

# THE LAW AS EMOTION REGULATION

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## ABSTRACT

*This article comments briefly on a presentation by Kathryn Abrams, exploring emotion and family law.<sup>1</sup> In addition, it presents five observations about emotion and its relevance to family law from the perspective of research in psychology. These observations concern the relationship between cognition and emotion. First, the specific emotions that people experience in legal disputes are determined by their focus of attention. Second, there are three possible kinds of focus, including a focus on outcomes, actions, or objects, and each elicits a different family of emotions. Third, courts properly focus on the outcomes and actions of relevant parties, but not on persons as objects. A focus on blameworthy actions of persons tends to elicit anger, whereas a focus on the unappealing aspects of persons themselves may elicit disgust. Fourth, emotions involve an embodied commitment to a given interpretation of a situation. Fifth, although emotion and legal reasoning may seem at odds, specific emotions and specific laws may serve similar functions in that both the cognitive content of emotions and the propositional content of laws serve to regulate affective reactions.*

## CONTENTS

Abstract .....	334
I. Introduction.....	334
II. The Emotions of Family Conflict.....	336
III. From Outcomes to Objects.....	337
IV. Anger vs. Disgust.....	338
V. Actors As Objects .....	340
VI. Emotions as Commitments .....	341
VII. Law and Emotion .....	344

## I. INTRODUCTION

Emotions are central in family legal disputes, a fact that would seem to invite considerations of emotion in analyses of cases, proceedings, and outcomes. Professor Abrams, however, in her illuminating paper<sup>2</sup>, makes clear that there are also barriers to the inclusion of emotion in analyses of family law. One of these is that family law tends to be seen as

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<sup>1</sup> This article is based on a presentation given at the Center for Children, Families, and the Law, September 2008 Conference at the University of Virginia School of Law.

<sup>2</sup> Kathryn Abrams, *Barriers and Boundaries: Exploring Emotion in the Law of the Family*, 16 VA. J. SOC. POL'Y & LAW 301 (2009).

women's work, so that an emphasis on feelings and emotion may jeopardize a scholar's reputation for objectivity and tough mindedness. Related concerns have long kept work in other realms of inquiry emotion free. But there are signs that fears of "emotionalism" are waning. An increasing number of books have recently appeared on emotional aspects of fields as diverse as economics, history, and literary criticism.<sup>3</sup>

Beyond scholarly concerns about objectivity, however, there are also substantive barriers to including emotion in analyses of family law. Professor Abrams notes that people may see as intrusive any examination by courts into the intimacy of families, especially for the purpose of regulating their feelings. Whereas state intervention in crime seems appropriate, the emotions of family life are seen as private.

In view of such obstacles to emotion in legal analyses, Professor Abrams suggests that psychology might be a critical ally. In that spirit, I offer some relevant observations about emotion from the perspective of psychology. Fundamental to this perspective is the idea that a person's momentary focus of attention controls which of the many possible emotions he will experience. In addition, I make five related claims:

1. Variations in the emotions that arise in legal disputes reflect corresponding variations in people's focus of attention.
2. There are three different kinds of emotions that reflect three different kinds of focus, including a focus on outcomes, actions, or objects.
3. The court properly focuses mainly on outcomes and actions, whereas a focus on the attributes of persons is more problematic. Emotions of distress, frustration, fear, and sadness reflect undesirable outcomes, and reproach indignation, outrage, and anger reflect blameworthy actions. Less appropriate are emotions of dislike, contempt, or disgust, all of which betray a focus on persons as objects.
4. Emotions are an embodied commitment to a given interpretation of a situation. As such, they can interfere with a full consideration of relevant facts. Moreover, people instinctively trust their feelings. Despite being self-generated, emotional experiences are treated like sensory experience, with the result that feeling is believing.
5. Although people have traditionally seen emotion as the enemy of reason, I suggest that emotions and laws are similar in their function and dynamics. In addition, one function of the law appears to be the regulation of emotion.

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<sup>3</sup> Scott McLemee, *Getting Emotion*, CHRON. OF HIGHER EDUC., Feb. 21, 2004, at A14, A14.

## II. THE EMOTIONS OF FAMILY CONFLICT

Participants in divorce and custody hearings may have feelings of sadness, despair, anxiety, fear, dread, disappointment, resentment, and jealousy, among other emotions. In addition, they may feel hope and anticipate relief from the stresses and strains of living in fractured relationships. These various emotions all have one thing in common -- they are about *outcomes*: They reflect a focus on desirable or undesirable outcomes of events. Outcomes are experienced as desirable or undesirable when seen as affecting one's goals and plans.<sup>4</sup> Events are good when they seem to promote outcomes that one wants or when they prevent outcomes that one wants to avoid.

In addition to outcome-relevant emotions, the court may also see guilt, shame, and embarrassment, or reproach, outrage, anger, and indignation. These emotions all have one thing in common -- they are about *actions*. They involve different kinds of disapproval of blameworthy actions, either one's own or those of partners and family members. Actions are blameworthy to the extent that they violate moral or other standards of behavior.

Finally, in addition to outcome and action-based emotions, one might encounter contempt, dislike, hate, or disgust in court. In the domain of family law, these emotions arise in situations that may initially have elicited love, liking, and attachment. These emotions are not about outcomes or actions. Rather, they are responses to people as objects or entities of perception. People who once seemed appealing, likeable, and worthy of love, may now seem unappealing and may be disliked or hated and perhaps even seen as disgusting or offensive.

Thus, I am claiming that emotions, including those that arise in family court proceedings, depend on one's focus of attention, and that there are three distinct kinds of focus: outcomes, actions, and objects. Thus, a woman who focuses on outcomes for her child in the custody of her ex-husband may feel concern or anguish about the child's happiness and wellbeing. If she focuses not on outcomes, but on actions, she may feel shame or guilt about her own actions or reproach, anger, or indignation about the actions of her spouse. And if she focuses not on outcomes or actions, but on individuals (the child, the spouse, the spouse's new partner, other family members) she may feel love, hate, contempt, disliking, or disgust. These possibilities illustrate how different emotions arise from different points of focus. Of course, the life-changing events in family court can lead to a focus that changes rapidly. Hence, the people involved may experience multiple, even conflicting and therefore confusing emotions.

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<sup>4</sup> ANDREW ORTONOY ET AL., THE COGNITIVE STRUCTURE OF EMOTIONS (1988).

## III. FROM OUTCOMES TO OBJECTS

Which emotions belong in family court? Should we be disgusted at a deadbeat dad or a neglectful mother, or should we be indignant and reproachful, or perhaps angry? Emotionally speaking, the scenarios that end up in court often begin with a focus on the undesirable outcomes but eventually involve a focus on persons as distasteful objects, as described below.

Divorce and custody hearings concern important outcomes with implications for people's goals and plans. A focus on the undesirable outcomes that have led to the courts may elicit a subset of emotions that includes becoming unhappy, disappointed, frustrated, sad, or fearful. But distress over such negative outcomes also motivates a search for causes, which often leads individuals to blame someone for the outcomes. Thus, a focus on the undesirability of outcomes may shift to a focus on the blameworthiness of actions. Such a change of focus necessarily changes the emotions that are triggered. Attention to the blameworthy actions of a spouse or other family members leads to feeling reproachful, indignant, or angry, or if attention is self-directed, to feeling guilty, ashamed, or angry at oneself.

But by the time spouses end up in court, the shift of focus from undesirable outcomes to blameworthy actions may continue, resulting in a focus on the unappealing attributes of the estranged spouses, lovers, and family members. That is, individuals may come to see their bad outcomes not simply as a result of blameworthy actions, but as due to irremediable flaws in the other person as an object, perhaps even as a hated entity, as something inherently unappealing, disgusting, or worthy of contempt. Thus, a focus on undesirable outcomes often morphs into attention to blameworthy actions, and finally to dislikable character traits. And, each change of focus necessarily changes the emotions that are experienced.

Of the three possible points of focus proposed by the emotion theory to which we have alluded<sup>5</sup>, the most appropriate focus for the court is on actions, as it is the business of the courts to establish blame or liability. A less appropriate focus of attention for the court would be on the defendant as an object of judgment, leading perhaps to an emotion of dislike, a potential contaminant of the judgment process.

In addition, especially in civil cases, the court also focuses on outcomes. Thus, in order to set compensatory damages, there must be some accounting of the degree to which the outcomes in question were undesirable. In accordance with such a division, it would seem inappropriate for judgments of blameworthiness or guilt to influence

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<sup>5</sup> *Id.*

judgments of the undesirability of outcomes. However, research shows that people do tend to conflate issues of blame or liability on the one hand with legally distinct questions of damages on the other. Instead of arriving first at fault and then separately at the undesirability of outcomes, as prescribed in the law, research shows that people resort to more holistic judgmental processes.<sup>6</sup>

It is worth noting, however, that there is something emotionally natural about this conflation of action and outcome focus. Indeed, it is the basis for the emotion of anger, which arises when one focuses on both the undesirability of outcomes and the blameworthiness of the action that was responsible. Just as the intensity of anger is found to reflect such a joint focus, punishment at the hands of the court also appears to reflect a joint consideration of how bad an outcome was and how blameworthy relevant actions were.

#### IV. ANGER VS. DISGUST

Less appropriate than such a mapping between anger and legal judgment, however, is a mapping between disgust and such judgment. Some legal thinkers have proposed that justice might be served by the elicitation of disgust at certain crimes, such as hate crimes.<sup>7</sup> Professors Abrams<sup>8</sup> and Nussbaum<sup>9</sup> have countered with cogent reasons for thinking that the unleashing of disgust in the courtroom might be short-sighted. Emotion theory leads to a similar caution, at least insofar as the disgust takes persons as its object. Disgust signifies something distasteful, and whereas the act of committing hate crimes is distasteful, that is perhaps not the reason for punishment. The function of the law is presumably not to regulate behavior that we find distasteful, but rather behavior that is wrong; behavior that fails to meet moral standards.

But people do use distaste as a basis for moral indignation. Haidt has proposed that people judge violations of moral standards intuitively, and that one intuitive basis is the emotion of disgust.<sup>10</sup> Empirically too, we have found that moral judgments are potentiated by feelings of disgust,

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<sup>6</sup> FEIGENSON ET AL., *Effect of Blameworthiness and Outcome Severity on Attributions of Responsibility and Damage Awards in Comparative Negligence Cases*, 21 L. & HUM. BEHAV. 597, 608 (1997).

<sup>7</sup> WILLIAM IAN MILLER, *THE ANATOMY OF DISGUST* (1998).

<sup>8</sup> Kathryn Abrams, *Fighting Fire with Fire: Rethinking the Role of Disgust in Hate Crimes*, 90 CAL. L. REV. 1421, 1421-24 (2002).

<sup>9</sup> MARTHA C. NUSSBAUM, *Sewers of Vice: Disgust, Bodies, and the Law*, in *THE PASSIONS OF LAW* 19 (Susan A. Bandes ed., 1999).

<sup>10</sup> Jonathan Haidt, *The Emotional Dog and its Rational Tail: A Social Institutionist Approach to Moral Judgment*, 108 PSYCHOL. REV. 814, 817 (2001).

even when the source of the disgust is irrelevant to the action judged.<sup>11</sup> Thus, disgust serves as a powerful proxy for evidence of immoral action. But the basis of disgust, according to emotion theory, is distaste, and it is surely important for justice that legal judgments not simply reflect taste.

Abrams and Nussbaum have proposed that moral outrage or indignation is more appropriate emotional responses in a legal context, and our emotion theory concurs.<sup>12</sup> Crimes, including hate crimes, often involve acts that violate important moral standards, and, as indicated earlier, a focus on such violations elicits reproach, outrage, and indignation.

A central implication of focusing on persons rather than actions is that when someone's actions are blameworthy, then embarrassment, apology, and forgiveness offer some opportunity to rebalance the scale. But focusing on another person as an unappealing object does not allow such redemption. Whereas anger toward someone indicates a focus on their actions, disgust toward someone indicates a focus on the person himself. Disgust motivates us to expel that person from society as a social toxin. Disgust, contempt, and hate are all emotions elicited by a focus on the unappealing attributes of objects.<sup>13</sup>

Of course, a focus in the courtroom on the individual rather than his actions as flawed may be encouraged by the defense when pleading insanity and by the prosecution where capital punishment is sought. In the latter case, the defense generally calls character witnesses in order to prevent the judge and jury from coming to see the defendant as an object with unappealing attributes, and hence as disgusting and fit to be eliminated. The issue then is often whether the defendant is merely guilty of blameworthy actions or whether the defendant is an evil, distasteful person. Far better to have judges and juries feel angry and reproachful, than to have them feel disgust or contempt.

An example comes from a case of vehicular homicide in Iowa in which a man speeding in a congested area crashed into another car resulting in the death of a young child. The judge, after expressing disgust at the defendant, ignored a prior plea bargain agreement as well as the recommendations of the State and various experts for treatment and leniency, sentencing the defendant to for a long prison term.

In summary, the claim is that disgust in the courtroom flows from a focus on the defendant as a person, whereas anger implicates only his action and not his nature. Moreover, the larger claim is that specific

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<sup>11</sup> Simone Schnall et al., *Disgust as Embodied Moral Judgment*, 34 PERSONALITY & SOC. PSYCHOL. BULL. 1096, 1100 (2008).

<sup>12</sup> See Abrams, *supra* note 7; NUSSBAUM, *supra* note 8.

<sup>13</sup> See ORTONY, *supra* note 3.

emotions follow from specific points of focus, and this fact should lead to efforts to regulate the emotions that arise in the courtroom by directing the attention of litigants, judges, and juries appropriately. In addition, these same principles allow one to divine from the emotions they display the focus involved in people's innermost thoughts.

The fact that emotions are reliable indicators of thought is used by psychotherapists, who are routinely trained to pay more attention to the emotions of their clients than to their words. As Professor Emery notes in his work with men undergoing divorce, anger is often an obstacle to therapeutic progress, because of its exclusive focus on blaming someone. Husbands especially find that experiencing anger is easier than experiencing hurt feelings or sadness. But the moral high ground of anger tends to prevent the kind of grieving and self-examination that can be useful in the divorce process. It is not clear how the court might use such facts in a constructive fashion, but in relevant instances, mediators and therapists sometimes encourage individuals to explore alternative narratives that focus on outcomes, which should lead to sadness, disappointment, and hurt feelings, rather than focusing on actions, which leads to anger.

#### V. ACTORS AS OBJECTS

In the foregoing, I argued for the virtues of focusing on outcomes and actions rather than on the actor him or herself. But, as it happens, people seem to have a strong tendency to see the causes of people's behavior as lying within their character or personality. In social psychology, a phenomenon known as the Fundamental Attribution Error illustrates the problem.<sup>14</sup> When asked why someone acted in a particular way, observers tend to find explanations within the person rather than in the demands of the situation, even when strong situational pressures are evident.

Research on lie detection provides supporting data. Even when the cues necessary for detecting lies are available, observers are generally quite poor at doing so. Instead of seeking to detect lies, people appear to be seeking liars -- focusing on persons rather than on their actions. When they look into other people's faces, they see not evidence of lying or truth-telling, but of whether or not the person is honest.<sup>15</sup>

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<sup>14</sup> LEE ROSS, *The Intuitive Psychologist and His Shortcomings: Distortions in the Attribution Process*, in 10 *ADVANCES IN EXPERIMENTAL SOC. PSYCHOL.* 173 (Leonard Berkowitz ed., 1977).

<sup>15</sup> Maureen O'Sullivan, *The Fundamental Attribution Error in Detecting Deception: The Boy-Who-Cried-Wolf Effect*, 29 *PERSONALITY AND SOC. PSYCHOL. BULL.* 1316 (2003).

What is the basis of this tendency? Perhaps it is simply more efficient to focus on persons as sources of behavior rather than on individual behaviors. Since most people tell the truth most of the time, suffering a few lies may be more adaptive than trying to assess the truth value of each statement that each person makes. Hence, trying to detect cheaters, rather than instances of cheating, may be a labor saving strategy. By moving the decision-point one step back (from the action to the person), one can then believe people instinctively (with all its attendant advantages) and simply treat dishonest individuals as non-persons. Once labeled as liars, they can be rejected from the community, so that one need not interact with them at all.

The social psychologist, David Pizarro<sup>16</sup> has come to related conclusions in his studies of moral judgment. He states that:

One insight I believe has been missed in a lot of work on moral responsibility is that individuals seem to be making global character judgments about an individual rather than analyzing specific acts. . . . individuals encode people as ‘good people’ or ‘bad people’, then use this judgment to infer such things as control, intentionality, and freedom.

In summary, this section asserted that emotions reflect people’s current mental focus. Thus, anger toward defendants indicates a focus on the blameworthiness of their actions along with the undesirability of the outcomes they caused. By contrast, disgust at defendants signals a focus on the unappealingness of them as persons, a focus inconsistent with the primary mission of the court. But because both theory and evidence suggest a pervasive readiness to adopt a focus on persons rather than actions, disgust might often arise in legal disputes, regardless of its appropriateness.

## VI. EMOTIONS AS COMMITMENTS

Emotions are embodied commitments to particular interpretations of a situation.<sup>17</sup> Finding oneself angry already commits one to an implicit perception of blame and control, because that is an essential part of what we mean by anger. Indeed, the realization that a putative agent had no control not only tends to sap one’s anger, but may even make one embarrassed at having been angry in the first place. Thus, the assignment of blame requires first establishing that a person had control over the actions that were responsible for the undesirable outcomes. But some

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<sup>16</sup> Personal Communication (Nov. 6, 2008) (on file with author).

<sup>17</sup> GERALD L. CLORE & KAREN GASPER, *Feeling is Believing: Some Affective Influences on Belief*, in EMOTIONS AND BELIEFS: HOW DO EMOTIONS INFLUENCE BELIEF 10 (Nico H. Frijda, Antony S. R. Manstead & Sascha Bem eds., 2000).



recent research challenges such a model of blame assignment.<sup>18</sup> Sometimes judgments of blame come first and determine subsequent judgments of control and responsibility.<sup>19</sup> In relevant research, when a person was described as having sexually harassed a co-worker, blame assignment was found to be mitigated after information was presented about a brain tumor preventing the person from controlling his behavior. By contrast, when the person was described as having sexually harassed his elementary school students instead of a co-worker, he was then automatically seen as responsible, and subsequently learning about his brain tumor did not diminish judgments of his responsibility.

What are the implications of such results? They would seem to threaten the standard model of how we make legal decisions, but do they threaten the validity of such decisions? If the emotion of anger accurately implicates an actor's responsibility, then the fact that anger was elicited before individuals were aware of any judgment of responsibility may be unimportant. However, having a legal decision furthered by anger would threaten the validity of the decision if the anger came from an irrelevant source and were misattributed to the act to be judged.

Much of our research is guided by the affect-as-information hypothesis, which holds that the cognitive influences of affect depend not on affect per se, but on the information conveyed by affect.<sup>20</sup> Unadorned positive and negative affect conveys information simply that something is good or bad in some way, whereas the information from specific emotions is more precise. As we have indicated, some emotions indicate the desirability of outcomes, some the praise or blameworthiness of actions, and some the appeal of objects.<sup>21</sup> But specific emotions also carry quite specific information. Thus, sadness reflects one's own undesirable outcome, whereas pity is occasioned by someone else's. Fear is elicited by the prospect of an undesirable outcome, whereas relief occurs when such outcomes are avoided. The point is that specific emotions reflect specific kinds of situations, and the particulars of such situations sharpen the meaning and impact of the emotion. Their influence on thought and action can therefore be quite precise, and of course the more constrained the meaning of the emotion, the less likely it is to be misattributed.

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<sup>18</sup> David A. Pizarro et al., *Casual Deviance and the Attribution of Moral Responsibility*, 39 J. EXPERIMENTAL SOC. PSYCHOL. 653, 653-659 (2003).

<sup>19</sup> Yoel Inbar et al., 9 *Disgust Sensitivity Predicts Intuitive Disapproval of Gays*, EMOTION (forthcoming).

<sup>20</sup> Norbert Schwarz & Norbert L. Clore, *Mood, Misattribution, and Judgments of Well-being: Informative and Directive Functions of Affective States*, 45 J. PERSONALITY AND SOC. PSYCHOL. 513, 515-25 (1983).

<sup>21</sup> See Ortony, *supra* note 3.

Evidence for this hypothesis (that influences on judgment are due to the information value of affect rather than to affect per se) can be seen in mock trial research in which accounting students served as jurors in a bankruptcy case concerning the alleged negligence of an accounting firm.<sup>22</sup> Jurors experienced various levels of distress as a function of various levels of vivid testimony about the unfortunate consequences of the bankruptcy for investors, employees, and the community in which the company was located. The results showed that the more emotionally arousing the description of the bankruptcy, the more likely were jurors to find the accounting firm negligent. However, some jurors had been assigned to a condition in which they made pre-trial ratings of their feelings of anxiety and distress about having to make the difficult decision. After this alternative possible source for their feelings of distress was made salient, these jurors tended not to judge the accounting firm as negligent. The experiment thus found that the impact of affect on juror judgment is not due to the affect per se (since all jurors experienced the same level of distress), but to the situated information conveyed by their distress (indicating negligence vs. indicating their anxiety about rendering a judgment).

In addition to its impact on judgment, affect and emotion also help regulate cognitive processing. Thus, in situations involving problem solving, positive affect may imply that one's expectations and assumptions are correct, whereas negative affect indicates some kind of problem. One result of this apparent feedback about one's thinking is that in good moods people tend to focus globally on the big picture, whereas in sad or anxious moods, people tend to focus locally on details.<sup>23</sup> The relevance of such laboratory results was evident in research on the degree to which jurors were able to spot inconsistencies in testimony. Congruent with the laboratory results, sad moods resulted in more accurate detection of testimonial inconsistencies by mock jurors. Such results can either be seen as potential sources of bias or simply as evidence of the embodied nature of thought and the pivotal role of intuition and emotion in guiding thought.

In summary, in this section we noted that emotions are embodied commitments to a belief that the facts of the current situation are those that typify that kind of emotion. Thus, fear implies the existence of threat and feeling indignant implies blameworthy action. By and large I believe that this system tends to be accurate and adaptive. However, the fact that emotions are reliable representations of people's perception of their situation is no guarantee of the validity of their perception, because emotion also influences perception. Thus, for example, pre-existing

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<sup>22</sup> Kathryn Kadous, *Improving Jurors' Evaluations of Auditors in Negligence Cases*, 18 CONTEMP. ACCT. RES. 425, 425-35 (2001).

<sup>23</sup> Gasper & Clore, *supra* note 15.

affective conditions of depression or anxiety are likely to lead to selectivity in people's cognitions and perceptions of their situation. As a result, even though emotion may faithfully reflect the perceived situation, those perceptions may be partly self-generated.

## VII. LAW AND EMOTION

Traditionally, emotion has been seen as a blind force and law as a rational regulator that enables humanity to transcend itself. This account is generally traced to Aeschylus (525-456 BC), the father of Greek tragedies. In the *Oresteia*, Athena controls the Furies' thirst for revenge by bringing in a jury to decide impartially after listening to evidence with a rational mind. This view portrays the function of law as taming the blind desire for vengeance. The Furies, symbolizing the emotions, are ultimately enlisted to serve this new model of justice, and we are led to conclude that emotion can be subdued and made to serve the law.

In this section, I suggest a related, but slightly different relationship between law and emotion. The proposal is not about rationality (which is not a term in active use in psychology). Instead, we speak of cognition, which carries no implications of rationality or irrationality. I suggest that law and emotion are analogous in structure and function. Both are a meeting ground for affect and cognition, and in both, cognitions shape and focus affective reactions. Of course, emotions, once elicited can be difficult to control, because they arise more or less automatically in relevant situations, but research shows that emotions can be regulated successfully when interpretations of the situation can be changed.<sup>24</sup> Thus, one's anger at another's thoughtlessness may vanish when the situation is transformed by hearing the perspective of the other. Despite the fact that we think of emotions as automatic and uncontrollable and laws as intentional and deliberative, law too can change our interpretations of what perceived as acceptable and unacceptable or fair and unfair.

I am suggesting that rather than emotion being an obstacle to justice, one can see the business of law and emotion as analogous. Thus, emotion can be thought of as cognitively or situationally constrained affect. Rather than an unadorned experience that something is somehow bad or good in some way (which is the information provided by the objectless affective reactions of moods), emotions are specific kinds of goodness or badness that reflect specific kinds of situations. Emotions have the effect, therefore, of constraining affective reactions to be problem-focused, and hence potentially useful. The suggestion is that one can see the law in a similar way, as a means of situating and

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<sup>24</sup> James J. Gross, *Emotion Regulation in Adulthood: Timing is Everything*, 10 CURRENT DIRECTIONS IN PSYCHOL. SCI. 214, 214-19 (2001).

constraining raw affective and punitive reactions, limiting them to particular infringements of moral or customary standards of behavior.

This interpretation of emotion as cognitively constrained affect is buttressed by current theory about the process of emotion origination.<sup>25</sup> In this process, initially undifferentiated and primitive affective reactions are iteratively constrained or shaped by cortical input (cognitive interpretations). Affect is therefore progressively made specific and becomes targeted to the emotionally significant aspects of situations.

Presumably, the propositions that constitute the law are also ways of saying what is and what is not subject to sanction and what kinds of sanctions match particular sins. Thus, the law should tend to constrain the impulse to punishment, banishment, or killing by focusing attention on culpable action rather than simple dislike, for example. In this regard, English law initially prescribed only one punishment for a guilty verdict: death or later, transportation to Australia or other distant shores. Eventually, the Quakers lobbied for the potentially more humane practice of imprisonment, which also allowed punishments to fit crimes by affording imprisonment for more or less time.

As usually told, this kind of narrative about the development of law and systems of justice carries with it assumptions about moral progress. It may be important to note that our psychological analysis does not assume such progress. Something like the processes depicted may be important for progress, but they in no way ensure it, since laws are devised to serve power as well as justice. Our analysis says simply that the cognitive content that defines specific emotions and specific laws serves in both instances to regulate the course of affective reactions. Thus, the law not only seeks to constrain vengeance, as in Aeschylus' play, but also, in the case of family law, to change the shape of domestic situations in the knowledge that the emotions experienced by the people living in them will also change.<sup>26</sup>

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<sup>25</sup> Philip D. Zelazo & William A. Cunningham, *Executive function: Mechanisms Underlying Emotion Regulation*, in HANDBOOK OF EMOTION REGULATION 135, 135-58 (James J. Gross ed., 2007).

<sup>26</sup> For further information about the topics of this paper, see generally Dan M. Kahan, *The Progressive Appropriation of Disgust*, in THE PASSIONS OF LAW 63 (Susan A. Bandes Ed., 1999); Maureen O'Sullivan, *The Fundamental Attribution Error in Detecting Deception: The Boy-who-cried-wolf effect*, PERSONALITY & SOC. PSYCHOL. BULL. 1316, 1316-1327 (2003); Carolyn Semmler & Neil Brewer, *Effects of Mood and Emotion on Juror Processing and Judgments*, 20 BEHAV. SCI. L. 423, 423-426 (2002); Marvin Zuckerman and Gerald L. Clore, *Anxiety and Risk Taking*, (unpublished data, available through the University of Illinois at Urbana-Champaign) (on file with author).

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