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POWER, STATUS, AND EMOTION MANAGEMENT IN PROFESSIONAL COURT WORK-THE CASE OF JUDGES AND PROSECUTORS

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**Power, status, and emotion management in professional court work–
the case of judges and prosecutors¹**

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Abstract

We examine key characteristics of the work tasks of judges and prosecutors from a power and status perspective, discerning how emotions tie into this perspective. Analysis of court observations, interviews and shadowing of judges and prosecutors at four Swedish district courts and prosecution offices shows that power and status operate differently for the respective professions, resulting in distinct emotions and emotion management strategies. For analytical purposes we adopt a split power concept: *power over* and *power to*. The judges' rather distinct *power over* requires a certain status in order to be comfortably executed, counteracting guilt and shame in relation to lay people. The prosecutors' work is characterised by dependent power relations and the enactment of status both to the police and to judges for their *power to* perform their work. We suggest that this gives rise to different emotional profiles for the two professional roles. The article highlights the malleable and relativistic dimensions of power and status, and above all their inherent emotional qualities.

Keywords: court, emotion management, judges, power, prosecutors, status

INTRODUCTION

The power of professional legal actors have been analysed from several perspectives usually separated by profession. Research on prosecutors' power include discussions about the separation of power (Barkow, 2006; Kjelby, 2015) and prosecutorial discretion (Davis, 2007; Radelet & Pierce, 1985; Wright & Engen, 2006), particularly related to plea bargain negotiations (Bibas, 2003; Bowen, 2009). Judges' power have foremost been studied in relation to decision-making (Conley & O'Barr, 1990; Lens, Augsberger, Hughes, & Wu, 2013; Peterson, 1995), sometimes with a comparative approach (Guarnieri & Pederzoli, 2002; Rémiche, 2015), in relation to presiding in court (Bergman Blix & Wettergren, 2015; Maroney, 2012; Ptacek, 1999; Scarduzio, 2011), and how the two affect each other (Hunter, 2005; Maroney & Gross, 2014; Moorhead, 2007; Roach Anleu & Mack, 2013). Linking legal actors, power, and emotion is less common in the literature but emotional implications of the legal actors' use of power is sometimes referred to even when it is not a central argument, and a growing literature specifically focusing emotions in legal practice.

Judges and prosecutors belong to an elite group of professionals invested with both power and high social status. In democratic societies, they are also vulnerable to critique of

misuse of power and public legitimacy is important for their own comfort in exercising power. Being part of different constellations of power relations, they also inform us about how professional roles are shaped by these different relations. The purpose of this article is to analyse key characteristics of the work tasks of judges and prosecutors from a power and status perspective, and discern how emotion and emotion management tie into this perspective. Specifically, how do judges and prosecutors experience power in their work roles? How do professional power and status shape interactions with laymen and with other professionals? How does the dynamic of power and status in court relate to emotions and emotion management strategies?

Scandinavian law adheres to the civil law system. The pre-trial features are largely inquisitorial, while the trial itself is adversarial (Eser, 1996, p. 343). The district courts are the first instance of the general court and presiding in most district court trials is one professional judge and three lay judges. The role of the judge coincides with common law procedures in that the judge presides in court and is in charge of order and security, but is not active in choosing or presenting evidence, and abides to norms of emotionlessness (Dahlberg, 2009; Roach Anleu, Bergman Blix, & Mack, 2015). In contrast to the common law system, the civil 'code' lessens the room for interpretation; the judge has to abide to the written law. The legal procedure is in many ways informal. There are no elaborate rules of evidence, and no exact rules on examination and cross-examination (Gomard, 1961, p. 37). During preliminary investigations, the Swedish prosecutor is required to be objective; in court, the prosecutor takes the role of the accusing party (Wergens, 2002) *while remaining objective* in terms of heeding potential new evidence in favour of the accused. Prosecution is mandatory according to the principle of legality and plea bargain is not permitted in Sweden. However, compared to other European countries, the prosecutor in Sweden has strong judicial power (Zila, 2006), embracing summary punishments and waivers of prosecution¹.

POWER AND EMOTION IN RESEARCH ON LEGAL ACTORS

Research on legal actors has confirmed the proposition that subordination, or less power, leads to heavier demands for emotion management (Hochschild, 1983). Subordinate legal actors, women in particular, need to manage their own as well as the lawyers' emotions, functioning as emotional buffers between client and lawyer (Lively, 2002; Pierce, 1999), while often being 'snubbed' by superior lawyers (Francis, 2006). Research studying prosecutorial power to a large extent focusses pre-trial decision-making (Bibas, 2003; Bowen, 2009; Fisher, 1987). Linking power to intraprofessional emotions, an ethnographic study of

plea bargain negotiations in an American context found that the prosecutors had little at stake if the negotiations failed, while the defence lawyers depended on a deal (Bowen, 2009). This unequal power balance created tension and suspicion between the professional actors. Experienced, high status defence lawyers could 'equalize the power' (Bowen, 2009, p. 25), through relationships and knowledge on how to 'play' the rules. In a similar vein, in court, the judge presides and prosecutors usually adapt to the style and demeanour of the judge (Wettergren & Bergman Blix, 2015). In examinations and cross-examinations prosecutors, strategically expressing frustration, sarcasm or sympathy, can impel victims, defendants or witnesses to express for example sadness or anger, (Brannigan & Lynch, 1987; Wettergren & Bergman Blix, 2015).

An overarching predicament linked to prosecutorial power is the tension between demands for objectivity and engagement, putting loyalty (Bandes, 2006) and morality (Fisher, 1987) at the centre of analysis. Prosecutors' relative closeness to the victim and the police, in combination with the adversarial ideal of two opposing parties, tends to put emphasis on the moral obligation (and pride) to defend the state/victim rather than on objective requirements to search for alternative explanations. The tension between objectivity and engagement in prosecutors' work is paralleled by the tension between the judge's passive role in the adversarial procedure and his or her need to be active as chair, presiding in court, and 'getting through the list' (Mack & Roach Anleu 2007). Moorhead (2007) argues that the ideal of an impartial passive judge is hard to uphold in civil cases where litigants are unrepresented. Here, the judge needs to address an unequal power balance by taking a more active and empathic role towards litigants (Moorhead, 2007).

In an article on *Angry judges*, Maroney argues that anger can be used as a legitimate power display in sentencing; the judge using her authority to condemn immoral acts of the defendant (2012). However, there is a fine line between righteous and dehumanising expressions used to 'assert [the judge's] dominance' (2012, p. 1258). Expressions of a judge's power in court can be interpreted as condescending, indifferent, bored or rude but also as patient and listening (Ptacek, 1999; Roach Anleu & Mack, 2013). An ethnographic study of judges in the US (Scarduzio, 2011) links judges' privileged status position to their ability to deviate from the court's feeling rules (Hochschild, 1983), arguing that judges use humour, express anger, frustration, and rudeness as power devices to speed up the procedure, relieve tension and guide clients' behaviour.

Whether or not the judge deviates from normative behaviour, the cultural understanding of judicial power affects the perception of their position. In a study comparing

French and American judges Rémiche (2015) argues that the French judge is associated with mechanistic application of the law, while the American judge is seen as a potent decision-maker. The study links the conceptualisation of American judging and power to the comparatively low proportion of female judges in the US, but indirectly also shows how power connected to professional discretion is associated with a stronger sense of power than 'mere' legal/bureaucratic power where the acting subject is supposedly interchangeable.

POWER, STATUS AND EMOTION

Our analysis operates with three central concepts: Emotion, power, and status. Emotion, quite simply, we understand as a motivation to act. All action is driven by emotion, whether the emotion is backgrounded and below consciousness (Barbalet, 1998), or conscious and cognitively managed (Hochschild, 1983). This is not to say that emotion only resides within the individual—it is evoked by action and interaction and thus springs out of our relations to others (Ahmed, 2004). Emotions are both biological and social products (Hochschild, 1990) but our focus is on the social dimension and the way that emotions are shaped by, and shape, social relations and cognition through behavioural norms that Hochschild (1983) calls *feeling and display rules*. Adaptation to these norms is performed by *emotion management* (Ibid). The totality of feeling and display rules, as combined with the discourse of emotions, pertinent to a specific social space we call an *emotional regime* (Reddy, 2001).

The classical concept of power is heavily theorised in social science and philosophy (e.g. Arendt, 1998; Foucault, 1995; Kemper, 2011; Lukes, 2005; Weber, 1978). For our purpose, power needs to be conceptualised both as *power over* in the traditional Weberian sense (1978) and as *power to* that enables the subject to act to achieve desired goals. *Power to* requires access to resources, for instance information, but a substantial part of these are emotional resources (Poder, 2010). *Power to* is motivated by self-feelings, such as self-confidence and self-esteem, as well as feelings about the context of action, such as trust (Barbalet, 1998). Successful achievements reflect in the eyes of others' recognition, and give rise to pride, reinforcing positive self-feelings as well as feelings about the context (Collins, 2004). Through such chains of interaction the subject is shaped as self-confident, trusting, and proud. Thus, through the linkage of emotions, *power to* is influential in the formation of the subject as actor (Allen, 2002).

While *power to* is directly connected to action, *power over* is an asymmetrical relation; a position that grants a person resources to command others. As argued by Heaney

(2011) the two forms of power analytically link to emotion in different ways: *Power to* is connected to self-esteem, self-confidence and trust, and *power over* is connected to security, guilt, and fear (Kemper, 2011). Guilt is evoked when power (over) has been used wrongfully or excessively, and fear is evoked when power (over) is reduced in relation to the other. Through emotions, *power over* also shapes subjectivity, both of the superior and of the subordinate:

Those who exercise power over others typically have a consciousness of it that is qualitatively different than the consciousness of those subordinated by it. (...) [P]articipation in relations of any sort requires and generates a sense of involvement which may be positive or negative, strong or weak, but always includes an evaluation of the other, the self and the relations between them. These evaluations register in the person's physical structure and their dispositions for subsequent action; they therefore constitute the indicators of emotion, including physiological processes, feeling states and motivation. (Barbalet & Qi, 2013, pp. 405-406)

The concepts of *power over* vs *power to* enable us to categorise the types of power emerging in the analysis of judges and prosecutors. Both types are relational and give rise to emotion that motivate action and shape the subject's professional role.

The concept of status is often associated with a profession's social recognition (Abbott, 1981). Our focus is however on intra- and interprofessional and situated status (Kemper, 2011) in relation to power (over/to). Situated status is a situational accomplishment, the actual receiving or giving of compliance (Ibid). Kemper (2011, p. 13) defines the relationship between status and power (over) as voluntary versus non-voluntary compliance. In other words, a person who has more status than another can get the other to act for his or her purposes without the use of power. Conversely, having to use *power to* get one's way reduces one's status (Abbott, 1981).

In the sociology of emotion, status is linked to emotions in a way similar to power, that is, status relations embed and produce emotions. For instance, the one who gives status may be 'liked', the one who claims more status than his or her due may feel ashamed, the one who does not accord, or withdraws, status may be disliked (Kemper, 2011). Collin's theory of *Interaction Ritual Chains* (2004) elaborates on the emotional energy of status positions in group interactions, showing that high status gives rise to high emotional energy including

confidence, pride, etc. Low status renders low emotional energy including low confidence and shame.

Looking closer at the distinctions between *power over* and *power to* and status we see that accorded status gives *power to* through the emotional resources of self-confidence, trust, and pride. Status gives a person the *power to* act to achieve his or her ends. *Power over* can be enacted without status, but then is likely to give rise to resentment (Barbalet, 1998) perhaps even contempt (Kemper, 2011) in the subordinate, further reducing the superior's status. It follows that *power over* may involve striving to gain status in order to legitimise power, or to prevent conflict.

The claim that emotion fuels and motivates action implies that emotion and rational action are intertwined and inseparable (Barbalet 1998). However, the fact that emotion and reason are *conventionally* understood as conceptual opposites, needs to be accounted for in the analysis of contemporary professions. This is the case in particular of the court professions that are dominated by the rationalist (cum a-emotional) emotional regime that we have elsewhere labelled *the emotive-cognitive judicial frame* (Wettergren & Bergman Blix, 2015). Intra-professional hierarchy of status can even be understood in relation to a work's distance to concrete human matters, such as emotions, because it implies a sophisticated engagement with 'pure' reason (Abbott 1981). For instance, prosecutors' and defence councils' transformation of lay peoples' narrative into judicial codes (Tilly, 2008), functions as an inter-professional status marker:

The judge stands above the district attorney because he may keep his professional purity through the rituals of the courtroom. The public defender and the district attorney must purify issues for his consideration. (Abbott, 1981, p. 824)

The court ritual itself also contributes to purification, through procedural regulation and architecture; the design of the court room sets a physical distance between judge and the parties accentuated by the elevation of the judge's bench (Dahlberg, 2009). This setup of the ritual is motivated by a prerogative for impartiality and an understanding of impartiality as being emotionless (Maroney & Gross, 2014).

The appearance of emotionlessness of the court and the different tasks of prosecutors and judges, including their different professional status positions and the different power relations they are involved in, indicate different patterns of emotion management for the two professions. Emotion management here denotes the conscious or habituated adaptation to the feeling and display rules of the emotive-cognitive judicial frame, which orientates court

professionals to uphold an emotionless appearance and rewards them with intra-professional status and pride. Emotion management is also the management of own emotions evoked in the various relations to colleagues and other employees at the workplace. The fact that the prosecutor performs ‘purification work’ for the judge suggests that the prosecutor is more directly involved in the emotionality of events than are judges.

METHOD

This article draws from a multi-sited case study (Marcus, 1995), covering four strategically selected Swedish district courts and their respective prosecutions offices. Data was collected 2012-2015 through a combination of ethnographic methods: observations, interviews and shadowing. Shadowing implies following one person for a specified period:

[S]hadowing is an itinerant technique which allows the researcher to experience the shape and form of their target’s days. These qualities mean that shadowing is inimitably placed to investigate an individual’s role in, and paths through, an organization. (McDonald, 2005, p. 457)

Members of each profession with diverse career background, years of experience, age, and sex were shadowed in order to study the preparation of cases and the shift between front and back stage performance. We accompanied the participant when in court and made court observations. In relation to the shadowing we also conducted semi-structured interviews on general topics combined with questions related to the observed hearings. This strategy both enabled us to validate our observations and to concretise questions and reflections with specific events (McDonald, 2005); a valuable approach given that the participants were not used to reflect on and talk about emotions.

We shadowed and made 120 interviews with 93 people, 55 judges (including clerks)ⁱⁱ and 38 prosecutors evenly distributed over the four courts and prosecution offices. The interviews ranged in time between 30 minutes (follow-up on observations) to 3½ hours, averaging 2 hours. We observed about 300 trials ranging from 5 minutes (when adjourned) to 8 days. The interviews involved questions about connections between emotion management and role performance; situations where emotions are legitimate/illegitimate; loyalty/disagreement with colleagues/lay people; etc. All interviews were recorded and transcribed.

During court observations focus was on the ritual (of the hearing) noting body language, facial expressions, glances and gazes, explicit emotion words, tone of voice,

management of ritual transgressions, etc. Observations relating to the shadowing, such as small talks, preliminary analysis, our own emotions, were noted in a separate field diary. As a means to reach experiential aspects of emotions in court we used ‘emotional participation’ as a methodological tool, generating reflections and insights to the situations and persons under observation (Bergman Blix, 2015a; Wettergren, 2015).

The data was anonymised and coded in a software program for qualitative data analysis, NVivo. The codes derived from a combination of inductive themes and deductive codes, relating to our theoretical frame of emotion theory and research. When the data had been coded each theme was analysed separately with a more stringent theoretical approach (Alvesson and Sköldbberg 2009, Wolcott 1994). Expression of, and reflections on, emotions in relation to collaboration and conflict in court was interpreted in light of previous literature on power and status theory, and their relation to specific role expectations of prosecutor and judge.

In the result section following below, representative excerpts from field notes and interviews serve to exemplify our analysis. The excerpts have been translated from Swedish to English by the authors. In order to secure the participants’ anonymity we use pseudonyms (first name). Age of the prosecutor or judge cited or shadowed is given in tens (30+, etc).

In the following we will begin by analysing the power of the judge which is marked by the power of presiding in court and decision-making/ruling in the case. We focus on the problematic aspects of the judge’s *power over* in terms of its limits and its clashes with norm systems that do not acknowledge the legitimacy of the judge. Similarly, when continuing with the prosecutors’ power we dwell more on the aspects of *power to*, because the prosecutors’ power is marked by its dependency on other actors, most notably the police and the judges.

RESULTS

The judge - comfort and unease of ‘power over’

In accordance with the adversarial court procedure in Sweden, the judge’s role is to pass judgement on the material presented by the parties (prosecutor and defence), and to preside in court. A judge’s obligation to make independent decisions is an example of *power over*, while the performance of the chairman role also engages *power to*.

Swedish judges in general have an ambivalent relationship to *power over*, we argue, because it does not rhyme with a Swedish cultural orientation towards consensus (Daun, 1996). Especially novice judges express unease at the idea of their power:

I think it is a bit...scary anyway. If you think about it...I think it is...a bit unreal almost that you...if I think about the amount of power I have, just after having worked a couple of years, it is like “who am I to sentence people to incarceration?” (...) But, it is not as if...I don’t go around at work thinking ”God, I am so powerful”. I don’t think that would be good. (Estelle, associate judge, 20+)

Experienced judges may have habituated the feeling of power and feel confident with using power, but emphasise the responsibility that comes with it. This points to the common view that, in so far as *power over* is executed, it needs to be done in a legitimate way:

It is like Pippi Longstocking, the one who has a lot of power has to be very kind. [...]If he [the defendant] is a regular and knows what to expect that is one thing, but you have to handle first time offenders and ordinary people with care. (Erik, judge, 50+)

A defendant should understand the rationale of *power over*. If this is the case, and through care and gentle treatment, a judge may feel comfort in executing *power over*. In contrast, some judges do not associate their role with power at all:

I don’t see that I have any power, I cannot see how I could have any...Well, I have the tools I have, that I need to, or that the legislator has provided for me, to implement my task. (Simon, judge, 60+)

Simon dissociates from the power invested in the role of the judge, which he sees merely as a function of power, thus indicating a sense of discomfort with *power over*. Such a complete disassociation from a position of power was not common and, interestingly, only expressed by senior judges, perhaps reflecting a generational shift from an idea(l) of the judge as a ‘mechanical applier’ of the law (Remiche, 2015), to a professional role more adept to reflect on their position of power.

Judges’ executive *power over* in their chairman role is in effect limited. If defendants are misbehaving and interfere, the judge can put them in another room where they can follow the hearing through wire, but that is not possible during examinations with the defendant. If another person misbehaves the judge can adjudicate for contempt of court, but that is also used with care due to the principle of public access (Regeringsformen, 1974). To a large extent the power in hearings is therefore an interactional accomplishment that can be questioned. The example that several judges use, that shows their awareness of their lack of

power, is whether to ask a person to take off their cap or not. If a judge tells a defendant to take off their cap, and they refuse, they ‘put themselves in a position where they lose power’ (field notes, Fred, chief judge, 50+), because they have no mandate to force them. In the following quote, a judge emphasises the importance of removing the cap:

Judge Asger: I am liberal in many many ways but as far as dress-code is concerned I would consider it really annoying if someone does not take off the cap upon entering the courtroom. I have thought about how to handle that.

Interviewer: You would tell them to remove it?

Judge Asger: I would. In one way or another I would and then I assume that – because you know they say that ‘well what will you do then if they don’t take it off?’ Well then we’ll make them take it off [laughs]. (...) On the other hand I am very liberal with the language. I think you can use any kind of language which is easier than this damned bureaucratic language... (Asger, associate judge, 30+)

Asger is confident that he will require the cap to be removed, but at a subsequent court hearing this was not the case:

The defendant comes in, he wears something in between a cap and a hat, pulled deep down over the head. I expect the judge to say something but he ignores it. When the defendant’s turn to speak has come, he curses a lot, and often. The judge interrupts him: ‘Eh, try to think a bit about the language in here’... He flashes a forced smile at the defendant. The defendant does not stop cursing, though. The judge’s face is slightly turned towards him while he talks, but the judge has covered his mouth and chin with his hand. The defendant keeps the hat on the entire trial. (Field notes, Asger, judge, 30+)

Not only does Asger refrain from telling the defendant to take off the cap, instead he reproaches his language in spite of his proclaimed liberal language views. The fact that he did tell him off, but concerning language not dress code, and his body language and gestures, indicates both shame and resentment towards the defendant for keeping the hat on. We suggest that judge Asger did not ‘dare’ to command the defendant to remove the hat. Had the defendant ignored it, just like he ignored the request to ‘think about the language’ the judge would have lost both in terms of *power over*—which he does not have in this case—and in terms of status, as it would be clear that the defendant rejects his status.

Status relates to unwritten norms, i.e. to the norm system of which the juridical professions are part. Logging on with this norm system means respecting the normative position of the other/the judge and the normative position of one-self in the court room. In other words, if, in this case, the defendant does not acknowledge the norm system to which the juridical professions and their power belong, it implies that neither does he acknowledge the *legitimacy* of that system. He is there, he submits to it, merely because of its *power over*, in the violent implications of that type of power, which in Arendt's view is not power at all but its opposite: only the powerless need to be violent (Arendt, 1998). This is in essence why judges hesitate to venture outside the realm of their juridical power, putting not only their own status at risk of being rejected, but even more so the legitimacy of the system which they normatively embrace. Since it is important for the judges' image of themselves and of the system that their power is legitimate, it is crucial to uphold the court ritual *as if* power is legitimate.

Maroney's study of American judges (2012) suggests that there is a greater probability that these will extend their *power over* and force compliance to norms, as well as to legal rules of behaviour in the court. In the Swedish context most judges would feel uncomfortable with (ab)using *power over* in this way, a feeling that is linked to the Swedish understanding that legitimate law is just, also in the eyes of the defendant. Abbott claims that judges lose status but gain power when they interfere in the ritual (1981) but our example suggests that judges also avoid to interfere from risk of exposing their lack of power, and thereby losing legitimacy for the court.

Power over that entails a misuse of power is a source of guilt (Kemper 2011), and as we have seen judges avoid this by either being 'kind', conscientious, or dissociating from the function of executing power. These solutions to the discomfort of juridical power in democratic societies can be seen as attempts to turn power into a service (Gay, 2008), part of the governance strategy of contemporary public institutions (Lobel, 2004). The balance between juridical power presented as a service to the people, and as a *power over* that can in fact be rejected as unjust, is not straight forward:

If we are to sit and think a hundred years about every decision, then the parties will not get a *decision*. Especially in crime cases, here is an accused denying that he has done this, and then we must rule in that case within a reasonable time because it is not nice [to let him wait]. But sure, sometimes it goes wrong. In fact I have called parties at times, to say that I think you should appeal because my decision was

wrong [laughs]. I just caught myself afterwards [self-reproaching voice] *what did I think of*. And then I called the defence lawyer [when the appeal time had almost passed and they had not appealed] and asked him: 'did you look at the sentence'? (...) And then, 'you know you have to appeal within three weeks...' (...) I know that some [other judges] disapprove of my actions, but let them have it. The court of appeal changed the sentence, so it was good that I called [laughs]. (Judge, Bente, 50+)

On the one hand efficient decision-making is framed as a service in the defendant's interest (reinforcing the legitimacy of the judiciary), but on the other hand it may lead to hasty decisions that may harm the defendant (decreasing the legitimacy of the judiciary). Such misuse of power induces guilt. In this interesting example the judge acts on her guilt and risks her own status among peers to maintain the legitimacy of the system.

To sum up, the judge's position as powerful in terms of *power over* embeds emotions of guilt and discomfort (cf Barbalet 1998). In a democratic system, and especially in the Swedish system where a high degree of consensus is a cultural good, the legitimacy of such power ideally implies that the subject complies with the norms according to which he or she is rightfully submitted to a legal process. As we have seen, judges are either comfortable with having *power over* but try to use it as 'kindly' or restrictively as possible. Or they are uneasy with the idea, and chose to consider themselves a 'function of the system'. Either way, 'the cap story' serves to illustrate and to reflect upon the insecurity of *power over*; it is in effect limited when clashing with different norm systems, and when this limit is reached, the judge's status as representative of a legitimate system may be undermined. A person who refuses to take the cap off in spite of a judge's order, not only reduces the judge's status but reveals to everyone present the relative powerlessness of the law, an intensely shameful situation for the judge. Pursuing the matter, by framing it as a legal offense, would be seen by other court actors as well as lay people as a power abuse and power abuse gives rise to guilt. Guilt was exemplified by the hasty ruling, later corrected by the judge who explicitly told the defence lawyer to appeal. Though such measures are rare, our district court judges generally comfort themselves with the idea that wrong can be turned right in the court of appeal. In sum, the role of the judge is shaped by an ambivalent, sometimes comfortable sometimes uneasy, relation to *power over*, and a concern with its legitimacy.

The prosecutor – managing emotions of status and ‘power to’

Contrasting the often lonesome and autonomous work of the judge, prosecutors rely on an array of relations to other professionals who can either ease or obstruct their work, regardless of the formal juridical power relation that puts prosecutors on top. This makes the prosecutors’ professional role distinct from judges’, in the sense that prosecutors continuously need to imagine other’s reactions to the measures and decisions that they take. We will begin by illustrating this with the example of their relation to the police.

In the preliminary investigation—which in fact takes most of the prosecutors’ time—the prosecutor depends heavily on the competency and acquiescence of the police in order to perform effectively. Prosecutors are ‘a spider in the net’ while ‘the police takes care of the practical matters’ (Anneli, assistant prosecutor, 30+). They speak about the police as partners in collaboration, demanding respect, especially if dealing with experienced officers. Using *power over* a police can be counter-productive, and obstruct the prosecutor’s *power to* do their job; officers who dislike the prosecutor can delay the effect of the prosecutors’ directives and affect the evidence; cause the loss of important pieces of evidence such as CCTV films; erode the reliability of witness stories due to sloppy protocols or important questions that were never asked etc. The police is generally known to struggle with work overload so neglect to fulfil a directive can easily be explained away with lack of time (Björk, 2014; Liederbach, Fritsch, & Womack, 2011).

To avoid such problems, the relationship to the police needs to be emotionally lubricated:

It is the best when there is collaboration, although I am the one who sits with the tool box and [decides on] the coercive measures. But it is often the result of reasoning, I mean that is the best, when ...the officer you work with says [enthusiastic] ‘I just got this idea, what do you think about that?’ (Anneli, assistant prosecutor, 30+).

Emotional gift giving – such as commending good work, nice manners when giving directives or ‘reasoning’ in a collaborative way– is a technique that enhances the police’s status, and ensures a good relationship (Clark, 1990).

Valdemar says that that when you meet police officers [the first time] they read you to find out what type you are and how they can approach you. ‘That is the hierarchical order,’ I say. ‘Yes, it’s about power relations,’ Valdemar and Lara

agree. They keep talking about how to give directives in a nice manner, to remember to praise the police for a good piece of work, not just 'do this and that' and take their work for granted. (Valdemar, 30+ and Lara, 30+, prosecutors, field notes)

Previous research suggests that the demands on emotion management of subordinate legal actors' is higher than for superiors (Francis, 2006; Lively, 2002; Pierce, 1999), but in our example with prosecutors and police officers the amount of emotion management depends on the degree of interdependence in the power relation. Subordination gives clues to how, and maybe also which emotions are managed, but the hierarchically superior prosecutor indeed needs to perform emotion management in relation to subordinate actors, such as the police. There is resentment embedded in the power relationship police – prosecutor due to the purification work the police has to do 'to sort events so they fit into the prosecutors indictment' (Björk 2014:18) and this encoding 'chafes, evokes emotional instability, and cognitive dissonance' (Ibid). On the other hand the police depends entirely on the prosecutor in coercive measures, which is why they are interested in 'reading the type' of prosecutor. According to Kemper (2011) one is disposed to like someone who accords status. Moreover the status accorded by a superior is perceived as an *authentic* gift.

Prosecutors' dependency on collaboration with other professions such as the police makes *power over* a paper construct, highlighting *power to* as a mutual according of status that enables one to perform, in a position of superior and subordinate, in the situation where the superior depends on the acquiescence of the subordinate. Status-giving thus accords *power to*.

In court, prosecutors are independent players, representing the state, but they are also dependent on the other court professional to gain situational status and they are formally subordinated to the judge. The latter may affect prosecutors' *power to* do their work in court, and in this sense the relationship echoes the one between the prosecutors and the police. Contrary to that relationship, however, the prosecutor cannot escape a judge who obstructs, scolds or scorns his or her work. In other words, judges are not as reluctant to use *power over* prosecutors and defence lawyers, as they are in relation to lay people, since other legal actors by definition subscribe to the norms and legitimacy of the legal system.

The prosecutor depends on judges to give them space to perform in court. Accordingly, just like the police is attentive to the 'type' of prosecutor, the prosecutors keep

track of ‘types’ of judges, and adjust their performance to fit particular judges (Wettergren & Bergman Blix, 2015).

When it is a new judge you might ask your colleagues about how he or she is, just to be mentally prepared. What do I have to expect? If you hear that they have an uneven temper, then of course you become a bit more insecure. (Bror, prosecutor, 60+)

...and regulate their ritualistic strictness depending on judge:

I went up to let him [the judge] read it [...] and I would never have dared to do that if [name of another judge] had been presiding, because, then you have to ask for permission [light laughter] in person [end laughter]. (Josefin, prosecutor, 30+)

The situation when a prosecutor’s power and status is undermined by the judge will be elaborated in subsequent sections. Before ending this section we will briefly illustrate the prosecutors’ relation to lay people.

In modern prosecutor training in Sweden, it is recommended for the prosecutor to shake hands with both plaintiff and defendant before the trial. The greeting ceremony serves to show both parties that the prosecutor represents the state and is objective. Shaking hands with both parties thus raises the prosecutor’s professional status. Echoing the judges’ concern with legitimate power, it also reflects a strategy to ‘establish rapport’ with the defendant, and avoid hostility at the start of the examinations. Nevertheless, prosecutors have considerable *power over* the defendant and may readily display it, especially if they think that the defendant is morally dubious. Below, the prosecutor presented clear DNA evidence tying the defendant to the scene, but the latter kept denying.

I didn’t even bother to ask him any questions. I don’t see any point in trying to reason with him, check details. Either he lies, or he doesn’t. There is no use in questioning him. If the evidence in principle is home anyway, just posing questions for the sake of it [is useless]. (Jakob, prosecutor, 50+)

A secure *power over* position, combined with confidence in the strength of the evidence, enables the prosecutor to distance himself from dealing with the ‘lies’ of the defendant, without losing status. Absence of anger in the face of open provocations is a combined power/status display (Collins, 2004).

In this section, we have shown that the prosecutor's role is shaped by a complexity of power relations that makes it distinct from the judges in many ways. In the juridical hierarchy they are subordinate to judges, but superior to the police. They depend on both the police and on judges for their *power to* do their work. Firstly, while they formally have *power over* the police, the police is a different institution with different norms and values attached to their specific (practical, action-oriented) professional pride, making many police officers predisposed to resent (the power of) the prosecutors. Prosecutors thus need to develop emotion management skills that give them status as well-liked among the police. Secondly, the relationship to judges is collegial and within the institution of the legal professions. There is no norm or value conflict, nor can prosecutors escape the peer evaluative eye of the judge in the court room. Finally, prosecutors manage emotions in relation to their *power over* lay people in court, sometimes tuning in emotionally to get a smoother examination, sometimes using emotional distance as a power/status display. The following section will elaborate on the topic of the relationship between prosecutor and judge.

Judge and prosecutor - Resentment and anger tracing power boundaries

The court process carries strong ritualistic elements and its success relies on each role playing its part; it is an interactional accomplishment. The fact that prosecutors are sensitive to judges' power displays in court and usually adapt their behaviour accordingly, can be seen as *ritual deference* (Scheff 1990) through which prosecutors affirm and sustain the judges' status and power as chairmen, contributing to the display of justice as consensual and undisputed.

In general, and contrasting the situation with e.g. the defendant, the status of the judge is seldom challenged by the other professional actors, but when it is, it gives rise to strong feelings of resentment:

...most people are very attentive to what, what you think up there if I may say so, it is, most people see that there is lots of power radiating and they do, yes, most people do as I want. Last time I roared at someone was actually at a lawyer who wanted to make a statement at a point in a trial where he was not supposed to make statements, in order to refer to circumstances that you were not supposed to refer to, THEN I HAD TO ROAR that he must be quiet (...) WELL THEN YOU MUST LET IT COME FORTH, let the feeling come forth that I am not afraid to use the language of power... (Folke, judge, 60+)

This comfortable announcement of *power over* is tied to the object of power being within the judge's legal and norm system. A judge who is comfortable with *power over* and uses it legally correct, with self-confidence, thus rises in status (Maroney, 2012). Judicial skills constitute one of the things that make the chairman dependent on the other professional parties. While experienced prosecutors may be asked for advice, prosecutors during training instead irritate judges when they are slow and ask too many and ineffective questions. This impatience reflects the tension, managed by the judge, between keeping the schedule and letting the parties have their say (Scarduzio, 2011). Yet, cutting a prosecutor's examination may give rise to new problems.

Given that judges in adversarial procedures should be impartial and passive in investigative matters, they are only supposed to ask clarifying questions. But if the judge refrains from filling in the prosecutor's missing questions, and then writes a judgment stating that the case was acquitted due to these points not being clarified, the prosecutor will appeal and the court of appeal will convict instead, and it will 'cost the tax payers a lot of money' (Ola, judge 40+). Therefore judges do sometimes venture to ask questions in the grey zone, but it becomes a tricky balance:

She [the prosecutor] never asked, it was never clear who [the defendant] bargained with, that was just implicit, and it cannot be implicit. I had to pose those questions. And that is not my role. [...] When a prosecutor doesn't function, isn't skilled, it's not good, from a judge's point of view, because it undermines our objectivity. [...] I have investigative responsibility as well, but I won't go in and bring down the defendant. (Monika, judge, 40+)

Judges take different positions here, but whether they do ask questions or refrain from it, they resent the prosecutors that put them in this position. Instead of passively collecting substance for decision-making, the judge is forced to use power on the verge of his or her power boundaries, and risks evoking guilt as a consequence of abusing his or her power.

From the perspective of the prosecutor, especially novice prosecutors are often occupied with getting all the procedural issues right, and they get no training in performing examinations. They learn by trial and error, and therefore usually end up posing a lot of questions when trying to get the answers they want. The resentment of impatient judges affects them.

He wants it to be fast, [he] goes in to steer [the process] a lot. I think he passes the line sometimes for how much a judge can steer an examination, and how much he can cut in. He can tell a witness that he ‘should only talk about “this”, everything else is completely irrelevant’. And I think that is wrong, because we cannot know beforehand if it is irrelevant, some aspects can be of importance for the trial. (Magnus, assistant prosecutor, 30+)

This quote represents a common way of speaking about being publicly humiliated by a judge. It is not framed as humiliation but as the judge’s professional transgression. However, as seen in the following quote, being divested of one’s status leads to feelings of pain:

Of course, if I have a full day with her and [laughter] she goes in on *every* examination I hold, and kind of tell me ‘that is not interesting’ or takes over the examination herself, *then* you can feel, it can be kind of painful. It has happened on some occasions, but you know, being a beginner I am quite humble. I have a lot left to learn. (Magnus, assistant prosecutor, 30+)

When the prosecutor’s status is withdrawn by the judge’s interference, it undermines his self-confidence and he loses *power to perform* (Collins, 2004) and makes the judge more resentful, and so forth in a shame-anger spiral (Scheff, 1990).

From the prosecutor’s point of view, they need the judge to accord them status to perform examinations the way they see fit, and harsh judges make them insecure. On the other hand, prosecutors become used to being questioned, which means that adapting strategies to situations as they unfold is an inbuilt work predicament. Knowledge of the style of a certain judge both renders adjustment in the presentation of a case and directs blame for why it became acquitted or sentenced too ‘mild’. Continuous evaluation of judges can also be seen in prosecutors’ resentment towards judges that do not interfere, particularly in relation to the defence lawyer: ‘[Judge X] cannot set boundaries, she just lets the lawyer take over’ (Elsa, prosecutor, 50+).

From judges’ point of view, they chair the trial but also need to be attentive to everything that is said in the matter. The alteration between a passive listener and an active chairman can be difficult:

The plaintiff comes in late and his counsel wants to take a break to talk to him. The judge allows this. The defence lawyer objects: “We are already behind schedule”.

The judge sits silent, apparently giving this a long thought. Her expression is neutral. Then she answers in a low but steady voice: “Nevertheless, the counsel wants to talk to her client...” The defence lawyer shrugs. Everyone starts to leave. (Elionor, judge 30+, field notes)

The delayed reaction to a question, or an incident, is common to judges. It points to the conscious effort behind the performance of impartiality, implying well-founded arguments and emotionless expressions, in court. Some judges reflect on this difficulty:

One thing that I think is difficult, or that I am bad at [laughs] is to interfere when someone asks leading questions, or questions on the border of being infringing. [...] I think that I am a bit slow started sometimes, and I always think afterwards, oh shit, I should have said something. So that can be a bit stressful, in particular in trials with more confrontation, when they become angry at each other. The prosecutor and the defence lawyer in particular. A defendant and a plaintiff are a bit easier to handle, really, than the prosecutor and defence lawyer who are more or less self-assured. (Ola, judge, 40+)

The above quote stands in contrast to the previously discussed ‘cap’ story’ where laymen stood out as difficult to handle. However, ‘the cap-story’ shows the judge’s limited power to handle the breaking of norms of behaviour, when laymen do not want to adhere to, or lack knowledge of, the juridical norm system. Here, it is the procedural rules that are at stake; the rights and duties of the parties such as turn-taking and whom to address are regulated by law (CJP, 1942) and clearly within the judge’s power. But interfering with professionals who *push their boundaries*, for instance expressing too much confrontational anger, is a matter of interprofessional norms and status (self-assertion) and not as clear-cut.

Even though the prosecutor to a large extent adapts to the judge, status competition occurs, especially when both judge and prosecutor are high status actors:

Walking in the prosecutors says: ‘There is no defendant outside’. No reaction from the court. The judge looks at his papers, asks the clerk to check the data base. Judge: ‘He has been served his indictment, stating that the case can be handled in his absence’. Prosecutor: ‘Mm’, leaning back with his arms crossed. Prosecutor: ‘I see in the papers that a date is wrong.’ The judge stares at his screen without acknowledging the prosecutor. Prosecutor: ‘I must make an amendment and change the date to 31 January.’ The judge does not react. Eventually the judge says: ‘When

a case is handled in absence of the parties, it is not possible to...' The prosecutor rapidly fills in: '...make changes.' The judge interrupts: 'I was talking to the lay judges.' Prosecutor: 'Excuse me.' Judge: 'No worry,' without looking at the prosecutor. When the prosecutor leaves he shakes his head, looks at the researcher and smiles. (Bertil, chief prosecutor, 40+ and Hans, senior judge, 60+, field notes)

The judge claims power and superior status through indifference, lack of response (Kemper 2011:23), and emotional distance (Abbott 1981). The prosecutor claims status by attempting to show professional competence. The fact that he, through his mimics, involves the researcher as an ally in confirming his (negative) evaluation of the judge indicates that he was affected.

To sum up, by alternating between the perspectives of judge and prosecutor, we have shown that resentment and anger are usually the result of colliding agendas of the different, but interdependent, professional actors in court, sometimes combined with a lack of confidence in the *power to* pursue their respective tasks. For the judge, the association between impartiality and unemotionality, and demands for procedural correctness, hinders the ability to react fast, causing resentment from prosecutors who depend on the judges' power display. In contrast, prosecutors' failure to present convincing evidence to the judge, or claims for patience with 'irrelevant questions' risking the schedule by taking up too much time, evoke resentment from judges who find themselves forced to display power in legal grey zones.

Professional legal training orients court professionals' cognition towards the legal professional rules and ethos. We argue that the training implicitly—through tacit knowledge and habituation (Bergman Blix, 2015b)—teaches an orientation of emotions (Flower, 2014). Judges and prosecutors not only learn to 'do law' as cognitive craftsman work, they also take pride in these professional skills and orientation (Bergman Blix & Wettergren, 2015). We call this orientation the emotive-cognitive judicial frame (Wettergren & Bergman Blix, 2015). In the following two sections we will exemplify what typically makes judges and prosecutors respectively professionally proud versus ashamed, in order to further demonstrate status relations and the types of emotion management characteristic of the two types of work.

The judge - pride and shame in the legal system and in one's own position

As we have seen, the judge has an institutionalised *power over* in court, but needs to negotiate situated status and *power to* in the court interactions. We argue that this in turn is associated with confidence and self-assertion, accentuated by the recognition of others

(Collins 2004). Upholding procedural correctness is one of the judge's main tasks through which he or she derives status and pride. Experienced judges may gloss over mistakes, but for judges in training the strict maintenance of procedural correctness is a way to prove their worth. Shame in failure is visibly seen in these cases:

You can get community service instead of prison [...] if you live [in Sweden] and have the possibility to serve here. I had a criminal case with two people who lived in Poland, but they were caught for smuggling, and I asked 'would you agree to community service?', because it is something you always ask. The same second I said it, I realised that it could never be an option, and then both the defence lawyer and the prosecutor kind of laughed, and I just felt, oh, that was *not good*, and you should be able to just shake that *off*, but I blushed, and then you expose your inexperience, so that is not good [laughs]. (Kristin, associate judge, 30+)

Just as failure to live up to procedural correctness gives rise to shame, positive feedback from the parties involved gives rise to feelings of pride: 'It is great when you feel that you reached someone. You feel it in the court room when people are satisfied' (Sanna, chief judge, 50+). Pride and pleasure in the ability to make a difference for the people who come to court is associated with the legitimacy of *power over*. In criminal cases it can be pronounced in matters when a 'regular' criminal has started to change his or her life, wants to clean up their mess, and the judge can support that pursuit by finding a suitable, supportive punishment (Mack & Roach Anleu, 2011).

Pride and shame relate to status (Kemper, 2011). We have seen that in their powerful position, judges can gain or lose status in relation to how that *power over* is exercised. Furthermore, the emotive-cognitive orientation of the judge is closely connected to the legal system as a whole, as seen in the fact that it is the lay people's expressions of satisfaction with and trust in this system that makes the judge feel proud, and the opposite, feeling ashamed on behalf of the system's transgressions, whether it be a personal mistake or someone else's (Bergman Blix & Wettergren, 2015).

The prosecutor - pride and shame in striving for objectivity and the shame-shield of professional community

Prosecutors' pride is tied to their role as a state representative and the associated demand for objectivity. This is a tricky position, given that the prosecutor is also a party in court. It requires a habituated skill to move in and out of engagement with the idea of

someone's guilt, depending on the strength of the evidence. Great pride is taken in the ability to 'let go' of a case that is impossible to prove, and this pride has to do with the norms of democratic justice (Wettergren & Bergman Blix, 2015).

The prosecutor should only prosecute if he believes that there is sufficient evidence to prove a person's guilt, so the decision to let go is taken during the preliminary investigation. Thus, if a case goes to court the prosecutor's professional status can be at stake if the case is dismissed, causing shame. In other words he or she is emotionally invested in proving that the defendant is guilty (Bandes, 2006; Fisher, 1987), but in order to maintain objectivity, these emotions are toned down. Winning in court is described as 'nice' but of lesser importance in interviews. In field notes, however, winning in court in larger cases comes out as more important than admitted:

Jakob tells me that the judgement for the murder trial will come today. I walk with him to his office to book an interview, and he says that he will check out the local newspaper site "they are usually fast". And there it is: "murder". Jakob clenches both his fists and pulls them down in a victory gesture saying loudly: "MURDER! This is my doing. Sometimes you have to let yourself be proud. It was murder!" He repeats it three times and then says: "Now I have to go to the lunch room to brag". (Jakob, prosecutor, 50+, field notes)

If the court decides not only to convict but to stick to the prosecutor's labelling of the crime, it raises the prosecutor's status. Status is accorded by the judge through the sentence, and as indicated in the quote it is also accorded from colleagues—it is possible to 'brag' about winning.

We have already seen that prosecutors may be shamed by the judge in the court proceedings. Even if this is relatively rare, stories about judges who pick on prosecutors and thereby undermine their *power to work*, are rather common. Such behaviour of the judge is taken to indicate dissatisfaction with the prosecutor's professional competence, and in the cases where the accused is acquitted, it is also an indication of failure. We have also seen that prosecutors' status may be challenged by the police. Though we have not had space to dwell upon it here, it is also routine that injured parties may challenge prosecutors' status when they close down preliminary investigations, and that defendants—and their lawyers—challenge prosecutors in court. This multiplicity of relations that are in various ways affected by, and affecting, the prosecutors' power make them used to dealing with status challenges; 'everyone is against us' (Lara, prosecutor, 30+).

Take a soccer referee. They are used to take quick and uncomfortable decisions, and they are used to get shit for those decisions. (...) It is a bit like that in this job. You get a lot of shit, really. You need to act fast...and...then they come for you, from all possible directions and you get angry calls from injured parties – the defendants rarely call you – because you don't do as they want, and from angry police officers, because you don't do what they want. (Peter, prosecutor, 40+)

Given these circumstances it is hardly surprising that there is a strong sense of solidarity among prosecutors. In the interviews, this is seen particularly in the way that prosecutors talk about emotional sharing of not only success but also emotions of failure; frustration, shame, and nervousness. 'And then you can walk into a colleague's office and say [low tired voice] "Jesus what a fucking trial and I thought I would die" [end low tired voice] that's how we do it, sort of' (Bror, prosecutor, 60+). One prosecutor who had previously been a judge, puts the difference between the two professions quite clearly, when describing emotions of nervousness before her first appearance as a prosecutor in court. She got lots of supportive advice from colleagues beforehand, and caring questions afterwards:

This is not precisely the way it works in court [among judges], there everyone works more for him or herself. So it is clear that we [prosecutors] are more vulnerable in our job, and it feels like there is a greater sense of solidarity and community here too. (Saga, prosecutor, 40+)

The sense of community and solidarity is accentuated through organisational devices, such as the rule that prosecutors are expected to take over each other's investigations and court proceedings if needed, and that they are not allowed to overrule a colleague's decision to prosecute. In minor cases it is routine that one prosecutor investigates, another decides on prosecution, and a third takes the case to court. The potential to feel shame is obvious here, given the speedy handling of, and the amount of different prosecutors involved in the processing of these cases. Shame arises when the prosecutor going to court discovers, sometimes after the trial has started, that key evidence have been overlooked and are missing, or that the case is too weak and should not have been prosecuted at all. A prosecutor however never blames a colleague in court, but deals with it, and acts to save both his or her own face and the face of the office. The rule that a decision to prosecute cannot be overruled by another prosecutor may work to protect the office from internal conflicts. An orientation towards a sense of community and solidarity between prosecutors is thus implicitly encouraged through

the organisation of prosecutors' work. In sum, prosecutors' complex and dependant power relations make them a vulnerable group of legal professionals, creating intraprofessional solidarity and the need to establish and manage emotional boundaries in interactions with others (Hayward & Tuckey, 2011) that function as a shame shield.

CONCLUDING DISCUSSION

By analysing key characteristics of the work tasks of judges and prosecutors, we have demonstrated how power and status work differently for the respective professions, and how this is connected to different types of emotion management and emotion outcomes. The analytical categories of *power over* and *power to* has served to illustrate the malleable dimensions of power, the way that power ties into status, and how this connects to emotions. To conclude, the different combinations of *power over* and *power to*, depending on work tasks and organisational contexts, enable us to identify the formation of different professional subjectivities and distinct emotional challenges and management strategies for the professional roles of prosecutor and judge that we suggest to label 'emotional profiles'.

The emotional profile of the judges is characterised by a rather distinct *power over* that requires a certain status in order to be comfortably executed, counteracting guilt and shame in relation to lay people who do not necessarily embrace the norms of the legal system and its legitimacy. Judges may be less reluctant to exercise *power over* court professionals, as these, by definition, subscribe to the system's norms and legitimacy. Here they may instead resort to 'privileged deviance' (Scarduzio, 2011).

The emotional profile of the prosecutor is characterised by dependent power relations both to the police and to judges for their *power to* do their work. The demands to flexibly manage and predict others' emotions and to adapt relationally are considerably higher than for judges. Just like the field observations of judges give the impression of a high degree of individualism, self-assurance, and identification with the legal system, field observations of prosecutors give the impression of solidarity within the profession, collective emotion management similar to what Olsson (2008) labels 'emotional harbouring', and identification with the *office*. This sense of community and collective emotion management functions as a shame shield supporting their professional exposure to status challenges.

Resentment and anger between professionals frequently occur in court as the result of colliding agendas, sometimes combined with a lack of confidence in the *power to* pursue their respective tasks. Judges take pride primarily in procedural correctness and laypeople's recognition of the legitimacy of the law, while prosecutors take pride primarily in their

objective capacity to let go of weak cases and to ‘win’ the strong ones taken to court. Their different objectives put different claims to *power to act* in court. For instance, the judge may want clear and concise questions that generate the best substance for decision-making, while the prosecutor may want unwavering respect for a specific, strategic examination.

In terms of the script of judicial dispassion, identified by a number of previous studies on emotions in court (Maroney & Gross, 2014) it can be argued that the different emotional profiles are also shaped by the need to reproduce and sustain the illusion that emotions are irrelevant in legal professional work. In fact, the judges’ lower dependency on others’ acquiescence and collaboration makes the imaginary division between emotion and rationality more readily reproduced by them at a discursive level. In contrast, prosecutors more readily recognise and speak of the emotion management skills needed in interactions with police, lay people, and other court professionals. Given these insights, judges are less likely to tolerate ruptures and breaks to the presentation of objective justice and are more sensitive to critique against the legal system, than are prosecutors.

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ⁱ Exceptions to the principle of mandatory prosecution are based on specific legal-political or process-economical circumstances and it is up to the deliberation of the prosecutor to apply these principles (Kjelby, 2015). In effect, during 2014, 25% of the decisions made by the prosecution authority lead to a notification in the criminal records registry, without court trial (Åklagarmyndigheten, 2015).

ⁱⁱ In Sweden court clerk is a two-year career position and a first step for both prospective prosecutors and judges. More experienced clerks preside in petty crime trials.

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