

The sensitive prosecutor: Emotional experiences of prosecutors in managing criminal proceedings[☆]

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ABSTRACT

For over three decades, therapeutic jurisprudence (TJ) has produced rich scholarship highlighting the inseparable connection between law and personal wellbeing. Only recently, however, have TJ scholars begun to explore the influence that the law has on those practicing it. The current research aims to contribute to this developing area of study. It explores the “emotional map” of public prosecutors in relation to defendants and crime victims, their awareness to these emotions and the impact that these emotions have on their professional decisions. The research involves in-depth interviews with 14 public prosecutors handling criminal cases in Israeli courts. The qualitative, phenomenological analysis of the documented interviews revealed three exposure levels in which interviewees discussed the emotional aspects of their work. The tension between resisting emotions and accepting them was lurking upon each one of the subjects. Their descriptions of specific raw emotions emerged at the deepest level of exposure, and at that level, anger was the most prominent emotion. Our findings raise some skepticism regarding the prosecutor image as a completely rational and provide the insight that prosecutors' emotional world is boiling underneath the surface. Moreover, the exposure of the continuous tension between acceptance and rejection of emotions provides an explanation for the prosecutors' difficulty in acknowledging their emotions in full. This tension negatively impacts the prosecutors' personal and professional lives in ways that resemble psychological symptoms of secondary trauma. The findings may contribute to the development of a “knowledge base” of emotional experiences of prosecutors that could enable the creation of models for regulating and managing emotions of legal agents, for the benefit of litigants, legal agents, and the legal process more broadly.

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1. Introduction

Yael was a victim of incest. I² was the prosecutor in her case. Yael and I were corresponding while the trial was in progress. She wrote to me after the verdict:

I never knew I had such an endless pool of tears, which could fill a vast sea... I thought I would be relieved after the verdict, but reality proved me wrong. A heavy weight fell on me and it is pressing hard. The pain seems eternal. Perhaps you have a soothing word for me?

I wrote her back:

Dear Yael, for him this may be the end of the world, but you, like a child, wake up to the morning after the end of the world, and everything around you is wilderness and ruins. Where do you start? Perhaps you should start by washing your face, looking at yourself in the mirror, and meeting your new self....

Yael wrote back:

I told my therapist about the “end of the world wilderness and ruins” and about the difficulty of the verdict. I told her that you managed to define my feelings precisely, where I failed to do it although I tried. I told her that you don't hide your feelings, even when on duty. I found myself in your words because, in a way, when the verdict was handed down, you experienced it with me and that helped me feel understood and not alone.

Yael had never heard of “therapeutic jurisprudence” (TJ), but she spoke the TJ language and taught me about my own feelings at the trial.

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¹ The article is based on the first author's thesis research, which was conducted under the supervision of the second author.

² This story is told by the first author, who was a public prosecutor at the time of the study. “Yael” is a pseudonym, as are the names of the other research participants.

Even in the era of TJ, the combination of “law”, “emotion” and “prosecution” is not a given. The research on which this article is based sought to reveal the truth behind the figure of the rational prosecutor, as portrayed in the research literature, and examine the emotional aspects of the prosecutors’ work, during their intricate encounters with crime victims and defendants in the course of criminal procedures.

This article aims to examine the emotional experience of prosecutors managing criminal procedures. It is based on research inspired by theoretical writings on TJ (Wexler & Winick, 1996), which regard the law in all of its aspects to be a powerful agent, with significant positive or negative implications for the wellbeing of individuals. Researchers of TJ are interested, among others, in the implications of the legal occupation for legal actors (Murdoch, 2000). Methodologically, the TJ framework encourages the integration of scientific knowledge and empirical tools from the social sciences and psychology into legal research (Wexler, 2000). We selected the qualitative research method for this study because it enables us to describe a phenomenon as it is perceived through a variety of personal, subjective, and multi-dimensional perspectives. Our assumption is that we are examining not merely one reality but many, which are created by social structuring (Lincoln & Guba, 1985).

The study involved fourteen interviews with public prosecutors, representing the State of Israel at criminal procedures on behalf of different district attorneys’ offices. The interviewees included men and women, Jews and Arabs, at various levels of seniority.

Public prosecutors are granted wide decision-making power by law. For example, prosecutors are authorized to decide whether or not to bring a case to trial. They determine the charges included in the indictment, how to handle the case in court, which witnesses to summon, and so on. The present study examines the emotions that prosecutors experience in the exercise of their professional discretion, until they reach a final decision, and during their contact with the other actors involved in a case. The examination is intended to promote the study of decision-making in the legal arena as a social phenomenon. It can also assist public prosecutors in improving their institutional functioning as they manage criminal procedures on behalf of the state.

2. Theoretical background

2.1. Therapeutic jurisprudence

TJ emerged as a new approach at the end of the last century (Wexler & Winick, 1996). It contends that the law has far-reaching psychological implications, both positive and negative, for everyone involved. To understand these implications, the law should be examined through a therapeutic lens. TJ assumes that it is impossible to examine the law in a sterile way, detached from the reality in which it exists. On the basis of this assumption, by importing terms from the social sciences and the study of emotion, research has been carried out in the last two decades to investigate the effects of the law on the stakeholders’ wellbeing. Among others, some research inquired into the effect of criminal law procedures on defendants (Ward & Gannon, 2006), the effect of divorce procedures on children (Weinstein, 1997), and the effect of different phases in the criminal procedure on victims (Hoyle, Erez, Kilchling, & Wemmers, 2011).

TJ is not merely a research agenda. It contains an aspiration to promote positive and therapeutic outcomes of the law, and to reduce its anti-therapeutic effects. According to the TJ perception, attorneys and judges function as agents of social change, and as such, their roles should be reconstructed to promote the wellbeing of the stakeholders with whom they interact (Perlman, 2007).

TJ literature, inspired by the late Bruce Winick and led by David Wexler, promotes a holistic approach to maximize the psychological and interpersonal gains from the interaction between judges and litigants (Winick & Wexler, 2003). Although much of the literature is focused on designated alternatives, such as problem solving courts, there is a growing interest in the judicial role of mainstream courts as well (Jones, 2011;

Spencer, 2012). Recently, judges’ roles have been reframed and theorized as serving judicial conflict resolution (JCR) (Alberstein, 2015).

TJ scholars have also considered the ways in which lawyers can improve their empathic discourse with stakeholders, for the benefit of these stakeholders as well as for improving the image of the profession. Such practices have acquainted lawyers with a broader perspective on facts which considers the psychological, social, familial and physical implication of legal solutions, thus enhancing their ability to weigh various options for their clients’ benefit (Defoe, 2012). The TJ movement has affected professional expectations from lawyers, specifically, to replace intuitive interpersonal skills in their work with clients with a constructed use of findings from the psychological literature. More broadly, the role of lawyers has been reconstructed, from the TJ perspective, as peacemakers, and their social function redefined as crafting value-based, sustainable, and holistic solutions that build relationships (Wright, 2010).

2.2. Empirical research on law and emotions

The study of emotions includes a wide interdisciplinary body of knowledge in the social sciences. Researchers have explored the definitions of separate emotions (Damasio, 1994), their components (Ben-Ze’ev, 1996), and characteristics (Frijda, Mesquita, Sonnemans, & Van Goozen, 1991). Subsequent studies have considered the receding dichotomy between “reason” and “emotion” (Abrams & Keren, 2009), the link between emotions and decision making (Phelps, 2005), and the various ways in which emotions affect patterns of evaluation (Choe & Min, 2011).

Scholars have identified and examined the emotions of legal actors, focusing, for example, on specific emotions like compassion, as the core emotion in legal work (Hopkins, 2015), or anger, as related to judges (Maroney, 2012). One strand of research focuses on the effects of emotions on judgment (Bandes, 2015; Clore, 1994). For example, Feigenson and Park found the jury’s emotions, affected by victims’ declarations, influenced their decision making (Feigenson & Park, 2006).

Despite the growing knowledge about affective elements in the legal profession, many players in the legal field are still persevering in a formalistic approach concerning emotions. Lawyers, in particular, are instructed to “think” rather than to “feel,” and are expected to act in an emotionally detached manner (Yakren, 2008). Unfortunately, working in an emotion-suppressing job produces negative results, such as increased tension and burnout, secondary trauma, and early retirement (Silver, 1999). Instead of using shallow self-regulation mechanisms of emotions, such as suppression or repression, researchers offer models of deep regulation methods that are more effective in minimizing the negative consequences and maximizing the advantages of emotions (Grandey, 2000; Maroney, 2011).

Research in TJ and in the emotional labor fields has focused on the emotions of some legal actors, such as investigators, lawyers, and judges, but prosecutors were left emotionally isolated in those fields of research. The scant research on prosecutors’ emotional maps focuses not on the prosecutors themselves but rather on the emotional aspects of the trial. For example, when describing prosecutors’ stereotypical empathy toward battered women as defendants, the focus was on the women rather than on the prosecutors (Becker, 2001). Similarly, studies about prosecutors and victims showed that sharing emotions with prosecutors helped victims cope with the criminal process and promoted their rehabilitation (Goodrum, 2013). Meaningful connections between prosecutors and victims promoted trust between them.

Although the influence of internal factors, such as emotions, on decisions has been acknowledged (Bandes, 2015), the ways in which emotions affect prosecutors’ decisions are yet to be studied. Even at a time when emotionalization has been penetrating the field of criminal law, the absence of research on this topic is quite noticeable, possibly because of the difficulty in interviewing public prosecutors as individuals rather than as public agents (Blix & Wettergren, 2014). Public prosecutors are typically depicted as rational figures representing the

institution, emotionally detached, conviction-oriented and suffering from tunnel vision (Bandes, 2006).³ By contrast, the present study uncovers the emotional aspects in the work of prosecutors.

3. Method

We followed a qualitative-phenomenological approach in our research. It involved in-depth interviews with 14 public prosecutors, both men and women, Jews and Arabs, at various seniority levels, handling criminal cases across Israel.⁴ The emotional aspects of the prosecutors' work may be significantly affected by various personal variables such as gender, years of experience in the job, and area of residence (Cornille & Meyers, 1999), and we made a special effort to obtain a theoretical model that reflects the widest range of representations of the issue under study (Corbin & Strauss, 2008).

To recruit interviewees, the first author (a public prosecutor herself) approached the various District Attorneys following the ethic approval for the study, and requested permission to contact colleagues who meet the abovementioned criteria. The DA's then contacted prosecutors who they thought matched the desired profile. Most of them accepted the invitation to participate in the study, with the exception of few who were unable due to schedule difficulties. Following the acceptance of consent, the researcher then contacted the participants directly and an interview meeting was set. Interviewees were informed that their participation was voluntary. Interviews were based on a semi-structured guide⁵ that enabled the interviewees to talk about issues that are meaningful to them (Spradley, 1979). The interview guide referred to the following domains: emotional aspects in the prosecutors' work concerning defendants and victims, the way in which these emotional aspects suit the organization and its needs (emotional labor), recognizing emotional hot spots in the criminal procedure (Wexler, 2011a, 2011b), and the way in which prosecutors' emotions are expressed in their decision making. The interviews were conducted by the first author, were supervised by the second author and took 90 min each.

4. Findings

The data obtained from the interviews uncovered two main intersecting patterns. The first relates to the level of exposure, reflecting the degree of openness in which interviewees were willing to discuss the emotional aspects of their work. Although the interviewees differed in their willingness to share emotions, a similar pattern emerged: as each interview continued, rapport was built and interviewees became more candid about their experiences. The second pattern, which emerged across the various levels of exposure, is a tension between rejecting these emotions and accepting them.

The interviewees were taking "one step forward and two steps backward," at times stating that emotions were not part of their job description, and at other times revealing that emotions were at the very core of their work.

4.1. Resisting emotions vs. accepting them: The core conflict in prosecutors' work

On the one hand, almost all interviewees acknowledged the existence of a broad range of strong emotions at work, experienced by them as well as by all involved in a trial. On the other hand, when matters became too personal in the interviews, most interviewees reported

³ According to the Israeli system, prosecutors should take a detached stance and should not go all out for a conviction. Instead, prosecutors are expected to be 'ministers of justice', concerned only to put the case before the court in as impartial a manner as possible.

⁴ Public prosecutors in Israel handle criminal cases in which the maximum sentence according to the penal code is more than three years, as well as some specific crimes such as sexual offenses. Police prosecutors handle less serious offenses. They were not included in this study.

⁵ The guide is available upon request of authors.

experiencing resistance to the involvement of emotions in their work. Because emotions were regarded as undesirable for being powerful and influential, they were perceived as contrary to the rules of the game. This is how David explained his conduct in the extremely emotional trial of a former Nazi commander:

There's a heart under the robe, but the robe is protecting me... So I can do the job that is called jurisprudence, without becoming emotional. It is a very safe place from emotional outburst, the idea that everything is within the legal procedure. Maybe because emotions are so strong, you have to say "no" because if I open myself to emotional empathy just a little bit, I won't be able to deal with it anymore. So I prefer to go to the other extreme and banish any emotion whatsoever.

The interviewees stated that they were gradually indoctrinated to reject their emotions and adopt an anti-emotional ethos. In their descriptions of how they rejected emotions, the interviewees exposed legal formalistic approaches: the law is based on validated rules, and emotions stand in contrast to its values because they create uncertainty and inequality. From this point of view, emotions were depicted as expressing weakness, professional failure, and disruption of proceedings:

I managed a case against a father who was brutal with his wife and kids... When the girl got up to testify and started describing life at home, I felt tears choking me, but I couldn't cry, I'm a prosecutor in a court and I cannot show weakness. But then I saw that the judge herself was crying, and that the defense lawyer was crying as well, and I broke down in tears. The four of us stood there crying, the witness, the judge, the defense lawyer, and myself. But you make this event disappear, as if it never happened.

[Linda.]

The interviewees described emotions as being in opposition to logical thinking, claiming that the logical thinking required for the job is reflected in use of power, ruling, and being goal-oriented. Not surprisingly, sentiments like pity or empathy were viewed as feminine and expressing weakness. A related theme concerned the ways in which prosecutors resisted these and other emotions.

4.2. Ways of resisting emotions

On the surface, the interviewees had difficulty addressing emotionally loaded issues. Instead, they revealed how they were using various techniques to resist almost automatically the invasion of emotions. The methods of resistance can be divided into two broad categories: subversion and avoidance.

4.2.1. Subverting emotions

When emotions are high but expressing them directly is undesirable, one way of discarding them is by subversion. The interviewees spoke about how they offload their emotions on family members, defense lawyers, and judges.

Representing the state is like being a hollow vessel. If this vessel aches or feels weak, is tired or planning to go to a movie that night, it doesn't matter. But when I'm in the company of a lawyer or with a judge whose behavior is upsetting, it's then that I'm unable to manage my feelings and they burst out... I've never thought of it. Then, I let myself be my true self. With victims and defendants I'm official, they're the guests, and the judges and defense lawyers are close neighbors...

[Sandra.]

4.2.2. Avoidance

Interviewees spoke about avoiding emotional dilemmas or declining roles that trigger such dilemmas. Avoidance of this type emerged at

different stages of the process, including during some less expected ones. For example, Karen described her emotional experience of communicating with families of homicide victims before reaching a plea bargain:

I want to stop these talks, to break off the emotions, to break away from my professionalism... these talks are hard to cope with... who are you to call that family a “difficult” one? They’ve lost their child. But they object to the bargain we’ve reached... and on the other hand you are torn asunder. In those moments you are cut off from all emotion, and from being professional, you are actually neither one of them.

4.3. Accepting emotion: rational management of emotions

Despite the continued rejection of emotions, prosecutors accepted their existence. This acceptance, however, is combined with rational management. Participants described how at times they regulated undesired or unneeded feelings, and at other times externalized and even generated the required emotions (Hochschild, 1983). These were mostly superficial processes, however, in which emotion was regulated by manipulation (Grandey, 2000).

4.3.1. Efforts to control emotions

Interviewees described how they had been trying to control their emotions. Their descriptions concerned temporal issues (the exact point in time when they took control) and context (allowing their emotions to affect their attitude toward the stakeholders, while controlling the same emotions when making the decision regarding them). Interviewees also spoke about the way their emotions were expressed (for example, through body language) and about the kind of emotions they externalized or concealed (positive vs. negative).

Lora, for example, made a distinction between conduct and decision making:

Personally I loathe people who think they are smarter than anyone else, and that they can buy me and the whole system. I recognize this feeling, but being a public servant, I control it. It won’t affect my decision, but it will affect my attitude toward them; my language will be harsh with them. This is my weakness.

4.3.2. Fabricating emotions toward stakeholders

According to the interviewees, some emotions are desirable at given stages of the legal process, and can be deliberately produced. The interviewees spoke about using their anger, for example, by aiming it at the judge. For example, assuming that the judge was sensitive to children’s safety, the lawyer argued that road rage endangered pedestrian children.

Demonstrating the deliberate use of emotion, John spoke about “fabricating empathy” toward plaintiffs as part of the job requirements of the prosecutor:

I think the method of managing emotions in a criminal case is a rational, not an emotional one... Although I don’t perceive myself as the most pleasant of men, you become a bit softer, you listen more, and you stay within the boundaries... To explain to the victim that we cannot prosecute the case because we need to follow the rules... is an art form.

4.4. Constructing emotions as professional devices

At this deeper level of exposure, interviewees were ready to regard their emotions with less resentment, and retrospectively examine emotionally-loaded experiences with defendants and complainants.

Hence, at this deeper level, the narrative changed and the emotions played a significant role in the lawyers’ professional lives. But because the institutional ethos is one of rejecting emotions, the interviewees followed two main modes of addressing them - internalization and justification - which reflected the internal tension between rejecting emotions and accepting them.

The internalization mode included absorption of emotions, hiding behind the professional framework or legal rules, and the “laundering” of emotions.

4.4.1. Absorption

“Absorption” refers to the accumulation of long-lasting emotional residues as a result of ongoing emotional involvement, without the opportunity to properly vent the emotions in question. Prosecutors are engaged in the legal process daily, and the accumulated results are powerful.

Evilness is everywhere in criminal procedures ... All sides wish they had never been there. No one says: “I wish I were an eye witness to a murder,” or “I wish I were a victim...” people don’t want to get there. They were jolted out of their routine into that situation... They and us meet there in our work place... We absorb all the frustration, fear and anger and disappointment and joy, very little joy I would say... And you feel it percolates inside you. We absorb a lot of things. (Michael)

4.4.2. Integration of the individual into the legal system

Some interviewees presented themselves as subject to the rules of the organization, and used this perception as a defense mechanism (“I am nothing but a vessel”). This is how Michael described it:

We are doing our job, we always examine everything, we are level-headed, we are fair, and we seek the truth. We are not individuals. If we show emotions, someone will say the lawyer has cried during the trial... I’m a crybaby too...it’s OK [laughing]. Interviewer: Are you a crybaby? Interviewee: Yes. And a big one. Interviewer: “When do you cry?” Interviewee: “I cry a lot. Even when it’s not appropriate.” Interviewer: “When do you cry at work?” Interviewee: “I don’t cry at work.”

4.4.3. Laundering

If emotions are exposed, they may play a role in decisions through “legal laundering.” This mechanism disguises emotions as legal arguments, rendered in an official style, or converted into creative solutions.

Some interviewees claimed that hiding their emotions was in reality a defense mechanism, and that the rules of the system provided an immediate way for doing it.

The fact that the existing rules are conceived to resist emotions creates a vicious cycle: prosecutors suffer from the negative results of working in an emotion-suppressing job (Yakren, 2008) and therefore retreat to familiar rules as a defense mechanism; but the rules that reflect the non-emotional ethos fail to provide prosecutors adequate tools for dealing with their emotions.

I think that my emotions are not visible in the official records. No, I’m awfully official... I disguise them stylishly.

[Sandra.]

4.5. Justification modes

Four themes emerged, representing four ways of justifying the everyday professional reality of the prosecutor: emotions as a given fact, emotions as empowering and enriching, emotions as intuition or professional compass, and emotions as an engine.

4.5.1. *Emotion as a given fact*

Emotions are viewed as an inevitable part of reality, neither good nor bad:

Our work, we can say many things about it, but there are two things in it that are very powerful, sort of natural laws. There is never a dull moment, and you live almost in unimaginable domains... But at the end of the day, you've got a very human life story. Very extreme in its realization, pathological. And when you are prosecuting, you are touching and not touching the evil. It's in front of you all the time. It's around you all the time. This should be interesting to explore.

[Lisa.]

4.5.2. *Emotion as empowering and enriching*

Emotions are conceived as providing personal advantage because of what they contribute to the individual. For example, they help prosecutors better understand the personal experience of the victim or of the offender, and even reflect upon their own lives:

I find all the emotions relating to the defendant and his family intriguing. I used to sit and watch the interactions. The way they would hand him the sandwich... Family is like looking into someone's soul... And I remember the sentences they said to me... "I'm not like you, I'm a simple man..." They actually had a better upbringing than I had. I was proud of myself when they reminded me of where I came from. I choose to come here every day, because every day I reconnect with my starting point. And this is the right choice for me. The encounter with people who remind me every day that I could have been in their place.

[Lora.]

4.5.3. *Emotions as intuition or professional compass*

Some of the interviewees stressed the professional benefits of emotions, especially as a supplement to rational considerations in making decisions. Emotions emerged as particularly helpful in evaluating the reliability of complainants:

Reading through the material, it looked like a baseless complaint. It was clear that we would summon her [the alleged victim] and inform her that with great sorrow and heartfelt regret we are closing the case. And when she got here we asked for her opinion. She was insisting on her truth in her not-so-fluent and unsophisticated language. From the most basic viewpoint of a person fighting for her truth. And we were convinced and went from skepticism and doubt to having full trust, appreciation, and respect... You believe in someone when you respect them and have empathy toward them.... All this is called trust. Trust is basically a collection of multiple emotions. Trust is an emotion. Trust is a cluster of emotions.

[Lora.]

4.5.4. *Emotions as an engine*

Another benefit derived from emotions, as conveyed by the interviewees, was the fact that emotions are an engine that motivates lawyers to be proactive in handling their cases. The experience of anger as a strong motivator stood out, based on the belief that any given situation can be changed (Berkowitz & Harmon-Jones, 2004). Interviewees described how when angry, they took determined action to fight injustice and reveal the truth:

The way he [the defendant] managed the case, his arguments, made me angry. For example, he claimed to have had an ABS system in his car, which was obviously a lie... A feeling of anger arose in me, which I transformed into action, in the sense that it made me go out of my way in order to achieve justice in this matter ... And in the verdict, the court assigned some weight to this. It mattered a lot to me. Getting the feedback that my effort had an impact.

[Nick.]

4.6. *Exposure of specific emotions*

At the deepest layer, interviewees exposed specific emotions they felt toward stakeholders in various circumstances. Anger emerged as the most common emotion, but at times it concealed other underlying emotions such as sorrow, fear, and pity. Additionally, other specific emotions not related to anger were revealed in the interviews, such as empathy, compassion, and sadness.

4.6.1. *Anger*

Interviewees spoke freely about their anger, and they appeared to be proud to acknowledge it. Feeling angry bolstered their status, especially among men (Tiedens & Linton, 2001), who noted that being angry during cross-examination was common. Participants also portrayed anger as typical to the legal world, where at times it appeared not as personal but rather as legal-historical: being outraged by an offense meant having a strong will to make sure that justice is done. Anger appeared in the interviews as a long-lasting emotion. Neuroscience studies show that anger produces chemical reactions of pain relief, and that it is possible to become addicted to it (Seltzer, 2008).

Alongside the deliberate public anger, at times interviewees' anger was directed at stakeholders whom prosecutors compared themselves to, such as defendants who are typically law-abiding and normative. In the following excerpt, John spoke about his anger toward a defendant who was charged for abusing his child. He pointed out that his anger toward that defendant exceeded any anger that he had ever felt against heads of crime organizations:

We expect more from those who are similar to us. The fact that the defendant is a parent... he's not a drug addict... middle class... the lack of taking responsibility here is worse... We are much angrier with those who are similar to us.

4.6.2. *Anger as a cover for other emotions*

Examining anger revealed that it was an emotion that is institutionally accepted, as long as it is targeted toward offenders. But at times, anger was a cover for other, less accepted emotions, such as pity toward a pedophile defendant. Anger toward victims is considered less acceptable, but it appeared in some instances, together with some other, hidden emotions. Whoever anger was targeted toward, it was only the tip of the iceberg.

At times, anger was a cover for emotions of compassion or empathy, especially toward stakeholders with whom interviewees could identify. Anna spoke about deep identification with the pain of a plaintiff who complained of incest, a teenager whom she fully trusted and with whom she went all the way to fight a hopeless battle. But instead of fighting, as Anna has expected her to do, the plaintiff chose to run away, which made Anna extremely angry:

All the evidence was against her. I gave it a lot of thought, and finally I decided to go with her... Suddenly she disappeared... The police was looking for her but couldn't find her... I found her on Facebook... She explained to me why she hadn't come and that she didn't want to hear anything else about me or this case... She sounded in awful state. I tried to convince her... I waited for her in court and she just didn't show up... It was so difficult [on verge of crying]. This was a case I managed for a long time [cries]... This betrayal, the fact that I was there for you, I went with you against all odds, and at the end you've turned your back on me. You didn't go all the way... I was angry that she chose the easy way out.

4.6.3. *Compassion, empathy, and pity*

There is probably a reason why pity was felt toward defendants and compassion toward victims. The moral appraisal made it legitimate to show pity toward a defendant, and even take it into consideration

when making decisions (Nadler, 2012) Typically, we feel pity toward someone whom we regard as inferior. In contrast, we feel compassion toward those whom we view as equals in the deepest sense (Spelman, 1997).

Most descriptions of pity toward defendants were qualified, like the ones described above. Even when pity influenced the punishment, interviewees justified the reduced sentence by claiming that the system is able to absorb marginal reductions in minor offenses.

Pity does not reflect a therapeutic approach; rather, such feelings express the “impatience of the heart”, and the will to be relieved of the stress. In contrast, descriptions of compassion, which were felt mainly toward victims, reflected identification from the bottom of the heart with one’s equals. At times, interviewees described compassion as an emotion that left its imprint on them for many years:

There was one witness [a Holocaust survivor]... This woman... was connected with the rest of the survivors by a shared destiny from hell... As her time to testify approached, I felt something was slipping away... I understood that the closer we came to that date, she feared more and more the time she would have to stand and testify in front of him. So I came to her in the evening, and she told her husband to leave the room and she told me: “Listen, I know you want me to testify in court tomorrow, but if I do I will commit suicide” [crying]. Even today it is hard [crying], yes hard, I gave her up, yes.... I knew she was a very important witness... I don’t know if it was an emotional decision or a responsible decision by a prosecutor... Some sort of public responsibility that is beyond jurisprudence... Or maybe I chickened out too quickly, and someone else would have gone all the way, and she would have survived...

[David, who managed a trial of a Nazi criminal.]

4.6.4. Sadness or sorrow

The interviews revealed that sadness was a precursor of a thorough analysis of the situation, including its marginal facts. This finding echoes other studies reporting that sorrow, unlike anger, generated long and deep processing patterns. In an experiment carried out among police investigators, angry investigators behaved differently from sad ones (Ask & Granhag, 2007).

It is known that deep thinking connected with sorrow tends to ascribe responsibility to various causes, not only to the person who is the target of the sorrow (Keltner, Ellsworth, & Edwards, 1993). In the present study, sorrow provided a broader perspective to interviewees (Tiedens & Linton, 2001), which helped them gain important insights.

Noemi, for example, said that the long time she had been dealing with painful stories afforded her a perspective on her own life. Sorrow and sadness are at times associated with generous decisions made with regard to another person, because they promote acknowledgment of the perspective of the other. But the interviewees cited mainly helplessness when describing the experiencing of sorrow, and reported a feeling of submission and lack of existential control (Shelly: “I have absolutely no control over anything”).

4.6.5. Fear

Most interviewees were reluctant to speak openly about fears they may have experienced under certain circumstances. Fear contradicts the professional ethos presented by the interviewees, who stated that in principle they are not afraid of anything (if they need to fight, they fight, and if they need to retreat, they do so fearlessly). Feeling lack of control (Rachman, 1990) conflicts with the institutional expectation of public prosecutors to be always in control. But underneath the ethos of control, existential anxieties are continually “infused into the veins,” in Shelly’s words. The efforts to reject fear as a non-prosecutorial emotion result in its absorption and concealment.

John wished that he could take off his “professional armor” and expose the fear he had experienced when he was being threatened:

I have been threatened for three years... You’re making lunch while two policemen are walking in your garden, you’ve got a child in the house, it’s an insane situation. Your basic instincts tell you that it won’t happen to you... Our abilities, our strengths make us feel safe, which is completely false... We are so exposed, but our perception is so God-like... because I know the law, and my friends are cops... This of course is complete stupidity and nonsense. But you can’t afford facing yourself saying “this is stupidity” because then you’ll collapse.

4.6.6. Disgust

This kind of emotion was not dominant in the interviews, and it was not typically expressed in relation to given stakeholders. With regard to defendants, disgust was mentioned as a reaction to certain types of offenses, that were considered to violate the purity of all involved such as child sexual abuse (Horberg, Oveis, Keltner, & Cohen, 2009):

There were some defendants who literally made me sick. It was automatic. An abuser of old people who robs them... I’m not interested at all in seeing him... I won’t touch the emotional areas of such a person. But if a man is a murderer, I might do. I mean, there should be something very very mean, extremely cruel and bad in a person’s behavior for me to distance myself from him emotionally. I even don’t let our eyes meet...

[Shelly.]

The response to this feeling is described here clearly as looking the other way, referring to physical or emotional distancing (Ugazio, Lamm, & Singer, 2012). The reason may be the moral judgment (Chapman & Anderson, 2013) that lies at the basis of disgust.

The problem with a decision affected by disgust is that by moving away the prosecutor may become detached from the situation; in such state of mind it is more difficult for the prosecutor to get to the bottom of the case and make hard decisions that require a deep understanding of the circumstances.

4.6.7. Shame

Prosecutors typically expressed feeling shame as individuals or as a professional group, rather than feeling shame with regard to individual actions (Ben-Ze’ev, 2001). This type of shame is inseparable from moral judgment (Barker, 2003). Shame was also expressed as a byproduct of the interviewees’ emotional response, which was considered to clash with the formalist views mentioned above. George’s description of how he was required to conceal his nationality and his emotions illustrate this point:

Already, because you’re a prosecutor, people suspect that you probably wish to sell your cases, so if you’re also an Arab... [raises his tone] you’re even more of a suspect.

The interviews also revealed that defensive or aggressive behaviors were at times covers for an underlying feeling of shame. In this type of behavior, gender differences stood out. Whereas George described his severe approach toward Arabs as intended to disguise shame, Linda internalized emotions of pity toward the defendant out of shame, and adapted masculine behaviors to conceal sentimentality. In both examples, whether resulting from a gender identity or nationality, the interviewees experienced shame because they had feelings toward the stakeholders.

4.6.8. Guilt

Guilt was prominent mainly among interviewees who had a troubled conscience for different reasons: national, gender-based, or professional. John experienced guilt as a male prosecutor managing cases of sex offenses committed against women:

Rape cases should not be handled by men. You try not to hurt... but on the other hand you need to get inside her genitalia, because whether his genital got into her genitalia or not is exactly what you need to prove. And you are completely aware that this is insanely personal for her. And it is emotional for you as well... Twice as much if you're a man, because there is no similar experience for you and for her... I belong to the predator group, and I'm completely aware of it. Rape is a male thing and I'm a male... My personal contact with feminism started with guilt... and I think it affected the way I work, the way I meet with a rape victim, it is different than other cases. You don't feel guilty in a murder case... But I think that dealing with the concept of guilt over the years... have sharpened my sensitivity and I think the other side feels it as well.

As opposed to shame, on the practical professional level, the emotion of guilt motivated action. Guilt often appeared as an existential emotion for prosecutors, who perceived themselves as being bad representatives of the accuser, which contradicts the perception of their role as representing the good, moral side.

The self-perception of being bad appeared to be connected with the unsolved tension between the presence of emotions and their continuous rejection. This is how Ron summed up many years of work as a prosecutor:

You see, the decisions I've been making, for half a century almost, have made me a worse person... Interviewer: Why are you saying that? Interviewee: Because I have to overcome my feelings in order to use the law. There is no other way, I have no choice....

Consequently, avoiding emotions on a daily basis produces a feeling of collective guilt. Most interviewees admitted choosing the profession "to be on the good people's side," yet some of them felt that along the years they had become bad.

4.7. The concealed path and long-lasting residues

Some of the emotions discussed by the interviewees emerged as long-lasting. These included anger that became a way of life; sorrow that was felt for years; guilt that became part of the interviewees' identity; and fear that turned into constant anxiety. Emotions such as sorrow, fear, and repulsion were absorbed and became accumulated in the interviewees' personalities, as an expression of the tension these emotions created in their professional lives. Interviewees described the long-lasting implications for their professional and personal lives of what they referred to as "continuous denial." They portrayed their personal lives as unfolding in the shadow of their work, and as an unstable existence originating from "being constantly fed by fear." Shelly said:

Over the years, I've been holding the conception that the world is not at all what it seems when you are with your children, fixing an omelet, going to work and back, and so on. The world is completely different, and the fact that you fail to see it because you are a normal human being doesn't mean that it can't pop up into your life and play havoc with it ... And this unstable existence ... is feeding a lot of my personal fears... I'm constantly fed by them. The world is not so good, not so good....

John described what was going on in his mind immediately after being traumatized by the photo of a child's body, a crime victim in a case he was managing. His description is a mixture of emotions, including disgust, fear, and deep sorrow. But what stands out most is the detachment between the emotional world and the professional life caused by constant rejection of his emotions, which eventually led to detachment from himself.

I couldn't open the pathology pictures of the baby. No. And only when we were preparing for the court hearing did I go to the hospital, and they made for me a 3D simulation... It was the first time that the dead baby and I looked each other in the eye... I came home and sat down on the sofa, and got up in the morning, I have no idea what happened. I disappeared. I got home in the evening, passed out. I just collapsed. And the following day, business as usual. Like my mother had taught me, working, doing. Are you scared? Don't be scared. It is what it is...

5. Discussion

The data provided by the interviewees presents a complex picture, containing multiple layers of exposure regarding the degree of openness in which the interviewees were willing to discuss the emotional aspects of their work. At the same time, the interviewees exhibited constant movement along another axis, between acceptance and rejection of the emotions they exposed. Outwardly, the interviewees objected to their emotions. To deal with the unwanted presence of emotions in their work, they struggled to perform conscious emotional management. These efforts, however, seem superficial and were only partially successful. At a deeper layer, prosecutors were more connected with their emotions. But even at this level, the institutional resistance to emotions affected the way they dealt with them. Often, prosecutors used modes of internalization to cope with the tension between their emotions and the resistance to them. At the deepest level of exposure, prosecutors allowed themselves to express specific emotions (reconnected with an emotion experienced in the past). At this deepest layer, interviewees uncovered the various ways in which different emotions affect their work. For example, prosecutorial emotions affect their appraisal of defendants and victims and affect prosecutor's conduct and decision making. Perhaps most important, the effort to conceal and subvert emotions influences prosecutorial work on a daily basis and may be a cause of professional fatigue and stress. Both professional and personal difficulties emerged from each one of the layers described by the interviewees, based on their emotional life at work.

From the professional viewpoint, constant rejection of emotions means also avoiding emotional areas that may contain relevant information (Choe & Min, 2011). If emotional experiences had been exposed and discussed openly, they could have been collected in a database, which would be relevant both for research and in practice (Nonaka & Konno, 1998).

The interviewees' descriptions of their efforts to control emotions reflected mainly repression and suppression mechanisms. The suppression of emotions is considered undesirable from a therapeutic perspective (Morris & Feldman, 1996). Subverting emotions is just as undesirable, because the wrong emotion is directed at the wrong person (Dunn, Billotti, Murphy, & Dagleish, 2009). Studies on emotional labor have shown the negative implications of disparity between the worker's authentic emotions and those that the professional position requires (Morris & Feldman, 1996). This disparity was especially visible in the case of lawyers (Ashforth & Humphrey, 1993).

At a deeper layer of exposure, the interviewees expressed a positive and enriching reconnection with emotions, but they still kept hesitating between concealing and justifying the emotions.

When concealing emotions, prosecutors found themselves absorbing their emotions or assimilating them in their self-definition as "the system" For example, the interviewees needed to assimilate the organizational ethos and reduce emotional dilemmas accordingly. This stood in sharp contrast with their daily tasks, which involved moral judgment, and which naturally includes emotional aspects.

When justifying emotions, prosecutors agreed that they were part of prosecutors' complex professional reality, and mentioned the positive aspects of work-related emotions: emotions make them better people or better professionals, and motivate them to act. One way of justifying

emotions, was to reflect on them as contributing to their professional skills, to the level of an emerging “intelligent intuition” (Ben-Ze’ev & Krebs, 2015). Yet, from the personal point of view, already at this level, it was implied that the “professional comfort” (in Shelly’s words) contrasted with the inner “emotional storm.”

The justification path was merely an acknowledgment that prosecutors found it difficult to speak, think, reflect, and reach conclusions about their own emotions. This is not surprising, considering the institutional anti-emotion ethos. Without a profound discourse concerning the use of emotions, it is impossible to adopt a therapeutic point of view toward stakeholders.

Studies have indicated that the exchange of sincere emotions between prosecutors and victims enhances trust between them and contributes to the judicial process (Goodrum, 2013). But such emotional discourse can only occur when lawyers are able to confront their own emotions. Without such emotional management, the use of therapeutic techniques in lawyer-victim or lawyer-defendant interactions is likely to be futile (Balson, 2013).

At the deepest level of exposure, the findings reflected the interviewees’ reconnection with specific emotions such as anger, compassion pity and fear, but they appeared in different frequencies. Accordingly, they were arranged in the model in a ways that reflect not only the frequency in their exposure but also the movement along the acceptance-rejection axis. Anger stood out as the most common emotion, which is consistent with its portrayal in the literature (Maroney, 2012) as the least stigmatic of all emotions in the work of law. The other specific emotions, some of which were concealed beneath the anger, were organized along the axis of tension extending between rejecting and accepting emotions. Anger, the most legitimate emotion, is situated close to the acceptance end. It is followed by compassion or pity (as long as they are directed at legitimate stakeholders), followed by disgust, and finally fear, located near the rejection end, as it

clashes with the ethos of fearlessness mentioned by the interviewees. Entrenched emotions, including sorrow and existential guilt, are placed in the deepest layer, where they are likely to remain for a long time. Fig. 1 illustrates the main findings and their interconnections.

The salient presence of anger is not surprising, because anger is the judgmental emotion and it represents institutional censure of wrongdoing: “when law itself is angry, so should be the judge” (Potegal & Novaco, 2010). Positive aspects of anger have been identified in other studies: anger was correlated with individuals’ optimism regarding their success in accomplishing their assignments, their readiness to take risks, focusing attention on the event, and motivation to amend what was perceived as injustice (Berkowitz & Harmon-Jones, 2004). At this point, a difficulty emerges because the anger that is perceived as professionally justified is occasionally exposed as unmanaged anger, following mainly from the motivation to regain control. When experienced out of context and unregulated, anger might result in improper decision making or lead to uncontrolled venting.

In the present study, anger often concealed other emotions. This finding is consistent with psychological studies that referred to anger as “the tip-of-the-iceberg emotion” (Seltzer, 2008), a secondary emotion underneath which lie other, deeper emotions. Peeling off the anger was necessary to understand the real emotions that were at work. Such delving is crucial, because different emotions result in different evaluation patterns and affect decision making differently (Choe & Min, 2011). Analysis of the emotions concealed under the anger exposed them as less legitimate. For example, the emotion of pity emerged as an unwelcome, even shameful one in the eyes of the interviewees, particularly when felt toward defendants accused of severe crimes. The objection to pity was expressed mainly by female interviewees, for whom experiencing “feminine emotions” was perceived as threatening the rational thinking required for the job (Minow & Spelman, 1988).

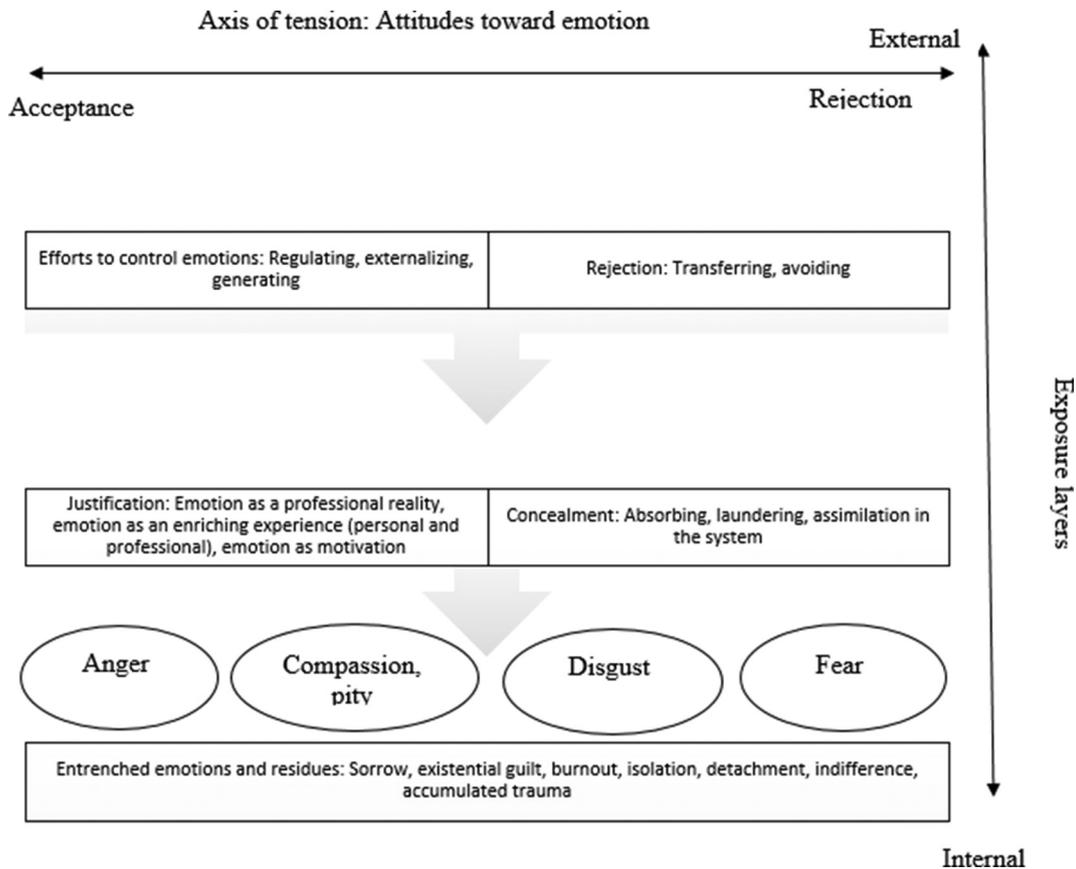


Fig. 1. Prosecutors’ emotions situated between acceptance and rejection: A multilayered model.

At the deepest layer, among long-lasting emotions, interviewees mentioned post-traumatic symptoms, detachment, anxieties, burnout, a sense of existential danger, and distrust in others. These findings are consistent with studies on psychological distress symptoms and vicarious trauma experienced by frontline law-enforcement and therapeutic professionals (Gomme & Hall, 1995). Many of the interviewees described symptoms typical of vicarious trauma or of compassion fatigue, such as flashbacks and apathy (Figley, 1995). Even in the course of the interviews, the difficulty in describing and reliving their experiences was obvious in both men and women, and was expressed through silences, crying, and loud speech.

6. Conclusions

The analysis of the interviewees' accounts revealed possible conscious emotional management. But the professional world of the prosecutors lacks tools for effective and comprehensive emotional management. The interviews revealed that behind the scenes of the trial, prosecutors are left without the protection of their jurist gown, exposed to a confusing blend of emotions. Many interviewees even pointed out, that it was generally the emotional experiences that were engraved in their memory, rather than the legal details of the case.

The positive responses of the interviewees to the interview itself, and their mention of the lack of emotional discourse of this type in their work reflect the tension in which prosecutors operate: on the one hand, their role is a highly volatile one, full of emotional experiences. On the other hand, the institutional approach toward emotions is typically one of denial and rejection.

Sandra:

There are things that need to be aired. I come across very tough materials that generate emotions and fears... Something like this kind of conversation... just speaking about feelings... already helps to some extent with continuing to work because I feel, for example, that this dealing with sexual offense cases... I won't be able to do it much longer.

These findings highlight the fallacy of the depiction of the prosecutor as a rational, emotionless figure. They support the claim that the proposed dichotomy between emotion and rationalism is misleading, and that a constructive debate on this issue is essential. Others have argued that lawyers who ignore the emotional needs of their clients leave behind "volcanoes that could erupt any minute" (Bibas, 2012; Lacey, 2013). Our findings provide a similar insight about prosecutors: their emotional world is boiling underneath the surface.

Struggling to adhere to formal perceptions of the legal profession as a fully rational one, despite the turbulent reality of their professional role, participants were often unable to interact with the stakeholders in an emotionally-intelligent manner, often missed therapeutic opportunities that the legal process had to offer to the stakeholders and to themselves. Without a profound discourse concerning the use of emotions, it is impossible to adopt therapeutic techniques in lawyer-victim or lawyer-defendant interactions (Balson, 2013).

Understanding the emotions of prosecutors can have practical benefits at several levels: first, it can improve their quality of the life by helping prosecutors be better understood. Research on this topic may promote the development of models for regulating and managing emotions of lawyers, similar to emotional regulation models that have been developed and implemented for judges in recent years (Maroney, 2011). Second, the findings can assist prosecutorial institutions in addressing the emotional needs of prosecutors, for example, by establishing support groups, where prosecutors can vent their emotions at work. Third, the knowledge gained from this study can improve prosecutorial work. Being more aware of their motives will enable prosecutors to make more informed and balanced decisions. Understanding their own emotions will help prosecutors better understand the emotions

of stakeholders, thereby improving their ability to act as therapeutic agents in their encounters with stakeholders. Finally, the present research may promote public trust in prosecution by exposing the daily realities of the prosecutorial work. This contribution is especially significant at a time when heated debate is taking place about the ways in which prosecutorial roles should be carried out.

Further research on the emotional experiences of prosecutors, defense attorneys and judges is needed in order to enhance our theoretical understanding of emotions in the legal sphere and to maximize the practical implications of such knowledge.

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