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Emotions and the frontiers of legal education

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ABSTRACT

Based on an educational experience that brought together law students and inmates in the same classroom, this paper reflects on the connections between emotions, justice and democracy. After a brief description of the course, the paper explores its philosophical assumptions. The methodology of the course is inspired by Martha Nussbaum’s claim that emotions must be at the foundation of a theory of justice. By using the Socratic method, the instructor created a space for emotions to play a crucial role in the interaction among participants. This approach was inscribed within Michel de Montaigne’s idea that the construction of knowledge must be based on dialogue, which requires the participants to take a leap of faith and to trust each other in order to engage in genuine cooperation, following the ideas of Richard Sennett. The paper claims that this exercise in cooperation promotes an acute sensitivity towards justice (along the lines of Amartya Sen) and enhances democratic dialogue (along the lines of John Stuart Mill). Thus, cooperation, dialogue and emotions are the three pillars of the philosophical framework of this project, and ultimately point towards the importance of love for justice, legal education and the promotion of civic values.

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Dialogue; cooperation; role of emotions

1. Introduction

The goal of this paper is to reflect on the role of emotions in legal education, taking as a starting point an educational experience involving a group of law students and convicted criminals that took place in the prison of Lledoners, near Barcelona (Spain). In a different paper we have offered a detailed description of the course, its design and implementation. Presently we are going to elaborate on the philosophical foundations that lie at the core of this educational project, with a particular focus on the role that emotions played during the course.

The course “Philosophy Behind Bars” was organised by ESADE Law School in cooperation with the Catalan Department of Justice. The prison of Lledoners was chosen by the Catalan Government to host the experience because it is considered a pioneer institution in terms of re-educational policies and activities – and a model for other local penal institutions. The course was based on the Socratic method, with the

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professor acting as facilitator of a dialogical investigation of some of the fundamental aspects of human life, such as fear, happiness, justice or responsibility. There were 18 participants, half of whom were prisoners, the other half law students, either graduate students or undergraduates in their last year. Prisoners had been selected from a pool of candidates according to their educational background, reasoning skills and good behaviour.

The ultimate aim of the course was to create a space for debate and to create emotional bonds among two groups that rarely have the chance to interact with each other in conditions of equality. At a more concrete level, the course had an immediate common goal for all participants, which was to break prejudices towards the other group, and other specific goals that were particular to each group. The activity took place during a whole academic term, with 12 weekly meetings in prison between students and inmates, and some separate introductory sessions specific for each group. Both law students and inmates were asked to write reflective diaries of their experience – and in the case of the students, this was part of their academic requirements to obtain credit.

This course was conceived as an exercise in justice – rather than as a theoretical elucidation of justice – following the framework set by Amartya Sen in his recent book *The Idea of Justice*. In this seminal work, the Noble Laureate challenges mainstream theories of justice, and in particular the social contract theory, that he criticises as being “transcendental” and “institutionalist”.

By “transcendental” Sen means that the dominant approach to justice “concentrates its attention on what it identifies as perfect justice”, thus setting as its main goal to attain the ideal state of justice, “rather than on relative comparisons of justice and injustice”. The “non-transcendental” nature of the course was reflected for a start in its participants: a group of convicted criminals certainly represents a low level of achievement in the scale of justice. Discussions were often referred to the crude realities of the inmates’ lives, not hiding the injustice and pain that they had suffered and inflicted upon others. Furthermore, the dialogue built among participants did not pursue the definite settlement of issues but rather aimed at the free expression of contrasting ideas. Following Sen, intellectual cooperation was preferred over intellectual competition, emphasising that different perspectives can contribute to the dialogical exercise and be potentially valid at the same time, without having to attain an ideal transcendental theory.

By “institutionalist” Sen means that “direct attention is bestowed almost exclusively on ‘just institutions’, rather than focusing on ‘just societies’ that may try to rely both on effective institutions and on actual behavioral features”. But, always

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1 Equality between the two groups was sought as much as possible in the design and implementation of the course, although it could be achieved only in a very imperfect way. For a start, one of the groups was in an inherently oppressed position, by its members having their freedom significantly curtailed. Furthermore, there was an obvious gap between the average socio-cultural and economic levels of the two groups, that had implications all through the process. Thus, the actual conditions of the exercise were far from any sort of Habermasian “ideal speech situation”, although the course tried to tackle some of the elements that prevent that situation from happening in real life, such as sustained prejudices: J. Habermas, *The Theory of Communicative Action*, Vol. I: *Reason and the Rationalization of Society* (Boston, Beacon Press, 1984).

2 Both students and inmates signed a form of agreement giving the authors of this paper permission to use their diaries for research purposes and to quote them anonymously.

3 Ibid., pp. 5–6.

4 Ibid., p. 67.
according to Sen, institutions are not justice in themselves, and “we have to seek institutions that promote justice, rather than treating the institutions as themselves manifestations of justice ….” This course was overtly “non-institutionalist”, and not only in the obvious physical sense (for students at least) that it took place outside the usual environment of the law school classroom, but also in its content and methods. The prisoners had applied freely to enrol in the course, and they did not obtain anything material in exchange, not even institutional benefits. Furthermore, the course did not deal with “law” in the strict sense of legal rules and materials, and although legal issues were discussed frequently, it was not with the aim of reinforcing institutional patterns, but rather to question and criticise them, highlighting their real effects on the lives of real people. In this sense also the course was non-institutionalist.

2. Goal of the course and conceptual framework

Aristotle famously said that “man is by nature a political animal” and that we can only achieve the good life by living as citizens in a state. In that sense, the right politics is what allows us to build a society that promotes and enhances human virtues, thus contributing to justice. Inversely, it would be difficult to promote virtuous citizens in an unhealthy society.

In contemporary times, many voices point to the lack of social dialogue and constructive public debate as a burden that impoverishes if not threatens our democratic societies. If we believe that democracy is the best form of government for the advancement of justice, and if we believe in the crucial role of those who work in the administration of justice and who are responsible for creating and implementing the law that governs the community, it follows naturally that legal education must be (among other things) an education in the practice of the art of dialogue.

It is in that sense that we can claim that the ultimate – and ambitious – goal of this project is to advance democracy and justice through the practice of genuine dialogue. The philosophical framework of the project is based on three pillars, each one of them crucial to fight against important obstacles that hinder the advancement of democracy and justice. These three pillars are:

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\(^7\)Ibid., p. 82.

\(^8\)For obvious reasons, the sessions took place in prison, but interestingly prisoners often claimed that it was “as if they were out of prison”, maybe because they were sitting alongside students in a fresh environment of intellectual freedom. This highlights the importance of the institutional dimension in their lives. We developed this point in “Socrates Behind Bars”, supra n. 1, subsection 4.1.


\(^10\)This is the background against which the political philosopher Michael Sandel emphasises the importance of dialogue and genuine debate in order to promote a vigorous democracy. In one of his most recent books, he points out that “if our debates about justice unavoidably embroil us in substantive moral questions, it remains to ask how these arguments can proceed. Is it possible to reason about the good in public without lapsing into wars of religion? What would a more morally engaged public discourse look like, and how would it differ from the kind of political argument to which we’ve become accustomed? These are not merely philosophical questions. They lie at the heart of any attempt to reinvigorate political discourse and renew our civic life”: Michael Sandel, Justice: What’s the Right Thing to Do? (London, Penguin Books, 2010), p. 126.

\(^11\)In the next few paragraphs, as well as in the following sections, we reflect on the ideas of different authors that have inspired our project, and on how that inspiration materialised during the course. Of course, the ideas and theories that we expose have been the object of criticism and philosophical rebuttal. However, we do not pretend to engage in that sort of philosophical discussion, which would be clearly beyond the limits of this paper.
Trust and cooperation, along the lines of Michel de Montaigne and Richard Sennett.

Democratic dialogue, along the lines of John Stuart Mill.

Public importance of emotions, along the lines of Martha Nussbaum.

All these authors are concerned with democracy and justice in the widest possible sense at a societal level. Inspiration was drawn from them in order to design an educational project that, albeit ambitious in its final aim, had a very limited scope, with barely 20 participants enrolled in it. The idea of working together with prisoners and law students is key to understanding the ethos of the project, and it presents specific challenges in each one of the three pillars defined above:

- In terms of trust and cooperation, these two groups are usually perceived as very separate from each other if not as frontally opposed. This became evident during the course, and was best reflected in the self-confessed mistrust of prisoners vis-à-vis lawyers, including their own defence attorneys. As for the students, they were initially full of fears and prejudices. Both parties had to take a leap of faith to bridge this massive gap and to create trust among each other in order to make cooperation possible.

- In terms of dialogue, there is a very noticeable lack of meaningful communication between the two groups, which is paradoxical taking into account that they hold closely related positions within the legal system. In other words, lawyers and prisoners are meant to talk to each other, but the fact is that they rarely do so – and once they try the first problem that they face is finding a common language shared by both groups, as became evident during the course. But of course without meaningful dialogue no understanding is possible, which has obvious practical consequences, especially for inmates.

- In terms of emotions, bringing together individuals from two groups that are so different in so many respects (including life stories, social and educational background, family environment, and so on) had a strong emotional impact on the participants. Although it is impossible to encapsulate the richness of diverse emotional reactions in one single formula, there was a prominent sense of compassion on the part of the students towards the prisoners. And as important as the content of the emotions was the fact that they were in reference to people in flesh and bone with whom the students were in close personal contact during a whole term. We develop this, and the previous points, in the following sections.

3. Trust and cooperation

In his studies on the identity of the human being, the Renaissance philosopher Michel de Montaigne famously asked: “when I play with my cat who knows whether I do not make her more sport than she makes me?”12 With this question the French humanist was making explicit what usually remains an implicit mystery, that is, when we are interacting with others, what certainty do we have about their thoughts, feelings or intentions?

This uncertainty may be at the roots of human mistrust, and it is one of the reasons why so frequently people stop cooperating, or even interacting with each other. We can never really get to know what happens in the lives and minds of others, whether humans or cats. Frequently we do not even know what happens in the minds and hearts of those who are our most intimate connections, the people we live with, the people we love.

Montaigne’s point is that the impossibility of absolute understanding should not prevent us from trying to cooperate with each other. We need mutual commitment. Cooperation may arise from an inner drive for company that compels us to do things together, or as a result of utilitarian reasoning. Even from an evolutionary point of view we arrive at the same conclusion: humans have had to cooperate in order to survive, protecting themselves against hostile environments, finding collective ways to overcome all sorts of challenges.\(^\textnormal{13}\)

Contemporary societies are no exception. However, they pose a special problem inasmuch as they are competitive societies. Competition is the very essence of capitalism, the triumphant economic system not only in most modern societies but allegedly in the whole world as a consequence of globalisation. How shall we cooperate in an environment that is \textit{radically competitive}?\(^\textnormal{13}\)

The American sociologist Richard Sennett has devoted part of his work to answering that question. In his book \textit{Together} he sheds light on this dilemma by emphasising both the importance and the difficulties of cooperation.\(^\textnormal{14}\) According to Sennett, cooperation is not so much about moral attitudes or shared ideals, as it is about “skills”. We can learn to cooperate and to train our cooperative capacity in the same way that we can learn and train any other skill – driving, cooking, playing cards, building a house or dancing. But Sennett maintains that in the contemporary age economic growth has come hand in hand with a lack of concern for these sorts of skills. In a literal sense, “modern society is ‘de-skilling’ people in practicing cooperation”.\(^\textnormal{15}\)

Cooperative skills are learnt and trained through social rituals, in which modern competitive societies are lacking. Worse than that, the sorts of traditional rituals that motivated people to enter into association and to engage with each other are being destroyed. In contrast, new social rituals put into question the need and the true art of cooperation, two prominent examples being forms of impersonal communication favoured by social networks or short-term labour relations.\(^\textnormal{16}\) But the instinct of cooperation is resilient inasmuch as “mutual support is built into the genes of all social animals; they cooperate to accomplish what they can’t do alone”.\(^\textnormal{17}\)

The course “Philosophy Behind Bars” has tried to offer a platform in order to train and develop some of the skills that according to Sennett are necessary for cooperation.\(^\textnormal{18}\) Among them stands out the capacity to observe and to listen, that was a central component in the course (especially when students were listening to the


\(^{15}\)Ibid., p. 8.

\(^{16}\)Ibid., pp. 46, 47.

\(^{17}\)Ibid., p. 5.

\(^{18}\)See our paper “Socrates Behind Bars”, \textit{supra} n. 1, in particular the subsections dealing with “talking and listening” (4.3), “emotional impact” (4.6) and “Socratic method” (4.7).
prisoners). Another key element is empathy, that links with the emotional core of the activity as described below in section 5. Sennett highlights as well the need to engage genuinely in open dialogue, that is different from an adversarial confrontation in which both parties compete to be right. Open dialogue, conceived within the Socratic tradition, provided the basic method of the course, and all efforts were made not to turn the debate into a competition among participants.\(^{19}\)

While Sennett maintains that cooperation ought to be a basic value in contemporary societies, we believe that this is precisely what Montaigne represents in a historical sense. In spite of living in a continent devastated by war and religious conflict, he had a strong belief in building political compromise through daily life cooperation. Against the political, religious and moral constraints of his time, he aspired to a cooperative life that was free from received dogma, and as a consequence his writing was founded upon the idea of dialogue.

Montaigne never lost faith in his belief that we can grow only by interacting with others, and by engaging in meaningful dialogue. This is the reason why in his works he drew on conversations with his fellow citizens, and candidly reflected on their agreements and disagreements. He wanted to see others such as they are, since identifying and acknowledging our differences is a prerequisite of cooperation. “Manners and opinions contrary to mine do not so much displease as instruct me”, wrote Montaigne, “nor so much make me proud as they humble me, in comparing them”.\(^{20}\)

For Montaigne, knowledge was built by looking at the world from different perspectives, which could be achieved through conversation.\(^{21}\) His intellectual style was based on allowing everyone to express their own particular truth.\(^{22}\) He believed that it was by sharing different visions without imposing any one in particular, that we could advance freedom, autonomy and ultimately happiness. The dialogical exercise allows us to grow together and to enrich each other with our own singularities. This is the only way to learn, step by step, the logics of cooperation.

But neither Montaigne nor Sennett say that it will be easy. Practising cooperation demands commitment and dedication. It is a process of trial and error, that requires personal virtues such as humility and modesty, as well as leaving individualism behind in order to look beyond ourselves. This is the entry gate to the art of conversation, that implies the art of listening: it is necessary to put in play our capacity to pay attention – and to understand – not only what the other says but also what the other does not say.\(^{23}\) Subtle as it is, we all have that capacity according to Montaigne, but we need to put it into practice. Going back to Sennett: cooperation “requires of people the skill of understanding and responding to one another in order to act together”; otherwise, cooperation becomes “a thorny process, full of difficulty and ambiguity and often

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\(^{19}\)Interestingly, common legal wisdom has it that it is by confrontation of opposing views in court that truth is found. See a statement of this idea, and criticism of it, in David Luban, *Legal Ethics and Human Dignity* (Cambridge, Cambridge University Press, 2007), pp. 32–40.

\(^{20}\)Montaigne, *supra* n. 12, p. 238.


\(^{22}\)An idea that was very much reinforced and developed many years later by John Stuart Mill. See section 4 below.

\(^{23}\)“The good listener detects common ground more in what another person assumes than says”, an idea that Sennett attributes to Theodore Zeldin (Sennett, *supra* n. 14, p. 19).
leading to destructive consequences”.

For Sennett, togetherness can only be embodied in immediate, face-to-face relationships. It is only with dedicated practice and training in face-to-face relationships that we can develop the necessary skills to cooperate.

In that sense, a classroom can be an excellent setting and also a great opportunity to train ourselves in the art of cooperating. And in this particular case, cooperation was one of the pillars of the course. Rather than a goal to be achieved, it was an implicit mechanism: the whole class could be seen as an exercise in cooperation. This required a good deal of courage from the participants (and the instructor). As with Montaigne and his cat, both groups of classmates had to “play” with the other group without actually knowing what the other thought and what was going on in their minds. In other words, the course required its participants to take a leap of faith in order to trust each other. This was necessary for cooperation to be real and for dialogue to be genuine, and it was especially crucial from the point of view of prisoners and their life prospects, due to the close connection between trust and hope that has been highlighted by modern psychology.

4. Democratic dialogue

The course “Philosophy Behind Bars” aimed at creating a space where participants could develop and improve their cooperation skills, which required them to trust each other – and to be trusted – as a prerequisite. This was possible not only because the setting allowed students and inmates to have a face-to-face relationship, but also because of another crucial element in the course – and the second pillar of its philosophical framework – that is, free and open dialogue. Participants would not have been trained in cooperation skills had the course been taught in a traditional way, with the professor delivering more or less objective knowledge and the students doing their best at trying to absorb it. Instead of that, the course was carried out as a “cooperation workshop” with dialogue being the dominant method – and, as we said above, cooperation in practice requires among other things learning to listen carefully to what others have to say.

Dialogue was fundamental in this project both as a means and as an end in itself. First, dialogue was not only important but truly necessary in order to build trust among those taking part in the experience. Secondly, dialogue was also a means to improve cooperation skills among participants, which is at the same time important in order to advance democracy and justice – along the lines that were developed in section 2. In other words, dialogue, trust and cooperation go hand in hand.

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24 Sennett, supra n. 14, p. viii.
25 Erik Erikson, *Identity and the Life Cycle* (New York, W.W. Norton & Company, 1980), pp. 57–63. Expressions of hopelessness were frequent among prisoners, and often related to a self-confessed sense of mistrust towards their prison mates, prison officers, lawyers, the legal system and ultimately society in general. Although we cannot investigate here the psychological dimension of crime, it is tempting to see a connection between hopelessness and mistrust on the part of prisoners, and to trace back that lack of trust to their childhood and family environment, as was related by them when talking about their life stories. For these reasons, it was very problematic for them to take a leap of faith and trust complete strangers.

26 Trust and dialogue relate to each other in a sort of “chicken and egg” situation. Dialogue is a condition of trust, but as we said above there must be trust among participants in order to engage in dialogue, which we refer to as “taking the leap of faith”. In a previous paper describing the experience we have underlined how dialogue was seriously threatened when trust among participants was replaced by suspicion and mistrust (“Socrates Behind Bars”, supra n. 1, subsection 4.4).
But we also want to focus on dialogue as an end in itself. Here we draw on the work of the British thinker John Stuart Mill, who held that freedom of opinion and expression is a precondition for the mental well-being of mankind.27 Allowing all opinions to be freely expressed promotes democracy, advances knowledge and ultimately results in the well-being of citizens. Mill was radical in his defence of this principle, and he maintained that “if all mankind minus one were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind.”28

This idea was a strong inspirational force for this project. The whole exercise was oriented towards listening with utmost respect to the opinions of the inmates, who are usually silenced or not listened to by society. Prejudices are left out of the picture by accepting Mill’s statement that “we can never be sure that the opinion we are endeavoring to stifle is a false opinion; and if we were sure, stifling it would be an evil still”.29 Silencing an opinion, always following Mill:

is robbing the human race; posterity as well as the existing generation; those who dissent from the opinion, still more than those who hold it. If the opinion is right, they are deprived of the opportunity of exchanging error for truth: if wrong, they lose, what is almost as great a benefit, the clearer perception and livelier impression of truth, produced by its collision with error.30

The idea of bringing students and inmates together to discuss and debate in the same physical space adds a further layer to the idea of dialogue. It could of course be argued that in order to know other people’s opinions it is not necessary to confront them directly, but one can know about them indirectly as these ideas appear in books, the media, and so on. But beside the fact that the voices of convicted criminals are rarely found in the public debate – and even more rarely treated with fairness – we firmly believe that confronting other people’s arguments indirectly by listening to whoever represents them is simply not enough.31 We must be able to hear different opinions and views “from persons who actually believe them; who defend them in earnest, and do their very utmost for them”; we must know about them “in their most plausible and persuasive form”.32 This is the reason why real contact among those who hold contrasting opinions is best, especially if talking about individuals or groups that rarely have opportunities for such real contact, as is the case of the law students and the prisoners who took part in this educational project.

28 Ibid., p. 18. Interestingly, Kant was equally radical in his approach to deontological morals, holding that a single human being living isolated on a desert island should behave following the categorical imperative. Immanuel Kant, The Metaphysics of Morals (edited and translated by Mary Gregor), Cambridge Texts in the History of Philosophy (K. Ameriks and D.M. Clarke (eds), Cambridge, Cambridge University Press, 1996). The similarity is striking, especially since what Kant was doing with his example was to show that moral thinking from a deontological perspective does not depend on the consequences of actions, whereas consequences are precisely the fundamental concern for Mill as a utilitarian philosopher, and lie at the core of his vigorous defence of freedom of expression.
29 Mill, supra n. 27, p. 18. Mill himself establishes the connection between (lack of) dialogue and prejudice, when he says that by listening just to one side (rather than both sides of a debate) “error hardens into prejudices, and truth itself ceases to have the effect of truth, by being exaggerated into falsehood” (ibid., p. 49).
30 Ibid., p. 49.
31 Ibid., p. 36.
32 Ibid.
Moreover, listening to the voices of those who are not often listened to is important for a further reason that was also emphasised by Mill. According to the utilitarian philosopher, those opinions that are in the minority, or that are usually silenced, should be particularly encouraged since they represent neglected interests or dimensions that risk not having their share. And assuredly people’s opinion is typically impoverished by the fact that we usually live surrounded by others who think alike and rarely dare to consider foreign ideas. As Mill puts it “the world, to each individual, means the part of it with which he comes in contact; his party, his sect, his church, his class of society”. By not being exposed to different people, to diversity, each individual’s vision of the world becomes short-sighted, and in that measure far from the truth, that “in the great practical concerns of life, is so much a question of the reconciling and combining of opposites”.

For that reason we believe that bringing together two groups that remain separate – when not openly in confrontation and full of prejudices towards each other – can help its participants to move closer to the truth, since whatever the truth is, it is the result of a struggle between different ideas. It is only by exposing our opinions to dialogue and debate that we will be able to prove and to strengthen them. All those opinions that remain uncontested and never exposed to criticism, will be held “in the manner of a prejudice, with little comprehension or feeling of its rational grounds”. Public dialogue and the creation of spaces that promote collision between opposing visions and worldviews are the recipe for instilling full meaning into thoughts, and that is what this educational activity was trying to achieve.

Along these lines, we believe that one powerful way to strengthen the mental equipment of future legal professionals is to confront them with opinions and views coming from a group who thinks about law, lawyers and the legal system in a completely different perspective. Opening one’s mind to criticism – and practicing the difficult art of listening to what is said against one’s own views – is “the only way in which a human being can make some approach to knowing the whole of a subject”, and as Mill holds, “no wise man ever acquired his wisdom in any mode but this; nor is it in the nature of human intellect to become wise in any other manner”. Thus, if we want our students to truly embody the principles and doctrines that they have learnt in law books and in the classroom we need to expose them to the battlefield of opinions, and in this metaphorical sense practicing Socratic dialogue with convicted criminals was like sending them to the trenches.

The price to pay for not engaging in a dialogue of this kind is high, since “not only the grounds of the opinion are forgotten in the absence of discussion, but too often the meaning of the opinion itself”. For that reason Mill believed that

33Ibid., p. 46.
34Ibid., p. 45.
35Ibid.
36Ibid., pp. 45–46. This conception of truth does not extend to mathematics, where “all the argument is on one side. There are no objections, and no answers to objections. But on every subject on which difference of opinion is possible, the truth depends on a balance to be struck between two sets of conflicting reasons” (ibid., p. 35).
37Ibid., p. 49.
38Ibid., p. 22.
39Ibid., p. 38.
we should thank others who think differently from us but share their opinions, since they enable us to give more meaning to our own thoughts and to get a closer look at truth.\textsuperscript{40} As we said elsewhere, this educational exercise was very much based on the idea that several reasonable arguments can exist to define what is just or correct in a given situation, and it is not so much about deciding who got it right or who got it wrong as about confronting the different views – an idea that lies at the core of Amartya Sen’s theory of justice, another inspirational source of this project.\textsuperscript{41} The right way is often “in between”, and it can only appear if we create a space where different views can be exposed and discussed in open dialogue.

Both students and prisoners claimed that they had never been exposed to an experience of this kind. We believe that this exercise is rare, and it is so among other things because this sort of quest for truth that Mill proposed requires a good deal of personal and collective courage. It is in fact much easier to believe what our own world believes and thus to relinquish “the responsibility of being in the right against the dissentient worlds of other people”.\textsuperscript{42} But Aristotle, who believed that education should be about making students virtuous citizens, placed courage among the most important virtues. And Socrates – considered by his contemporaries the wisest and most virtuous of men – was a living example of courage embodied in dialogue, exposing his ideas to others and listening to their opinions with the deliberate aim of advancing knowledge. By simply taking his method to prison this project was trying to offer both to inmates and to future lawyers the opportunity to practise courage, and courage is needed to engage in the sort of dialogue that Mill propounds.

5. Public importance of emotions

Emotions were at the forefront of this educational project from its very inception. In fact, the main goal of the course was defined as creating a space where both groups of participants could create emotional bonds. In a previous paper we have emphasised the emotional impact that the course had on the students.\textsuperscript{43} In very broad terms, they went through a process that began with a combination of excitement and fear, that was then superseded by complicity, empathy and ultimately compassion, but with recurrent surges of suspicion and mistrust.

We find that exposing students to an intense emotional impact was in and by itself an important achievement of this course. With relevant nuances in different countries or legal systems, legal education is notoriously emotion-less, in the sense that it does not aim at provoking emotional states in the students, much less to educate in such emotions.\textsuperscript{44} In broad terms, we could define a scale of four different levels for integrating emotions in legal education:

\begin{itemize}
\item \textsuperscript{40}Ibid., p. 43.
\item \textsuperscript{41}“Socrates Behind Bars”, supra n. 1 at section 3, and see also section 2 above in this paper.
\item \textsuperscript{42}Mill, supra n. 27, p. 20.
\item \textsuperscript{43}“Socrates Behind Bars”, supra n. 1, in particular subsection 4.6.
\item \textsuperscript{44}As affirmed by Paul Maharg and Caroline Maughan, “Legal education has operated principally in the domain of knowledge and reasoning and ignored the effect of feelings, attitudes and values in the learning process”, in “Introduction” to Paul Maharg and Caroline Maughan (eds), Affect and Legal Education (London, Routledge, 2011), p. 17. This traditional lack of interest in the emotional dimension of legal education is also reflected in the scarcity of relevant literature, that volume being a notorious exception.
\end{itemize}
• Level 0: Students receive a purely “technical” approach, based (depending mostly on the particular legal system) on statutes, doctrines and/or case law, without any relevant emotional component.

• Level 1: Students are exposed in an abstract and general way to the emotional appeal of some important civic and political values through their manifestation in legal principles and other legal materials. For example, by studying human rights law, students are introduced to values such as equality or non-discrimination, or to the historical formation of the idea of human dignity. Emotions are present inasmuch as they can be derived from this sort of intellectual discourse.

• Level 2: Students are exposed in particular ways, albeit indirect, to realities that create an emotional response. This is the case for example when students watch and discuss films or documentaries describing fictional or real-life stories that are relevant for their legal education.

• Level 3: Students are exposed in particular, direct and personal ways to law-related realities with the result (or even the aim) of creating an emotional response. This can happen for example through clinical legal education, or other forms of experiential learning.

The project described in this paper must be placed at level 3, since it primarily aimed at creating a strong emotional response in the student body. As a contrast with what is the general rule in legal education, this course was full of emotion in the most obvious sense of the term: “nervousness”, “tension”, and “excitement” were some of the words that students used in their diaries to describe their first day of class, and a few of them shed tears during the last session, something that rarely (if ever) happens in a law school classroom.

This neglect of the emotional dimension is especially problematic in light of Martha Nussbaum’s work on political emotions and their relation to justice.\(^{45}\) As is well known, Nussbaum sustains that a just society needs to cultivate and foster emotions that support and enhance its main civic values. Although this is a dimension that has been traditionally neglected in the liberal tradition, she holds that emotional commitment on the part of citizens is fundamental both for stability and as a motivational force, also in the case of liberal democratic societies that do not share or impose a particular comprehensive philosophical or moral doctrine or worldview.\(^{46}\) Within this general framework, we believe that there are reasons to be concerned about the neglect of the emotional dimension in legal education considering the crucial role that law professionals play in relation to the most important civic and political values in society. In other words, by not dealing with emotions we may be missing an opportunity to build future legal practitioners into role models for the advancement of justice.

One of the reasons why legal education falls short of producing an emotional impact is its distance from those who are the ultimate recipients of the system of administration of justice.\(^{47}\) This gap makes it very difficult, if not impossible, for


\(^{47}\) This gap is to a certain extent bridged through clinical legal education and other forms of experiential learning. However, clinical legal education is not universally widespread, and in particular none of the students participating in the course had clinical experience.
emotions to flourish. Always following Nussbaum, emotions are “eudemonistic”, meaning that they are triggered by people who are “among the important parts of the life of the person who feels the emotion”. In other words, “we grieve for people we care about, not for total strangers”.

In a certain sense, this course was about making the prisoners “no-total-strangers” for the students by including them within their “circle of concern”. The fact that the two groups came from completely different backgrounds and initially approached each other with prejudices was not a problem, since the thought of importance does not need to antecede the emotion. In the words of Nussbaum: “the vivid presentation of another person’s plight may jump-start it, moving that person, temporarily, into the center of the things that matter”. This is exactly the sort of reaction that students often describe in their diaries after the inmates explained personal details of their own life stories.

Nussbaum develops the eudemonistic nature of emotions specifically in relation to compassion, the particular emotion she deals with more extensively in her book. And compassion was precisely the sort of emotion that came to the forefront, sometimes implicitly but often explicitly, when students reflected on their own emotional state.

Nussbaum’s treatment of compassion is a textbook example of the emotional bond that was developed by students vis-à-vis inmates. First, seriousness of suffering was obvious, if only because most inmates were serving long-term sentences. But important as the years spent in prison are, students learnt that pain and suffering also take less apparent forms, such as being far away from family and friends or the fear of being rejected once back in society.

Secondly, although the prisoners were convicted criminals, the element of no-fault was also very much present, since the compassion and the blame typically address different phases of the person’s situation. As Nussbaum illustrates: “we may blame a criminal for a criminal act while feeling compassion for him, if we think that the fact he got to be the sort of person who commits criminal acts is in large part an outgrowth of social forces”. Students were indeed shocked at learning facts of the personal lives of

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48Nussbaum, supra n. 45, p. 144.
49Ibid., p. 11.
50This is graphically expressed by one of the students who writes in her journal after one of the first sessions: “in a very short time those that today we call prisoners will have a name and surname, a personal story and a special bond with each one of us”.
51Nussbaum, supra n. 45, p. 145.
52One inmate in particular caught the students’ attention. Just a few minutes before the first session he received his first permission to leave prison for a few hours after having spent 23 years in jail. “When we were born, he was already in prison”, one of the students claimed. This prisoner read aloud some pages he had written about his life in prison, and played a short film he had edited on the same subject. Students declared themselves to be “moved”. “I cannot define what I felt”, one of them wrote in her diary, “pity, compassion, injustice … here you have a good man under the skin of someone who had a difficult life”. Motivated by stories such as this one, some students actively offered their legal advice to their classmates, which was not part of the object and aims of the course.
53At the end of the course, one of the inmates wrote and read aloud an emotional goodbye letter addressed to the students, in which he said: “listening to our problems you have lived through them as if they were your own problems”.
54Nussbaum, supra n. 45, p. 142.
55Ibid., p. 143.
the prisoners that obviously pointed towards social, economic, psychological and other forces at the origin of their criminal careers.\textsuperscript{56} No-fault can also take a more subtle form when the suffering seems disproportionate to the fault, which was again a usual reaction on the part of the students who often criticised the severity of some punishments.\textsuperscript{57}

Thirdly, the “thought of similar possibilities” played a crucial role in the course as well. By bringing together students and inmates into the same room to discuss the same issues in an atmosphere of complete intellectual freedom, the course aimed at “removing barriers to compassion that have been created by artificial social divisions”.\textsuperscript{58} In spite of having taken at least two years of criminal law and criminal procedure, students were experiencing for the first time what it was to be in close contact with prisoners, and they felt that they were not as alien to each other as they may have thought. The prospects of a life deprived of freedom were literally embodied in front of them. As a consequence freedom was not taken for granted anymore: it became important, and the danger of losing it very real indeed. The strongest symbol of this thought of similar possibilities came when the two groups parted ways after each session and students saw their classmates walking back to their cells. “Some leave, some stay”, a student wrote in her diary. “I felt the power of deciding what to do tonight, a power they did not have … And I learnt above all that we are the same people living different lives …”

From the point of view of legal education, what is most interesting here is how personal compassion can trigger an emotional appeal to legal and civic values. It is in the relation between the particular and the general that the most important contribution of this project to the education of future lawyers lies, and the emotional element plays a crucial role in it. As is recognised by a body of theoretical literature (supported by some significant albeit limited empirical research), when the work of university students is focused on things they care about, the result is an increase both in their performance and in their level of satisfaction.\textsuperscript{59}

In that light, emotions in this project were sought not for their own sake, but as instruments of legal education. By turning the prisoners into “no-total-strangers”, and thus by offering students the opportunity to care about them, a certain degree of alignment was sought between formal educational goals and the students’ inner purpose, hopefully resulting in better students and ultimately legal professionals. This assumes a conception of “emotions” that, as exposed by Nussbaum in another important book, links with classical Greek thought, maintaining that emotions are not mere “appetites”, but that they “have an important cognitive element” and “embody ways of interpreting the world”.\textsuperscript{60}

\textsuperscript{56}For example, students were shocked to hear from an inmate that he had never had a birthday cake, not even when he was a small child. A student writes in her diary that they should bake a cake for him before the term is over. In that very moment, blame disappeared from the main focus. It was there, undoubtedly, but so was the feeling of compassion for the person whose childhood was barely conceivable for the students.

\textsuperscript{57}Nussbaum, supra n. 45, p. 144.

\textsuperscript{58}Ibid.


By carefully taking the debate back to general philosophical, political and legal points, the instructor avoided the danger of “emotional foundationalism”, that is, of regarding compassion triggered by the inmates’ personal stories as an “uncriticized foundation for public choice”, which is in fact “as pernicious as neglect of the emotions”. Thus, the course moved in a constant balance between the emotions triggered by the personal stories, viewpoints and opinions of the inmates, and the general principles of the legal and penal system that set the framework of their institutional lives.

This “uneasy oscillation between the particular and the general” had specific effects on students and on their self-perception as future lawyers. In the same way that the ultimate goal of Nussbaum’s project is that citizens have a critical commitment towards the political community and its values, a growing critical consciousness of the students vis-à-vis the legal system became obvious during the term. This critical consciousness was evident in their negative evaluation of what they perceived as blatant injustices or system malfunctions. But, interestingly, it was also present in positive assessments, such as for example in a deeper understanding of the philosophy that justifies the humanist theories of punishment, very much based on compassion. And maybe most significantly, it resulted in a renewed sense of empowerment and of the lawyers’ professional responsibility and its absolutely crucial impact in social and political terms. Emotions became thus hugely relevant in this project of legal education as a vehicle for an enhanced professional conscience.

6. Conclusion: love and the frontiers of legal education

In this paper we have described and analysed the three pillars that sustain the philosophical framework of this project on legal education. The first pillar is the need for cooperation, that is intimately related to the idea of trust among those who have to live and work together in society. In developing this first point, we have drawn on the work of Richard Sennett and the classic writings of the French humanist Michel de Montaigne. The second pillar is based on the importance of public dialogue for a healthy democracy, that is at the core of the work of John Stuart Mill. The third pillar has to do with the importance of emotions for justice, and is overtly inspired by the work of Martha Nussbaum.

All three elements were key in the design and implementation of the course, but the third one was especially innovative and challenging from the point of view of mainstream legal education. Although we have just sketched some implications of an emotional approach to law and the education of lawyers based on our particular experience, we would like to conclude this paper with a few admittedly ambitious reflections on how love matters for justice. In the words of Nussbaum:

61Nussbaum, supra n. 45, p. 157.
62Ibid., p. 386.
64See “Socrates Behind Bars”, supra n. 1, subsection 4.8. Although this is a power for which students have been preparing themselves for years in law school, in one way or another the system appears to have failed in making it explicit. According to their own statements, it was only by meeting face to face with prisoners in an open dialogue that students understood that they were being trained to occupy a role within a system that has immense consequences in the real lives of people and that confers on them huge powers and an inescapable responsibility.
Respect is not the public emotion good societies require, or at least not the only one. Respect grounded in the idea of human dignity will prove impotent to include all citizens on terms of equality unless it is nourished by imaginative engagement with the lives of others and the type of imaginative engagement society needs is nourished by love.65

Compassion can be seen as a step forward in the development of love as a political emotion. In fact, always following Nussbaum, “all of the core emotions that sustain a decent society have their roots in, or are forms of, love – by which I mean intense attachments to things outside the control of our will”.66

This radically challenges the comfort zone of traditional legal education, but links with an interesting philosophical tradition that sees in love a fundamental means of knowledge. According to the Austrian thinker Viktor Frankl, survivor of the Nazi concentration camps in Auschwitz and Dachau, “love is the only way to grasp another human being in their innermost core of his personality.”67 More than that, it is only by loving someone that one can see the potential in the other person, and by doing that “the loving person enables the beloved person to actualize these potentialities”.68 Goethe expressed this idea with logical clarity and aesthetic beauty by saying that “if you treat an individual as he is, he will remain how he is. But if you treat him as if he were what he ought to be and could be, he will become what he ought to be and could be.”69

This way of approaching the other becomes especially relevant to analyse the way in which the two groups of participants related to each other during the course. Students often referred to their growing feeling of complicity vis-à-vis their classmates by saying that they were learning to see “the person behind the prisoner”. As for inmates, they were eager to offer the best version of themselves in front of the students, who often reflected their surprise at learning about their classmates’ potentialities.70 We think it is not too naive to believe that humble instances of love were at play when individuals wanted to be seen as human beings full of potential rather than just “prisoners”.71

Grounding political commitment in love is an alternative to the philosophy of social contractarianism, that traditionally builds legal and political legitimacy upon the notion of mutual interest. Nussbaum shows the incompleteness of this motivational force by pointing at the exclusion of those who have nothing equivalent to offer in exchange for their inclusion. In her book Frontiers of Justice, she identifies three

66Ibid., p. 15.
68Ibid.
70For example, some prisoners took pride in talking about the healthy habits they had developed in prison, such as reading, studying, or the capacity to confront solitude and take advantage of their situation to do “inner work”. Some expressed their willingness to offer information and viewpoints that could be genuinely useful to the students as future lawyers, to demonstrate in front of them how much law they know, to offer their unique perspective of life inside prison. And of course, the prospects of life after prison (and of a better life after prison) were constantly present during the discussions.
71The idea that people offer the best version of themselves in the company of those whom they appreciate, and in particular their loved ones, has a long tradition in philosophy. It goes back to Plato stating that the best army would be an army of lovers, because “a lover who is detected in doing any dishonorable act, or submitting through cowardice when any dishonor is done to him by another, will be more pained at being detected by his beloved than at being seen by his father, or by his companions, or by anyone else. The beloved too, when he is found in any disgraceful situation, has the same feeling about his lover” (Plato, Symposium, Internet Classics Archive, at http://classics.mit.edu/Plato/symposium.html, accessed 1 December 2015).
instances of exclusion (disabled people, poor countries and non-human animals) and argues that they cannot be included within the scope of the contract from the perspective of mutual benefit but only through solidarity and love.

The same can be said, *mutatis mutandis*, about prisoners. The utilitarian logic of mutual benefit seems inappropriate to deal with those who have placed themselves beyond the limits of what is legally acceptable. Inmates are not only alienated from the rest of society, but they are also beyond the frontiers of core legal education, in spite of the fact that their lives are being completely determined by law and the actions of legal professionals. We said above that the law students participating in the course were confronted face to face with the realities of prison life for the first time, in spite of years of studying criminal law. With its limited scope, the ultimate aim of this project was to bridge this massive gap by engaging a small number of students in a public exercise on emotions.

This whole pedagogical project is sustained on the idea that education in sentiments is actually possible, and that there are cultural elements at play in the sorts of emotions that people experience, and in their efficacy.\(^\text{72}\) The way in which initial prejudices were overcome during the process, opening the door for empathy and compassion, seems to confirm that point. Emotional bonds, and the removal of emotional barriers, made cooperation possible and desirable, thus demonstrating that “the bases of social cooperation [are] complex and multiple, including love, respect of humanity, and the passion for justice, as well as the search for advantage”.\(^\text{73}\)

But the consequences of sentimental education extend beyond any particular individual or group of individuals. Although love and solidarity offer a better ground than mutual benefit to establish relations with excluded groups, they should not be confined to these relations. Love matters for justice not only when it is incomplete and an aspiration, “but even in an achieved society of human beings, were such to exist”.\(^\text{74}\) And if love matters for justice, it should matter to legal education.

**Disclosure statement**

No potential conflict of interest was reported by the authors.

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\(^{73}\)Ibid., p. 221.

\(^{74}\)Nussbaum, *supra* n. 45, p. 380.