



Engaging with court research: The case of French terror trials

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Abstract

Transnational legal research often tends to overlook the local management of justice. It often moves too quickly from the local to the trans/global level, without taking the necessary time to investigate local practices. In addressing this research gap, my aim is to “re-localize” studies within their geographical context and analyze the trans/national dynamics from within, using a bottom-up approach based on ethnography. This article presents a prolonged ethnography carried between 2017 and 2022 within French terrorism courts by a multidisciplinary team. The article provides an overview of the methodology, highlights the key finding, and offers a methodological framework for future empirical court studies, with the intention of supporting researchers in their future studies.

Key words

Empirical court research; multi-disciplinary research; French criminal prosecution; terrorism

Resumen

La investigación jurídica transnacional a menudo tiende a pasar por alto la gestión local de la justicia. A menudo pasa demasiado rápido del nivel local al trans/global, sin tomarse el tiempo necesario para investigar las prácticas locales. Al abordar esta laguna en la investigación, mi objetivo es “relocalizar” los estudios dentro de su contexto geográfico y analizar las dinámicas trans/nacionales desde dentro, utilizando un enfoque ascendente basado en la etnografía. Este artículo presenta una etnografía prolongada llevada a cabo entre 2017 y 2022 dentro de los tribunales de

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terrorismo franceses por un equipo multidisciplinar. El artículo proporciona una visión general de la metodología, destaca el hallazgo clave y ofrece un marco metodológico para futuros estudios empíricos de tribunales, con la intención de apoyar a los investigadores en sus futuros estudios.

Palabras clave

Investigación judicial empírica; investigación multidisciplinar; enjuiciamiento criminal francés; terrorismo

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1. Introduction

In the last decade, the number of youths engaged in transnational jihadism has been increasing, with many of them joining armed forces in the Iraqi-Syrian conflict zone and committing acts of violence in France or abroad. The terrorist attacks on the headquarters of Charlie Hebdo and the Bataclan in 2015 can be marked as France's 9/11 and a turning point in its counterterrorism policy: the war on terror has reached France's soil.¹ Against this socio-political setting, French legal institutions have been largely mobilized. A two-year state of emergency was introduced between 2015–2017, gradually becoming part of common criminal law (Henette-Vauchez 2022). The number of trials against individuals involved in armed groups on the Iraqi-Syrian front has reached a level unprecedented in the history of French criminal justice: terrorism has become a phenomenon of mass prosecution (Mégie and Pawella 2017).

At that time, when cases were only starting to be prosecuted, we proposed the French "Mission de recherche Droit et Justice" – an independent research entity financed by the French National Center for Scientific Research (CNRS) and the French Ministry of Justice – to study the courts that have the authority to hear these terrorism cases. The method proposed was ethnographic and the originality of our project lay in its pluri-disciplinary nature. The research team was composed of an anthropologist, a political scientist, who is also a sociologist, a jurist with philosophy background (who was formerly a judge), and myself – an international lawyer. The project was accepted and funded.

The initial research questions, which were to be examined through the lens of our different perspectives and disciplines, were focused on the role of the court: how counter-terrorism law is performed and what was actually happening in courtrooms. As an international lawyer (and the English speaker of the group), I was mainly interested in examining how the global war on terror was managed within local and ordinary judiciaries, and the extent of their dialogue with international law and politics. I wanted to trace the way law is applied, while placing these practices within a broader geopolitical context, and to explore to what extent French lower criminal judges were acting as global players.

Our methodological starting point was to enter the courtroom and to observe trials. Together, we attended dozens of Islamist terrorism trials between 2017–2022. Our approach looks at the role of courts through a bottom-up approach, as performed and shaped within the judicial scene at the local level. It starts with the courtroom scenes themselves in order to report on the ordinary nature of these legal processes. It also looks at the protagonists in the trials: their language, their relations, and their actions. As opposed to doctrinal legal research on terrorism which focuses essentially on the study of legislation and precedents of eclectic case studies, we consider the social interaction of the actors and the empirical context of judicial practices (Cotterrell 2012).

¹ On the 7 and 9 January 2015, several attacks took place in Paris (herein after "The Charlie Hebdo terror attacks"). It first targeted the offices of the French satirical newspaper known for its controversial cartoons, resulting in the killing twelve people, including cartoonists, journalists, and police officers. It was followed by a second coordinated attack on a Kosher supermarket, resulting in the deaths of four people and leaving others injured. On the evening of November 13, 2015, several coordinated attacks took place in the eastern part of the city. The assault at the Bataclan Theatre, while a concert was underway, and shooting in nearby cafes resulted in the loss of 130 lives and hundreds more injured.

Criminal trials of terrorism cases constitute privileged moments to observe, in a dynamic way, the management of “terrorism” through law. Our study proposes to analyze terrorism logics – exception, rule of law, emergency – beyond the dichotomies. We examine how they are reflected, represented and negotiated, from within courtrooms; our analysis is based on the practice, the routine and the evolution of the judicial process and the performance of law, where a variety of actors and policies modulate these concepts through accommodation, innovation or struggle. Beyond the empirical assessment of such a method, the analysis that emerges goes beyond simplified dichotomies and offers a nuanced, and sometimes contradictory, analysis of the law and practice that derives from the empirical findings. It is not simply security versus rights, exceptionalism versus the rule of law, repression versus reparation, but a space where conflicting concepts interact in an organic way and modulate justice in the era of jihadism.

This research is situated within academic literature on the “War on Terror” in democratic context (Abel 2019, Dezalay 2020, Vedaschi and Scheppele 2021), critical security studies (Bigo and Bonelli 2018) and global law and conflict (Chinkin and Kaldor 2017). From a global law perspective, after the terrorist attacks in the United States on 9/11/2001, the United Nations Security Council, as well as other international institutions and agencies, set out a global and transnational legal framework to fight terrorism (De Londras 2022). Scholars have raised deep concerns about the future implementation and the uncertain impact of this broad new legislative framework on individual liberty and traditional criminal doctrines (Saul 2020). This framework challenged some of the very foundations of liberal criminal law as it replaced the idea of repression with an uncertain notion of pre-emption (Garapon and Rosenfeld 2016), and limited the rights to due process, privacy and free movement.

While lower national criminal and administrative courts are increasingly asked to perform a transnational role, most notably in terrorist cases, the routine legal practices of national legal actors, which are tasked with dealing with thousands of people, remain under-studied. Within a transnational context, scholars have addressed different aspects of the study of terrorism, such as United Nations listing and sanctions (Sullivan 2020), the financing of terrorism (De Goede 2020), and intelligence (Bigo 2007). Further studies have looked more generally at the matrix of global and transnational counter-terrorism legislation and actors while highlighting the challenges to democracy, individual rights and accountability (De Londras 2019, Vedaschi and Scheppele 2021). However, transnational legal research tends to produce studies that overlook the routine and local management of justice (Halliday and Shaffer 2015). It moves too quickly from the local to the trans/global, without taking the necessary resources and time to investigate local practices. There is still an important “empirical gap” on how national judges have actually been applying terror laws in practice.

In fulfilling this research gap, I aim to “re-localize” studies into their geographical space and analyze the trans/national from “within”, through a bottom-up approach based on prolonged localized ethnographies (see, for example, Massoud 2021, Lefranc 2021, Baczkowski 2021). “Reaching” all the way down to local practice (Shaffer and Ginsburg 2012, Halliday and Shaffer 2015), this approach echoes with the ones employed by new legal realism scholars and international sociologists (Merry 2006, Talesh *et al.* 2021).

Given the scope of this article for the special issue the primary focus is to present our method and how it was developed, and to share briefly the main findings.

First, the article will present the method employed, with an emphasis on the significance of court ethnography (section 2). Then, the main findings will be presented, albeit briefly, through a concise overview outlined according to the three generations of terrorism trials (section 3). Finally, I propose a methodological framework for conducting empirical court studies to assist researchers in future studies (section 4).

2. Methodology: Grasping “law in action”

Our ethnography commenced with the beginning of the first Islamist terrorism cases being heard at the Assize court. Additionally, we conducted observations in the 16th chamber of the Tribunal Correctionnel, the lower criminal court, where numerous terrorism-related cases were tried, carrying sentences of up to ten years of imprisonment. Later on we attended hearings in the dedicated courtrooms where the “historic trials” of Charlie Hebdo and the Bataclan trials were held. I also attended a hearing at the constitutional court, where the constitutionality of a terrorism law was contested. The following section delves into the different stages, providing an overview of the methods employed, and shows how as the research evolved, it allowed us to “take an active role in the institutions and phenomena we studied” (Starr and Goodale 2002, p. 7).

2.1. Trial observations

2.2.1. The specially-constituted Assize Court for terrorism cases

First, we conducted prolonged trial observations in the specially-constituted Assize Court for terrorism cases. It is situated in the historic courthouse of Paris (“Palais de Justice”) in the city center.

IMAGE 1



Image 1. Courtroom « Voltaire », 15 September, 2018.²

² The picture is publicly available at: [https://commons.wikimedia.org/wiki/File:Palais_de_justice_de_Paris_-_salle_Voltaire_\(cour_d%27assises\).jpg?uselang=fr](https://commons.wikimedia.org/wiki/File:Palais_de_justice_de_Paris_-_salle_Voltaire_(cour_d%27assises).jpg?uselang=fr)

The Assize court has exclusive jurisdiction over all terror cases that are punishable by 10 years in prison or more. It is constituted by a presiding judge alongside four other judges, without a jury (of ordinary citizens) as is the case in regular Assize trials. This is why it is named *La Cour d'assises spécialement composée* (the “Specially Composed Assize Court”).

The origin of this special chamber can be traced back to a law passed on 21 July 1982, which established initially its competence over only over crimes related to the military and the safety of the State. In 1986, in response to threats on members of the jury by the extreme left group Direct Action during a terror case, it was decided to extend the chamber’s jurisdiction to cases dealing with acts of terrorism. Over time, its jurisdiction has expanded to include organized crime.

For each trial, a different set of judges sit on the bench. The presiding judge is chosen from the regular pool of Assize judges, while the other four judges (“assessors”) can be any judge, regardless of their specialized experience in Islamist terrorism. Previously, the Court was composed of seven judges, but due to the increasing number of terrorism cases, it has been reduced to five members – one president and four assessors – with decisions now being adopted upon a regular majority, unlike the jury courts.

For the first two years, from 2017 to 2019, we observed all thirteen terrorism trials, including their appeals, resulting in a total of over 138 days of hearings. Some of these trials extended over two months, while others were shorter, lasting a week. A significant portion of the cases focused on individuals who had returned from the Syrian front, and the charges primarily related to joining an armed terrorist group (Weill 2018). Notably, these cases did not involve victims, nor any terrorist acts committed within France. Only two trials dealt with terrorist acts executed – the Merah and Cannes-Torcey trials.

Throughout our observation period, we witnessed the construction of a new modern courthouse designed by the renowned architect Renzo Piano in the north part of the city named les Batignoles. As a result of the relocation of the counter-terrorism investigative unit and all the lower courts to the new facility, we observed the transformation of the “Palais de Justice” into a place that was much less busy than before.

2.2.2. The 16th chamber of the Tribunal Correctionnel

While primarily focusing on observations at the Assize court, we also irregularly attended hearings at the lower criminal court, known as the Tribunal Correctionnel. Specifically, we observed proceedings in the 16th chamber of the Tribunal Correctionnel, which handles all terrorism-related offenses punishable by up to ten years of imprisonment. With a bench comprising three trial judges, this court has accumulated substantial expertise in handling numerous cases against foreign fighters and returnees from the Iraqi-Syrian front.

2.2.3. The historic trials

Between 2020–2022, we attended the so-called “trials for history”, commonly known as the “Charlie Hebdo” and the “Bataclan” trials. These trials prosecuted individuals who were accused of being involved in the major terror attacks that took place in Paris in 2015.

The “Charlie Hebdo trial” refers to the trial of the January 2015 attacks. It was held five years after the events, from September to December 2020, in the new modern courtroom of the Palais de Justice de Batignole. This trial was marked by acts of violence committed in parallel to the trial, including the murder of schoolteacher Samuel Patty for teaching about the Mohammed cartoons controversy that motivated the attacks on *Charlie Hebdo*.

The Bataclan trial lasted for an extensive period of 10 months being a focal point of public attention. It was as the most important trial in terms of its political role, active victims’ participation, the level of responsibility attributed to the accused, national and international media coverage, as well as its considerable cost and duration. The trial’s significance was further underscored by the construction of a temporary courtroom within the historic Palais de Justice. This dedicated courtroom was specifically designed to accommodate the large number of victims and their lawyers, allowing their participation and representation throughout the proceedings.

The hearings of these two trials took place every day, despite the fact that they were held during the Covid period. On several occasions, hearings were interrupted when defendants tested positive to COVID-19. At least one member of our group was present during these long trials. The filming of the Charlie Hebdo and Bataclan trials, was a notable exception to the absence of a court record, as it is usually the case. The filming was made possible by The Badinter Act of 1985. This law was adopted on the eve of the prosecution of Nazi collaborator Klaus Barbie³ and marked a turning point in the history of justice, as it opened up, for the first time, the possibility of recording trials to create audiovisual archives, essentially filming trials for history.⁴ Since then, only a few trials have been filmed and archived in the National Archives, including trials related to the genocide of the Tutsis in Rwanda, Nazi collaborators in France, and most recently, terrorism trials such as the Charlie Hebdo and Bataclan trials. However, the footage is not broadcasted live, and it remains stored in the archive, inaccessible to the general public for 50 years.

³ Klaus Barbie was found guilty of seventeen crimes against humanity and sentenced to life imprisonment for deporting hundreds of Jews from France.

⁴ More recently a new law “on confidence in the judiciary” entered into force (Law no. 2021-1729 of 22 December 2021), which added that “the sound or audiovisual recording of a hearing may be authorised, for a reason of public interest of an educational, informative, cultural or scientific nature, with a view to its dissemination”. For more details see: Bellanger *et al.* 2023.

IMAGE 2



Image 2. Photo of the Bataclan courtroom at the Palais de Justice in Paris, 13 June 2021, taken by Romane Gorce, Promete Team.

2.2. Immersion in court

In line with legal ethnomethodology (Garfinkel 1967, Dupret 2021)⁵ and ethnographic research on courts (Feeley 1979, Latour 2002, Weill 2020, Lefranc 2021, Mustafina 2022), our aim was to enter the places where the law is performed. Combining anthropological and socio-legal approaches, derived from the tradition of judicial ethnology (Malinowski 1927), this approach is reflected in the physical presence of the researcher in the courtroom for the entire trial period and is extended by theoretical reflection. Narratives and interactions often remain outside the text of case law; by contrast, trial observation facilitates a nuanced understanding of how the law is made by the different protagonists, who operate within a specific context.

Our immersion continued beyond the hearings, through informal exchanges with lawyers, magistrates, and journalists and also with the families of the accused. This allowed for the informal collection of data, obtained by discussions in the cafeteria, daily meetings on public benches, and the occasional exchange in the corridors, during the suspension of the sessions, or while waiting for verdicts sometimes late in the evening. This led to a deeper and more nuanced understanding, not only of the law and its

⁵ “Legal praxeology is the perspective that claims to consider the law through the practices ... It occupies the space that exists between formalism and sociologism. Legal praxeology is the approach that takes law seriously in all its formal and sociological depth. This means that it considers absurd the pretention of dealing with law while ignoring what its practitioners take as essential to their activities, that is, the rules; but it finds it equally indispensable to deal with these rules and the activities that refer to them through their modes of accomplishment. ... Particular cases are studied ethnographically in order to elicit the mechanisms that are specific to how they unfold, including what is linked to the law as followed by both its professional and lay practitioners. Legal praxeology’s descriptive attention is concerned with the methods proper to the people concerned. One could speak of an interest in ‘legal ethnomethods’” (Dupret 2021, pp. 76-77).

implementation in the socio-political context and cultural setting, but also of how the law can be seen through the lens of routine and the banality of human interaction (Feeley 1979, Latour 2002, Dupret *et al.* 2015, Kohler-Hausmann 2018).

Being immersed in courtrooms transforms the researcher into part of the judicial scene. The way we, as researchers, were perceived by the actors involved in the court setting evolved during the long research period. At the beginning, we could enter the courtroom incognito with our notebook, being a part of a small audience who had little interest in us, and which was constructed mainly of family members of the accused, some general members of the public and a few professionals. We could simply merge into this group without being singled out. In one trial, I regularly sat next to the father of the main person accused. He told us later that his son noticed us speaking to him and asked him who we were.

With time, however, the various court actors came to know us. As we became more and more visible, our status changed: we were allowed to bring our laptops and even use phones in the courtroom. Access to legal documents was, at times, easier and we became more and more familiar with internal workers who provided us with information and documents from the record. This process reached its peak at the start of the Charlie Hebdo and Bataclan trials. There was now an official list of accreditations to access the courtroom, restricted only to the victims, who were constitute as civil parties, lawyers, security personnel and a limited number of journalists and researchers.⁶ Each of these groups was allocated a particular space to sit. As journalists and researchers were attributed the same space, they could mix. This socializing and the personal relations established during the long hearing days resulted in the researchers being often approached by the media: we were all invited to be interviewed by the major TV, radio and newspaper outlets, both local and international. I was interviewed by *Le Monde*, *The Financial Times*, *The Washington Post*, *The New York Times*, *La Croix*, Radio France Culture, France 24, RFI.⁷ Some of these publications gave space to our research and analysis, other were shorter and were mainly short citation. Having the possibility to communicate with a large audience about our work, was an interesting experience for me. Other researchers preferred not to do so.

2.3. *Semi structured interviews and follow up exchanges*

These observations were complemented with dozens of semi structured interviews carried out by the members of our group – individually or together – with key judicial actors, including trial judges and presidents of benches, defense lawyers, prosecutors and investigative judges. These interviews allowed for a better understanding of the way each person experienced the trial, based on the role they have and the manner in which they forge their practices.

⁶ The researchers of whom there were now dozens, were working on various projects, under the umbrella of a new collective called 'Promete' (2021).

⁷ See for example: Financial Times 2021a, 2021b, Washington Post 2021. Interviewed for France Culture at the end of the trial of Charlie Hebdo (Tellier and Sturm 2020); Participated in radio round table at France Culture chaired by Florian Delorme (Weill 2021); interviewed for the French daily newspaper, *La Croix*, at the beginning of the Charlie Hebdo trial (Bienvault 2020); long interview for French daily *Le Monde* (Jacquin 2020); interviewed for *The New York Times* (Nossiter 2018).

From the start, we had relatively privileged access to the judges to do interviews for three main reasons. Firstly, the research was financed by the Ministry of Justice, and they facilitated access by providing an official letter. Secondly, one of the researchers was a judge earlier in his career. He stopped practicing law years ago and has become a respected author well known and very appreciated within the judicial profession. Lastly, many of the judges were personally interested in academic research in general, and more specifically on terrorism and their own work.

Repeated interviews with the same person not only help establish a relationship of trust but also prompt the interviewees to further contemplate their own actions and experiences. Observations and interviews generate particularly valuable data when conducted in rotation. By observing the person “in situ,” whom we have already interviewed, we gain a specific context that we can then further discuss in a follow-up interview. This approach allows the interviewee to comment on specific issues raised during the hearing, making the discussion more concrete and revealing insights that were not apparent during the observation alone. This iterative approach enhances the depth of the data and leading to a more comprehensive understanding of the practice of the actors and the subject studied.

2.4. *Participative observations in professional networks*

The exchanges with the judicial actors continued while we presented and tested our hypotheses and observations, in the context of training sessions at the “National School of Judges” (ENM), at lectures and conferences we organized at our universities with their participation.⁸ These interactions were essential to the evolution of our thinking and to better understanding of their actions and representations.

During the period of the state of emergency, between 2017–2019, I was part of a network created by academics, NGOs (such as the French branch of Amnesty international and Human Rights Watch) and lawyers, coordinated by Open Society. Attending the monthly meetings and joining the group’s mailing list kept me up to date with the many legal developments and litigation by lawyers before the constitutional and administrative courts as well as the European Court of Human Rights. Some of my students were involved in this network, and they also joined me to do court observations. Later, I saw many of the network’s participants in courtrooms: as defenders or victims’ lawyers. At that time, I was also a member of the French National Human Rights Commission (CNCDH), during which we interviewed different judicial

⁸ At Sciences Po Paris, where I am a research associate, we organized two major conferences. The first was the launch of our first report, *Jihadists on Trial: An Ethnographic Study at the French Assize Court (2017-2019)*, in an interdisciplinary colloquium with the participation of judicial actors including the French Counter-Terrorism Prosecutor, the President of the Assizes Criminal Court, a counter-terrorism investigative judge and a defense lawyer (CERI, Sciences Po, March, 2020). The program is available at <https://www.sciencespo.fr/agenda/ceri/fr?event=1953>. The second conference was held in November 2022 following the Bataclan trial: *The Bataclan trial seen by the social sciences: an ethnographic and multidisciplinary approach*, program available at <https://www.sciencespo.fr/fr/evenements/le-proces-v13-vu-par-les-sciences-sociales-une-approche-ethnographique-et-pluridisciplinaire> (see also an interview on the Sciences Po website: Etienne 2022). Other conferences were organized by members of our teams at the universities of Rouen (October 2019) and Limoges (January 2023). At the French National School for Magistrates, where one of our team members teaches, we have, since 2018, organized and participated in a dozen of panels with the participation of actors.

actors including the anti-terrorist prosecutors and the UN Special Rapporteur on Human Rights and Counter Terrorism.

2.5. Analysis of legal documents

We complemented this ethnographic corpus with the study of various documents: legal texts such as indictments, decisions, and judgments as well as legislation, internal ministerial directives, statistical data and news items. Although legal documents and court decisions were essential for our research, we encountered major difficulties in accessing these written sources. Even though the judgments are public documents, they are not easily accessible, as they are not published electronically. With regard to the indictment file, many journalists possessed them before the opening of the trials. So we could obtain access to these documents through personal ties with journalists or lawyers, sometimes even through the judges.

Moreover, we regrettably experienced the absence of a written record of the hearings: one must be present in the courtroom throughout the entire trial to have a record of what is being said. This is unfortunate because one of the few places where the voice of the accused can be heard publicly is in the courtroom, and important stories disappear once the trial is over. In fact, their existence depends on the more or less haphazard attention given to the trial by the media. As some of us were also teaching, we were not able to be at all the hearings all the time. But the observations were carried out continuously by the presence of at least one of the members of the team, often several, who communicated the evolution of the trial to absent members.

2.6. Cross analysis with the research group

During the entire research period, we had regular discussions within our research group, through periodic meetings in the office and routine exchanges at the court room. Being researchers from different disciplines, we used complementary approaches, which enriched the exchange and analysis of data throughout the entire research process. As a legal researcher, I was mainly working on the legal texts, the legal arguments raised at court and the respect of the procedure in light of the legal framework of human rights law. For the anthropologist and the sociologist, it was important to be present in the courtroom during the entire hearing time; they had each a field diary, in which they systematically wrote the exchanges and interactions of the actors as well as the court's rituals. We then collectively produced a report, as well as joint publications.

Working as a multidisciplinary research group is not a new practice in many fields, and the virtues of this approach are well established. However, it is rarer for such groups to work together on the same subject, at the same time-space, and to produce a collective piece of writing. From a methodological point of view, this was an innovative experience that allowed us to have a multi-level reading grid as each perspective was developed and refined through joint discussions. Writing together allowed these different perspectives and analyses to become a common reflection.

For our first report was submitted in December 2019 (Besnier *et al.* 2020). Together we developed the outline. Each researcher was responsible for a part and had to analyze the trials according to his/her own disciplines. The anthropologist provided a detailed account of the judicial ritual, the political scientist and sociologist analyzed the role of

the different actors while the jurists provided a critical legal analysis of the legislation, precedents of high courts and lower courts' jurisprudence. The common analysis was apparent in the conclusion/concluding paragraphs.

The report was circulated widely within professional judicial circles. Our personal contacts built up with prosecutors, judges, and lawyers played a crucial role in disseminating the report. Additionally, our funder played an important part, as one of its aims is to support research in dialogue with judicial professionals for institutional improvement. Indeed, at the end of the report, we also provided recommendations. As a result, lawyers began using our report in their arguments, and prosecutors and judges who participated in our conferences read and commented on it.

Follow up research projects were then funded, now focusing on the "Historic trials". A new research collective was created, with many other researchers (Promete 2021). We further edited two special issues of a French peer reviewed journal with contributions from the different actors, including the defense lawyers, prosecutors and judges and academic analysis (ENM and Dalloz 2021, 2023). Today, we are in the process of collectively writing a book for Cambridge Studies in Law and Society.

2.7. On distance and positioning

The distance between the field research, the object and the researcher is a crucial aspect to consider. Ethnography is a method of immersion, embedded in the environment it studies, with the researcher in close contact with the social group s/he is studying and with which s/he interacts to conduct their research. In our case, we were dealing with a field of research with major political and social importance, locally and internationally, an object that we were observing but also actively involved in its construction. This distance with our object became challenging, as it involved a daily commitment and very close proximity to the players in the field, including the family of the accused, victims and the judicial actors. Moreover, there was something addictive in observing justice, being in courtroom every day, hearing fascinating human stories (of course not all the moments were fascinating, there were also long boring moments such as the reading long technical documents), being a part of a collective.

Sociologist Loïc Wacquant (Wacquant 2021) has stressed the importance of this proximity and deep immersion in the field of study but at the same time the danger of being too emerged and not being able to have the required distance to pursue the analysis and to relocate the object into a larger historical and political context:

Crossing a boundary (...) consists in 'going native', as the Americans say, in other words leaving your place as an outside observer and taking on the role of a 'native', an 'indigenous'. Embracing 'the point of view of the native', to borrow a famous expression from the anthropologist Bronislaw Malinowski (1884–1942) (...). By training relentlessly, with my fists and my guts, by learning to box with my comrades in the gym, I became the phenomenon I wanted to understand. If you have to get as close as possible to the action, to immerse yourself in it, to mimic it, to perform it, you also have to give yourself the means to come back from it, to make the return journey, to gain some distance thanks to theoretical tools. (Wacquant, cited in Cerf 2023; translated from the French original)

It is indeed challenging to determine if the required distance was maintained throughout the research. Striking a balance between immersion and distance is a constant consideration in ethnographic research. It is essential to be mindful of these dynamics and continually reflect on their potential impact on the research process and outcomes. Writing, in itself, is a crucial part of the research process. Before entering that phase, I took the necessary time to disconnect from the field research. However, the findings can only reflect my own stance and distance from the object of study.

3. From the laboratory of the lower courts to the show justice of the “historic trials”: Three generations of terror trials

During our research, we identified three generations of trials. The following section outlines the main findings along these three generations.

3.1. The Lower Court’s 16th chamber sets the method

The “first generation” of jihadist trials occurred before the 16th chamber in the lower criminal courts (Tribunal Correctionnel) in Paris, which centralized all terrorism offenses with sentences of up to ten years imprisonment. Between 2014 and 2018, more than 200 individuals faced prosecution, and an additional 1,600 individuals were subject to criminal investigation (Brisard *et al.* 2018). This chamber operated as a judicial laboratory of counter terrorism. Dealing with numerous cases involving foreign fighters, it developed significant expertise in handling such cases and established a legal definition of “terror” in contrast to “jihadist” groups (Weill 2018). During this period, the judicial response to terrorism was characterized by broad preemptive approaches, which involved the use of vague notions of dangerousity and radicalization. This approach was put into practice through close collaboration between investigating judges and the prosecution, who were given increased authority and resources, alongside the specialization of the judges (Mégie and Pawella 2017, Weill 2018).

Although the French Criminal Code has continuously evolved to include more and more criminal offences adapted to the changing modes of international terrorism, such as the new offences concerning apology for terrorism, financial support of terrorism and recruitment, almost of all the prosecution of foreign fighters involves the long-standing offence of “association of wrongdoing in relation to a terrorist enterprise” (in French: *Association de malfaiteurs en relation avec une entreprise terroriste*, hereinafter: AMT). This offense criminalizes the mere participation in a group that has a plan to commit a terrorist act, with the knowledge that the group has a plan to commit such an act (Article 421-2-1 of the French Criminal Code). There is no requirement that the individual contributes materially to the commission of the terrorist act in itself, nor that the terrorist plan is executed. Defense lawyers have highlighted in numerous interviews that this offense has allowed the prosecution of vast networks of suspects only very loosely related to one another, with little evidence.

Traditionally, French counterterrorism criminal legislation relied on a combination of sweeping legal prerogatives and relatively lenient punishment (Foley 2013). While many suspects were caught in the wide net cast by the AMT, their prison sentences were

comparatively light. During this initial period, the lower courts developed a range of penalties through case law, which varied depending on the nature of the offense.⁹

While prosecutors applied criminal prosecution policy in a uniform manner, the judges initially had a more nuanced approach. Some judges expressed difficulty in fully grasping the effects of their decisions and the consistency of the sentences they handed down. This sentiment was captured in the words of a presiding judge who remarked, "It is impossible at the moment to fully grasp the effect of our decisions. But perhaps even more problematic, it is often difficult to grasp the consistency of the sentences we hand down!" (Presiding judge, December 2017).

The level of investment by judges varied based on their personalities, experiences, and career stage. Some judges dedicated a significant amount of time to studying these cases in order to acquire knowledge of jihadist networks, their codes, and the way they were set up. This involved seeking information from various sources, including maps, academic studies, and other sources related to these movements and the Syrian conflict. Despite these initial individual differences, the judicial actors involved in handling terrorism-related cases became specialists over the course of these trials.

In April 2016, in the aftermath of the 2015 terrorist attacks, there was a radical change in the prosecution policy. From the perspective of the authorities, the existing ceiling of up to ten years' imprisonment for joining a jihadist terrorist group did not adequately match the gravity of the behavior. As a result, it was decided to prosecute the act of joining such a group in the Syrian-Iraqi front as a felony (in French "crime"), with penalties of up to twenty or thirty years' imprisonment. This new prosecution policy, introduced by the Prosecutor, initially faced opposition from the investigative judges. However, it was eventually imposed by the highest court in France. As a result of this jurisprudence, the policy had to be followed, and it was even applied retroactively to cases that were already under investigation by the investigative judges, despite their disagreement (Weill 2018).

Following the implementation of this harsher criminal prosecution policy, terrorism cases involving returning from the Iraqi-Syrian front have systematically been transferred to the Special Assize Court. Previously under the competence of the *Tribunal Correctionnel*, the Assize Court now had the authority to impose much longer prison sentences for these cases.

3.2. *The Special Assize Court and the resistance of its judges*

We began our ethnography in 2017 and for two years, we closely followed all of the trials that were transferred. Most of these cases are often without victims/civil parties, and sometimes even without the defendants themselves, who are presumed dead. These are the "second generation" trials.

⁹ For those who had been integrated into a terrorist organization abroad, particularly Daesh, and were usually prosecuted in absentia, the sentences ranged from six to ten years of imprisonment. Foreign fighters who had returned to France faced prison sentences of six to nine years, depending on the length of their stay in the Iraqi/Syrian conflict zone and the severity of their acts. Individuals who had joined a terrorist armed group in France and were about to travel faced sentences of four to six years. Finally, those who had provided logistical support to persons traveling to Syria or Iraq to join terrorist armed groups received sentences of two to four years of imprisonment.

3.2.1. The Slow Justice of the Assize Court¹⁰

The Assize Court hears cases involving the most serious criminal offences and has the authority to apply the severe punishments. However, appearing before the Assize Court at that time also meant being heard by non-specialized judges, and for a long period of time in a procedure that has two main features: the oral nature of the proceedings and the investigation of personalities (Lerner 2001). This process allows for the creation of a unique space, in which the accused can (and indeed is expected to) express themselves. During our research, we observed that this process facilitated the emergence of narratives that had an unexpected impact on the final decisions of the judges in terms of punishment.

Inquiring into the personality of the accused is an important phase of the hearing, to which a considerable amount of time is dedicated in court. It provides the public with unique access to personal stories and trajectories; indeed, one of the few places where the word of the accused is heard publicly is the courtroom. The willingness to understand the facts in the context of the personality of the accused is a feature of hearings in France. During the trials that we observed, this phase lasted, on average, a day per person before the fact-finding process. Here, the path of the accused is closely examined, from their early childhood and on through their schooling, work, and family environment. In linking the individual to their social and familial context, an intimate space is created in which the accused can describe their world: their family, childhood, and aspirations. For this purpose, medical and psychological reports are presented, and these are corroborated by the testimonies of family members and other relevant witnesses such as neighbors or colleagues. After an in-depth interrogation from the judges, the accused and the witnesses answer questions from the public prosecutor as well as the lawyers for the civil party and the defense.

In French criminal law procedures, victims have the right to participate in the process as civil parties. They are a party to the process with extensive rights such as the right of access to the investigation file, and the prerogative to call a witness to the bar and to question the accused during the trial. As with the defense lawyer and the prosecutors, the civil party lawyers are an integral part of the trial.

We noticed that the non-specialized judges familiarize themselves with the complex sociological and geopolitical context, which they discover during the proceedings. The questions posed by the various actors in the courtroom attempt to clarify the link between conversion to Islam, religious practice, radicalization, and jihad (Conti 2022). The long duration of the Assize Court proceedings can, in certain situations, illuminate the course of the case, including for the accused themselves, and trigger feelings of regret and a sincere desire for rehabilitation. In the Cannes-Torcy case, we heard 20 defendants, all from very different origins and social backgrounds. We heard their parents and we learned about their backgrounds and the facts in great detail. After 55 days of hearings, the last words of one of the accused were as follows: "I thank the judges for listening to my story. For the first time, someone took the time to listen to me" (field note, 20 June 2017).

¹⁰ This term was inspired by a discussion with J.S. Hodgson (2020).

During hearings, judges are meant to assess the potential dangerousness of the accused and to analyze how they were radicalized in order to prevent a future potential act. The question of “potential dangerousness” was thus present in most of the trials we followed. Psychologists are sometimes questioned by the President to enlighten the court. For example, in the trial of O., a psychologist testified based on reports written after meetings with the accused in prison. When the presiding judge asked about the dangerousness of the accused, the psychologist retorted that he was not in a position to answer such a question. “Is he susceptible to influence?” enquired the president. “I would say immature,” and he maintained that the accused was not self-critical about his actions. After this testimony, the accused spoke up: “This person saw me twice, for 90 minutes, how can he say all this? How can he be so sure of my profile?” “That’s the expert’s job,” responded the judge (Field note, 20 November 2018).

These evaluations pose serious difficulties from the point of view of liberal criminal law doctrine (Garapon and Rosenfeld 2016, pp. 128–129), since one cannot rely on predictions without being arbitrary: “How can the court judge the future, let alone the future of a human conscience? Will he give up? Will he act? We do not know (...). The judge does not have (...) such resources. And yet, we would like him to punish, and punish severely” (Defense lawyer, in his plea before the Constitutional Council, field note, 7 April 2017).¹¹

Interestingly, in the first cases heard before the Assize Court, we observed a resistance to the prosecution policy by the trial judges. The oral nature of the hearings has an influence on the sentence passed, and this results in a significant discrepancy between the requests of the prosecutor and the final decisions of the Assize Court. It seems to us that non-specialized judges not only use an anti-terrorist analysis perspective but also make their judgment through the lens of ordinary delinquency. The judges of the Assize Court were guided by the prospects of rehabilitating the convicted person beyond the concern for prevention and suppression (Weill 2020).

3.3. *The “historic trials” and the introduction of hybrid justice*

The Charlie Hebdo trial (2020–2021), followed by the Bataclan trial (2021–2022), are the “third generation” trials, or the “historic trials”, involving thousands of victims and civil parties. These terrorism trials announced the emergence of “hybrid justice”, with the strong participation of victims integrating explicit restorative goals within the criminal trial, triggering strong emotions within the courtroom, transforming the trials into a platform which reminds us of truth commissions. Modulating the criminal procedure “from within”, these trials were an expression of the “ordinary” counter-terrorist justice, and at the same time it introduced an important reparative and restorative dimension, significantly open to the victims, political actors and social scientists. These trials also posed new questions regarding the link between victims’ rights and the right of the defense (Weill and Sulzer 2021).

¹¹ Decision n° 2017-625, 7 April 2017, case of *M. Amadou S.* Video of the pleading over the constitutionality of a new law relating to individual AMT is available: <https://www.conseil-constitutionnel.fr/decision/2017/2017625OPC.htm>

3.3.1. The Bataclan trial

Designed to be held as a historic trial, the Bataclan trial had an explicit socio-political role (Arendt 1963, McEvoy *et al.* 2022). The trial was exceptional in several aspects: its long duration over 10 months, the complexity and volume of the investigation file, the intensive participation of victims – consisting of over 2,600 civil parties and their 400 lawyers, the high level of responsibility of some of the accused. Hundreds of professionals were involved in the daily work on the case. And yet, it was decided to maintain standard French criminal procedures in such an exceptional setting.

The first five weeks were devoted to the victims/civil parties, who gave an average of 12–18 testimonies per day, and these were not limited in time. The decision to allow all the civil parties an opportunity to give a deposition without a time limit, was an explicit endorsement of restorative justice within the criminal trial that allowed them to speak out and describe their experiences and trauma. Within this space, two main narratives emerged. The first was the memorial/rehabilitation process and the second was their demand to the right to truth, while insisting on providing a fair trial for the accused. Despite the diversity of experiences, the group of victims was very homogeneous. They were mostly young people, who went out in east Paris, a leftist part of the town, on a Friday night, just as they did many other weekends, to hang out in bars and to watch a heavy metal concert. A large proportion of them hold university degrees and adhere to values such as liberty and social diversity. Their social profiles had a major impact on the trial, they set its tone. It was their voices that we heard: voices that described the horrors and, at the same time, voices that frequently asked for a fair trial and an understanding of how this could have happened.

The delivery of these testimonies triggered intensive emotional moments. The depositions often took the form of real rituals of memorial to the dead and a detailed recount of attacks and the trauma. The tears flowed abundantly, even among us researchers. In later conversations, one of the judges said that she was glad she had to wear the (anti-COVID) mask, so no one could see her tears. The criminal trial departed from a distant coldness towards sensitivity and empathy, as evidenced by the warm words of the presiding judge to the victims (Lefranc and Weill 2023). The usual formality of the judicial procedure, seen as a requirement for guaranteeing neutrality and impartiality, opened its gate to emotions (Bergman Blix *et al.* 2019, Roach Anleu and Mack 2021). Sometimes victims chose to address a question directly to the accused, which led to spontaneous exchanges between them. Several defendants spoke of how difficult it was to listen to these testimonies (noting that most of them had been incarcerated for several years in complete isolation). Later in the proceedings, when questioned, they went on to say that they had decided to talk because of a look in a grieving mother's eyes, or because of a specific question raised by a victim.

In seeking to understand, the civil parties called to the bar several *witnesses of context* – including members of the political establishment and the security agencies, including the former President, the Minister of the Interior, and head of security services, as well as academics and experts – to shed light on the socio-political context before and after the attacks, and to explain the dynamics of the violence. Thus, the role of the civil parties was not limited to their deposition. They further shaped the trial through the witnesses they invited, creating a new and unprecedented dimension. This trial, more than just

establishing criminal responsibility of individuals, also aimed to shed light on the functioning of states. Although objections were heard from the defense, that this would turn the judicial proceedings into a political trial, the judges decided to allow their testimonies. Whether it was a move towards politicizing the trial or having a trial with a political component, this undertaking by the French criminal court to fulfill the “right to truth” evokes transitional justice, in the same way that truth commissions can expose the involvement of the state apparatus in repression (Lefranc and Weill 2023).

Despite the participation of experts, the main absent at the trial was the establishment of social linkages to experiences of social exclusion, racism, post-colonialism, and radicalization, all of which have been well identified by leading sociologists in academic literature (Roy 2010, Khosrokhavar 2018, Conti 2023). While radicalization was presented almost solely through the prism of the individual pathology, ideology, propaganda and wrong choices, the expertise provided ignored the important impact of existing social structures on someone who is vulnerable to such an ideology. Having historians and/or sociologists highlighting these frames would have triggered a deeper understanding than what was provided by the political echelon and experts present at the trial.

4. Analysis of the findings

4.1. What is the role of French judiciary in the context of the fight against terrorism?

The role of the French judiciary in the context of the fight against terrorism is complex. Should we speak of an evolution towards a “justice of exception,” or have we remained within a rule of law framework that preserves civil liberties, the right to a fair trial, and rehabilitation objectives when sentencing? The answer is not unequivocal. It is a result of policies and practices that have been shaped by various actors, and it consists of arbitrating between a logic of suspicion and prevention, and a concern for justice. It seems that the French justice system, in the context of the fight against terrorism, is built on the foundations of three pillars: its exceptional status, its heavy tendency towards specialization, and the routine functioning of ordinary justice. “Justice” does not speak in one voice. Despite terrorism cases being prosecuted in a political context of repressive and harsh prosecution policies, the routine of regular criminal procedure has enabled a certain resistance of judges to this repressive position, and with them, the resilience of the rule of law.

Based on the empirical data collected, it is demonstrated that lower jurisdictions, in this case criminal courts, acting in a transnational context, can offer stronger resistance to state policies compared to supreme courts. This is due to the routine and banal nature of their function and their direct interaction with the accused persons, combined with the judges’ professional ethos and notions of judicial independence. Unlike supreme courts, whose role is more visible, and therefore subject to constant scrutiny by the political branches of the state, lower courts can operate in a more distant, independent space. Far away from the center of power and the media – they can resist state policy and promote other values through fact finding and assessments; it is these judges who can develop an alternative approach to repressive doctrines.

The ethnography highlighted the crucial significance of trials for the accused to narrate their stories and for the public to hear them. During the trial, the defendants had the opportunity to present their voices and personal paths. The trial was the only platform where such narratives could be heard in such a meaningful manner. At the same time, trials establish only a judicial truth, unveiling certain aspects while obscuring others. On one hand, trials are expected to be transparent and accessible. On the other hand, they rely heavily on classified information held by security agencies. The management of secrecy in these trials raises questions about the information that is disclosed, and the information that remains hidden. During the observation we saw how trials are embedded within this paradox, being both public and secret.

It is within the inherent tension that emerges between harsh legal categories and prosecution policy, on one hand, and the individual experiences and singular trajectories on the other hand, that the judges who form and perform justice position themselves and gradually define their own role. As was found by Fassin and Kobelinsky in the context of migration courts in France, we can clearly see that, in terrorism courts too, the act of judging involves a contradiction between the principle of justice and the feeling of mistrust (Fassin and Kobelinsky 2012). These two sets of opposing values and goals, which are reflected within the moral economy of terrorism, determine the operations of the court's actors: On the one hand, the objective of prevention is framed by a prevailing climate of suspicion. And, on the other hand, the criminal justice procedure, is still largely committed to the principles of a fair trial and the independence of the judges, both of which are anchored by criminal judges through their professional ethos. During the ethnography, it became apparent how judges position themselves both in relation to their attempts to handle their own personal and societal feelings of suspicion towards those accused of terrorism and, on the other hand, a professional concern to produce a fair criminal court decision.

This contradiction leaves the observers (and the accused and/or their lawyers and families) with mixed feelings: although the process is carried out with attention and openness, as well as a sense of justice, offering a space for expression and nuance, the impossibility of this preventive task renders the process profoundly repressive and arbitrary.

4.2. What lessons for mass trial prosecutions?

This research opens an avenue for reflection on the role of a criminal trial, and the lessons that can be learned within the wider field of transitional justice. The premise highlights the potential of the Bataclan trial as a model for a new paradigm of mass crime prosecution. By better integrating the objectives of reparation and restoration within the criminal process, this trial actively involves victims as participants in the proceedings. It also attributes a significant role to the narratives of the accused and incorporates the expertise of various social science professions. The civil law legal tradition, which allows for the participation of victims as civil parties and the direct interrogation of the accused by the judge, rather than through intermediaries like lawyers in common law trials, is a key feature in this context. By embracing a model that emphasizes reparation, restoration, victim participation, and the narratives of the accused, this trial sets a compelling example for potential advancements in mass crime prosecution. International criminal justice institutions, such as the ICC, could benefit from

considering and drawing inspiration from these practices to better address the legal complexities of mass crime prosecution and their socio-political roles.

4.3. Conclusion: Theorizing empirical court studies

With the aim of theorizing empirical court research based on research experience here and elsewhere,¹² it is suggested to develop a conceptual and methodological framework to study courts, the way decisions are produced and the social, legal and political implications of trials. This method is grounded in empirical observation and seeks to capture the interaction of the actors, their social trajectories, and the legal challenges. At the same time, it addresses institutional boundaries and routines, as well as the political environment in which they are located. Grounded in ethnographic observation, the proposed framework of analysis is based on four dimensions: (1) The dynamics of legal doctrines; (2) The role of human actors; (3) The impact of the institution (structural patterns, hierarchy, and bureaucracy); and (4) Political and geopolitical factors.

4.3.1. The dynamics of legal doctrines

The first dimension examines how political and social goals are translated into legal doctrines. It explores how these doctrines, as they are developed and function as independent forces, can eventually facilitate or limit the achievement of these socio-political visions through interpretation or fact-finding (Shapiro 1986, Kennedy 1997). While filling content into vague statutory terminology, such as “dangerousness”, “proportionality”, “security”, and “public order”, courts introduce a policy choice, and each meaning given to these terms is necessarily a construction. Similarly, while establishing the facts (for example, through the use of presumptions or by giving more weight to the narratives of security agents), courts establish them in correlation with a certain policy. This demonstrates, as established by critical legal scholars, that while developing and applying the doctrinal framework, the legal decision is motivated by the social and political forces and actors that shape it, far from being “neutral” or “objective.” In our case, it was very visible with the use of the main incrimination of AMT, which allows a very broad net for incrimination and punishment, with little evidence burden. The undefined notions of dangerousness and radicalization were also elastic enough to employ a severe repression policy.

4.3.2. The role of human actors

A court decision is a product of the interaction and contribution of many actors. Yet, positivist legal research, mainly taught at law faculties, concerns essentially the study of legislation and precedents or selective cases, without considering the socio-political and empirical context of judicial practice. The components of “the law in action” – such as legal rituals and procedures, the narratives of the protagonists, and the judicial actors’ behavior and interaction – need to be observed and analyzed to understand the impact of those interactions on the production of case law. Thus, it is not only the abstract norms

¹² See in the context of a so called “hybrid court”, Weill *et al.* 2020, 2022. An ongoing project by Sharon Weill and Sara Dezalay studies asylum courts with regards to these axes. Other inspiring research by socio-legal scholars includes the works of Feeley 1979, Bourdieu 1987, Latour 2002, Bigo 2007, Fassin and Kobelinsky 2012, Christensen 2017.

and court decisions that interest the researcher, but the actual practice and interaction of the actors on a concrete case, on which the theoretical analyses are based.

At least three specific groups of actors play a key role in making case law: judges, defense lawyers, and state prosecutors. Yet, other actors such as civil society actors, victims' associations, clerks, donors, secretaries, journalists, interpreters, academics, NGOs, experts, and political actors are also important (Weill *et al.* 2020).

The actors' career trajectory, competencies, and prior socialization and political positioning are key to understanding how court decisions are made (Bourdieu 1987, Christensen 2017). In this context, the interaction between these players, and in particular the extent to which they cooperate, confront, and are impacted by different internal or political struggles or networks, should be examined. Of particular interest is demonstrating how the practices and legal choices of different actors are impacted by power dynamics and the structure of the institution, including institutional routines and legal bureaucracy.

Methodologically, this can be done through repeated individual interviews of a wide range of actors (and not only the dominant ones) and up through the hierarchy.

4.3.3. Mass litigation and the institution: Hierarchy, routine and bureaucracy

Legal work is necessarily impacted by the structure of the institution, including by institutional routine and legal bureaucracy (Latour 2002, Bigo 2007). Routines, organized by managers, set the balance between the legal and social dimensions of the act of judging and orient the work of courts towards the bureaucratic goal of efficiency. This is how even an exceptional trial becomes routine for professionals bounded by institutional bureaucracy, hierarchy and sometimes personal precarity.

Courts usually render their decisions on a case-by-case basis and do not impose general policies, which renders their political impact barely visible. While legal reasoning is an application of the law on certain facts, its analysis should be done as part of a larger process rather than a case-by-case approach. Studying a large number of cases over time only reveals the insignificance of studying a detached individual cases. This is not to say that judges do not operate through individual cases, but they do so as part of a larger professional process. Each of their individual legal decisions heavily depends on the corpus of their work and the previous experiences they have had. While defense lawyers necessarily defend their own client as a unique case, court professionals (judges, clerks, prosecutors, etc.) adjudicate cases as part of a socio-political agenda, as well as their own professional practices and habits. Studying "a case" would undermine the reality of their routine workload in the context a mass litigation reality, in which the law is applicable as a result of accumulative knowledge, previous experience and shaped policy. Methodologically, cases should not be examined in isolation from the routine. It is necessary to decrypt the more general political line of the court, envisioned by the hierarchy, by reading together its many decisions and observing the workings of the court as they are developed over a number of years. A case study approach in which an exceptional case, a precedent, is observed, only masks the overwhelming cumulative power of ordinary and banal judgments (Shamir 1990).

4.3.4. Relocating courts within a geopolitical context

While the law claims to have an underlying capacity to evade political variables, we are interested in showing the positions given to politics and international relations within courtrooms. It is also essential to contextualize case law in the broader international political arena, as well as historical situation, with the aim of understanding the political role of the courts, despite the key claim of political detachment. Judgments are not just a mere application of neutral legal rules on facts, but a complex reality that involves a matrix of political actors and interests (Weill 2014). They are not “an independent or isolated event but an integral part of a political process in which many agencies interact with one another” (Shapiro and Stone Sweet 2002, 168–9). This is not to say that judges are not independent, simply that they do engage with politics all the time and carried themselves a political role. Methodologically, it is important to reveal these interaction and roles.

5. Final word

This research experience was rich and unique. Collaborating with researchers from other disciplines, having a horizontal collective work dynamic, and being invested in the project together created a unique and positive environment for the research. All of us were invested in the project, and no “motivation” discussions were needed. We all spent hours and hours in court; together or alone; we were independent and, at the same time, collaborative and loved to work not only in-group but together. Additionally, the special political moment and active involvement in the social public debate added another dimension to the significance of this research. Shared passion, meaningful engagement, collaboration and political timing created a magical synergy, resulting in a lasting experience that has strongly shaped my approach to any future court research. Ant yet, magic is complicated to theorize.

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