3-2005

The Milosevic Trial - Live: An Iconical Analysis of International Law's Claim of Legitimate Authority

Maya Steinitz

'The *Milošević* Trial — Live!'

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Abstract

It has been argued that in order for a normative system to qualify as 'law', it must, at the least, claim to possess legitimate authority and to be supreme to other normative systems. This article examines one highly visible development in international law — the criminal war trials — from a sociological perspective, trying to discern whether and how international law claims legitimate authority and supremacy. Specifically, it focuses on a deeply symbolic example of international criminal adjudication: the Milošević trial — a 'transitional justice' trial in that it is a trial held after a conflict that has deeply disrupted the relevant community. The article offers a sociological reading of the symbolism of the interpersonal dynamics of the Milošević trial and concludes that what is in fact attempted, and perhaps achieved, through internationalizing the transitional-justice trials is the internationalization of the transition process itself. The subject of the transition from an illiberal and illegitimate regime to a liberal and legitimate one is not in fact the former Yugoslavia, but the 'international community' itself. The rule of law that the International Criminal Tribunal for the Former Yugoslavia seeks to vindicate is not only law as such, and not necessarily the law of the former Yugoslavia, but the rule of international law.

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The quote in the title is taken from B92, a media association covering 'the transformation of post-Milošević Yugoslavia's cultural life', available online at http://www.b92.net/index.phtml (visited 23 June 2003).

Journal of International Criminal Justice 3 (2005), 103–123 doi: 10.1093/jicj/mqi003

1. The Power of Image: The Socially Constructed Nature of the Authority, Legitimacy and Supremacy of International Law

A. The Claims of Legal Systems to Legitimate Authority

> *Imago veritas falsa* [the image is a false truth]. (Alciatus (Renaissance jurist))[1]

Among the stark developments that characterized the watershed in international law that were the 1990s was the establishment of the international criminal courts. With the establishment in the early 1990s of the ad hoc International Criminal Tribunals for the Former Yugoslavia (ICTY) and for Rwanda (ICTR) (in 1993 and 1994, respectively) and the establishment of the International Criminal Court in the late 1990s,[2] finally, '[l]ike any maturing legal system, international law has entered its post-ontological era'.[3]

But what does it mean that international law has 'entered its post-ontological era'? How can we tell if it 'really is' law? Or, perhaps a more modest ambition: how can we tell whether international law possesses the non-normative pre-requisites for a normative system to be considered a *legal* system?[4]

According to one prominent theory of law, 'necessarily[,] every legal system which is in force anywhere . . . either claims that it possesses legitimate authority or is held to possess it, or both'.[5] In other words, a claim — *rather than a reality* — of legitimate authority is necessarily a part of the social practice of law. Further, in order for law to 'claim' 'legitimate authority', law must *communicate* and the content of communication must include some conception of a legitimate use of 'authority'.[6] There is a third condition needed in order for a normative system to be considered a legal system: it must claim to occupy a position of *supremacy* within society:

> [i]t is an essential part of the function of law in society to mark the point at which a private view of members of the society, or of influential section or powerful groups in it,

1 See C. Douzinas et al. (eds), *Law and the Image: The Authority of Art and the Aesthetics of Law* (Chicago: University of Chicago Press, 1999), at 7.

2 The ICTY (hereinafter 'Tribunal') was established through Res. 827, and it is governed by the Statute of the International Tribunal (hereinafter 'Statute of the Tribunal'). SC Res. 827, UNSCOR, 48th Session, 3217th meeting (1993).

3 See T. Franck, *Fairness in International Law and Institutions* (New York: Oxford University Press, 1995), at 6.

4 See J. Raz, *Ethics in the Public Domain: Essays in the Morality of Law & Politics* (New York: Oxford University Press, 1994), at 201. 'There are two kinds of reason[s] for not having authority. One is that the moral or normative conditions for one's directives are absent . . . . The other kind of reason for not having authority is that one lacks some of the other, non-moral or non-normative, pre-requisites of authority, for example, that one cannot communicate with others', *ibid.*, at 202.

5 *Ibid.*, at 199.

6 *Ibid.*, at 201.

ceases to be their private view and become (i.e. lays a *claim* to be) a view binding on all members notwithstanding their disagreement with it.[7]

One can add a fourth condition, usually implicit in theories of law: the claim to be administering *law* is inextricably linked to a claim to be speaking on behalf of an identifiable community whose values are being vindicated through the legal process. In order for a normative system to be law, it must exist within, and be created by, a sovereign, in both senses of the word, namely a community (polity) and a 'leviathan' that governs the community.

But, one might ask, what does it mean to say that 'the law' claims legitimate authority and supremacy? Surely, this is nothing more than a troublesome personification of 'law'.[8] The answer is that while 'law' cannot communicate such claims *institutions* can and do through the kind of social interactions that they foster.

B. *International Law's Claims to Legitimacy Examined through the* Milošević *Trial*

The communicative properties of legal rituals, and particularly of criminal trials, have been a focus of sociological study of the law ever since Durkheim identified the rituals of penality to be a key to the analysis of society itself and opened up questions concerning the semiotics of punishment: its communicative propensities, its symbolic resonance, its metaphoric capacity to speak of other things.[9] Subsequently, criminal trials have been studied from various sociological perspectives as an example of the ways in which legal institutions communicate meaning, construct reality and function in society in general.

In this vein, this article adopts a specific sociological outlook in order to examine the social construction of reality by the ICTY's *Milošević* trial — an outlook that centres on the metaphor of life as theatre.[10] The following analysis

7 *Ibid.*, at 50 (emphasis added). According to the Statute of the Tribunal, the Tribunal and national courts have concurrent jurisdiction over serious violations of international humanitarian law committed in the former Yugoslavia. However, the Tribunal can claim primacy over national courts and may take over national investigations and proceedings at any stage if 'this proves to be in the interest of *international* justice', available online at http://www.un.org/icty/glance/index.htm (visited June 2003).

8 This is one prong of Dworkin's attack on Raz's theory of law. See R. Dworkin, 'Thirty Years On', 115 *Harvard Law Review* (2002), at 1672.

9 See D. Garland, *Punishment and Modern Society: A Study in Social Theory* (Chicago: University of Chicago Press, 1993), at 46.

10 '[L]ife itself is a dramatically enacted thing. All the world is not, of course, a stage, but the crucial ways in which it isn't are not easy to specify.' See E. Goffman, *The Presentation of Self in Everyday Life* (New York: Doubleday, 1959), at 72. The paradigm developed by Goffman, often referred to as 'dramaturgy' or 'theatricity' is the paradigm that informed the analysis in this article both in terms of theory and in terms of methodology. Terms such as 'self', 'front' and 'region' used in the second part of this article are terms of art in dramaturgy. Goffman's theory builds upon Herbert G. Mead's symbolic interaction theory, which, likewise, informs the

of the *Milošević* trial, therefore, focuses on face-to-face interaction (performances) as a way of studying the symbolic means through which reality is constructed. Social reality, institutions (such as the ICTY and other legal institutions) and even selves are all social emergents. The elements of social encounters consist of (1) effectively projected claims to an acceptable self (e.g. judges' projected claims to be acting out the role of a 'judge') and of (2) the confirmation of such claims on the part of others. Since performances serve to express the characteristics of the performer (be it, for example, an 'accused' or a 'judge') or of the task preformed (such as 'adjudication'), studying one set of performances within a legal institution, as in this article, offers a perspective on the question of how international law claims legitimacy, authority and supremacy.[11]

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analysis herein. See, generally, G.H. Mead, *Mind Self and Society* (Chicago: University of Chicago Press, 1962). Also influential are the classic performance theories of legal rituals of Turner and Garfinkel. See V. Turner, *From Ritual to Theater* (New York: Performing Arts Journal Publications, 1982); H. Garfinkel, 'Conditions of Successful Degradation Ceremonies', 61 *American Journal of Sociology* (1956), at 420. See, also, meta-theatrical accounts of courts' totemic authority and judges' clerical function in L. Barshack, 'The Totemic Authority of the Court', 11 *Law and Critique* (2000), at 301; and L. Barshack, 'Notes on the Clerical Body of the Law', 24 *Cardozo Law Review* (2003), at 1151. On the fit of the dramaturgical methodology to the social reality of courtroom proceedings, see P. Rock, *The Social World of an English Crown Court: Witness and Professionals in the Crown Court Centre at Wood Green* (New York: Oxford University Press, 1993); J.M. Atkinson, *Order In Court: The Organisation of Verbal Interaction in Judicial Settings* (New Jersey: Humanities Press, 1979).

Given the limited scope of this article, neither the theoretical background nor the theoretical implications of applying such social–psychological method and theory to jurisprudential issues can be explored. Both, however, are the subjects of M. Steinitz, *Law as Communication: A Concept of International Law* (forthcoming doctoral thesis; working title). See, also, M. Steinitz, 'Authority, Legitimacy and Participation in International Legal Institutions: The Case of the Milosevic Trial', 1 *NYU Global Law Working Papers* (2004) (for a more robust summary of the theory and its application). In a nutshell, by sojourning to social method and social theory, particularly to the social–psychological study of attitudes and attitude change, and by turning the jurisprudential eye towards legal *institutions*, one can begin to understand not only whether and how 'law' communicates claims of legitimate authority, but also how participants (including theorists) come into possession of their concepts of law. This, in turn, has implications for classic jurisprudential debates about the concept of law itself and about the methodologies that can be used when studying the concept of law. Aspects of these debates have been criticized as 'armchair sociology'. Hopefully, synthetic approaches such as the one implied herein can help to remedy this jurisprudential malady. For such critique, see, e.g. B. Leiter, 'Realism, Positivism, and Conceptual Analysis', 4 *Legal Theory* (1998), at 533.

11 It is virtually impossible to quantify whether international law is 'held to posses' legitimate authority. But it is possible to qualitatively evaluate whether it 'claims to posses' legitimate authority. By marrying the philosophical query with a sociological enquiry, the article endeavours to do precisely that. It is of primary importance to point out that both the jurisprudential notion of a claim, *rather than a reality* of legitimate authority, and the sociological premise of the constructed nature of reality, facilitate and invite a *critical*

C. The Sociological Significance of Trials in the 'Conversation' Between Individuals and the Social Structure

That legal institutions, and particularly courts, narrate realities is a widely held view. It is also uncontroversial that the genre that these narratives most closely resemble, in terms of theatricity, is drama: a prologue and set-up, a crisis (conflict) and a cathartic resolution. For this reason, courtroom interactions are not only metaphorically theatrical, as are all human interactions, but, at the same time, they actually *are* theatre. The actual and the metaphorical theatricity each functions on two levels: the actual or 'small play' (the advocate's production of his or her client's case is the walled-in set of encounters played primarily to the judges and the immediate audiences in the courtroom) and the 'large play' (the trial as a whole, played for public audiences at large).[12]

It is of particular relevance for the analysis of the *Milošević* trial that courts are also the institutions in which the continual 'conversation' between the individual and the social structure *about the past* takes place. And when concrete past events are dramatically re-enacted, so is another aspect of the past: society's founding events — its mythical beginning. Almost all societies have myths (and, more often than not, realities) of bloody beginnings. When they do, their courts are given to continual talk thereof as a means of construction, reconstruction and maintenance of social reality, as the adhesive that maintains a given community as a distinguishable unity. 'Who we really are is discovered in the beginning and imagined in the courts'.[13] International criminal courts function similarly in the enterprise of constructing an 'international community'.

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examination of the phenomenon described, namely of the Tribunal's claim of legitimate authority. Writes Raz:

> [T]he law claims authority. The law presents itself as a body of authoritative standards and requires all those to whom they apply to acknowledge their authority. This is of course not a novel thesis.... Since the law claims authority should its claim be acknowledged? Is it justified? Is there an obligation to submit to the authority of the law; if not, is it at all permissible to do so?

See J. Raz, *The Authority of Law: Essays on Law and Morality* (New York: Oxford University Press, 1979), at 33. Ultimately, whether one considers the Tribunal's claims justified or not rides on ones *normative* views of law in general and of the Tribunal's operation in particular. The issue grappled with here is only whether the *non-normative* pre-requisite of communicating a claim of legitimate authority exists, and, if so, what does it consist of?

12 The terms 'small play' and 'large play' are borrowed from Ball, who speaks of a trial as encompassing two plays: the 'small play', which is the advocate's production of the client's case, played primarily to the jury or the Judge; and the larger play, the trial as a whole. M.S. Ball, *The Promise of American Law: A Theological, Humanistic View of Legal Process* (Athens, Georgia: University of Georgia Press, 1981), at 48.

13 *Ibid.*, at 65 (discussing American courts as enacting the mythical beginning of American society). See, also, A. Feldman, 'The Sirens' Song: Discourse and Space in the Court of Justice', 1 *Theory and Critique* (1991), at 143 (discussing courts as *loci* of the continual social conversation about the past).

In trials generally, this is an unspoken backdrop but it becomes explicit in 'big' cases such as transitional justice cases. Transitional trials are, after all, trials about societies' foundational violence, their bloody beginning, their founding or re-founding.

> What seems apparent in the former Yugoslavia is that the past continues to torment because it is not past. These places are not living in a serial order of time but in a simultaneous one, in which the past and present are a continuous, agglutinated mass of fantasies, distortions, myths and lies. Reporters in the Balkan wars often observed that when they were told atrocity stories, they were occasionally uncertain whether these stories had occurred yesterday or in 1941, or 1841, or 1441. For the tellers of the tale, yesterday and today were the same.[14]

Since the continual conversation about the constitutional moment is the adhesive that keeps a given community together, by upholding the conversation about the primordial beginning of a community, the courts are simultaneously *creating* the mythical beginning and the community as a social reality. In addition, through dramatically enacting the conversation about — and therefore the *participation* in — the mythical beginning, courts generate their own *legitimacy*. And, finally, by preserving the story of the origin, the courts preserve their own *authority*. To be precise, it is this function that gives courts legitimacy in playing out their authoritative role.[15]

D. The Milošević Trial as a Symbol of a Battle Between Two Claims of Supreme Sovereignty: The Sovereignty of the 'International Community', Personified by the Tribunal, and State Sovereignty, Personified by Milošević

With this in mind, the following analysis of the phenomenology of the *Milošević* trial demonstrates how, through text (rhetoric) and image (performance), 'international law', namely officials in international legal institutions, claim that these institutions posses legitimate authority and are, at least in some respect, supreme.

An analysis of the symbolic construction of authority and the communication of a claim of legitimacy through an analysis of the symbolism of the interpersonal dynamics of the *Milošević* trial also reveals that, while appearing to be 'merely' a criminal trial of an individual defendant, albeit an important individual, the trial in fact stages and dramatizes larger processes. First, while, on the level of text, the proceedings attempt to subject Milošević the individual to the authority of the Tribunal, *on the sub-textual level, the attempt is to subject the existing system of state sovereignty as the*

14 See M. Ignatieff, 'The Elusive Goal of War Trials', *Harper's Magazine*, March 1997.

15 Ball, *supra* note 12, at 20, 42 and 65. On the idea of 'constitutional moments', see, B. Ackerman, 'Constitutional Politics/Constitutional Law', 99 *Yale Law Journal* (1989), at 453.

highest level of sovereignty to the sovereignty of an international governance apparatus ('sovereignty' meaning both a community, 'the international community', and the apparatus governing the community — 'global governance'). Secondly, by internationalizing the process of transitional justice through trying war criminals in international tribunals, and particularly by trying defendants who personify *the state* in international tribunals, *the tribunal usurps the process of transitional justice.*

Milošević's symbolic disruptions of the judicial proceedings — of the Tribunal's narration of reality and its ritualistic stigmatization of the sovereignty represented by Milošević — and his attempts to subvert the process so as to suggest a competing narrative in which he possesses supreme authority and legitimacy signify larger ruptures and resistance to the process of establishing the authority of the international community and its governance apparatus. In short, on the level of deep structure, the trial symbolizes the battle between two systems of sovereignty.

2. The Image of Power: The *Milošević* Trial and the Battle of the Sovereignties

> That is why *this show* which is supposed to take place under the guise of a trial is actually *a crime against a sovereign state,* against *the Serb people,* against me. (Slobodan Milošević, Opening Statement)[16]

> [The holding of trials is] a clear statement of the will of *the international community* to break with the past by punishing those who have deviated from acceptable standards of human behavior. In delivering punishment, the international community's purpose is not so much retribution as stigmatization of the deviant behaviour. (Antonio Cassese)[17]

A. Trial and Counter-Trial: Face-to-Face Performances in the Milošević *Trial*

Since institutions, like selves, are *performed,* an obvious starting point to the decoding of the phenomenology of the Tribunal is an examination of its dramaturgical devices. By examining dramaturgical elements such as interior design choices, terminology, dress code, graphic design of documents and

16 Tr., Opening statement, *Milošević* (IT-99–37-PT), Trial Chamber, 14 February 2002, at 285. Intl. Trib. for the Prosecution of Persons Responsible for Serious Violations of Intl. Humanitarian Law Committed in the Territory of Former Yugo. since 1991, May 7 1997 (emphasis added). *All emphases in text of transcript hereinafter are not in the original.* All following references to transcripts hereinafter refer to this case, unless otherwise specified. The transcripts are available online at http://www.un.org/icty/ind-e.htm (visited June 2003).

17 Cassese is the former president of the Tribunal. See A. Cassese, 'On the Current Trends towards Criminal Prosecution and Punishment of Breaches of International Humanitarian Law', 9 *European Journal of International Law* 4 (1998) (emphasis added).

courtroom behaviour, one learns how the courts create social distance, mystification and a sense of awe, and even sacredness. In short, such devices are indicators of how a claim, and sometimes a corresponding perception, of legitimate authority and supremacy may be asserted.[18]

The examination of dramaturgical devices immediately reveals that a prominent way in which the Tribunal asserts and communicates its claim of legitimate authority is by imitating the generic settings of courts in the West — templates that are familiar codes of authority to the Western observer. The design reflects the conviction of the designers; when filtered through the decoding capacity of Western audiences, the tacit underlying assumptions are successfully conveyed. (This, of course, disregards non-Western audiences, though the claim is to be speaking to and for the 'international community' as a whole.)

The front region of the Tribunal's courtroom is a single large space, in the centre of which sit the three Judges on an elevated platform. Facing the Judges (and away from the public gallery), arranged in a semicircle, are three performance teams: the prosecution, the *amici curiae* ('friends of the court') and the defence. The traditional Western concealment of the judges' bodies is maintained[19] — the audience allowed a view of their crimson-robed upper bodies, arms and heads only. The prosecution and the *amici* make use of prestige symbols such as black robes and the occasional wig — a lack of uniformity that serves as a visual reminder of the diversity of legal systems and cultures represented by the employees of the Tribunal. Another such reminder is the personal fronts of the performers: the performance teams which are employed by the Tribunal — namely the Bench, prosecution and *amici* — are visibly multicultural and multi-gendered. The judges, for example, are Richard May from the UK (presiding), Patrick Robinson from Jamaica and O-gon Kwon from South Korea. (Currently, after the death of Judge May, Patrick Robinson (presiding), O-gon Kwon and Iain Bonomy (from the UK).) Among other things, the diversity among the various employees is a means of claiming legitimacy, as this is, visibly, a form of 'representativeness'. Behind his desk sits the defendant, at the other end of the semicircle, wearing a suit, often with the much-commented-upon 'patriotic' red tie.[20] The only reminder of his status as an accused is the uniformed guard sitting in close proximity.

18 The following is an ethnographic analysis of the pre-trial stage and the Kosovo stage of the ongoing *Milošević* trial. The data analyzed consist of a total of approximately 250 hours of videotaped footage of the trial tapes (95 days of testimony), approximately 400 pages of pre-trial transcript and more than 10,000 pages of trial transcript in the Kosovo phase.

19 Such fragmentation and concealment of the Judge's body leads to the disappearance of the Judge's persona. The disappearance of the Judge's persona is part of the *mystification* of the court, the establishment of its otherness and separateness: since the Judge (as a human person) vanishes, s/he is replaced by the presence of the sacred Thing, the totemic presence. See Feldman, *supra* note 13, at 147–148 and Barshack, *supra* note 10, at 318–320.

20 See, e.g. I. Fisher, 'Milošević on Offensive, Ever Mindful of History', *New York Times*, 3 March 2002, at 1–5.

While the division between prosecution and Bench is strictly maintained, the two teams can be seen, dramaturgically speaking, as forming a coalition in so far as both uphold the definition of the situation as a legal proceeding in a court of law. The prosecution is overtly a 'team player', assisting the Tribunal in maintaining the 'legal' nature of the proceedings by adhering to the required etiquette and exercising dramaturgical discipline.

More striking, however, is the *amici*'s participation in upholding the definition of the situation promoted by the Bench and the prosecution, through dramaturgical loyalty, and the moral claim (of legitimate authority) implied by the sponsored definition.

The *amici* were appointed by the Tribunal in response to Milošević's symbolic refusal to appoint counsel, intended to communicate his claim that the institution is neither a court nor legitimate:

> THE ACCUSED: And please, I want to remind you, I'm not recognizing this Tribunal, considering it completely illegitimate and illegal, so all those questions about counsels, about representation, are out of any questions.[21]

The Tribunal, conveniently, defined 'legitimacy' as fair process and therefore responded by appointing the *amici*, with the stated purpose of assisting the court in administering a fair trial.[22] As the name suggests, the *amici* are, first and foremost, friends of the Tribunal and one of the ways in which they fulfil their function is substituting for a participation that is compliant with the convention of courtroom behaviour on the part of Milošević. For example, when Milošević refuses to enter a plea, the *amici* step in:

> JUDGE JORDA: You are an *amicus curiae*, Mr. Tapuskovic. Please help the Court... Please assist the Court, tell us what you plead about. Are you pleading on behalf of the rights of the accused, or are you pleading that there was an error?... Please specify what you are pleading to in order to assist the Court. This is the reason why you are being here.

21 Tr., at 24 (30 August 2001).

22 The Order Inviting Designation Of Amicus Curiae, 30 August 2001, reads:

> THE TRIAL CHAMBER therefore considers it desirable and in the interests of securing a fair trial that an amicus curiae be appointed as permitted by the Rules of Procedure and Evidence, *not to represent the accused but to assist in the proper determination of the case*, and pursuant to Rule 74.

As far as Milošević is concerned:

> So in this case, the friend of the court appears in the role of promoter of the media picture with regard to this failed indictment, trying to get things to be better. So he should be sitting on the Prosecution bench, that other bench over there, not over here. It is my opinion, along with these norms of yours that are obviously not even being observed by your employee who you appointed friend of the court, I think that the fiasco of this indictment should not make it possible to support it in the media so unethically. (tr., at 10171–10173 (11 September 2002)).

The *amici* oblige, following the etiquette and protocol that the accused refuses to follow:

> MR TAPUSKOVIC: *Your Honours, esteemed Judges of the Appeals Chamber*, we agreed today as *amicus curiae* I will present our views regarding all of these issues that were raised here today. *I will attempt to be direct, and I will attempt to adhere to the time allotted to us*, given to us to express our position regarding all of these matters that need to be decided upon.[23]

The drama of criminal proceedings that unfolds on the stage described above is separated from the 'small audience' present in the public gallery by a bullet-proof glass partition. And in the back region, out of sight of this high-tech, executive meeting room *cum* court, are the holding room for the accused, robing rooms for the judges and a waiting area for the witnesses.[24]

The segregation of the teams from the audiences and from each other in the front region created by this internal design is geared towards creating and maintaining social distance. The social distance is also upheld by various additional dramaturgical choices, such as the use of ushers to transport documents from the parties to the Bench, and all serve to generate the desired formality and mystification.[25]

This design sends the same message to the members of the 'large audiences' — to the so-called 'international community' and to the Serbs, Bosnians and Croats — when images of the proceedings are transmitted through the media. The segregation within the back region and between the front and back regions of courtrooms serves the same purpose. The Judges reside in the forbidden city, from which they emerge at the commencement of the proceedings and into which they fade away at its adjournment.[26] Region division is, generally speaking, the physical materialization of corresponding role segregation — one in which the divine nature of Judges and the profane nature of the accused and audiences are affirmed.[27] In this fashion, judges create the impression (in the strong sense of the word) that their utterances

23 Pre-Trial, Interlocutory Appeal Hr'g at 357 and 353 (30 January 2002).

24 See M.P. Scharf, *Balkan Justice: The Story Behind The First International War Crimes Trial Since Nuremberg* (Durham: Carolina Academic Press, 1997), at 84.

25 '[R]estrictions placed upon contact, the maintenance of social distance, provide a way in which awe can be generated and sustained in the audience — a way . . . in which the audience can be held in a state of mystification in regard to the performer . . . the man himself may be a mere incident with no definite relation to the idea of him, the latter being a separate product of the imagination. This can hardly be except where there is no immediate contact between leader and follower, and partly explains why authority, especially if it covers intrinsic personal weakness, has always the tendency to surround itself with forms and artificial mystery, whose object is to . . . give the imagination a chance to idealize', Goffman, *supra* note 10, at 67–68 (quotation omitted).

26 See Feldman, *supra* note 13, at 146.

27 *Ibid.* On the sacredness of Judges or Courts, see generally Barshack, *supra* note 10; P. Goodrich, *Languages of Law: From Logics of Memory to Nomadic Masks* (London: Weidenfeld and Nicolson, 1990); D. Garland, *Punishment and Modern Society: A Study in Social Theory* (Chicago: University of Chicago Press, 1993).

and directives are of a divine nature and, as such, should be considered overriding reasons for action.

Conversely, Milošević's very decision to represent himself is a meta-role-disruption — one which facilitates many more. A 'role-disruption' is a behaviour that threatens the reality sponsored by a performer by interrupting the definition of the situation as projected by the other participants. By adopting this role, Milošević creates opportunities to manipulate time, space and story — to construct his own authority. When acting out his role as Defence Counsel, Milošević conducts his cross-examinations sitting down. His body language is confident; he usually sits with his arm flung back on the chair and, when not aggressively cross-examining, often smirks.[28] Milošević, who is a trained lawyer, goes beyond mere refusal to be represented. As we shall soon witness, he very actively puts on his own defence (with the assistance of his loyalists, acting in the back region, thus facilitating the facade of a one-man's-defence team[29]).

Meanwhile, the effects of the Tribunal's design choices are amplified by the organization of verbal interaction chosen. Western courts are characterized by unique speech patterns and, more generally, unique organization of verbal interaction in the courtroom, all of which enhance and complement the authoritative contents of the spoken directives and utterances. These are imported wholesale into the courtroom setting of the Tribunal. The patterns include speaking in the royal 'We', referring to themselves as 'the Chamber' and to each other as 'Judge' and 'President' by those claiming authority (e.g. 'JUDGE JORDA: Judge Meron. JUDGE MERON: Thank you, President. Judge Guney asked you a question about...'[30]). This terminology is adhered to by those accepting the authority (e.g. '...but to be honest with the Court...'; 'I'm entirely in the Court's hands, certainly.'[31]).

A preferred role-disruption on the part of Milošević is the flouting of the 'royal speak', his refusal to adopt the officially designated terminology and, by implication, the situation definition which they are aimed at signifying. The Judges are always referred to by the prefix 'Mr' instead of the required 'Judge' or 'Your Honour'; the *amici* are 'the gentlemen of the amicus';

28 At times, he is even amused with the proceeding, in a manner uncharacteristic of an accused facing life imprisonment: 'MR. NICE: ...the defendant is clearly amuzed [sic.]', tr. (30 May 2002).

29 Though, the participation of Milošević's team bleeds into the front region: 'JUDGE MAY:... there has been a change in the situation generally since the accused now has his associates', tr., at 6357 (5 June 2002).

> 'And included in my reasons for wishing to do that is to ensure that the accused, who makes observations about the amount of material served on him, shall be able to identify what work needs to be done by himself and by his associates as soon as possible and certainly in the course of any summer break.' (tr., at 6936 (13 June 2002))

30 Pre-Trial, Interlocutory Appeal Hearing, at 325 (30 January 2002).

31 Respectively: The *amici* Mr Raneveld, tr., at 243 (9 January 2002); and the Prosecutor, Mr Nice, tr., at 27 (12 February 2002).

the indictment is 'this document'; the entire trial is 'this activity'; and the Tribunal is 'this institution'.[32]

Repetitions and strict control of turn-taking function in a fashion similar to the 'royal speak' in the construction of authority,[33] as does the choice to graphically design official court documents in a manner familiar in Western courts.[34] While authoritarian management of turn-taking is a mild version of physical control within Western courts, and, similarly, within the Tribunal, the extreme end of this spectrum is the exercise of sheer physical power. Symbolism and iconography aside, the accused is accompanied at all times by a uniformed, armed guard and he is escorted to a cell at the

32 Consider the following:

> THE ACCUSED: . . . now, during the cross-examination over these past days, weeks and months in relation to Kosovo, I got a total of 115.000 pages, 600 video cassettes, 230 audio cassettes with regard to the indictment which I call here as well a top absurdity because I was not president of Croatia or Bosnia, so I simply wonder whether you, *Mr. May, Mr. Robinson, Mr. Kwon*, believe that these two weeks are a reasonable amount of time within which I should get informed . . .
>
> . . .
>
> JUDGE MAY: We will shorten this. We hear the point you make. Are you asking us for more time? Are you applying for more time?
>
> THE ACCUSED: Mr. May, I'm not asking you for anything. I'm asking you —
>
> JUDGE MAY: Very well. Then in that case I will give you the answer, if you're not asking. The answer is this: That as you were told before the recess, you were given a month's recess, you were given these extra two weeks — a total of six weeks in all — to prepare . . ..
>
> . . . I have ruled on that matter. You're making no application, and I've told you what the answer is. So we're moving on. You must understand this, Mr. Milošević: In a court, business has to be dealt with in an orderly fashion. People are not allowed to speak whatever is in their mind at any time. (tr., at 10165–10169 (11 September 2002)).

33 For example, the formula 'Slobodan Milošević, acting alone or in concert with other known and unknown members of a joint criminal enterprise, planned, instigated, ordered, committed, or otherwise aided and abetted the planning, preparation, or execution of . . .' (including slight variations) repeats at least eight times throughout the reading of the Kosovo indictment. The formula: 'On [date], [description of alleged crimes]. The names of the victims are set out in Annex I attached to this indictment' repeats at least 15 times throughout the reading of the indictment, tr. (29 October 2001).

As to turn-taking, consider this typical exchange:

> MR NICE: . . . Your Honours, I don't know if I can help further at this stage.
>
> JUDGE JORDA: Thank you, Mr. Nice. I turn to my colleagues to ask whether they have any questions they would like to put to counsel. Judge Hunt, Judge Guney. Judge Hunt'. (Pre-Trial, Interlocutory Appeal Hearing, at 311 (30 January 2002)).

34 Court orders, as well as other court documents, in formal format and design are available online at http://www.un.org/icty/ind-e.htm (visited June 2003).

adjournment of the proceedings. In between these ends of the spectrum are intermediate measures, such as turning off the microphone of the accused when he refuses to adhere to the turn-taking directives (as he often does).

> JUDGE MAY: Turning then to the accused. Mr. Milošević, are there any issues you wish to raise.... You know the rules, no speeches at this stage. You'll have the opportunity to defend yourself in due course....
>
> THE ACCUSED: Well, I would like to know, first of all, can I speak or are you going to turn off my microphone like first time?
>
> JUDGE MAY: Mr. Milošević, if you follow the rules, you will be able to speak. If you deal with relevant matters, of course you will be able to speak.
>
> THE ACCUSED: Well, that is my next question. I would like to make presentation on the illegality of this Tribunal.
>
> JUDGE MAY: You have already put a motion in on this topic
>
> ...
>
> THE ACCUSED: My associates will give it to the press if you don't allow me to make it public.
>
> JUDGE MAY: If you make it in writing, it can be made public in due course.
>
> ...
>
> THE ACCUSED: So we have to communicate as civilized persons, not with switching off of the microphone or to use the force for that so we can understand each other, what is possible, what is not.[35]

Beyond the exercise of brute power, these measures are aimed at maintaining the smooth performance of a *ritual*. Adjudicative processes comprise scripted routines, many of which are repetitive by nature, aimed at creating and intensifying the ritualized nature of the proceedings. For example, witnesses at the Tribunal begin their testimonies by making a declaration to tell 'the truth, the whole truth and nothing but the truth'. In another ritual, all present in the room stand when the Judges, always as a collective, enter or exit the courtroom. The beginning of each of the two phases of the trial (the Kosovo phase and the Bosnia and Croatia phase) is in the form of a ceremonial reading of the indictments:

> JUDGE MAY: We now turn to the next stage, which is the reading of the Kosovo indictment. The second amended indictment will now be read, as Rule 62 provides, in a language which the accused speaks and understands. *Let the indictment be read.*
>
> THE REGISTRAR: The Prosecutor of the International Tribunal against Slobodan Milošević and others. Second Amended Indictment.[36]

This particular ceremony is coupled with the ceremonial appearance of Chief Prosecutor Del Ponte. (Del Ponte appears in the beginning of the opening

35 Tr., at 19–20 (30 August 2001).
36 Tr., at 69 (30 October 2001).

statements of each of the indictments and only in them, Her absence patent at all other times.)

Countering the scripted rituals described above, patterns of unscripted, disruptive routines sponsored by Milošević emerge. Milošević frequently engages in provocation at the beginning of a session, in the form of 'news bulletins' from last night's media, or of gratuitous, repetitive, procedural questions and, most frequently, accusatory haggling over time allocation.

> THE ACCUSED: Well, before I begin my samination [*sic.*], I'd like to hear from you how much time I'm going to have. In view of the fact that the examination-in-chief went on for two hours and 45 minutes, a full two hours and 45 minutes, plus the fact that we have a statement which is 25 pages long.
>
> JUDGE MAY: Let us —
>
> THE ACCUSED: I hope that that is obvious and self-evident.
>
> JUDGE MAY: No. First of all, we will decide how long it has been that the Prosecution took.
>
> THE ACCUSED: Well, it says that on the clock. We're not going to decide whether today is Monday or Tuesday, are we? The examination-in-chief started at 11.30.
>
> JUDGE MAY: The time taken in all, by my calculation, is one hour, 54, 55 minutes. Call it two hours.
>
> THE ACCUSED: Mr. May —
>
> JUDGE MAY: No. There must be no inaccuracy about these statements of yours. The time actually taken up by the Prosecution, as I say, was about one hour, 55 minutes, and we'll call it two hours for the sake of the argument. Now, with that in mind, we will see how you get on. If there is much repetition and argument, time — and irrelevancy, time will be shortened.[37]

All of the above are aimed at projecting a definition of a situation: this is a court of law in which authoritative and legitimate legal proceedings take place. When individuals (in this case: the Judges, Prosecutors and *amici*) project a definition of the situation, and thereby make an implicit claim to be a person performing a specific role, they automatically exert a *moral* demand upon others, obliging them to value and treat them in a manner that persons in their role have a right to expect. They also demand that others recognize the values in the name of which they purport to speak — here, the values of 'humanity' (reconceived of as an 'international community'):

> DEL PONTE: ...The law is not a mere theory or an abstract concept. It is a living instrument *that must protect our values and regulate civilised society.* And for that we must be able to enforce the law when it is broken. This *Tribunal, and this trial in particular, give the most powerful demonstration that no one is above the law or beyond the reach*

37 Tr., at 6342–6343 (5 June 2002). Note the parent-like threat of punishment — a typical reaction by Judge May to Milošević's provocations.

> *of international justice.* As Prosecutor, I bring the accused Milošević before you to face the charges against him. *I do so on behalf of the international community* and in the name of all the member states of the United Nations, including the states of the former Yugoslavia.[38]

As this quote demonstrates, as instructive as the study of dramaturgical devices is, so is the study of the rhetoric of the Tribunal, conveyed in oral and written, legal and non-legal texts produced by the Tribunal. Here, too, the Tribunal resorts to the method employed by all Western courts when claiming authority — the reference to legal sources from which validity is said to be derived. In this case, the source most often looked to is the Statute of the Tribunal, as in the ceremonial opening of the indictment-reading of the *Milošević* Trial:

> The Prosecutor of the International Criminal Tribunal for the former Yugoslavia, *pursuant to her authority under Article 18 of the Statute* of the International Criminal Tribunal for the former Yugoslavia, the Statute of the Tribunal, charges Slobodan Milošević with crimes against humanity, grave breaches of the Geneva Conventions, and violations of the laws or customs of war as set forth below.[39]

Or, past decisions of the Appeals Chamber:

> PROSECUTOR: ...We have already three appeals judgements: the *Tadic* appeals judgement which, in fact, is an important judgement which deals with the substance of all the arguments raised here; we have the *Aleksovski* judgement which goes back and follows up on the Tadic judgement. And I believe that the three principles which have been recalled by the Appeals Chamber are untouchable here.[40]

The referenced Appeals Chamber decisions are themselves an exercise in legal bootstrapping: '[J]urisdiction is not merely an ambit or sphere...it is basically — as is visible from the Latin origin of the word itself, *jurisdictio* — a legal power, hence *necessarily* a **legitimate** power, "to state the law" (*dire le droit*) within this ambit, in an **authoritative** and final manner.'[41] The appeal to a manufactured 'tradition' (implied in the reference to precedent) and the use of Latin (and French, and jargon) also serves to mystify the practice of law. Knowing the law becomes a matter of knowing an antique tradition that exists outside of history and texts, in the realm of things divine and to be divined; of belonging to the company of the sages and the sacred judges, as it is the legal oracle alone that can call up the immemorial past and through it determine the contours of the future.[42]

38 Tr., opening statement, at 3–4 (12 February 2002).
39 Tr., at 1 (29 October 2001).
40 *Ibid.*, at 58.
41 *Tadic* Appeal, at 4–5 (all italics in the original; bold added).
42 See Goodrich, *supra* note 27, at 131–141.

B. The 'Large Trial': The Symbolism of the Milošević Trial

The appeal to past decisions does not carry any legitimating effect on the interpersonal level.

> THE ACCUSED: Well, I understood they were dealing with that problem of illegality as a problem of jurisdiction. It is clear to any lawyer in the world that question of jurisdiction can be open when juridical institutions are concerned. You are not juridical institutions. You are not juridical institution; you are political tool.[43]

But, of course, the real purpose of the judicial practice of quoting previous decisions is not to persuade on a case-by-case basis, and Milošević's contestations are interesting only in that they represent the political claims by an embodiment of states' sovereignty who insists and persists: 'That is why this show which is supposed to take place under the guise of a trial is actually a crime against a sovereign state, against the Serb people, against me.'[44]

And, indeed, as the 'exchange' between Milošević and the Judges illustrates, the ultimate function of the practice is a social and cognitive one. The function of this practice in a legal reality is equivalent to the function of conversation in a social reality. Conversation is the most important means of reality construction, reconstruction and change.[45] Conversations constantly uphold and maintain the 'self-evident'. But, in order to do so, they must be continual. The judges' practice of quoting, citing and referencing past decisions functions in an identical manner within the legal discourse. The fear of discontinuity and of the subsequent rupture of reality is so great that Judges often resort to citing and quoting banal past decisions and 'recycled' legal material, including citing, quoting and referencing their own past decisions. This last practice also serves to construct the Judges themselves as divine entities, with two bodies: a physical, historical, body and an abstract one, which is constantly hovering above them, as a continual presence.[46]

Counteracting this very perception, in his role as a defendant, Milošević is engaged in other-derogation as means of disclaiming the authority and legitimacy of the Tribunal ('THE ACCUSED: All right, all right, Mr. May, we'll get to that later, I mean the fact that you have been intervening this way'[47]). In his role as an advocate, however, he goes further down the path of self-elevation. Milošević not only rejects the Tribunal's definition of the situation but also tries to construct one of his own; he is subverting the process to stage an unauthorized trial within a trial. In it, he is the Prosecutor. The West, and particularly NATO, stands accused. The Bench–prosecution coalition is constructed as proxy for the West: 'All kinds of cruising missiles

43 Tr., at 24–25 (30 August 2001).

44 Tr., opening statement, at 285 (14 February 2002).

45 P.L. Burger and T. Luckmann, *The Social Construction of Reality: A Treatise in the Sociology of Knowledge* (New York: Anchor Books, 1966).

46 Feldman, *supra* note 13, at 156–158.

47 Tr., at 6359 (5 June 2002).

you used over Yugoslavia.... I don't see what the meaning of this is in this regrettable opus of *yours*...*Your bosses* broke up Yugoslavia...'[48] Milošević insists on defining the process as the prosecution of a collective, not an individual. Serbia and the Serb people are on trial:

> THE ACCUSED: ...Over the past two days, all the Prosecutors that we have heard here have uttered one particular sentence; that is to say that they are just trying an individual, that it is an individual who is on trial here. Now, that is a very sensitive — it is a sensitive point to link this up with a nation, with a people. So they're trying an individual and not a nation. All three Prosecutors said that. But in all the indictments, they are accusing the whole nation.[49]

In the same vein, it is the crux of Milošević's claim that the proceedings are an infringement upon the sovereignty of Yugoslavia (and, as such, a show trial).[50] In his cross-examination of a witness, Milošević attempts to advance this contention:

> Q. Well, don't you feel that it is precisely these arguments presented by you, as indeed the argumentation of the indictment is, in essence, as is this trial; that is to say that the main goal is to justify the crimes perpetrated by NATO against a *sovereign* country? Yes or no.[51]

This time, it is judge May who is disrupting Milošević's performance, silencing him as a means of weakening the claims about the self he was

48 Tr., at 256–257 (14 February 2002).

49 Similarly:

> JUDGE MAY: Count 1 — Count 1: Persecution on political, racial, and religious grounds, a crime against humanity, punishable under Articles 5(h) and 7 of the Statute of the Tribunal. How do you plead to that, guilty or not guilty?
>
> THE ACCUSED: This indictment is the second act of the crime committed *against my people* because the victim is proclaimed as the culprit to protect the real culprits for the crimes against Yugoslavia. It is absurd *to accuse Serbia and the Serbs* for the armed secession of Croatia which provoked a civil war. (tr., at 40–41 (29 October 2001))

In a *L'etet c'est moi* logic, Milošević goes even so far as reversing the order of reasoning:

> *Serbia, and I personally, therefore,* are alleged to be waging a political genocide outside Serbia. But...Our defence was a heroic defence, a heroic defence from an aggression launched by NATO, the NATO pact. (tr., at 250 (14 February 2002))

50 When trying to refute the legal argument that the conflict in the former Yugoslavia was an international conflict, he advances the argument that:

> ...with respect to international law, in the crisis in Yugoslavia, the sole international legally protected subject was Yugoslavia itself, as a member of the United Nations and the sole bearer of the international legal subjectivity, as a legal subject. So that in that territory, there were no wars. (tr., at 357 (9 January 2002))

51 Tr., at 6160 (4 June 2002). If nothing else, this succeeds in placing the issue of the clash of sovereignties at the forefront of the politics of the Tribunal, Bench–prosecution's indignation notwithstanding.

attempting to project as part of the definition of the situation. Specifically, Judge May counters Milošević's presentation of self as [former] leader and sovereign and imposing a self of an individual accused in a criminal trial:

> JUDGE MAY: We have been over this. It is not for the witness to comment on the purpose of the trial. He is merely here to give evidence. You have made these allegations about justification of the NATO bombing as a reason for his evidence. He's given you his answer. He says it's completely untrue. Now, there's no point going over it again.[52]

An increasingly impatient Judge May responds to Milošević's provocative role-disruptions through paternalistic explanations of the procedures, through silencing and reigning-in and through translating substance into procedure. Silencing often takes a form similar to the following:

> JUDGE MAY: . . . Now, let's move on to something else.
>
> THE ACCUSED: Am I bothering you here, Mr. May, with my questions?
>
> THE ACCUSED: I mean generally.
>
> JUDGE MAY: Just move on.[53]

More interesting is the translation process that takes place. A typical example of this process can be seen in this exchange:

> JUDGE MAY: . . . now, you want to enter pleas today or are you asking for an adjournment to consider the matter further?
>
> THE ACCUSED: This trial's aim is to produce false justification for the war crimes of NATO committed in Yugoslavia.
>
> JUDGE MAY: Mr. Milošević, I asked you a question. Do you wish to enter your pleas today or are you asking for an adjournment to consider the matter further?
>
> THE ACCUSED: I have given you my answer. Furthermore, this so called Tribunal . . .
>
> JUDGE MAY: *The rules state* that if an accused fails to enter a plea, then the Trial Chamber shall enter a plea of not guilty on his behalf. Mr. Milošević, *we treat your response as a failure to enter a plea* and we shall enter pleas of not guilty on each count on your behalf.
>
> THE ACCUSED: As I have said, the aim of this Tribunal is to justify the crimes committed in Yugoslavia. And that is why this trial is a false Tribunal . . .
>
> JUDGE MAY: Mr. Milošević, this is not —
>
> THE ACCUSED: — an illegitimate one.[54]

These are classic examples of 'role-disruption'. Milošević voices a rejection of the definition of the situation as that of a legitimate trial in a legitimate

52 Tr., at 6160 (4 June 2002).

53 Tr., at 6250 (5 June 2002).

54 Tr., at 2–5 (3 July 2001). The same is true of the following example: 'JUDGE MAY: . . . a presentation, as it was termed, filed by the accused on the 30th of August, relating mainly to the alleged illegality of the Tribunal. This we will treat also as a *motion*', tr., at 29–30 (29 October 2001) (emphasis added).

court of law and ritually profanes the front region, the medium through which the voice of the totem — the ultimate morality of humanity ('the international community') — speaks:

> JUDGE MAY: Mr. Milošević, it is time for the interpreters to have a break.
>
> THE ACCUSED: Okay. I would be glad to have a cup of coffee for your break.
>
> JUDGE MAY: We will adjourn for 20 minutes.
>
> THE ACCUSED: Half an hour.
>
> JUDGE MAY: Twenty minutes.[55]

These quotes represent a larger pattern of interpersonal dynamics between Judge May and Milošević in which the exchange is embedded. (Noteworthy is the fact that the other Judges do not engage in any of these patterns with the accused. This role is seen as the exclusive domain of the presiding Judge.)

The significance of the dynamics of the Tribunal's interaction with Milošević goes well beyond the tug-of-war between a particular Judge and a particular accused. The dynamics are part of a conversation between the Tribunal and the 'large audiences'. Judge May personifies the entire Tribunal, the voice of the Father — the alleged morality of the alleged 'international community'. In this role, Judge May is the mouthpiece of the claim of supremacy over the sovereign of the old-world order: the State, personified and represented by Milošević. The pervasiveness of such sub-textual claims is not usually easy to see or to grasp, even with the analytic tools provided by dramaturgists, as our reactions to such cues become deeply internalized. In the *Milošević* trial, however, these claims are brought into stark relief by the extraordinary refusal of the accused to acknowledge them on any level. A relentlessly defiant Milošević constantly attempts to disrupt all of the above mechanisms in order to disclaim the authority, legitimacy and supremacy of the Tribunal, to assert his own authority and supremacy, to subvert the process to serve as forum to perform, and to transmit and immortalize his own message. Milošević engages in a literal rejection of the court's authority by means of repeated verbal and written utterances to that effect, and by a symbolic refusal to appoint an attorney, but his performance functions on a larger, metaphorical level as well. Milošević too is posturing for the larger audiences — Serbs, imagined future audiences contemplating the historical record.

The constant struggle between Judge May and Milošević represents the battle between the traditional Westphalian-world order of 'billiard ball' states and a struggling-to-emerge new world order in which the transnational sphere reigns supreme. The tedious haggling over time, as well as dramaturgical and, indeed, theatric attempts to control other dimensions of face-to-face interactions within the courtroom now take on a different meaning.

55 *Ibid.*, at 259–260.

The underlying issue is who gets to control the production of narrative, to control the manufacture of truth, to shape reality. The concrete competition in this case is over who gets to tell the authoritative story of what happened in the cessation Balkan wars of the 1990s — wars about sovereignty — and to manipulate the memory of blood and gore; the competition between Milošević's story of a sovereign state *disintegrating* into *illegitimate* sovereign fractions with the active assistance of Western imperialists versus the Tribunal's story of the beginning of an *integration* of a *legitimate* supranational sovereign. The struggle over authorship of, and therefore authority over, narrative and memory applies not only to the level of historical record but also to the level of the story of the mythical beginning and, by extension, to authority over the very community that is being conceived through the re-enactment of the mythical beginning.

3. Conclusions

At the outset of this article, I posed the question: how does international law, *qua* law, claim legitimate authority and supremacy? It should now be clear that one of the ways in which international law claims legitimate authority and supremacy is through mouthpieces such as judges in dramatic transitional trials. The communicative properties of courts are honed, as we have seen, towards conveying that very message. They do so by manipulating the physical and aesthetic space of the proceedings, and by strictly controlling ritual and rhetoric. In the case of the *Milošević* trial, the putative 'defendant' attempts to undermine the projection of authority and legitimacy at every turn. Because the Tribunal purports to speak *for* the international community *to* a former head of state, the competing performances for the 'small audience' of the courtroom make much more grandiose claims before the global 'large audience'. Beyond the standard mystification and awe effects that come with adopting Western courts' dramaturgical set-up, and beyond the assertion of the primacy of Judge May over Milošević in controlling the proceedings, the international trial advances the agenda of globalization and the creation of an international governance system.

Trials, especially dramatic ones happening during times of the organization or re-organization of systems of governance, i.e. 'transitional trials', actually *shape* the transition in some sense and, to a degree, the community undergoing the transition. Here, the Tribunal, in the name of an 'international community', has usurped the very transformative energies that provided an opportunity for profound social change in the wake of the founding event of the Balkan wars. The Tribunal and the social forces that it serves (the 'global governance' movement) appropriate the founding, or re-founding, of a new community. In this way, the Tribunal provides an *image* of a legitimate community and prods its participants towards the fulfilment of this image; it creates a sense of the legitimacy and authority of the community's courts. In short, the Tribunal appropriates the transition itself.

Furthermore, just as *the transitional criminal trials are internationalized, so is the cognitive normative shift that they facilitate.* The transition of a regime from illiberal and illegitimate to liberal and legitimate[56] attempted through trials such as Milošević's is therefore that of the *'international', as opposed to Balkan,* community. As we have witnessed, the rule of law that the Tribunal seeks to vindicate is not only law as such, and not necessarily the law of the former Yugoslavia, but the rule of *international* law. The operative community that serves as constituency, interpretive community and the community to be healed and liberalized in 'crimes against humanity' is humanity or, in the parlance of the prosecution and the court, the 'international community'. The process is taking place in a more general post-conflict situation — the end of the Cold War — in the wake of which we see an attempt to 'democratize' and 'liberalize' the world. The internationalization of transitional trials, then, is the extension of that drive to the emerging apparatus of international governance. In the context of such an important and radical normative shift, we must not passively follow the dramatic cues embedded in the courthouse ritual, but rather unpack those cues and make a conscious, informed choice whether to accord the institutions of global governance the legitimate authority that they are demanding.

56 On trials as the most effective legal mechanism in facilitating such normative shifts on the national level see, R.G. Teitel, *Transitional Justice* (New York: Oxford University Press, 2000), at 7 and 67.