

International Association of Constitutional Law (IACL-AIDC)

ROUNDTABLE in CÓRDOBA- ARGENTINE

“Political Sentiments and Moral Emotions”- August 9-10-2022

Session 4- President Prof. Marcelo Figueiredo- São Paulo- Brazil

Introduction:

Feeling in the Science of Law:

Throughout its history, Western thought, and especially legal thought, has privileged reason over feelings. And this can be explained by the fact that reason has always been grounded on invariability and eternity, while feelings have been portrayed as inconstant and misleading manifestations of nature.

Therefore, most contemporary legal views do not pay enough attention to the influence of feelings in the constitution of normative prescriptions, nor even take into account the influence of sensory experiences in the process of making a legal decision.

This narcissism of reason, inherent in the legal world, excessively attached to formal logic and rationalism, has never allowed the emergence of contents that aggregate principles, values and concepts originating from less orthodox fields, such as those in which human feelings are situated.

Little attention is paid by law operators to the influence of feelings in the constitution of legal systems, nor is the influence of sensory experiences in legal decision-making processes taken into account.

Of course, throughout time there have been excellent thinkers and their works, who have dedicated themselves to the subject directly or indirectly. It is not the case of remembering all of them (Aristotle, St. Thomas Aquinas, Kant, Decartes, Hume, Durkheim, Radbruch, Loewenstein, Rawls) etc.

Let's remember, for example, Rudolf Von Jhering¹ and his classic lesson: Law is not reduced to conceptual constructions; law is that permeated by social needs, ends, interests and values. Jhering refuses any possibility of thinking of legal feeling as an endowment of nature.

Legal feeling, ethical feeling - the content of legal and ethical truths - is a historical product. For the author, legal feeling depends on facts, which are made as historical reality. The legal feeling is connected to the abstraction capacity of the human spirit, without which it is impossible to think about man.

Let us also remember the approach by Pablo Lucas Verdú² and the intimate relationship of constitutional feeling to the construction of citizenship in the various States, asserting the importance of the maturing of legal feeling as a way of ensuring the participation of all citizens in the political discourse, with a view to legitimizing the effectiveness of fundamental rights.

In symbolic language, it is known that a ship on the pier is safe; but it was not made to stay on the pier. The legal operator should not only moor at the pier of objective justice, nor sail exclusively on the ocean of the concrete case, because many times the pier of the port, although safe, only contains the first half of law; a situation in which the other half can only be found in the waves of the open sea³.

It is necessary, therefore, to perform an adequate weighing of legal normativity and feeling, equidistant from rationalism and romanticism in all their exteriorizations.

In the synergic relationship between Law and feeling, the just will be achieved through the fullness of the reflective and intuitive potential of its interpreter, as in the famous phrase by Ortega y Gasset, "I am me and my circumstances".

¹ Henrique Garbellini Carnio, Rudolf Von Jhering e a Genealogia da Ética: o Devir Histórico como Determinante da Procedência do Sentimento Jurídico, Revista História e Cultura, Franca, volume 4 pages 101 to 117, December 2015

² Andréa Maria dos Santos Santana Vieira, A Importância do Sentimento Constitucional como Substrato para a Construção da Cidadania no Brasil, www.derechoycabiosocial.com access in July 2022.

³ Nevita Maria P. de A. F. Luna, Alexandre de Maia e Juliana Teixeira Esteves, Uma Erótica Jurídica: O Lugar do Sentimento na Juridicidade e o Nascimento do Poeta-Juiz, Revista Brasileira de Sociologia do Direito, volume 3, issue 3, September-December 2016, page 252.

Circumstance is what is around man, what surrounds him. It is the physical and cultural-historical contour that dominates life in part: language, art, religion, law, the state, etc.

Law needs an erotic point, which Susan Sontag talks about. It is impossible to live in a Democratic State of Law without breaking away from the static law, and start interpreting it, following the needs of a complex and changing society.

It is in this context that today we are pleased to coordinate this panel.

We received and analyzed several papers submitted for this panel. After the selection process, Selin and I were able to select 10 papers.