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E. A. Heaman

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“Emotions as Reason”

E. A. HEAMAN

I was lucky enough to teach Eric Reiter's *Wounded Feelings* to graduate students. Many were instantly won over by it, but others struggled to understand how to read this first “legal history of emotions” (as the awarding citation by the Canadian Historical Association described it), stymied by the technical language and by how emotions relate to other constituents of history. I could share the uncertainty about the field: my books don't say much about emotion. It appears briefly as a causal factor in my monographs concerned with medical and commercial reasoning, and it doesn't appear in my book on the state, which ignores nationalism, at all. So, I was happy to say: “Lean into that perplexity; it's a good question. Let me know what you come up with.” But my other response was to blurt out: “But it has the holy grail of a history monograph,” the three things that, together, make for excellence. Firstly, it has a granular account of people saying, in their own words, who they think they are and what they think they deserve. Secondly, it is an account of the mechanisms and institutions that negotiate between individual yearnings, social norms, and the state. Thirdly, it makes an argument about large-scale changes over time, as the common sense of one age cedes to something different. Let me speak to those three constituents — the sense of self, of the social/state relationship, and of history — before jousting a little with the findings.

Eric Reiter gives us the deep legal backstory of moral injury and then shows a fabulous parade of people coming into the courts to say what made them feel hurt, affronted, insulted, mortified, or disgraced. We also get to see how their neighbours did or didn't agree with their claims of mortification as well as the courts'. There were many elite complainants, whom the judges tended to uphold, but also non-elite people making their own claims to emotional integrity and respectability: the Polish family who won their case against the police that disrupted their drink-fuelled baptism party, for example, or the man made the target of a charivari for stealing his neighbour's potatoes, who also won his case. Still, respectability was “not symmetrical”: a maid who, after working for eight months, was asked to open her purse as she left the house, and who sued for insult, lost her case on grounds that the master had spoken civilly and a servant must bear a

certain amount of “*sensibilité froissée*” or “bruised feeling” (69). Readers who, like Jack Granatstein, don’t want to hear about “the history of housemaid’s knee in Belleville,”¹ won’t want to hear the history of housemaid’s affront in St-Jean-sur-Richelieu. But as a onetime housemaid myself, I loved hearing her story and all the others. For all the legalese and sometimes obvious insincerity, it is impossible not to see, in many of these stories, something springing from the heart and its need for balm.

Secondly, we see how emotions, which we understand as highly subjective and individualized, acquired social and institutional currency across social, institutional, and state forms. The state has to judge who is rightly hurt when interest, propriety, or deference have been breached. In the case of the charivari, for example, we see a known “bad apple,” not just a potato thief but someone considered violent and litigious, being disciplined by his neighbours with a half-hour hullabaloo; that case becomes a confrontation between the judiciary and local opinion, both jealous of their punitive powers. The extent to which a given injury was public or private mattered enormously. But we also see judges letting one man speak roughly to his wife, while another is told that masturbation in his wife’s presence was inflicting extreme insult and humiliation. Gender is a complicating factor in many of Reiter’s stories: women were considered more emotional than men, so more likely to smart at an insult, but often frivolously so, and without the same “material” interest directly at stake, because material interests largely adhered to male heads of household.

Thirdly, Reiter gives us a large-scale account of how, between the 1860s and the 1940s, moral injuries became rights in Quebec legal culture. Discussions about rights appeared early on, but as the right for someone to do something to someone else within the bounds of convention or propriety. By the end of Reiter’s book, rights have come to stand for the moral injury itself, understood as a breach of individual integrity. Reiter argues that “Rights became an intensifier, a way to put a case about feelings onto footing similar to property or contract claims ... ‘my right was violated’ substituted objective legalistic precision for the subjective power of ‘I was humiliated’” (305).

Emotions, it’s clear, could be just as causal in law as in medicine and commerce. I could reason about them as I reason about other kinds of social-intellectual causes, bringing in Thomas Kuhn and his paradigms, but my version would look more like history of science than of emotions. According to Rob Boddice, the call for a focus on

emotions began as a repudiation of a purported binary between reason and emotion that depicted the former as hard-headed and the latter as frivolous and unstable.² That wasn't an entirely new observation: Pascal's heart had its reasons; Hume declared that reason was passion's slave. But the argument was a useful corrective to overly rationalist accounts of history that sometimes depicted white, propertied men as particularly rational and unemotional, while everyone else was undone by their emotions. *Wounded Feelings* makes that case very precisely, empirically, and well. Using emotions as grounds for selecting cases enables Reiter to stitch together an impressively coherent narrative. It also gives us the deep irony of people trying to carve out place for subjective feelings in legal language, court logic, flailing against reductionist liberal logic and yet continually carrying that liberal logic into new reaches.

And yet emotion is still visibly being boxed and binaried all over the place. Emotions are clearly in tension with the professional logic that lets the judge decide when feelings do not deserve to be taken seriously, such as when emotional distress at a medical procedure like an autopsy, is deemed unimportant or inconsequential. Emotions get ruled out according to purportedly objective priorities. Judges and doctors get to have emotions, but professional decisions should reflect professional logic.³ Other kinds of vocational logic get less respect, clearly trumped by the professional version. Policemen who make the wrong arrest don't get to take umbrage; nor do ticket collectors or security guards or servants, unless someone speaks to them roughly or lays hands on them. Qua employee, they are emotionally neutral, as are their employing corporations, which can suffer economic but not emotional damage. History of emotions refines rather than erases the distinction between emotion and non-emotion. I still see a certain rationalization of emotion: a discourse ultimately led by reason. The question becomes, what are the rules and conventions? And I would argue that Eric Reiter's account shows us how certain kinds of knowledge claims and commercial rights managed to impose historical limits on appeals to emotion.

Where people had wounded feelings, something failed: some form of knowledge or prediction or risk assessment. Everywhere, in Reiter's historical analysis, emotion was being translated into knowledge and rationality, as something with which to calculate risk. Because it is risk, insurance companies figure in the book, but so do the pains of love, which people struggled to calculate rationally. A

telling case of failure of knowledge is that of Xavier, who proposed to Rose, only to fall out with her over a prenuptial agreement, as he concluded she's a gold digger. A marriage contract incurred liabilities, but so did the mere act of proposing: Rose sued for breach of promise and won \$150. Xavier's complaint, that Rose hadn't loved him, prompted the observation "that the defendant should have taken steps to assure himself of his fiancée's devotion before letting things progress to such an advanced stage" (197). Xavier's wounded feelings were his own fault, reflecting his failure to do good risk assessment. Hadn't he *known* about women, that they were apt to be gold diggers?

Every question concerning wounded feelings had, underneath it, a question of whether greater caution or better risk assessment might have prevented the wounding. Every case had an underlying presumptive analysis, the kind that epidemiologists perform for epidemics, or bankruptcy courts for bankruptcies, or airplane crash commissions for crashes.⁴ Professional logic of that sort combined with a prudential logic of self-regulation to offer the necessary "objective, legalistic precision." I see in that prudential logic of self-regulation a historical debt to Norbert Elias's model of *The Civilizing Process* that began in early modern etiquette books and taught people to restrain their revulsions and emotions in complex social situations.⁵ Emotions figure as causal factors, but the framework remains reason, requiring thoughtful analysis of what is and isn't under any given person's control: love, honour, and so forth. Because reputation and disgrace are irreducibly social, they require you to predict how other people are going to respond: ungrateful children, vicious spouses, tittering bystanders. How much security can respectability purchase against enmity? And how easily can that respectability be lost or reversed? I see here the legal counterpart of Keith Walden's great book on the Toronto Fair as expressing the dizzying array of choices, things to do and buy, in the modern city, but updated in ways that seem closer to our own perspective by the genuinely ubiquitous threat that someone might, if not lay hands on you, say something rude and humiliating that spectators or courts might confirm.⁶ It's not just about feelings but also about the ways that the material and social foundation that should protect the feelings become dizzyingly challenged.

For example, no one wanted to be called a "whore." It was insulting and humiliating for women and the men close to them. It may have caused family breakdown, social ostracism, harassment, and assault, and in one case recounted here seizure by police and hygienic

inspection. Such epithets made respectable women like a housemaid vulnerable to a little “bruised feelings” and rough handling from time to time. The job of the courts was to decide on empirical and moral grounds whether the epithet and humiliation were reasonable and fair. Police were reprimanded for arresting a respectable woman in a sweep of unrespectable ones; the police response that the woman in question had fought back in unrespectable ways was dismissed out of hand. The calculus of respectability for any given street or woman was perilous. But the changes to material and moral life were democratizing ones that made older forms of moral opprobrium harder to uphold in a legal system predicated on legal equality. As Tocqueville had discovered in the gap between aristocratic France and a democratizing America, according to Frank Ankersmit, “Social uncertainty or confusion leads in the democratic use of language to uncertainty in meaning.”⁷

We can see, in the state’s difficulties in deciding such questions on something like objective, professional grounds the makings of our current conundrums: a world where shaming epithets fly faster and more furiously than ever before, thanks to the internet and anonymity. That’s what Diane Abbott, a Black British MP since the 1980s — long enough to notice the kinds of generational changes that *Wounded Feelings* charts — blames for the huge upswing. Things weren’t like that back in the 1980s, she argues. When her aids were asked what most surprises them about working with her, their response was the incessant letters and emails and social posts that let fly with the most demeaning racial epithets imaginable.⁸ But the state doesn’t take much interest in such things. People learn to ignore the shaming epithets and the “f--- your feelings” ethos upholding them (that, Laurie Penny observes, never seems to apply to white men⁹), or they withdraw from the important conversations that draw insults as honey does flies.

Christopher Dummitt also has spoken to some of those long-term postwar changes. He has seen an escalation of “radical individualism” in both neoliberalism, described by the left as “hyper-individualistic, selfish cultural transformation,” and in the left-wing “neoliberalism,” also deeply invested in a “culture of radical individual autonomy,” that grew out of the rights revolution figuring in the tail end of *Wounded Feelings*.¹⁰ I hope he registers the differences between the different kind of Governor General’s awards, the non-fiction award that now goes only for personal memoirs that Eric Reiter cannot win, and the scholarly-history one that he did win: the one that interrogates the way the

self, the social, and the state calibrate one another on a large canvas, often over long periods of time.¹¹ *Wounded Feelings* shows us not just ruptures but continuities in the hard negotiations between individual, state, and society over the long durée.

Perhaps rights strive so hard because they fail so badly to protect people from humiliation. Long before the postwar rights revolution, *Wounded Feelings* illustrates, rights were clearly weaker than the older protections for wounded feelings, those from propriety, in the face of commercial interests and professional logic. A Black man's right to enjoy a commercial service, such as a theatrical show, could be trumped, on the rights model, by the owner's worry that white customers might fall away. Fred Johnson won his complaint for humiliation against a discriminating Montreal theatre in 1898; later complaints for the right to service, including Fred Christie against the York Tavern, were less successful. Black men either became less respectable or less wounded or less rights-invested. If the nineteenth-century court found it must, on objective legal logic, admit Black men into the community of the emotionally sensitive, the twentieth-century court developed new grounds to write their feelings out again. Commercial risk assessment and professional logic justified such discrimination. We might see there a certain economic logic working to reshape the other ways of thinking, as the older version of rights, that is, as a right to do something to someone, was carried into realms prohibited in the nineteenth century, so as to become not extensions of but encroachments upon personal integrity and dignity. Commerce and professional judgment instrumentalized laws and rights alike and blasted away the protections of propriety. But emotions put up a good fight. Eric Reiter's account of how they did so gives us a much more complex and interesting account of the emerging modern Canadian self than anything we've had before.

E. A. HEAMAN teaches history at McGill University and has written five books.

E.A. Heaman enseigne l'histoire à l'Université McGill et a écrit cinq livres.

Endnotes

- 1 Christopher Moore, "History and Relevance," *Christopher Moore's History News* 18 February 2010.
- 2 Rob Boddice, *The History of Emotions* (Manchester UK: Manchester University Press, 2018), 59–62.
- 3 See Joseph Heath, *The Machinery of Government: Public Administration and the Liberal State* (Oxford: Oxford University Press, 2020).
- 4 James Fallows, "The Three Weeks That Changed Everything," *The Atlantic*, 29 June 2020.
- 5 Norbert Elias, *The Civilizing Process: Sociogenetic and Psychogenetic Investigations*, trans. Edmund Jephcott, ed. Eric Dunning, Johan Goudsblom, and Stephen Mennell (Oxford: Blackwell, 1994).
- 6 Keith Walden, *Becoming Modern in Toronto: The Industrial Exhibition and the Shaping of a Late Victorian Culture* (Toronto: University of Toronto Press, 1997).
- 7 Frank R. Ankersmit, *Aesthetic Politics: Political Philosophy Beyond Fact and Value* (Stanford CA: Stanford University Press, 1996), 299.
- 8 "Labour's Diane Abbot tells of 'racist and sexist abuse,'" *BBC News*, 12 July 2017; see Lisa Amanda Palmer, "Diane Abbott, misogynoir and the politics of Black British feminism's anticolonial imperatives: 'In Britain too it's as if we don't exist,'" *Sociological Review*, 68, no. 3 (2020): 508–23, <https://doi.org/10.1177/0038026119892404>.
- 9 Laurie Penny, "'Fuck your feelings' Never Applies to White Men," *Medium*, 7 February 2021, <https://pennyred.medium.com/fuck-your-feelings-never-applies-to-white-men-7aa827153774>.
- 10 Christopher Dummitt, "We have a collective action problem," *The Hub*, 5 May 2021; "Meoliberalism: Common Assumptions in a Polarized Age," (presentation, Between Postwar and Present Day: Canada, 1870–2000, Local, National, Global conference, University of Toronto, 7 May 2021).
- 11 Kenneth Whyte, "Who's Killing Canadian Non-Fiction?" *Globe and Mail*, 6 December 2019.