**Sentiment Analysis**

Role of Emotions in Judging

* Divisive Idea—conflicting realities:
  + Law assumed and expected to be neutral
    - Whether judges can make dispassionate decisions or not, politicians and the public expect and even demand that they do so” Wistrich 857
  + Law is innately tied to emotion:
    - “Criminal law reflects theories of fear, grief, and remorse; family law seeks (ideally) to facilitate love and attachment; tort law measures emotional suffering; litigants seek emotional satisfaction by invoking legal mechanisms; legal decision makers may have strong feelings about parties in their cases” Maroney 120
  + Judge identity is neutrality
    - Traditional theory expects either no emotions or suppression of those
      * “Traditional legal theory either presumes that judges have no operative emotions about the litigants and issues before them or mandates that any such emotions be actively suppressed, reflecting an untested, commonsense wisdom that emotion distorts the objective legal reasoning demanded by the judicial role” Maroney 132
      * “Judges, however, are supposed to make decisions based on the facts and the law rather than on the basis of enmity or empathy for litigants” Wistrich 857
      * “Suppressing emotions seems like a professional imperative” Wistrich 860
      * Scalia: “[a]ppealing to judges’ emotions is misguided because… [g]ood judges pride themselves on the rationality of their rulings and the suppression of their personal proclivities, including most especially their emotions” Wistrich 860
      * “For judges, however, being impartial is a key element of their official role and their personal identity” Wistrich872
* Very public instances backlash toward promotion of emotion
  + “overt sentimental expression in judging…has attracted public debate and even derision” Maroney 132
  + Obama
    - “I view that quality of empathy, of understanding and identifying with people’s hopes and struggles, as an essential ingredient for arriving a[t] just decisions” Wistrich 857
    - Kagan: “It’s law all the way down” 858
    - Sotomayor
  + Blackmun, dissenting 1989 Deshaney v. Winnebago
    - “But feeling deeply is no substitute for arguing rigorously; and the qualities that made Blackman an admirable man ultimately condemned him to be an ineffective Justice.  By reducing so many cases to their human dimensions and refusing to justify his impulses with principled legal arguments, Blackmun showed the dangers of the jurisprudence of sentiment.” Nussbaum 24
* Positions toward judging and emotion (jurisprudence of sentiment)
  + Empathy might be necessary to judge well
    - “Emotions are so key to the richness of life that no effort to understand humans and human society could make any claim to accuracy or completeness without taking them into account” Little 975
  + Empathy might require abandoning the law
    - “The danger of the affect heuristic, however, like most forms of intuitive reasoning, lies in unexamined reliance on it in inappropriate circumstances” Wistrich 867
    - “Judicial reliance on an emotional reaction to a litigant alone goes far beyond what President Obama meant when he articulated his desire for empathetic judges” Wistrich 867
  + Emotion could lead to prejudice
    - “Judicial reliance on the affect heuristic would create one law for the sympathetic and another for the unsympathetic” Wistrich 868
    - “prejudice is the pernicious cousin of sympathy” Wistrich 868
    - “we tend to view in-group members with sympathy and solidarity and out-group members with suspicion and hatred” Wistrich 868
* Impossible to detach anyway—must make it work
  + Even Justices who promoted emotionless language are known for this (Scalia)
  + Court is a place of heightened emotion
    - “Courts are emotional places. Judges are exposed to the full spectrum of emotions, many of them unpleasant.” Wistrich 861
  + Humanity’s connection with emotion
* Field of law and emotion
  + Burgeoning
  + Deserving of scrutiny
    - “Early such efforts within legal scholarship consisted largely of decrying the construct of a clean division between “emotion” and “reason,” and advocating a more explicit role for the former” Maroney 121
    - Relevant to the theory and practice of law
    - Historically has not received this
  + Possible to track and search
  + Legal actor approach
    - “focuses on the humans that populate legal systems and explores how emotion influences and informs, or should influence or inform, those persons’ performance of the assigned legal function” Maroney 131
  + Beginning to occur with opinions
    - “In response to these dynamics legal scholars have posed broad questions about the role of emotion in judging, and have looked to judicial determinations—particularly verbal cues embedded in written opinions—for clues as the judges’ feelings about parties and issues or their theories of “appropriate” emotionality” 132-33
* How emotion might work well
  + Emotions can be based on reason
    - “However valuable empathy might be for a judge, single-minded reliance on an emotional reaction to a litigant reflects a lawlessness that most judges would repudiate” Wistrich 868
    - “To have sympathy or compassion for someone’s plight, again, you have to believe something about the seriousness of what the person has suffered. You have to believe that it did not come upon them entirely through their fault. Moreover, you have to believe that that is a general human possibility; that you yourself have similar possibilities” Nussbaum 25
    - “So, emotions are not just mindless; they embody thoughts. Therefore, we cannot dismiss them from judicial reasoning and writing just by opposing them in an unreflective way to reasoning and thought” 25
  + Literary reading (Breyer):
    - Justice Breyer on confirmation: “I was reading something by Chesterton, and he was talking about one of the Brontes… . He said … you go and you look out at the City, he said - I think he was looking at London - and he said, you know, you see all those houses now, even at the end of the 19th century, and they look as if they are the same. And you think all those people are out there, going to work, and they are all the same. But, he says, what Bronte tells you is they are not the same. Each one of those families is different, and they each have a story to tell. Each of those stories involves something about human passion. Each of those stories involves a man, a woman, children, families, work, lives. And you get that sense out of the book. So sometimes, I have found literature very helpful as a way out of the tower.” Nussbaum 23
    - “the language of judging should be in some respects, which we would have to specify very carefully, like the language of the lover of literature.” Nussbaum 24
      * not words and style, but imagination
      * perceiving individual humanity
      * “recognizing that each has a complicated story with factors that make it not the same as anyone else’s” Nussbaum 24
    - “[public actors] should be passionate for the well being of others, but they should not insert themselves and their own goals into the picture that they responsively contemplate” Nussbaum 28
  + Individual humanity
  + Person of public rationality
    - “this person whom we construct will have all and only those thoughts, sentiments, and fantasies that are part of a publicly rational outlook on the world.” Nussbaum 26
    - Impartial spectator
    - “he is not going to have such thoughts and emotions as relate to his own personal safety and happiness or to anything about the way in which his own personal stake in the outcome has an impact on the situation." Nussbaum 26
    - he is without bias and surveys scene with a “certain kind of detachment” Nussbaum 26
    - “among his important moral faculties is the power of imagining vividly what it is like to be each of the persons whose situation he imagines” 26
    - “both empathetic identification accompanied with a kind of critical external assessment are crucial in determining the degree of emotion that it is rational for the participants in the case to have” 27
  + How emotions can be appropriate
    - “We might start to worry, and I think this is Rosen’s more interesting worry, that a judge who is guided by emotion will simply let sympathy gush all over the place in an inappropriate way, that it will lead to a disregard of the evidence, a disregard of legal reasoning, and just a kind of inappropriate gushy way of proceeding” Nussbaum 25
    - thinking about how emotion can enter into judicial thought and judicial writing; that we want emotion that is tethered to the evidence, that has been carefully filtered for bias, that’s informed by legal reasoning of the best sort.” 29
* Either way, emotions are there so they should be studied

Analysis of Graphs

Increase of women on the court

Feminist Jurisprudence