

**JUDGES, EMOTIONS AND ETHICS: A (POSSIBLE!) DIALOGUE FROM THE BRAZILIAN
LEGAL-CULTURAL CONTEXT**

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“Emotionless judges are “mythical beings”, like “Santa Claus or Uncle Sam or Easter bunnies”³

“Legal thought requires an understanding of emotions not simply as defects of rationality, but also as a distinctive mode of apprehending and navigating the world around us. Developing this understanding requires a body of work which draws on a breadth of humanistic and (social) scientific knowledge, which brings that knowledge to specific legal problems by integrating it into practical solutions, whose utility follows many distinct paths and can be communicated to and adopted by a range of legal actors”.⁴

Abstract

According to Aristotle, we should feel emotions in the right way, for the right reasons, in the right moment and related to the right person⁵. In this work I will be loyal to Aristotle as much as I can. From this background I will discuss the judge’s decisive role within the system of imprisonment for criminal offences in Brazil. The main argument of this article is that judges should take their emotions into account. According to Aristotle, the prudent person can trust in his/her emotions and prudence (the excellence of the calculative part of the soul) can be developed following the example

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³ MARONEY, Terry. Emotional regulation and Judicial behavior. *California Law Review*, vol. 99, p. 1481-1552, 2011, p. 1484. Available at SSRN: <https://ssrn.com/abstract=1785616>. Last access: 01/07/18.

⁴ ABRAMS, K.; KEREN, H. Who is afraid of Law and emotions. *Minnesota Law Review*, 94, p. 1997-2074, 2007, p. 2074.

⁵ ARISTOTLE, Nicomachean Ethics In: *The complete works of Aristotle: the revised Oxford translation*, translated by Ross, W. D. Vol. II. Princeton, N.J.: Princeton University Press, 1984. 1106b 20.

of the *phronimos*. Emotions are, therefore, related to the moral nature of the agent. It is for that reason the judiciary should turn its attention to the moral development of judges.

Key-words: Law and emotions, Aristotelian Ethics, Enforcement Law in Brazil.

1. What are emotions according to Aristotle?

Aristotle defined emotions in distinct ways in his works. This is because each definition of emotions is related to a specific scientific intention. In *Rhetoric*, Aristotle defines emotions as “all those feelings that so change men as to affect their judgements, and that are also attended by pain or pleasure”⁶. In *Nicomachean Ethics*, he explains the meaning of passions/emotions as: “appetite, anger, fear, confidence, envy, joy, friendly feeling, hatred, longing, emulation, pity, and in general the feelings that are accompanied by pleasure or pain”⁷. Both definitions do not present a full account of emotions in Aristotle’s mind, as the first account regards the specific aims of rhetoric and the second one is a list of cases, which cannot be assumed as a complete definition of emotions, along with the statement that they are accompanied by pleasure and pain.

The decisive element of emotions does not appear in the previous definitions but is deeply explored in *Rhetoric*: Emotions are based on thoughts, opinions or evaluative judgements. “This element is not only a part of the emotions: it is the decisive

⁶ ARISTOTLE. *Rhetoric* In: *The complete works of Aristotle: the revised Oxford translation*, translated by Roberts, W. Rhys. Vol. II. Princeton, N.J.: Princeton University Press, 1984. (1378a20–25).

⁷ ARISTOTLE, *Nicomachean Ethics* In: *The complete works of Aristotle: the revised Oxford translation*, translated by Ross, W. D. Vol. II. Princeton, N.J.: Princeton University Press, 1984. (1105b20–25).

element⁸ (...) the agent has an opinion and the emotion is felt according to this opinion”⁹.

Aristotle realized that emotions are not an auxiliary element of persuasion but, rather, are intimately connected with a) states of pleasure and pain; b) our opinions and evaluative judgements and with the objects at which they are directed; c) our desires; d) certain cognitive efforts, such as having beliefs and making judgements¹⁰. Emotions express our evaluative judgements and can be educated but never (completely) eliminated from the decision-making process.

Therefore, good deliberation in practical life includes emotions and the wise person, rather than suffocating or avoiding the emotional experiences involved in practical deliberation, should be concerned in educating desire and developing his/her virtues and the excellence of prudence¹¹ in order to feel emotions in the right way. Aristotle states that the following advice must guide the emotional experience of the wise person in a practical situation; “feel [emotions] at the right times, with reference to the right objects, towards the right people, with the right motive, and in the right way, is what is both intermediate and best, and this is characteristic of virtue”.¹²

In contemporary times, we know much more about emotions. Emotions are complex phenomena. According to Damásio, emotions are the jewels of the crown in the process of regulating life.¹³ Without emotion, there is no rationality as we know it.¹⁴

⁸ “Na verdade, este elemento não é somente uma parte da emoção: ele é seu elemento decisivo”. ZINGANO, Marco Antônio de Ávila. *Emoção, ação e felicidade em Aristóteles*. In: *Estudos de Ética Antiga*, 2ª ed. São Paulo: Discurso Editorial: Paulus, 2009, p. 152.

⁹ “O agente tem então uma opinião e a emoção é sentida conforme a esta opinião”. ZINGANO, Marco Antônio de Ávila. *Emoção, ação e felicidade em Aristóteles*. In: *Estudos de Ética Antiga*, 2ª ed. São Paulo: Discurso Editorial: Paulus, 2009, p. 152.

¹⁰ RAPP, Christof. *Tragic Emotions* In *A Companion to Ancient Aesthetics*, edited by Murray, Penelope and Destrée, Pierre. Hoboken: Wiley-Blackwell, 2015, p. 443–444. Available at: https://www.academia.edu/14898301/Tragic_Emotions. Last access: 01/07/18.

¹¹ ZINGANO, Marco Antônio de Ávila. *A conexão das virtudes em Aristóteles*. In: *Estudos de Ética Antiga*, 2ª ed. São Paulo: Discurso Editorial: Paulus, 2009.

¹² ARISTOTLE, *Nicomachean Ethics* In: *The complete works of Aristotle: the revised Oxford translation*, translated by Ross, W. D. Vol. II. Princeton, N.J.: Princeton University Press, 1984. 1106b 20.

¹³ DAMÁSIO, A. R. *E o cérebro criou o homem*. Trad. Laura Teixeira Motta. São Paulo: Companhia das letras, 2011, p. 141.

¹⁴ “Because emotions have never been a suitable candidate in the continually unsuccessful search for a species-specific difference between humans and animals, they were never classified as essential properties of the human being. Their central significance for the rest of our mental life was neglected.

Consider Phineas Gage¹⁵, who, after an accident at work, lost his ability to be emotional and to regulate his own emotions; this led to his ruin. Emotions involve *outside aspects* such as the particular social context and the corresponding cultural models of interpretation and behavior and they also involve *internal aspects* such as innate physiological processes anchored in human biology, psyche, brain structures and brain functioning and trauma¹⁶. In sum, “emotions should be conceptualized as highly complex bio-cultural interaction systems that develop and change over the course of time”.¹⁷ Emotions can also be consciously regulated using emotion regulation strategies¹⁸.

Alongside all this complexity, it still makes sense to relate the subject's emotional experiences to the development of the moral agent. In this paper, we will center the discussion on emotions around the moral development of the moral agent while noting that emotions are a much more complex phenomena.

2. Emotions in Law

Law is a science which is called upon to solve problems arising in praxis. At all times, new cases arise which require an adequate juridical response and old legal problems may require new (or renewed) responses. “This is because problematic experience, as

However (...) without emotions, much would leave us indifferent; even our own future would seem uninteresting and trivial. Without emotions, we would be unable to make the decisions that guide our actions; we would have no evaluative basis for more long-term rational judgements and decisions. Without emotions, we would be incapable of a social and cultural life in a close community with many other persons (...) humans are emotional beings in a crucial sense – not in the sense that they differ fundamentally from other living beings through their emotionality but in the sense that without their emotionality many of the properties formerly proposed as species-forming differences such as our ability to act rationally (animal rationale) or our ability to form and sustain social communities (zoon politikon) would not exist either”. STEPHAN, A. Homo sapiens – the emotional animal. In: RÖTTGER-RÖSSLER, B.; MARKOWITSCH, H. J. (ed). *Emotions as bio-cultural processes*. New York: Springer, 2009, p. 13.

¹⁵ DAMÁSIO, A. *O erro de Descartes: emoção, razão e cérebro humano*. Trad. Dora Vicente e Georgina Segurado, 24ª ed., Nem Martis: Publicações Europa-América, 2005.

¹⁶ VAN DER KOLK, Bessel. *The body keeps the score: Mind, brain and body in the healing of trauma*. New York: Penguin books, 2015.

¹⁷ RÖTTGER-RÖSSLER, B.; MARKOWITSCH, H. J. (ed). *Emotions as bio-cultural processes*. New York: Springer, 2009, introduction.

¹⁸ For an account on emotion regulation in Law. MARONEY, T. Emotional Regulation and Judicial Behavior. *California Law Review*, Vol. 99, p. 1481-1552, 2011; Vanderbilt Public Law Research Paper No. 11-16. Available at SSRN: <http://ssrn.com/abstract=1785616>. Accessed at: 2.2.15.

well as historical experience, is always broadening and deepening in terms of demanding new questions and another direction for the answers.”¹⁹

In each court judgment there is a decision, as it is desired to reverse the dimension of *voluntas* into one of *ratio*.²⁰ There are certainly relevant differences between the judge, who decides on a case, and the classic moral agent, according to Aristotle. The judge is not a moral agent by excellence when judging a legal case, that is, he or she does not make decisions concerning her own life and then acts on them under the classical concept of a moral agent. Deciding a case, however, is not ruled by fixed norms and principles in theoretical terms.²¹ “Since a judge has to reflect on what works and what doesn’t in legal interpretation and application, the professional quality of *phronesis* is crucial”.²² The judge is engaged in the task of having to “bridge the gap between the generality of the rule and the particularity of the situation.”²³ The *phronimos* virtuous judge is concerned about the good practical decisions in the future (*prohairesis*) which affect the life of the parties in dispute, their own life and the community’s life.

Let us look at the example of Fiona Maye in the literary work “The Children Act”. Fiona is a judge at the Superior Court in London and must decide whether Adam Henry should compulsorily receive blood transfusions. The young man and his family refused

¹⁹ “Isto porque a experiência problemática, enquanto também experiência histórica, vem sempre a alargar-se e a aprofundar-se, em termos de exigir novas perguntas (problemas) e outro sentido para as respostas”. CASTANHEIRA NEVES, A.. *Metodologia Jurídica: Problemas Fundamentais*. Vol. Boletim da Faculdade de Direito. STVDIA IVRIDICA. Coimbra: Coimbra Editora, 1993, p. 157.

²⁰ When a legal problem is unanswered by the legal system, the relationship between the legal system and the legal case turns an aporetic one. The legal system ceases to be the expression of an available hypothetical solution to reveal itself as an uncomplete task. By the questioning of a situated legal case, as an aporetic experience - because the practical queries and problems posed by the concrete legal case have not yet been absorbed by a fundamental systematic-dogmatic exercise. CASTANHEIRA NEVES, A. *Metodologia Jurídica: Problemas fundamentais*. Boletim da Faculdade da Faculdade de Direito: Stvdia Ivridica 1. Coimbra: Universidade de Coimbra, 1993, p. 158.

²¹ For a defence of the judge as a moral agent. SILVESTRE, Ana Carolina de Faria. Emotions and sentiments in judicial deliberation. *International Journal for the Semiotics of Law*. 2019.

²² GAAKEER, Jeanne. Practical Wisdom and Judicial Practice: Who’s in Narrative Control?. *ISLL Paper, The Online Collection* 8, p. 8.

²³ GAAKEER, Jeanne. Practical Wisdom and Judicial Practice: Who’s in Narrative Control?. *ISLL Paper, The Online Collection* 8, p. 8.

to consent to the transfusion for religious reasons and the refusal would culminate in the death of Adam or in very serious sequelae. The case ended up in the hands of Judge Fiona. On the one hand are the parents, resigned to the boy's condition because they believe that blood transfusion is prohibited by God. On the other, the hospital, which seeks the consent of the court to proceed with the transfusion as an indispensable part of the treatment of leukemia to which the young man was submitted. Finally, Adam Henry and his guardian. Legally, the principles of freedom of belief and faith, the principle of dignity, the right to life, the freedom to choose medical treatment, the principle of the best interest of the child and the discussion on Adam Henry's legal capacity (with seventeen years old) of refusing the blood transfusion. With regard to the Brazilian legal reality, specifically, there is the Federal Constitution that raises the principles of freedom of belief and faith, the principle of human dignity and the right to life as constitutional principles. The principle of the best interest of the minor is also enshrined in the Constitution and is largely provided for in specific legislation entitled the Statute of Children and Adolescents (*Estatuto da Criança e do Adolescente*). Freedom of choice of medical treatment is a fundamental premise in the relationship between doctor and patient. In light of this complex juridical scenario, what is the correct answer for the *sub judice* case? The appropriate response to the case is not available in the legal system for it to be identified and applied. It is built from the case and for the case by means of practical-normative reasoning, hence the statement that the judge must be assumed, to some extent, as a moral agent.

"The meaning of the legal system is not static (...) If we assume the concrete case as the methodological *prius* of the practical realization of law and the axiological dimension of law as "a validity to assume and to problematize in the very realization of law", then we are able to conclude that legal adjudication demands more than scientific knowledge and it should be treated as a judicative decision. It leads us to sustain that the legal adjudication demands Aristotle's *phronesis* excellence and also some virtues"²⁴.

²⁴ SILVESTRE, Ana Carolina de Faria. Emotions and sentiments in judicial deliberation. *International Journal for the Semiotics of Law*. 2019.

3. Reflecting on emotions – challenges in the Brazilian juridical context

Law Enforcement in Brazil provides a landmark from which to reflect on emotions in law because the incarceration system has collapsed²⁵. The Law Enforcement in Brazil gives the judges involved in enforcement of the law²⁶ many important powers as to suspend the operations of a prison facility, or part thereof, which is not adhering to the law or not operating within the state's requirements. However, how can a judge order the suspension of a facility if Brazilian prisons are mostly overcrowded? Additionally, the violation of the inmates' human rights is a disturbing reality in most Brazilian prisons, at least at certain degree²⁷.

A truly committed enforcement law judge will do their best to guarantee the prisoners' rights (regardless of the crime he/she has committed) and, faced with the reality of incarceration in Brazil, it can be anticipated that the moral development of the judges and their ability to manage their own emotions and the emotions of the parties assume an important role. Judges are not super heroes but a truly committed judge (a prudent one?) can use his or her creativity and other personal efforts in order to change some aspects of the reality of incarceration for example, to fulfill the system's legal requirements, to promote the prisoner's well-being and to change the relationship between the inmate and the community. However, these personal efforts and creativity have their limits. Judges cannot change the structure of the incarceration system, but they can do their best to promote the prisoner's well-being.

²⁵ According to the National Counsel of Justice (CNJ), the incarcerated population in Brazil, in July of 2019, was over than 812.000. Incarcerated population increases 8,3% per year. Available at: <https://g1.globo.com/politica/noticia/2019/07/17/cnj-registra-pelo-menos-812-mil-presos-no-pais-415percent-nao-tem-condenacao.ghtml>. Last access: 01/29/2020.

²⁶ In small counties, in which there is only one judge, she or he should rule all types of legal cases but the more big is the county, the more judges tend to work there and it becomes viable to separate between them the competency to rule specific kinds of legal cases. In big counties, there are judges specialized in deciding only criminal legal cases.

²⁷ Another bloodbath in Brazil's prison. *Human rights watch*. 2019. Available at: <https://www.hrw.org/news/2019/05/28/another-bloodbath-brazils-prisons>. Brazil World Report: Prison Conditions, Torture, and Ill-Treatment of Detainees. *Human rights watch*. 2019. Available at: <https://www.hrw.org/world-report/2019/country-chapters/brazil>

3. 1. Law Enforcement in Brazil: A brief account

Brazil embraces the civil law tradition. Nonetheless, the influence of common law practices has been increasing. For instance, since 2004, the Brazilian Supreme Court has been authorized to set mandatory precedents in exceptional circumstances, binding both the Executive and the lower ranks of the Judiciary. The Brazilian criminal justice system is framed by the 1988 Constitution and subordinate regulations such as the 1940 Penal Code, the 1941 Code of Criminal Procedure, the 1984 Brazilian Enforcement Law (LEP) and many other varying regulations which address criminal investigation, prosecution, adjudication and criminal execution in a more detailed manner. In this work I will focus my attention on Brazilian penal law, particularly the disparity between the written law and the reality of penal conditions in Brazilian prisons and the judge's important role in this scenario.

Penal law gives a great deal of power to judges, lawyers and public prosecutors in shaping sentencing and my main goal in this work is to analyze, through the Aristotelian background, how the education of desire can enrich their work. I am not suggesting that Brazilian judges are not committed enough to their work, but rather that due to the actual conditions of the prisons, the low public investment for building new penitentiaries and rebuilding those which are badly damaged, and the power given by penal law to judges, that moral development play an important role. Within this particular context, my argument is that the moral education of judges should be an institutionalized concern.

3.1.1. Law Enforcement in Brazil (LEP): Some remarks

Law Enforcement (LEP) in art. 1 establishes that the penal law's goals are the implementation of the sentencing provisions or interlocutory decisions and the provision of appropriate conditions for the harmonic social integration of the inmate.

Art. 1 is in accordance with art. 5º of the Federal Constitution of 1988 which expressly states that: XLVII – There shall be no: a) death penalty, except in case of war; b) penalties of a perpetual character; c) forced labor; d) ban; e) cruel punishment; XLVIII – the sentence will be served in different prison accommodation in accordance with the nature of the crime, the age and sex of the convicted person; XLIX – It is guaranteed to

maintain prisoners' physical and moral integrity; L – It is guaranteed that convicted women shall remain with their children during breast-feeding.

Art. 3 establishes that those who are convicted of a criminal offence maintain all the rights which are not affected by the penal sentence. There shall be no discrimination based on race, social status, religion or political orientation.

Art. 5º establishes that the individual convicted of a criminal offence will be classified according to their criminal records and personality, in order to guide the individualization of the penal sentence.

Art. 6º establishes that the classification will be performed by a Technical Commission of Classification ("TCC"), bodies established to implement an individualized penal program for each inmate. The individualization of the sentence is a constitutional precept (art. 5º, XLVI, FC) which must be taken into account in the *judicial individualization of the punishment* (when the judge defines what is an adequate penalty between the minimum and maximum previously established by law), and within the initial penalty regime (if it is the case of granting/recognizing any kind of benefit, etc.) as in the *individualized enforcement program*. Art. 7ª establishes that there should be a TCC established in each prison to deal with cases in which the inmate was punished by deprivation of liberty. The TCC is comprised of the prison director, at least two chiefs in charge of different sectors in the prison (for instance, administration, work, recreation, etc.), a psychiatrist, a psychologist and a social assistance officer.. In other cases, the TCC will be formed by Inspectors of Social Services. The judge is the final voice in the individualization of penal sentencing and he or she needs to be well informed in order to give to each inmate what they are due by justice and by law.

Notwithstanding the legal requirements for the establishment of TCCs, according to the Justice Ministry Report on the Actual Situation of the Enforcement System (2008),²⁸ only in the Federal District and the States of Espírito Santo, Minas Gerais,

²⁸ Relatório da situação atual do sistema carcerário. Comissão Técnica de Classificação. Available at: http://www.justica.gov.br/seus-direitos/politica-penal/arquivos/plano-diretor/anexos-plano-diretor/meta06_ctc.pdf. Last access: 05/26/17.

Mato Grosso, Pará, Piauí, Paraná and Rio de Janeiro is there a TCC in every prison. In Espírito Santo State, only 3 prisons have Technical Commission of Classification in functioning. Maranhão State, Paraíba State and São Paulo State have TCC's in some prison units. This data is not regularly updated, but although the real situation may have changed slightly, there is no evidence which suggests the changes have been substantial or positive.

The practical consequences of the inexistence of TCC's in prisons and the insufficient numbers of penitentiaries in Brazil are as follows, firstly, the incarcerated population is separated only on the basis of gender. The requirement for separation to be based on the nature of the crime, age and gender is therefore only partially fulfilled. A person convicted of stealing (without violence) may be obliged to share a cell with a person convicted for rape, another one convicted on drug trafficking and so on. Secondly, the cells are crowded, with almost 2 convicted people per vacancy.²⁹ Thirdly, sexual violence is a terrible and frequent occurrence in these places. In practice, there is no full respect for the physical and moral integrity of the convicted person.

In art. 10 it is established that assistance must be provided to the inmate by the state in order to prevent reoffending and to prepare him/her to return to community life. Chapter II of PEL is dedicated to exploring the material, health, legal, educational, social and religious assistance terms provided to the inmate.

One of the guaranteed rights of the inmate is educational assistance. It is stated in the Federal Constitution (art. 205) and it is reaffirmed by the PEL. Studying is especially important for the inmate (and to offenders on parole) because it is a way to reduce their sentences. For every 12 hours of study, the sentenced person will reduce their penalty by one day. The inmate can reduce their sentence by working, by studying or by reading books. According to National Justice Council (CNJ) recommendation n. 44, reducing a sentence by reading books should be encouraged in general but it should be done so especially in prisons where inmates do not have access to education, professional training and do not work. The voluntary participants in the project will have around 30 days to read the book and after that they need to present a book

²⁹ Cadeias seguem superlotadas e sob o domínio de facções. Available at: http://brasil.elpais.com/brasil/2014/09/26/politica/1411768517_706257.html. Last access: 05/26/17.

review that is going to be evaluated by the project organization commission. For each accepted book review (up to the limit of 12 books by year), the inmate reduces their penalty by 4 days.³⁰

Reducing a penalty by reading books initially seems to be a promising strategy to guarantee an alternative way to reduce an inmate's penalty. However, according to the National Uprising of Penitentiary Informations (Infopen) 2014 report, the socioeconomic profile of the incarcerated population in Brazil indicated that 75.08% of inmates had only studied until elementary school age (10 years old).³¹ Given these low levels of literacy, for many inmates reducing their penalty by reading books is not a realistic alternative.

3.1.1.2. The role of the judge within Law Enforcement in Brazil

The Law Enforcement in Brazil establishes that: It is for the judge to:

Art. 66: I – apply the new law to previously decided cases only if they are favorable to offender;

II – declare the extinction of criminal liability;

III- decide on:

- a) Whether the penalty will be served concurrently or consecutively;
- b) Whether the offender will be released under 'licence' (on parole) or, conversely, whether the offender under licence must return to prison and serve the rest of the sentence.
- c) Whether to reduce the penalty due to time already served or by work, study or by reading books;
- d) Whether to allow conditional suspension of penalty execution;
- e) parole eligibility;
- f) Enforcement incidents;

³⁰ CNJ serviço: saiba como funciona a remição de pena. Available at: <http://www.cnj.jus.br/noticias/cnj/81644-cnj-servico-como-funciona-a-remicao-de-pena>. Last access: 05/26/17.

³¹ ³¹ Relatório da situação atual do sistema carcerário. Comissão Técnica de Classificação. Available at: http://www.justica.gov.br/seus-direitos/politica-penal/arquivos/plano-diretor/anexos-plano-diretor/meta06_ctc.pdf. Last access: 05/26/17.

IV- Authorize temporary permission to leave;

V- determine:

- a) How restriction of rights sentences (community sentences and weekend limitation sentences) are going to be served, according to the personal conditions of individual offender, and monitor this;
- b) Conversion of restriction of rights sentences into deprivation of liberty sentences.
- c) Conversion of deprivation of liberty sentences into restriction of rights sentences;
- d) Whether to enforce hospitalization and deciding on hospitalization instead of incarceration;
- e) Whether to revoke hospitalization (passed one year after the termination of hospitalization);
- f) The termination of hospitalization;
- g) The carrying out of a sentence in another district or hospitalization in another mental institution;
- h) The transfer of the offender to (another) federal prison institution;
- i) The correct enforcement of the sentence and/or hospitalization;
- j) Conduct monthly inspections of penitentiary facilities, undertaking measures to ensure the facilities are operating correctly and, when the case arises, apportioning responsibility if a crime is committed.
- k) Suspend operations of a facility, or part thereof, which is not adhering to the law or not operating within the requirements.
- l) Install and participate in the Community Council³².
- m) Deliver a statement of the sentence length annually to the offender.

³² The Community Council intends to improve the presence and the direct participation of the community in social life. The basic composition of the Community Council is: the Enforcement Judge, some professionals as lawyers, social assistances, public lawyers and a representative of the business community. The Enforcement judge can also invite other representatives of the community to take part in the community council.

The judge has been granted decisive powers by the PEL. A responsible judge (a prudent one?) can change offenders' reality in a positive way and, they can also be a key element involved in transformation within community life. If a prudent judge notices that the prison conditions are so poor that they do not respect human and fundamental rights, then it is within their power to suspend the operations of the facility. The LEP provides the judge with additional powers beyond supervising the enforcement of the criminal sentence, and this paper's argument is that the more prudent a judge is (or is are willing to be), the more influential they will be when working within the penal system.

José Henrique Mallmann, while a state judge in Santa Rita do Sapucaí, a small town in South Minas Gerais, for instance, had positively changed many incarcerated prisoners' lives with low investment and high creativity. He developed the idea for a pedaling program while researching cost-free, clean energy sources on the internet.

A selected group of inmates³³ have the chance to lower their sentences by exercising themselves on four customized stationary bikes attached to car batteries, which charge as they pedal. The batteries are used to power streetlights in the local plaza. Ten hours of pedaling is required to fully charge one battery. The energy of one battery is enough to power 10 street lamps,(out of a total of 34)For every 16 hours of pedaling, inmates have their sentences reduced by one day, with no maximum time limit on how much they can cycle.³⁴ Inmates are not forced to undertake this program, they are all volunteers.

Pedaling impacted in a positive way on the inmates' feeling of self-worth ("Pedaling we feel important, we feel useful, we feel better in our daily life"³⁵, Ronaldo da Silva, inmate). The relationship between the prisoner and the society is altered because now the inmate is not a passive element withinsociety, but rather someone who is doing something useful for society by helping in reducing public costs of electricity and

³³ It's mandatory to have a good behavior in prison and to be examined by a doctor, who will check their health conditions for physical activity. Available at: <https://www.youtube.com/watch?v=E9f7VSeRw5s>.

³⁴ Brazilian inmates reduce sentences by hitting the bike, books. <http://edition.cnn.com/2012/07/14/world/americas/brazil-alternative-sentence-reduction/>

³⁵ Detidos pedalam para gerar energia. Available at: <https://www.youtube.com/watch?v=Oi5Hn6K5Oh8>. Last access: 01/07/18.

improving the community sense of safety (“People see us in a different way. It’s an opportunity to reintegrate to society”³⁶). Prisoners’ physical health is improved (“Today with our project, with this idea, [some] inmates can practice physical activity, many of them has lost weight”³⁷, Gilson Rafael Silva, prison director). Overall, the programme complies with the penal law which permits the reduction of the penalty by working, reading books etc. Moreover, it establishes that one of the most important goals of the penal law is the reintegration of the inmate (“At the same time, they are benefiting from it because after three days of pedaling, it’s reduced one day of penalty”³⁸, Gilson Rafael Silva, prison director).

Mallmann, in his personal life, is a quiet and discrete person. He is married, has 3 kids and enjoys reading books (he is especially attracted to classical authors such as Shakespeare, Victor Hugo and Zola). In an interesting interview, it’s possible to learn a little bit more about him. He states that he bring from his house to Court the desire to conciliate, to pacify and to promote justice. “[from house to Court] I bring the desire to conciliate, the desire to pacify. I always say that deciding a case is not so difficult as pacifying a dispute and restoring social peace. It depends much more on serenity, on the desire to pacify than deciding if A or B is right”³⁹.

There is no way to radically separate the personal life from the professional life and literary works gives eloquent examples on this indissoluble unit. One of the most illustrative one is Atticus Finch.

Atticus is a competent legal professional who knows the law and acts in accordance with it. In his personal life he is quiet, peaceful and there are many reasons to affirm that he is a feminist too. Scout, his daughter, was not raised to become a “lady of

³⁶ Detentos pedalam para gerar energia elétrica e reduzir pena. Available at: <https://www.youtube.com/watch?v=E9f7VSeRw5s>. Last access: 01/07/18.

³⁷ Detidos pedalam para gerar energia. Available at: <https://www.youtube.com/watch?v=Oi5Hn6K5Oh8>. Last access: 01/07/18.

³⁸ Detidos pedalam para gerar energia. Available at: <https://www.youtube.com/watch?v=Oi5Hn6K5Oh8>. Last access: 01/07/18.

³⁹ “[da casa para o fórum] levo o desejo de conciliar, a vontade de pacificar. Eu sempre digo, decidir um processo não é coisa muito difícil, mas você pacificar um litígio, fazer voltar a paz social é muito difícil. Isso depende muito mais de serenidade, de vontade de pacificar do que propriamente de decidir se A ou B estão certos”. Conheça o juiz que revolucionou o sistema prisional em Santa Rita do Sapucaí. Available at: <http://g1.globo.com/mg/sul-de-minas/jornal-regional/videos/v/conheca-o-juiz-que-revolucionou-o-sistema-prisional-em-santa-rita-do-sapucaí/2047283/>. Last access: 01/07/18.

Maycomb society". She is a child who wears overalls and climbs trees. In an enlightened book passage, Scout tells Atticus the conversation she previously had with her aunt. She had been criticized for not being feminine. According to the aunt, Scout should be a ray of sunshine in her father's solitary life. Atticus ends Scout's concerns affirming that there are sufficient "rays of Sunshine" in the family and so she can keep being the person she is. Atticus is not racist despite living in a racist society. He accepts the challenge of defending a black man accused of raping a white woman. A sense of justice guides Atticus in his professional and personal decisions. The same orientation seems to guide Judge Mallmann in his daily life and in his daily professional life. All the positive transformations that came to the prisoners' lives and to the community of Santa Rita do Sapucaí were caused by Judge Mallmann's actions and innovations and his commitment to justice.

I conclude that the moral development of judges (in Aristotelian terms), especially in peripheral countries such as Brazil, deeply traversed by inequalities, must be taken into seriously account by judicial power. The Code of Ethics of the Brazilian judiciary, for example, aims to set the minimum ethical standards and ensure the credibility of the Brazilian judiciary. This is certainly important, but it must go hand in hand with ethical efforts to reach a more morally informed community experience and give visibility to Mallmann's example (and other successful examples). In that way, the actions of one judge can influence other judges as the *phronimos* influence the community life through her example.

Final notes

Legal professionals feel emotions in their daily professional lives. Passion can blind a person's view and impair the legal decision-making process but eliminating emotions from law is not an option. Emotions are in law and the best way to deal with it is to face this. Emotions are complex phenomena and this article has explored the influence of moral development, from the Aristotelian background, on emotions.

According to Aristotle, we learn to become prudent by following and reproducing the example of *phronimos* individuals. This is why it is so important to give visibility to initiatives that are perceived by the community in general, and by the juridical community specifically, as prudent. These will inspire other judges to act prudently as well and to strengthen the bond between judiciary power and *comunitas*. This is especially important in countries like Brazil in which inequality (in many different levels), human rights violation of prison inmates and poverty etc are a disturbing daily life reality.

Judges are not super heroes but a truly committed judge, a prudent one, can use her creativity and other personal efforts in order to change some aspects of the reality of incarceration, to achieve the goals of the law, to promote the prisoner's well-being and to change the relationship between the inmate and the community. Judges cannot change the structure of the incarceration system but they can do their best to promote the prisoner's well-being within it.

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