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Project 11
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Law as a Product of Emotion: The Rise of the Victim

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Abstract

Two research trends mark an increasing interest as of today. They concern, on the one hand, the study of emotions in legal issues and on the other, the phenomenon of the rise of the victim as much in the criminal law scene as in the social scene. Both of these aspects can be analysed at the same time in conjunction. After having described the different emotional reactions victims can display, we will consider the changes in the legislation that stem from the consideration given to their affects by the different legal regulation systems. An ensuing field study with qualitative interviews should allow us to highlight the expectations, needs and status of victims

1. Introduction

Law is mainly based on rationality and objectivity, as shown by the importance given to legal regulation mechanisms of behaviour like criminal law sentences, as means of response to criminal behaviour. In spite of this fact, law is not immune to emotions, both in the judicial process and as a tool of the regulation of social behaviour. For Ricoeur [35], law can be viewed as a response to indignation which allows the legitimization of the distinction between the just and the unjust. The contemporary analysis of social phenomena such as politics [5], racism [43] or media exploitation of vicarious suffering [3], is influenced by the affective dimension. Law is not exempt from this influence.

This interest in the emotional dimensions of legal matters has recently been attracting an increasing amount of attention, especially in research focusing on psychology in the law. One good example of this type of research is the study of the psychological aspects of decision making by legal actors [42]. To the contrary, less attention has been afforded to investigate how emotions influence law making by stimulating, nourishing and legitimizing the elaboration of legal norms. Emotions, as Salas [40] argues, shape legal writings and a good illustration of this assertion can be found in the effect of collective emotions that are aroused by events, such as environmental catastrophes, terrorist acts or genocide, on the rise of new expectations towards the political and legal system. Moreover, the argumentative approach of the legislators itself is impregnated with emotions [23].

Within this framework, project 11 aims to examine more closely the place of affects in relation to the current transformations in the modes of legal and social regulation, through the investigation of the normative foundations and the practical applications of law. This project which bears the title of "The importance of emotions in social and legal regulation" involves a twofold approach in accordance with the two main ways in which affects and emotions interact with law, namely law as a product of emotion and emotions as a tool of regulation. The first approach which is the study of law as a product of emotion is the one we will describe here. The aim of this study is to examine the impact of emotion on the transformation of social and legal norms through the assessment of the growing importance of victims in legal proceedings. More precisely, we plan to appraise the position and the role of the victim in criminal trials as well as assess which are the changes in the law that result from a growing sensitivity to affects and individual suffering.