The role of the judge, reason and emotions

The subject of this round table is not to assess how judges manage the emotional reactions of the public or parties in a case. It is about examining how they carry out their duties while experiencing their own emotions.

Renaud Alméras, a barrister at the Paris bar, has shown how there has always been tension between a judge's reason and their emotional response.

First studied from a rhetorical perspective in the classical era, in particular by Plato, Aristotle and Cicero, the relationship between reason and emotions was also at the heart of teaching delivered under the Ancien Régime in France, when rhetoric was one of the seven liberal arts taught at the start of a university course, prior to the study of law.

As Renaud Alméras pointed out, a judge's consideration of their emotions at that time came into conflict with two other requirements: first, the obligation to rule objectively and impartially, and secondly, the assertion of royal power, which required judges to base their decisions solely on the application of the law, rather than their personal assessment of what was just.

Ultimately, we cannot ignore the conclusions reached by Portalis in his preliminary speech on the French Civil Code:

"*It is all to the good that the necessity for judges to learn, to carry out their research and to explore in detail the questions that arise means that they can never forget that, if the case before them concerns matters that strike their rational mind as arbitrary, none can be judged purely on their whim or desire."*

As far as the present day is concerned, Jean Lecaroz, Solicitor-General at the Cour de Cassation, has said that taking feelings into account in the role of the judge presupposes that the law is open to other disciplines, the precursors of which were the School of Free Law in Germany with Rudolf Von Jhering, the School of Free Scientific Research (Eugen Ehrlich) and in France, François Geny with an essay on methods of interpretation and sources and positive private law.

Judges and other legal professionals have thus written about the part played by feelings in the role of the judge, for example, the American judge Joseph C. Hutcheson in 1929, or more recently in France, Odile Barral, Jean-Louis Gillet and Jean Danet (*Les cahiers de la justice*, 2014).

This issue has prompted significant research in other disciplines, such as the philosophy of law, sociology, economics and neurosciences, in which the studies undertaken have shown that there is no opposition between reason and emotion.

It is the Law and Emotion movement, however, that has taught us most about the place of emotional responses in the role of the judge, based on an interdisciplinary approach that addresses the part that is or should be played by emotions in the practice and conception of law and justice.

Finally, Jean Lecaroz has emphasised the fact that we cannot tackle the question of the relationship between reason and emotions in the role of the judge without considering the research done by Martha

Nussbaum, professor of philosophy and literature at the University of Chicago Law School, for whom a judge is only effective if they are able to listen to their emotions, within certain boundaries, on the basis that reason and feelings can each enhance the other.

Peter Charleton, a judge at the Irish Supreme Court, has commented that the judge's personal emotions or feelings must never be allowed to sway their judgment, since the judicial system would collapse if the public did not trust them to be impartial.

Procedures exist to ensure that cases are not judged by judges where there is a reasonable suspicion of bias and judges themselves are required to recuse themselves in cases where they may feel unable to make an impartial decision because of their personal feelings, for example, where the case concerns a member of their family or they are related to the defence counsel.

Judges are citizens like any other people, with their own opinions and emotions, but in their role as a judge, they must be guided by the law, and they must never show any contempt for the parties when drafting their judgments, for example by using offensive language.

It is also important for judges to respect each other. As a result, the dissenting opinions expressed by certain judges when a decision is handed down must never be impolite or harsh in its criticism of those who have ruled in favour of it.

Plans are underway to reform the justice system in both Ireland and France, in particular to ensure better use of information technologies, but should not fundamentally challenge the role of the judge as an impartial arbiter of disputes.

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