Emotional Labour in the Magistrates Court

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Abstract

The concept of emotional labour describes the management of emotions as part of everyday work performance. Much of the research has been conducted in relation to jobs in the service sector where (mostly female) employees are required to shape their own feelings in order to make customers or clients feel at ease, comfortable or happy.

This paper examines emotional labour on the part of magistrates in court. Magistrates must often regulate their own emotions and those of some court users during the course of their everyday work. Magistrates deal directly with a large number of people, many of which are not represented by a lawyer and who express a variety of emotions, including anger and distress. Many also experience social problems that may elicit empathy on the part of the magistrate. The paper reports findings from interviews with over 40 magistrates throughout Australia and begins to address the issue of emotional labour and possible consequences for this branch of the judiciary.

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Introduction

The courtroom is the location of many, usually negative, emotions: in criminal cases defendants are angry and sometimes hostile, victims are distressed; in civil matters both plaintiffs and respondents may feel frustrated and annoyed at having to go to court; in debt collection cases, defendants may feel embarrassed about their inability to manage their finances; and in domestic violence cases parties may be openly hostile. Court users can feel intimidated; experience both fear and uncertainty, which can affect emotional displays (Konradi, 1996). In the superior courts, legal representatives filter out or manage many of these emotions: the judge hears technical legal arguments with the much of the raw human emotion and complexity excised. The judge interacts with the legal counsel not with the ordinary citizen; hears the matters translated into legal rather than everyday language and responds to the legal argument not to a citizen's demands or desires (Abbott, 1980: 823-4). In contrast in first instance courts, where parties are often unrepresented by lawyers, the judicial officer must deal directly, and often quickly, with diverse members of the public and their emotions, as well as the legal issues they present.

This paper examines emotional labour in magistrates\(^2\) courts in Australia. Much of the research on emotional labour emphasizes that employees in an occupational hierarchy are required to engage in emotional labour vis-à-vis members of the public on whom the employer depends for financial success. Magistrates do not depend on court users in the same way, nor are they formally or explicitly required by a hierarchical superior to engage in emotional labour. Nonetheless, magistrates confront un-mediated emotions in the courtroom and must manage their own emotions and displays of feelings and many are concerned to affect the feelings and emotions of court users.

Magistrates Courts in Australia

Magistrates courts are general courts, usually of first instance and constitute 'the ground level of a three-tier [or two-tier] judicial system' (Thomas, 1997: 195). Magistrates sit alone without a jury. Their criminal jurisdiction is determined by category of offence: summary or minor indictable. These courts deal with quite serious offences against the person and property and have the power to imprison for up to two years or more depending on the state or territory. In the civil jurisdiction the value ranges from $25,000 to 100,000, and sometimes unlimited by consent; there is also a small claims division. Magistrates also have responsibility for other jurisdictions, which might include domestic violence restraining orders, coronial, mining, occu-

\(^2\) In most jurisdictions, the court is called the Magistrates Court, except in New South Wales where it is the Local Court and in Western Australia where it is the Local Court for civil matters and the Court of Petty sessions for criminal cases. In the Australian Capital Territory, the Northern Territory and Tasmania there is no intermediate court between the Magistrates Court and the Supreme Court. South Australia, Queensland, New South Wales and Western Australia have a District Court and the equivalent in Victoria is the County Court.
pational licensing, liquor licensing, children (criminal, care/protection and adoptions), and diversionary courts. Many matters once dealt with by superior courts are now within the jurisdiction of magistrates courts (Lowndes, 2000).

The vast majority of citizens who come into contact with the judicial system—whether it is for a criminal trial, a debt recovery action, a committal or some other matter—will have their case considered by (and most likely only considered by) the magistrates court. Australia-wide magistrates courts deal with 96.3 per cent of all criminal lodgements and almost 90 per cent (88.9%) of all civil lodgements (SCRCSSP, 2003: Table 6.6). Pressure also exists for matters to be dealt with quickly: magistrates courts in all states and territories finalised almost four-fifths (78 percent) of criminal cases and just over nine-tenths (92.7 percent) of civil cases within 6 months of hearing in 2001-02 (SCRCSSP, 2003).

**Emotional Labour**

Hochschild defines emotional labour as work that ‘requires one to induce or suppress feeling in order to sustain the outward countenance that produces the proper state of mind in others—in this case, [flight attendants] the sense of being cared for in a convivial and safe place’ (1983: 7). Emotional labour involves the management of feeling to create a publicly observable facial and bodily display. Emotional labour is instrumental: the management of feeling is for the benefit of another person. Much of the ‘emotional labour’ research has focussed on pink-collar occupations, i.e. relatively low paid jobs occupied mostly by women. Not only do these occupations require emotional labour and not only women or employees in female-dominated occupations do emotional labour – but the type of emotional labour, the kinds of emotions to be managed and the desired outcomes appear to differ by gender.

Subsequent research has examined emotional labour within occupational hierarchies where the beneficiary of the emotional labour is someone of higher occupational status. Pierce shows how paralegals are ‘expected to support and maintain the emotional stability of the lawyers for whom they work through deferential treatment and caretaking’ (1999: 128). They must manage their own and the attorneys’ anger and remain pleasant and cheerful while accomplishing their tasks. Interestingly, the norms for emotional labour differ for male and female paralegals: women are expected to be nice and affectively engaged, whereas men are expected to be polite or affectively neutral (1999: 135-6).

**Professions and Emotions**

Traditional conceptions of the profession specified a key attribute as the suppression of emotion, the inappropriateness of unregulated emotion in the professional setting, in the professional/client relationship (Parsons, 1954: 35). Professions provide services to patients or clients, or to impersonal values like the advancement of science, or justice. Expressions of emotion that deviate from standards of conduct (usually promulgated in professional eth-
ics, etc) are deemed to be unprofessional. ‘Emotional deviance refers to experiences or displays of affect that differ in quality or degree from what is expected in given situations’ (Thoits, 1990: 181).

Members of a profession enjoy considerable autonomy and do not operate in an occupational hierarchy in the same way as employees. Nonetheless, in professional occupations where there is a high level of interaction with individuals—who may be distressed, angry or anxious—detachment or disinterestedness may be extremely difficult or impossible. Interestingly, Hochschild includes lawyers and judges in a list of some fifteen occupations that involve substantial amounts of emotional labour (Hochschild, 1983: 153, 234-38). Lawyers deal with messy personal problems, for example in family law and criminal law matters, where there are high levels of emotion, especially anger and anxiety. Lawyers may persuade reluctant clients to try to reach a negotiated settlement and this entails managing their emotions (Sarat and Felstiner, 1986: 96). Research shows that barristers themselves consider the use of emotions an integral component of their work, and they engage in both private and public emotional labour (Harris, 2002: 563, 574). Private emotional labour occurs during interaction with other members of the legal profession, especially among members of the junior bar looking for work in an increasingly competitive market (Harris, 2002: 564; Morison and Leith1992: ch3). Public emotional labour occurs during interaction with clients, witnesses and judges, magistrates and juries (Harris, 2002: 563). In the courtroom, barristers use ‘feigned and exhorted emotional display during witness examinations and cross-examinations’ (Harris 2002: 570). This can result in witnesses or victims feeling frustrated and angry as a direct result of the defence counsel’s attempts to (intentionally) manipulate their emotions and make them appear not credible (Konradi, 1999: 53-4).

The focus of this paper is on the judicial role where the emphasis is on decision-making according to law and facts without expression or consideration of the judges’ own or court users’ emotions. Numerous discussions in decided cases, ethical statements, and legal texts describe the appropriate behaviour and standard of conduct expected of judicial personnel in court. For example, judicial officers: ‘should be civil, courteous and reasonably patient towards all persons in their courts, including parties and their legal representatives, witnesses, spectators, and court staff’ (Wood, 1996: 15). Statements on judicial conduct emphasize that judges must be and appear to be impartial and unprejudiced and that their direct involvement with court proceedings be limited.

Various guides and ethical statements specify appropriate courtroom conduct and behaviour and identify the expected personal qualities and demeanour—which inevitably entail the suppression of emotions in order to ensure that users of the court experience appropriate feelings, among other things. It is desirable for judges ‘to display such personal attributes as punctuality, courtesy, patience, tolerance and good humour ... [a] judge must be firm but fair in the maintenance of decorum’ (AJIA, 2002: 15). Judicial officers are advised not to use language that would give offence or evince racial, religious or sexual bias or prejudice. The Canadian Judicial Council warns that ‘flippant or off hand’ remarks that might cause offence

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and 'the intemperate language in times of tension' should be avoided (Canadian Judicial Council, 1998: 76-77). These are normative statements about the appropriate emotions and the feelings to be displayed. The everyday experience of magistrates in court and the role of emotion management - both their own emotions and those of court users - have not been explored in any depth.

The Research

As part of the development of a larger research project into magistrates and their courts, we conducted interviews with over 40 magistrates in every Australian jurisdiction, between December 2000 and March 2001. The aims of the interviews included identifying areas which magistrates themselves saw as issues facing the magistracy; to elicit support for the larger project, and also to gather preliminary information about the operation of the magistrates courts. We wanted to learn about magistrates’ perceptions and experiences regarding a range of issues including: the organization of the magistrates courts, legal or procedural issues, the everyday work of the magistrates courts, professional/industrial issues, relationship of magistrates to and the role of other participants and professional and social profile. The interviews were wide-ranging and relatively unstructured. We did not specifically ask about emotions in the courtroom or the everyday work of magistrates. The magistrates themselves identified emotions as key issues. Thus, the interviews generated unexpected data on emotions in the courtroom and emotional labour, which form the basis of this paper.

Emotional Labour in Magistrates Courts

The occupational location of a magistrate is unique. Magistrates are not in a hierarchical line/management situation. They have a large degree of autonomy in the exercise of everyday work; there are professional entry requirements, but unlike other professions, magistrates do not have a professional/client relationship; and their decisions are reviewable by appeal to a higher court. Magistrates have security of tenure (though not unlimited). The service ideal of the magistracy is abstract, that is to serve the community, society, and justice, rather than to provide a particular service to individual clients as such. Unlike the professional/client relationship, which is private and entails confidential communications, most proceedings in the magistrates court are open to the public (an exception is care matters). There is also a high level of visibility via media reporting.

Emotional labour is often said to be mostly performed in front-line occupations, those with high degrees of interaction with members of the public. Magistrates courts are the gateway to the judicial system, and indeed, magistrates often refer to their work as located at 'the coalface' or in 'the front line'.

The interviews generated a number of examples of the kinds of emotions and emotional labour that magistrates deal with every day in court. References to emotions were made by both men and women magistrates. Though it
cannot be said that magistrates are required to perform emotional labour in a formal or official way, they are conscious of feeling rules and presentation of self and express concern for the kind of experience and impression a person will take away from the magistrates court. Tyler shows that citizens' satisfaction with the justice system and the extent to which they define the fairness of a procedure (and ultimately the legitimacy of institutions) are more affected by their experience of the process than by the substantive outcome (1990). 'Normative aspects of experience [with police officers and judges] include neutrality, lack of bias, honesty, efforts to be fair, politeness, and respect for citizens' rights' (Tyler, 1990: 7). A belief that they had an opportunity to present their arguments, to be listened to and have their views considered by the authorities influenced people's assessments about whether the procedure was fair and increased their willingness to voluntarily accept third-party decisions (Tyler, 1990: 163-73).

The significance of procedural justice concerns in the way magistrates interact with court users and manage emotions comes through in the following comment:

Magistrates have got to be aware of the fact that many people who appear before them appear before the court for the first time, or even if they're coming as an observer with a relative or a friend who is the defendant or a witness. What these people see will often be their first encounter of what courts are all about, so magistrates have to bear in mind ... that other people are watching and judging, the members of the public are watching and judging what they do in virtually every move they make, and the perception that they take away from them, from that personal contact with the court, is a perception that will stay with them for a long time and will be far better than anything they read in the paper or see on the news. So, as I said, I think courts have to be very, very conscious of that. (Emphasis added)

The magistrate is in a hierarchically superior position compared to the other participants in the courtroom as s/he manages the operation of the court proceedings (within legal/procedural parameters) and is not required by a supervisor to engage in emotional labour. However, this magistrate points to the visibility of magistrates' conduct and behaviour to a wider, more amorphous audience that will make judgements about the fairness of the justice system based on particular experiences. With long case lists each day, ensuring that infrequent users of the court will experience it as fair presents a challenge to magistrates.

Many of the emotions expressed by litigants will be negative—frustration, distress, anger, sadness—and many of the stories and situations of litigants will be distressing and difficult. Moreover, in the adversarial legal system, even though litigants may view the process as fair, one or more of the participants will lose and be distressed by the outcome, whether it is a criminal penalty, or an order to pay damages, or a failure to have a claim recognised.

Another magistrate refers to the emotional dimensions of the care jurisdiction and the concern to listen to parties, even where there is legal counsel.
So you're always trying to calm the situation down, try and get everybody to have their own say, work within time limits that are reasonable but also let the parties feel like they've walked out knowing that they've said what they wanted to. ... There are a whole lot of things and emotions to manage, apart from just the paperwork, the evidence and the decision.

A number of magistrates referred to dealing directly with un-represented litigants, as distinct from legal counsel. One of the tasks of legal counsel is to present the issues according to legal rules and principles, with much of the emotion (and non-legal issues) excised. For example, referring to minor civil claims, one magistrate observed the ways in which she managed raw emotions in the courtroom:

But yes, civil was a new experience, in that I was dealing with unrepresented people and dealing with minor civil claims. Dealing with, I suppose, that personal interaction with people where you actually need to find a whole lot of different skills as how to appease people, how to manage their problems, how to make them feel comfortable, and some people are better at that than others.

Tension exists between the technical or legal dimension of magistrates' work and emotions in the courtroom:

As I say, I can do it, I know what I'm there for; I can make my decisions. I am, generally speaking, happy with the decisions I make on the basis that that's what the evidence showed me I had to do; I'm not happy whether it was the right thing but the evidence that led to it had to be that conclusion, I don't have a problem with that, but as I say I have a problem walking away and just erasing everything I've heard about families and the stress that they're under, the treatment children have been dished out, what will happen to them for the rest of their lives. I just find it difficult to walk away from that and go home to my own children and look at them and think 'Oh, God', you know. I usually find I try to be more patient with my own children when I go home after a day in the care jurisdiction.

Another magistrate articulates the importance of the human dimension:

Now, there's two things that can happen to you. Either you're going to remain a decent person and become terribly upset by it all because your emotions - because your feelings are being pricked by all of this constantly or you're going to become - you're going to grow a skin on you as thick as a rhino, in which case I believe you're going to become an inadequate judicial officer because once you lose the human - the feeling for humanity you can't really - I don't believe you can do the job.

Conclusion

The courtroom is the location of many emotions, usually negative, which a magistrate must manage and ensure that court users have an experience of the process as a fair one. While magistrates are not performing emotional labour to satisfy a status superior, as they are not in a status hierarchy,
they are cognisant of assessments being made of the justice system based on individuals’ experiences, either as witnesses, victims, defendants, litigants, or members of the public.

There are number of constraints on magistrates’ capacity to effectively perform emotional labour or the kinds of emotional labour they perform. First is the fact that their role is to make decisions based on the law and the evidence and not to engage in emotional labour. Second, the sheer volume or work means there simply not enough time to perform intensive emotional labour. Third, the need to observe broad ethical principles regarding judicial conduct and behaviour limits the magistrates’ capacity for emotional labour, and finally the need for emotional labour may be displaced by the existence of legal representatives.

References


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