Humanity and Its Beneficiaries: Footing and Stance-Taking in an International Criminal Trial

Sigurd D'hondt, *University of Jyväskylä*

ABSTRACT

This article elucidates the role of metapragmatic devices like footing and stance-taking in trial hearings before the International Criminal Court (ICC) in The Hague. It focuses on the case of Ahmad al Faqi al Mahdi, a Malian Islamist found guilty of the 2012 destruction of cultural heritage in Timbuktu. We examine how the prosecution and defense reflexively formulate the hearing as part of a wider text trajectory and how they align personae across participation frameworks by locating the current courtroom event into a wider dialogical field. A careful inspection of these metapragmatic devices reveals how trial participants navigate the multiple tensions facing this emergent, amalgamated form of criminal adjudication, which lacks a coercive apparatus of its own and still bears the traces of the political act of its institution.

In January 2012, a violent conflict broke out in northern Mali between Bamako government troops and armed insurgents. Rebellions against the region's neglect and subordination by the south had been a recurrent feature of Malian history since the country's independence in 1960 (Lecocq 2010). This time, however, Tuareg separatists gathered in the National Movement for the Liberation of Azawad (MNLA) had joined forces with two jihadist Salafist groups: Al Qaeda in the Islamic Maghreb (AQIM), which mainly recruited internationally, and the Ansar Dine militia, which had strong local connections. After a series of quick military successes, the coalition had by April 2012 acquired control over all major urban centers in the north. The agendas of the nationalist and jihadist

Contact Sigurd D'hondt at the Department of Language and Communication Studies, PO Box 35, FI-0014, University of Jyväskylä, Finland (sigurd.a.dhondt@jyu.fi).

I would like to thank Jonas Bens for comments on an earlier draft, as well the editor and the two anonymous referees. Thanks as well to the members of the University of Jyväskylä's Discourse Hub and its data session group for commenting on the ideas developed here in a more embryonic form.

Signs and Society, vol. 7, no. 3 (Fall 2019). 2326-4489/2019/0703-0006$10.00

forces soon became incompatible, however. After a brief internal conflict, AQIM and Ansar Dine took control of the uprising.[1] In the ancient city of Timbuktu, an acclaimed center of religious scholarship and intellectual activity since the fourteenth century, the morality brigade, or Hisbah, now regulated public life. The latter oversaw the correct implementation of sharia legislation and was headed by Ahmad al Faqi al Mahdi, a locally reputed Islamic scholar recruited by Ansar Dine to marshal support for Islamist rule. Between June 30 and July 11, Hisbah members destroyed nine mausoleums of religious scholars venerated as saints in local Sufi Islam, together with the entrance door to the Sidi Yahya mosque. The mausoleums consisted of modest mud structures but played a vital role in Sufi religious practices (rejected as heretic by Salafi purists). Al Mahdi was directly involved in planning the demolitions and brought together the required men and resources. He oversaw the destructions and personally participated in them, wrote a sermon justifying the actions, and legitimated them before the international press.[2]

On July 13, two days after the demolitions ended, the Bamako government referred the situation in Mali to the International Criminal Court (ICC) in The Hague. In January 2013, the Office of the Prosecutor (OTP) declared that there were sufficient indications of war crimes to open a full investigation. Around the same time, France started a military intervention, quickly taking control of Timbuktu and most northern towns. More than a year and a half later, in October 2014, al Mahdi was apprehended in Niger. On September 26, 2015, he arrived in The Hague. In December of the same year, the OTP charged him with the war crime of attacking cultural property and buildings dedicated to religion, protected under Article 8(2)(e)(iv) of the Rome Statute. The confirmation of charges hearing took place on March 1, 2016, and the trial itself started on August 22. Because al Mahdi pleaded guilty and the OTP and the defense had reached an (informal) plea agreement beforehand, the trial lasted only three days.[3] On September 27, 2016, al Mahdi was sentenced to nine years of imprisonment.[4] The case received

1. See Lecocq et al. (2013) for the local dynamics behind the coalition's fragile equilibrium. For a comprehensive overview of the 2012–13 crisis, see Thurston and Lebovich (2013).

2. "Document présentant les conclusions factuelles et juridiques du Bureau du Procureur au soutien du Chef d'accusation dans l'affaire contre Ahmad AL FAQI AL MAHDI," December 15, 2015, ICC-01/12-01/15-66-Red, https://www.legal-tools.org/doc/2ac52a/pdf/.

3. The ICC Statute does not allow formal plea bargaining. In this case, however, prosecution and defense had agreed beforehand that (*a*) the defendant would plead guilty and (*b*) that neither party would appeal the verdict if the sentence would be between nine to eleven years of imprisonment. The ICC judges, however, were not bound by the proposed sentencing range, and in theory they could have pronounced the maximum sentence of thirty years.

4. See the Al Mahdi case, https://www.icc-cpi.int/mali/al-mahdi/.

a lot of attention. As one commentator noted, "first, Al Mahdi is the first member of an Islamist armed group to appear before the ICC. Second, it is the first ICC case in which the defendant made an admission of guilt. Third, it is the only instance to date in which the war crime of destroying cultural heritage has been the primary subject matter in a case before the ICC" (Ellis 2017, 24–25). The case, he concludes, "will be significant in determining how the international community should best deal with such abhorrent attacks in the future" (25).[5]

International criminal law is an emergent judicial paradigm still under development, and statements like these should be read against this background. The ICC became operative as recently as 2002. The Rome Statute, the treaty that established the court and provides its constitutive legal framework, was adopted in 1998. As a relatively new institution, the ICC consequently faces multiple challenges, both internally and externally. As Wilson (2016, 743) points out, "international tribunals are characterized by an uncertainty and unpredictability in fundamental law and procedure that can undermine their legitimacy. The conventional model in which a national justice system slowly accumulates legitimacy over centuries does not apply to international courts, which have had to hastily patch together an unstable amalgam of Anglo-American common law and Continental civil-law traditions." This internal indeterminacy is matched by equally serious external challenges. The ICC lacks a coercive apparatus of its own, making it dependent on the goodwill of others for arresting suspects and seizing evidence (Wilson 2016, 743) and eventually forcing it to engage in opportunistic alignments with powerful actors (Branch 2016). On the whole, the disarticulation of law and politics that successfully legitimizes consolidated domestic legal systems appears much more fragile in the ICC context. This partially relates to the court's recent origins, but it also reflects the fact that "the politics of the 'founding' violence of law is . . . re-inscribed within the framework that the law reproduces" (Kamari Clarke and Koulen 2014, 302). "The drafting history of the Rome Statute," they point out, "resulted in a considerable role for the UNSC [United Nations Security Council]" (315). Eventually, this opens up the decision to refer a case to the ICC to power-play between state-actors, who do not themselves necessarily recognize the court's jurisdiction. Eventually, this

5. Not all comments were equally laudatory. For Schabas (2017, 101), the ICC tried "to pick some low-hanging fruit" based on a questionable application of the notion "attack." He argues that the crime against humanity of persecution might have provided a judicially more sound basis for prosecuting al Mahdi than the war crime charge, because the destructions were not part of a military operation and the required "war nexus" was absent. Badar and Higgins (2017) consider the al Mahdi case a missed opportunity to strengthen the court's legitimacy by engaging with Islamic legal traditions (e.g., by pointing out that there exist different interpretations of the topic among Islamic legal scholars).

reinscription of the political helps to undermine the court's legitimacy. The Security Council's referral of the situation in Sudan in 2006, which eventually resulted in the issuance of an arrest warrant for Sudanese president al Bashir (2009), was for many African heads of state the sign to retract their initial support for the ICC and greatly fueled accusations of the ICC being a neocolonial court. The court's "exclusively African" focus has repeatedly been criticized. According to Branch (2016), the ICC was forced to adapt the politics of its intervention to changing geopolitical circumstances (the War on Terror; see also Tallgren 2014, 79), finding in Africa a weak target. This, together with opportunistic alignments with actors themselves responsible for human rights violations (see above), exacerbated structural tensions endemic to international adjudication in general. Hence, "the ICC's interventions in Africa [are] subject to intense challenge by voices inside and outside the courtroom in the name of truth, justice and peace, opening the prosecution narratives to the constant threat of rupture" (Branch 2016, 36).

This article investigates ICC court hearings in the al Mahdi case, elucidating how actors in an international criminal trial navigate these tensions in their situated courtroom conduct. Our focus is on the confirmation of charges hearing of March 1, 2016, the first time the prosecution and the defense publicly presented their theory of the case before the court. Starting from the assumption that adjudication can only be fully understood through the everyday practices by which it is brought to life, this article joins a growing body of detailed ethnographic and discourse-analytical accounts of how people actually communicate in courtroom settings (see, e.g., Conley and O'Barr [1990]; Hirsch [1998]; and Matoesian [2001], among a range of others). We will trace how the participants in the confirmation of charges hearing discursively manage the equivalence between punishable conduct and applicable legal categories (Dupret 2016), specifically examining the role of metapragmatic devices like footing and stance-taking in this process. Previous research (D'hondt 2009a, 2010, 2014) demonstrated these devices' potential for anchoring trial discourse in a broader sociodiscursive field, which makes them excellent for tracking how trial participants interactionally navigate the tensions the ICC faces.

First, we examine the preamble to the prosecution submissions, a brief overview of the charges by prosecutor Fatou Bensouda, which lasted approximately nineteen minutes. She spoke immediately after the court officer had finished reading the charges document, forestalling more detailed accounts of the evidence by other members of her team. This article is arranged in three sections, each of which reviews a key episode in the prosecutor's preamble:

(*a*) a narrative summary of the destruction of the mausoleums ("Summarizing the Facts of the Case");
(*b*) an account of the mausoleums' role in local religious practices and their significance to the community ("The Impact of the Demolitions on the Local Community"); and
(*c*) a report of how the destructions affected humanity at large ("Speaking in the Name of Humanity").

Each of these episodes involves a distinct metapragmatic framing of the discourse. In the penultimate section ("The Defense Remarks"), we briefly repeat this exercise for the defense. Al Mahdi had entered a guilty plea, and, consequently, the defense kept its remarks to a minimum, preserving its main deposition for the actual trial. Nevertheless, one can detect dialogical elements that connect it to the prosecutor's discourse, which translates into distinct footing and stance-taking patterns. Video footage of both submissions are available on the ICC website,[6] but this analysis relies primarily on publicly accessible court records (also available on the website). Al Mahdi's confirmation of charges hearing was a multilingual event in which English, French, and Arabic served as floor languages, with simultaneous translation available between all three of them. Official court transcripts are available only in French and English (the court's official working languages). The analyses below are based on the transcript that reflects the actual floor language. In one excerpt where the speaker switched between French and English, the original floor language has been reconstructed from two different court records. First, however, we briefly review exactly how metapragmatic devices like footing and stance-taking anchor trial discourse in a broader sociodiscursive field.

Text Trajectories, Stance-Taking, and Footing

One way to make sense of criminal adjudication is to treat it as a text trajectory (Blommaert 2005) in which "text travels" (Heffer et al. 2013) from one judicial context to another (see also D'hondt and van der Houwen 2014). Central to this notion of trajectory is the fundamental instability of texts as they make their way through the legal system (Heffer et al. 2013, 8). Instability arises because what counts in a given situation as "text" is itself the outcome of a process of discursively negotiated de- and re-contextualization (Bauman and Briggs 1990), which

6. See the Al Mahdi case, https://www.icc-cpi.int/mali/al-mahdi/.

may drastically alter the form and/or meaning of the traveling discourse. Formal changes in wording and footing, for example, are a recurrent feature of "talk to text" transformations in police interrogations (Komter 2006, 2019), where official records, produced with an eye on their later usage in court, consist of "monologized version[s] of dialogical interaction" (D'hondt and van der Houwen 2014, 4). There exists, furthermore, a large body of work demonstrating how testimony acquires a new meaning (or "shifts"; Ehrlich 2007) in subsequent recontextualizations (in cross-examination: Matoesian 2001; closing statements: Eades 2016; applications for a protective order: Trinch 2003; trial verdicts and appellate opinions: Ehrlich 2007, 2012), which critically engages with the impact of language ideologies and tacit normative frameworks (like hegemonic masculinity or colonial hierarchy) on such recontextualizations.

Other studies focalize the interactional procedures by which discourse from an earlier trial stage is recontextualized. Direct quotes, for example, are said to imbue evidence with greater authority (e.g., Philips 1986) because they minimize the interactional distance between reporting and reported event (Matoesian 2001, 110). Elsewhere (D'hondt 2009a, 2014), I argue that foregrounding/downplaying the trial's textually mediated nature—that is, (not) making visible the existence of written records that mediate between the trial and the facts (the reported event)—can itself be exploited as an interactional resource for making/unmaking a case. In their closing arguments, prosecutors and attorneys produce discursive construals of what happened that oscillate between "letting the facts speak for themselves" (and treating them as transparent) and asserting interpretive agency over the case file. The latter makes the textually mediated nature of the charges against the defendant visible and highlights one's own role in interpreting these texts. Presenting the facts thus entails a negotiation of trial participants' own involvement and of the relevant "participation framework" (Goodwin and Goodwin 2004). For a defense attorney, this can result in a disaffiliation toward her own client (D'hondt 2010, 2014). These regularly recurring "footing patterns" (Goffman 1981) correspond roughly to the "narrator" and "interlocutory" voices that Rosulek (2007; 2015, 31) found in closing arguments. However, my analysis added that they reflexively situate the attorney's discourse in relation to the legal text trajectory of which the hearing is part.

Intertextual practices such as these "metapragmatically regiment" (Silverstein 1993) the closing argument and embed the hearing into a wider sociodiscursive field. Through subtle interplays of alignment and (dis)affiliation, they facilitate the projection into the legal space of an unspecified *we* that encapsulates

"normality," a screen onto which attorneys, in turn, project notions of otherness that escape clear legal definition (on cultural otherness, see D'hondt [2010]; on insanity, see Maryns [2014]). As the analysis below illustrates, they also facilitate inserting the court hearing into wider dialogues that transcend the spatiotemporal boundaries of the courtroom (Irvine 1996). In this way, this article joins a growing body of studies that highlight other sources of intertextuality, in addition to the judicial text trajectory proper (e.g., Rock 2013; Chaemsaithong 2018; Chaemsaithong and Kim 2018).

Recent sociolinguistic literature on stance (Jaffe 2009, 2016) provides a starting point for elucidating this metapragmatic regimentation of courtroom talk. According to authors like Lempert (2009), propositionally evaluating something (in this case, describing the facts of the case) also entails interactionally positioning oneself toward other stance-takers, both copresent and absent (in this case, the other trial participants). Du Bois (2007) adds a third element to what he conceives as a "stance triangle:" stance-takers must also *position themselves* in relation to the stance object. Criminal hearings are densely intertextually structured, and trial participants seldom have direct, unmediated access to the circumstances of the facts. Under such conditions, positioning oneself in relation to the stance object de facto assumes the character of inscribing oneself in a text trajectory.

It is useful, therefore, to consider stance-taking in conjunction with Goffman's notion of footing, understood as "the alignment we take up to ourselves and the others present as expressed in the way we manage the production or reception of an utterance" (1981, 183). A key aspect of footing is the production format of an utterance. For Goffman, the unified notion of speaker falls apart into multiple participation statuses (not necessarily taken up by the same participant), including the "animator" of the utterance (the one physically uttering it), its "author" (the one who drafted it), and its "principal" (the party whose position is represented). This nesting of participation statuses involves the projection of a wider phenomenal field in a monological stretch of discourse (Goodwin 2007) and may also evoke a trajectory of unspecified prior interactions ("shadow conversations"; Irvine 1996). Through these evocations of prior interactions, role incumbents are aligned across new, situation-transcendent participation frameworks in ways that enable the speaker's dialogically organized position toward his/her own discourse to achieve interactional effects upon current interlocutors and audiences.

As noted in the introduction, ICC hearings represent an emergent, often highly contested form of criminal adjudication. Examining how the trial

participants metapragmatically anchor the hearing into a wider sociodiscursive field, along the lines sketched here, therefore assumes particular analytical salience. In the next section, we start with analyzing footing and stance-taking in the prosecutor's initial summary of the charges.

Summarizing the Facts of the Case

Already in a very early stage of the submission, Fatou Bensouda produces a narrative summary of the demolitions (lines 1–16 below), immediately followed by a statement of al Mahdi's personal involvement (lines 19–25). Here, she recycles the facts of the case in an abridged form from the charges document, which the court officer read out only a few minutes before:[7]

1	Soumise depuis le début du mois d'avril 2012 au bon vouloir des groupes armés	Since the beginning of April 2012 subject to the mercy of the armed groups
2	Ansar Dine et Al Qaïda au Maghreb islamique, la population de Tombouctou s'est	Ansar Dine and Al Qaeda in the Islamic Maghreb, the population of Timbuktu
3	réveillée au matin du 30 juin 2012 pour constater avec consternation qu'une attaque	woke up on the morning of June 30, 2012, noticing with consternation that an attack
4	avait été lancée par ce groupe.	had been launched by that group.
5	Ces attaques étaient menées pour détruire ce qui constituait leur patrimoine	These attacks were carried out to destroy what constituted their historic
6	historique et occupait une place centrale dans leur vie.	heritage and what occupied a central place in their lives.
	[Lines 7–13 omitted]	
14	Hélas, à l'époque, rien n'a été possible pour stopper la fureur destructrice des	Unfortunately, at the time, nothing could be done to stop the destructive furor of
15	groupes armés. Hélas, à l'époque, rien n'a aussi été possible pour épargner ces	the armed groups. Unfortunately, at the time, nothing could be done to save these
16	édifices dont la valeur était immense.	buildings, whose value was immense.
17	With your indulgence, your Honours, I will continue my	
18	submissions in English:	
19	The suspect Ahmad Al Faqi Al Mahdi, also known by his nom de guerre, Abou	
20	Tourab, is appearing before you today charged for this callous attack which he led, an	
21	attack that was planned and carried out with various tools and equipment.	

7. Transcripts ICC-01/12-01/15-T-2-Red-FRA (12, line 14, to 13, line 1; https://www.legal-tools.org/doc/d3d6d7/pdf/) and ICC-01/12-01/15-T-2-Red2-ENG (13, lines 7–15, https://www.legal-tools.org/doc/1a7bdc/pdf/). The lines of the transcript have been renumbered to improve readability. All translations from French into English are my own.

22 The facts are out in the open. The attack
received extensive media coverage
around
23 the world. Mr Ahmad Al Faqi Al Mahdi and
the coperpetrators revealed to the
24 whole world their contempt for these
buildings and for the rules set out by
the Rome
25 Statute, which defines such a conduct as
a war crime.

In this excerpt, the prosecutor's narrative frames itself (and, by extension, the charges document that it recapitulates) as "transparently relaying the facts" (D'hondt 2009a, 2014). She does not assert interpretive agency, there is no mention of preceding trial stages (the inquiry) in which documentary records of the facts ("evidence") were collected, and the facts themselves are presented as perspicuous, self-evident, and not requiring interpretation. "The facts are out in the open" (line 22), and she/her office is hence exclusively acting in the capacity of neutral transmitter. (Because Bensouda is both the director and a representative of the OTP, her institutional persona and her office equally qualify as principal of the discourse. The analysis will not try to resolve this ambiguity, except when it becomes an explicit interactional concern.)

Curiously, the summary also attributes motive and intent to the perpetrators—which is intuitively at odds with its apparent neutrality, as knowledge of the latter is, under normal circumstances, exclusively reserved for the subject-actors involved (Labov and Fanshel 1977; Pomerantz 1980) and minimally requires a form of interpretation (D'hondt 2009a). These motive attributions are, in turn, embedded in wider processes of "sentimentalization" (Bens 2018): the various bodies featured in the prosecutor's narrative, both human (militia members, residents) and nonhuman (the mausoleums), are charged with affect and emotion in a way that renders their interrelationships meaningful. For example, inhabitants of Timbuktu wake up noticing "with consternation" (line 3) that an attack had been launched against something they hold most dear, while the destructions themselves become an expression of "destructive furor" (line 14). In addition to this "local" sentimentalizing (involving perpetrators and victims located in Timbuktu), the summary also goes a step further. It treats militia members as actors in control of motive and intent in the global interactional arena: they "revealed to the whole world their contempt . . . for the rules laid down in the Rome Statute" (lines 23–24).

This move beyond the local emphasizes (makes visible) the perpetrators' intentions, by hinting at an alternative intertextual embedding of the hearing that is independent of the prosecutor's inquiry. Lines 22–25 overtly allude to the fact that the perpetrators allowed journalists to cover the Timbuktu demolitions, al Mahdi and other Ansar Dine leaders readily gave interviews, and footage of the mausoleums being taken down with pickaxes was circulated on the internet. As such, the summary reframes the demolitions as a communicative act designed for a global audience. In fact, the prosecutor herself played a part in this parallel text trajectory mediated by international press coverage. Immediately after the demolitions started, on July 1, 2012, she gave an interview to AFP warning the perpetrators that they might be guilty of a war crime under the Rome Statute.[8] The perspicuous "visibility" of their contempt for international law derives inter alia from their noncompliance with this caution, which objectivizes the communicative intent behind the demolitions and further downplays the prosecutor's agency in interpreting them. In the sense, the prosecutor's strategy resembles that of her colleague in the much more low-profile, domestic resisting arrest case documented in D'hondt (2009a), where the prosecutor cast her decision to charge the four teenagers as an automated institutional response, grounded in an "objective" attribution of intention based on their refusal to obey a police order.[9]

The prosecutor's statement that "the suspect . . . is appearing before you today charged for this callous attack" (lines 19–20) explicitly formulates the participation framework into which this presumed neutral transmission inserts itself. It frames the judges, entrusted with the task of evaluating the charges, as the recipients of the submission, and the defendant, the one who is actually charged, as its object. Her use of the passive voice, however, leaves opaque that either she or her office is also the author (and principal) of the charges against the defendant. Again, her own role in bringing al Mahdi to court is minimized and remains invisible. (In lines 17–18, she momentarily appears but only in her role of animator, asking permission to continue in English). Of course, leaving principalship opaque does not equal denying it, and the episode is still produced under the institutional assumption that she or her office is responsible for the discourse as its principal. The passive voice, however, illustrates how she

8. Press release, "ICC Prosecutor Fatou Bensouda on the Malian State Referral of the Situation in Mali since January 2012," July 18, 2012, https://www.icc-cpi.int/Pages/item.aspx?name=pr829. On the resulting dialogical network, see Dupret and D'hondt (forthcoming).

9. In the trial verdict, interviews in which al Mahdi supported the demolitions were indeed considered proof of intentionality (Judgment and Sentence, September 27, 2016, ICC-01/12-01/15-171, par. 55, https://www.legal-tools.org/doc/042397/pdf/).

immediately empties that principalship, presenting the decision to prosecute as an automated institutional response devoid of interpretive agency.

Occasional displays of regret, like "Unfortunately" in lines 14 and 15, further complicate principalship (and add to the various strands of emotionality woven into the neutral transmission), as they are individually attributable to the prosecutor as owner of her own emotions. Taking a lead from Tallgren (2014, 72), however, we can interpret these displays of emotion as expressing the speaker's "[alignment] into a collective subject of 'our' shared emotion," triggered by the confrontation with cruelty and suffering. The prosecutor is thus neutrally transmitting *and* simultaneously commenting on this process (D'hondt 2009a) in the name of the shared "humanity," which she coembodies with the court (cf. infra).

The Impact of the Demolitions on the Local Community

The inquiry's invisibility does not last long. Immediately after sketching al Mahdi's involvement, the prosecutor produces a lengthy account of the significance of the demolished mausoleums from a religious, historic, and identity point of view.[10] (Unlike the facts and circumstances of the case, this aspect had been dealt with only scantly in the charges document.) The account is primarily oriented to the legal task of demonstrating (*a*) that the mausoleums were indeed protected under Article 8(2)(e)(iv) of the Rome Statute (and their demolition effectively constituted a war crime), and (*b*) that the destructions meet the gravity threshold for referral to the ICC. Lostal (2017) characterizes Bensouda's approach to the historical and cultural value of the demolished monuments as "anthropocentric," because it prioritizes their significance to the local community and the consequences of the demolitions for Timbuktu residents' well-being and self-worth. As we shall see, this translates into a specific combination of footing patterns.

Below, the prosecutor addresses the mausoleums' significance from a religious point of view. First, she reviews their role in local religious practices (lines 1–6), then she sketches the impact of their destruction on the Timbuktu population (lines 7–14) and clarifies an applicable point of law (lines 15–20):[11]

1 Allow me to begin with the religious dimension of the mausoleums. The
2 mausoleums and saints of Timbuktu play an important role in the daily lives of the
3 city's inhabitants. The mausoleums are frequently visited by the city's residents,

10. Transcript ICC-01/12-01/15-T-2-Red2-ENG (13, lines 17–18, https://www.legal-tools.org/doc/1a7bdc/pdf/).

11. Transcript CC-01/12-01/15-T-2-Red2-ENG (14, lines 4–23, https://www.legal-tools.org/doc/1a7bdc/pdf/).

usually on Fridays. They are places of worship. The act of going to the mausoleums is perceived as a sign of faith and religious piety. Some even travel to them on pilgrimages.
It is specifically these practices that the armed groups Ansar Dine and Al-Qaeda in the Islamic Maghreb wanted to annihilate by destroying the mausoleums in question. As Witness P-125 stated, the destruction of the mausoleums, and I quote him, "a fait très mal à la population." End of quote. It became impossible for the inhabitants of Timbuktu to devote themselves to their religious practices. These practices which were deeply rooted in their lives. These practices which signified the deepest and most intimate part of a human being: Faith. These practices which were part of their shared life together.
At this point I wish to stress that this case is not about determining who was right or wrong from a religious point of view. The bottom line is that the attacked monuments had a religious use and had a historic nature, this is all that matters. To intentionally direct an attack against such monument is a war crime under the Rome Statute regardless of the judgment by other people on the religious practices by the inhabitants of Timbuktu.

Each of the three parts of her argument in this excerpt is characterized by a distinct footing pattern, and the textually mediated nature of the charges only surfaces in the second one (lines 7–14). Here, the prosecutor relies on a witness statement (lines 9–10) to validate how the demolitions affected the community by obliterating religious practices. The case file itself, the material sediment of the inquiry (and the conduit through which testimony travels), is indexed by the witness identification number (P-125). Throughout the submission, the prosecutor systematically draws on such testimony to scaffold her account of how residents experienced the destructions, and the quote in lines 9–10 is typical in this respect. She does not assert interpretive agency over what it might mean or preempt possible rival interpretations. The role of the quote is solely to illustrate how Timbuktu residents suffered from the destructions. It is treated as transparently transmitting whatever it purports to report, and not framed as requiring interpretation or pitched against other evidence. Apart from the "I quote" preface (a brief personal appearance indicating that she is momentarily only animating), the prosecutor remains invisible, acting solely in the capacity of neutral transmitter of "transparent" evidence.[12] Her reliance upon quoted

12. In earlier analyses of footing in a (purely) inquisitorial setting (D'hondt 2009a, 2014), the textually mediated nature of the charges was made visible through a footing pattern identified as "engaging with the case file." This footing pattern involved explicitly qualifying the evidence and asserting full interpretive agency. The prosecution and defense adopt this pattern either to dispute the other party's reading of the available evidence or to buttress their own account of the facts (in anticipation of a possible objection). As such, it appears typical of inquisitorial contexts, where both parties are forced to construct their account on the basis of the same body of evidence. However, in the amalgamation of inquisitorial and accusatorial systems characteristic of ICC proceedings (see above), each side calls its own witnesses, and the value of testimony is typically assessed later on, during cross-examination.

materials appears primarily related to the "practical epistemics" analyzed in conversation analysis (e.g., Heritage 2013), because the impact of the destructions represents a knowledge domain to which only those affected possess first-hand access (Labov and Fanshel 1977; Pomerantz 1980). To be clear, such entitlements to knowledge are part of the rhetoric of case making and do not reflect actual cognitive states. This is evident, for example, from the fact that the quote in lines 9–10 scores low on information value but is nevertheless highly visible (because it retains the original language of the testimony): *that* a quote is used seems more important than what the quote actually says.[13]

This visibility of intertextual mediation in lines 7–15 contrast markedly with lines 1–6, where the prosecutor explicates the religious usage of the mausoleums before the demolitions. Here, the case file remains hidden (although, later on, other members of the defense team extensively quote expert testimony supporting precisely this part of the submission). Of particular interest is the "anthropological detail" provided about local religious practices ("usually on Fridays," line 4) and the occasional expression of curiosity accompanying the recounting of these practices ("Some *even* travel to them on pilgrimages," lines 5–6, emphasis added). Instead of posing as a neutral transmitter, the prosecutor now adopts an expert voice. The claim to anthropological expertise aligns the prosecution with the collective *we* of the court, collaboratively engaged in truth-finding. The prosecutor simultaneously places herself in the role of knowledge provider (in an intercultural setting, as indicated above), satisfying the court's thirst for understanding. The victims are thereby reduced to objects of the discourse, and their own testimony is accountably of little relevance. In spite of recurrent claims to be dispensing justice on their behalf, the prosecution is here putting up a cultural boundary and actively disaffiliates itself from its own client (much in the same way as the defense did in the domestic trial documented in D'hondt [2010]).[14]

The third segment in this excerpt (lines 15–20) is one of the rare moments where the prosecutor asserts full interpretive agency, openly assuming responsibility for the opinions expressed in her discourse. She steps out of her role of neutral transmitter of the facts in order to address a point of law, anticipating a defense objection on the OTP's interpretation of the Rome Statute. Once this parenthesis is completed, and the religious significance of the mausoleums

13. In later parts of the submission, the defense team also provides detailed evidence for those elements of the accusation that the prosecutor treats as transparent. The "transparent" account itself also contained attributions of motive and intent and was couched in sentimentalizing language (see above).

14. A similar anthropological voice and footing pattern can be found later on, when one of the prosecution attorneys surveys the religious and historical significance of the mausoleums in greater detail.

sufficiently addressed, the prosecutor resumes her account of the impact of the destructions "from a . . . historic, and [an] identity point of view."

Speaking in the Name of Humanity

A drastic shift occurs once the prosecutor addresses the significance of the destructions beyond the strictly local: their impact on Africa and humanity at large. For this, she again incorporates quotes from various sources (members of government, representatives of international bodies, experts), which are treated as transparent similarly to the statements by Timbuktu residents. The overall participation framework projected by this segment, however, also opens up the trial to court-external constituencies. The juxtaposition of multiple statements collectively lamenting the destruction of cultural heritage assumes a choral character, which reflexively epitomizes common humanity (triggered by the shared outrage over such brutality; Tallgren 2014, 72). Humanity features in two guises here. It is collectively the victim of the destruction of the cultural heritage, and it also faces the responsibility of collectively responding to it. The two go hand in hand, and the prosecutor's "transparent quotes" illustrating global consternation are systematically followed by calls for a strong response, thus evoking an ideal of retributive justice. The following excerpt illustrates how the prosecutor, in switching from the first to the second guise of humanity, leaps from reporting about humanity's collective indignation (lines 1–2) into coenacting it (lines 4–7), joining the polyphonic choir that she has carefully orchestrated:[15]

1 In short, humanity's collective conscience was shocked by the senseless destruction of
2 its common heritage.
3 Madam President, your Honours, words of condemnation are not enough.
4 Humanity must stand firm in rejecting these crimes through concrete punitive action.
5 History itself, whose physical embodiment is at peril through such attacks, will not be
6 generous to our failure to care and to act decisively. Such an attack must not go
7 unpunished.

Earlier, we pointed out how the prosecutor momentarily aligned herself with the *we* of the court as collaboratively engaged in truth-finding. The excerpt above illustrates how this collective *we* ("our failure," line 6) is in turn usurped by abstract humanity, now allied with a retributive notion of justice ("Humanity must [reject . . .] these crimes through concrete punitive action," line 4). The

15. Transcript ICC-01/12-01/15-T-2-Red2-ENG (17, lines 3–9, https://www.legal-tools.org/doc/1a7bdc/pdf/)

defendant, subjected to this proposed retribution, is excluded from "we"/"the court"/"humanity." Apart from adding to the gravity of the charges, these humanity invocations contribute little to the legal task of establishing criminal liability. Al Mahdi was charged with war crimes, not crimes against humanity.[16] It appears that from here on, the prosecutor's metapragmatic framing appears to prioritize legitimizing the trial and vindicating the role of the ICC in promoting global justice over actual legal case making.

Other authors have pointed out how the abstract term "humanity" is elusive and easily destabilized (e.g., Mégret 2015). In this case, it is supplemented with an equally abstracted conception of "the victim" (cf. Kendall and Nouwen 2013) that alternates with humanity as the court's ultimate constituency on whose behalf justice is done. However, the way the prosecutor here designates the victim as the beneficiary of the court's justice is radically different from how she earlier appealed to humanity. For the latter, she carefully staged a polyphonous orchestration of voices, in which she herself (aligning with the collective *we* of the court) eventually joined in. The abstract victims, however, although they share with the court an acute aspiration for justice (which ultimately allows the court to do justice on their behalf, Fletcher 2015), remain a separate entity throughout. Their presence is projected by reframing the hearing as part of a "dialogical network" (Leudar and Nekvapil 2004) in which trial participants collectively respond to the victims' calls for help. To see how this happens, one should look at the submission's opening[17] and closing:[18]

1 Madame la Présidente, Messieurs les juges, "Tombouctou	Madam President, your Honours, "Timbuktu
2 est sur le point de perdre son âme, Tombouctou est sous la menace de vandalisations	is about to lose its soul; Timbuktu is under the threat of outrageous acts
3 outrageantes, Tombouctou a sous la gorge le couteau tranchant d'un froid	of vandalism; Timbuktu has under its throat the sharp knife of a coldblooded
4 assassinat." C'est le cri de désespoir que lançait un habitant de Tombouctou lors de	assassination." This is the cry of desperation launched by an inhabitant of Timbuktu during
5 la destruction des mausolées de la ville. Même sentiment de désolation et	the destruction of the city's mausoleums. The same feeling of desperation and

16. Although certain authors argue that the latter might be more applicable (Schabas 2017; Badar and Higgins 2017).

17. Transcript ICC-01/12-01/15-T-2-Red-FRA (11, line 26, to 12, line 4, https://www.legal-tools.org/doc/d3d6d7/pdf/).

18. Transcript ICC-01/12-01/15-T-2-Red-FRA (18, line 23, to 19, line 2, https://www.legal-tools.org/doc/d3d6d7/pdf/).

6	d'impuissance chez un autre Tombouctien qui disait—je le cite: "Ils ont détruit	powerlessness from another Timbuktian, who said—I quote him: "They destroyed
7	tout ce qu'on a. On n'a pas de force pour nous défendre." Fin de citation.	everything we had. We've got nothing to defend us." End of quote.

1	Enfin, c'est aussi la première fois qu'un suspect, dans la situation du Mali, est déféré	Finally, it is also the first time that a suspect in the situation of Mali is brought
2	devant cette Cour. Le premier suspect, M. Ahmad Al Faqi Al Mahdi, est devant vous,	before this court. The first suspect, Mr. Ahmad Al Faqi Al Mahdi, stands before you,
3	Madame la Présidente, Messieurs les juges.	Madam President, your Honours.
4	C'est donc l'occasion pour dire aux victimes de ces attaques que nous avons enfin	This is the occasion to tell the victims of the attacks that we have finally
5	entendu leurs cris de désespoir. Nos investigations se poursuivent et nous	heard their cries of desperation. Our investigations are continuing and we
6	entendons faire tout ce qui est . . . ce qui est à notre disposition pour que les	intend to do all that is within . . . within our power in order to make sure that those
7	responsables des crimes du Statut de Rome qui sont commis au Mali répondent de	responsible for crimes against the Rome Statute committed in Mali answer
8	leurs actes.	for their acts.

In her closing remarks, the last of the two excerpts, the prosecutor first accentuates the context and participation framework of the hearing, by addressing the judges and drawing attention to the physical presence of the defendant (lines 2–3). She then reformulates the encounter as an opportunity "to tell the victims that we finally heard their cries of desperation" (lines 4–5), setting up a conspicuous parallelism with the submission's opening. Here, in the first of the two excerpts, the prosecutor launched her opening with two quotes attributed to a nameless victim, the first framed as a "cry of despair" (line 4), the second as an expression of "desolation and powerlessness" (lines 5–6). The first of these metapragmatic qualifications is particularly effective: It frames the quote as prompted by the original speaker's dire emotional state, emphasizes his/her incapacity to take action on his/her own behalf, and suggests that it was not directed at any recipient in particular. Following the prosecutor, we "the court" must assume the responsibility to respond to the call, retrospectively establishing a dialogical network (Leudar and Nekvapil 2004) that connects the hearing to the "victim's cries" uttered four years earlier.

In this way, the recontextualization provides a particularly graphic response to Kamari Clarke's question "What kind of victims does the ICC require Northern Uganda's [or in this case, Mali's] citizens to be?" (2009, 121). Commenting

on the tension between international criminal law and local Ugandan reconciliation initiatives, Kamari Clarke points out that

> [this] articulation of justice that advocates international law over national law . . . reduces citizens in Uganda (and elsewhere) to victims whose very exclusion from political life is the necessary condition for political intervention by international legal regimes such as the ICC. . . . The result is an African population characterized by what Agamben (1998) calls *zoe*, or "bare life"—a condition of extrapolitical, absolute victimhood in which life is reduced to the effort required to satisfy only the most basic needs of existence. (Agamben contrasts *zoe* with *bios*: politically or morally qualified life, the form of life found in a thriving community.) (119–20)

Acceptance as a victim by the ICC requires one's "agency [to be relegated] outside of the political sphere" (143), as neither victim nor perpetrator are "expected to interpret or exercise legal power in their own right" (144). In fact, this is exactly what the prosecution accomplishes by recontextualizing the Timbuktu residents' statements as "cries of despair": It condemns their utterers to the status of bare life, framing them as crying out for help and lamenting their situation but also as unable to directly address the court or independently engage with the international community. Instead, they wait until an outside agency, in this case the ICC, intervenes on their behalf (see also Kendall and Nouwen 2013, 255).

This becomes all the more obvious if we look at what is lost in the prosecutor's recontextualization of these victim statements. In lines 6–7, the prosecutor recycles a statement attributed to a Timbuktu resident quoted on Radio France Internationale.[19] The first quote, however, is part of a drafted proclamation, the *Declaration de Tomboctou*, published on the internet more than a month before the attacks, on May 21, 2014.[20] It is authored by Mohamed Diagayété, director of the renowned Ahmed Baba Institute. Addressed to the UNESCO secretary general, it purports to be speaking on behalf of a committee of Timbuktu intellectuals. On June 30, 2012, FranceTV broadcasted a sixteen-second clip of another Timbuktu resident (not Diagayété) reading out the first three lines in front of a camera (corresponding to the excerpt quoted by the prosecutor).[21] Framed

19. See RFI Afrique, http://www.rfi.fr/afrique/20120710-mali-islamistes-detruisent-grande-mosquee-tombouctou-ansar-dine.

20. See Tombouctou Manuscripts Project, http://www.tombouctoumanuscripts.org/ar/blog/entry/declaration_de_tombouctou/.

21. See FranceInfo, https://www.francetvinfo.fr/monde/afrique/video-au-mali-des-islamistes-detruisent-des-mausolees-classes-au-patrimoine-mondial_113927.html.

by the newsreader as "a call for help . . . by the elders in charge of culture" (my translation), the broadcast retained the original document's character as a public statement and implicitly designated the one reading it out as a spokesperson. The prosecutor recontextualizes exactly the same three lines, but she does so in the context of a dialogical network with an unspecified, nameless victim. In doing so, she strips the statement of what makes it recognizable as part of politically and morally qualified life: the fact that it was written by a respectable academic, raising his voice on behalf of a representative committee and determined to speak out for the community at large, with sufficient "clout"—linguistic, social and cultural capital—to have his text circulate on an international platform.

Tracing the submission's intertextual sources also reiterates how the judicial text trajectory depends on parallel text trajectories, mediated by international press coverage. Of the ten statements quoted in the prosecutor's submission, only two are identified with a witness identification number. Six other quotes, all except one by members of government and representatives of international bodies, are from already circulating official statements, subsequently included in the prosecution's written conclusions in support of the charges.[22] In fact, the two quotes with which the prosecutor opened her statement (in the first excerpt above) are the only already circulating statements not mentioned in the conclusions.

The Defense Remarks

It takes the prosecution team about three hours to conclude, after which the floor returns to the defense. Al Mahdi's main counsel, Mohamed Aouini, announces that the defense preserves its submissions to the merits for the actual trial (because of the plea arrangement), but that cocounsel Jean-Louis Gilissen will formulate a few preliminary remarks. In a statement lasting twelve minutes thirty seconds, Gilissen recognizes that the facts constitute a transgression. He then briefly contextualizes them, alternating between descriptions of:

(*a*) the context of the demolitions as a *political* conflict over the regulatory role of religion in public life (rather than driven by interreligious hatred per se),

22. See n. 2.

(*b*) the destructions themselves as only affecting structures erected *on top of* the original graves (the former prohibited, the latter protected under Islamic law),

(*c*) the defendant as a moral character, acting in accordance with a vision of purity that he presumed to best represent the interests of his community.

On two occasions, Gilissen reproduces a teleological argument, explicitly designating al Mahdi as the principal and dissociating himself from his Salafist discourse. Elsewhere, he systematically addresses the court in his own name, intermittently using the collective *we* to include his co-counsel Aouini (as in lines 2 and 12, below). He thus asserts interpretive agency as an attorney, either engaging with prosecution statements and misconceptions entertained by the public (the accusatorial aspect of the trial) or providing information about the defendant and the circumstances of the case (assisting the judges in their inquisitorial task of truth-finding). Gilissen strikes a delicate balance here, positioning himself as mediator between defendant and court. The information he provides about his client is cloaked in "other-descriptions" (D'hondt 2010), which al Mahdi would probably never use himself. He also intersperses his talk with brief evaluative comments, evoking a common normative framework shared with the audience but not with the client. Unlike Bensouda, however, he persistently maintains his distance from the judges, emphasizing their autonomy in the decision they have to make on the confirmation of the charges.

The latter is evident, for example, from the fact that he does not use the collective *we* of the court, except on one occasion. To underscore the distinction between Islam, political Islam, and terrorism (which he presents as fundamental to the judges' task of adjudication), Gilissen reframes the hearing as an encounter in which the defendant tries to communicate to the court. He now includes himself as part of the court ("is trying . . . is trying to tell *us*," 11, emphasis added), taking up the role of facilitator of the entailed dialogue:[23]

1	L'islamisme est une instrumentalisation de l'Islam. On ne passe pas indifféremment	Islamism is an instrumentalisation of Islam. And one does not simply move on
2	de cela au salafisme ou au terrorisme. Et ce que nous souhaitons, avec Me Aouini,	from that to Salafism or terrorism. And what we wish, together with my learned colleague Aouini,

23. Transcript ICC-01/12-01/15-T-2-Red-FRA (94, line 15, to 95, line 1, https://www.legal-tools.org/doc/d3d6d7/pdf/).

3	c'est souligner les limites qu'il convient d'imposer dans la décision que vous rendrez	is to underscore the limits that should be imposed in the decision that you will make
4	sur la confirmation des charges.	on the confirmation of the charges.
	[Lines 5–9 omitted]	
10	Il convient d'y être attentif pour ne pas se tromper, pour ne pas confondre les choses	One must keep this in mind in order not to be mistaken, in order not to mix up things
11	et permettre de comprendre ce que M. Al Faqi Al Mahdi essaie . . . essaie de nous dire.	and be able to understand what Mr. Al Faqi Al Mahdi is trying . . . is trying to tell us.
12	La Cour pénale internationale, par sa Chambre préliminaire — nous en sommes	The International Criminal Court, acting through its Preliminary Chamber—we are
13	certains, avec Me Aouini —, peut — s'il nous est permis, nous articulons	sure about this, together with my learned colleague Aouini—, can—if it is allowed, we say so
14	respectueusement —, doit comprendre ce distinguo, parce qu'il ne s'agit pas	respectfully—, must understand this distinction, because there has never been
15	d'attaquer des mosquées. [. . .]	question of attacking mosques. [. . .]

Gilissen's temporary affiliation with the court and his self-positioning as facilitator suggest cultural distance and project a cultural boundary separating court and client. However, unlike the dialogue between court and victim evoked by the prosecution, it also affirms the defendant in his role of autonomous judicial actor, displaying a clear sense of agency in reaching out to the court. Gilissen's remarks about al Mahdi's involvement in the Hisbah portray his engagement during the civil war as regulated by an intellectually buttressed view of what is best for his community—thus qualifying that engagement as part of "politically-morally qualified life." In the excerpt, the defense attorney extends this political-moral qualification of al Mahdi's alleged conduct to his appearance before the court. Through his self-positioning as mediator, he paradoxically also underscores the defendant's own agency in reaching out to the judges, voluntarily entering a guilty plea and setting forth his own line of argumentation.

Conclusion

Two key questions must be answered here. How does the legal discourse mediating ICC trials compare to the discursive practices associated with domestic criminal trials? To what extent do these discursive practices reflect the various internal and external challenges facing the ICC? ICC trial discourse is certainly characterized by a "lack of fit between legal categories . . . and a messy social reality" (Branch 2016, 36), but then, such discrepancies already permeated

Conley and O'Barr's classic (1990) account of litigants' rule- and relationship-oriented perspectives in small claims courts. Further, it appears insufficient to note the game of alignments and disaffiliations that develops between the prosecution and the defense, as comparable constellations can be found in domestic criminal trials, where they may help to conceal the sociopolitical circumstances of adjudication (D'hondt 2009a, 2009b). The present analysis demonstrated, however, that this dynamic interplay between footing practices, alignments with the court and other trial participants, and evoked constituencies, which is characteristic of courtroom discourse in general, acquires a very specific flavor in the context of ICC trial proceedings. In addition to the legal task of establishing possible equivalences with the Rome Statute, the ICC trial actors' metapragmatic regimentations of the ongoing trial seem particularly concerned with asserting the court's independence from the political realm. As discussed in the opening section, this remains a thorny issue that underlies many of the external challenges to the ICC's legitimacy (see also Nouwen and Werner 2010; Kamari Clarke and Koulen 2014).

The first empirical section of this article pointed out how the prosecutor's discourse framed the OTP's decision to prosecute as self-evident and perspicuous, by concealing the judicial text trajectory behind the case and presenting the charges as an automated judicial response to conduct that is manifestly punishable under the Rome Statute. This approach to covering up hypothetical political considerations behind a decision to prosecute is by no means unique, and D'hondt (2009a) documented the existence of a comparable phenomenon in domestic (civil law) criminal proceedings.

Yet, there is no domestic equivalent to the way in which ICC trial actors, particularly the prosecutor, exploit the interactional affordances of the court's collective *we* to anchor ICC trial proceedings in a wider socio-discursive field. In domestic criminal adjudication, this collective *we* of the court plays a prominent role in legal case making, since it provides a screen on which trial actors project commonly accepted notions of normality that render deviance and otherness visible (see above). During the al Mahdi hearing, however, this concept of *we* played only a minimal role in establishing the punishability of the facts. Nevertheless, the prosecutor expended significant discursive effort rendering this *we* that the court stands for explicit. On the one hand, the court was imbued with the transcendent *we* of abstract humanity, confronted with the historic task of standing up against the destruction of its common heritage. On the other hand, the prosecutor framed her discourse as being geared toward the collective task of ensuring justice on behalf of the (equally abstract) victims, whose cries she

quoted during the opening part of her deposition. The central role played by this accounting work in the prosecutor's submission illustrates the extent to which a case conducted before the ICC quasi-automatically becomes "a case for" the ICC, and it highlights how the court continually needs to reassert its own legitimacy. The paradox here, of course, is that any attempt to legitimize/depoliticize the ICC's operation by claiming to do justice in the name of this "double abstraction" (Kendall and Nouwen 2013, 256) is in itself inevitably highly political. As Nouwen and Werner (2010) note, the task of sorting friends from enemies (in this case, of humanity) lies at the very heart of what constitutes politics. Additionally, the dialogue that the prosecutor projects between the court and the victims effectively deprives the latter of any political agency, thereby symbolically reinforcing the center-periphery asymmetry between the ICC in The Hague, as the source of jurisprudence, and the various local sites where its justice is received (Kendall 2014, 62).

ICC trial participants must not only assert their independence from politics, but also navigate the perceptions of cultural distance that might threaten the ICC's attempts to adjudicate crimes committed in foreign cultural settings. Hence, the present analysis highlighted how at one point, the prosecutor slipped into a discourse of anthropological expertise, with the victim being assigned the position of the object of that discourse. The defense attorney, in contrast, positioned himself as a cultural mediator, assisting al Mahdi in his attempt to bridge the evident cultural gap. Both footing patterns are reminiscent of Wilson's (2016) observation that judges on international tribunals readily incorporate social scientific evidence, provided that it does not "[imperil] the authority of judges as finders of fact" (2016, 737). Previous studies (D'hondt 2010; Braunmühl 2012) have demonstrated that discursively framing the defendant as a cultural other does not necessarily require (and hence de facto trumps) actual ethnographic documentation. The current case does not support such a strong assertion, although it nonetheless illustrates the importance of framing conduct as requiring mediation and cultural translation. Furthermore, it is revealing that these framings are not solely geared toward exculpating the punishable behavior of *offenders* who qualify as cultural others ("cultural defense," Foblets and Renteln 2009). Instead, the prosecutor also provides cultural information *about the victims* to help determine whether the defendant's conduct meets the criteria for punishability specified within the Rome Statute. Domestic legal systems are routinely associated with one particular cultural environment, and articulations of cultural otherness are thus typically reserved for deviant "outsiders" who do not share the court's cultural background.

The fact that the prosecutor in this case used cultural evidence to render the victims' conduct intelligible indicates that the ICC somehow considers itself to be "elevated above" cultural diversity.

In tracing these various metapragmatic framings, this article joins a wide range of recent studies drawing attention to the practices of victim representation in international criminal trials (Kamari Clarke 2009; Kendall and Nouwen 2013; Fletcher 2015) as well as to the constituencies in whose name justice is served (Tallgren 2014; Mégret 2015). The article, however, explicitly prioritizes the interactional forum in which such representations and constituencies are articulated (the so-called black box of courtroom talk), thereby underscoring both their role in the discursive accomplishment of legal tasks and the way in which they are negotiated during the course of actual trials. In this way, the present analysis may also shed new light on the following statement by Mégret (2015). Having exposed the intrinsic destabilizability of just about every constituency in whose name the ICC might seek justice, he concludes that "if the ICC can only have its way by successively mobilising a series of constituencies that are inherently in tension with each other, what remains is the feeling that the Court's ultimate constituency is nothing but itself. The 'absent sovereign,' then, is not any of international criminal justice's many constituencies (not even victims), but the agent that is capable of articulating the successive prominence and effacement of these constituencies" (Mégret 2015, 45). This article's focus on the interactional arena in which these constituencies are articulated indicates that there may be multiple agents involved in the process of formulating the ICC's "absent sovereign" (Kendall and Nouwen 2013, 254). Instead of positing a single agentive subject producing the discourse, the present analysis invites us to look at ICC trial discourse as the medium for projecting images of the court and to conceptualize the interactional here-and-now of the hearing (as epitomized by the court's collective *we*) as the "screen" onto which these images are projected. The various metapragmatic devices that ICC trial actors resort to so as to anchor ongoing courtroom events in a broader dialogical field are hence essentially "fantasmatic" projections (Glynos and Howarth 2007, 145–52). Their role involves instilling a momentary impression of wholeness in light of the fundamental impossibility, noted by Mégret in the quote above, of unequivocally assigning an "absent sovereign" to the court. The present analysis demonstrated that the various parties to the trial engage in this task with a high degree of explicitness, and this in itself illustrates the tensions and frictions that the project of global criminal justice, as embodied by the ICC, faces.

References

Agamben, Giorgio. 1998. *Homo Sacer: Sovereign Power and Bare Life*. Stanford, CA: Stanford University Press.

Badar, Mohamed Elewa, and Noelle Higgins. 2017. "Discussion Interrupted: The Destruction and Protection of Cultural Property under International Law and Islamic Law-the Case of Prosecutor v. Al Mahdi." *International Criminal Law Review* 17 (3): 486–516.

Bauman, Richard, and Charles Briggs. 1990. "Poetics and Performance as Critical Perspectives on Language and Social Life." *Annual Review of Anthropology* 19:59–88.

Bens, Jonas. 2018. "Sentimentalising Persons and Things: Creating Normative Arrangements of Bodies through Courtroom Talk." *Journal of Legal Anthropology* 2 (1): 72–91.

Blommaert, Jan. 2005. *Discourse: A Critical Introduction*. Cambridge: Cambridge University Press.

Branch, Adam. 2016. "Dominic Ongwen on Trial: The ICC's African Dilemmas." *International Journal of Transitional Justice* 11 (1): 30–49.

Braunmühl, Caroline. 2012. *Colonial Discourse and Gender in US Criminal Courts: Cultural Defenses and Prosecutions*. New York: Routledge.

Chaemsaithong, Ksidra. 2018. "Use of Voices in Legal Opening Statements." *Social Semiotics* 28 (1): 90–107.

Chaemsaithong, Ksidra & Yoongjeong Kim. 2018. "From Narration to Argumentation: Intertextuality in Two Courtroom Genres." *Lingua* 203:36–50.

Conley, John, and William O'Barr. 1990. *Rules vs. Relationships: The Ethnography of Legal Discourse*. Chicago: University of Chicago Press.

D'hondt, Sigurd. 2009a. "Good Cops, Bad Cops: Intertextuality, Agency and Structure in Criminal Trial Discourse." *Research on Language and Social Interaction* 42 (3): 249–75.

———. 2009b. "Others on Trial: The Construction of Cultural Otherness in Belgian First Instance Criminal Hearings. *Journal of Pragmatics* 41 (4): 806–28.

———. 2010. "The Cultural Defense as Courtroom Drama: The Enactment of Identity, Sameness and Difference in Criminal Trial Discourse." *Law and Social Inquiry* 35 (1): 67–98.

———. 2014. "Defending through Disaffiliation: The Vicissitudes of Alignment and Footing in Belgian Criminal Hearings." *Language and Communication* 36:68–82.

D'hondt, Sigurd, and Fleur van der Houwen, eds. 2014. "Quoting from the Case File." Special issue of *Language and Communication* 36.

Du Bois, John. 2007. "The Stance Triangle." In *Stancetaking in Discourse: Subjectivity, Evaluation, Interaction*, ed. Robert Englebretson, 139–82. Amsterdam: Benjamins.

Dupret, Baudouin. 2016. *Adjudication in Action: An Ethnomethodology of Law, Morality, and Justice*. Farnham: Ashgate.

Dupret, Baudouin, and Sigurd D'hondt. Forthcoming. "L'Ecrasement Fondamentaliste de l'Histoire: Islamisme, Idoles, et Age de l'Ignorance." In *Afriques: Débats, Méthodes et Terrains d'Histoire*.

Eades, Diana. 2016. "Theorising Language in Sociolinguistics and the Law: (How) Can Sociolinguistics Have an Impact on Inequality in the Criminal Justice Process." In *Sociolinguistics: Theoretical Debates*, ed. Nikolas Coupland, 367–88. Cambridge: Cambridge University Press.

Ehrlich, Susan. 2007. "Legal Discourse and the Cultural Intelligibility of Gendered Meaning." *Journal of Sociolinguistics* 11 (4): 452–77.

———. 2012. "Text Trajectories, Legal Discourse and Gendered Inequalities." *Applied Linguistics Review* 3 (1): 47–73.

Ellis, Mark. 2017. "The ICC's Role in Combatting the Destruction of Cultural Heritage." *Case Western Reserve Journal of International Law* 49:23–62.

Fletcher, Laurel. 2015. "Refracted Justice: The Imagined Victim and the International Criminal Court." In *Contested Justice: The Politics and Practice of International Criminal Court Interventions*, ed. Christian De Vos, Sara Kendall, and Carsten Stahn, 302–25. Cambridge: Cambridge University Press.

Foblets, Marie Claire, and Alison Dundes Renteln, eds. 2009. *Multicultural Jurisprudence: Comparative Perspectives on the Cultural Defense*. Oxfort: Hart.

Glynos, Jason, and David Howarth. 2007. *Logics of Critical Explanation in Social and Political Theory*. London: Routledge.

Goffman, Erving. 1981. "Footing." In *Forms of Talk*, 124–59. Philadelphia: University of Pennsylvania Press.

Goodwin, Charles. 2007. "Interactive Footing." In *Reporting Talk: Reported Speech in Interaction*, ed. Elisabeth Holt and Rebecca Clift, 16–46. Cambridge: Cambridge University Press.

Goodwin, Charles, and Marjorie Harness Goodwin. 2004. "Participation." In *A Companion to Linguistic Anthropology*, ed. Alessandro Duranti, 222–44. Oxford: Blackwell.

Heffer, Chris, Rock, Frances, and John Conley, eds. 2013. *Legal-Lay Communication: Textual Travels in the Law*. Oxford: Oxford University Press.

Heritage, John. 2013. "Epistemics in Conversation." In *The Handbook of Conversation Analysis*, ed. Jack Sidnell and Tanya Stivers, 370–94. Oxford: Wiley-Blackwell.

Hirsch, Susan. 1998. *Pronouncing and Persevering: Gender and the Discourses of Disputing in an African Islamic Court*. Chicago: University of Chicago Press.

Irvine, Judith. 1996. "Shadow Conversations: The Indeterminacy of Participation Roles." In *Natural Histories of Discourse*, ed. Michael Silverstein and Greg Urban, 113–59. Chicago: University of Chicago Press.

Jaffe, Alexandra, ed. 2009. *Stance: Sociolinguistic Perspectives*. New York: Oxford University Press.

———. 2016. "Indexicality, Stance and Fields in Sociolinguistics." In *Sociolinguistics: Theoretical Debates*, ed. Nikolas Coupland, 86–112. Cambridge: Cambridge University Press.

Kamari Clarke, Maxine. 2009. *Fictions of Justice: The International Criminal Court and the Challenge of Legal Pluralism in Sub-Saharan Africa*. Cambridge: Cambridge University Press.

Kamari Clarke, Maxine, and Sarah-Jane Koulen. 2014. "The Legal Politics of the Article 16 Decision: The International Criminal Court, the UN Security Council and Ontologies of a Contemporary Compromise." *African Journal of Legal Studies* 7 (3): 297–319.

Kendall, Sara. 2014. "Critical Orientations: A Critique of International Criminal Court practice." In *Critical Approaches to International Criminal Law: An Introduction*, ed. Christine Schwöbel, 54–70. London: Routledge.

Kendall, Sara, and Sarah Nouwen. 2013. "Representational Practices at the International Criminal Court: The Gap between Juridified and Abstract Victimhood." *Law and Contemporary Problems* 76:235–62.

Komter, Martha. 2006. "From Talk to Text: The Interactional Construction of a Police Record." *Research on Language and Social interaction* 39 (3): 201–28.

———. 2019. *The Suspect's Statement: Talk and Text in the Criminal Process*. Cambridge: Cambridge University Press.

Labov, William, and David Fanshel. 1977. *Therapeutic Discourse: Psychotherapy as Conversation*. New York: Academic Press.

Lecocq, Baz. 2010. *Disputed Desert: Decolonisation, Competing Nationalisms and Tuareg Rebellions in Mali*. Leiden: Brill.

Lecocq, Baz, Gregory Mann, Bruce Whitehouse, Dida Badi, Lotte Pelckmans, Nadia Belalimat, Bruce Hall, and Wolfram Lacher. 2013 "One Hippopotamus and Eight Blind Analysts: A Multivocal Analysis of the 2012 Political Crisis in the Divided Republic of Mali." *Review of African Political Economy* 40 (137): 343–57.

Lempert, Michael. 2009. "On 'Flip-Flopping': Branded Stance-Taking in U.S. Electoral Politics." *Journal of Sociolinguistics* 13:223–48.

Leudar, Ivan and Jiri Nekvapil. 2004. "Media Dialogical Networks and Political Argumentation." *Journal of Language and Politics* 3:247–66.

Lostal, Marina. 2017. "The Misplaced Emphasis on the Intangible Dimension of Cultural Heritage in the Al Mahdi Case at the ICC." *Inter Gentes—the McGill Journal of International Law and Legal Pluralism* 1 (2): 45–58.

Maryns, Katrijn. 2014. "The Interdiscursive Construction of Irresponsibility as a Defence Strategy in the Belgian Assize Court." *Language and Communication* 36:25–36.

Matoesian, Gregory. 2001. *Law and the Language of Identity: Discourse in the William Kennedy Smith Rape Trial*. Oxford: Oxford University Press.

Mégret, Frédéric. 2015. "In Whose Name? The ICC and the Search for Constituency." In *Contested Justice: The Politics and Practice of International Criminal Court Interventions*, ed. Christian De Vos, Sara Kendall, and Carsten Stahn, 23–45. Cambridge: Cambridge University Press.

Nouwen, Sarah, and Wouter Werner. 2010. "Doing Justice to the Political: The International Criminal Court in Uganda and Sudan." *European Journal of International Law* 21:941–65.

Philips, Susan. 1986. "Reported Speech as Evidence in an American Trial." In *Languages and Linguistics: The Interdependence of Theory, Data and Application*, ed. D. Alatis, 154–70. Washinton DC: Georgetown University Press.

Pomerantz, Anita. 1980. "Telling My Side: 'Limited Access' as a 'Fishing' Device." *Sociological Inquiry* 50 (3–4): 186–98.

Rosulek, Laura Felton. 2007. "Dual Identities: Lawyer's Construction of Self in the Closing Arguments of Criminal Trials. *Texas Linguistic Forum* 51:154–64.

———. 2015. *Dueling Discourse: The Construction of Reality in Closing Arguments*. Oxford: Oxford University Press.

Schabas, William. 2017. "Al Mahdi Has Been Convicted of a Crime He Did Not Commit." *Case Western Reserve Journal of International Law* 49:75–102.

Silverstein, Michael. 1993. "Metapragmatic Discourse and Metapragmatic Function." In *Reflexive Language: Reported Speech and Metapragmatics*, ed. John Lucy, 33–58. New York: Cambridge University Press.

Tallgren, Immi. 2014. "Who Are 'We' in International Criminal Law? On Critics and Membership." In *Critical Approaches to International Criminal Law: An Introduction*, ed. Christine Schwöbel, 71–95. London: Routledge.

Thurston, Alexander, and Andrew Lebovich. 2013. "A Handbook on Mali's 2012–2013 Crisis." Institute for the Study of Islamic Thought in Africa Working Paper 13-001. http://www.bcics.northwestern.edu/documents/workingpapers/ISITA-13-001-Thurston-Lebovich.pdf.

Trinch, Shonna. 2003. *Latinas' Narratives of Domestic Abuse: Discrepant Versions of Violence*. Amsterdam: Benjamins.

Wilson, Richard Ashby. 2016. "Expert Evidence on Trial: Social Researchers in the International Criminal Courtroom." *American Ethnologist* 43 (4): 730–44.