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‘Empathy pouring out of your bones’: Emotions and emotional labour in courts – The case of young magistrates in England and Wales

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journals.sagepub.com/home/crj**Xavier L’Hoiry** 

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Abstract

This article explores the experiences of young (under 40 years old) magistrates in England and Wales, a perennially under-represented group in the criminal justice system. Drawing on 23 interviews with currently serving young magistrates, the article examines the use of emotions and emotional labour by this group of criminal justice actors, specifically the ways in which emotion constructively informs judicial decision-making, and how emotional management is used to achieve procedural justice in magistrates’ courts. Data also show that young magistrates, as a minority group in this context, enact emotional labour practices to navigate through their experiences which include instances of soft discrimination and an absence of peer support. The article’s findings make new contributions to the growing corpus of literature on emotion and criminal justice as well as advancing understandings of emotional labour, specifically the intersection of this concept with age, volunteerism and discrimination.

Keywords

Courts, criminal justice, discrimination, emotional labour, emotions, magistrates

Introduction

This article explores the experiences of young magistrates in England and Wales, focusing on their use of emotions and emotional labour (Hochschild, 1983) in carrying out

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their judicial duties. In doing so, the article casts young magistrates as ‘emotional creatures’ (Maroney, 2006: 121), making a case for the appreciation of emotions in court settings as a pathway towards more ‘emotionally intelligent justice’ (Sherman, 2003). A growing body of scholarship has called attention to the role of emotions in law (Maroney, 2006), with research examining the extent to which emotion forms part of court proceedings (Bandes, 1999; Henderson, 1987). Drawing on Maroney’s taxonomy of law and emotion studies, this article takes an emotion-centred and a legal actor approach to make new contributions to extant literature by exploring the experiences of young magistrates (defined by the magistracy as those under 40 years old), a hitherto largely ignored but critical group of actors in the criminal justice system in England and Wales. Specifically, the article makes three key arguments: first, that young magistrates draw on their emotions to enhance (rather than hinder) their judicial decision-making. Second, that emotions are used to engender procedural justice in magistrates’ courts (Tyler, 2007) and to manage the negative emotions of court users (Sherman, 2003). Third, that emotions and emotional labour practices are deployed by young magistrates to manage their own emotional displays in a setting where they remain under-represented (and encounter negative experiences as a result). In doing so, the article also makes new contributions to understandings of emotional labour, specifically the intersection of age, volunteerism and (soft) discrimination.

The article begins by setting out the context of the (lack of) representative composition of the magistracy, particularly the elderly age profiles of currently serving magistrates and the implications arising from this. There follows a review of literature relevant to the themes explored in this study, including work on emotions in law and criminal justice, the concept of emotional labour and studies exploring emotions and emotional labour in relation to age, discrimination and volunteerism, all of which are relevant to the experiences of young magistrates. The ‘Methods’ section outlines the sampling, recruitment, fieldwork and analysis elements of the research as well as reflects on the study’s limitations. The following section presents primary data to explore the experiences of young magistrates and the ways in which they engage with emotions and emotional labour strategies in the course of their judicial duties. Finally, the article concludes with a discussion of the study’s key findings, situating these within existing scholarship on emotion, emotional labour, law and criminal justice.

The magistracy and the perennial challenge of representative composition

The magistracy is a linchpin of the criminal justice system in England and Wales (Gibb, 2002), comprising 85% of judiciary members, with magistrates sitting in criminal, family, civil and youth courts. In carrying out their duties, magistrates make potentially life-changing decisions concerning custodial sentencing, child protection orders, psychiatric assessments and diversions from custody. The magistracy also holds an important symbolic function. The role of a magistrate in England and Wales is unique insofar as magistrates are volunteers and act as so-called lay judges (Gibbs and Kirby, 2014). While magistrates exist in other jurisdictions (e.g. in Australia, India and Hong Kong), these are

salaried roles. In England and Wales, magistrates are intended to represent the wider public in the criminal justice system, embodying the fundamental democratic principle of participatory justice or in other words, being judged by one's peers (Gibson and Cavadino, 2008). Being representative of their communities thus runs at the heart of magistrates' legitimacy and is effectively the 'primary justification for (their) involvement' (Crawford, 2004: 700) in the criminal justice system.

Despite the importance of representative composition, the magistracy has long been plagued by its persistent lack of representation of the communities it serves. Simply put, magistrates are overwhelmingly elderly, white and middle-class. Ministry of Justice (2023) figures show that 82% of magistrates are 50 and over, and 44% are 60 and over. Previous figures have shown that fewer than 10% of magistrates are under 40 and magistrates under 30 represent less than 1% of the magistracy (Ministry of Justice, 2019). Demographic data also report that 87% of magistrates are white, with all Black, Asian and Minority Ethnic groups under-represented (Ministry of Justice, 2023). Critically, this disproportionality is getting worse, with the age profile of magistrates in particular becoming older in the past two decades (Gibbs, 2014). The elderly age profile of magistrates is a particular concern given the dearth of younger magistrates joining the magistracy in recent years. In response to concerns about the rapid loss of retiring magistrates, difficulties attracting new candidates and the increasing backlog of cases to be heard in criminal courts, in March 2021 the Ministry of Justice announced that the mandatory retirement age of magistrates would be raised from 70 years old to 75, the first time in 27 years such a change has been made (Ministry of Justice, 2021). Although this decision may alleviate immediate pressures, it evidently does little to tackle long-running concerns as to the magistracy's representativeness, particularly the age profile of serving magistrates.

Literature review

Despite the evident importance of the magistracy within the criminal justice system together with the problem of their lack of representativeness, the role of magistrates has been subject to surprisingly little academic attention. In the early 21st century, New Labour's criminal justice reforms prompted some academic and non-academic attention to magistrates' courts (see Liberty, 2002; Sanders, 2002), but little further examinations have emerged since, despite the magistracy becoming less representative in the intervening period. Outside of the United Kingdom, research has been carried out in Australia concerning magistrates' experiences, particularly as they relate to emotion, stress and trauma (Burns et al., 2024; O'Sullivan et al., 2022; Roach Anleu and Mack, 2005; Schrever et al., 2024). However, the unique voluntary role of magistrates in England and Wales arguably limits comparisons with other jurisdictions. It has fallen instead on charitable organisations to fill existing research gaps, such as studies carried out on behalf of the Howard League for Penal Reform (Gibbs and Kirby, 2014) and Transform Justice (Gibbs, 2014). However, even these contributions do not involve young magistrates exclusively, and what continues to be absent from all literatures is an empirical engagement with young magistrates which seeks to understand their experiences in an environment where they remain perennially under-represented.

It is worth noting that although this article explores emotion, with an emphasis on empathy, these terms are not uncontested. Emotion has no definitional consensus in existing literature and often appears to be treated as self-explanatory or with reference to specific emotions such as joy, sadness or anger (Dixon, 2012). Though acknowledging the definitional complexities in this area, this article adopts Cabanac's (2002: 69) definition of emotion as 'any mental experience with high intensity and high hedonic content (pleasure/displeasure)'. Relatedly, the notion of empathy has also been subject to many definitional attempts, and some have argued that empathy is not an emotion in and of itself, but instead 'a mechanism through which the emotion of another is perceived and processed' (Maroney, 2006: 127). This article adopts the definitional approach taken by the legal scholar Lynne Henderson (1987: 1579), who sets out empathy as involving:

(1) feeling the emotion of another; (2) understanding the experience or situation of another, both affectively and cognitively, often achieved by imagining oneself to be in the position of the other; and (3) action brought about by experiencing the distress of another (hence the confusion of empathy with sympathy and compassion).

Emotions, criminal justice and magistrates' courts

It has long been a core assumption of modern legal systems that a dichotomy between law and emotion should exist for law to be dispensed with reason. As Maroney (2006: 120) explains, prevailing beliefs have posited that 'reason and emotion are different beasts entirely: they belong to separate spheres of human existence (and) the sphere of law admits only of reason'. Following from this, research has suggested that strict expectations exist as to the objectivity and neutrality of judicial decision-making, with 'vigilant policing required to keep emotion from creeping in where it does not belong' (Maroney, 2006: 120). Emotion is often understood as being antithetical to law (Westaby and Subryan, 2020) with judicial decisions influenced by emotions, rather than reason, characterised as 'irrational' (Roach Anleu and Mack, 2005: 601). This casts judicial officers as institutional figures first and foremost, valorising the absence of emotion in the dispensing of their duties. Parallel to such beliefs, however, has been a growing recognition of the role and value of emotions in court (and other) settings. Understood as part of the re-emotionalisation of law and justice (de Haan and Loader, 2002), scholars such as Karstedt (2002, 2019) have argued that not only has emotion returned to criminal justice in the late modern period, but also that emotions such as disgust, anger, shame and vengeance are indelibly embedded in foundational notions of law and justice. Attempts to separate emotion and law are therefore accused of ignoring the 'vital facets of the actual role of emotions in law and legal procedures' (Karstedt, 2002: 301). The return of emotions to law and justice has led to scholars such as Karstedt (2002: 109) to call for greater attention to the role and use of (particularly positive) emotions in criminal justice, to develop understandings of the 'emotional capacity of criminal justice institutions'. Maroney (2006), in seeking to advance such discussions, created a taxonomy of law and emotion studies, detailing six overlapping approaches to advancing understandings in this field. This article adopts two of Maroney's (2006) six approaches: an emotion-centred approach which focuses on a single emotion (in this article's case empathy)

to understand its 'purpose, functioning (and) embedded values' (p. 125); and a legal actor approach which is attentive to 'the humans that populate legal systems and explores how emotion influences and informs . . . those persons' performance' (p. 131).

Research on judicial officers and emotions has argued that suppressing emotions from legal practice may in fact be counterproductive (Bandes, 1999). Bergman Blix and Wettergren (2016: 32), in calling for greater sociological understandings of emotions in the judiciary, propose that 'the emotional script of dispassion . . . hinders judges in developing deliberate emotion management strategies' necessary to ensure smooth process (Booth, 2012) during court proceedings. In some cases, (subtle) emotional displays may help judges to set expectations for courtroom behaviour or re-assert hierarchical relationships among court actors (Bergman Blix and Wettergren, 2016). Roach Anleu and Mack (2005) also propose that some outward displays of emotion by judicial officers, such as empathy, can enhance court users' experiences. Indeed, empathy has been repeatedly identified as an instrumental feature of judges' work (Henderson, 1987; Posner, 1999), with judges drawing on empathic emotions to treat everyone fairly, extract all relevant information and ensure procedural justice for all parties (Tyler, 2007). Empathy also supports judicial decision-making, allowing judges to draw on their own experiences alongside their imagination (Brennan, 1988) to understand defendants' actions not in a legal vacuum blocking out emotions (Henderson, 1987) but as part of the 'everyday life of human beings' (Bergman Blix and Wettergren, 2016: 33). Empathy used in these ways may be understood as a 'reasonable emotion' (Nussbaum, 2004: 46) which facilitates court proceedings, seeks to maximise satisfaction for all parties and allows for the management of emotions of all court users. Such an approach aligns to Sherman's (2003: 26) call for 'emotionally intelligent justice' where judges (among other criminal justice actors) 'who are aware of their own emotional forces may be able to manage those emotions more effectively' to account for the feelings of offenders and victims and to minimise the impact of negative emotions such as humiliation, defiance and anger.

Emotional labour

In exploring the use of emotions by young magistrates, this article draws on the framework of emotional labour. Arlie Hochschild (1983: 7) introduced this concept in her study of flight attendants, describing this as 'the management of a way feeling to create a publicly observable facial and bodily display'. For Hochschild (1983), emotional labour was a necessary aspect of many workers' everyday performances at work, deployed by individuals to meet the aims and expectations of organisations, though often their own feelings and values may not align to those of their employers. Hochschild (1983: 147) envisioned emotional labour to consist of three elements: first, workers must engage in some 'face to face or voice to voice contact with the public'. Second, workers must 'produce an emotional state in another person', emphasising that emotional labour involves not just the management of one's own emotions but also that of others. Third, emotional labour involves employers exercising 'a degree of control over the emotional activities of their employees' (p. 147), usually via training and supervision though this criterion has been extended in subsequent research to include occupational contexts with

less direct supervision but nevertheless still involving organisational expectations for workers' public displays.

Emotional labour can be enacted in several ways but most prominent according to Hochschild (1983) are surface and deep acting. Both processes ostensibly require workers to 'induce or suppress feelings in order to sustain the outward countenance that produces the proper state of mind in others' (Hochschild, 1983: 7). Surface acting involves workers simulating an outward emotional performance which does not reflect their own, true feelings. Deep acting differs insofar as while workers must still alter their own feelings to align with those expected by the organisation, they more sincerely attempt to feel the new emotion than surface actors. Subsequent studies have suggested further ways in which emotional labour may be enacted, such as genuine emotional responses which take place when workers' own true feelings align to that of an organisation's (Ashforth and Humphrey, 1993). In such cases, labour is still necessary because these feelings must be managed and performed publicly in an appropriate way. Detachment has also been identified in which alignment between workers' feelings, whether real or simulated, to that of an organisation's is not possible (Kadowaki, 2015). In such instances, workers enact detachment by suppressing their emotions as much as possible, depersonalising their interactions with others to complete a given task without emotion. Of particular relevance to this article, studies of emotional labour in the legal sector have noted several ways in which emotion work is undertaken in practice. Here, adversarialism has been identified as a form of emotional labour engaged in by legal practitioners (Pierce, 1995), whereby intimidation and aggression are used to 'dominate the courtroom' (Westaby and Subryan, 2020: 38). At the other end of the scale, strategic friendliness (Pierce, 1995: 52) has also been reported, deployed by legal practitioners to eschew the adversarial nature of litigation by using 'charm or flattery to manipulate others' and achieve desired aims.

The impacts of emotional labour have been documented as positive and negative, with studies linking emotional labour to stress, burn out and low self-esteem (Ashford and Humphrey, 1993) among other harms. The presence of 'communities of coping' (Korczynski, 2003) has been identified as an important mechanism to manage and mitigate these harms, as part of which workers perform 'reciprocal emotion management' (Lively, 2000) with one another to alleviate the pressures exerted by organisational demands vis-à-vis outward emotional performance. Other studies have pointed to the positive impacts of roles requiring performances of emotional labour, including enhanced job satisfaction, high self-esteem (Wharton, 1993) and a sense of community (Shuler and Sypher, 2000).

Emotions, age, volunteerism and soft discrimination

Research has also examined the role of age in emotional management strategies. Drawing on socio-emotional selectivity theory (Carstensen, 1992), several scholars have found that older employees appear to be able to regulate their emotions more effectively (Hur et al., 2014; Kogovsek and Kogovsek, 2014), engage with their emotions in a more genuine manner when interacting with the public (Dahling and Perez, 2010) and find greater levels of job satisfaction than their younger counterparts as a result of performing emotional management (Lee, 2016). These analyses suggest that age correlates with more

developed emotional intelligence, enabling older workers to manage their emotions in ways that ensure public displays align to organisational rules while also safeguarding their own emotional well-being.

With regard to volunteerism, a critical element of magistrates' *raison d'être*, relatively few studies have examined the relationship between voluntary work and emotional labour. Quinn and Tomczak's (2020) research on the penal voluntary sector has highlighted the extensive deep acting required of volunteers as they engage with service users. In lieu of a salary, volunteers reported that the emotional demands of their work were central to their enjoyment of their roles. Although seemingly a positive finding, Quinn and Tomczak (2020: 94) caution that for workers who are not financially remunerated, seeking pleasure from emotional labour may become a 'source of tension if practitioners are unable to form the meaningful connections they stake their well-being on, if the difference they can make is perceived to be insufficient or if they experience difficulties such as secondary traumatisation and compassion fatigue'. Elsewhere, studies of volunteerism in emotionally challenging contexts have identified that in the absence of financial rewards, volunteers find value and meaning in peer support and forging close bonds with other volunteers (Doidge and Sandri, 2018).

Finally, discussions of age discrimination in the workplace are also salient, particularly forms of soft discrimination. Soft discrimination in the workplace refers to workers undergoing various negative experiences related to their age, though these experiences may fall below legally prohibited thresholds. This may include the use of ageist language, being treated without respect by colleagues, receiving less favourable evaluations than others and more broadly experiencing barriers to progress due to age (Furunes and Mykletun, 2010; Stypinska and Turek, 2017). Experiencing soft (and indeed hard) discrimination in the workplace has been found to impact workers' attachment to organisational goals and values, impacting workers' sense of belonging within an organisation (Snape and Redman, 2003), feelings of invisibility and isolation (McConatha et al., 2020) and stress linked to workers feeling pressure to prove themselves worthy of their roles (Tastsoglou and Miedema, 2005).

Methods

This study was designed as a qualitative exploration of the experiences of young magistrates. The research questions focused on why young people entered the magistracy, how they experienced being younger than their colleagues and the extent to which this impacted their experiences as judicial officers. Semi-structured one-on-one interviews were carried out and it was originally planned that the study would conduct 20 interviews with serving magistrates under 40 years old. This age limit was chosen as it adheres to the Magistrates Association's definition of a young magistrate. A form of purposive sampling was therefore deployed insofar as only those magistrates within a specific age range were targeted and other variables were not used to include or exclude participants. Once approval was obtained from the Ministry of Justice's Judicial Office, contact was made with the Magistrates Association's Young Magistrates Special Interest Group inviting members to take part in an interview. This invitation elicited 23 volunteers, and all were interviewed. Interviews were carried out between January and June 2022. All 23

participants were serving magistrates at the time of the study (one subsequently resigned their position).

Table 1 shows that the sample produced a split of male (15/23) and female (8/23) participants. The majority of participants served exclusively in criminal courts (19/23), with two participants serving only in family courts and a further two serving in two different types of courts (crime and family; crime and youth). Table 1 also details the ages of participants together with the geographic location of their sittings (provided in broad terms). With the agreement of the Ministry of Justice's Judicial Office, the study employed a strict ethical protocol vis-à-vis safeguarding the identifiability of participants given the few young magistrates currently serving in England and Wales. As such, participants are all given a pseudonym and demographic information aside from that included in Table 1 is not provided as doing so would risk compromising the identity of some participants.

Interviews were audio recorded with participants' consent, and transcripts were produced. Interview data provided information-rich, subjective reflections of participants' experiences as young magistrates, and thematic analysis was deployed to identify common trends in their experiences (Clarke and Braun, 2013). An inductive approach was taken to the analysis, seeking to identify data-driven themes from participants'

Table 1. Participant information.

Participant	Gender	Court	Area
Dan	Male	Crime	North East
Will	Male	Crime	South East
Gary	Male	Crime	East
Elsa	Female	Crime	South West
Nick	Male	Crime	South Wales
Phil	Male	Crime	North West
Robin	Male	Crime	East Midlands
Christine	Female	Family	East
Dawn	Female	Crime and youth	London
Jacob	Male	Crime	East
Tom	Male	Crime	East
Jonah	Male	Crime	North West
Kerry	Female	Crime	South West
Ben	Male	Crime	West Midlands
Jon	Male	Crime	East Midlands
David	Male	Crime	London
Greg	Male	Crime	East
Becky	Female	Family	South West
Helen	Female	Crime	East
Gill	Female	Crime	South East
Jason	Male	Crime	South East
Ruth	Female	Crime	North West
Stephen	Male	Crime and family	South West

transcripts. The analysis followed structured steps drawing on Braun and Clarke's (2006) phases of thematic analysis. First, familiarisation with the data was undertaken by listening to audio files once and reading transcripts several times. Second, several themes were identified from the data and, relevant to this article, the theme of emotion was recognised as a common pattern across all interviews. Participants were not initially asked about emotions during interviews, but analysis of transcripts showed that terms such as, and references to, empathy, managing one's emotions and those of colleagues and other court users were raised repeatedly by participants. Indeed, all 23 participants made some reference to emotion as a direct or indirect factor in their experiences. Transcripts were then re-analysed several times to review the identified themes and split these where necessary – for example, sub-themes were identified such as emotional labour, adversarialism and empathy. Participants' data were then extracted to provide compelling accounts of ways in which young magistrates engage their emotions in practice.

As with all research, this study has some limitations. A sample of 23 participants limits the generalisability of the findings. Although ethnicity, religion, social class and other demographic information are not disclosed for reasons of identifiability, it can be disclosed that the sample of participants was largely white British, with a mix of middle- and working-class backgrounds. If diversity within the magistracy is to be understood as cross-demographical, which it undoubtedly should be, focusing solely on the age of magistrates perhaps offers a limited perspective. Nevertheless, given the absence of extant literature which has engaged directly with young magistrates to understand their experiences, even a relatively small sample offers new and insightful data, limitations on generalisability notwithstanding. Indeed, the strength of the dataset in this study is in its originality, representing the first study to have engaged directly with serving young magistrates and producing new empirical findings in doing so.

Emotions, emotional labour and young magistrates

This section presents primary data to demonstrate the triple uses of emotion for young magistrates. First, young magistrates engage with emotions such as empathy to inform their decision-making, seeking to understand the circumstances of all parties in court. Second, empathy is centred by magistrates to ensure court users experience procedural justice, feeling that they have been heard and that justice has been done. Third, young magistrates draw on emotional labour practices to manage and mitigate against the challenges they face as they navigate through an environment in which their minority status is repeatedly re-asserted by their colleagues through forms of soft discrimination. This section also highlights the key challenge of the absence of communities of coping (Korczyński, 2003) for emotion workers such as young magistrates.

Empathy and judicial decision-making

Young magistrates deliberately and consciously draw upon emotion as an instrumental part of their roles. Participants understand their roles as magistrates to involve not simply an impartial and objective application of the law but a subjective and emotionally informed decision-making process which seeks to understand how individuals may end up appearing before them (Brennan, 1988). A key rationale for engaging with emotions

for young magistrates is to achieve procedural justice for all parties (Tyler, 2007), ensuring that while magistrates apply the letter of the law, court users also 'feel' justice has been done.

The thing that I really try as hard as possible to do is obviously to make sure that the decision that we come to, whether it's on a guilty, not guilty, or in sentencing, or whatever it is, I obviously make sure that that's just. But much more than that actually, that everyone feels that justice has been done as well. And that is so important, because otherwise what's the point? (Jon)

Closely related to this, participants also believe that their presence in the court room has beneficial impacts on court users by engendering notions of trust, confidence and respect – key features of procedural justice – in court settings.

Hopefully, if they see a younger face on the bench, maybe that will give them greater confidence that justice will be done. (Jacob)

You walk out from the retiring room, and they give you another look . . . I'd like to think they're looking and thinking 'oh gosh I didn't expect to see someone, you know, who looks a bit younger' . . . I don't look the same as the others, so I hope that's positive [for court users]. (Robin)

For young magistrates then, the delivery of procedural justice can be situated in both their judicial decision-making and their engagement with emotions in doing so, but also more broadly in their visibility on the bench and the impact this may have on the experiences of court users.

At times, young magistrates engage their emotions by reflecting on their own backgrounds and experiences, with participants repeatedly identifying empathy (Henderson, 1987) as a key tool used to facilitate deep acting and enable a contextual understanding of individuals' circumstances.

I've come from a very deprived background in some respects, I grew up on a council estate in a really rough area . . . I understand why sanctions would lead people to crime and I understand from my background how people on benefits find themselves in these difficult situations. (Robin)

I do think it is your life experience that gives you those qualities . . . I had a very, very bad childhood that gave me a strong right or wrong ethic, and duty was a very strong thing that came from that . . . And that resonated in me that it was justice has to be served across all walks of life . . . You can empathise because you're a real human being, you've got emotions. (Greg)

I didn't come from a middle-class background, I've lived on a council estate, my parents were divorced. I used to hang around with these kids that are now coming through the system . . . So actually, being able to relate to people's poverty, because poverty does impact people's decision-making. Because it's right, we have to uphold the rule of law, but what it is it's judged by your peers for your peers and that's the whole aim of the magistracy, isn't it? You represent the areas you come from. (Phil)

Young magistrates evidently draw on emotions such as empathy as well as engage their imagination to allow them to develop an appreciation of defendants' and victims' experiences and emotions. This appreciation, they argued, directly influenced their judicial decision-making, including attempts to '*sway*' (Nick) colleagues during deliberations. Empathy was therefore celebrated by young magistrates, with participants also aligning empathetic emotions to notions of respect and fairness for court users, particularly potentially vulnerable people such as children.

The whole of family court is you are delving into every aspect of that family's life. If you can't really empathise with them then you're being rubbish, you're rubbish at your job . . . you just couldn't be in family [courts] if you didn't have empathy pouring out of your bones. (Becky)

Failing to empathise is described above as being 'rubbish at your job' and young magistrates repeatedly criticised more experienced (and older) colleagues for their lack of empathy and unwillingness to emotionally engage with the narratives of defendants and victims in court.

I think a lot of times, [older magistrates] seem to think, 'oh he's done something wrong, we need to punish him, that's what we're here for'. Whereas my view is, we're not just there to punish people, we're there to reduce the offending. (Elsa)

Being 'case-hardened' was repeatedly raised by young magistrates as a significant criticism of their (older) colleagues, restricting some magistrates' ability to draw on empathetic responses to achieve productive outcomes in any given case and, more broadly, to deliver emotionally intelligent justice (Sherman, 2003). Here, age was specifically identified by participants as a key determinant, with younger magistrates usually able to engage empathetically with court users and older magistrates unable or unwilling to do so (at least in the experiences of participants in this study). In discussing the case-hardened nature of some of their older colleagues, participants repeatedly recalled tensions arising when young magistrates' aspirations to deliver emotionally informed justice do not align with the attitudes of their older colleagues:

I've certainly experienced some of the older members to be more case-hardened . . . [They] take the view that, 'no, I'm the presiding justice, I've been doing this 30 years, this [mitigation] is clearly bullshit and we're not having it, give them the full six months'. And I'm like, whoa, I disagree. (Jacob)

There was certainly one experience I had where I sat with these two guys . . . and the chair prided himself on being known as 'The Hangman' . . . and I was just thinking, you've done this for far too long . . . It felt like I had no say in anything during the day. (Gill)

However, parallel to negotiating tensions with older colleagues, young magistrates' attempts to deliver justice informed by empathy and other emotions are also 'regularly frustrated' (Helen) by the structural dimensions of the criminal justice system, including financial restrictions which limit the options available for magistrates.

I do sit in court quite often and think, court isn't the right place for this person . . . Mostly just a lot of the mental health related [cases], and the options, and the disposables we have available are no good. And we know that they're going to be back there because the underlying issues are not going to be resolved. (Kerry)

[Prison] doesn't solve anything and they end up back there again. Your hands are sometimes really tied . . . There are many other options I think available, that we just don't utilise well enough [because] there's never enough funding. (Gill)

Emotional labour and navigating through adversarialism and soft discrimination

Parallel to emotions supporting judicial decision-making, young magistrates reported several ways in which emotions and emotional labour are dispensed in interactions with (usually) older colleagues. Here, instances of soft discrimination are managed and mitigated using a series of techniques described in literature on emotional labour and emotion management. For several participants, age has been a specific point of conflict with older magistrates who were unconvinced that younger people were suitable magistrates. In such cases, many participants reported having to 'prove' (Christine) themselves to older colleagues, echoing known stressors in literature on discrimination in the workplace (Tastsoglou and Miedema, 2005).

I've had people that won't sit with me, refuse to talk to me, won't take my opinion on board, this is in the much earlier days when you're having to prove yourself. But it was openly common that there were a number that disagreed with my appointment, purely down to being [young]. (Jonah)

A magistrate, now he was assigned to be my mentor . . . he was professional, he was nice, but he did candidly tell me, that in his experience, no one should be a magistrate before 35 . . . Which to tell me when I was 25, was a little bit interesting. (Stephen)

Several participants in this study believed that older colleagues at times dismiss their views due to their age, with one participant reporting that 'my argument weighs a bit less' (Robin) due to his age. This reflection points to the potential impact of soft discrimination with feelings of invisibility or lesser value experienced by young magistrates (McConatha et al., 2020). These experiences of soft discrimination bring considerable pressures on young magistrates' emotional management when faced with discriminatory comments and attitudes from colleagues. Participants habitually engaged in the suppression of their negative emotions (Kadowaki, 2015), developing a 'thick skin' (Jonah) during difficult interactions with colleagues. Other participants encountering such behaviours reacted by pro-actively listing the credentials they felt made them suitable magistrates despite their age.

It's got to the point where I'm quite annoying, I do mention 'oh I've actually got a law degree'. Because I think sometimes, it just helps undo those expectations about my understanding, my experiences, and my ability, which I think can sometimes be a bit frustrating. (Nick)

I sit on three boards in a large company and I'm chairing a court today, and I might be 30 years younger than you, but I'm perfectly capable, thank you. (Gill)

Such interactions can be understood as forms of soft adversarialism (Pierce, 1995) in response to soft discrimination, in which young magistrates feel compelled to justify and legitimise their presence to their older colleagues. Other participants deployed emotional labour strategies such as strategic friendliness (Westaby, 2014) to mitigate the likelihood that interactions with colleagues would be difficult when they realised their age:

When I was new . . . I took the trouble to find out who my presiding justice would be and I dropped them an email just to say, hello, I'm pretty much brand new. And I thought it helped break the ice a little bit. (Tom)

Central to the experiences of young magistrates therefore is the use of emotions and emotional labour to manage conflictual interactions with colleagues. Experiencing forms of soft discrimination which result in feelings of lesser value or invisibility inevitably creates further, more complex and challenging demands on the emotional management of young magistrates, who must suppress what may be their frustration or despondency to remain professional and adhere to the display rules (Hochschild, 1983) expected of judicial officers.

Absence of communities of coping for young magistrates

Drawing on one's emotions in the ways described above, particularly when confronted with distressing and challenging cases while navigating potential conflicts with colleagues, is undoubtedly demanding. One participant described the importance of drawing on emotion management techniques such as self-regulation (Quinn and Tomczak, 2020) and the suppression of negative emotions (Kadowaki, 2015), without which she would 'just be in tears all the time' (Becky). In other emotionally exigent contexts, workers are often able to draw on support from one another as part of communities of coping (Korczynski, 2003), with such peer-to-peer support identified as particularly valuable for volunteers (Doidge and Sandri, 2018). For young magistrates however, this form of support does not appear immediately available. While all new magistrates have access to mentors, these are often experienced (and therefore older) colleagues, and while some participants reported positive experiences of mentorship, the lack of connection with other young magistrates was a regular lament.

I've never sat with anybody on the bench within 25 years of my age. (Dan)

How the hell have I gone eight and a half years of being the only person who just happens to be under 40? Something's not right there. (Greg)

Participants reported often feeling isolated due to the absence of other young magistrates, and with this isolation came a vacuum in support from colleagues undergoing similar experiences. As noted above, feelings of isolation are a common experience of under-represented workers experiencing forms of discrimination in the workplace

(McConatha et al., 2020) and the absence of peer-to-peer support leaves young magistrates to manage complex emotions alone. The unavailability of communities of coping for young magistrates is in part a numbers game insofar as there are very few existing young magistrates and they therefore rarely have opportunities to interact, such as being scheduled for court sittings together. However, circumstances linked to financial austerity also appear to have played a part, as Jon describes when discussing the closure of a court canteen:

When I started we had a little canteen which was subsidised. And magistrates would just come to the court and they'd sit in the assembly room . . . you did get to talk about not just the cases that you had seen that day but about approaches to things, and it was an opportunity to learn. And that has gone. Completely gone. So that loss of community . . . that is a real loss. (Jon)

Discussion and conclusion

Existing scholarly work has been attentive to the 'return of emotions' (Karstedt, 2019: 101) to law and criminal justice in the late modern period and studies have examined the intersection of emotions and law in various contexts and involving a range of actors (see Bades, 1999; Posner, 1999 and others). Adopting an emotion-centred approach (empathy) and a legal actor approach (young magistrates; Maroney, 2006), this article makes new contributions to extant literature by exploring the experiences of a hitherto overlooked group, magistrates under 40 years old. These individuals represent not only criminal justice actors who have been largely ignored to date, but volunteers within the criminal justice sector, who are again a group which have been subject to scant academic attention, with little known about the ways in which emotion is used by magistrates in their judicial decision-making and in dispensing their duties more broadly. Further, this article advances understandings of emotional labour (Hochschild, 1983) by connecting this concept to discussions of age, (soft) discrimination and volunteerism, drawing on the experiences of young magistrates as a unique perspective through which to understand emotional labour in new ways.

This article has argued for the recognition of judicial officers such as magistrates as 'emotional creatures' (Maroney, 2006: 121) and specifically for an appreciation of emotions in court as tools through which emotionally intelligent justice can be dispensed by judges, in part to foster a sense of procedural justice for court users. Contrary to understandings of legal practice which cast judicial decision-making as a completely objective process, with emotions characterised as antithetical to proper application of the law (Westaby and Subryan, 2020), the reflections of young magistrates above describe forms of deep acting designed to understand individuals' circumstances and in doing so, a deep engagement with emotions as an implicit and critical part of magistrates' judicial duties. For young magistrates, engaging with emotions such as empathy achieves two critical facets of their judicial duties. First, it constructively informs their decision-making, enabling them to consider the broader circumstances which may have led an individual to appear before them, specifically the 'motivations, intentions [and] perceptions of defendants and victims' (Bades, 1999: 7). Empathy is used by young magistrates as an 'emotional tool . . . to imagine the rationale for the actions of the parties involved, to

understand their narratives, and to understand their positions, all important aspects of judicial decision making' (Bergman Blix and Wettergren, 2016: 33). Far from hindering rational decision-making, centring emotions as part of their decision-making is deemed by young magistrates to enhance these processes (Brennan, 1988). Having understood and appreciated defendants' and victims' circumstances, emotional engagement helps young magistrates find suitable outcomes within the otherwise restrictive confines of the disposals available to them. Further, engaging with emotions such as empathy ensures young magistrates avoid becoming case-hardened, and therefore emotionally dissonant, unlike (some of) their older colleagues (Henderson, 1987). Being unwilling or unable to engage empathetically with court users was repeatedly criticised by young magistrates in this study and understood as a failure to acknowledge that the 'law operates in the everyday life of human beings' (Bergman Blix and Wettergren, 2016: 33). Empathy used in the ways described in this article may be understood as a 'reasonable emotion' (Nussbaum, 2004: 46), empowering young magistrates to attain a 'truer perception' of court users' lives and ultimately to deliver 'better (more accurate, more moral, more just) decisions' (Bandes, 1999: 7).

Second, young magistrates use emotions and emotional labour practices to ensure a smooth process (Booth, 2012) during court proceedings and, importantly, that all court users experience procedural justice (Tyler, 2007). Court users *feeling* that justice has been done was repeatedly raised by young magistrates as critical as applying the letter of the law, and participants reported using empathy and engaging in the emotional management of court users to ensure all parties feel heard and judgements are deemed fair. Achieving such outcomes can be challenging in court settings where anger, shame, vengeance and other negative emotions may be present (Karstedt, 2002). Young magistrates must therefore show considerable skills in their emotional management of others to manage such emotions while maintaining the propriety expected of judicial officers and of the court setting more broadly. As Sherman (2003: 26) has argued, for judges, 'understanding how to *avoid* provoking such emotions as defiance, anger, and humiliation may be more important than understanding how to instil a desire to obey the law'. Young magistrates in this study were acutely aware of their responsibilities vis-à-vis delivering procedural justice and willingly engaged with their emotions and with emotional labour practices to deliver 'emotionally intelligent justice' (Sherman, 2003).

Parallel to this, young magistrates perform another critical form of emotion management as part of their interactions with colleagues. Multiple forms of soft discrimination were described by young magistrates during which their age was a point of conflict and, having been made to feel that they must prove themselves to older colleagues (Tastsoglou and Miedema, 2005), young magistrates are forced to deploy various forms of emotional labour including soft adversarialism and strategic friendliness (Pierce, 1995). Such practices are necessary for young magistrates to adhere to the display rules expected of judicial officers and, again, to ensure court users experience a smooth process.

The emotional engagement and, specifically, the use of empathy and the deep acting detailed by young magistrates in this article are particularly noteworthy since their ability to enact such emotional labour strategies broadly runs contrary to existing literature which has found older workers to be more adept at employing such strategies (see Dahling and Perez, 2010; Lee, 2016). Although this study was not comparative insofar

that it did not engage with older magistrates and therefore cannot compare the emotional management of younger magistrates to that of their older counterparts, the data detailed above nevertheless confirm that younger actors in this context can and do deploy complex forms of emotional labour, particularly an acute engagement with deep acting. This may be an emotional high wire act, particularly when young magistrates draw on their own traumatic or otherwise difficult experiences (as described by participants above). Participants in this study were clear that their youth was a central factor in their ability and willingness to enact emotions such as empathy towards those appearing in court (and indeed suggested that the older age of their colleagues could be a factor in their apparent inability or unwillingness to do likewise). This points to a noteworthy intersection between age and emotional labour, with young magistrates a group for whom youth plays a positive role in supporting sophisticated and advanced forms of emotional management and emotional intelligence.

All these place complex and varied demands on young magistrates' emotions and emotional labour, demands which are arguably exacerbated by the absence of communities of coping (Korczyński, 2003). The inability to draw on their peers to access 'a safety valve for emotional overload' (Roach Anleu and Mack, 2005: 598) is particularly notable when considered alongside, first, the extensive emotional investment detailed by participants in this study and the labour required to manage this, second, the seemingly habitual forms of soft discrimination experienced by young magistrates and the impacts on magistrates' need to manage their emotions accordingly and, third, the fact that the role of magistrate remains a voluntary one, and research has repeatedly shown that in the absence of pecuniary benefits, volunteers rely heavily on peer support to manage their emotions and well-being (Doidge and Sandri, 2018). The reflections of young magistrates in this article demonstrate that these legal actors (Maroney, 2006) can imbue the criminal justice system with an emotional capacity (Karstedt, 2002) to deliver emotionally intelligent justice (Sherman, 2003). But ensuring a future for the magistracy which sees the greater involvement of young magistrates requires a better understanding of how these individuals experience their roles, the potential impacts of the emotional labour required to dispense their judicial duties and how young magistrates may be better supported. Future research may consider the experiences of magistrates relative to other key demographics including gender, race and class backgrounds given that some of these are also perennially under-represented in the magistracy. Moreover, though this study has focused on young(er) magistrates, it remains the case that research concerning magistrates more broadly is lacking in England and Wales. Developing greater understandings of magistrates' capacity and, critically, willingness to deliver procedural fairness and emotionally intelligent justice may prompt important discussions concerning the future of the magistracy in England and Wales.

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