terry Maroney’s emotion regulation model for judges (anchored in the Aristotelian advice on the emotions [2: 1106b 20]) presents strong arguments in favor of some emotional regulation strategies rather than others in the context of judicial practice. The emotional regulation model itself does not aim to make an aspirant-judge judicially virtuous,<sup>14</sup> but it is evident that the model can help judges who are not prudent enough to keep in touch with their sentiments and feelings, and can help them to evaluate their emotions when making a decision in court. Terry Maroney’s model does not certainly solve the problem of the education of desire and therefore, does not guarantee that judges will experience trustworthy emotions. This being said, however, it can be understood that the model can be a valuable resource for ensuring that judges are not blinded by passions, and it is also of value for judges who have not been prudent, but would like to be.

If we accept Aristotle’s notion that “our actions are also responsible for our coming to have dispositions of a certain sort” [2: 1103b30–32], and that our emotions can be considered by reason in practice then we are lead to the conclusion that the daily practice of Terry Maroney’s judicial emotion regulation model can be important for the development of judges’ dispositions. The daily practice of engagement strategies, can, as a rule, be valuable for judges to feel emotions in the right way, toward the right person and at the right time when facing the challenges of adjudication in general.

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<sup>14</sup> The judicial emotional regulation model proposed by Terry Maroney is explicitly related to the Aristotle’s advice on the emotions, although the author does not explicitly affirm that the judicial emotion regulation model aims to make judges more judicially virtuous.



### 3 Terry Maroney's Model for Judicial Emotion Regulation

A model for judicial emotion regulation must recognize the specific challenges of adjudication.<sup>15</sup> It should integrate regulatory strategies which tend to improve the judicial decision-making process and avoid those which tend to impair it. A proposed model should be accessible to ordinary judges in their daily professional life and also be compatible with the essence of the judicial function.<sup>16</sup>

As a general rule, the judge cannot avoid the emotional stimulus which arises during the trial... when for example, he has good reasons to suspect that the lawyer or the public prosecutor have presented a falsified document, or when he analyses an expert assessment concerning a cruel murder case, or when he hears the testimony of a victim of sexual abuse, or even when he realizes that the bankruptcy estate will not be sufficient... As a rule, a judge cannot employ emotional avoidance strategies, such as thinking about another subject or reading a non-related book.<sup>17</sup> The judge must pay attention to what is going on in the judicial process.<sup>18</sup> "As a general matter, avoidance is unavailable to judges because its indulgence is incompatible with the core requirements of their work" [10: 1530].

Emotional avoidance is traditionally recommended to judges. This is the reason why judicial emotion suppression strategies such as avoiding an emotional stimulus, behavioral suppression, the anticipatory suppression of emotional experience, denial and repression, seem to be the most appropriate regarding judicial emotion regulation strategies. However, as Maroney states, they require effort and entail many of the same cognition and memory costs.<sup>19</sup>

Behavioral suppression can be necessary in some justified cases.<sup>20</sup> Due to its side effects on cognition and memory, it must be adopted as a supplementary strategy. According to Maroney, the model for emotion judicial regulation in a court must mainly assume engagement strategies, such as cognitive reappraisal (anticipatory

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<sup>15</sup> "In determining the relative merits of emotion regulation strategies, context is paramount" [10: 1528].

<sup>16</sup> "A viable model of judicial emotion regulation (...) must be achievable (...) It must be accessible to ordinary judges in the ordinary course of their work, and it must, at its core, be compatible with the essence of the judicial function" [10: 1509].

<sup>17</sup> "Perhaps the most effective and permissible avoidance strategy would be to avoid situations the judge routinely finds most challenging by thoughtfully choosing the court in which she works (...) Judges certainly are free to make such choices, and they should do so if they find themselves better suited to certain types of assignments. But this is only a marginal strategy. Many judges work in courts of general jurisdiction and have virtually no control over what types of cases land in their courtrooms. Even those who work in specialized courts hear a wide range of cases that will provoke an equally wide range of emotions" [10: 1529–1530].

<sup>18</sup> "While distraction is effective in blocking out emotional stimuli, and thus interrupting the progression of the associated emotion, it is equally effective in blocking out much else that is going on. Not surprisingly, distracted persons reliably demonstrate "impoverished recall" of the situations from which they are distracting themselves" [10: 1529].

<sup>19</sup> "Each of these strategies is individually costly, and collectively they are undesirable, even dangerous" [10: 1532].

<sup>20</sup> See the videos [17, 18].

and reactive ones),<sup>21</sup> emotional introspection<sup>22</sup> and emotional disclosure.<sup>23</sup> In some justified situations, as an exception, but never a rule, behavioral suppression strategy can be desirable.<sup>24</sup>

## 4 Final Notes

Legal adjudication is a practical task. If we accept Castanheira Neves's jurisprudentialism, we will be urged to look to the law as a task which is performed in practice. Resolving a legal problem means much more than offering a legal answer to the legal case. It requires judges who are really committed to practical deliberation in the process of questioning in a legal case, which involves emotions.

The core of law realization is the legal case (assumed as a methodological *prius*) and the adequate answer for this is not available in the legal system, since it is a human task. By enacting this task, which includes, at its core, judgment and choice, the judge can develop and improve the excellence of *phronesis* and the virtues which are fundamental for practical matters and for law, mainly as a practical-normative issue.

<sup>21</sup> "Antecedent reappraisal involves pre-commitment to a set of beliefs or attitudes designed to channel one's reaction to an anticipated emotional stimulus in the desired direction. For example, the woman consistently angered by her father-in-law might consider whether there is another way to frame his behavior. She may conclude that her father-in-law "talks only about himself because he doesn't have many friends," meaning that when he starts talking about himself his behavior will elicit sympathy rather than anger (...) Emotions also may be cognitively reframed once they are underway. Such reactive reappraisal "involves attending to the emotional situation but changing its emotional meaning," by changing either one's relationship to it—"I am the adult here"—or one's beliefs about it—"my son is not trying to make me crazy, he is just being a typical teenager" [10: 1505].

<sup>22</sup> "Introspection involves recognition of the emotion and focused attention to its particulars (...) the Honorable Alex Kozinski (...) provide an example of how judicial introspection might function. When Chief Judge Kozinski learned that the prosecutor had lied, he did not just notice that he was angry; he sought to determine why he was angry and to decide whether those reasons justified or even compelled some judicial response. Three reasons emerged. First, Chief Judge Kozinski was angry on behalf of the public, whose trust the prosecutor had violated. Second, he was angry on behalf of the defendant, whose life had been affected. Finally, he was angry on his own behalf, because the prosecutor had disrespected him, his authority, and the rules of his courtroom. Upon further reflection, he determined that his feelings of being personally affronted were relevant, for a judge must be able to rely on the good faith of litigants. But he also assessed that this reason to be angry was relatively less important to other people. He decided to base his response primarily on vindicating the interests of the public and the defendant and to use his anger as to all three reasons as a metric for the outrageousness of the conduct. The level of self-interrogation modeled by Chief Judge Kozinski in this instance allows a judge to distinguish between cases in which an emotion rightly informs the legal determination and those in which it might instead lead to an intemperate or inaccurate reaction" [10: 1522–1523].

<sup>23</sup> "Disclosure "entails a description, in a socially shared language, of an emotional episode to some addressee by the person who experienced it. "This often takes the form of talking about the experience, but can include writing, singing, producing artwork, or any other form of expressive activity. Disclosure may be designed to engage others in the process of cognitive reappraisal, as when others help pick apart the experience and find ways to reframe it" [10: 1505].

<sup>24</sup> "Behavioral suppression sometimes—but only sometimes—is so necessary as to justify its costs" [10: 1528].

Terry Maroney's model for judicial emotion regulation offers strong reasons for adopting some emotion regulation strategies rather than others in the practical realization of law, and in the judge's daily professional challenges as well. The daily practice of the model can help judges: (a) to reach dispositions of a certain sort, which can alter the way legal cases are perceived; (b) to deal, in an adequate way, with parties; and (c) to decide legal cases. As we have seen, the emotional regulation model does not solve the problem of educating desire or the problem of experiencing trusted emotions, but it is evident that the model can be a valuable resource for preventing judges from being the victims of their own passions, as well as helping responsible judges get in touch with their emotions, review those emotions, and commence the long process of the education of desire. After all, the emotions are causes that can alter the way a person sees the facts of life, and Terry Maroney's judicial emotion regulation model can influence the way judges deal with their emotions and their impact on the judicial deliberation process.

If the practical realization of law is mainly a practical task, and emotions, feelings and passions are related to the practical sphere, then Terry Maroney's model for judicial emotion regulation can offer valuable strategies for feeling emotions at the right time, with reference to the right objects, towards the right people, with the right motive, and in the right way. This does not resolve the challenge of the education of desire, but it could well be an important step towards achieving this aim.

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