Affect and Legal Education: Emotion in Learning and Teaching the Law

Professor Paul Maharg
Caroline Maughan
what is the ‘affective domain’?

- One definition (Price 1998):
  ‘it involves the study of emotions: how they are expressed, how they are learned, how they arise, how they are experienced consciously and unconsciously, how they influence and are influenced by behaviour, how they relate to intelligence, language, reason and morality.’
‘all experience is framed in terms of our perceptions of it, and regardless of the context, our perceptions of experience are primarily characterised in terms of our emotional responses.’

(Goldfayl 2005/6)
US Airways Flight 1549 was a scheduled commercial passenger flight from New York City to Charlotte, North Carolina that, on January 15, 2009, was successfully ditched in the Hudson River adjacent to midtown Manhattan six minutes after takeoff from LaGuardia Airport after being disabled by striking a flock of Canada Geese during its initial climb out.[3][4][5]

The bird strike, which occurred just northeast of the George Washington Bridge about three minutes into the flight, resulted in an immediate and nearly complete loss of thrust from both engines. When the aircrew of the Airbus 320 determined that they would be unable to reliably reach any airfield from the site of the bird strike, they turned it southbound and glided over the Hudson, finally ditching the airliner near the USS Intrepid museum about three minutes after losing power. All 155 occupants safely evacuated the airliner, which was still virtually intact though partially submerged and slowly sinking, and were quickly rescued by nearby watercraft.[6][7][8][9]

The entire crew of Flight 1549 was later awarded the Master's Medal of the Guild of Air Pilots and Air Navigators. The award citation read, "This emergency ditching and evacuation, with the loss of no lives, is a heroic and unique aviation achievement."

It has been described as "the most successful ditching in aviation history."[10]

*Balancing Safety and Accountability*

Ashgate Publishing
Damasio constructs a hierarchy, based on instinctive responses and ‘progressing through’ to what we call feelings. It takes the following form:

- Innate, automatic survival supporting devices
- Pain and pleasure behaviors (sic)
- Drives and motivations
- Emotions proper (Damasio, 2003)

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Emotions-proper begin to differentiate with greater complexity into other emotional categories.

According to Damasio, these are:
- Social emotions
- Primary emotions
- Background emotions
These emotions, as the label suggests, are emotions that we are not consciously aware of, except that they may contribute to a ‘mood’ we experience.

‘I imagine background emotions as the largely unpredictable result of several concurrent regulatory processes engaged within the vast playground that our organisms resemble.’ Damasio (2003, p.44)

‘The ever-changing result of this cauldron of interactions is our ‘state of being’, good, bad or somewhere in between. When asked “how we feel,” we consult this “state of being” and answer accordingly.’ Ibid. (p.44)
These are the emotions which tend to come to mind when we typically discuss emotion. They include: fear, anger, disgust, surprise, sadness and happiness.

These emotions, and the stimuli that cause them are clearly identifiable across cultures and even across species.
These include: sympathy, embarrassment, shame, guilt, pride, jealousy, envy, gratitude, admiration, indignation and contempt.

We can often observe the nesting principle in social emotions. Damasio give the example of contempt. Here, the expression of the emotion will usually be accompanied by the facial expression used principally to signify ‘disgust’.
Phineas Gage group, c.2000-2004: interest in behavioural & neurosciences within legal education (Hugh Brayne, Chris Maguire, Maughans (Carol & Mike), Julian Webb

Maharg – social learning, Rogerian core concepts in legal education

Announced in 2006, LILI Conference

‘Poster plenary’, ALT, Amsterdam 2009
The Problem
Cartesian Dualism – the mind/body distinction

Dualism is increasingly rejected in philosophy and social theory.

Thinking through embodiment in legal education

Julian Webb
UK Centre for Legal Education
and
Warwick Law School

Learning through the body
Learning processes are “distributed – stretched over not divided among – mind, body, activity, and cultural organised settings” (Lave, 1988 1)

- Focus on the body as a source of social (environmental) and self awareness: soft-skills, perceptions of risk, conflict managing and resolving skills
- Making learning transformative – recognising importance of how we feel in and about the learning process
- Using experiential and action techniques which engage mind and body
- The challenge of reflection – making reflection more holistic but also recognising that reflection in some respects subjugates the body to the mind (… she who reflects is lunch… ?)
- The challenge of e-learning: disembodied or differently embodied?

Somatic learning models often fail to take the bodily basis of affect seriously – still emphasises affective knowing as a process differ cognitive reflection

The embodied nature of emotions
- Emotions are a high level adaptation – involving complex patterns of chemical and neural responses; their function is primarily to assist the organism to maintain homoeostatic regulation. Although the inducers of emotions will vary between individuals (to some degree) and will be culturally shaped and influenced, they are ultimately biologically determined to ensure survival (social as well as physical)
- Basic emotional responses are located deep in the brain stem in the cingulate region, over which we have no means of exerting voluntary control (Damasio, 1999). We may be able to control the expression of emotion, we cannot, on the whole, “block the automatic changes that occur in the viscera and internal milieu” (p.49)
- Feelings are not the same as emotions, they are caused by emotions, and reflect the collection of sensory information that is recognised in consciousness as representing that emotion.
- Thus, emotions are somatic responses, often triggered before the recognition of the emotion “kicks in” – eg fear (Morris et al, 1996); emotional and physical reactions to facial expression (de Gelder et al, 1989); emotional responses are understood because they are transcribed on the body – movement, facial expression, posture, patterns of reaction to a particular stimulus in a given environment

For more recent treatments, from very different perspectives, see, eg: Burkitt (1999); Johnson (1987); Prieto (2007); Wider (1997)
supported by advances in cognitive science and neuro-biology, etc.
Part I: Affect, Legal Education and Neuroscience

1. Why Study Emotion?  
   *Caroline Maughan*

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   *Richard Roche*

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    *Julian Webb*

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12. Addressing Emotions in Preparing Ethical Lawyers  
    *Nigel Duncan*

    *Paul Maharg*
Students are more aware than staff of the gaps and silences surrounding learning objects, particularly the absence of the affective domain. The effects of this:

- Space is not necessarily absence – has always been part of university study; but the quality of space and silence is critical, and not given enough consideration.
- Students need to learn to read & write disciplinary texts – texts that both constrain and liberate.
- They need to negotiate the suppression of voice in HE (West, 1996).
- Belenky et al. (1986) have traced the fragmenting results of privileging rationalistic understandings over more affective and experiential knowledge.
Form: essay 1, feedback in conference, essay 2.
Conference focused initially on writing structure
Based upon the work of Scardamalia and Bereiter (1986: 797–8)
Procedural facilitation, not substantive facilitation, was emphasised in the conference
The argumentational models students structured and the writing heuristics they experimented with in one unassessed essay were then used in a subsequent assessed essay in the module
It became clear after the first few conferences, and on studying the transcripts, that it was difficult for students to discuss the structure of their writing without
discussing the social and performative aspects of it, within the context of their own experience of text production.
Interviewer: ... do you think ... you’re unsure about your writing?

Ian: I don’t think – not too much. I suppose there is maybe a possibility that I just don’t want to be cornered – I don’t want when I’m writing the essay to put it as if – I don’t want to be cornered, to look as if I haven’t got a clue what I’m talking about. So you try and cover as much ground as you can, if you know what I mean, so that you don’t, you aren’t totally wrong rather than following one chain of thought and then ‘Oh that’s completely wrong’. If you try and make it a little bit more broader then you’ve got a better chance of not being wrong. But it’s maybe just a habit I’ve got into trying to do that because I think in a lot of the exams I did in the Higher there wasn’t maths or anything like theory, it was like Modern Studies, Geography, Economics, English. A lot of essays I had to write in the exam. I think that’s what’s got me into the habit of it, writing like that so that when the marker comes to mark it, it’s not – they can’t say ‘Oh that’s right or wrong’. I’ve tried to cover myself.
He expresses anxiety:
- notice shift between first & second person.
- ‘Covering’ – shame, and the knowledge engenders processes and strategies that block and inhibit writing critically – not uncommon in student writing (Gee 1996).

Ian’s writing is insular, produced only for adjudication, not in any sense a *practice*. It was based on fear and anxiety, and became silent, inarticulate. It was an absence, a space of dread and frustration for him.

The affirmation that emotion mattered in writing was key.

The conference enabled Ian (to put it in Derridean terms) to substitute for the space of anxiety his own centre of significance as part of the process of writing and legal interpretation.
<table>
<thead>
<tr>
<th>Student</th>
<th>Comment</th>
<th>Date &amp; time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kirsty</td>
<td>obviously i am not very good at this chat thing since i just posted a post saying hey guys and thats it!</td>
<td>20 November 14:27:33</td>
</tr>
<tr>
<td>Kirsty</td>
<td>wot i am trying to say is, i posted my first draft letter to the other firm, although i didnt know whether to tell them that we have no maintenance records, and also, i re read their letter to us and they have already told us the legal basis for their claim but they havent been very specific. do u think i should leave that bit in? [name] x</td>
<td>20 November 14:29:07</td>
</tr>
<tr>
<td>Alan</td>
<td>hey guys. cant find my phone at the mo so if you text me I won't get it. If you want to phone about sending off letters I'll be at my parents and their no is [number, possibly landline]</td>
<td>21 November 09:47:17</td>
</tr>
<tr>
<td>Alan</td>
<td>Shouldnt we also clarify with the other side the date of the incident cos they said 2008 but the insurance co have confirmed that it was 2007.</td>
<td>21 November 13:49:45</td>
</tr>
</tbody>
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Three problems:
1. Information management
2. Managing voice, register and genre on digital platforms
3. Socialising processes in relational spaces

Three solutions:
1. Better, more powerful and social, platforms
2. Focus on a post-digital Ciceronian rhetoric
3. Create a zone, where students can discuss and reflect on their work, try out identities that are at once professional but cool, make mistakes or learn, from others’ mistakes, and learn how to communicate consistently and accurately with colleagues, in any register.
For adults as well as children, affirmation, holding and inclusion, especially for those on the margins, provides a basis for existential legitimacy, core cohesion and authentic engagement in the world. The problem has been that education and educators have lacked a compelling language to interpret and theorize the intimate dimensions of learning and self-development within a connected and historical frame of reference: or, to state it differently, to interpret what it takes, emotionally, socially as well as intellectually, to keep on keeping on even in the most oppressive and fragmented of times.

West, 1996, 208.
Phineas Gage:
http://www.ukcle.ac.uk/projects/past-projects/maguire/


