

# INTRODUCTION: SOCIOLOGICAL PERSPECTIVES ON INTERNATIONAL TRIBUNALS

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## I. INTRODUCTION

Sociologists of law have long emphasized that law is rooted in communities.<sup>1</sup> International tribunals are embedded in certain communities (e.g., regional, ideological, or professional groups<sup>2</sup>), and they reflect and affect socio-cultural patterns prevailing in those communities. While the work of tribunals involves numerous socio-cultural issues, this Introduction only briefly addresses certain interactions between tribunals and social factors and processes, primarily those relating to social functions, power relations, meanings, rituals, and interactionist processes.

A sociological analysis of international tribunals cannot limit itself to an examination of official legal texts (such as constituent instruments of tribunals or their decisions) and their interrelationships. Although these sources of “lawyers’ law” remain significant, *informal* rules applied to tribunals (like those related to

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1. See, e.g., ROGER COTTERRELL, *LAW, CULTURE AND SOCIETY: LEGAL IDEAS IN THE MIRROR OF SOCIAL THEORY* 117, 161 (2006) (pointing to community as the source of law); see also MATHIEU DEFLEM, *SOCIOLOGY OF LAW: VISIONS OF A SCHOLARLY TRADITION* 7–8 (2008) (providing an overview on the sociological perspective of the law).

2. See, e.g., Antoine Vauchez, *Communities of International Litigators*, in *THE OXFORD HANDBOOK OF INTERNATIONAL ADJUDICATION* 655, 656–57 (Cesare Romano et al. eds., 2014) (discussing interactions between international tribunals and professional groups); Erik Voeten, *International Judicial Behavior*, in *THE OXFORD HANDBOOK OF INTERNATIONAL ADJUDICATION* 550, 566 (Cesare Romano et al. eds., 2014) (discussing the significance of professional background for judges).

particular language or rituals in the courtroom) should also be carefully studied.<sup>3</sup> For example, some practices shared by certain international tribunals (e.g., regarding judicial dissent) are also significant for socio-legal analysis.<sup>4</sup> Similarly, a sociological examination also pays attention to the role of *informal actors*, such as the secretariats of international economic tribunals<sup>5</sup> or prosecutors in international criminal tribunals.<sup>6</sup>

## II. SOCIAL FUNCTIONS

Many socio-legal scholars explore the social functions (both manifest and latent functions) of tribunals in international society.<sup>7</sup> While some roles of tribunals are widely shared (e.g., the dispute settlement function), others are less settled among experts (e.g., law-making or governance).<sup>8</sup> Some scholars embrace a broader view according to which tribunals occasionally present general images of community goals, identities, and deep values of the international community.<sup>9</sup> From a sociological perspective, it is clear that tribunals also fulfill non-strictly judicial functions, such as promoting social integration.<sup>10</sup> Sociological literature on

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3. See EUGEN EHRLICH, *FUNDAMENTAL PRINCIPLES OF SOCIOLOGY OF LAW* 9–11, 38 (Walter L. Moll trans., Russell & Russell 1962) (1913) (defining Ehrlich's conception of 'living law'); Moshe Hirsch, *The Sociology of International Law: Invitation to Study International Rules in Their Social Context*, 55 U. TORONTO L.J. 891, 894–95 (2005) [hereinafter Hirsch, *The Sociology of International Law: Invitation to Study International Rules in Their Social Context*] (defining the same concept with regard to international law).

4. Dunoff and Pollack highlight the significance of 'practice theory' for the study of international law and legal actors (including international tribunals). See Jeffrey L. Dunoff & Mark A. Pollack, *Practice Theory and International Law*, in *RESEARCH HANDBOOK ON THE SOCIOLOGY OF INTERNATIONAL LAW* 252, 266–67 (Moshe Hirsch & Andrew Lang eds., 2018) (detailing the practices related to the litigation process).

5. J.H.H. Weiler, *The Rule of Lawyers and the Ethos of Diplomats: Reflections on the Internal and External Legitimacy of WTO Dispute Settlement*, 35 J. WORLD TRADE 191, 205–06 (2001) (describing the informal role of the Secretariat in the World Trade Organization dispute settlement process).

6. See John Hagan & Ron Levi, *Crimes of War and the Force of Law*, 83 SOC. FORCES 1499, 1504–05 (2005) (explaining the role of the prosecution of the International Criminal Tribunal for the former Yugoslavia).

7. Robert Merton introduced the distinction between "manifest" and "latent" functions to the structural-functional perspective. "Manifest" functions are the intended and recognized consequences of any social pattern to other social actors or institutions. "Latent functions" are often unintentional or unrecognized results of social action but still essential for society. ROBERT MERTON, *SOCIAL THEORY AND SOCIAL STRUCTURE* 105, 114–23 (Enlarged ed., 1968).

8. José Alvarez discusses the following functions of international tribunals: dispute-settlement, fact-finding, law-making, and governance. José E. Alvarez, *What Are International Judges for? The Main Functions of International Adjudication*, in *THE OXFORD HANDBOOK OF INTERNATIONAL ADJUDICATION* 158, 159–61 (2013). For a broader list of functions of international criminal courts, see Stuart Ford, *A Hierarchy of the Goals of International Criminal Courts*, 27 MINN. J. INT'L L. 179, 188–91 (2018).

9. Wouter G. Werner, *Speech Act Theory and the Concept of Sovereignty: A Critique of the Descriptivistic and the Normativistic Fallacy*, 14 HAGUE Y.B. INT'L L. 73, 79 (2001).

10. See, e.g., Mikael R. Madsen, *The Sociology of International Law: An Introduction*, in *LAW, SOCIETY AND COMMUNITY: SOCIO-LEGAL ESSAYS IN HONOUR OF ROGER COTTERRELL* 241, 244–45 (Richard Nobles & David Schiff eds., 2014) (describing courts as a forum to deliberate

collective memory highlights that a group's memory preserves the store of knowledge from which the group derives awareness of its unity and peculiarity.<sup>11</sup> Thus, tribunals may enhance social integration through the presentation of a consensual historical narrative shared by state societies belonging to a particular region.<sup>12</sup>

International tribunals (like domestic ones) also function as *social control mechanisms*. Every society deploys diverse social control mechanisms to encourage and enforce conformity to societal norms. Social control involves a myriad of disciplinary mechanisms including both formal means authorized by the criminal justice system (e.g., police, courts, and prison officials) and less organized informal mechanisms (including expressions of praise or social disapproval, contempt, ridicule, or isolation).<sup>13</sup> *International* social control mechanisms comprise a broad range of practices, including international bodies' statements expressing condemnation, international "peer review" procedures, or threats to expel members from international institutions.<sup>14</sup> Decisions of international courts, particularly those reflecting fundamental norms in international society, are likely to exert social pressure on violating actors to comply with these international norms.

International tribunals may function as agents of socialization.<sup>15</sup> Socialization is one of the most influential sociological processes in the international system<sup>16</sup> and it affects the general compliance rate with international law.<sup>17</sup> The major agents of international socialization include regional or ideological groups of states, a

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in order to ensure social stability and integration).

11. Jan Assmann & John Czaplicka, *Collective Memory and Cultural Identity*, 65 NEW GERMAN CRITIQUE 125, 130 (1995).

12. Moshe Hirsch, *The Role of International Tribunals in the Development of Historical Narratives*, 20 J. HIST. INT'L L. 391, 405–06, 408–10 (2018) [hereinafter Hirsch, *The Role of International Tribunals*].

13. ERICH GOODE, *DEVIAN'T BEHAVIOR* 47–49 (9th ed., 2011) (1978); Erich Goode, *Deviance*, in *THE CONCISE ENCYCLOPEDIA OF SOCIOLOGY* 135–36 (George Ritzer & J. Michael Ryan eds., 2011) [hereinafter Goode, *Deviance*].

14. MOSHE HIRSCH, *INVITATION TO THE SOCIOLOGY OF INTERNATIONAL LAW* 168 (2015) [hereinafter HIRSCH, *INVITATION TO THE SOCIOLOGY OF INTERNATIONAL LAW*].

15. See Nicole de Silva, *International Courts Socialization Strategies for Actual and Perceived Performance*, in *THE PERFORMANCE OF INTERNATIONAL COURTS AND TRIBUNALS* 291–92 (Theresa Squatrito et al eds., 2018) (discussing socialization by the International Criminal Court); see also SUNGJOON CHO, *THE SOCIAL FOUNDATIONS OF WORLD TRADE: NORMS, COMMUNITY, AND CONSTITUTION* 213–15 (2015) (discussing the role of World Trade Organization's dispute-resolution mechanisms in promoting socialization with respect to international trade).

16. HIRSCH, *INVITATION TO THE SOCIOLOGY OF INTERNATIONAL LAW*, *supra* note 14, at 173. For a discussion on the concept of 'acculturation,' which is closely related to socialization and its role in the international legal system, see RYAN GOODMAN & DEREK JINKS, *SOCIALIZING STATES* 22, 25–37 (2013). See also Ryan Goodman & Derek Jinks, *How to Influence States: Socialization and International Human Rights Law* 54 DUKE L.J. 638–46 (2004).

17. See, e.g., Kal Raustiala & Anne-Marie Slaughter, *International Law, International Relations and Compliance*, in *HANDBOOK OF INTERNATIONAL RELATIONS* 538, 546 (Walter Carlsnaes et al. eds., 1st ed. 2002) (explaining that states may begin to comply with international law based on changes in their perceived interests over time, which can be altered as those states are socialized towards accepting what conduct is permissible under prevailing legal norms).

particular nation with which the individual actor is identified, and certain non-state actors. International institutions often play a significant role in international socialization and it is particularly notable regarding the long accession process to certain international organizations, as well as the interaction between members following the accession.<sup>18</sup> International tribunals occasionally adopt policies and practices aimed at socializing international actors into certain international norms and procedures (e.g., through training and outreach activities).<sup>19</sup>

International tribunals fulfill both strictly judicial as well as broader social functions. It is noteworthy that these two categories of functions are frequently intertwined; thus, in reality, it is often difficult (if possible at all) to disentangle these functions.

### III. POWER RELATIONS AND ASYMMETRIES

Socio-legal scholars, particularly those inspired by the social conflict or other critical approaches, emphasize that international tribunals are embedded in power relations and political conflicts.<sup>20</sup> Thus, international adjudication constitutes a significant battleground in which international actors struggle for primacy.<sup>21</sup> Such analysis aims to unmask perceptions of equality and underlines that international tribunals are not ideologically or culturally neutral. The rival litigating parties exert asymmetric influence on international tribunals—for example, with regard to the composition of tribunals<sup>22</sup> and asymmetric resources that are available to the rival parties in international judicial proceedings.<sup>23</sup> From this perspective, international tribunals are often biased in favor of powerful groups in international society, their rulings tend to preserve the dominant position of strong actors, and they are generally inclined to maintain status quo arrangements (and constrain socio-legal change).

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18. HIRSCH, INVITATION TO THE SOCIOLOGY OF INTERNATIONAL LAW, *supra* note 14, at 173.

19. de Silva, *supra* note 15, at 303–04, 315–17.

20. From the social conflict perspective, society is characterized by regular patterns of inequality regarding the allocation of essential resources among its members (e.g., wealth, authority, political power, and cultural resources or positions). The existing social structures result from the struggle held between rival groups. ANTHONY GIDDENS & PHILIP SUTTON, *SOCIOLOGY* 21–22 (7th ed., Polity Books 2013); Hirsch, *The Sociology of International Law: Invitation to Study International Rules in Their Social Context*, *supra* note 3, at 906–09. See JONATHAN H. TURNER, *CONTEMPORARY SOCIOLOGICAL THEORY* 1–2 (2013).

21. For an insightful analysis of struggles waged in the field of international commercial arbitration, see YVES DEZALAY & BRYANT G. GARTH, *DEALING IN VIRTUE: INTERNATIONAL COMMERCIAL ARBITRATION AND THE CONSTRUCTION OF A TRANSNATIONAL LEGAL ORDER* 33–62, 100–16 (2d ed. 1996).

22. Thus, for example, according to longstanding tradition (and with some few notable exceptions), each of the five permanent members of the Security Council may have a judge in the ICJ. Shabtai Rosenne, *International Court of Justice (ICJ)*, in MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW ¶17 (2006). See Natalya Scimeca, *Special Elections to Fill Vacancies on the International Court of Justice*, 14 ASIL INSIGHT (2010), <https://www.asil.org/insights/volume/14/issue/14/special-elections-fill-vacancies-international-court-justice> (outlining the process of electing ICJ judges).

23. See, e.g., Vitalius Tumonis, *Adjudication Fallacies: The Role of International Courts in Interstate Dispute Settlement*, 31 WIS. INT'L L.J. 35, 47–8 (2013) (noting the difference in resources and the effects on litigation for states litigating in an international tribunal).

Such a critical analysis also highlights unequal interactions and hierarchy between international tribunals. The international judicial system is stratified and some tribunals are more influential than others. The asymmetric structure is revealed through the analysis of cross-references<sup>24</sup> included in tribunals' judgments.<sup>25</sup> Thus, for example, the International Court of Justice (ICJ) retains a preferred status in the international legal system.<sup>26</sup> While investment tribunals frequently cite ICJ jurisprudence,<sup>27</sup> ICJ judgments rarely refer to investment tribunals' awards; and, in the domain of international human rights law, the Inter-American Court of Human Rights (IACtHR) cites the jurisprudence of the European Court of Human Rights (ECtHR) significantly more than the ECtHR cites the IACtHR.<sup>28</sup>

The power dimension of international tribunals is certainly significant in numerous cases, but it should not be studied exclusively (at the expense of overlooking other social dimensions). The multi-dimensional interactions between international tribunals (and between tribunals and other actors) should not be reduced to an analysis of power asymmetries alone. For example, while cross-references between tribunals are influenced by the asymmetric structure of the international adjudication system, such citations are also influenced by the specific socio-cultural features of the communities where the particular tribunals are anchored, as well as the type of interactions between the relevant communities. Thus, if the relations between the two relevant communities are strained (or characterized by hostility), the prospects for mutual citations are reduced.<sup>29</sup>

#### IV. MEANING, INTERPRETATION, AND LABELING

Sociological analyses of international tribunals also pay attention to inter-subjective aspects of tribunals' activities—prominently, the meanings attributed by tribunals to social phenomena. Such meanings emerge from social interactions and,

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24. See Harlan Grant Cohen, *Theorizing Precedent in International Law*, in INTERPRETATION IN INTERNATIONAL LAW 268, 278 (Andrea Bianchi et al. eds., 2015) (discussing the citation of judgements by international tribunals as an instrument to enhance their prestige and authority in the international legal system).

25. See Erik Voeten, *International Judicial Behavior*, *supra* note 2, at 563 (discussing asymmetries in mutual citations between tribunals).

26. See Daniel Terris et al., *Toward a Community of International Judges*, 30 LOY. L.A. INT'L & COMP. L. REV. 419, 450 (2008) (noting that the ICJ is "the court most commonly recognized to be at the top of the pecking order"); see also Laurence Boisson de Chazournes, *Plurality in the Fabric of International Courts and Tribunals: The Threads of a Managerial Approach: A Rejoinder – Fears and Anxieties*, 28 EUR. J. INT'L L. 13, 39-40 (2017).

27. See, e.g., Ole Kristian Fauchald, *The Legal Reasoning of ICSID Tribunals – An Empirical Analysis*, 19 EUR. J. INT'L L. 301, 341-42 (2008) (analyzing role of ICJ case law in investment tribunal decisions).

28. Erik Voeten, *Borrowing and Nonborrowing Among International Courts*, 39 J. LEGAL STUD. 547, 562-63 (2010).

29. See, e.g., Moshe Hirsch, *The Sociology of International Investment Law*, in THE FOUNDATIONS OF INTERNATIONAL INVESTMENT LAW: BRINGING THEORY INTO PRACTICE 143, 152-56 (Z. Douglas et al. eds., 2014) (describing the interactions between investment tribunals and human rights courts).

to some extent, are shared by individuals comprising a society.<sup>30</sup> This approach accords particular importance to the legitimacy<sup>31</sup> of international tribunals and explores why and to what extent actors accept their authority.<sup>32</sup>

Such inter-subjective analyses underscore that legal texts (such as treaty provisions, or tribunals' decisions themselves) are inherently subjective and may well be subject to different interpretations developed by different communities. One of the primary functions of tribunals is to interpret certain facts, attribute meaning to certain actors' behavior (e.g., to determine whether a certain person had the intention of attaining some result), and infer some causal links. While a particular interpretation adopted by a tribunal is inherently inter-subjective, its normative content is likely to affect the social acceptance of that interpretation in the international community. Thus, tribunals are often required to interpret facts and texts in a socially persuasive manner.

Labeling theory<sup>33</sup> posits that the determination of whether a particular act constitutes a breach of a norm is not objectively given, but rather socially constructed, and affected not only by the properties of the particular act, but also by subjective cultural factors.<sup>34</sup> The labeling process is undertaken not only by public agencies that are legally authorized to label a particular actor as deviant (like the

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30. See MAX WEBER, *THE THEORY OF SOCIAL AND ECONOMIC ORGANIZATION* 21–22, 89–90 (Talcott Parsons ed., A.M. Henderson & Talcott Parsons trans., 1947) (explaining the connection between social action and individual subjective meaning); see also NORMAN K. DENZIN, *SYMBOLIC INTERACTIONISM AND CULTURAL STUDIES* 25 (1992) (discussing the significance of meanings emerging human interactions in the symbolic interactions approach); MALCOLM WATERS, *MODERN SOCIOLOGICAL THEORY* 12, 15 (1994) (expounding on the relationship between social meaning and individuals (according to the symbolic interactionist approach)).

31. See ROGER COTTERRELL, *THE SOCIOLOGY OF LAW* 152–57 (2d ed. 1992) (discussing Max Weber's three bases of legitimacy (rational-legal domination, charismatic domination, and traditional domination)) [hereinafter COTTERRELL, *THE SOCIOLOGY OF LAW*]; see also Sanne Taekema & Wibren van der Burg, *Towards a Fruitful Cooperation Between Legal Philosophy, Legal Sociology and Doctrinal Research: How Legal Interactionism May Bridge Unproductive Oppositions*, in *LAW, SOCIETY AND COMMUNITY: SOCIO-LEGAL ESSAYS IN HONOUR OF ROGER COTTERRELL* 129, 134–44 (Richard Nobles & David Schiff eds., 2014) (discussing how legal interactionism creates legitimacy).

32. For an analysis of the legitimacy of international tribunals from this perspective, see Madsen, *supra* note 10, at 242–46. See also Freya Baetens, *Unseen Actors in International Courts and Tribunals*, in *LEGITIMACY OF UNSEEN ACTORS IN INTERNATIONAL ADJUDICATION* 10–12 (Freya Baetens ed., 2019).

33. Labeling theory is widely used in the sociology of deviance. See WATERS, *supra* note 30, at 29–31 (discussing how the theory of symbolic interactionism influenced labeling theory with regard to deviance); see, e.g., Ryken Grattet, *Labeling Theory*, in *THE ROUTLEDGE HANDBOOK OF DEVIANT BEHAVIOUR* 121–26 (Clifton D. Bryant ed., 2011) (discussing labeling theory and mentioning how it has become relevant in multiple fields of study).

34. See, e.g., HOWARD S. BECKER, *OUTSIDERS: STUDIES IN THE SOCIOLOGY OF DEVIANCE* 9–14 (1963) (discussing the social processes which lead societies to attach the label “deviant” to some rule-breakers and not to others); Paul Rock, *Sociological Theories of Crime*, in *THE OXFORD HANDBOOK OF CRIMINOLOGY* 69, 71–73 (Mike Maguire et al. eds., 2002) (describing how language—and more specifically labeling—is used to construct our social realities); see also Goode, *Deviance*, *supra* note 13, at 135 (describing the constructionist view that judgements of deviance are subjectively created).

judiciary), but also by informal actors like peer groups, the media, and religious or other institutions.<sup>35</sup> The labeling approach turns our attention to the fact that international tribunals not only settle legal disputes but also function as international labeling agencies, determining whether a particular actor is tagged as an international law-breaker (which may stigmatize a particular social group in the international community).

From the labeling perspective, it is clear that a determination by an international tribunal regarding whether an actor has violated an international legal rule is not objectively given. It is also clear that this international labeling process relates not only to the particular features of the specific act but also to certain socio-cultural factors. It is thus plausible that adjudicators taking part in this labeling process are affected by various subjective factors, such as their socio-cultural backgrounds or conceptions of justice prevailing in their social groups. The definitions of numerous international obligations are ambiguous; for example, vague legal concepts, such as “due diligence” in the law of state responsibility, “legitimate expectations” in international investment law, and “legitimate interests” under the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights, are applied by international bodies. International tribunals that apply such vague concepts in order to determine whether a particular person or state has breached international law are particularly susceptible to being influenced by socio-cultural factors prevailing in their communities.<sup>36</sup>

## V. RITUALS AND SYMBOLS

International tribunals’ proceedings involve a variety of symbols and rituals.<sup>37</sup> Humans construct a society which depends significantly on symbols, and human interaction relies heavily on the employment of such symbols (including words, objects, and actions).<sup>38</sup> Symbolic communication between people is of utmost importance to our reality, our society, and our distinctly human qualities.<sup>39</sup> The symbolic and ritual practices of international tribunals are prominent in the ICJ courtroom (e.g., with regard to the ceremonial outfit or specific language used by the different parties in the courtroom)<sup>40</sup> as well as in hearings of international arbitral

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35. See RICHARD JENKINS, *SOCIAL IDENTITY* 187–90 (4th ed. 2014) (detailing how organizations and institutions label members and non-members).

36. HIRSCH, *INVITATION TO THE SOCIOLOGY OF INTERNATIONAL LAW*, *supra* note 14, at 169–71.

37. See OSCAR G. CHASE, *LAW, CULTURE, AND RITUAL* 114–24 (2005) (discussing the role of ritual in domestic courts’ procedures); COTTERRELL, *THE SOCIOLOGY OF LAW*, *supra* note 31, at 102–06 (describing the interaction between law and symbols).

38. See JOEL M. CHARON, *SYMBOLIC INTERACTIONISM* 48–53 (Kari Callaghan ed., 4th ed. 1979) (discussing the significance of symbols to human interaction).

39. See *id.* at 25, 68–69 (discussing how humans understand the world through symbolic interactions with one another); see also DENZIN, *supra* note 30, at 27 (explaining how cultural meanings are expressed via communication and how those meanings are symbolic).

40. See CHASE, *supra* note 37, at 116–20 (elaborating on the use of rituals in national courts); see also Gregory Messenger, *The Practice of Litigation at the ICJ: The Role of Counsel in the Development of International Law*, in *RESEARCH HANDBOOK ON THE SOCIOLOGY OF INTERNATIONAL LAW* 208, 221–23 (Moshe Hirsch & Andrew Lang eds., 2017) (describing the

tribunals.<sup>41</sup> Judges' rites of passage, which include the making of a solemn declaration (e.g., as part of a ICJ judges' "swearing in"),<sup>42</sup> signify depersonalization and suppression of a new judge's individuality. Such symbolic practices<sup>43</sup> tend to enhance the authority of the judges, and to attain this aim, they have to resonate culturally with accepted values.<sup>44</sup> Some practices performed in international legal proceedings (such as a separate entrance for judges)<sup>45</sup> fulfill both instrumental objectives (aimed at facilitating an efficient resolution of the legal dispute) as well as ceremonial goals, and the dividing line is often blurred.<sup>46</sup>

#### VI. INTERACTIONIST APPROACH, THE LIMITS OF INTERNATIONAL TRIBUNALS, AND CONCLUDING REMARKS

International tribunals emerge from and operate in particular social environments, influenced by and influencing the distinctive socio-cultural features of these communities. Tribunals enjoy some "comparative advantages" and are often perceived as more neutral than the rival parties because, inter alia, adjudicators are commonly drawn from multiple state-societies and tribunals employ some powerful symbols. The interactions between tribunals and their "social habitats," as well as with other societal actors functioning in these communities (such as the mass media or social movements), affect those tribunals' normative influence and limits.

Tribunals interact with a local community and are aware of the need to maintain their legitimacy in that community. If a tribunal's ruling exceeds its legitimacy boundaries, its normative influence in the particular social group is likely to diminish (including its prospects for compliance). For example, tribunals' judgments occasionally present historical narratives of past events (famously in the judgment of the Nuremberg Tribunal), and some tribunals explicitly aim to influence collective memories.<sup>47</sup> The influence of such judicial historical narratives is not guaranteed, and it also depends on interactions between the particular tribunal's

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dress code in ICJ proceedings and how it is a physical manifestation of "symbolic capital"); Lyndel V. Prott, *The Role of the Judge of the International Court of Justice*, 10 BELGIAN REV. INT'L L. 475, 488–89 (1974) (showing ritual in ICJ proceedings through an examination of the role that judges play).

41. See Emmanuel Gaillard, *Sociology of International Arbitration*, 31 ARB. INT'L 1, 10–13 (2015) (discussing the rituals present in hearings at international arbitral tribunals).

42. See Statute of the International Court of Justice art. 20, Apr. 18, 1946, 33 U.N.T.S. 993 ("Every member of the Court shall, before taking up his duties, make a solemn declaration in open court that he will exercise his powers impartially and conscientiously.").

43. See generally Antoine Vauchez, *Keeping the Dream Alive: The European Court of Justice and the Transnational Fabric of Integrationist Jurisprudence*, 4 EUR. POL. SCI. REV. 51 (2012) (providing an analysis of the role of various rituals in maintaining the European Court of Justice's integrationist jurisprudence).

44. See CHASE, *supra* note 37, at 114, 116, 119–21 (explaining how the use of rituals that echo shared social values assists judges in asserting legitimacy).

45. See Prott, *supra* note 40, at 489 (describing how protective mechanisms—such as a raised bench and separate entrances for judges—at the ICJ symbolize the function that judges play in the legal system).

46. CHASE, *supra* note 37, at 119.

47. Hirsch, *The Role of International Tribunals*, *supra* note 12, at 400–01.



narrative and local communities. Thus, for example, the historical narrative presented by the International Criminal Tribunal for the Former Yugoslavia with regard to the genocide in Srebrenica was not accepted by most of the Serbian population in Serbia.<sup>48</sup>

Such cases bring to the fore the complex social reality in which international tribunals operate and highlight that tribunals often interact with more than one social group. Enhancing the tribunal's legitimacy in one community may entail diminishing its normative influence in another community. Tribunals operating in such a polarized social setting do not undertake pure rational choice calculation of their social costs and benefits in each community, and their considerations also relate to social issues, such as the collective identity of the particular tribunal or the social identity of the individual adjudicators.

International tribunals do not directly encounter local communities, and their judicial rulings are mediated through existing cultural systems that include, for example, local values, social hierarchies, and symbols. Tribunals also interact with additional social agents in the relevant community, such as the mass media, social movements, and diverse governmental bodies. Consequently, a sociological analysis of international tribunals should explore these legal actors in the broader socio-cultural context in which tribunals operate and take into account a wide range of socio-cultural features characterizing the tribunals, the involved communities, and other social actors active in these communities.

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48. See Marko Milanović, *The Impact of the ICTY on the Former Yugoslavia: An Anticipatory Postmortem*, 110 AM. J. INT'L L. 233, 246–47, 258–59 (2016).