

# Judicial Work and Emotion

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**The Australian Sociological Association  
Travelling Scholar Public Lecture**

Northern Institute, Charles Darwin University  
Level 2, Savannah Room, Casuarina





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SOCIOLOGY I

First Term

Xerox copies of articles available from the Library, Reserve Section

Analytic Framework

David Aberle et al  
Peter Berger  
R.K. Blake and K. Davis  
R.K.M. Crook  
K. Davis  
Jack D. Douglas  
Erving Goffman  
David Lockwood  
R.K. Merton  
C. Wright Mills  
Talcott Parsons

The Functional Prerequisites of a Society  
Sociology as a Form of Consciousness  
Norms, Values and Sanctions  
Teaching and Learning Sociology  
The Use of Functional Analysis  
Glossary of Key Concepts  
Some Remarks on the Social System  
Research and Sociological Theory  
The Role Set  
The Sociological Imagination  
The Position of Sociological Theory  
Hobbes and the Problem of Order/The Non-Contractual Elements in Contract  
An Outline of the Social System  
Principia Sociologica

W.J.H. Spratt

The Structure of Simple Societies

George C. Homans  
A.R. Radcliffe-Brown  
W.E.H. Stanner

Anxiety and Ritual: The Theories of  
Melnikowski and Radcliffe-Brown  
The Mother's Brother in South Africa  
The Study of Kinship Systems  
The Dreaming

Social Change and Modern Society

Norman Birnbaum  
Kingsley Davis  
Emile Durkheim

The Rise of Capitalism: Marx and Weber  
The Demographic Transition  
Forms of Social Solidarity/The Division of  
Labour and Social Differentiation  
Types of Suicide

Marion Levy

Organic Solidarity and Contract  
Social Patterns (Structures) and Problems  
of Modernisation

Karl Marx

The Class Struggle  
Technology as the Prime Mover of Industrialisation  
and Social Change/Alienated Labour

Karl Marx and F. Engels

Class Structure and the Change from Feudalism  
to Capitalism

R.K. Merton

Bureaucratic Structure and Personality  
Mechanisms of Change and Adjustment  
Toward a Theory of Modernity

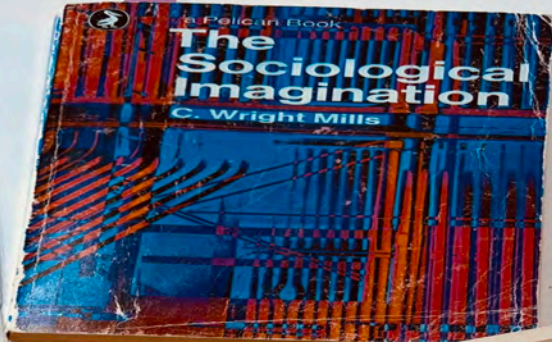
Neil Smelser

A Society is an Organism  
Characteristics of Bureaucracy  
Legitimate Order and Tyranny  
On Protestantism and Capitalism

Herbert Spencer

Max Weber

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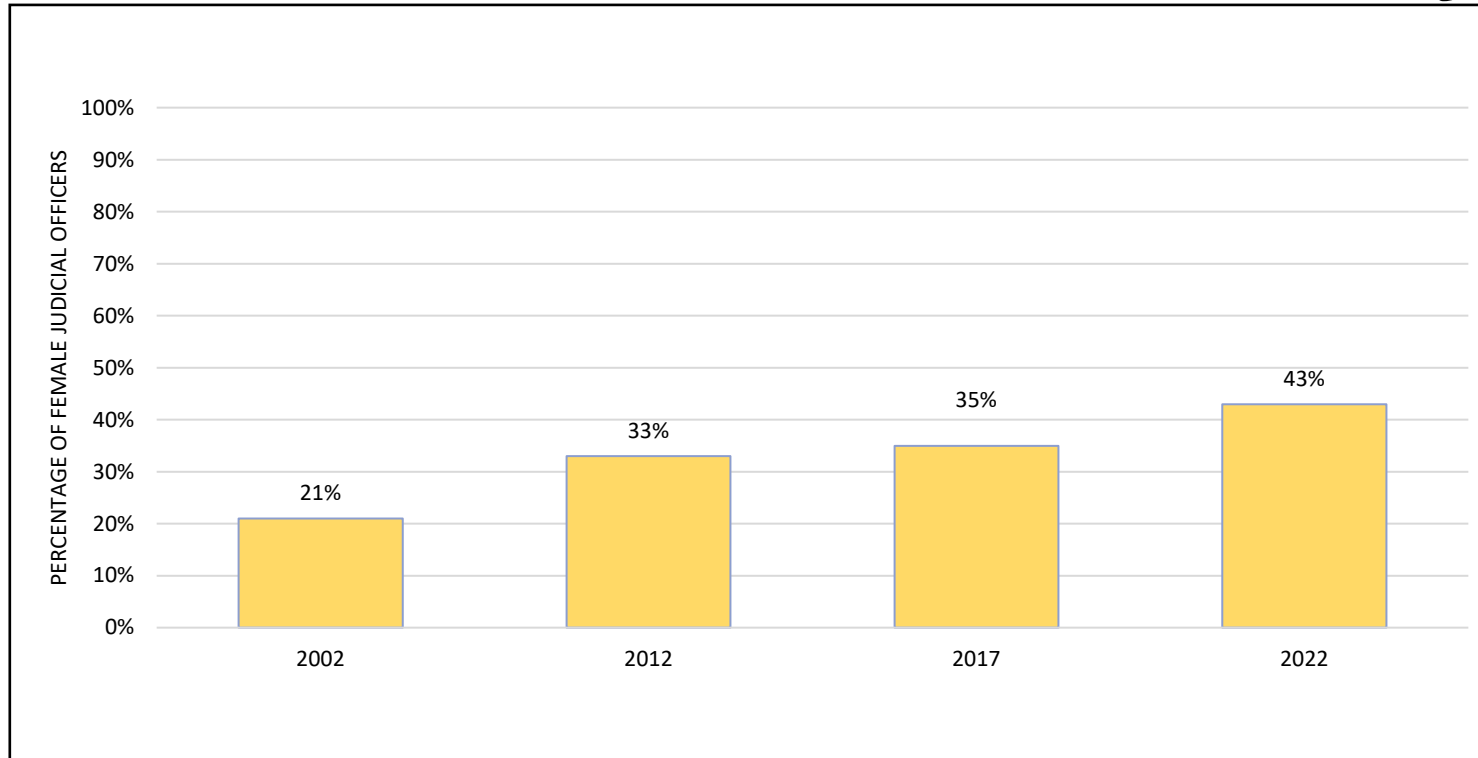
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... to depend...  
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# Women in Australian Judiciary



Source: Data supplied by Australasian Institute of Judicial Administration (<https://aija.org.au>)





# Conventional Model of Impartial Judging

The judicial officer is:

- Detached
- Disinterested
- Dispassionate
- Impersonal
- Rational
- Without emotion



# Qualities/Skills for Judicial Work

	<i>Essential (%)</i>
• Legal knowledge	78
• <b>Impartial/not biased</b>	<b>77</b>
• Diligence/hard work	52
• Compassion	48
• General life experience	48

# Confidence in judges to

*Complete / great deal (%)*

- Apply the law correctly 51
- Be fair in deciding cases 37
- **Be impartial/unbiased in their decisions 34**
- Make appropriate decisions about divorce and child custody 20
- Give appropriate criminal sentences 19

EMOTION



LOGIC





# Emotion: A Complex Concept

- Emotion experience/feelings
  - Subjective, involving physiological change,
  - A product of social interaction → interpersonal relations
  - Cultural categorisation
- Emotion regulation → feeling rules
- Management of own emotions and display
- Management of others' emotions and display
  - Defendants, litigants, victims, lawyers and others, especially in court

You're seeing absolute misery passing in front of you day in, day out, month in, month out ... 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.

# Judicial Work and and Emotion

- Interactional demands
- Management of own emotions
- Emotion as practical resource
- Management of other's emotions
  - Invoke feeling rules
  - Tone of voice
  - Humour
- Institutional constraints – limits of judicial emotion work



# Interactional Demands

	Supreme Court (N=111)	District/ County Court (N=128)	Magistrates Court (N=239-240)
Legal representatives are well prepared <i>Always/often</i>	70%	47%	38%
My time is taken up explaining things to unrepresented litigants <i>Always/often</i>	10%	5%	58%

Source: National Surveys 2007

# Interactional Demands

We get a lot of difficult people before us in court, not only defendants but also some ... very unskilled lawyers and sometimes it's quite difficult to deal with them and difficult not to be rude but we've got to try ... there's a tension between passive and active judging I think too and if you just sit there passively you could be there for three times the amount of time that it actually takes but, and we don't have that luxury - if it's a luxury. (Magistrate, I 09)

Source: National Interviews 2012-13

# Management of Own Emotions

I can remember one of the first files I looked at, the house was just appalling, the fridge I thought I was going to be sick, umm, and my, looking at it in chambers before I went on the bench, my blood pressure, anger, everything was just running rife ... and so I had to pull myself back and walk on the bench and think you're not here to judge this person on your own standards, you're here to deal with it on the evidence and only the evidence, umm, and I find it easy when you do that. (I 19)

Source: National Interviews 2012-13



# Management of Own Emotions

If you focus on the law then you should be able to manage your emotions but not everybody is like that. You can't remain unaffected by something that's just so distasteful or uncomfortable. Umm, you can only present that poker-faced appearance that perhaps persuades both parties that you're independent (I 26)

Source: National Interviews 2012-13

# Emotion as Practical Resource

It can be deeply distressing to have to impose long prison sentences on people who you know have had a background which is not always advantageous ... and as soon as I stop finding it stressful, I'll give it away I think because you have to, it forces you to think about it and if you feel angry about behaviour you have to try and set that aside. (I 21)

# Emotion Display and Empathy

There were so many people crying and look, I think you have to allow that, those feelings of compassion, emotion. I think you have to allow them to come through you, umm, you know, a little bit like letting the silt settle, I think you have to allow them to come through you because that's very normal, and then when you are, time to write your sentence or decide upon your sentence then you can move them to one side .... I think you have to let that all come through you and filter it and then find yourself at the right point where you're ready to deal with it. (I 31)

Source: National Interviews 2012-13

# Invoke Feeling Rules

So I often, umm, will say when everyone's getting **angry** and the defendant's calling out and prosecutor's **getting antsy**, I'll say, "look could everyone just stop, there are rules about how we behave in court. The first rule is that I'll give the prosecutor an opportunity to speak, you will get an opportunity to speak" - because that's usually what they're **angry** about. "I guarantee you will get an opportunity to speak but you cannot interrupt, there are rules about how we umm, all behave in court, some respect, courtesy". I talk to them like my 12 year old, umm, but it generally works. People are **anxious** they are not going to get heard so if you **reassure** them, "you will get an opportunity to say something". Even if it's completely irrelevant. You let them have, I mean obviously we won't let them go on for half an hour but let them have their couple of minutes. (Magistrate, I 31)

Source: National Interviews 2012-13

# Judicial Emotion Work: Resources

I think your **tone of voice** is a very good tool...for somebody who's in a heightened state of anxiety or anger, I've found that if I lower my voice, lower the tone of my voice and the volume rather than if you shout at them they just get worse but they are often quietened down as well – at least enough for you to be able to say what you need to say. (Magistrate, I 09)

Source: National Interviews 2012-13



# Judicial Emotion Work: Using Humour

Even in the courtroom, like I'd, I would use **humour** reasonably often, umm, sometimes to just, as a bit of a **circuit breaker** but other times just to be **human**. You know, like if something funny happens, ...it's no use being all dour and stern up on the bench while everybody else is having a laugh – like you know if it's not offending anybody and it's not inappropriate well then you know I can't see any problem with **having a laugh** as well or, or you know, occasionally make **a quip** or something that is umm, again not inappropriate ... I probably tend more towards the using humour than away from it – but I think it's important and I – it shows that you are human to everybody else and that you've got a bit of a sense of humour and that you're not inflexible and umm, but you know I think it sort of **does help you cope** a little bit too. (Magistrate, I 34)

Source: National Interviews 2012-13

Well, I'm not sure that we do have to neuter ourselves not to express emotion. ... look I think we do express emotions but in a more restrained way. There are times when I've described child pornography as disgusting and abhorrent, you know, now that's quite emotional stuff and I think about that and I think, am I being, am I being beyond the pale emotional or, I mean I don't like to go too far because I think that does betray an emotion which can overcome the dispassionate imposition of sentence which is important ... you're not human if you can't express some emotion but it has to be restrained so that ... doesn't give a suggestion of interfering with the dispassionate setting of an appropriate sentence. (111)

The career extracts its pound/kilos of flesh. There is very little positive feedback. There is hardly ever any opportunity to debrief. I wake in fright at some of the things I hear & see. Why do I do it? Because I know I make a difference in some small way. Because I believe I am privileged. The people in my court are not. (Magistrate, NSAM 2155)

Source: National Surveys 2007







# JUDGING AND EMOTION

A SOCIO-LEGAL ANALYSIS

Sharyn Roach Anleu and Kathy Mack





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