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Emotions, Mind and Body on Trial: A Cross-Cultural Perspective

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Sabine Gruebler killed her husband and his brother’s son with an axe in the night between 26 and 27 March in 1774 in the Electorate of Saxony. She did this “out of love,” because, “we all have to die” in the end.¹ What followed in this lengthy trial was a heated discussion of Sabine Gruebler’s state of mind: was she an unstable woman suffering from melancholy, or was she a cold-blooded murderess? Gruebler justified her actions through her—admittedly idiosyncratic—notion of love. Her interrogators as well as expert witnesses called upon from the medical and legal faculties sought to establish whether her rational faculties were impaired, and thus, whether she deserved a mitigated sentence. Gruebler’s state of mind, her gender and body, and her emotions were all investigated and assessed in deciding her fate. The presiding magistrates as well as the assembled witnesses presented a variety of emotional reactions—from shock to incredulousness, revulsion to pity. The twenty-first century reader of the trial cannot help but also react emotionally to the events described; yet it is clear that the way that Gruebler’s emotions and ultimately her actions were judged was inextricably intertwined with historically specific notions of these categories.

Norbert Elias, Emile Durkheim and Michel Foucault all explored how the development of legal institutions related to changes in ideas about emotions, morality and the body, and thus underlined the fundamental connection between penal law and the historically specific emotional culture of societies.² In jurisprudence in contrast, as Susanne Karstedt has pointed out, emotions have been actively sidelined so that the “true preserve of law: reason”

can reign supreme.³ It is only in the last decade or so that legal scholars have begun to rediscover the integral relationship between law and emotions. Discourse about the law as “rational” is highly culturally-specific and reflects a particular legal ideology that places reason in opposition to, and as more valuable than, emotions. Yet this position overlooks the fact that emotions have always been integral to the law, particularly in the case of criminal law.⁴ Emotions were and are taken explicitly or implicitly into consideration in legal debates, in law-making, in the codified norms and in their application, especially in relation to paramount categories such as free will, individual responsibility and culpability, or the aggravating and mitigating circumstances of a crime. Anger, rage, hatred, disgust, jealousy, shame, remorse, love: these are just some of the emotions that have directly or indirectly played a role in defining what conduct was worthy of legal protection or in need of legal proscription, why and how it was necessary to punish, and what feelings punishment was meant to evoke.

Social and cultural historians have long used legal records to shed light on those otherwise lost to the historical record: the poor, the disenfranchised, youths, and—especially—women. The “new” social history of the 1970s and 1980s marked the beginning of a sustained engagement with legal sources as a means to answer questions that preoccupied social historians: about the lives and experiences of “ordinary” men, women and children. The allure of the archives, to borrow Arlette Farge’s phrase, could be found in their promise to reveal the intimate lives and voices of people long gone.⁵ In particular, the microhistorical movement that originated in Italy in the 1970s paved the way for the use of legal records to revive the everyday lives of lost worlds, and to find the “normal” in the exceptional. Early modern historians forged a particularly strong tradition of using legal records as a window onto the (almost always) illiterate common folk.⁶

The mining of such sources to illuminate the subjectivities of ordinary people has been particularly well developed in the historical literature on crimes of passion in the nineteenth and twentieth centuries.⁷ It is perhaps most clearly in this work, for instance in Ruth Harris's seminal *Murders and Madness*, that we have come to learn about constructions of selfhood in court from the late eighteenth-century onwards, the period in which the so-called "modern self" is thought to emerge. Yet, Natalie Zemon Davis's pathbreaking *The Return of Martin Guerre* challenged the idea that "selfhood" could only be seen as a modern category. The tale of Martin Guerre was in fact a story about the self: what it meant to take someone else's identity, what it meant to take physical possession of a name.⁸ It thus complicated the notion of selfhood for the early modern period as it forced historians and readers to ask questions about how early modern people—and crucially, early modern peasants—negotiated their lives in highly complicated ways. It also opened up questions whose answers were not traceable in archival records: what did Bertrande de Rols feel when the new Martin Guerre returned to Artigat, and when she welcomed him into her home? And how did she feel when the "real" Martin Guerre returned to reclaim his stolen identity? Davis's groundbreaking work thus challenged historians to imagine historical lives—that is, individual subjectivities and emotions—even when the archive proved elusive. Her work showed that early modern people had highly complex inner lives that historians ought to address.

Yet the question of how court records can be used and what issues they can illuminate has been a source of debate. In particular, historians have disagreed about whether criminal records can only be read as normative sources that produce and reflect institutional—societal, religious, political—values and discourses, or whether these sources can also shed light on how people experienced the law and thus provide more nuanced readings of the texture of everyday lives and realities.⁹ Can we know how Sabine Gruebler, the female murderess,

experienced the trial process and gave meaning to her actions, or can we only come to know how legal institutions interpreted those actions, how these institutions created emotional scripts of sanctioned and deviant behavior and of moral and legal responsibility? Even those more optimistic about how legal records can be analyzed are aware of the many layers of distortion that lie within these texts. Court records are highly constructed documents: They are often written in the third person by a notary, often redactions of much more lengthy interrogations, and often highly formalized versions of spoken dialect. Torture was utilized in many criminal trials until the nineteenth century, further distorting the “voice” of the accused.

Despite these reservations, many social historians have made excellent use of legal records. Arlette Farge, Carlo Ginzburg, Natalie Zemon Davis, Malcolm Gaskill, Ulinka Rublack, Laura Gowing to name but a few, have all shown how legal records can open a window on to the minds, emotions and experiences of those who became caught up in legal—both civil and criminal—processes, in turn shedding light on cultural “mentalities,” including understandings of gender and the body.¹⁰ One particular focus has been on the meanings of honor, in relation to law, violence and gender.¹¹ Yet, none of the most formative historians to use criminal records had been schooled in the “history of emotions” as we now know it. These historians have, in effect, long done the history of emotions without actually calling it that. The question this Special Issue seeks to explore, thus, is what analytical value an explicit engagement with the “History of Emotions” can bring to explorations of law and emotions. Can working with analytical paradigms, as set out below, help us refine our analysis of emotions, and their relationship to the law, in historical societies? My suggestion is that working with a more methodologically reflexive understanding of emotions, and how they can be analyzed in concrete historical situations, can deepen our understanding—and complicate chronologies of change—regarding the interrelationship between law and emotions. As I will argue, we need to understand emotions not just as inchoate feelings but as

bodily practices that are culturally and historically situated. Moreover, in order to historicize emotions, we also need to historicize the psychological, physical and material context in which a person experiences her emotions: that is, we need historically contingent notions of the self, body, and the material performance of corporeality.

While the history of emotions has been around for the last three decades—and indeed the *Journal of Social History*'s Founding Editor Peter Stearns did more than any other to establish this area of inquiry with his and Carol Stearns' work on "emotionologies"—the field has grown exponentially in the last decade.¹² Broadly defined, the four main strands of emotions history are emotionology (Stearns and Stearns); emotional communities (Rosenwein); emotional regimes (Reddy); and emotional practices (Scheer).¹³ Taken together, these methodologies examine the way emotions have been defined, governed and expressed in a given society and period, and how this has changed over time. A larger debate among historians of emotions has mirrored that of historians who use court records: can these histories ever get to the level of "felt" experience, or can they only ever touch the level of representations and norms, the standardized discursive nature of emotions?¹⁴ Can the history of emotions show how people actually "felt" and experienced their own emotions? Can legal records show how someone really felt when a neighbor called her a witch or a whore, or can they only show how the court created standardized narratives of dispute? And what can social and cultural historians using legal records learn from the history of emotions?

Much of the focus in the history of emotions, the so-called emotionological approach formulated by Peter and Carol Stearns, takes as the object of its inquiry the norms, rules and discourses governing emotions in a particular cultural context, a method especially applicable to examining penal codes as well as normative scripts of emotional behavior in the courtroom.¹⁵ In her work on the early Middle Ages, Barbara Rosenwein developed a different approach that has also achieved considerable traction, focusing on "emotional communities."

This framework focuses on the different emotions, their expressions and their instrumental uses in specific communities: the “modes of emotional expression that they expect, encourage, tolerate and deplore.”¹⁶ In the legal context, Rosenwein’s concept has been applied to, for instance, an examination of the emotional communities of judges in early modern German witch-trials.¹⁷ Beyond these approaches, William Reddy has had the greatest methodological impact on the field, especially with his notion of *emotives*.¹⁸ Reddy’s term ‘emotives’ denotes gestures and speech acts both descriptive and performative. Emotives, according to Reddy, are at once managerial and exploratory: an attempt to call up the emotion that is expressed, an attempt to feel what one says one feels.¹⁹ Where Reddy’s emotives have tended to focus on verbal expression—although he does not exclude other non-linguistic forms of expression—Monique Scheer has persuasively built on Reddy in her notion of emotions as practice, in which a “knowing body” performs emotions.²⁰ Scheer thus underlines the importance not of “having” emotions but of *doing* emotions. Indeed, Scheer’s groundbreaking article was a response to the fact that emotions in history were being theorised in an abstract, non-corporeal framework. For Scheer, in contrast, there is always a physical dimension to emotion, “even if this is drenched with culture and history.”²¹ This means that not only do emotions have to be historicized, but so too does the body and the relationship between the two. The importance of the body in analyzing emotions becomes especially clear when considering emotions and legal practices, as is demonstrated in the four articles which make up this Special Issue. These articles show that ideas about guilt and innocence were often closely connected to how the body on trial was read and interpreted. The arena of the courtroom was a space in which identities were constructed and contested, and where repertoires of emotions were judged as providing evidence of guilt or innocence. The courtroom as a space in which divergent identities (of the “criminal” or “innocent”) were battled out thus lends itself well to Scheer’s methodology, as she suggests that:

Conflicts over emotional practices will provide particularly rewarding objects of study, as they produce many sources for explicating clashing emotional styles. These contain explicit and implicit assumptions about how emotions work, how they should be lived out, and what they mean; they are also tied to underlying concepts of the self, personal agency, and the moral values that flow from them.²²

The law, and in particular litigation, is inherently a site of conflict. Defendant and plaintiff vie to put forward their versions of the “truth” in the eyes of the law; their narratives are suffused with notions of emotional norms as well as repertoires of embodied emotions. Implicit and explicit judgments of emotions come to the fore in the legal arena: what kinds of emotions should people show on trial, and how was this dependent on gender, age and social status? What emotions were seen as mitigating factors in committing a crime, and what emotions were deemed to be legally punishable or worthy of legal protection? How did these understandings of emotions interact with societal and cultural notions of moral responsibility, free will and conscience? And what sources are available to historians to pursue these questions?

A common thread weaving together the four subsequent articles on “Law and Emotions” is the interrelationship between the body, emotions and legal practices. Allyson Creasman’s article on “Fighting Words: Anger, Insult, and “Self-Help” in Early Modern German Law” examines changes in how early modern German burghers conceptualized the role of anger and provocation in cases of insult and defamation. Early modern German society and law held a conflicted assessment of anger: debate existed as to whether anger could mitigate a defendant’s culpability for defamatory outbursts, or whether such outbursts remained punishable since they posed a threat to public order. What becomes clear in Creasman’s article is that anger in early modern Germany was seen to have tangible physical consequences. Emotions and the body were thus inextricably linked. One case from Frankfurt am Main illustrates early modern burghers’ multivalent understandings of anger: it was a legitimate response to outraged honor, but it was also a destructive force that, uncontrolled,

could have deadly consequences. In 1638, a quarrel which had erupted between Daniel Jacobs and his neighbors, the tailor Martin Müller and his wife Cunigunda, was said to have cost the lives of Jacobs' wife and their unborn child. Anger could be permissible in early modern Germany as a forceful defense of honor, so important in a society in which economic transactions were based on one's good name and reputation. Yet anger could have potentially fatal consequences. Creasman's article thus makes clear the deep connection between law and emotions at a time when emotions were seen to have highly threatening societal, economic and physical effects.

In line with revisionist accounts of the rise of the law in the early modern period—which no longer view the increasing use of law courts as a symptom and effect of what Norbert Elias termed *The Civilizing Process*, but rather view the law as another (increasingly effective) avenue for early modern people to pursue conflicts²³—Creasman's arguments complicate Elias' suggestion that standards of civility emerging in this period increasingly proscribed the passionate defense of honor and the pursuit of private justice. Indeed, Creasman shows that, between the sixteenth and eighteenth centuries, far from demanding the suppression of anger, the law increasingly came to protect it, while at the same time seeking to tame its more destructive manifestations.

The relationship between emotions and the body is also at the heart of Katie Barclay's essay on "Performing Emotion and Reading the Male Body in the Irish Court, c.1800-1845." Barclay shows that justice in nineteenth-century Ireland was shaped by the bodies of men: physical appearance was understood to provide information about a person's social background, character, sense of guilt, and honesty; it was available to be read by others in the court when interpreting events during trial. At the same time, how those on trial performed emotion was central to discussions of how their bodies, and consequently their character, should be read. The centrality of "character" to these readings of emotions, bodies,

comportment and clothing were heavily shaped by the science of physiognomy. We thus see a different understanding of the relationship between the body and emotions to that of early modern Germany; yet even in the post-Cartesian Irish court, emotions, character and the individual were still closely aligned with the body. Moreover, where emotions were evidently intrinsic to legal debates and law making, as shown in Creasman's essay—that is, what emotions were permissible or punishable by law, and what emotions should be protected—emotions were also central to judging guilt and innocence. The kinds of emotions that men displayed in court, Barclay demonstrates, affected how evidence was viewed and whether they received justice. As Barclay makes clear, the kinds of emotions that were performed, and more crucially how these emotions were judged, were highly gendered and dependent on age and social status.

The courtroom as a space or “emotional arena” in which particular emotions were performed, displayed and prohibited has already led to fruitful work in the exploration of law and emotions.²⁴ What becomes clear in these four articles, however, is that we also need to think beyond the physical space of the courtroom—and beyond court records—as the only space in which law and emotions interacted. Marianna Muravyeva, in her article on “Emotional Environments and Legal Spheres in Early Modern Russia,” draws on legal petitions to show how plaintiffs sought to create favorable emotional environments by using complaining strategies in early modern Russia. Rather than employing emotional language, as one might expect, she shows that plaintiffs focused instead on descriptions of actions to create cultural and physical settings—which she terms an “emotional environment”—to ensure a favorable outcome. Muravyeva shows how emotions were transformed into practices, thus reinforcing Scheer's argument that emotions are not something we “have” but something that we “do.” Through an examination of cases of abuse of parents from seventeenth- and eighteenth-century Russia, Muravyeva suggests that early modern

complainants used an environmental approach to emotional management, focusing on the creation of specific cultural and physical settings to externalize their emotions for successful mediation of conflicts. These settings emerged as a result of the interplay of individuals and their surroundings, including natural, social, built, learning and informational environments that provided a specific way in which emotions were consumed by individuals and collectives. We can thus think of these emotional environments as operating beyond the physical space of the courtroom.

Moreover, as all the articles show, trial records make up only one facet of the sources available to historians of crime. Allyson Creasman examines legal codes to explore how anger was assessed in early modern German law. Both Katie Barclay and Gian Marco Vidor draw on newspaper articles to examine not only how emotions, gestures, clothing and comportment of those on trial were reported, but also how those who witnessed the trial, spectators as well as journalists, became drawn into the trial process and contributed to the dynamics of the courtroom. The nineteenth century witnessed an explosion of media and newspaper reportage which found a particular intensity in the documentation of criminal trials.²⁵ The emotions of the courtroom were scrutinized and depicted in sensational media reports, which in turn shaped how people *thought* that they should act on trial. Media reports thus both documented and helped shape norms and expectations of repertoires of embodied emotions in the courtroom. Newspaper reports show that the emotions of the courtroom went far beyond those directly embroiled in the legal process, an already sizeable cast including the judge, magistrates, juries, plaintiff, defendant and numerous witnesses. Rather the courtroom was a public, even social, arena. As Gian Marco Vidor shows in his article on “The Press, the Audience and Emotions in Italian Courtrooms (1860s-1910s),” the courtroom was a stage in which emotions were performed to an eager audience who were there to be entertained as well as to judge. By focusing on the public, a hitherto marginal actor in the

drama of the trial process, Vidor inverts the most common historiographical perspective: he puts the audience center stage. He shows not only that the audience was as scrutinized in newspaper reports as the plaintiff and defendant, but that their presence shaped the emotional dynamics of the trial process. In this way, the criminal trial became a place of emotional and social voyeurism for the courtroom audience and for public consumers of court news.

Criminal trials could thus be seen as affective dramas which were shaped by a number of competing forces both inside and outside the courtroom: the magistrates, notaries and judges, as well as the media, spectators and readers of court news.

The kinds of sources that historians can use in examining law and emotions clearly shape the kinds of questions we are trying to answer. Indeed, there is a distinction to be made between looking in legal archives or in the court news for evidence of emotions, as pursued for instance by Muravyeva, Barclay and Vidor, and the more specific study of the conscious use of emotions in early modern trials, as documented by Creasman in her analysis of honor and anger in early modern Germany. Both approaches can shed light on the relationship between law and emotions, but the latter approach arguably can give a clearer sense of change over time: how the efficacy of certain emotions—such as anger—employed on trial waxed or waned. On the other hand, looking for evidence of emotions in legal archives might yield unexpected results. For instance, it can alert us to the *absence* of emotional language, as Muravyeva has shown in petitions in cases of abuse of parents. Likewise, Michael Ostling has shown how expressions of love can be found in the most unlikely of places, in his analysis of Polish witch-trial narratives.²⁶ Indeed, identifying normative scripts of emotions as well as episodes of emotional experience is not a mutually exclusively endeavor. Ulinka Rublack's analysis of the witch-trial of Katharina Kepler, the mother of Johannes Kepler, shows that there were clear understandings of what display of emotions was expected for a woman on trial for witchcraft in early modern Germany. Nevertheless, Katharina Kepler—

like so many others—also insisted on her anger as legitimate in unprescribed ways.²⁷

Normative sources such as legal codes can be used effectively to shed light on the “emotionology” of a given time and place: what emotions were proscribed and protected in law, and why. Yet they clearly fall short as descriptions of the emotional experience of those caught up in trial processes. Newspaper records shed light on a different emotionological dimension: the way repertoires of embodied emotions were described and judged in the media. These sources can go—tentatively—beyond established discourses by showing how such media reports could in fact shape the emotions displayed on trial. Newspaper reports did not simply reproduce emotional norms, but shaped and created new emotional codes.

It is perhaps trial records and petitions—the latter which were used to such great effect in Natalie Zemon Davis’s pathbreaking *The Return of Martin Guerre*²⁸—that present the historian with the greatest opportunity to uncover the “voices” of those normally absent from the historical record.²⁹ Court records can reveal to the historian the emotional scripts of those caught up in the trial process itself. However, these sources too must be approached with caution, since we often do not know what actually occurred during the process of being on trial. The records will usually tell us whether the defendant was incarcerated during the trial process, and whether torture was applied. But what were the conditions? Was the defendant allowed visits from friends and family? Was he or she given enough food and kept warm? Were there informal interrogations and psychological manipulations that were not noted in the record? In the trial of Grethe Schmidt for infanticide in the duchy of Braunschweig in 1659, which David Myers has documented, the suspect was kept in prison for 325 days with only her guards for company and with only one visit from her father.³⁰ Such isolation amounted to a form of psychological torture and would fundamentally alter the suspect’s self-narratives over time. Court records, thus, can only ever offer the historian a glimpse of the psychological interactions that occurred during a trial process. The often visceral nature of

the emotions described in court records should not deceive us into thinking that we have the complete picture before us. Nonetheless, with careful methodological acuity, trial records arguably offer historians some of the most valuable sources for examining the lives, minds and emotions of people who populated the past.

Indeed, we must be careful not to set ourselves up for failure by seeking to uncover what people “really” felt, buried in the heart, soul or “unconscious.” Just as an exploration of early modern selfhood, for instance, which I have attempted elsewhere, should not seek to capture any person’s “self” in its entirety, but can only illuminate a specific context in which a particular person attempted to reflect upon and give meaning to their person, so an analysis of emotions must seek to limit itself to how emotions were enacted at precise historical moments.³¹ Within these parameters, it is both possible, and indeed crucial, to explore not just how normative scripts of emotions were created through the law, but how people gave meaning to, experienced, and used the law and the legal process. This means not examining how people experienced emotions in general terms, but rather examining the way in which people transformed emotions into words, actions and proceedings. William Reddy reminds us that emotion words are always somewhat inaccurate, incomplete translations of ephemeral feelings into stable, analyzable and thus historical emotions.³² As Michael Ostling remarks in reference to Monique Scheer’s work: “Emotions are not hidden in the heart: insofar as they exist accessibly at all, either to ourselves or to others, they are acted and enacted, bodily and therefore public documents of expressive culture.”³³ Emotions in this understanding, then, can and should be accessible for the historian: they are bodily practices which, through a range of legal sources, are given expression in history.

The four articles in this Special Issue demonstrate that emotions are inextricable to criminal law and reveal the range of sources available to historians of crime, from the formulation of legal codes, to pre-trial petitions and trial records, to newspaper reportage.

These articles show that there were clear changes in law and emotions from the early modern to modern periods, for instance regarding understandings of the physical effects of emotions, the way emotions were prosecuted and protected, the rise of court reportage in the media, and the development of physiognomy and the criminal “character” in analyses of emotional repertoires in the courtroom. At the same time, there are questions and concerns common to all the essays. Emotions are historically specific, tied to culturally constructed ideas about the mind and the body. More than that, emotions are embodied practices that can be *only* analyzed in concrete historical situations. And through this analysis, we can develop a deeper understanding not only of historical understandings of emotions, but also of the social and cultural context in which these emotions were expressed and given meaning.

These articles also suggest a series of questions for future research. Given the ever-increasing bibliography on the history of emotions, we need to think about whether the existing models (emotionology; emotional communities; emotives; emotional practices) are sufficient or whether more, perhaps looser, all-embracing models are needed, and if so, what these might look like. One theme that arises from the articles is the analytic importance of the physical, spatial as well as emotional environment. Certainly, a deeper engagement with the physical and spatial context in which emotions are performed, alongside the body that is “doing” the emotions, would be beneficial. This ties in with the so-called “material turn” in history. If historians now understand that the way people emotionally relate to things has a history, we need to have a clearer sense of the material conditions in which emotions are performed.³⁴ We see the importance of clothing, for instance, in Barclay’s analysis of the physical appearance of men in the early nineteenth-century Irish court. If clothing shapes the way in which people perceive themselves and the world around them, and the way that they themselves are perceived, then a history of emotions must incorporate both the body, its comportment and dress, and the material world. If we want to take performance seriously,

how people present themselves through their bodies and clothing needs to be part of that story too. This leads to my final suggestion, which is that an understanding of emotions, which we can see needs to be linked to the history of the body, must also be linked to historically-contingent ideas about the self. Understandings of modernity are predicated on an increasing dichotomy between “interiority” and “exteriority.” Scheer reminds us that the dualism of mind and body, of external expression of emotion and inner “authentic” emotional experience, is predicated on modern Western notions of the self, in which the idea of a unique, individual interiority is granted status as a biological universalism.³⁵ To approach the emotions of the past, or indeed, of non-Western cultures, requires us to also interrogate historically-contingent understandings of selfhood, so as to not unquestioningly replicate dichotomies between “inner” feeling and “outer” emotion, between experience and expression, between mind and body, emotion and reason. In short, an analysis of emotions in history can and should expand our understandings of other subjects of historical enquiry: of how people interacted with the material world, of how they understood their body, of how they made sense of their “self.” A history of emotions, therefore, can help us more fully understand how people lived their lives in past societies.

Endnotes

¹ Sächsisches Staatsarchiv, Hauptstaatsarchiv Dresden, 10024, Loc. 01918/03, 3r.

² Susanne Karstedt, "Emotions and Criminal Justice," *Theoretical Criminology*, 6 (2002): 299-317, at 300.

³ Ibid.

⁴ Ibid. See, for instance: Susan Bandes, *The Passions of Law* (New York, 1999); Martha Nussbaum, *Hiding from Humanity: Disgust, Shame and the Law* (Princeton, 2004); Terry A. Maroney, "Law and Emotion: A Proposed Taxonomy of an Emerging Field," *Law and Human Behavior*, 30 (2006): 119-142.

⁵ Arlette Farge, *The Allure of the Archives*, trans. Thomas Scott-Railton (New Haven, 2013).

⁶ It is no coincidence that legal records are such rich sources for early modernists. The early modern period witnessed the gradual monopolisation of law over disputes and settlements, replacing older models of vengeance and feud based on custom; the increasing centralisation of courts of law, which went hand in hand with state formation; and the gradual implementation of Roman Law across Western Europe. Civil and criminal law were one of the few direct means in which the ordinary folk came into contact with the nascent "state." Indeed, the early modern period came to be one of the most litigious periods in Western history. On the litigiousness of the early modern period, see Christopher W. Brooks, *Lawyers, Litigation and English Society Since 1450* (London, 1998). On the monopolisation of law over disputes and settlements, see Stephen Cummins and Laura Kounine, *Cultures of Conflict Resolution in Early Modern Europe* (Farnham, 2016), esp. Intro.

⁷ On crimes of passion, see for example Ruth Harris, *Murders and Madness: Medicine, Law, and Society in the Fin de Siècle* (Oxford, 1991); Maren Lorenz, *Kriminelle Körper - Gestörte Gemüter. Die Normierung des Individuums in Gerichtsmedizin und Psychiatrie der Aufklärung* (Hamburg, 1999).

⁸ Natalie Zemon Davis, *The Return of Martin Guerre* (Cambridge MA, 1984).

⁹ For instance, in reference to gender and criminal records, Ulinka Rublack has noted "A central issue historians have disagreed about is whether we can read criminal records and other contemporary records only as documents of such a gendered instantiation of values, and thus point to their standardized discursive nature, or whether historians can capture how sexuality could be given meaning by concrete people within specific relationships in more nuanced ways." Ulinka Rublack, "Interior States and Sexuality in Early Modern Germany," in Scott Spector, Helmut Puff and Dagmar Herzog (eds), *After the History of Sexuality: German Geologies with and Beyond Foucault* (New York, 2013), 43-62, at 50.

¹⁰ Arlette Farge, *Fragile Lives: Violence, Power, and Solidarity in Eighteenth-Century Paris*, trans. Carol Shelton (Cambridge MA, 1993); Carlo Ginzburg, *The Cheese and the Worms: The Cosmos of a Sixteenth-Century Miller*, trans. John Tedeschi and Anne Tedeschi (London, 1980); Natalie Zemon Davis, *Fiction in the Archives: Pardon Tales and their Tellers in Sixteenth-Century France* (Stanford, 1987); Malcolm Gaskill, *Crime and Mentalities in Early Modern England* (Cambridge, 2000); Ulinka Rublack, *The Crimes of Women in Early Modern Germany* (Oxford, 1999); Laura Gowing, *Domestic Dangers: Women, Words, and Sex in Early Modern London* (Oxford, 1996).

¹¹ Some examples include Scott Taylor, *Honor and Violence in Golden Age Spain* (New Haven, 2008); Klaus Schreiner and Gerd Schwerhoff (eds), *Verletzte Ehre: Ehrkonflikte in Gesellschaften des Mittelalters und der Frühen Neuzeit* (Köln, 1995). On meanings of gender and honor, see Laura Gowing, *Domestic Dangers: Women, Words, and Sex in Early Modern London* (Oxford, 1996); Alexandra Shepard, *Meanings of Manhood in Early Modern England* (Oxford, 2003); Ute Frevert, *Men of Honour: A Social and Cultural History of the Duel* (Cambridge MA, 1995).

¹² For a recent overview, see Rob Boddice, “The Affective Turn: Historicizing the Emotions,” in Cristian Tileaga and Jovan Byford (eds), *Psychology and History: Interdisciplinary Explorations* (Cambridge, 2014), 147-165; Jan Plamper, *The History of Emotions: an Introduction* (Oxford, 2015); Bettina Hitzer and Benno Gammerl, “Wohin mit den Gefühlen? Vergangenheit und Zukunft des Emotional Turn in den Geschichtswissenschaften,” in *Berliner Debatte Initial* 24, 3 (2013): 31-40.

¹³ See Peter N. Stearns and Carol Z. Stearns, “Emotionology: Clarifying the History of Emotions and Emotional Standards,” *American Historical Review*, 90 (1985): 813-836; Barbara Rosenwein, *Emotional Communities in the Early Middle Ages* (Ithaca, 2006); William M. Reddy, *The Navigation of Feeling: a Framework for the History of Emotions* (Cambridge, 2001); Monique Scheer, “Are Emotions a Kind of Practice (and Is That What Makes Them Have a History)? A Bourdieuan Approach to Understanding Emotion,” *History and Theory*, 51 (2012): 193-220.

¹⁴ See Rublack, “Interior States,” discussed above.

¹⁵ Stearns and Stearns, “Emotionology.” See for instance Peter N. Stearns, *American Fear: The Causes and Consequences of High Anxiety* (New York, 2006); Peter N. Stearns and Carol Z. Stearns, *Anger: The Struggle for Emotional Control in America’s History* (Chicago, 1986); Peter N. Stearns, *American Cool: Constructing a Twentieth-Century Emotional Style* (New York, 1994).

¹⁶ Barbara H. Rosenwein, *Emotional Communities in the Early Middle Ages* (Ithaca, 2007); Barbara H. Rosenwein, “Problems and Methods in the History of Emotions,” *Passions in Context*, 1 (2010): 1-32; Barbara H. Rosenwein, “Worrying about Emotions in History,” *The American Historical Review* 107(3): 821-845 (quote on p. 842).

¹⁷ Rita Voltmer, “The Witch in the Courtroom: Torture and the Representations of Emotion,” in Laura Kounine and Michael Ostling (eds), *Emotions in the History of Witchcraft* (forthcoming, Palgrave).

¹⁸ Reddy, *Navigation of Feeling*. For a discussion of critiques see Plamper, *The History of Emotions*, 164.

¹⁹ Reddy in Jan Plamper, “The History of Emotions: an Interview with William Reddy, Barbara Rosenwein, and Peter Stearns,” *History and Theory*, 49 (2010): 237-65, at 239-40.

²⁰ Scheer, “Are Emotions a Kind of Practice?” 199.

²¹ Plamper, *The History of Emotions*, 269.

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- ²² Scheer, “Are Emotions a Kind of Practice?” 218.
- ²³ See Cummins and Kounine, *Cultures of Conflict Resolution*, Introduction.
- ²⁴ Mark Seymour, “Emotional Arenas: From Provincial Circus to National Courtroom in Late Nineteenth-Century Italy,” *Rethinking History*, 16 (2012): 177-197.
- ²⁵ Although there were already media reports of criminal trials in the early modern period, see for instance, Joy Wiltenburg, *Crime and Culture in Early Modern Germany* (Virginia, 2012).
- ²⁶ Michael Ostling, “Speaking of Love in the Polish Witch Trials,” in Laura Kounine and Michael Ostling (eds), *Emotions in the History of Witchcraft* (forthcoming, Palgrave).
- ²⁷ Ulinka Rublack, *The Astronomer and the Witch: Johannes Kepler's Fight for his Mother* (Oxford, 2015).
- ²⁸ Davis, *Return of Martin Guerre*.
- ²⁹ John H. Arnold, “The Historian as Inquisitor: The Ethics of Interrogating Subaltern Voices,” *Rethinking History* 2 (1998): 379-386, at 380.
- ³⁰ W. David Myers, *Death and a Maiden: Infanticide and the Tragical History of Grethe Schmidt* (DeKalb, 2011).
- ³¹ Laura Kounine, *Imagining the Witch: Emotions, Gender and Selfhood in Early Modern Germany* (forthcoming, Oxford University Press).
- ³² Ostling, “Speaking of Love in the Polish Witch Trials.”
- ³³ Ibid.
- ³⁴ See for instance Ulinka Rublack, *Dressing Up: Cultural Identity in Renaissance Europe* (Cambridge, 2010).
- ³⁵ Scheer, “Are Emotions a Kind of Practice?” On understandings of “emotions” before the term came into use, and particularly within the framework of Christian understandings of the soul and free will, see Thomas Dixon, *From Passions to Emotions: The Creation of a Secular Psychological Category* (Cambridge, 2003). See also Monique Scheer, “Topographies of Emotion,” in Ute Frevert et al, *Emotional Lexicons: Continuity and Change in the Vocabulary of Feeling 1700-2000* (Oxford, 2014), 32-61.