



The heuristic value of emotion in legal education: From foundation to experience

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Abstract

This paper explores the connection between emotion and legal education. As a preliminary step, I will argue that the issue of the relationship between emotion and law has a broader scope, which can be defined in terms of philosophy of law or theory of justice. While the inclusion of emotion within these theoretical frameworks offers important insights, it does not, in itself, resolve the challenges posed by a *foundationalist* approach rooted in rationality. However, I contend that legal education represents a *practical* arena—one that is internal to the law—where these challenges can be temporarily bracketed or transcended. Through a strategic and experiential leap, legal education can address the otherwise aporetic tensions between emotion and law as understood in a broader, foundational sense. To illustrate this argument, I will examine two specific examples where legal education intersects with the emotional dimension. The first involves a project conducted at a *Summer School in Law and Humanities*; the second reflects on a case of clinical legal education. Both examples will be presented as *internal* or hermeneutic perspectives, grounded in practical, immersive experiences that highlight the role of emotion in the development of legal understanding.

Key words

Emotion; foundation; rationality; immersion; legal education

Resumen

Este artículo analiza la conexión entre la emoción y la educación jurídica. Como paso preliminar, argumentaré que la cuestión de la relación entre la emoción y el derecho tiene un alcance más amplio, que puede definirse en términos de filosofía del derecho o teoría de la justicia. Si bien la inclusión de la emoción en estos marcos teóricos ofrece

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importantes perspectivas, por sí sola no resuelve los retos que plantea un enfoque *fundacionalista* basado en la racionalidad. Sin embargo, sostengo que la educación jurídica representa un ámbito *práctico* —interno al derecho— en el que estos retos pueden ser temporalmente dejados de lado o superados. Mediante un salto estratégico y experiencial, la educación jurídica puede abordar las tensiones aporéticas entre la emoción y el derecho, entendidas en un sentido más amplio y fundamental. Para ilustrar este argumento, examinaré dos ejemplos concretos en los que la educación jurídica se cruza con la dimensión emocional. El primero se refiere a un proyecto llevado a cabo en una escuela de verano de Derecho y Humanidades; el segundo reflexiona sobre un caso de educación jurídica clínica. Ambos ejemplos se presentarán como perspectivas *internas* o hermenéuticas, basadas en experiencias prácticas e inmersivas que ponen de relieve el papel de la emoción en el desarrollo de la comprensión jurídica.

Palabras clave

Emoción; fundamento; racionalidad; inmersión; educación jurídica

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1. Introduction

With this paper, I adopt a methodological stance toward the relationship between emotion and law by shifting the focus from foundational theory to situated practice. Foundational theories of justice are typically characterized by a rationalist orientation, whose critical elements will be identified and examined. The guiding idea of this analysis is that, rather than asking whether emotions can (or should) serve as an alternative foundation to rationality in legal theory, it is necessary to investigate how emotions operate heuristically within legal education as an internal and experiential domain of the law. The central methodological move consists precisely in suspending the search for ultimate foundations—whether rational or emotional—and instead reasoning “from the middle,” that is, from within concrete legal practices in which meaning, judgment, and normativity emerge through participation. The aim is to show how a practice observed from the middle actually functions and, on this basis, how a practice-oriented approach constitutes a theoretical alternative to the rationalist and foundationalist frameworks that have traditionally guided theories of justice. Methodologically, the paper combines philosophical reflection with a hermeneutic and practice-based approach. Legal education is not treated as a secondary or merely instrumental field, but as a privileged epistemic site in which the tensions between rational abstraction and emotional involvement become visible and workable. Legal pedagogy is approached as an immersive and relational practice, in which emotions do not function as pre-given psychological states or explanatory causes, but rather as situational and coordinating forces that shape understanding, interpretation, and judgment. This internal point of view—adopted from the position of the participant rather than that of the external observer—allows the analysis to remain faithful to the pragmatic and contextual nature of legal reasoning. Accordingly, the argument proceeds through the examination of two experiential case studies drawn from legal education: an immersive, arts-based engagement with Fuller’s *The Case of the Speluncean Explorers* (1949) and a clinical legal experience addressing statelessness. These cases are not presented as empirical evidence in a positivistic sense, nor as experiments aimed at validating causal hypotheses, precisely in order to avoid a possible “foundationalist” relapse. Instead, they function as heuristic devices that illuminate how emotions contribute to the formation of what the paper calls a “legal sentiment”: a situational, relational, and reflexive capacity grounded in emotional coordination and oriented toward the juridical principle of thirdness.

2. Rationalism in theories of justice and relationship between nature and culture

It is therefore necessary to begin by examining the rationalist assumptions underlying the major theories that, in both recent and more distant history, have addressed the relationship between law and justice.

The level of abstraction that erases the emotional dimension in defining justice and law reaches its peak in John Rawls’ proposal (1971). However, Raymond Boudon (1995) has experimentally demonstrated that individuals placed under the “veil of ignorance” do not reason as Rawls predicted. Specifically, they appear to possess *feelings of justice* that

differ from those assumed a priori.¹ Rawls' most prominent critic, Robert Nozick (1974), similarly adopts a rationalist approach, attributing fundamental rights in a preventive manner *à la* Locke.

This mode of reasoning—characterized by the use of thought experiments—also pertains to the antecedents of neo-contractualists, namely the seventeenth-century contractualists. For instance, both Hobbes's and Rousseau's theories, despite their diametrically opposed views of human nature, are grounded in rationalist premises. The critical point I wish to emphasize lies in the underlying logic of contractualism and the assumptions on which the idea of the social contract is built. Even though contemporary discussions of rationality have become far more nuanced and complex,² the foundationalist problem remains unresolved.

Another important point concerns the relationship between legal culture and human nature. In the works of seventeenth-century contractualists and their successors, the objective was to identify a form of *rationality* inherent to (human) nature.³ This process inevitably involved constructing a specific *cultural* interpretation of that nature. In philosophical and political thought, closely related to the legal reflection found in theories of justice, both communism and liberalism⁴ stem from a fundamentally rationalist idea of human nature. In the former case, the starting point is typically Lockean; in the latter, the origin lies in Marx's (and Hegel's) doctrine.⁵ Today, the argumentative approach proceeds within different theoretical frameworks, drawing primarily from evolutionary biology, cognitive science, and neuroscience.⁶ The aim is to provide the foundation of the "states of nature" in a scientific sense.

While this effort is highly intriguing, it does not entirely eliminate the risk of reifying specific historical (or prehistoric) moments to support an ultimately ideological thesis—whether primitivism or its opposite.⁷ This issue arises from the near impossibility of avoiding a certain degree of "culturalization" of nature. Indeed, attempts to present nature as the *foundation* or origin of a political-legal theory—which is inherently normative—inevitably introduce a kind of *state of culture*.

Alternatively, adopting an approach centered on the *ought*—as seen in Kant and, later, Kelsen—rationality pertains specifically to the *sollen*, a concept closely aligned with *culture* (understood here as the artifice of law) rather than *nature*. Even so, both Kant and, to a lesser extent, Kelsen construct an idea of human nature, a tendency also present in the twentieth-century writings of Carl Schmitt, who drew on a Hobbesian foundation.

¹ Also Jean Pierre Dupuy (2002) criticises the anthropological bases of Rawls' theory, arguing that the individuals placed under the veil of ignorance are artefacts.

² For example, Nozick (1993) provides an excellent overview of the recent discussions on rationality.

³ For the critique of Enlightenment rationalism, the classic reference is to Adorno and Horkheimer (1944/2002). A keen contemporary defender of the Enlightenment is Pinker (2018).

⁴ The problems about liberal thought with regard to its rationalist assumptions are clearly highlighted by Michele Boldrin in his podcast called "Inattualità del liberalismo". About the rational basis of the liberal model, see also Bombelli 2019 (27-32).

⁵ Both liberalism and Marxism encompass countless nuances that I cannot delve into here.

⁶ Marx had already sought to establish a "scientific" foundation, not only through Idealism but also through his critique of political economy.

⁷ For one and the other perspectives see the paradigmatic Zerzan (1994) and Diamonds (2012).

While I will not delve further into the dichotomy of culture versus nature—taken *sic et simpliciter*, it is open to significant critique, as Descola (2005) suggests—what strikes me as particularly interesting is the cultural data concerning the argumentative shift in certain political debates, especially among self-described *liberal* circles in the United States. It seems that this shift reflects a broad transition from *nature*—even when culturalized—toward *culture* as the primary framework for foundational arguments.

The outcome of this shift is twofold: first, it abandons the effort to describe a “common nature” of human beings (a line of reasoning still pursued today through scientific discourse⁸ and, on a cultural level, more widespread in ‘right-wing’ discourse); second, it leads to the theorization of what might be described as an *absence* of nature.⁹ This absence, in turn, gives rise to what could be termed *hyper-culturalism*.¹⁰ Moreover, this shift appears to align with a political transition: from an emphasis on equality—whether of starting points (a liberal perspective) or outcomes (a communist one)—to an emphasis on inclusion (Ricolfi 2024). In many contemporary political debates, it seems that Foucault has decisively triumphed over Chomsky (With Defiance 2013). The primacy that current culturalism accords to inclusion—by overcoming nature as a foundation—leads, paradoxically, to significant *identitarian* consequences (Mounk 2023).

The central point I want to emphasise is that the long wave of theoretical reflection identified in the first part of the paragraph continues to produce its effects: even the absence of nature—and its political consequences—is underpinned by a rationalistic conceptual framework.

3. “Emotional turn” and the law

Once the prevalence of rationalism has been highlighted, we can now turn to the role of emotions, understanding them as a factor that complicates contemporary discourse more than ever before, especially from the point of view of legal reflection.

We must consider the so-called “emotional turn” (Plamper 2015), whose application to law (Bandes *et al.* 2021; see Cominelli 2018, 18-28) remains relevant from a *foundationalist* perspective, emphasizing what Pareto identified as the *residue* of rationality (Cominelli 2018, 11-13). Within the field of legal analysis, Petrażycki’s theories carried this *foundational* significance, a stance that aligns even more closely today with a psychological strand of legal realism (Bombelli 2022, 33).¹¹ This perspective naturally benefits from advancements in cognitive science, neuroscience, and the social sciences. The emotions underlying legal subjects and the “foundation” understood as a set of affectively charged legal “beliefs” make the core of the new theoretical model. However, critiques of the reductionism inherent in this model are not lacking, and they extend to

⁸ In contemporary “naturalist” thought, the concept of equality is typically viewed as rooted in cooperation, considered an “original” trait of pre-agricultural societies, particularly those of hunter-gatherers. Such an approach in the philosophy of law is in Romeo (2010).

⁹ The issue was addressed by Pinker (2002).

¹⁰ This may be a result of the rationalist framework through which many authors have envisioned human nature over time.

¹¹ An example of the scientific foundationalist role of emotions can also be found in Sacco (2015, 149,50), who claims that: “La norma parlata — visibile, leggibile, udibile — ha un suo doppione nascosto, muto, indelebile, presente nella cultura, nel DNA e nei neuroni dell’uomo, percepibile dal non giurista, dall’illettrato, dal bambino”.

more updated variants, such as the one proposed by Haidt, who does not specifically focus on law, but is relevant for legal thought (Brozek 2014).

At this point, I wish to claim that one should seriously take into account the methodological consequence arising from the critique of rationalism. If the so-called emotional, or “affective”,¹² turn were understood in a strong sense, perhaps it would be possible to avoid falling into yet another rationalistic exaltation of the role of emotions, conceived as a new foundation of justice.

Given that law can be seen as an intermediate form of knowledge situated between politics/economics and morality —one oriented toward the rationalizing abstraction of the universal, and the other toward that of the individual— it perhaps becomes necessary to pursue a form of *practical wisdom*: in this knowledge the “foundation” (which is not one) should be found, case by case, in concrete phenomena regardless the (always mythological) origin of them.¹³ The idea suggested here is that the (non) foundation that occurs on a case-by-case basis eludes a rationalistic framework because it is emotionally charged.

The approach to emotions that makes this thesis possible owes much to Dumouchel’s perspective (1999, 2008, Dumouchel and Damiano 2016).¹⁴ For Dumouchel, emotions are not merely an origin (which would once again steer them toward the rationalistic direction of a foundation, even if an emotional one), but act as coordinating factors between individuals. Emotions, therefore, are not something to be sought *in interiore homine* (the rationalistic origin), but must instead be appreciated for their shared and relational nature, always situated within a specific context. It is within such contexts that emotions enable mutual understanding, often through a process in which meaning emerges iteratively, from the interlocutor’s responses—forming a kind of “loop” composed of feedback and *après-coups*. This approach does not, however, lead to an emotional contagion in which individuality is dissolved. On the contrary, to quote Dumouchel: “Emotions as a process of co-ordination are the means of reciprocal influence among people and this influence enables individuals to acquire some autonomy” (Dumouchel 2008, 11). Considering moreover that “The social value of emotions [...] is neither symbolic nor subjective, because emotions have an intrinsic social value that does not depend on the social value of our description of them” (Cominelli 2018, 18),¹⁵ the paper adopts a perspective according to which emotions form the relational landscape between people. This landscape helps to shape both the relationships and the individuals who make them up.

¹² In Heritier’s perspective (Heritier 2016; Heritier and Caldo 2021), the “affective turn” is a discourse internal to philosophy and law. It is based on the role of authors such as Damasio, Panksepp, Gallese and Dumouchel.

¹³ This conception of law embraces an idea of truth as an event—namely, a specific and situational truth. In Manzin (2014), the “event” is rhetorically framed and materializes within the trial, particularly through the adversarial process.

¹⁴ The connection between law (particularly custom) and Dumouchel’s theory of emotions is discussed in Heritier (2021).

¹⁵ The author continues by explaining that “As much as emotions have a biochemical basis, they are not purely naturalistic. They are culturally specific, and so cannot be reduced to mere social conditioning” (Cominelli 2018, 18). The issue is closely connected to the concept of “belief” within the realm of law.

4. A deeply internal point of view

In this perspective, the task is to reason from the ‘middle,’ adopting a deeply internal—or hermeneutic—point of view: that of the participant, with all the complexity of their humanity, in the phenomena under analysis.¹⁶ While this approach applies to law as a whole, it becomes particularly relevant in an educational context, which inherently requires a pragmatic stance: education is a practice that, by definition, excludes abstract reasoning in its purest form, and to which the idea of a “middle” characterized by agents in emotional coordination aptly applies. In this sense, legal pedagogy can almost serve as a *synecdoche* for law itself because it shows its intrinsic practicality oriented toward a particular case.

However, I do not wish to embrace a simplistic form of pragmatism or an anti-methodological stance akin to Feyerabend’s “anything goes” approach (1975). Rather, my aim is to emphasize the *situational* nature of pedagogical discourse, a characteristic that also reveals something essential about the legal field. Every practice is embedded in a specific environment—or *Umwelt* (Uexküll 1934/2010)—with its unique affordances (Gibson 1979). To borrow another metaphor, the goal of a pedagogical action is to construct a map for each given territory, adopting what could be described as an *ecological perspective* (Bateson 1972).

It is therefore necessary to consider the heuristic value of what we might define as immersion, citing another author who is decisive from this point of view: as Andler (2023) notes, human intelligence distinguishes itself from artificial intelligence precisely through its ability to *live in situations*, not merely solve isolated problems. Human reasoning always engages with problems as they exist in their specific contexts. In other words, borrowing from Boudon (2009), one must reason in terms of *axiological rationality*,¹⁷ a form of reasoning that is both *situationally* and, as a consequence, *emotionally* determined.

5. Fuller’s Speluncean Explorers: story and theoretical exercises

Given these premises, the juridical-emotional goal is not to uncover some definitive foundation, but rather to immerse oneself in a dynamic and engaging pedagogical experience, by seeing what happens that is relevant. As a first example, I turn to the 2023 and 2024 *Summer School in Law and Humanities*,¹⁸ where participants conducted a philosophical, legal, and artistic exploration of Lon L. Fuller’s fictional case, *The Case of the Speluncean Explorers* (1949).

¹⁶ Zavatta (2017, 18) showed that “lo stesso Hart ha riconosciuto di dover trasformare la bipartizione in tripartizione “aggiungendo ai punti di vista interno ed esterno un punto di vista da lui chiamato ermeneutico (hermeneutic point of view). “Il punto di vista ermeneutico verrebbe adottato dai giuristi, o scienziati giuridici, nel momento in cui “si mettano nei panni” dei partecipanti “al fine di studiare meglio il diritto”.

¹⁷ For the relationship between emotions and axiological rationality in Boudon, see Demeulenaere 2015.

¹⁸ The *Summer Schools in Law and Humanities*, held from July 10-22, 2023, and July 8-20, 2024, in collaboration with the University of Eastern Piedmont, the Italo-French University, the University of Turin, and the Université Côte d’Azur, took place at the Georges Méliès Campus. They were organized and directed by Paolo Heritier. I collaborated on teaching activities.

First of all, the story of the case examined for the pedagogical work: at the heart of Fuller's case are five unfortunate explorers who find themselves trapped in a collapsed cave without food for an extended period. In their desperation, they make a *more or less consensual* decision to kill and eat one of their group so that the others might survive until rescue. Once they are freed, the survivors are tried and convicted in the first instance for murder.

Fuller then introduces the second layer of the story: five judges from a fictional Supreme Court, tasked with deciding the final fate of the four defendants. One judge abstains, two vote to uphold the conviction, and two vote for acquittal. Due to procedural rules, this tie results in the explorers being sentenced to death by hanging. Each judge in Fuller's narrative represents a distinct legal-philosophical position: Keen embodies strict legal positivism; Foster aligns with natural law theory, echoing the author's sensibilities; Handy adopts a realist perspective, and so on.

The traditional pedagogical exercise, which has continued unabated since the publication of the story, involves students and scholars choosing one of the judges' perspectives—or inventing new ones—to critically and creatively explore legal interpretation and the meaning of justice.

6. Fuller's Speluncean Explorers: immersive exercises

The innovation, as presented by Heritier (2023) and implemented in the *Summer Schools*, lies in *complicating* Fuller's exercise.

Drawing on my role as a researcher actively involved in teaching activities, I will present the following analysis based on my observations of the interactions among professors, directors, and students, as well as, and above all, those occurring among the students themselves. It should be clarified at this point that the activity under discussion was not conceived as a research project aimed at studying students' reactions and that, as will become clear, no experiment was conducted with them. The role of the professionals involved—namely professors, researchers, and directors—consisted in delivering lectures, guiding moments of discussion, and directing the artistic activities. As for the students, it should be noted that in both editions there were fifteen participants, coming from the Departments of Law, Philosophy, and Communication.

During the *Summer School* activities, students are invited not only to adopt the judges' perspectives—an expected approach for law students—but also to step into the roles of the explorers themselves. This pedagogical approach emphasizes *emotional identification* with the spelunkers, encouraging students to become more reflective decision-makers *ex post facto*. A key feature of this innovative exercise is its incorporation of a *technological element*: role-playing is enhanced through the use of *virtual reality* (VR).¹⁹ With this tool, students are given the opportunity to construct their own cave—*literally* as well as metaphorically. More specifically, they write the script and then inhabit the collaboratively created virtual environment, assuming the roles of the trapped explorers.

¹⁹ Using VR technology, the students created maps that connected Fuller's text (and others') to images, making them accessible in an immersive and interactive way. Under the lead of directors Gianluca Abbate and Angelo Cretella, they wrote and acted in the short VR film *Dans la Grotte*, which premiered at the MIA in Rome's *Palazzo Barberini* between 14 and 18 October 2024. In December 2024, *Dans la Grotte* won the prize for best VR film at the *Marche festival Corto Dorico*.

This immersive experience prompts students to engage deeply with the complexities of legal decision-making, confronting philosophical and legal questions about what is *right* and *wrong* in a communal and embodied way. Philosophically speaking, we could say that shaping in a collaborative way the environment in which they would operate, the students enacted their “second nature” (Chiurazzi 2021).

An additional and particularly compelling outcome of this exercise is the submission of the *co-created scenario* to subsequent groups of students. These later cohorts are encouraged to *reflect, critique, and reimagine* further innovations based on the work of their predecessors. This iterative process fosters a dynamic, evolving dialogue that builds on collective experience while encouraging critical engagement. Furthermore, the communal nature of the exercise often generates intense and spontaneous discussions that extend beyond the formal activities of the *Summer School*. This *ongoing dialogue*, driven by students’ theoretical engagement and active exchange of roles, creates an enriching environment where participants continuously challenge and refine their perspectives.

In summary, as a first point, immersion in the role of the speleologists prompts reflection on how one would have acted in the dramatic situation presented, thereby fostering a heightened level of emotional awareness connected to that question. This process is facilitated by the use of cinema, first through screenplay writing—in which participants imagine the situation—and then through immersion in a VR scenario. The process is further evidenced by the written work produced by the students at the end of the experience. As a second point, it should be noted that by inhabiting the positions of both the speleologists and the judges, participants are able to explore multiple perspectives, leading to an enhancement of empathic capacities. A greater degree of openness toward others seemed to emerge in the course of the discussions that developed during the filmmaking activities—at the stages of writing and directing—as well as alongside the *Summer School* activities in ongoing conversations. One of the elements to highlight is that the variety of perspectives on how to approach issues is linked to the different study backgrounds of the participating students. The third point is connected to the first two and consists in the fact that, precisely in expressing their value-based and emotional standpoints as fully as possible, many participants showed—within emotional coordination with others—that they arrived at partially different, mediated positions, thereby confirming Dumouchel’s intuition that coordination itself does not suppress individualities.

7. A hypothetical and perhaps problematic experiment

As I was saying, the first key point to emphasize is that an artistic and communal practice, grounded in a shared living experience, can provoke significant emotional changes. These changes manifest both within the artistic practice itself and *around* the dynamics of community life.

From a foundational-emotional perspective, the core issue of the case study would then be to validate these outcomes, which appear particularly significant beyond the notable artistic-legal creation achieved. The “scientific” nature of the experiment would involve assessing what seemed to me self-evident: (a) a deeper engagement with the practice of legal interpretation and (b) the development, among participants, of a legal-emotional

competence in relation to the dramatic topic explored—one that raises pressing philosophical-legal questions. The challenge would be to capture the emerging *legal sentiment* (see next paragraph), arising from adopting the judges' perspective after having first embodied that of the spelunkers. From a *law and humanities* perspective, it might involve the emergence of a specific emotional dimension: this could be defined as "polypathy," that is, a feeling of strong empathy with the various characters (Fuller's explorers and judges) with different philosophical-legal and even anthropological positions. I think that this "polypathy" is fostered by the technological *medium* and community-driven experience.²⁰

As I mentioned, understanding in foundational terms this phenomenon may require an experiment to investigate what happens at the intersection of emotional and cognitive understanding, given their profound interconnection. Such an experiment would be akin to those conducted to assess Rawls' theses (Boudon 1995) or the prisoner's dilemma (Cominelli 2018, 90-91), or even better, like the one proposed by Peter Goodrich, which examines the impact of aesthetics on normative beliefs.²¹

It might be worthwhile to propose a survey to students at the outset of the process, asking which judge (or other positions) they identify with, and then observing whether their perspectives shift during the debates. Furthermore, it would be essential to verify whether students who participated in the experience respond differently to similar cases compared to a control group of students uninvolved in the process. This comparison would be critical for evaluating the robustness of the proposed "affective heuristic."

However, some critical elements of the experiment that could be carried out should be highlighted. Naturally, in designing such an experiment, the *self-selection bias* should be taken into account, as participants who opt into the experience may already differ in meaningful ways from those who choose not to engage. Even if it were "scientifically" demonstrated that students—at least some of them—changed their views or emotions, even marginally, it would still be necessary to question the longevity of this transformation. Could the effect be ephemeral, outweighed by the enduring impact of nature over nurture, or undermined by the disconnect between the simulated environment and the real-world situations in which individuals typically live and act? One should also recall the insights of the *Annales School*, particularly the concept of the *longue durée*: cultural and social phenomena evolve slowly, and a brief, isolated experience is unlikely to produce profound or lasting change.

At this point, I would argue that the "Fullerian" identification process remains valuable, even if only situationally and, in some respects, precisely because it is "situated". It allows one to reveal the legal sentiment emerging from the exercise and, more precisely, offers a way to discern which emotional nuances prevail within a specific "interpretive

²⁰ I have attempted to define "polypathy" as the reader's pluralistic emotional response to the polyphony theorized by Bachtin in Campo (2024).

²¹ In Goodrich's experiment (2014, 11), there are two groups: "The first argued in an informal setting, a classroom or lecture theater that had been temporarily rearranged into a courtroom, with a judge in regular clothes presiding. The second group made their case in a formal courtroom, replete with columns, panels, Latin inscriptions, murals, portraiture, bench, bar, and thrones, before judges in robes. The group that appeared in the formal court with the robes and regalia, the Latin and the other *insignia of maiestas* were significantly more likely to view the procedure as more legitimate, the judgment as more authoritative, and the judge as more learned in law than those who appeared in the makeshift informal auditoria".

community.” Reflecting on the Summer School’s case, I have observed a broader, albeit temporary, shift within both the interpretive community and the community at large. As previously noted, this change is likely short-lived, and the Summer School can thus be understood as a form of Temporary Autonomous Zone (Wilson 1991).

In light of this, it must also be acknowledged that conducting long-term evaluations would be extremely challenging, if not practically impossible—and perhaps even inadvisable, as they would exceed the situational context and risk reverting to a discussion of origins. Indeed, I believe that law—and especially legal education—can help outline a transition from the general to the particular, where the significant aspects of the situation are tested; this perspective involves a shift in which the foundation is not entirely forgotten but is reconfigured (and “felt”) in relation to the specific case.

Thinking about, and against, the hypothetical experiment, I have to say that it would not be capable of assessing the longevity of potential effects involving interpretive tendencies and modulations of the various underlying theories of justice. Furthermore, it would probably fail to capture the additional, and imperceptible, features through which a sort of community’s axiological rationality freely emerges *in situ*. The elusive element that I believe I have identified in the experience under consideration involves an emotional shift among the students—or, more precisely, among some of them—toward greater self-awareness of their own emotional positions, an enhanced ability to take others’ emotional perspectives into account, and a gradual development of emotional coordination, following Dumouchel, within the pedagogical community.

8. Hypothesis on the “legal sentiment”

It seems to me that this hypothetical failure arises from the very concept of legal sentiment discussed here. This concept differs significantly from the one elaborated by Petrażycki, who conceptualized an “imperative-attributive” legal emotion²² strongly tied to the notion of power and framed in a solipsistic sense. While I agree with Petrażycki in distinguishing legal sentiment from moral sentiment, I diverge in my reasoning: the distinction should not hinge solely on the imperativeness that characterizes legal sentiment. Instead, it should be rooted in a reflection on “thirdness”, conceived in the Kojèveian sense (1981) as a fundamental juridical principle that permeates all jurists and the entire field of law. Legal sentiment, understood as the sentiment of “thirdness”, is inherently relational rather than solipsistic. It emerges from a process of radical identification with others, followed by the ability to adopt a critical distance grounded in awareness. This sentiment requires the development—even if temporary—of the capacity to take the perspective of others, while simultaneously recognizing that one’s own perspective is just one among many that constitute the broader discourse or practice.

Such a sentiment is deeply tied to a shared vision of emotions, as previously described: it is situationally formed and experienced, with variations depending on the specific

²² As Fittipaldi points out (2016, 464 and following pages, as cited in Bombelli 2022, 78) “in ‘legal obligations’ there is also an attributive side (a right-holder), who, as it were, ‘owns’ the imperative side’s obligation. The imperative side (*imperativnaja storona*) and the attributive side (*atributivnaja storona*) are Petrażycki’s own terms. [...] In Petrażycki’s psychological theory of law, in order for a legal relationship to exist it suffices that one Subject exists”. On the relational nature of legal sentiment, see Savona (2020).

context. One of its key aims is to mitigate identity-based characteristics often fostered by culturalist approaches (see paragraph 2).

It is crucial to emphasize that these reflections rest on a belief in the possibility of subtly influencing *common sense*, or rather the underlying unreflective cognitive practices which, by their nature, are not easily measurable or testable.²³ This influence may, in turn, affect the sense of justice (Fuselli 2014, 132), beginning perhaps from inescapable biological data but ultimately exploring their potential cultural configurations. While I propose a form of cultural politics, this does not entail advocating excessively utopian efforts. On the contrary, I argue for a pragmatic approach, grounded in the cognitive intuition that warns against proposing practices that are radically disconnected from the sociocultural context in question (Cominelli 2018, 744).²⁴ However, I believe that any meaningful change to what is unreflective—and therefore not fully controllable—depends on the heuristic role of emotions: this role becomes clearer if we don't understand the emotions in a foundational sense but rather as having a coordinating function. To align with this coordinating role, it is essential to avoid imposing "emotional" viewpoints from the top down through practices of ideological or emotional mobilization. Instead, I believe that, as educators, we should act as facilitators of co-constructed, cognitively informed emotions that would not otherwise emerge. This facilitation requires respecting the unintentional implications elicited by free emotional-cognitive encounters. With regard to the experience described above, it seems to me that the pedagogical exercises are characterized by a bottom-up approach: work on awareness, empathy, and sharing involves an engagement with emotions through which learning emerges organically—without relying on a predetermined foundation or progressing toward a pre-established direction.

Achieving this objective requires a refinement of the traditional *learning by doing* approach characteristic of experiential teaching methods. I propose introducing an additional dimension to this educational practice—what might be termed *learning (and teaching) by feeling* (Campo 2024), as well as *learning about feeling*.

9. A clinical-legal experience

I now propose some reflections on the *Statelessness Legal Clinic* at the *University of Naples Federico II*.²⁵ In this legal clinic, students engage in what is defined as *street law* or *community law* (Di Donato 2024b, 96-7), by entering Roma settlements (in Scampia and Giugliano) where many stateless individuals live. While in the case of the *Summer School* the "visible" outcome is the creation of a law and humanities "product" like a film, in the *Legal Clinic* the strictly legal goal is to obtain citizenship or statelessness status for (some of) the settlement's inhabitants (according to an idea of legal clinics intertwined with the so-called "Third mission" of the University).

²³ About the link between common sense, custom and unreflected level, see Bombelli (2022).

²⁴ Nor do I intend to explore the potential grounding of these emotional shifts in epigenetics. I merely wish to highlight Cominelli's (2018, 104) insightful reflection on the "naturalization" of culture: "Epigenetics is potentially a very important step in overcoming the dualism between biological determinism and sociological idealism: a move from nature versus nurture to nature through nurture".

²⁵ <https://www.giurisprudenza.unina.it/-/30163133-sportello-statelessness-legal-clinics>.

Achieving this goal requires a dual approach. On one hand, students must learn the relevant laws and case law on statelessness (a top-down approach). On the other, they must also derive legally significant insights from practical experience, working on individual cases (a bottom-up approach). Effective communication is essential, particularly with Roma individuals who have spent their entire lives in these settlements and are often apprehensive about engaging with outsiders, especially those representing institutions. Many residents do not initially understand the purpose of their encounter with the *Legal Clinic*. They are often unaware of what statelessness entails or the rights associated with its recognition—or with the recognition of citizenship. However, once their initial mistrust is overcome, they are often pleasantly surprised to find that the clinical-legal lawyers genuinely listen to them and work toward concrete solutions.²⁶

This work goes beyond the mere transmission of traditional legal skills. While technical skills developed through action (*learning by doing*) are crucial, fostering a service-oriented perspective (*learning by caring*) is equally important, as discussed by Rigo (2023) and Pannarale (2024). Furthermore, the process demands self-reflection—not only as jurists in training but also as researchers—to cultivate what might be called emotional skills (*learning by feeling and about feeling*) within relationships with others.²⁷

In this case as well, I report the following based on my participation in the educational activities and my observation of the dynamics between the students and the people living in the Roma settlement. First of all, it seems correct to say that entering a complex environment like a Roma settlement requires the construction of a metaphorical map to navigate its intricacies. In this map, the settlement residents themselves play a key role in revealing the complexity of the situation. Through these encounters, students often confront and dismantle their own prejudices about Roma individuals—stereotypes commonly held by the average citizen or student. This awareness, gleaned from the written testimonies left by some students, represents the first step in *learning by feeling*.

From the initial emotional breakthrough, and in the spirit of caring, students must engage in broader self-reflection about their role in the specific context. Yet emotional education does not stop there; it must also engage with the deeper layers of complexity beneath surface interactions. Within these settings, the clinic's "clients" become individuals with their own complexity—they assume diverse roles, not all of which are necessarily positive. The emergence of this awareness seems necessary to avoid reductive portrayals that cast anyone either as a helpless victim devoid of agency or merely as someone in need of care. This awareness also appears to give rise to a nuanced, sophisticated form of empathy. As a privileged observer, insofar as I took part in the educational activities, I must report that through numerous discussions with students it seems to me that—especially among those who engaged in the activity over an extended period—a certain "polypathic" emotional competence developed.

Turning to a more "prescriptive" point, in order to counter the cognitive bias of viewing the "other" as a flat, two-dimensional figure—whether as a vulnerable victim, a threat, or a distant outsider (a common initial reaction)—it is essential for students to develop understanding of emotional complexity. This nuanced perspective enables them to see

²⁶ As can be seen in the interviews collected by the students (Di Donato 2024a, 10-11).

²⁷ Exploring the role of feeling seems to me to be necessary in relation to the clinical-legal "lawyering with conscience" (Wilson 2018 and Di Donato 2024a).

settlement residents as multifaceted individuals with distinct roles, goals, and agency. By cultivating this deeper understanding, students can engage more effectively and take meaningful action toward achieving the clinic's objectives. The pedagogical usefulness of this emotional work also seems to have implications for the future, i.e. when students become legal practitioners and, in particular, judges. Indeed, it should be noted that extensive research now shows that empathy is necessary not only to treat the parties in a trial with humanity, but also to move beyond the myth of impartiality understood as detachment, and to judge in a more profound and ultimately better way (see Bandes 2009; Bergman Blix and Wettergren 2019).

10. Further hypotheses on the “legal sentiment”

Thinking *with* clients means empathizing with them while maintaining a necessary emotional distance. It involves recognizing their agency and transcending a perspective rooted solely in empathy or emotional contagion. These elements of what I term a “sentimental education” help progress toward the legal sentiment of “thirdness.” This concept, however, requires acknowledgment of the political and legal complexities inherent to the context in which one operates. Only through this recognition can we approach (or approximate) the ideal of thirdness.

I intentionally use the term “sentiment” because it pertains to feeling, not merely to understanding. Moreover, I prefer the word sentiment to emotion because it implies self-reflection and awareness. This sentiment is deeply situational, emerging from the shared emotions generated through the interaction between students and clients. What strikes me is the impression that something of this situational sentiment seems to remain with the students, even if this is not easily testable (and, as I have argued, perhaps it is not appropriate to test it). It also seems possible that the emergence of something “sentimentally” significant may occur spontaneously even long after the conclusion of the experience. While it is tempting to hypothesize about the statistical significance of an existential–legal transformation in the students (for example, by asking how many might exhibit greater moral skills in the future (Zanetti 2019, 71), while accounting for self-selection bias), I refrain from making definitive claims. This hesitation stems not only from the experimental challenges involved but also from my resistance to elevating emotions to a foundational level, thereby substituting metaphysical truth with a scientific one (see paragraph 2).

Nonetheless, even the potential transformation—understood as greater self-awareness and the testing of otherwise untested emotions—of just one student, even if temporary, holds remarkable value. At the same time, I believe it is worthwhile to facilitate this outcome—not through authoritarian commands or nudge²⁸ techniques, but by

²⁸ This model is flawed by a rationalist assumption: “Il riferimento all’agente-Human (le cui condotte ‘predictably err’) è infatti funzionale all’enfaticizzazione dell’agente-modello a base razionale (agente-Econ) che, a ben vedere, soggiace all’impianto concettuale del nudging. In altre parole: l’idea di fondo è che la ‘correzione’ o ‘orientamento’ (in linea di principio: rimozione) dei fattori irriflessi consentano di ottimizzare attraverso incentivi i processi decisionali con riferimento a un certo modello di ‘scelta razionale’ e, cioè, in rapporto a standards o obiettivi predeterminati e ritenuti razionalmente ottimali” (Bombelli 2019, 34). “Per quanto riguarda gli errori, Boudon è stato piuttosto critico nei confronti delle prospettive presentate da Kahneman e Tversky, laddove questi insistono sull’impatto delle distorsioni nella formazione delle credenze e delle decisioni. Boudon critica la loro tendenza (anche se non preponderante) a interpretare tali

contributing as facilitators. Within a pedagogical strategy like the one proposed, the teacher's task is consistently to enable students to explore, both within the situation and within themselves, partially uncharted possibilities, while always respecting their freedom to embrace or disregard these opportunities. If, in a broad sense, "the law can be seen as a super-meme: a biosocial constraint that develops in complex societies", then, from a clinical-legal and bottom-up perspective, it becomes our task to continually shape new directions and new "constraints" born of feeling. This emotional approach seeks to reconcile "the spurious contradiction between law as a static and historical phenomenon and law as a dynamic and promotional element" (Cominelli 2018, 196).

11. Conclusions

The two pedagogical experiences discussed—the immersive reinterpretation of Fuller's *Speluncean Explorers* and the clinical legal work on statelessness—have highlighted how emotional engagement can foster forms of legal awareness that are difficult to access through abstract reasoning alone. In both cases, emotions emerged not as private psychological states, but as shared, situational phenomena that enabled participants to navigate complexity, plurality, and conflict. These experiences suggest that legal education can facilitate the emergence of a "legal sentiment" characterized by reflexivity, emotional coordination, and openness to multiple perspectives—what has been described as a sentiment of thirdness.

The methodological approach adopted here, which aims to highlight the situational and coordinative character of this sentiment, represents a shift in perspective compared to the foundationalist approaches discussed at the beginning of the paper in relation to theories of justice. As this article has sought to demonstrate, the change in perspective brought about by the "Emotional Turn" involves a movement away from abstract rationality—or from a theory of emotions grounded in a "foundational" framework—toward immersion in practice. Yet this practical engagement produces a transformation that is, in itself, theoretical.

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pregiudizi come causali, e di conseguenza a caratterizzare i comportamenti dipendenti da tali pregiudizi come irrazionali" (Demeulenaere 2015).

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