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Minds Count Foundation Annual Lecture 2024

'When minds are traitors'

29 August 2024

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Introduction

The title to this speech is taken from a line in Shakespeare's *Measure for measure:* 'Our doubts are traitors and make us lose the good we oft might win, by fearing to attempt.' I came across it, looking for a literary expression of the problem that I want to discuss tonight. I wanted to point out that self-doubt is a perennial issue and I also thought that it was important to come up with an attractive title. I was not searching my memory bank of amazing lines by literary geniuses.

Framing a problem by reference to a quote from Shakespeare is common enough – sufficiently common that it permits me to illustrate a cognitive distortion of a kind to which I have been sadly prone: jumping from a reference to Shakespeare to assumptions that the speaker could speak at length and entertainingly about each of Shakespeare's 38 plays; quite likely has taught their several brilliant children to recite Shakespeare's sonnets by heart; donates generously to both established and fringe theatre companies, financially and through participation on their boards; and that Oxford University Press will soon be publishing their authoritative treatise about Shakespeare's influence on the law of charitable trusts. The mere reference to Shakespeare might be yet more proof that everyone else knows so much, and I know so little. Yes, I exaggerate for effect. Yet, it is far from the kind of self-defeating pseudo-logic that some of us find themselves thinking and, on a bad day, close to believing.

The idea of minds as traitors concerns cognitive distortions. Here is a definition, taken from the Harvard Medical School website: 'Cognitive distortions are internal mental filters or biases that increase our misery, fuel our anxiety and make us feel bad about ourselves.'[2] Humans have a lavish array of cognitive distortions at their command. Things like black and white thinking: 'I'm an incompetent fool, my colleague is omniscient'; over-generalisations: 'No one will ever love me', 'I have no friends and no clothes'; disqualifying the positive: 'Well, I was right about that but even an idiot can fall upon the correct answer.'

More directly harmful to others, internal mental filters can also fuel a cruel sense of superiority or righteousness. An example is the victim stance: 'I wouldn't have bullied

him if I hadn't been bullied myself.' Another is the need to always be right: 'You don't know what you're talking about. I'll just have to do it myself.'

When I think of my own mind as a traitor, what I am referring to is habits of thought that increase misery, fuel anxiety and make me feel bad about myself! I have broadened out the idea of doubts as traitors, to minds as traitors, in recognition of the fact that what I want to talk about tonight is not easily confined to questions of self-doubt, or even to imposter syndrome, which I will discuss later on.

In simple terms, my message tonight is, 'Do not believe everything you think', particularly if you are upsetting yourself.

What I am talking about is doubt that does not assist in doing good legal work; rather, that gets in the way of doing good work and living a satisfying life. I will try to deliver what I have to say in a way that will not bring us all down. Having said that, I hasten to say that all distress deserves to be taken seriously. That is the reason that I am speaking tonight.

Before going further, can I immediately offer the following positive message: healthy and appropriate doubt is a critical tool in good legal judgement. Doubts are not always traitors. The law can be complex, especially when applied to people and situations. Doubts are antidotes to cognitive errors like jumping to conclusions and confirmation bias. Doubts generate the intellectual inquiry and rigour that lie at the heart of legal reasoning. There is a thing called the Dunning–Kruger effect, self-confidence bred of ignorance, that I find hilarious, although a tiny part of me thinks that it must be extremely enjoyable (note my assumption that I do not experience the Dunning–Kruger effect myself).

Self-doubt, in reasonable doses, can also be a useful spur towards high achievement, motivating us to overcome our weaknesses and to try really hard. And who among us does not enjoy a bit of high achievement and its attendant external validation?

The traitorous self-doubt that Shakespeare described was a fearful kind, with the implication that it might be paralysing. One version of self-doubt fears failure so greatly that we refuse to try, we under-perform, or we give up. I hate the idea that there are young (or even not-so-young) lawyers whose talents are never fully expressed because they have talked themselves out of even starting the race.

That is not how self-doubt has afflicted me. I haven't ever really let doubts overcome me. Historically, my preferred pattern was to proceed with maximum internal negative dialogue, attractively supplemented by pitiable, self-deprecating laments directed to anyone who will stand still long enough to listen to me. I have had to work hard to change this pattern. And so it is that I have gone further than I ever would have predicted, but with substantial unnecessary grief.

More by way of introduction

Last year, my colleague and friend, Justice Jayne Jagot, gave the Minds Count Annual Lecture on the topic of 'Burning bright without burning out'. She discussed why legal workplaces might cause burnout and argued that the culture of legal workplaces is an important factor. Justice Jagot pointed to 10 workplace behaviours that she considered to be destructive of wellbeing. These included the artificial deadline, the artificial deadline coupled with the unreasonable turnaround time, and the artificial deadline coupled with the unreasonable turnaround time and imposed by a person who is unavailable to receive work completed under the first two conditions. An important theme of Justice Jagot's lecture was the psychological harms that may be inflicted through power imbalances.

Justice Jagot was speaking mainly about external factors that can impinge upon our psychological wellbeing.

Reflecting on that lecture, I have two questions: first, is a healthy workplace culture a guarantee of psychological wellbeing? I ask this question because, in blunt terms, I would say that, as a result of self-doubt and a range of cognitive distortions, over the years I have given myself a far harder time than any person who wielded power over me in a law firm or at the Bar or in a courtroom. In fact, if any such person had said to me some of the things that I have said to myself, that person would rightly be called mean and probably a bully.

But a second question concerns the relationship between the cultures in which we work and the things that we say to ourselves. Is there a neat division between external causes of psychological pain (the subject of Justice Jagot's address) and internal causes like self-doubt? What about the cultural and familial influences that play into the way that we experience the world? For example, how might workplace culture play on the mind of a lawyer who perceives themselves as an outsider in relation to that culture? The privilege that has accompanied me through my career has always been in plain sight, and the longer that I am in the law, the more obvious this becomes. Even so, that privilege has not insulated me from experiencing psychological pain in the workplace. I can now also see that many of the positive experiences in my career have been connected with a sense of belonging that is derived from privilege.

I operate on the assumption that, while we are all different, many of us have much in common. It seems to me that I cannot be the only lawyer who has experienced self-doubt and other cognitive distortions concerning their situation as a lawyer. In fact, I know that to be true from conversations that I have had over the years.

That brings me to the topic of 'imposter syndrome'.

Imposter syndrome

Imposter syndrome is a traitorous state of mind. Imposter syndrome is a particular manifestation of self-doubt. One definition is an ongoing fear of being found out or unmasked as being incompetent or unable to replicate past successes. And so, a person who experiences imposter syndrome will also think that they are surrounded by people who secretly believe that they are, indeed, an imposter. The person with imposter syndrome lives on borrowed time, in a permanent state of anxiety.

Only slightly more comforting is the thought that the surrounding people, if asked, would refuse to believe that their colleague has imposter syndrome.

Imposter syndrome is not a medical diagnosis but a phenomenon that has been identified and studied and can be accompanied by diagnosable mental disorders such as major depressive disorder or generalised anxiety disorder.

Psychological research indicates a correlation between experience of imposter syndrome and traits of perfectionism and achievement orientation, combined with a fear of negative evaluation and self-criticism. Of course, these traits can be productive. But clearly, and particularly when in combination with external factors such as high-pressure or high-performance work environments and hierarchical work structures, traits like perfectionism can lead to increased imposter feelings. Given the nature of our profession, it should not be of much surprise that a UK study conducted in 2018 found that lawyers are one of the top categories of professionals to experience imposter syndrome.

Despite its likely prevalence, however, the subject of imposter syndrome is fairly taboo, at least among Australian lawyers of my generation. Growing up, I remember lessons about the importance of presenting a strong exterior, with the implicit message that weakness is to be hidden and, if exposed, is

somehow contemptible. 'You should be like a swan, gliding across the water and kicking as hard as you can underneath.' It is fair to say that our culture admires strength and invincibility; conversely, that culture tends to show impatience and even contempt for weakness.

Although there is more and more recognition of the values of authenticity and vulnerability, many in positions of power are clothed in psychological suits of armour. Among many other reasons, people in positions of seniority, like judges, typically have a strong sense of responsibility to their institution, and to their judicial oaths and affirmations, which may be a powerful reason for concealing any sense of weakness. Of course, when we hide our vulnerability effectively, we give the impression that we are invulnerable. In turn, junior practitioners wrestling with self-doubt may think that they are the only ones in their situation.

Moreover, when senior members of the profession are unwilling or unable to acknowledge self-doubt, they are poorly placed to nurture colleagues who experience imposter syndrome or other forms of self-doubt. Of even greater concern, such individuals (who are often treated as role models) may suppress deep feelings of inadequacy and impose the harsh standards that they set for themselves on others, leading to the kinds of harmful behaviours that were the subject of Justice Jagot's address to the Minds Count Foundation last year.

These thoughts led me to the conviction that it is worthwhile to expose the problem of negative self-talk by lawyers for discussion. My reasons are: firstly, to encourage lawyers to reflect on whether their own habits of thought are psychologically painful or even harmful and so, very much worth addressing; secondly, to demonstrate that this is not an experience unique to young or early career lawyers: it is normal, in the sense that it is common; and thirdly, to suggest that this is a problem that can be diminished by exposure to the light of day, as well as other strategies. In making this suggestion, I am taking my lead from David Heilpern, the New South Wales magistrate who gave a powerful speech to this forum in 2017 about his experience of vicarious trauma. Among other things, David led me to realise how my own negative self-talk has been aggravated by a sense of shame about the experience. It is, at the least, counterproductive, to beat oneself up for beating oneself up. But it usually turns out that the shame that accompanies honesty is nothing in comparison to the fear of shame.

Hearing about imposter syndrome

If you listen out for them, there are many stories of people suffering from imposter syndrome in the law.

I first heard of imposter syndrome several years back when an old friend of mine went to the Bench. Perhaps a year after her appointment, my friend told me, in effect, that she was riddled with self-doubt. She said that she was experiencing 'imposter syndrome'.

I was gobsmacked. I had known this woman for decades. She was a terrific lawyer with decades of great courtroom experience. She was brimming with integrity, utterly committed to the discharge of her role, working like a navvy, and, although I hadn't seen her in court, the gossip was that her courtroom management was second to none. Her doubt seemed to be to be deeply misplaced. I'm happy to say that, for my friend, this was a passing phase, although painful at the time.

I next came across imposter syndrome after I boldly introduced myself to Baroness Brenda Hale, the first female president of the UK Supreme Court, and made a plan to meet her in London. I was recommended her memoir, to read in preparation for the visit. Baroness Hale's memoir starts with the following claim: 'We all have our imposter moments. I defy any woman to say that she doesn't. Here are four of mine.' Baroness Hale then describes those moments. She explains:

> This is the story of how [a] little girl from a little school in a little village in North Yorkshire became the most senior judge in the United Kingdom. How she found that she could cope. And how all those other people who feel they are imposters can learn to cope too. Some of them may even be men.[3]

Baroness Hale is a beautiful writer. Those sentences still make me shiver at their clarity and openness. When I met her, she did not disappoint. Her intellect, empathy and curiosity were all palpable. Again, I was amazed and somewhat outraged to think that this lively and generous woman could seriously have wondered whether she might be unmasked as an incompetent.

In preparing for this address, my associate pointed me to the following quote from Sonia Sotomayor, an associate justice of the United States Supreme Court: 'I have spent my years since Princeton, while at law school and in my various professional jobs, not feeling completely a part of the world I inhabit. I am always looking over my shoulder wondering if I measure up.' Justice Sotomayor wrote these sentences in 2002. At the time, she was 47, a judge of the United States Court of Appeals for the Second Circuit, and had been a judge for just under 10 years.

What these examples show is that even those people at the height of their careers and admired by many can themselves be riddled with doubt and feelings of unworthiness.

It is easy to think of a multiplicity of reasons why a person might experience imposter syndrome. Some of these might have nothing much to do with the working environment, such as experiences within the family of origin, or at school. But one obvious possibility is that legal culture conveys messages about the kinds of people who fill certain roles within our community. To what extent does imposter syndrome in the legal profession correlate with perceiving oneself as an outsider? An important question for legal workplaces concerns the extent to which inclusivity is an important value. If inclusivity and diversity are not visible and valued, it is easy to imagine how a sense of otherness might be productive of psychological distress in the form of imposter syndrome or other feelings of self-doubt.

Unhelpful things that I have thought and done

It is not always easy to tap into what one thinks or feels. Sometimes, we tell ourselves stories to protect ourselves from uncomfortable realities. Oh yes, I worked all weekend because I am so passionate about solving legal conundrums. Sometimes, we tell ourselves something that is an oversimplification that shields us from deeper reflection. I admit that I can be unappreciative about your contribution to my success. What more do you want? Can we move on now please?

These examples point to the complex implications of self-doubt: that it might impel us to behave in ways that make us miss out on the joys of life, might lead us to care less about our loved ones or to contribute to a work culture that is way less kind than it should be.

They also point to the problem of self-awareness. It can be hard to own up to cognitive distortions. I will give three examples.

The first example concerns the 'B team'. Well, before I ever heard of imposter syndrome, I developed an idea that I was a decent, competent member of the 'B team'. If I thought about this beyond giving myself the label, the reflections were trite

and superficial. They tended to drift into memories of playing competition tennis as a teenager. That competition was broadly divided into 'A', 'B' and 'C' grades. In telling myself that I was a competent member of a 'B team' I was, in truth, reinforcing the belief that I was not part of an 'A-grade' team. Of course, there were no 'A-', 'B-' and 'C-' grade competitions at the Bar; the competition was much more complex and much more dynamic. Not only that, the competition was never the point of my legal practice.

The second example concerns the mantra of luck. I have reminded myself many, many times of the good fortune that I have had in my career. And it is true that I have been very fortunate in many respects. I had a brilliant role model in my father. Through him, I obtained my first job as a paralegal and met barristers who mentored me and facilitated opportunities to obtain the experience that is utterly essential to becoming a proficient lawyer.

I could give hundreds of instances of my good fortune over the years. Yet, as I have assiduously reminded myself of my good luck, what I have also been saying to myself is that I do not deserve my career. By focusing on my good fortune, I deny my efforts which, over a career now exceeding 35 years, have, on any view, been considerable.

My third and final example concerns what is necessary to be a really good lawyer. I once caught myself thinking that, to be a really good lawyer, it was probably necessary to spend 20 or 30 years studying offline (happily, the fantasy extended to me studying offline in an Italian hilltop monastery with gorgeous scenery in an endless Italian summer and a lovely farmers' market full of juicy *pomodoro* just down the hill). The corollary, since I have never had 20 or 30 years in which to immerse myself in legal study, is that I can never be a really good lawyer. But there are other corollaries: for example, no other Australian lawyer has spent 20 or 30 years in solitary legal study. Is no one a really good lawyer? And what about the experiences missed by the legal scholar in the Italian hilltop monastery? Is it possible to become a really good Australian lawyer, without experiencing legal practice in the Australian community? And what about the flip side of mastery of a subject? Is mastery conducive to learning from or to listening to advocates? As a former advocate, I know how infuriating it is to appear before a judge who appears to think that they are the smartest person in the courtroom.

Helpful things that I have done to counteract cognitive distortions

Having shared ways in which I believe that my mind has betrayed me over the years, I think that it is only fair to claim (and hope you will accept) that I have not been defeated by my propensity for self-defeating thoughts.

In that sense, I hope that I am something of a good news story on the subject of cognitive distortion. So, I will finish with some thoughts on the topic of managing cognitive distortion. I have five points in this respect.

First, I try not to take myself too seriously. I like to laugh, and I like to laugh at myself when I am foolish.

Second, I work on treating myself kindly. After reading a draft version of this speech, my associate pointed out to me that I cannot make this claim without providing some examples to prove it.

If I catch myself in a cognitive distortion, I can often persuade myself that the distorted thinking is a product of an immature aspect of myself that can be guided kindly, but responsibly, by my adult self. I reward myself with good holidays and with fun activities, most recently golf.

I can see the irony of trying to be kind to everybody other than oneself. There is so much to say about kindness. When our new Governor-General, Sam Mostyn, was recently sworn in, she spoke about the value of kindness. I would love to see a world in which the legal profession, and especially the courts, took a leading role in entrenching kindness in the workplace. The legal profession includes so many brilliant and thoughtful individuals that it is surely up to the challenge of thriving in a way that is deeply kind. At this point, I must acknowledge the wisdom of Taylor Swift's grandmother, Marjorie Finlay: 'Never be so kind, you forget to be clever. Never be so clever, you forget to be kind.'

Thirdly, I have benefited enormously from psychological counselling over the years. I do believe that it is very hard to go through childhood and adolescence, even in a privileged sector of a privileged community, without experiences that predispose us to behaving in ways that cause harm to others and to ourselves. I doubt that there is anyone who would not benefit from taking a good, hard look at themselves. And the people around them are very likely to benefit as well. One great advantage of psychological therapy is that it affords an opportunity to bring to light painful memories or ideas that you might never be prepared to acknowledge otherwise,

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even to your closest friend. Once exposed, those sources of angst can dissipate almost immediately. Well, that at least is my experience.

Fourthly, I meditate. I use guided meditations on an app called Healthy Minds, which I find immensely soothing: almost like a warm bath for the brain. I often meditate on the plane between Canberra and Sydney. We must not downplay the importance of rest in our busy lives. We should keep on the lookout for role models who demonstrate how to take time out. Personally, I admire the Jewish practice of the Sabbath for its insistence on a day of rest.

Finally, I exercise. I wish that I exercised more, but I exercise enough to know that it generally lifts my mood, gives me something to pat myself on the back for, and wards off aches and pains that result from way too much sitting. My colleagues on the High Court who are here this evening, and all the members of my chambers, incorporate exercise into their routines. I have no doubt that their choices have been made with psychological, as well as physical, wellbeing in mind.

Conclusion

There is much more to be said about minds as traitors. Last week, I spent an hour with tonight's panellists and was reminded that there are many different perspectives and much more to learn from each other on this topic. Now that I have said my piece, I am looking forward to hearing what they have to say, and how this audience will engage with our topic. BN

ENDNOTES

1 I acknowledge the assistance of my associates, Aiden Lerch and Emma Roff, in the preparation of this address.

2 Peter Grinspoon, 'How to Recognize and Tame your Cognitive Distortions', *Harvard Health Publishing*, (Blog Post, 4 May 2022) <https://www.health.harvard.edu/blog/how-to-recognize-and-tame-your-cognitive-distortions-202205042738>.

3 Lady Brenda Hale, *Spider Woman: A Life* (Penguin, 2021).