

A Sociological Perspective on Emotion Work and Judging

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Abstract

Judicial work requires judicial officers to manage their own emotions and related conduct, as well as to anticipate, interpret, respond to and manage emotions and behaviours of others, most visibly in the interaction order of the courtroom. A detailed, sociological analysis of judicial interview data reveals the ways judicial officers themselves understand, manage and use emotion in their everyday work. Judicial emotion work is more than a purely individual or personal enterprise. It operates in accordance with explicit and implicit feeling and display rules, cultural scripts and legal norms that shape the relation between emotion and judging. The ways judicial officers articulate their understanding of emotion in their everyday work reveals their reproduction and potential transformation of the boundaries between emotion and their status as judge. These findings reposition emotion work as central to judicial performance and enable emotion itself to be recognised as a positive judicial resource.

Key words

Emotions; emotion work; courts; judges; judging

Resumen

El trabajo judicial exige que los funcionarios judiciales gestionen sus emociones y los comportamientos relacionados, así como que anticipen, interpreten, respondan a y gestionen emociones y comportamientos de otros, sobre todo en la interacción dentro del juzgado. Un análisis sociológico detallado de datos de entrevistas revela cómo los

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propios funcionarios entienden, gestionan y usan la emoción en su trabajo cotidiano. El trabajo emocional judicial es algo más que un esfuerzo individual o personal; opera en consonancia con normas explícitas e implícitas de sentir y expresarse, normas culturales y normas jurídicas que modelan la relación entre emoción y judicatura. La forma en que los funcionarios articulan su concepto de la emoción en su trabajo cotidiano revela la forma en que reproducen y, potencialmente, transforman los límites entre la emoción y su estatus como jueces. Estos hallazgos reposicionan el trabajo emocional en el centro del trabajo judicial y posibilitan que la emoción sea reconocida como un recurso judicial positivo.

Palabras clave

Emociones; trabajo emocional; tribunales; jueces; juzgar

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1. Introduction

This article uses a segment of an interview as a distinctive vehicle to decipher the place of emotion and emotion management in judicial work. Using a sociological perspective, the article identifies some of the ways judicial officers (judges and magistrates)¹ understand emotion in their everyday work. It reveals how they reproduce and potentially transform the boundaries between the emotions they experience and/or display and their performance as judge. This analysis demonstrates the intertwining of emotion and the judicial role.

The article addresses three main questions:

- How do judicial officers think about and what do they say about emotion and its regulation/management in their everyday work?
- What practices or strategies do judicial officers adopt to manage their own emotions within the institutional and organisational constraints of their work?
- What do these thoughts/comments indicate about the contextual, collective and interactive nature of their work?

First, the article considers the concept of emotion as used in different disciplines and then it investigates the concept of emotion work as the backdrop to the interview segment. The remainder of the article identifies the key emergent themes: reflexivity, effort, relationality, feeling and display rules, impartiality as emotion management and the use of emotion as a positive resource or strategy. The discussion ties these themes to broader sociological considerations of naming emotions, use of interviews as a research methodology, gender and emotion work and context. This careful, detailed sociological analysis of the interview fragment identifies the interviewee's reflexivity about the relation dimensions of judicial work despite the conventional model of judging that disavows emotion and shows the importance of context for understanding judicial emotion and emotion work.

2. Terminology: Emotion or emotions?

One sociological approach to understanding emotion emphasises context, constituted by complex patterns of relationship. This approach focuses on the social relations and interactions in which emotions emerge, are identified and named (or not): "It is in relation to others or to certain situations that feelings are identified [or labeled] as specific emotions" (Burkitt 2014, p. 8), rather than being established categories with firm observable boundaries (Barrett 2006b). This line of scholarship tends to use the term "emotion" without further specification or reference to particular emotions. In contrast, other approaches endeavour to delineate concepts of emotion, affect and feeling and give each a separate, definition (Leys 2011, Wetherell 2015).

Scholars in some disciplines seek to identify, distinguish and measure particular emotions, such as fear, anger, joy, hope and so on, sometimes treating them as basic or universal emotions (Ekman and Cordaro 2011). As Burkitt suggests: "Because feelings and emotions have received names like love, hate, fear and anxiety, we tend to think about them as though they are 'things' in themselves, entities that exist and can be known if only we can accurately trace their roots back to a causal origin" (Burkitt 2014, p. 1). The causal origin or causal mechanism is often presumed to be located in the brain, and emotion is physiologically observable on the face, in the voice, via movements, or otherwise embodied (Barrett 2006a, 2006b).

This article uses the collective term "emotion" and deploys the terms "emotion" and "feeling" interchangeably (also see Hochschild 1979, p. 551; Scheer 2012, p. 198).

¹ Generally, in Australia the term "magistrate" refers to judicial officers in lower courts. "Judge" refers to those who preside in the higher (intermediate or supreme) state, territory or national courts, except in the Northern Territory where magistrates were given the title judge in 2016. Australian magistrates are paid judicial officers, with legal qualifications, and appointed until a fixed retirement age. In this article, the term "judicial officer" refers to any member of the judiciary, regardless of court level or type.

Feelings that emerge in a social situation may engender multiple interpretations and be experienced as two or more emotions; emotions overlap and bleed into each other, making it difficult to disentangle and articulate separately. Feelings and emotions may be ambivalent or in conflict and not easily or immediately identifiable. Burkitt “introduces the idea of emotional tension, conflict, or ambivalence into a relational understanding of emotion. Indeed, it is rare that social situations, and the others we interact with in situations, affect us with simple or single emotions of which we are instantly aware” (Burkitt 2018, p. 3).

3. Emotion work

One conclusion that sits across all discussion of emotion is that: “emotions are considered a domain of *effort* and individuals are expected to conform to *norms* and strive for ideals” (Reddy 2009, p. 311, emphasis added). The level and kind of “effort” is reflected in different concepts, sometimes used interchangeably: emotional labour (Hochschild 1983, Wharton 1993, 1999, 2009); emotion work (Hochschild 1979); emotion management (Bolton and Boyd 2003, Lively and Weed 2014); emotion regulation (Maroney and Gross 2014, Gross 2015); emotional/affective practices (Wetherell 2015); and emotional capital (Cottingham 2016). Other concepts such as service emotions (White 2014), emotional granularity (Barrett 2006a, 2006b; Gendron and Barrett 2019 [in this issue]) and background emotion (Barbalet 2011) suggest that the effort may be less than entirely conscious perhaps a dimension of a general or professional orientation experienced (or perceived) as natural or automatic, even intuitive.

Studies of professional occupations² identify various degrees or types of emotion work. The suppression of emotion and personal feelings is a key attribute of traditional conceptions of the profession. Parsons, for example, observed that “the professions are marked by ‘disinterestedness’” (Parsons 1954, p. 35), and “affective neutrality” (Parsons 1951, p. 454). Ethical standards require members of a profession to maintain social distance and prohibit expression of unregulated or inappropriate emotions, especially in the relationship with clients. This has been described as “detached concern” (Lief and Fox 1963). Members of a profession typically “supervise their own emotional labour by taking account of professional norms and client expectations” (Hochschild 1983, p. 153). Ethical standards may be more abstract and less immediate, and perhaps by implication perceived as less powerful or directive, compared with the presence of a supervisor.

Despite the disavowal of emotion, those in professional occupations often deal with emotionally dense, face-to-face situations with clients and others who experience and display an array of feelings. Empirical research identifies the emotional demands in different legal settings, and shows how legal professionals use emotion as a resource or strategy to further individual or institutional legal objectives (Harris 2002, Kadowaki 2015, Flower 2018).

As with many other professions, the conventional model of judging disavows emotion and valorises impersonal detachment. Discussions of judging and judicial work often frame the individual judge as the embodiment (or conduit) of impersonal, rational law (Weber 1978, Bandes 2001, 2009; Bandes and Blumenthal 2012, Davies 2017). Maroney points out that this “insistence on emotionless judging – that is on judicial dispassion – is a cultural script of unusual longevity and potency” (Maroney 2011b, p. 630). In this cultural script, the absence of emotion is assumed to be essential for

² A newer literature does not rely on the concept of “profession” to investigate expert work and expertise, but uses broader and more inclusive terms such as “knowledge-based work” (Gorman and Sandefur 2011). These occupations (many relatively recent) are characterised by expert knowledge, autonomy, a normative orientation to service, and high status with associated financial and other rewards – all characteristics relevant to the traditional professions. Abbott (1988) describes the idea of expert work. Experts engage in three related tasks: diagnosis, inference, treatment. While these functions seem most applicable to medicine, they can be applied to other professions, including law.

impartial decision-making. “Emotions – and subjectivity more broadly – are generally viewed as sources of bias or flawed perception to be disciplined and contained, rather than as positive elements in experts’ tool kits” (Craciun 2018, p. 963).

Judicial work takes place in a context – typically though not exclusively the courtroom³ – that is constituted by relationships and associated formal and informal interactions. Rather than focusing on the individual judge and judicial behaviour, a sociological perspective examines the courtroom as an “interaction order”, that is “environments in which two or more individuals are physically in one another’s response presence” and where information and emotions must be managed in face-to-face interactions (Goffman 1983, p. 2). This emotion management necessarily involves “the self (as body and mind), language, material artifacts, the environment, and other people” (Scheer 2012, p. 193). “Conceiving of emotions as practices or acts (...) provides a way of counterbalancing the dominant language of emotions as always and essentially reactions, or triggered responses” (Scheer 2012, p. 206, emphasis in the original). From this perspective, emotions can be strategies or resources to enable judicial officers to do their work; but not necessarily in a manipulative, superficial or instrumental manner. This approach also understands judicial officers as possessing agency (Sewell 1992, Ridgeway 2006 – and above discussion).

4. The interview segment

A lengthy quote from an interview⁴ with one judicial officer⁵ is the vehicle to examine emotion work and judging from a sociological perspective. This analysis seeks to resist the pull to distinguish, label, measure or quantify particular emotions, and to go beyond framing emotion work as only about the feelings and behaviour of the interviewee. While the interviewee, as would be expected, reflects on her own emotion experiences, the interview also produces information on her awareness and recognition of others’ emotion experiences and display, especially in the courtroom. This information includes the interviewee’s perceptions, interpretations, and assessments of behaviour that implies emotion, particularly the feelings of others as inferred from their display – or lack of display – of emotion. This analysis demonstrates how emotion can be a resource to understand others and to manage the judicial officer’s own behaviour, to achieve their practical, normative and ethical goals. The interview excerpt suggests the need to reposition emotion work as central

³ Of course, judicial work also is undertaken outside the courtroom, where the capacity or occasion for emotion and emotion work still exists. Judicial work can occur in the absence of direct or immediate interaction or as part of reflection and decision making, or in other locations such as in chambers, where there are different configurations of relationships, or where the interaction occurs in virtual or video linked courtrooms, or where the submissions and response are entirely on paper, as in some US or European court proceedings.

⁴ Interviews were undertaken with 38 judicial officers – 17 magistrates, 21 judges; 19 men and 19 women in state courts – throughout Australia, between August 2012 and December 2013, ranging in length from 25 minutes to 1 hour and 33 minutes. Most were conducted in the judicial officer’s chambers. Interview questions were open-ended, allowing interviewees to discuss a full range of issues from their own perspective and in their own words, based on their experiences and knowledge. As the aim was to conduct the interviews more as a conversation than a question and answer process, there was ample scope for probing responses and seeking further information (Silverman 2013). During the interview, consent was sought from the interviewee to audio record and to write notes. All but two interviewees consented to being recorded, and all interviewees agreed to note taking. After each interview, handwritten notes taken during or after the interview, including observations about the court building or location of the interview, were more fully written up. Interviews that were audio-recorded have been fully transcribed within the Judicial Research Project to maximise accuracy and confidentiality. The computer software package NVivo was used to organise, analyse and examine relationships in this rich text-based, non-numerical data. The interview excerpt lasted two minutes, 48 seconds in an interview of just over one-hour duration (one hour, one minute and 53 seconds). It occurred about halfway through the interview (at 28 minutes 32 seconds).

⁵ The interviewee is a female magistrate. According to the 2018 data published by the Australasian Institute of Judicial Administration, of the 489 magistrates across the six states and two territories in Australia, 203 are women: a proportion of 41.5% (<https://aija.org.au/wp-content/uploads/2018/03/JudgesMagistrates.pdf>).

to judicial performance and enable emotion to be recognised as a positive judicial resource.

The magistrate's reflections were preceded by the interviewer's question: "Now what about emotions and management of emotions? Courtrooms can be very emotional places and you gave one example earlier in the domestic violence case, how do you manage the emotions of other who may be angry, frustrated, umm –." The magistrate starts by saying: "That's, that is really hard but I think the first thing to do will, a fundamental thing to do is to have an understanding about why people are emotional, umm." She continues for another two minutes and 32 seconds by describing a psychologist's talk to her court on the impact of trauma, and recounts her experience of the kinds of emotions that emerge in the children's court, criminal offending, domestic violence and when defendants are unrepresented. She then says:

You have to be conscious of guarding against your own emotional reaction, umm, and sometimes things like, you know, the consciously saying to yourself, being aware of your own emotional reaction, umm, and you have to be the calming one in the situation. Umm, again you have to let the person go to a certain extent – it's hard, it's a judgment. You have to let the person go to the certain extent that they feel that they've had their say and even if that involves a bit of ranting, umm, you have to very much step in control once they're getting beyond the pale and they're starting to be actually either very disrespectful to the court or quite offensive or actually presenting a danger to the people in and, you know, really getting to that point where you step in and say, 'Yes I've heard you Mr so and so, I'd now like you to sit down and I'm now going to hear from so on'. They will continue talking, [and I] say, 'I just said to you I would like you now to sit down, you've had your turn'. 'Oh yeh', and then it's, 'you will have another turn later but now it's someone else's turn and if it finally gets to the stage where you're not listening to me I'm now going to leave the bench and I'm going to come back and I expect that you will have calmed down etc'. So taking control is really important. Staying calm yourself is really important and exiting if, you know, on the odd occasion that's what you need to do. Calling in some of the other resources that you might have in the courtroom – if you've got a police officer, you might say or say to the lawyer, 'I'd like you now to speak to your client, it's really important that you speak to your client and you tell your client the position you're in', umm, so using some of those techniques, but no it's very very difficult, very very difficult. On occasions I have to say that I haven't completely controlled my emotions and I don't know that that's a bad thing. I have cried a couple of times in court and that's not necessarily – some other magistrates and judges would be like, 'you've what' but just very occasionally umm, I delivered a judgment about, umm, intellectually handicapped children [ie younger than 18] who were going to be losing their child to a welfare agency and I don't think that that hurt, that I showed that I was emotional. It was a very very, umm, it was probably one of the hardest decisions I've ever had to make in my life and I don't think it hurt for them to understand that it was, that it's hard for the Court too. (I 32, female magistrate)

Carefully unpacking this interview fragment identifies several overlapping and interwoven themes including reflexivity, emotion as a domain of effort, the interactional/relational nature of emotion, feeling/display rules, impartiality as emotion management, and emotion as a positive resource or strategy for accomplishing everyday work and goals. The conversational nature of the interview allowed such a flow of consciousness, which generates considerable information and nuance about the role of emotion in judicial work, which may not be captured by very narrow or specific questions as in a survey or asking only about particular identified emotions.

1. *Reflexivity*: This magistrate displays considerable reflexivity about her own emotions and those of others. "Emotional reflexivity refers to the intersubjective interpretation of one's own and others' emotions and how they are enacted (...). It is a capacity exercised in interaction with others" (Holmes 2015, p. 61; also see Holmes 2010, Burkitt 2012). Her comments describe others within the courtroom interaction order, not just her own actions or

feelings, including parties – litigants, defendants – lawyers, police officers, all of whom she is connected to relationally. She also alludes to a social or professional context broader than the immediate situation of the courtroom. Following an admission that she has “cried a couple of times”, she invokes the (anticipated) responses of “some other magistrates and judges [who] would be like: ‘You’ve what??!’” This signals her awareness that her conduct departs from the persistent script of judicial dispassion and her perception of how that departure would be assessed by judicial colleagues (Maroney 2011a, 2011b, 2012; Maroney and Gross 2014). She supposes that their responses will be normative and invoke expectations of judicial conduct requiring detachment and emotionlessness. Nonetheless, this judicial officer’s quantification of the times she has cried – ie “a couple” or “just very occasionally” – perhaps is an attempt to affirm that her departure from professional norms is infrequent and the boundaries stretched only slightly.

2. *Effort*: Emotion work requires effort. Individuals must routinely manage their own feelings and emotion display and that of others as part of their occupation, in order to achieve workplace, organisational or professional goals. The magistrate states: “You *have* to be conscious of guarding against your own emotional reaction, umm, and sometimes things like, you know, consciously saying to yourself, being aware of your own emotional reaction, umm, and you *have* to be the calming one in the situation” (emphasis added). This sentence points to the effort and work involved in managing her own feelings and display of emotion and highlights her role as judicial officer in the situation, as it is constituted by her and others. This suggests the idea of self-talk as an emotion management strategy (Goffman 1981). (Burkitt calls this “dialogical reflexivity, or ‘internal conversation’”; Burkitt 2012, p. 462). Her self-talk involves “being self-aware”, practicing “self-reflection” – a kind of auto-correction – as part of emotion work, to address both the experience of emotion and the outward display.

These comments affirm the special status of the judicial officer in court as “the calming one”; and “staying calm yourself” in the face of “ranting” or participants becoming “very disrespectful”. Display of a calm demeanour can entail considerable effort and emotion management. This highlights the boundaries between the judicial officer and other courtroom participants who may experience and display emotion, yet do not experience the same obligations to remain calm or to manage the emotions of others through a calm demeanour.

This effort or work, plus the practical strategies of self-talk or “consciously saying to yourself” and being conscious “of your own emotional reaction”, also demonstrate reflexivity. This internal self-talk is a conversation between the judge as ordinary person and the judge *qua* judge. It suggests an awareness of conscious reflexive monitoring in the courtroom context in which emotions “are generated, interpreted, and regulated” (Burkitt 2018, p. 170).

3. *Emotion is relational and interactional*: Emotion is not purely individual or personal, nor is it just about behaviour (Stets 2015). The magistrate mentions the actions, behaviour and feelings of others in the situation in which she experiences, manages and displays emotion. Management of these others’ emotions is not only individual, cognitive or behavioural. It is also relational, relying on input or effort from certain others in the immediate situation: “Calling in some of the other resources that you might have in the courtroom – if you’ve got a police officer, you might say or say to the lawyer, ‘I’d like you now to speak to your client, it’s really important that you speak to your client and you tell your client the position you’re in’”. This is an example of sharing or delegating emotion management work – to the defence lawyer, the police officer – and by virtue of this delegation, identifying the parameters of

judicial work and the judicial role by reminding others of the scope of their duties. It is a form of boundary work (Lamont and Molnár 2002). It is also an example of an occasion where the judicial officer does not share the emotion of the participants, in contrast to the criminal justice workers studied by Goodrum (2013) or the emotion sharing that has been described in international tribunals (Rimé 2009, Karstedt 2016).

4. *Feeling and display rules*: Feeling rules are norms that “inform the sense of what is ‘proper’ feeling in the performance and reading of emotional expression” (Scheer 2012, p. 216). Hochschild uses the term “feeling rules” to “refer to guidelines for the assessment of fits and misfits between feeling and situation” (Hochschild 1979, p. 566). Different settings tend to be governed by different sets of emotional norms or feeling rules (Lively 2008, Lively and Heise 2014). It is possible to excavate the feeling rules – explicit/formal and implicit/informal – in the norms governing the performance of judicial work and associated activities. Some of these norms may be contained in published written statements of judicial ethics or conduct guides such as those produced by the Australasian Institute of Judicial Administration, the American Bar Association or the Bangalore Principles adopted in many Commonwealth countries (Judicial Group on Strengthening Judicial Integrity 2002, American Bar Association 2011, The Council of Chief Justices of Australia and New Zealand 2017). The oath of judicial office in many jurisdictions also implies feeling rules by requiring judges “to do right to all manner of people according to law *without fear or favour, affection or ill-will*” (High Court of Australia Act 1979 (Cth) s 11, sch 1; emphasis added). Three of the four injunctions – fear, affection, and ill-will – suggest emotion or emotional capacities which are cast as incompatible with impartial decision making.

This magistrate is very aware of the normative environment in which she is working, though she does not explicitly reference any formal rules or norms. Phrasing or framing several of her actions as “you *have to*” implies norms – feeling rules – about appropriate emotion display, as well as the practical emotion dimensions of the judicial role. This framing suggests recognition of an external, somewhat nebulous force constraining her actions and the kind of emotion she can express. “You *have to* let the person go on to the certain extent that they feel they’ve had their say (...)” invokes ideas of procedural justice by being attuned to others’ feelings (Tyler 2000, 2003). This may also indicate some empathy in the moment, recognising how court participants are feeling at the time, and underscores the importance of managing their feelings.

The magistrate points out that: “you *have to* be the calming one in the situation” and in this way identifies the existence of boundaries and limits. She continues “once they’re getting *beyond the pale* and they’re starting to be actually either very disrespectful to the court or quite offensive or actually presenting a danger to the people in and, you know, really getting to that point where you step in” (emphasis added). She explicitly invokes the idea of boundaries by using the phrase “beyond the pale”. A pale is a 14th century Middle English word for a stake used to support a fence, as in a paling fence. The metaphor means that something is outside a boundary. Here the judicial officer is the enforcer of feeling rules, as well as subject to them. It is the judicial officer who must interpret conduct, then decide when – at what point – someone is becoming so disrespectful or offensive that they are breaching either general norms such as norms of civility, or specific courtroom norms. Such breaches may cause a person to be held in contempt of court or even amount to criminal offending if the behaviour is “presenting a danger to the people in [court]”.

Descriptors such as “disrespectful”, “offensive”, and “danger” are markers of disorder against which order is generated. By identifying and naming examples of disorder, the judicial officer constitutes (makes and maintains) order. This also connects to wider concerns about danger and security in the courtroom, especially where the defendant is not legally represented, where the connection between person and judge is not tempered by a lawyer (also see Douglas 1970, Rock 1998, Moran and Skeggs 2004, Mulcahy 2010).⁶

5. *Impartiality as emotion management*: In the background of her reflections lies commitment to a higher loyalty – impartiality – a foundational legal institutional norm. Judges take an oath of office promising to be impartial. Impartiality is a standard of conduct central to judicial self-definition (Geyh 2013). Impartiality also shapes the courtroom context, as this magistrate demonstrates:

Yes, I've heard you Mr so and so, I'd now like you to sit down and I'm now going to hear from so on'. They will continue talking, [and I] say, 'I just said to you I would like you now to sit down, you've had your turn'. 'Oh yeh', and then it's, 'you will have another turn later but now it's someone else's turn (...).

Here, she invokes the central judicial value of impartiality through the notion of turn taking though she never explicitly refers to impartiality. Rather, she translates impartiality, a concept with a specific legal meaning, into the everyday notion of turn taking (Goffman 1983, Wilson *et al.* 1984). This is an example of code-switching: decoding technical legal concepts and terminology into vernacular, concrete language familiar to and understandable by non-legal personnel (Craciun 2018). She describes an explicit movement from impartiality in substance (a decision according to law and proven or agreed facts) to a procedural norm (to hear both sides), a long-standing judicial value (Resnik and Curtis 2011), and then to turn taking, a widespread, everyday social norm. This process exemplifies “the dynamic production and consolidation of meaning” as it is the interaction between the magistrate and the participant that forms the context in which norms about appropriate behaviour become explicit (Lamont and Swidler 2014, p. 156).

This use of impartiality draws on overriding institutional norms and every day, ordinary social practices and so goes beyond the face-to-face interaction between the magistrate and the person before the court. This practical reliance on the procedural component of impartiality – translated from legal technicality into the concept of turn taking – shows how this central norm can become a resource or strategy to manage the emotions of others in the courtroom.

Letting a court participant continue without limit may be perceived by others as unfair, as indicative of a judicial officer showing favouritism or bias. In addition, it perhaps reflects her (personal) concern about being perceived as unfair, biased, and partial, thus departing from ethical norms of judicial conduct. It may also reflect a concern that allowing one party too much time may become the basis for a potential appeal on the grounds of bias or perceived bias.

This points to two dimensions of impartiality: First, the *achievement* of impartiality may require the judicial officer to regulate or suppress their own subjective feelings (Roach Anleu and Mack 2019). The quest to accomplish impartiality in this sense – to be impartial – entails considerable emotion work. Second, an emotionless *demeanour*, assumed to be necessary to display

⁶ We are grateful to Professor Leslie Moran (Birkbeck, University of London), for these observations regarding disorder and order which were made at the Workshop on *Judging, Emotion and Emotion Work* held at the International Institute for the Sociology of Law, Spain 2-4 May 2018 (<http://www.iisj.net/en/workshops/judging-emotion-and-emotion-work>).

impartiality, can also involve emotion work. In both ways the script of judicial dispassion (Maroney 2011a, 2011b) "is emotionally sustained" (Wettergren and Bergman Blix 2016, p. 31).

6. *Conscious use of emotion as a strategy or resource:*⁷ This magistrate describes being aware of feelings, her own and others, and makes (conscious) choices about her feelings and emotion display and their uses as emotion management strategies. There are two striking examples.
 - (a) One comment points to the importance of a calm demeanour and the role of leaving the bench as emotion work: "... if it finally gets to the stage where you're [court participant] not listening to me, I'm now going to leave the bench and I'm going to come back and I expect that you will have calmed down et cetera'. So taking control is really important. Staying calm yourself is really important and exiting if, you know, on the odd occasion that's what you need to do". This suggests that "staying calm", is a conscious emotion management strategy, used to avoid escalation of frustration or anger of someone who is "ranting". Her repeated declarations that "taking control is really important. Staying calm yourself is really important", suggest that not staying calm, perhaps becoming visibly emotional – angry, frustrated, impatient – may be construed as loss of control, entering the fray, detracting from impartiality and thereby undermining legitimacy and judicial authority. Coupled with apparent patience, she enforces turn-taking (see above), but recognises the limits of the effectiveness of her strategy of "staying calm" and perhaps of her capacity to do so; leaving the bench is a strategy to allow others to manage their emotions and for the judicial officer to manage her own. Off stage – in chambers – the judicial officer may need to de-brief; this may rely on emotional labour on the part of others: associates, judicial officers, court staff (Lively 2000, 2002).
 - (b) The second example is the magistrate's comment, somewhat confessional: "On occasions I have to say that I haven't completely controlled my emotions and I don't know that that's a bad thing. I have cried a couple of times in court". This implies that she could have exercised more control and not cried, but for whatever reason did not: perhaps a conscious choice not to stop crying or an inability in the moment to control her tears. Reflecting back on those situations she says: "I don't know that that's a bad thing", perhaps because of the value she sees in certain emotional displays as a way of communicating with particular audiences. This may not have been a conscious use of emotion in an instrumental or pragmatic way but the effect of her display of emotion – through crying – she suggests, helped the litigants understand the difficult nature of the decision.⁷ This could be considered an example of the social sharing of emotion embedded in the way the decision was delivered. A judicial officer crying in court is often newsworthy, sometimes reinforcing the requirement of judicial detachment and dispassion, other times demonstrating the humanity of the judge in the face of awful crimes and shocking evidence (Dixon 2012, Morris 2015, Smart 2018).

⁷ Background or unconscious emotions (Barbalet 2011) such as feelings of pride, pleasure, loyalty, satisfaction, are important but their thorough treatment is beyond the scope of this article. "Another misunderstanding concerning emotion (...) holds that those who experience emotions are necessarily conscious of them, and aware of them as emotions" (Barbalet 2011, p. 41). "[T]hose emotions that are arguably less amenable to strategic or explicit regulation, not only because they have low expressivity, but also because they are unlikely to be consciously experienced as emotions by the emoter. And yet these explicitly nonregulated emotions are essential to the capacities and capabilities of the human agents who experience them, and permit explanation of crucial social processes, including scientific discovery and trust relations" (Barbalet 2011, p. 42).

The interviewee's caution against crying in court also aligns with Schuster and Proppen's (2010) findings regarding emotional standards and hierarchies in the courtroom. In their study of victim impact statements, they found that judges appreciate victims' expressions of compassion and tolerate their expressions of grief, but are uncomfortable when victims display anger. This magistrate goes on to explain how her display of emotion through crying played a "didactic role", when emotions "become tools of intervention; they are integral to how experts 'treat' or solve a problem they are faced with" (Craciun 2018, p. 961). She explains: "... I don't think that that hurt that I showed I was emotional (...) probably one of the hardest decisions I've ever had to make in my life and I don't think it hurt for them to understand that it was, that it's hard for the Court too". Her emotion display is a tool, strategy or resource to convey the difficult nature of the decision and to increase others' understanding – perhaps asking the parents to empathise with the judicial officer and the difficult decision she had to make. In stepping away from the image of the detached, impersonal judge, she relies on emotion display to insert human engagement and empathy. Yet, she does not step too far away from the image. The judicial decision is based on legal, deliberative reasoning and application of law to proven (or admitted) facts, a process that disavows emotion. It is not clear from these comments whether the judicial officer considered the decision one of the emotionally or intellectually/legally "hardest decisions" or whether such a distinction fades even disappears. Her reminder that it is "hard for the Court too", seems to be an attempt to refocus attention from the judicial officer as *a person* with feelings, to the judicial officer as *the Court*, the institutional, and depersonalised entity which is obliged (and able) to render decisions that are difficult but must (and can) be made.

5. Discussion

This interview segment provides a rich opportunity to examine emotion in the judicial context. It illustrates the embedded nature of emotion and judging and offers an in-depth sociological interpretation of one judicial officer's reflections on "'affective-relational' knowledge work [that is] when they rely on their emotions to further their epistemic goals" (Craciun 2018, p. 960). From a sociological perspective, four main meta-themes emerge: identification (or not) of specific emotions; interviews as research method; gender and emotion; and the importance of context to understanding judging and emotion.

5.1. Naming emotion(s)

This article analyses what one judicial officer says about emotion in her everyday work. It does not focus on what the judicial officer actually feels, the emotions she experiences nor does it identify particular emotions. Note, in the interview fragment, the magistrate does not identify any of the so-called basic emotions frequently used in everyday parlance, for example anger or sympathy. Yet it is tempting to name or label the various emotions she implies – anger, frustration, sadness, pride in her work, satisfaction in making decisions, perhaps passion for the law – even though she does not. The situations she depicts are brimming with emotion. She describes the behaviour of crying – emotion display – but does not explicitly indicate what she was feeling or name any specific emotion(s). Indeed, crying as a form of emotion expression can be driven by different felt emotions (Becker *et al.* 2017).⁸ She prefaces her description of crying with an explanatory statement: "I delivered a judgement about intellectually handicapped children who were going to be losing their child to a welfare agency (...)". This suggests feelings of sadness, distress, pity

⁸ Historians suggest that it was only during the nineteenth century that tears became expressions of emotion in Western cultures (Dixon 2012).

or sympathy. She possibly also felt conflicting emotions: sadness in the case yet loyalty to the rule of law, and pride in her judicial work, these are perhaps unconscious or service emotions (Barbalet 2011, White 2014). Evident in these strategies is a model of the “good judge” and articulations of appropriate judging and how to manage judicial emotions, which may, in part, incorporate the dominant cultural script of judicial dispassion.

5.2. Interviews as research methodology

A perennial question in empirical sociological research on emotion is how to identify and collect reliable, valid data on emotion and emotion work (Clay-Warner and Robinson 2015, Flam and Kleres 2015, Godbold 2015, Holmes 2015, Olson *et al.* 2015, Patulny 2015, Roach Anleu *et al.* 2015). This article relies on a fragment from one interview to (i) to unpack the complexity of emotion work and judging; and (ii) to highlight a sociological perspective on emotion work and judging. Interview methodology enables a far-reaching flow of consciousness, as was the case in this interview, though some interviewees are more forthcoming or reflexive than others. However, like all data collection techniques, interviews are necessarily limited. They are conducted in an artificial situation. The interview is a co-production between interviewee and interviewer, and the interviewees provide accounts, even justifications, of their actions and approaches (Presser 2004). The interview is an opportunity for an interviewee, here the judicial officer, to present a particular judicial identity. The researcher cannot always gauge the alignment between what the interviewee relates and what he or she actually did or felt, or how he or she would behave in the future. Nonetheless, if the aim of the research interview is to gain insight into the way interviewees approach their work, and how interviewees interpret and understand their own actions, then this question of alignment is less relevant.

Another possible limitation of the interview as a research method to generate data on emotion is its focus on the views and perceptions of individuals. This aspect of interviewing “easily leads us down the slippery slope of methodological individualism when it comes to explanation” (Lamont and Swidler 2014, p. 162). This may result from failing to adequately recognise and account for the importance of context and interaction in understanding emotion and, especially, emotion work. Even so, interviewees’ accounts can indicate “how they try to translate interpretations of their own and other’s feelings into actions”, thus underscoring the relational nature of emotion (Holmes 2015). That is the case in the interview excerpt this article discusses.

5.3. Gender and emotion work

Early studies of emotional labour concentrated on highly-feminised, front-line, pink-collar, service occupations in which employers and/or managers explicitly require employees engage in emotion work (managing feelings and display of emotion of both self and others) even where this is not part of formal job descriptions. This empirical research highlights the inequalities and alienation these employees experience as they work to make customers or clients happy and feel good. Viewing jobs as requiring emotion work has led fairly directly to conclusions that they result in stress and burnout for incumbents; emotion work is tiring and inauthentic. However, the situation is more complex: “Employment in a job identified as involving emotional labor does not have uniformly negative consequences for incumbents” (Wharton 1993, p. 226).

There is a strong gender and hetero-normative undercurrent (actually more an over-current) in the research findings regarding the demand for and provision of emotional labour. This perhaps partly reflects the longstanding and tight social and cultural association of women with emotion. Employees providing emotion work are typically women; those requiring it are usually men (male supervisors/managers); those benefiting from this labour are often (not always) male customers or clients.

Nonetheless, gender and emotion work are not correlated perfectly; there are examples of men engaging in *and* resisting emotional labour, when they are in the same occupations as women (Lively 2000, 2002).

In the current analysis of the extended interview quote, an interpretive point relates to gender, emotion and court level. It would be inappropriate to infer from this quote that women are more attuned to emotion and emotion work than their male colleagues. Several men in the interviews reflected on their emotion experiences and emotion work in court. In a national survey, identical proportions of women and men (half) judges in the higher (jury) trial and appeal courts assess managing the emotions of court users as essential or very important (Roach Anleu and Mack 2017). In contrast, in a survey of Australian magistrates finds that a greater proportion of women (79%) than men (58%) consider managing the emotions of court users to be essential or very important in their daily work. In the lower, magistrates court, criminal defendants and civil litigants are often without legal representation, and the judicial officer must deal directly with people whose lives are embedded in complex social, economic and health disadvantage. As a result, the demand for emotion work will be greater than in higher courts. The different attitudes of men and women in magistrates courts compared with the similar attitudes of men and women in the higher courts reflects the complexity of gender as an explanation and reinforces the importance of context for understanding judicial emotion and emotion work (see Schultz and Shaw 2013 for discussions of gender and judging across different national legal systems).

5.4. Context

Often researchers and writers acknowledge the importance of context – pay homage to it – but then move on to a more individualist or behaviourist conception of emotion, and the context remains relatively unexplored or under examined. This research shows very concretely some of the emotions judicial officers experience, the ways they engage in management of their emotion, and how they may rely on emotion in performing the judicial role and accomplishing everyday work. Strategies differ depending on a range of factors, including location and the mix of relationships which vary between front stage and back stage (Goffman 1959).

The courtroom context (front stage) is constituted by physical setting, institutional norms, rituals and organisational routines, various participants (each with biographies and motivations), a division of labour, cultural representations, and so on. Off the bench (back stage) different organisational settings – chambers, common rooms, court library and so on – different routines, expectations and participants shape the configuration of emotion and emotion work. While it is impossible to incorporate everything into a research design, it is also essential to move away from a conception of context as nothing more than the receptacle in which interaction and individual behaviour occur.

6. Conclusion

Dissecting a small piece of a longer interview with a magistrate demonstrates the emotional density of judicial work and the complexity and subtlety of her emotion work. This magistrate reflects on her own emotions, those of court participants – both lay and professional – and shows how accomplishing judicial tasks relies on “internal states and emotional displays” (Craciun 2018, p. 960, fn 3). She gives examples of the ways this emotion work may be undertaken consciously or unconsciously as taken for granted ways of performing the judicial role. The concept of the “emotive-cognitive judicial frame” captures the embeddedness of emotion in judicial work and the intertwining with cognition, knowledge and deliberation (Wettergren and Bergman Blix 2016, p. 26).

The interviewee’s descriptions of her daily work highlight inter-connections between cognitive processes and feelings, which may be manifest through bodily sensation

and display, language, and tone of voice. Interestingly, this judicial officer does not label any particular emotions nor describe (and perhaps does not experience) emotions as discrete or distinct things with identifiable beginnings and ends. This is not unusual: "Feelings, sensations, thoughts, words and actions all flow together seamlessly and sometimes almost instantaneously" (Burkitt 2012, p. 469). In this way, emotions can be conceived of as practices, that is "emerging from bodily dispositions conditioned by a social context" (Scheer 2012, p. 193), in this case the courtroom setting.

The courtroom context shapes, but does not determine, the ways emotion is generated, recognised, labelled and interpreted. It is constituted by many dimensions: physical space, time, social norms – specific and general – participants, patterns of relationship, divisions of labour, rituals, routines, legal knowledge, organisational procedures and institutional values (Rossner and Meher 2014). In judicial work, emotion is produced in face-to-face interaction and constrained by powerful institutional values such as the centrality of impartiality and legal norms about proper or appropriate judicial conduct. Such norms can also include feeling rules which prescribe or prohibit certain emotions and emotion displays. The magistrate in the interview excerpt is aware of these feeling rules but does not specifically identify them when she says: "You [the judicial officer] have to".

Emotion and emotion work are often associated with burnout, stress, unwelcome demands, perhaps especially for professions where detachment is seen as an essential, even defining characteristic. While this magistrate indicates that emotion management is "very very difficult, very very difficult", it is only "on occasions" that she has not completely controlled her emotions. At the same time, the interview fragment also demonstrates several instances where she proactively uses emotion management and relies on emotion display as a positive resource or strategy.

Dissecting a segment of a longer interview is an unusual way to investigate emotion in judicial work. A sociological perspective reveals the richness of the judicial experience and management of emotion even when specific emotions are not explicitly named. Given the dominant emotive-cognitive judicial frame and the persistent script of judicial dispassion, asking judicial officers only about specific emotions may miss the depth of emotion work in their daily judicial practices. By identifying the effort, relationality, and facilitative dimensions of judicial emotion and emotion work in their everyday context, this research repositions emotion work as central to judicial performance and enables emotion to be recognised as a positive judicial resource.

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