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Emotional law based on justice and equity: a universal alternative for conflict resolution

Derecho emocional basado en la justicia y equidad: una alternativa universal para la resolución de conflictos



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Abstract

This article is based on my doctoral thesis that arose as a new construct epistemic legal called emotional law. Emotional law correlates in the base of justice and equity and is a universal alternative for resolving conflicts. It involves the participation of neurolaw which is rooted from neuroscience. The article focuses on the connection between law, reason, and emotion and how, through justice and equity, conflicts of any nature can be prevented and resolved using empathy. I discuss the evolution of these concepts and highlight the close link between emotion and law. The aim is to better understand society as an emotional entity composed of human beings.

Keywords: Emotional law, justice, equity, conflict resolution, empathy, neurolaw.

Resumen

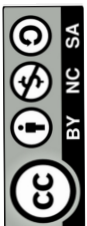
El presente artículo se origina como producto de una tesis doctoral, en la cual se generó un nuevo constructo epistémico jurídico, denominado derecho emocional; fundamentado en la justicia y equidad que es aplicable como medio alternativo universal para la resolución de conflictos; comportando la participación del neuroderecho, como raíz de la neurociencia. Por tal motivo, desde una investigación netamente hermeneútica, se fijará posición con relación a la conexidad entre el derecho, la razón y la emoción; y cómo con base en la justicia, equidad, se pueden prevenir y resolver conflictos de cualquier naturaleza, aportando una forma particular e inédita de regularlas con base en la empatía. En tal sentido, se estimará bajo un análisis cualitativo cómo estos conceptos han evolucionado; se establecerá que la emoción y el derecho están estrechamente vinculados, y se interpretarán para comprender mejor a la sociedad, que es netamente emocional por ser conformada por seres humanos.

Palabras clave: Derecho emocional, justicia, equidad, resolución de conflictos, empatía, neuroderecho.

Introduction

Daily, we observe a diversity of events across all social strata and on a global scale—from conflicts fueled by ideologies, romantic entanglements, and addictions to various elements that, when taken to extremes, degrade human character, such as alcohol, drugs, sex, and gambling. These are dangerous behaviors that can escalate to borderline criminal acts and, in many cases, become actual crimes. Such situations, commonly referred to as societal issues, are addressed by institutions responsible for safeguarding individual and collective rights, activating formal social control mechanisms enforced by the State through competent bodies. However, the role of informal societal regulation—through family, educators, and friends—is often overlooked, despite being the setting where many of these conflicts arise.

This area is precisely where state public policies should focus, aiming to prevent rather than punish, by fostering self-awareness and inner knowledge. This enables individuals to recognize and understand themselves, to observe and appreciate their strengths as well as their weaknesses, and to acknowledge



that their actions often have an immediate or subtly latent emotional drive. The type of emotion that materializes in the external world will determine whether the resulting act is peaceful or contentious.

In this context, acknowledging that the participants and instigators of conflicts are ultimately people, my epistemic-juridical construct of Emotional Law emerges. This concept proposes regulating behavior through empathy, aligning facts with the law, and recognizing the individuality, essential traits, and special characteristics of each involved party, thereby offering a fair and equitable approach to resolving disputes.

Consequently, neuroscience enters the field. As a discipline studying the nervous system, neuroscience is vital to understanding the link between human behavior and the psyche. This is crucial for Emotional Law, as it incorporates Neuro-Law—a branch of neuroscience that examines aspects relevant to judging an individual's criminal actions. Clinical brain studies of the offender can be considered as mitigating or aggravating factors for penalties or sanctions.

Moreover, the concept of neuro-rights is essential within the framework of Neuro-Law. Neuro-rights encompass subjective findings from cerebral observations conducted on individuals, often without their or their guardian's consent. Neuro-rights emerge as a mechanism for protecting human rights, particularly in verifying crimes, where one element is the externalization of an action—a physical manifestation of a thought carrying an emotion. Thus, no one can be found guilty or held criminally liable based solely on their thoughts

Methodology

This article utilized the hermeneutic method applied to legal documents to analyze and unpack their content in depth. This approach enabled not only the interpretation of legal texts but also the derivation of various conceptual categories that provided a clearer understanding of the topics addressed. Hermeneutics, as an interpretive method, focused on understanding the underlying meanings within these documents, requiring a detailed process of analysis and reflection on the context, intent, and structure of the texts.

Through this work, key categories were extracted and interpreted in light of legal principles and the theoretical framework applied, offering a broader and deeper view of the legal implications within the documents studied. This interpretive process allowed greater clarity regarding the meanings and applications of legal texts, thereby enhancing the understanding of regulations and their possible implications in various contexts.

Results

Considerations on law, reason, and emotion

Law originates from the groups and forces that operate unequally in each context; therefore, there is a connection between the contents of legal relationships, various social relationships, and the



factors that shape them. Law consists of norms establishing duties, granting rights, and setting the conditions for social coexistence, aiming to provide society with security, equity, justice, and freedom.

Consequently, law, reason, and emotion share a long, complex relationship in the history of philosophy and justice. This discussion suggests that the legitimacy and effectiveness of law improve when reason and human emotion are intertwined, as these are foundational components of fair legal systems. Some academics may apply these precepts, acknowledging or not, the importance of addressing law, emotions, justice, equity, and conflict resolution, thereby proposing an unprecedented method to regulate them based on empathy.

To understand law, it is essential to understand society, as it comprises people with emotions; thus, law should serve as a suitable tool to regulate emotions for the common good

Statement of an empirical reality

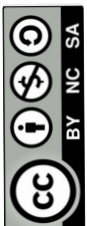
Optional conflict resolution mechanisms involve reflection on the conflict itself, law, and emotions. Their importance arises from analyzing individual behaviors within social interaction, aiming to understand and interpret their actions. Humanity's inherently social nature has led to the establishment of boundaries—both of sovereignty and individual personality traits. These boundaries, to some extent, inspired the creation of law, as a means to regulate outward actions with the goal of fostering harmonious and peaceful coexistence. The law offers a normative framework that can protect but also reprimand, thus providing individuals a sense of security.

Within the framework of law as a protective and regulating mechanism, it is essential that its application aligns with the principles of justice and equity. The simultaneous application of these principles has driven nations over time to adopt new conflict resolution forms tied to the law. Justice can be understood as the fair distribution of what is due to each person, assigning to each their rightful due. Based on this, it can be said that justice aims for equal distribution among individuals of goods or property claimed as their own. However, this statement is also relative, as it raises questions about how property rights are assigned and how to fairly distribute shared goods, given that some may belong to the common good.

The concept of justice is among the most frequently referenced, yet it remains one of the most complex to define, often being used lightly, irresponsibly, or analogously. Thinkers like [Ross \(1997\)](#) argue that claims to justice often evoke emotional responses to unfavorable situations, leading to both rational discourse and emotional expression.

According to [Squella \(2010\)](#):

Justice is often identified as the highest goal that law should achieve or at least help to achieve. It is often said that law exists to realize justice, and whenever such a claim is made, the focus is on the content of norms, principles, and other legal standards, rather



than on the formal methods or procedures involved in creating and applying those norms, principles, and standards (p. 175).

In this light, justice can be seen as an ultimate ideal and an aspiration for individuals, as it can be valued and assessed. Therefore, applying justice as a virtue requires understanding the formation of the state. Aristotle similarly referred to justice as giving each their due, aligning what belongs to each citizen with their contributions to society, their merits, and their needs.

All such definitions pursue the common good, which is closely linked to law's purpose of peace, allowing societal members to resolve issues without violence. Justice is directed at providing equal treatment, not as simple distribution of resources, but as the decision-making process that rightfully assigns resources to individuals. Justice thus implies equity, honesty, and ethics, leading to respect for individual rights, while also demanding respect for others' rights.

Accordingly, all are equal before the law and have the right to its protection against any discrimination infringing on human rights as established in relevant legal instruments.

Likewise, equity encompasses aspects of justice related to goodwill and intention. It serves as the ethical foundation that, from a normative standpoint, should align with the principle of justice, protecting interests and meeting the needs of diverse groups, especially the less privileged and vulnerable.

Hernández (2008) explains:

Equity is not the same as equality. Equity involves assessing inequalities through a lens of justice. The type of assessment used has political implications in both daily decisions and public policy. There are deep links between ethical positions and the technical developments that support policy, so technical neutrality on this matter is impossible, despite the efforts of technicians. Furthermore, the predominant type of assessment is historically contingent on each society (p. 73).

Ruiz (2017) adds:

Equity serves as a way to overcome the impersonality of justice without leaving the formal realm of justice. It also reflects the influence of friendship within justice, even if particular motivations of friendship or love may not determine its use or exercise in every instance (p. 175).

In this sense, justice and equity are interwoven, as justice involves establishing equity itself, giving each person their due based on their merits, qualities, and the holistic understanding of their emotions and feelings. Equity stems from legal determination and judgment, adjusting norms and legal decisions to meet natural law imperatives and principles of justice, offering a sensitive view of human reality that aligns with its roots and needs.



Therefore, equity aims to recognize equality between men and women and respect their fundamental rights. For this reason, it is crucial to incorporate law as a regulator of emotions in situations of contradiction, establishing a regulatory mechanism for behaviors that channels emotions through empathy, thus offering a significant theoretical contribution to the universality of law.

Conflict resolution

Conflicts are inherent in the social factors that influence how society transforms. They arise from the development of incompatible actions or differing emotions; they reflect an emotional state that creates tension and frustration, arising from differences in behavior, as well as social, familial, or personal interactions. Internationally, conflict may be inevitable, linked to the human condition; however, reality shows that coexistence is increasingly complex.

Likewise, the resolution and management of conflicts have become prominent as ways to reduce disagreements and dissatisfaction, preventing conflicts through actions that resolve differences while prioritizing general interests and focusing on specific situations that generate disputes.

In another sense, controversial situations have prompted actions to address problems and mechanisms to face them, highlighting the importance of viewing them as opportunities for learning. Conflict can be an intellectual and emotional challenge that fosters enriching experiences and drives societal evolution, encouraging non-violent processes that promote transformation within communities.

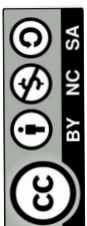
Achieving harmony, peace, and common good are among humanity's most vital pursuits. Accordingly, various methods for resolving conflicts and maintaining harmony—such as negotiation, conciliation, mediation, and arbitration—have been established.

Conflict resolution as a key aspect in international disputes

In resolving disputes within international law, the Permanent Court of International Justice defines a dispute as "a disagreement over a point of law or fact, a conflict of legal views or interests between two persons." The function of international law depends on the nature of the dispute and the parties' stance, with two main mechanisms for dispute resolution: international agreements (achieved through negotiation or diplomacy) or third-party decisions that enforce international legal standards.

The United Nations Charter and international law urge states to settle disputes peacefully without prescribing specific methods, allowing states to choose their approach. This highlights international law's primary role as behavior-based, seeking dispute resolution through amicable methods.

While conflict resolution in international settings is broad, the essential point is that international conflicts do exist and are resolved in accordance with international law and alternative methods. These aim to achieve harmonious resolutions, often influenced by particular interests rather than justice and equity.



Neuroscience as a tool for analyzing emotions

The human brain, weighing approximately 1.5 kg, contains around ten billion neurons that communicate via electrical impulses, triggering chemical changes that enable complex functions such as thought, emotion, language, and behavior. Neuroscience, the scientific study of the nervous system, examines the brain's molecular and cellular structure, focusing on neurons responsible for synaptic transmissions.

Neuroscience origins trace back to prehistoric trepanning practices, with debates over whether the brain or heart governed sensory, motor, and mental functions. The discovery of the nervous system's electrical activity in the late 18th century led to advances in neurophysiology.

Today, research continues to confirm brain plasticity, where repeated learning strengthens synaptic communication. According to *Sinergia Medical Journal*, this process helps the brain adapt by forming new synaptic connections, enhancing neuronal transmission.

Neuro-law and its implications

The link between neuroscience and law, though nascent, has gained attention. Technologies such as CT, PET, MRI, and MRA scans have made it possible to explore the brain extensively, leading to the emergence of terms like neuroeconomics, neuropolitics, and neurolaw.

In 2008, [Narváez \(2014\)](#) defined neurolaw as “the reflection on how various aspects of understanding, producing, and applying law are affected by the empirical study of the brain as a core element in explaining behavior.”

Neuroscience could help the legal field by determining truthfulness in human behavior; however, its application raises concerns about potential infringements on fundamental rights like freedom, dignity, and privacy, or the risk of suggestion-based techniques that could lead to false memories.

Thus, neuroscience continues to advance, and much remains to be understood about the brain. Within law, neuroscience should be explored from two perspectives: first, as a way to understand human behavior based on the nervous system, particularly emotions, to clarify truths in legal conflicts (neurolaw); and second, as a means of protecting the brain's integrity to safeguard inherent rights—i.e., upholding human rights and viewing science as a revolutionary tool serving humanity (neuro-rights).

Generative product

Understanding law is part of understanding the world and the beings within it, achievable through empathy, a capacity we should strive to possess. Consequently, I believe emotions should also be regulated within the framework of law as an alternative and mechanism for conflict resolution, oriented towards justice and equity. Based on experience and research data, I have observed that people make decisions according to their feelings, are aware of their emo-



tions, the reactions these generate, and their resulting consequences. Nevertheless, they recognize that justice and equity must always be unified in conflict resolution.

Thus, grounded in the general concept of law, I propose the creation of "emotional law," which I define as a necessary regulation of behaviors in societies, guiding humans toward the ethical, permissible, respectable, and harmoniously desired. This framework would account for the physiological reactions provoked by emotions when making decisions rooted in justice and equity. Legally, emotional law could be seen as a set of fair and equitable rules designed to analyze and protect the emotive behaviors of individuals in controversial situations, aiming to achieve a balance between the common and individual good.

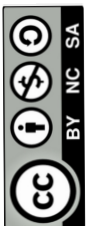
As [Goleman \(1996, 2001\)](#) indicates, emotional intelligence allows us to empathize, make sound decisions, and live in harmony. Likewise, [Bisquerra \(2000, 2001\)](#) highlights that children should be educated in emotions from an early age, yielding improvements not only in educational settings but also personally as they develop. This inspired the idea of creating a new epistemic legal construct, "emotional law," as a balanced regulatory framework for human conduct in contentious situations, involving participants in judicial processes and all actors in diverse conflict types, with the objective of reaching fair and equitable decisions.

In implementing emotional regulation in the legal realm, participants must first recognize the importance of emotions in achieving fair and just outcomes, a concept that may seem irrational due to the mechanical practice of law. The decision-making process can be complex, depending on perspective. Yet, by analyzing alternative conflict resolution methods such as mediation, conciliation, arbitration, and negotiation, one finds that these inherently contain elements of emotion and principles of justice and equity.

Thus, as a universal alternative, emotional law could regulate the emotions of participants in both national and international judicial processes. This could yield outcomes where parties feel satisfied, having been acknowledged as individuals with strengths and weaknesses, virtues and flaws, all of which influence their perspectives and desires.

This concept could prove invaluable in international law, where, by exercising the UN-granted power of conflict resolution, states might appoint an emotional law mediator. Such a mediator, using expertise in emotional intelligence, emotional education, and even neuroscience, could achieve favorable, harmonious, and peaceful results for all involved parties. However, we must acknowledge that implementation may be complex. As society evolves, new tools emerge, such as technology, alongside enduring values like love, respect, and empathy.

Thus, the establishment of emotional law, globally implemented first empirically in academic and judicial settings, would transform negative terms like "problems" or "conflicts" into "situations" or "issues to clarify," fostering a justice-based and empathy-grounded approach that considers individual characteristics. Secondly, from necessity, humans continually seek to understand others and themselves. From the perspective of self-knowledge, emotions can be educated and



channeled, forming a harmonious blend of reason and heart.

Finally, by understanding that we are accountable for our actions and their outcomes, we recognize that actions produce consequences that impact our surroundings, whether at a micro or macro level. The "Empirical Theory of Emotional Law" (EDEN), which gives life to emotional law, begins with "Experience," whereby the involved parties share their factual and legal grounds. It integrates "Law," traditionally devoid of emotion, yet applied by emotional beings. "Empathy," the conscious ability to understand others' feelings, plays a role, as does "Neuroscience," analyzing the nervous system and applied here to neuro-law.

Conclusions

In summary, from the interactions and situations gathered by the researcher, it is reflected that if every action generates a reaction, then every emotion, as a consequence of an external or internal event, similarly produces a reaction. Thus, if we empathized with our fellow human beings, we could better understand the daily challenges they face and likely act with more respect, care, tolerance, and kindness, potentially avoiding fruitless arguments that lack peaceful outcomes between parties.

In this context, emotional law seeks to educate legal professionals, primarily to understand themselves and recognize their counterparts, applying the law as a norm grounded in emotional intelligence with a balanced approach to justice and equity. This is because, at the root of every rational thought, there is an emotion, and professionals should be able to understand the emotions experienced by the parties in a legal process—particularly if they are mediators, negotiators, or arbitrators—in order to harmonize the situation and guide the involved actors, despite differing views, toward a balanced resolution where both feel they have won.

This is not a sign of weakness but rather the empathy that should emerge in every human being. It is the capacity and quality that we must possess to value others' emotions and feelings, founded on the recognition and acceptance of each individual with their unique traits. This does not mean always agreeing with what others say or do but reflecting on their actions, as empathy is the primary foundation for preventing violence.

Finally, based on the points presented and with an understanding of the numerous scientific studies demonstrating that emotions can be educated, that reason and heart must be in balance, and that the law can indeed serve as an alternative for conflict resolution, a stance is established on emotional law, grounded in the Empirical Theory of Emotional Law (EDEN).

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