

# The emotional particulars of working on rape cases

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## Introduction

Dirty work describes occupations and work tasks that society views as unpleasant, disgusting or morally questionable (Hughes 1958). They are required for society to function, viewed as a ‘necessary evil’ (Douglas, 1966; Kreiner, Ashforth and Sluss 2006) and often noble (Ashforth and Kreiner 1999). However, due to the work being considered distasteful or disgusting those that perform it are imbued with a taint or ‘courtesy stigma’ (Goffman 1963) which personifies the dirt. Work can be morally, socially and physically tainted (Ashforth and Kreiner 1999; Ashforth *et al.* 2007), with more recent literature arguing for a fourth dimension of emotional taint (McMurray and Ward 2014; Ward and McMurray, 2016): a dimension currently under theorised.

Application of dirty work to criminal justice jobs is well established (Lemmergaard and Muhr 2012; Mawby and Worrall 2013; Huey and Broll 2015; Mawby and Zempi 2018). However, it has been applied less often to American attorneys (McIntyre 1987; Drew 2007) and not at all to English barristers<sup>1</sup> who prosecute and defend in rape cases. This is surprising in light of the ‘peculiar form of discomfort’ (Baillot, Cowan and Munro 2013: 518) that accompanies proximity to sex offences and rape representing the epitome of shaming violence that degrades, invades and leaves the (typically female) survivor feeling “dirty” (Caputi 2003). In this article we use the approach to offer an original way to think about, theorise and investigate barrister groups, the work they do and the construction of meaning within their profession. Where relevant, we also draw on wider scholarship on emotion, namely, affect theory - an approach often neglected by the mainstream of criminology and law. Affect is used to describe emotions (e.g. anger, fear) but also encompasses bodily sensations (e.g. shame, guilt, excitement) and other ineffable feelings and senses. These may be positive or negative, fleeting or sustained, experienced consciously and unconsciously and may sit outside of language in terms of being able to articulate (Brennan 2004; Wetherell 2012; Massumi 2015; Sointu 2016). Here, we use affect theory, with its focus on relationality and embodiment, to understand how barristers can be transformed by their work and simultaneously aim to move jurors, recognising the body’s capacity to affect and be affected (Spinoza 2000. See XXXX 2019 for an application of affects to rape cases. We do not repeat those arguments here).

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<sup>1</sup> We use the terms barrister and advocate interchangeably in this article.

In this paper we ask: how is the work of rape barristers dirty, with a focus on emotional dirt? What impact do clients' burdensome emotions and behaviour have on barristers? Thirdly, what mechanisms are used to manage stigma and retain the ability to feel good about the work undertaken? We progress dirty work theory, **and scholarship on emotions within criminology more broadly**, by developing the emotional dimension of dirt and considering how it impacts the emotional labourer. We argue that in a profession where dirty emotions **and sensations** cannot be entirely dis-identified from, and to do so would undermine practice, specific mechanisms for moderating stigma are required. We develop the concept of 'tempered indifference' to capture the ways advocates strategically turn their emotions down, but not to the point of neutrality. In an arena where feelings have been written out of the work that barristers do, we make visible a form of emotional investment that is integral to doing the job and ensuring that justice is not undermined.

This article does not aim to dismiss or minimise the poor advocacy practice that exists in relation to rape, including the 'working around' of reforms aimed at supporting victims in court (Lees 1996; Kelly, Temkin and Griffiths 2006; Zydervelt *et al.* 2017). However, we recognise that the justice system's ability to improve its response to sexual violence is bound up with practitioners' abilities to emotionally manage their work **and must feature in scholarship**. We argue that barristers' work is tainted on multiple dimensions with emotional dirt contributing substantially to the taint of the profession. Barristers employ emotional labour in order to manage this dirt, their difficult feelings stemming from contact, to meet the expectations of the profession and manage its contradictions. That is, advocates must distance themselves from the emotional aspects of cases in order to maintain objectivity, despite simultaneously needing to invest in that emotion in order to summon the passion required to do an effective job. In these circumstances, mechanisms of humour, recalibrating, refocusing and reframing are not sufficient to manage work taint. Barristers employ 'tempered indifference' in order to do their job and create positive work identities in the tension between contradictory identification points (Lemmergaard and Muhr 2012). However, the longer-term ability to turn emotions back on remains debatable. We emphasise the importance of emotional support in order to keep doing the work and ensuring a justice system capable of retaining its advocates.

## **Dirty work and taint**

The taint, 'pollution' or 'sully' stemming from contact with dirty work has been categorised into three forms (Ashforth and Kreiner 1999). *Physical taint* involves intrinsically dirty work e.g. refuse collection, or those jobs which occur in 'noxious' or dangerous conditions. *Social taint* is underpinned by regular contact with stigmatised individuals e.g. the prison guard, or the worker maintains a servile position. *Moral taint* covers occupations and tasks constructed as morally questionable, sinful or of dubious virtue e.g. lap dancing, or where deceptive or unethical methods are employed. Many occupations are tainted on multiple dimensions and practically all work, at some point, will involve elements of dirt that can spoil one's identity (Kreiner *et al.* 2006). The key features of dirty work, however, are not the job per se, but the consistency in visceral response elicited by diverse forms of dirty employment, as well as the accompanying question of, 'how could you do that?' (Ashforth and Kreiner 1999). Dirt is socially constructed, based on subjective standards that link to ideas of cleanliness, virtue, goodness and badness. Dirt is considered a threat to moral, well ordered lives and the associated stability these are perceived to represent (Douglas, 1966).

McMurray and Ward (2014) have more recently defined a fourth dimension of emotional dirt to denote jobs that require the handling of difficult, burdensome or out of place emotions. Working with feelings 'that threaten the solidarity, self-conception or preferred orders of a given individual or community' threaten to stigmatise the worker (McMurray and Ward (2014: 1134). The performance of emotional labour, or specifically, the inducement or suppression of feelings in order to sustain an outward performance that produces the 'proper' state of mind in others, is central to this form of dirt (Hochschild 1983: 7). At work emotions are filtered, marginalised and commodified in order to produce a state of mind considered appropriate by one's employer. For example, when supporting self-confessed paedophiles Samaritans reported the job to be a privilege, but had to conceal feelings of disgust and anger provoked by the work. Surface acting was necessary to present in a way that the Samaritan did not feel, but which met organisationally imposed expectations and convinced others, without necessarily deceiving oneself. The embodied feeling of revulsion invoked here speaks directly to Brennan's (2004: 3) 'transmission of affect'. That is, that 'the emotions or affects of one person, and the enhancing or depressing energies these affects entail, can enter into another'. Brennan argues that all beings, entities and forces are connected energetically and capable of producing in parties transformative material impacts. Those who need to rid themselves of negative affects - shame, anger, feelings of worthlessness and regret - can

transmit them to another who must carry that affect, evidenced through physical and/or biological changes in the body.

Despite the presence of stigma, positive work identities and pride are routinely fostered amongst dirty workers, through the cultivation of shared and deeply held ideologies. Occupational ideologies reframe, recalibrate and refocus stigmatised work (Ashforth and Kreiner 1999; Ashforth *et al.* 2007), enabling negative associations to be downplayed and positive relations asserted. *Reframing* involves infusing work stigma with more positive value or neutralising it through denying, for example, that injury was caused. *Recalibrating* involves modification of the standards used to evaluate the extent of dirt, enabling a potentially small and desired part of the job to appear larger or a large and dirty part seem less significant. *Refocusing* involves focusing on the rewards of the work or the success stories, whilst actively overlooking 'bad news' items. Despite these processes, most dirty workers retain some degree of ambivalence to their employment in light of continued contact with negative outsider worldviews (Ashforth and Kreiner 1999). Dis-identification with one's job, or various aspects of it, is therefore natural and expected.

Danish prison officers dis-identified from the stigmatised elements of their work through the adoption of cynical, gallows humour (Lemmergaard and Muhr 2012). This enabled officers to laugh at the parts of their job that gave rise to taint, relieve emotional responses linked with threats to identity (if we can laugh, it cannot be that bad), enhance esteem (we can laugh at what others cannot) and permitted carrying on. However, in light of the contradictory expectations imposed by the profession, humour, reframing and refocusing ideologies were not sufficient in isolation to allow officers to do their work and still feel good about it. Namely, the dirty aspects of the job could not be entirely dis-identified from because to do so would undermine officers' safety when with prisoners. However, distance was necessary to manage the emotions caused by the stories of prisoners' crimes and to allow officers to want to get sufficiently involved in order to facilitate rehabilitation. To manage these contradictions, 'professional indifference' was performed. This involved officers distancing themselves from the emotions associated with their work by creating cognitive spaces for neutrality and non-intentionality in how they thought and acted. Indifference enabled personal beliefs to be put to one side without losing the longer-term ability to become involved in rehabilitative efforts. Indifference was not synonymous with not caring, but allowed officers to be indifferent for a purpose, to identify and dis-identify concurrently and

to hold simultaneously the seemingly contradictory positions of ‘respecting’ and ‘suspecting’ (Lemmergaard and Muhr 2012). Such indifference is central to workers who are required to care about the dirty emotional aspects of their job. We argue that barristers are one such group.

### **Applying dirty work to barristers groups**

Within this framework it is easy to see how barristers can be situated as dirty workers (McIntyre 1987; Drew 2007). Drew (2007) conceptualised the work of American attorneys as socially and morally tainted, based on proximity to stigmatised individuals and the ethics of their criminal behaviours. In the case of rape barristers, it is likely that moral and social taint also links to longstanding cultural assumptions around rape victims as defiled, sullied or ‘damaged goods’ (Weiss 2010). Assumptions that hinge more broadly on scripts of femininity whereby women are dichotomised into being ‘good’, clean, pure and virginal (and less responsible for their rape) versus ‘bad’, dirty, sexually experienced and contaminated (and more responsible)<sup>2</sup> (Caputi 2003). Such scripts have been found to heighten the association between rape and the debilitating sensation of shame (Weiss 2010).

We also suggest that moral taint stems from barristers’ practices in court. Defence advocates have long been criticised for using stereotypes to undermine complainants and a combative questioning style (Lees 1996; Smith and Skinner 2017; Zydervelt *et al.* 2017). Adversarial justice requires a defendant to be represented to the best of an advocate’s ability and in practice this takes the form of discrediting the complainant’s reliability and credibility during cross-examination (Westera *et al.* 2017). A number of the difficulties faced by complainants are therefore inherent in the justice process (Zydervelt *et al.* 2017). In light of the general populace’s lack of appreciation for the nuances of adversarial justice, combined with media examples of fictitious and real life barristers doing anything and everything to win their case (Ryan 2015), it would not be surprising if barristers found themselves tainted, largely due to their defence practice.

We also argue that a rape advocate’s practice is physically tainted. Barristers routinely come into contact with blood, semen and vomit and in the most extreme cases, death and decay (Dick 2005; Huey and Broll 2015). Contact with physical dirt, whilst second-hand in that it is

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<sup>2</sup> Scripts which are classed and racialised

engaged with through the reading of evidence and case facts, is still likely to be sufficiently central to the role that it stigmatises the worker. Finally, we suggest that advocates' work is emotionally tainted in light of barristers being exposed to, and expected to provoke and manage, burdensome emotions in others (Craig 2016). The traditional paradigm of courtroom civility involves lawyers acting with decorum, rationality and professionalism, juxtaposed against the emotional and often irrational feelings and behaviours of the complainant and accused (Drew 2007; Craig 2016). In order to do their job, maintain decorum, not become unduly subjective and build a sense of esteem from their work, it is likely that barristers will be required to dis-identify from the stories of violence they hear. However, paradoxically, they must engage with these dirty aspects in order to summon the emotions needed to convince the jury and to defend or prosecute to the best of their ability (Bar Standards Board 2018). In light of the reciprocal nature of interaction (McMurran and Ward 2014), it is realistic to assume that engagement with dirty emotions and behaviours will impact the advocate's own emotional state, even if professional expectations dictate otherwise. This is likely to be enhanced in a profession that operates the 'cab rank rule', where barristers have little discretion in selecting or rejecting the cases they work with. As the Bar Standards Board (2018: 44) identifies, an advocate must accept instruction from a client irrespective of 'any belief or opinion which you may have formed as to the character, reputation, cause, conduct, guilt or innocence of the client'. Furthermore, despite barristers working intensely on distressing casework, unlike other criminal justice practitioners, they have 'limited welfare arrangements in place to support staff' (HMCPSI 2016: 3). Supervision and formalised debriefing are not a stipulation of employment. Currently, the elements of the job that rape barristers dis-identify from, the nature of the emotional labour they perform, and the rewards and longer-term losses associated with that investment remains unknown.

## **Methodology**

With the support of British Academy (BA) funding, between April 2015 and June 2016 the authors conducted 39 semi-structured interviews with barristers who prosecuted and defended in English rape trials. In order to strive towards a purposive sample, we recruited participants from the four largest cities in the four CPS regions that prosecuted the most rape cases between 2011 and 2012 (CPS 2012).<sup>3</sup> We wished to recruit from more than one chambers in each given city, to, as far as possible, enhance the representative nature of our findings. As

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<sup>3</sup> The time at which the BA application was being developed

such, we interviewed six barristers from two chambers in the largest city in the West Midlands; six barristers from two chambers in the largest city in Yorkshire and Humberside; nine barristers from three chambers in the largest city in the North West and 18 barristers from nine chambers in London. We sampled from approximately one quarter of chambers that specialised in crime in each respective city.

Barristers were recruited via a mix of approaches. In each area the clerks of criminal chambers that dealt heavily with sex cases (as identified from their WebPages) were approached and asked to disseminate an email invite. This invite outlined the research and requested an interview with any advocate who had prosecuted or defended in a rape case. Barristers were also strategically approached by email if it was evident from their personal page on the chambers' websites that they prosecuted and/or defended rape. Snowballing of personal contacts was also used as a recruitment mechanism. All participants were self-selecting and we acknowledge that this limits our findings. However, the consistency with which themes emerged across advocates located in different cities, the resonance with our pilot research (XXXX 2010; 2018) and wider evidence, indicates that we can offer rigorous insights into how rape barristers' work is tainted. We also suggest that there is no reason to assume that these findings are restricted to only British barristers, but potentially apply to rape advocates located in other adversarial jurisdictions.

The final sample comprised 18 male and 21 female advocates, the majority of whom were highly experienced. The most experienced had practiced on rape cases for 40+ years whilst the least experienced had worked on them for four. All barristers had prosecuted and/or defended crimes other than sexual offences. However, at the point of interview, over half stated that in excess of 50 percent of their workload constituted rape. The range of rape cases worked across was extensive and included stranger, acquaintance, adult, child, current and historic offences. These included violence, alcohol, non-physical forms of coercion and instances where men and boys were the complainant. However, due to the gendered nature of sexual violence (HM Government 2016; ONS 2017), women and girls were most frequently the victim and their cases discussed accordingly. Greater involvement with male rape victims would have likely tainted the work differently, in light of advocates (and outsiders) potentially viewing male victimisation as more socially, morally and emotionally extreme (Baillot *et al.* 2013). As noted, barristers have little discretion in selecting or rejecting the cases they work with and professional standards dictate that they defend initially in order to



build the experience required for prosecutorial practice (Bar Standards Board 2018). Thirty-four participants had a mixed-practice defending and prosecuting rape whilst four only defended (for one this was due to their more junior status whilst for the other three it had been an active decision) and one exclusively prosecuted.

Interviews took place at the barrister's chambers, a room in Crown Court or over the telephone (14 interviews were telephone interviews) and lasted an average of 57 minutes. Telephone interviews lasted an equivalent length to those conducted in person, implicating that the mode of interview did not impact the depth or quality of the information elicited. A semi-structured approach was used to strike the balance between flexibility and comparability (Baillot et al. 2013) with questions asking about both the substantive law of rape and how any emotional impacts of the work were managed. Interviews were digitally recorded and transcribed verbatim immediately after they had been conducted. This enabled the authors to identify lines of inquiry relevant to emergent theory which were pursued in subsequent interviews. Transcripts were scrutinised and coded using NVivo, the qualitative data analysis software. Transcripts were read and coded initially by the first article author and then verified for accuracy with the second. During the initial open coding phase (Strauss and Corbin 1990) an inductive approach was taken where concepts and categories were allowed to spontaneously emerge from the data. At this stage it became evident that work on rape cases was constructed as 'emotionally demanding', 'intense', 'draining' and described via the language of dirty work. That is, through recurrent phrases such as 'dirty', 'grubby' and 'grim'. Following the development of a set of coded themes and categories, transcripts were re-read to ensure that those codes accurately represented participants' responses and to structure them in accordance to their relationships and subcategories. Selective coding allowed for more detailed analysis of the core concept of dirty work and its applicability to rape advocates' practice. Theory was enhanced and connections with codes refined.

The three overarching themes that emerged from this process were: 'working at the Bar – a dirty profession', 'the emotional particulars of working on rape cases' and 'strategies for managing stigma'. Although some inconsistencies in our data were evident, which we explicate, high levels of consensus emerged. Whilst this may make work on rape cases look overly systematic or rigid, as Douglas (1966) notes, the function of ideas focused on contagion is to impose system onto untidy, difficult experiences. It is by collectively exaggerating difference and similarity that shared values, beliefs and norms emerge -

allowing order to be imposed at a group level (Ashforth and Kreiner, 1999). Consensus is therefore to be anticipated, although not to be taken to mean that barristers' ideas and understandings of dirt are stagnant. Rather, they are sensitive to change and in a continued process of refinement and enrichment (Douglas, 1966).

### **Working at the Bar – a dirty profession**

This first theme incorporates three lower-order codes. 'Getting dirty' captures the ways in which the work of rape barristers is tainted, especially emotionally so. 'The impact of taint on outsiders' describes the stigma non-advocates attribute to the work whilst 'making dirt visible' highlights the ways in which dirty emotions are capitalised upon in court.

#### ***Getting dirty***

The work of barristers who prosecute and defend in rape cases bore a number of the hallmarks of repulsion identified in other dirty work analyses (Chiappetta-Swanson 2005; Simpson, Slutskaya and Hughes 2011). Barristers used stories to describe tasks and case facts that were gratuitous in levels of violence and coercion, that involved serial abusers, repeat complainants of a range of ages, that included evidence of vomit, semen and blood and that resulted in **profound emotions and sensations** of guilt, anger, resentment, shame and self-blame. Thus, proximity to moral, social, physical and emotional dirt was ever-present and it is unsurprising that the work was described as 'filthy', 'grim', 'grubby and horrible' (Barrister 12, Female - hereafter, B12F) and akin to 'a sort of diet of filth' (B24F).

Speaking to emotional dirt and burdensome feelings that threaten the solidarity and self-conception of a given individual or community (McMurray and Ward 2014: 1134), around two-thirds of barristers talked about the 'draining' (B38M) work involved in responding to clients' difficult feelings. Such statements resonate with Sommerlad's (2016: 70) discussion of the heightened focus on client care in England and Wales having led to 'boundary spanning' through the requirement to understand, empathise and mediate with clients. Indeed, in describing their defence practice barristers talked about the need to respond to **feelings and sensations** of anxiety and fear at possible loss of liberty and reputation:

... then there's the other side where you're representing people who are completely charming, never been in trouble before, find themselves two people in a room and

the next morning, she said he raped her... that can be quite difficult because you're dealing with... you're doing more social work with them than lawyer stuff (B6F).

Whilst engagement with complainants was more limited and often revolved around singular meetings on the day of the trial, managing **affects** of 'fear', 'shame' and 'self-blame' was frequently necessary: 'She said I don't want to go ahead, I don't remember anything. And I said, come on, you're here, you know, you don't want him to get away with it...' (B5F). These descriptions, which were typical of others, emphasise that fundamental to the advocate's role was working through the difficult feelings of individuals who had been raped, perpetrated rape or were accused of it. Providing 'social work' and client care via listening, reiterating, encouraging and reassuring were necessary responses. Thus, the burden of client emotion was met with the emotional labour of the advocate, labour which was informed by the expectations of the profession and which often included surface acting (Hochschild 1983; Kadowaki 2015; Sommerlad 2016). Whilst we come on to discuss this in further detail, here, it is sufficient to note that in responding to emotional dirt, feelings that could threaten barristers' own emotional state had the potential to emerge. Further, whilst emotional dirt existed as a distinct element of stigma associated with the advocate's job, it intersected with the social dirt of sexually abusive and abused individuals, the moral dirt of what perpetrators had done (or been accused of doing) **and the attributions of blame and shame heaped onto rape victims**. Thus, the impact of different forms of dirt, disentangling them and deducing the degree to which each taints the work of rape barristers, is not easily done.

### ***The impact of taint on outsiders***

Participants were aware of the occupational stigma stemming from their proximity to dirt and being in a profession which 'outsiders' (B2M) experienced discomfort at. The graphic nature of evidence, the stigma of sexual offenders, the ethics of their crimes, the 'emotionally draining' (B38M) impacts of work with clients and the requirement to engage with **affects** of fear, shame and distress meant that 'most people think all of it sounds pretty awful' (B10F). Uncomfortable conversations about the profession could therefore ensue: 'when you do talk about it, there'll be a sort of nervous laugh, gosh, isn't this awful, isn't this depressing' (B17F). Thus, advocates were stigmatised for personifying the dirt that threatens well-ordered lives. Those external to the profession wished to distance themselves from the work and wanted to know how barristers could do it (Ashforth and Kreiner 1999; Ashforth *et al.* 2007).

It was not only the emotional taint stemming from engagement with dirty feelings that resulted in negative outsider reactions, moral taint was especially pertinent. Outsiders wanted to know ‘why are you defending criminals?’ (B20M). Similarly, the deployment of unethical methods as part of this process, or the ‘naughty things’ (B3M) barristers were portrayed by media to do in the context of their work, situated them as ‘terrible’ individuals amongst the public. Participants argued that outsiders did not fully understand their profession with exaggerated TV depictions distorting the public construction. The use of combative questioning style and stereotype are not simply the reserve of media portrayals, with such tactics continuing to be used in court (Zydervelt *et al.* 2017). However, the license permitted to do so within an adversarial framework, as well as it being the defence advocate’s duty to ‘fearlessly’ promote their clients’ best interests (Bar Standards Board 2018: 33), are not captured within media depiction (Ryan 2015). Public knowledge was consequently argued to be based on limited available examples, as well as a reticence to find out more about the work in conversation. Barristers faced the prospect of being held to account for their job, especially for its morally dirty elements. The impacts of moral taint, however, were again reinforced by (and overlapped with) the social taint of stigmatised sex offenders and victims, the moral taint of those illegal sexual acts, the physical taint of graphic evidence and the accompanying affects of fear, shame, regret and self-blame. Disaggregating the impacts of each form of taint was not possible, with each working to have a cumulative impact on the public perception of the profession.

### ***Making dirt visible***

Speaking to the transmission of affect, which places emphasis on how sensations and feelings emerge from bodies, arise relationally, are transmitted to others and can change those bodies (Brennan, 2004; Spinoza 2000), there was a strong desire amongst advocates to make dirt visible. This was in order to produce a ‘visceral response’ (B31F) in jurors and amplify the gut-wrenching authenticity of a complainant’s account. Thus, dirty affects could be a valuable as well as unsettling tool in an advocate’s armoury and were often intuitively worked within court practices:

I always like to ask questions like, so what was it like when you kissed the girl who'd just vomited everywhere, you know, was it nice kissing her, tasting of vomit? Which is normally a question that a jury think, oh, you are disgusting (B9F).

There was unanimous agreement that in order to maximise the impact of evidence a complainant should be present in court behind a screen, rather than utilise the special measure of the video live-link (see XXXX 2019). Having ‘the flesh and blood in front of you’ (B8F) was perceived to increase the proximity between jurors and the contaminating impact of her account. It also produced in complainants responses that referenced their own bodily reactions to being in a room with their abuser. Examples were given of complainants: ‘pointing at him and saying, that's wrong and you know that's wrong, you dirty bastard’ (B29M). In describing the sensation of being orally raped one barrister discussed a woman who was reduced to ‘vomiting in the witness box’ (B20M). Thus, barristers viewed the giving of evidence as involving embodied affects, the process of which served to move and transform victims. In the latter example, the toxic affects ‘dumped’ into the complainant by her rapists leave her burdened and debilitated (Brennan, 2004; Caputi, 2003). The (partial) exorcism of those toxins, in the sound, sight and smell of vomit are transmitted to jurors, enhancing the capacity to simultaneously affect and move them (Caputi, 2003). Indeed, so impactful was the act of vomiting perceived to be, the barrister argued ‘at that point I could have just sat down’ (B20M), convinced enough had been done to secure a conviction. Such reactions were perceived less likely in the ‘completely sterilised’ (B11M) remote environment of the live-link room.

Here, we acknowledge the mock jury evidence that suggests rape case outcomes are not inevitably disadvantaged by giving evidence via the live-link (Ellison and Munro 2014). Further, the standard against which conviction is judged likely (and the desired transformative impact on the jury achieved) i.e. if the complainant is being physically sick, is indisputably set too high here. Tensions arise in terms of barristers striving towards that standard whilst also ensuring that the position of complainant remains habitable (Lees 1996; Craig 2016). These findings do, however, give insight into why barristers hold so vehemently the importance of having complainants physically present in court to give their evidence (which influences their advice. See XXXX 2018). Namely, it enhances the potential for transmission, contamination and ultimately, conviction.

### **The emotional particulars of working on rape cases**

This second theme includes three lower-order codes of ‘emotionally demanding prosecutorial practice’, ‘emotionally demanding defence practice’ and ‘gaining satisfaction from the job’.

The former two codes analyse the impact of clients' burdensome emotions on advocates, impacts which differed dependant on whether prosecuting or defending. The latter code considers why, despite these emotional struggles, positive work identities could still be constructed.

### ***Emotionally demanding prosecutorial practice***

Work on rape cases was constructed as 'very intense' (B2M) and for certain advocates preference was 'to do a murder because a murder is so much easier than a sex crime' (B7F). Whilst this intensity could link to the nature of case facts and evidence, the impact of working with the burdensome emotions and behaviours of others, and the impact this could then have on a barrister's own emotional state, was central. Thus, emotions were not only commodified in the context of work but could also be genuinely felt (Harris 2002; Kadowaki 2015), transforming advocates themselves and adding to the difficulty of doing the job. For example, female barristers identified with the woman whose case they prosecuted and struggled to reconcile acquittal - emotional responses made more complex when played out within an imperfect legal system:

And occasionally you can be reduced to tears. I'd say maybe once a year or something of that nature... Sometimes you get an acquittal and you're pretty certain that they have [the defendant has perpetrated the rape]. And that's not a comfortable place to be and also, sometimes a victim will look at you, woman to woman, if you like, and you... you will not be able to do anything other than keep eye contact because you're... you're in the theatre of the court process (B12F).

Central to this quote is the incongruence between what the participant perceived should have been a conviction and the ultimate acquittal. Whilst barristers see evidence that may not be presented to jurors and assessments of guilt may be influenced by this, advocates must bear witness too, and manage the emotions stemming from, the lived reality of working in a system which can 'routinely deliver injustice' (B33M). These professionally imposed limits, and the limit on what the barrister can now do, are met here with a defiant holding of eye contact. This public 'front stage' gesture maintains the professional reality of the court, reinforcing its expectations and culture, whilst outside the courtroom, 'back stage', emotion can be more profoundly expressed (Goffman 1959; Drew 2007). Here, the holding of eye contact responds to the complainant's burdensome emotions but also seems to provide the

means for managing the advocate's own. The eye contact also appears to **transmit**, woman to woman, a gendered 'knowingness' of the structures that leave all women vulnerable to men's violence **and that the 'dumping' of negative affects too frequently burdens women. That is, that the feminine subject must disproportionately bear the impossible feelings and sensations of shame, humiliation, worthlessness and not having one's account believed, yet still be expected, somehow, to live (Brennan, 2004; Caputi, 2003).** Here then, the eye contact also **seems to offer** a personal acknowledgement of 'I believe you', despite the system's outcome suggesting otherwise. Emotional labour is deployed to allow for human agency and to balance organisationally imposed limits with the worker's personal feelings and experience (McMurran and Ward 2014). **In highlighting this non-verbal interaction the advocate appears to recognise the embodied and relational nature of affects and that such communications are capable of provoking, and reflecting, a range of sensations and reactions.**

### ***Emotionally demanding defence practice***

The element of the job that most frequently precipitated emotional reactions involved defence practice, although as indicated, not exclusively. These emotional difficulties may contextualise why out of the 22 advocates who specified a preference for prosecuting or defending in rape cases, over 80 percent favoured prosecutorial work. Participants reported being 'worn down' (B20M) by engagement with defendants who were 'highly intelligent, manipulative people and they not only are attempting to manipulate little children, but also the barristers who represent them' (B6F). Cross-examining and the requirement to say to a complainant who is 'obviously a very damaged victim... you're lying, aren't you?' (B9F) also weighed heavy, emotionally, on a significant minority. Here, emotional dirt intersected with the ethical dilemmas of one's morally tainted defence practice and a recognition that in the context of work 'I can use these forensic techniques to draw out inconsistencies when I know I shouldn't really be doing that as a human being' (B35M). **This, in turn, could result in role conflict and a dis-identification from this element of the job: '...you can be a bit more true to yourself prosecuting than you can defending. That's not to say I won't argue people's corners fully, but just occasionally... you look at yourself and wonder why you're doing it' (B35M).** In practice then, the upholding of adversarial justice, which demands complainants be discredited and defendants' interests 'fearlessly' protected (Westera *et al.* 2017; Bar Standards Board 2018), was difficult work to do. Such work could 'destroy part of your humanity' (Drew 2007: 28) and leave advocates haunted by the prospect of defendants going on to reoffend, **including targeting the barrister, once released from prison.**



A quarter of female barristers spoke in detail about the uniquely gendered challenges of defending child sex offenders when they had children themselves, a topic not raised by men: ‘when you’ve got kids; you actually want to stab them in the eye’ (B39F). Such work could make participants ‘feel physically sick’ (B24F) and there was a struggle to balance the expectations of the professional role with that of mother: ‘... you come home and watch your children playing in the bath and then you think, no, I must go and clean out my mind and change my clothes’ (B15F). These descriptions, which frequently referenced embodied affects linked to a range of senses, again placed particular focus on the capability of bodies to affect and be affected and highlight how courtroom transformations can creep into home life. Such descriptions sit in stark contrast to accounts of legal neutrality and non-emotion (Craig 2016), whilst resonating with Petrillo’s (2007) findings. Her female probation officers emphasised that work with sex offenders heightened perceptions of risk towards their children and produced feelings of contamination that spilled into personal lives. Whilst most of our participants reported being able to be ‘schizophrenic about the job’ (B16F) and leave the emotions associated with cases at work, for others, splitting one’s ‘work-self’ from an untouched, cleaner ‘home-self’ was more difficult to achieve (Lemmergaard and Muhr 2012).

However, to argue that all advocates disliked defending and sought to avoid it would be disingenuous. Positives were gained from the work and for a minority it was their preferred and exclusive practice. These participants spoke about being ‘more in control of a case’ (B13M) when defending, having the freedom to work for the individual (as opposed to the state) and perhaps counter-intuitively, feeling like one was more aggressive, or ‘mean’, in the role of prosecutor. However, for the majority who felt less at ease with defence practice, personal views and emotions had to be put to one side. As the job dictates (Bar standard Board 2018), there was a unanimously reported necessity to ‘remain independent’ (B39F), ‘have objectivity’ (B31F) and not let the emotions ‘affect the way that you do your job’ (B14F). Surface acting was necessary to suppress certain feelings, construct others, perform neutrality and meet the expectations of defendants and the legal system more broadly (Harris 2002; Lemmergaard and Muhr 2012; Kadowaki 2015; Sommerlad 2016). However, as we come on to discuss, putting emotions on and taking them off was a practice which longer term could take its toll.

### *Gaining satisfaction from the job*



Despite barristers' work being tainted on all four dimensions, advocates gained significant satisfaction from it and in the majority, were able to retain a positive sense of self (Ashforth and Kreiner 1999). Around a quarter described their work as 'fun', a description used by American attorneys to capture the exhilaration of performing their role in the 'theatre' of the courtroom (Drew 2007). Such a description, however, appears out of place in an environment heavily premised on dirty emotions. In describing the masculinised culture of the Bar, certain barristers argued that a sense of prestige was derived from 'doing really awful, difficult cases, and sort of bigging it up' (B17F). Perhaps then, descriptions of the work as 'fun' were a demonstration of one's ability to derive pleasure from tasks that others would struggle to handle (Simpson *et al.* 2011). In doing the 'awful' and finding some degree of enjoyment from it, emotional responses may be relieved (if we enjoy it, it cannot be that bad) and self-esteem enhanced (we can enjoy what others cannot). Whilst there may well be fun aspects to the job, we also suggest that framing dirty work as fun is easier to do than fully engaging with just how difficult that work is (Lemmergaad and Muhr 2012). As we discuss below, the use of humour was a means through which the absurdity of the role could be dis-identified from.

Aspects of the job also enabled barristers to feel emotionally and intellectually fulfilled and to hone key skill sets (Huey and Broll 2015). Participants frequently described the satisfaction stemming from 'planning the case' (B26F), 'building something' (B5F) and 'putting things together' (B9F). Contributing towards the administration of justice was viewed as 'a responsibility that I enjoy' (B35M), 'particularly rewarding' (B2M) and made advocates 'feel utterly delighted if I get a prosecution home' (B24F). Similarly, the job allowed for emotional satisfaction through being able to participate in a process that exposed especially loathsome individuals: 'I like prosecuting when I think he's [the defendant] an evil bastard' (B39F). And sometimes, regardless of whether the advocate was representing that individual: '...although I was representing him, I was thinking, you go for it girl [when the complainant verbally attacked the accused in court]' (B29M). Perhaps then, part of the fun is also about participating in a process that holds particularly tainted individuals to such public account.

### **Strategies for managing stigma**

Understanding the mechanisms that allow barristers to develop a sense of esteem, pride and enjoyment from their work - despite the presence of taint - is of importance. In this theme we identify the shared mechanisms that enabled this. Four sub-codes of 'getting your head down

and getting on', 'ideological strategies of recalibrating, reframing and refocusing defence work', 'gallows humour' and 'tempered indifference' were developed.

### ***Getting your head down and getting on***

As noted, there was a strong belief amongst all advocates that the emotional elements stemming from the work had to be handled. Reminiscent of the defence tactic of 'accepting' (Ashforth *et al.* 2007), there was a stoic commitment to just 'getting on with it' (B14F). This commitment was frequently underpinned by a fatalistic sense of not being able to effect change anyway, because 'let's face it; this is the job we've chosen' (B7F). 'Getting on with it' was, on the face of things, something advocates did well. As accounts have indicated, it was only 'occasionally' or 'when your children are very young' (B24F) that cases or elements of them could disarm advocates resolve: '...now it feels like it has practically no impact on me, but every now and then one gets through the shield' (B24F). These occasional impacts suggest that occupational ideologies have been effectively internalised and the stigma of the job moderated, with workers relatively automatically enacting their role (Ashforth and Kreiner 1999). Only occasional discontinuities precipitated the questioning of one's profession and the advocate's position within it, in turn triggering new rounds of sense making (Ashforth *et al.* 2007).

### ***Ideological strategies of recalibrating, reframing and refocusing defence work***

As noted, the majority of barristers specified a preference for prosecutorial practice and this could be considered a form of *recalibration* where the less stigmatised and dirty elements of the job are given predilection (Ashforth and Kreiner 1999; Ashforth *et al.* 2007). As also noted, most barristers are required to prosecute and defend due to the limits placed on being able to select and reject the work one does (Bar Standards Board 2018). For almost all participants, the stigma of defending was *reframed* and infused with more positive value. Similar to McIntyre's (1987) attorneys who made claims to protecting an individual's right to a trial when representing those accused of rape (as opposed to enabling them to circumvent the system), English barristers spoke about the importance of all people being 'entitled to a defence' (B28M). Advocates, who are trained to focus on legal and evidentiary aspects of cases, rather than moral, argued that such principles were integral to a fair, democratic society and that defence work allowed those principles to be upheld. Defence practice was also reframed as enabling skills to be developed that would assist in mastering (the less stigmatised) prosecutorial role: 'I do feel that I need to defend, particularly because it's

important to prosecute well, to know how people defend, and the issues that arise' (B12F). Defending was frequently presented as allowing advocates to become 'aware of the other side of the coin' (B11M) and to approach prosecutorial work 'properly questioning' (B24F).

We also identified a frequent *refocusing* of defence practice in order to prioritise the rewards and overlook the stigmatised properties. Again, similar to McIntyre (1987) and Drew's (2007) work with public defenders, most advocates reported focusing on winning, as opposed to whether their client was guilty, in order to minimise occupational conflict: 'I don't generally give any thought to whether he's guilty or not, because, frankly, I'd be stressed out of my brain if I did' (B31F). Energy and emotion were channelled into the evidence, case facts, approaching things 'in a very academic way' (B8F) and 'looking at it like a crossword puzzle. What do I need to do intellectually to win this' (B22M). However, barristers were not blind to the stigma of defence work and could not be in light of negative outsider perception. As B31F's comment indicates, there is something more ethically troubling that she is investing emotional work into trying to ignore. Indeed, many of our participants did not 'actively overlook' the stigma of defending but used occupational ideologies to soften its negative impact.

### ***Gallows humour***

Taint was also managed through the use of cynical gallows humour (Ashforth *et al.* 2007), with jokes appearing in the context of interviews: 'Oh, eighty percent [of the advocate's caseload was comprised of rape cases], sometimes a bit more, but I think...funnily enough, I've just got...I've just got a murder [laugh] to raise my spirits' (B6F). Just over half of the sample argued that 'a very dark sense of humour' (B12F), 'cynicism' (B20M) and 'a gin and tonic and a laugh' (B9F) were key to dealing with the dirty elements of the job. Although the use of alcohol was never presented as a 'serious' strategy for managing work stigma, it is worth noting that American attorneys are more likely to drink at harmful levels, including at a level consistent with dependency, when compared to other professional groups (Krill, Johnson and Albert 2016). Alcohol, like humour and the ideological strategies discussed, likely provides the means to dis-associate from the harsher realities of the work.

Indeed, humour was not synonymous with not caring or treating one's role trivially, but a front for managing emotions and a form of release in a profession taken exceptionally seriously. Humour and ironic distance were used to normalise what was heard and to attempt

to remain unaffected by it (Gassaway 2007; Lemmergaard and Muhr 2012). They were used to enhance self-esteem by constructing meaning and values, a sense of solidarity and upholding work identities separate from the formal expectations imposed by the profession. Indeed, humour sits in stark contrast to the professionalism enacted in court (Drew 2007). However, in a climate where the dirty elements of the job could not be entirely dis-identified from, and to do so could compromise one's role, humour and mechanisms of recalibrating, refocusing and reframing, were not quite sufficient to enable advocates to do their job and still feel good about it. Whilst such mechanisms helped to create distance, this does not necessarily mean that emotional involvement is decreased or feelings made easier to handle.

### *Tempered indifference*

Similar to Lemmergaard and Muhr's (2012) correctional officers, we found that the utilisation of a form of professional indifference, which we refer to as 'tempered indifference', was essential to doing the job and remaining shielded from unmanageable emotional strain. Tempered indifference specifically involved the application of indifference towards the emotional experiences encountered, as opposed to wider elements of the job. However, rather than indifference involving the adoption of spaces for neutrality and non-intentionality, so as to perform the contradictory expectations of one's role (as found by Lemmergaard and Muhr 2012), for rape barristers, indifference involved the careful tempering of one's emotions. That is, personal feelings were 'turned down' because 'holding back that little bit just stops it sort of becoming really subjective' (B8F). However, not down to the point of neutrality because that would have prevented advocates getting sufficiently involved with the case to have the 'passion to do your best, whatever side you're on' (B8F) and to 'use the emotions' (B16F) to convince the jury. Thus, tempered indifference allowed advocates to get involved in cases, to cross-examine and do their best for a client. It also enabled them to simultaneously remain 'a step removed' (B10F) and to dis-identify sufficiently from the stories of violence, the difficult emotions and ethically compromised feelings that could stem from defence work: **affects** which could undermine practice if fully engaged with. Thus, ensuring that emotions were carefully calibrated and not fully felt was central to the advocate's emotional work (Hochschild 1983; Kadowaki 2015). Tempered indifference enabled barristers to identify and dis-identify concurrently with the dirty emotions and behaviours of clients and their own difficult feeling stemming from that engagement. Rather than dis-identification undermining outcomes for victims - which has been identified in the context of work on asylum applications (Baillot *et al.* 2013), here, it

was pivotal to enabling barristers to achieve the involvement required for quality, independent representation.

However, this continued tempering of emotions, over the years of the job, could have implications for being able to turn emotions back on. A significant minority of participants spoke about becoming 'hardened' over time, it being 'almost rather difficult to feel anything at all' (B12F) and recognising that 'hearing of the abuse of a...of a small child doesn't impact you, well, that in itself has had an effect, hasn't it?' (B24F). Being required to permanently sacrifice something of oneself as part of the process of working with sex offenders and offences was highlighted by Petrillo's (2007) female probation officers. It may be this longer-term loss of ability to emotionally orientate that led to the speculation: 'I would put money on a low mortality age range at the bar' (B24F). For barristers, who remain one criminal justice practitioner group where limited welfare arrangement is in place (HMCPSI 2016), it is unsurprising that the job should take a longer-term toll.

## **Conclusion**

This article has offered an original way to think about, theorise and investigate barrister groups, the work they do and the construction of meaning within their profession. It has advanced dirty work theory and scholarship on emotions more broadly by developing the concept of 'tempered indifference'. This explicates that for rape barristers, a key component of their emotional labour involved turning feelings down - albeit not to the point of neutrality - in order to manage the contradictions stemming from their job. In a context where emotions have been written out of the work that barristers do, we highlight a form of emotional investment that enabled them to do their job, feel good about it and ensure that outcomes for clients were not undermined. We surmise that in occupations underpinned by contradictions, which require, for example, the worker to suspect and respect, tempered indifference (or a variant of it) may well be at play. We encourage future work to help validate this claim and to better assess the rewards and losses associated with such labour.

Fundamental to our theoretical approach has been the bringing of dirty work and emotional labour into a conversation with affect theory - which to our knowledge, has not occurred previously. While the 'affective turn' has taken hold in many disciplines, particularly the social sciences (Clough 2007; Gregg and Seigworth 2010), it has been less evident in criminology and law (some exceptions include Philippopoulos-Mihalopoulos 2015, XXXX

2019 and XXXX forthcoming). In utilising the concept of affect the article opens the doors to theoretically and methodologically rich criminological scholarship on sexual violence and emotions. While some emotion scholars use the terms affect and emotion interchangeably, following Massumi (2015), we conceptualise emotions as a sub-set of affects. From this perspective affect brings into the frame of study a broader range of feelings, including those more ineffable sensations that go beyond what we would intuitively classify as an emotion. Again, we encourage research to adopt the approach to examine the experiences of criminal justice actors, courtroom dynamics and practices more broadly.

As argued, affects are fundamentally embodied and transformative: they are a force of and for change. We have started to show how barristers were affectively transformed by contamination from the dirty aspects of their labour. Work frequently impacted advocates' mental, emotional, physical and bodily lives, both within and outside the courtroom. Strikingly, barristers intuitively understood the transformative nature of the body and aimed to harness its affective capacity in order to effectively convince the jury of their case. Here then, we add a theoretical lens to what was instinctively understood to be part of one's practice.

In addition to these theoretical contributions, from an applied perspective it was evident that the tempering of feelings over the years of the profession could have implications for being able to emotionally orientate longer term. We would reiterate the importance of the HMCPSI (2016) report and its emphasis on ensuring that advocates who work on rape cases are emotionally supported to do so. In this regard, we commend the recent measures introduced by the Bar Council that point advocates to a range of resources to help manage their wellbeing (see Bar Council 2018). However, as our analysis has highlighted, engagement with this material may not be straightforward or proactive. The Bar is a profession premised on the masculine, where there is a stoic commitment to dealing with the emotional dimensions of the job and where the handling of the dirtiest of tasks intertwines with self-esteem and identity. Even those advocates who reported the re-envisioning of abuse on their children did not consider seeking formalised support to manage such impacts. Hence, wellbeing measures and the desire to recognise and improve emotional health must be actively championed from the top and with an appreciation of the culture such measures are being embedded within. As well as high levels of work responsibility and professional expectation being major causes of work stress amongst legal practitioners (Positive 2015), the

managing of clients' difficult emotions, affects and behaviours, and the reciprocal impacts of these on advocates, should be situated as an integral to the stress of the job. Rather than a focus on the improvement of wellbeing in order to increase productivity, focus should hinge on improving wellbeing as a means of sustaining the capacity to emotionally temper (which benefits clients) in the short-term and to guard against the harm of that continued work-imposed process in the longer. Arguably, such a commitment will help to retain highly skilled and experienced advocates - individuals who are pivotal to ensuring that the integrity of the justice system is upheld.

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