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Researching secret spaces: A reflexive account on negotiating risk and academic integrity

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Abstract

This article uses the case study of the Commission for International Justice and Accountability (CIJA) and its work on Syria as a way to reflect on the challenges international lawyers face in conducting research in relation to secret, highly constrained spaces. In particular, the article engages with debates within anthropology on the nature of para-ethnographic research as a way to think about research relationships between international legal scholars and practitioners as conducive of collaboration, (inter)dependency and dialogue. Yet this type of research, especially without the grounding of legal texts, raises questions about the legal researcher's integrity and author(ity). Thus, the article's core concern is to explore the inter-relationship between a variety of risks that can occur for both scholars and research subjects operating in secret spaces.

Keywords: anthropology; Commission for International Justice and Accountability (CIJA); methodology; para-ethnography; secrecy

> '. . . what constitutes "risk" is less about what took place in the field than what takes place on the page. How we *story* the experience. And what we decide to reveal. The risk at this level is about what we disclose to readers about ourselves and others, and how what we write about may figure into our careers.'
>
> H. L. Goodall Jr.[1]

> 'Authors [in law] are expected to write up research by mentioning "the facts", the theories, and possibly the methods. The relationship between facts, theories, methods, and the researcher, however, is rendered invisible, and so is the personal, social, and political character of research.'
>
> S. Nouwen[2]

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[1]Quoted in K. A. Stewart et al., 'Risky Research: Investigating the "Perils" of Ethnography', in N. K. Denzin and D. Giardina (eds.), *Qualitative Inquiry and Social Justice: Toward a Politics of Hope* (2009), at 213.

[2]S. M. H. Nouwen, '"*As You Set out for Ithaka*": Practical, Epistemological, Ethical, and Existential Questions about Socio-Legal Research in Conflict', (2014) 27 LJIL 227, at 233.

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1. Introduction

In the midst of Syria's social collapse, legal innovation has flourished in a range of public and private registers. The high degree of risk involved in working in such a complex geopolitical context has presented particular challenges for prominent public bodies, thus opening up greater space for a variety of smaller, often non-state actors, to undertake a range of emergency relief, advocacy, and criminal investigation practices.[3] Some of these actors working on highly sensitive issues are able to operate 'under the radar'[4] and require a high degree of secrecy for their continuing success. This article considers the case of one such actor, CIJA, as a way to reflect on the nature of legal research and the production of knowledge in relation to secretive organizations.

CIJA's risky and secretive work presents particular challenges for the scholar seeking to produce 'rigorous' research for a legal audience. The integrity of legal scholars tends to rest on our ability to demonstrate a compelling command of the field, especially through sophisticated engagement with doctrine as well as theory. Yet in the case of researching CIJA, these resources were not available to me. Secrecy required that I could not engage with any of CIJA's pre-trial briefs, or legal 'product' (as doctrine), and the theory of entrepreneurial justice I developed to explain its role in the wider accountability field only emerged much later in the process of my own reflection. In setting up this research, a host of logistical questions soon arose and, given my interest in international criminal justice responses in the midst of the Arab uprisings, I quickly developed an interest in CIJA upon reading some newspaper accounts of their work in Syria. Beyond these stories though, I soon learnt that there was nothing else to go on. Given the lack of data publicly available on CIJA then, how could I, an international legal academic, go about researching this organization? Could anything of scholarly value emerge from such a dearth of data?[5] Was this type of research just too risky for me as a researcher, but more importantly, to those working in the 'high threat environment' of the Syrian accountability field?[6] Such ruminations quickly opened up a broader set of reflections on the methodologies I would need in approaching CIJA *as a secretive organization* and as linked to academic anxieties over my own integrity. Accordingly, this article does not offer a detailed account about my substantive findings on the nature of CIJA's work. Instead, the article serves as a way for us to reflect on the process of scholarly outputs as well as on our own positionality as scholars, lawyers, and activists.

CIJA is hard to categorize. It is registered as a non-governmental organization (NGO) in the Netherlands and has its headquarters in another European capital. Headquarters staff hail overwhelmingly from Western states and many have extensive international criminal law experience. The largest number of dedicated staff working on the Syria files, however, are Syrians themselves and are based in Syria and neighbouring states where they seek to obtain documentation and witness statements that inform both future international trials and have already been used in domestic trials across Europe. As an organization that concentrates on securing and analysing evidence that implicates those at the very top of the Assad regime as well as ISIS, CIJA's highly sensitive work can only succeed beyond the purview of popular and scholarly scrutiny. While it is an international NGO, its lack of a public profile – it has no website and tends to avoid public scrutiny – points to its divergence with the advocacy work of standard human rights organizations. Although secrecy structures all of CIJA's extra-organizational interactions, a degree of public recognition and legitimacy is crucial in sustaining its funding (from public donors) and its position within the field of international criminal justice. Part of this legitimacy can derive from academic validity that scholars such as myself can supply. Researching

[3]For a general overview see B. Van Schaack, 'Imagining Justice for Syria: Water Always Finds its Way', (forthcoming).

[4]Interview #2, (16 June 2017) at CIJA headquarters.

[5]This challenge is also dealt with by Nouwen, *supra* note 2, at 238. For a rejection of the idea of 'data' in its entirety see N. K. Denzin, 'The Death of Data?', (2013) 13 *Cultural Studies ↔ Critical Methodologies* 353; E. A. St. Pierre, 'Writing Post Qualitative Inquiry', (2018) 24 *Qualitative Inquiry* 603, at 605–6.

[6]According to CIJA's technology security co-ordinator and 'ethical hacker', training workshop, 2 November 2018.

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CIJA, then, rests on a delicate negotiation where the scholar can gain knowledge about the organization in a highly constrained manner, which if disseminated discretely and with adequate detachment, can produce a degree of legitimation for CIJA on the one hand, and the preservation of academic integrity on the other.

Yet, risk operates here at a number of levels. Most simply, '[r]isk often begins with the choice of research site'.[7] Once I had identified CIJA for my scholarly inquiry, I was confronted by the far more palpable risks experienced by CIJA's staff in carrying out their work in and on conflict zones. In walking a fine line between ensuring CIJA discretion and satisfying scholarly conventions, there was the constant risk of foreclosing my CIJA access as well as putting my scholarly reputation at risk.[8] Through the CIJA case, here I ask, where do the risks lie and how could and should I as a scholar manage this responsibility?

For my own study, I had to turn to interviewing as my sole source of data. This is unusual within the discipline of law and even in the adjunct fields of legal anthropology and socio-legal studies where ethnographically informed methods based on interviews and participant observation are often read *together with* a range of legal texts. As lawyers, it is hard to abandon our faith in these traditional textual forms, and CIJA's dearth of documentary data is in stark contrast with the voluminous material already generated by (public) international criminal tribunals.[9] As these interviews were usually conversations occurring between experts in international law – myself as scholar, and my interlocutor as legal practitioner – we can think of 'my findings' as para-ethnographic, or in the words of George Marcus, collaborations among researchers and 'other sorts of experts with shared, discovered, and negotiated critical sensibilities'.[10] Studying the world-views of fellow lawyers operating in highly globalized, secret spaces enables us to explore the ways in which meanings are made, not only through their quotidian work practices, but also through the process of (para)ethnographic inquiry itself. Accordingly, this article provides an ethnographic account about the process of research itself. It seeks to enrich international legal methodological reflection through a conversation with some relevant anthropological debates.[11]

This article begins in Section 2 by discussing my (substantive) findings on CIJA through a concept which I call 'entrepreneurial justice'.[12] I define 'entrepreneurial justice' as the identification of a gap or weakness in existing public accountability fora and the creation of a new private or privatized organization and/or approach that seeks to address (at least part of) this gap. As exemplary of this trend, studying CIJA's inner workings is a way of understanding the role of (innovative) international criminal law (ICL) frameworks in the governance of societies in collapse. The article's central focus emerges in Section 3, which considers questions of access, secrecy, and scholarly knowledge production by engaging with a variety of anthropological debates. Finally, in Section 4, I consider the ethics of such research in relation to the Syrian civil war. In interviewing CIJA's Syrian lawyers risking their lives on a daily basis, I ask whether it is possible or desirable to reconcile the 'complex and sometimes contradictory roles as scholars and as activists in the chaotic, multilayered world of' (post)conflict justice.[13] Rather than conclude with an unassailable and

[7]Stewart et al., *supra* note 1, at 200.

[8]A. Riles, 'Exploring the "Legal" in Socio-Legal Studies', in D. Cowan and D. Wincott (eds.), *Exploring the 'Legal' in Socio-Legal Studies* (2016), at 260.

[9]In Nouwen's reflection on her own socio-legal journey in the field of international criminal justice, she raises a related contrast between the growth of scholarship on (or for) the field compared to scant empirical work such as hers. See Nouwen, *supra* note 2, at 228–9.

[10]G. E. Marcus, 'Introduction', in G. E. Marcus (ed.), *Para-Sites: A Casebook Against Cynical Reason* (2000), at 3.

[11]Anthropology comprises a number of branches. I refer to 'anthropology' as only the social/cultural branch of the discipline.

[12]I develop this concept in detail in: M. Burgis-Kasthala, 'Entrepreneurial Justice: Syria, the Commission for International Justice and Accountability and the Renewal of International Criminal Justice', (2019) 30(4) *European Journal of International Law*.

[13]S. E. Merry, 'Anthropology and International Law', (2006) 35 *Annual Review of Anthropology* 99, at 107. Also see D. Mosse, 'Misunderstood, misrepresented, contested? Anthropological knowledge production in question', (2015) 72 *Focaal – Journal of Global and Historical Anthropology* 128, at 131.

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general prescription, instead, I invite my audience to continue these conversations as enriched through their own reflexive research experiences.

2. Foreground as background: CIJA as an exemplar of entrepreneurial justice

The nature of CIJA as an organization and its work easily lends itself to media-generated narratives about 'Syria's truth smugglers'.[14] Yet, it is also important that as scholars we can step back and interrogate our own responsibility to our research subjects and our scholarly audience(s).[15] For Madison, 'fieldwork data *travel* to the public stage with the hope that the performance will invoke a response (ability) among a group or spectators'.[16] In this section, I present my findings about CIJA, which emerged from my fieldwork. Although this story is the 'substantive' scholarly contribution arising from my research, I want to show that such an account makes sense *only* when situated within its methodological 'backstory'. Thus, my brief account of 'entrepreneurial justice' here acts not as the foreground, but as the background to this article, allowing us to explore *how* I came to its conceptualization in Sections 3 and 4.

From modest beginnings in the early days of the Syrian uprising, CIJA has evolved to become a sophisticated organization working in a range of (post)conflict sites including the Balkans, Burma, the Central African Republic, Iraq, Nigeria, and Syria. Once it became clear that events on the ground in Syria were degenerating in 2011, a range of local and international governmental and non-governmental actors started organizing themselves along a spectrum of humanitarian governance.[17] The future director of CIJA, Dr. William Wiley was an experienced 'legal humanitarian' himself,[18] having worked in Canada's domestic war crimes programme, the International Criminal Tribunals for the Former Yugoslavia (ICTY) and Rwanda (ICTR), and the International Criminal Court (ICC) as a field investigator, before moving to the Iraqi High Tribunal. Britain's Foreign and Commonwealth Office approached Wiley in 2011 and asked if he could co-ordinate some human rights training for Syrian lawyers. Wiley rejected the human rights portfolio and instead offered to provide services specifically in training local activists and lawyers to collect evidence for future (international) criminal trials. At the time, no one else was doing this in Syria and Wiley wanted to develop the capacity to secure evidence outside the country and build up a cadre of skilled Syrians able to collect robust witness statements as well as documentation now amounting to around 850,000 pages. CIJA's successes in training and evidence collection soon won the support of a number of European government donors who, since 2013, have provided it with a healthy budget of around €7 million for its operations in Syria and beyond.

Accounts emerging from my interviews with CIJA employees were replete with highly thoughtful and expert reflections gained from experience within public ICL sites. While typically convinced of a world improved (and improvable) through ICL, CIJA's Western-trained staff were all highly sceptical of current – public – institutional arrangements.[19] Yet CIJA staff do not see their work as replacing public bodies, but rather, as filling in gaps in public capacities, as best

[14]J. Borger, 'Syria's truth smugglers', *The Guardian*, 13 May 2015.

[15]C. Smissaert and K. Jalonen, 'Responsibility in Academic Writing: A Dialogue of the Dead', (2017) 24 *Qualitative Inquiry* 704.

[16]D. S. Madison, 'Dangerous Ethnography', in N. K. Denzin and D. Giardina (eds.), *Qualitative Inquiry and Social Justice: Toward a Politics of Hope* (2009), at 193.

[17]This is a term used by Barnett, but in his account international criminal accountability actors are not included. See M. Barnett, 'Humanitarian Governance', (2013) 16 *Annual Review of Political Science* 379.

[18]On the notion of 'legal humanitarianism' see S. Kendall, 'Beyond the Restorative Turn: The Limits of Legal Humanitarianism', in C. De Vos et al. (eds.), *Contested Justice: The Politics and Practice of International Criminal Court Intervention* (2015).

[19]The most noteworthy being the ongoing inability of the International Criminal Court (ICC) to act in relation to Syria due the absence of Syrian ICC membership and the double veto of Russia and China against ICC jurisdiction through the United Nations (UN) Security Council. See *UN Security Council Draft Resolution*, UN Doc. S/2014/348 (22 May 2014).

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illustrated through CIJA's assistance with a range of domestic criminal trials.[20] Along with its various contributions to domestic cases, CIJA's 'secondary' work includes capacity building of local lawyers as well as information sharing with a variety of states conducting anti-terrorist and law-enforcement initiatives. All these ventures implicate traditional public forms of power but are often carried out beyond public scrutiny and knowledge in hidden spaces. If we combine these elements of CIJA's work along with the way it actively markets its unique contribution to its donors across a range of security, development, and accountability gaps, then 'entrepreneurial justice' speaks to its contribution in Syria and beyond.

How was I able to identify the nature of CIJA's work as a form of entrepreneurial justice? What scholarly risks were involved in relying so greatly on the account of my interviewees? Particularly in engaging with CIJA's Syrian staff, how could I ensure that my own research did not increase the risks they faced on a daily basis? Could I tell enough of a story to satisfy a 'scholarly audience' without compromising the safety of my informants? These were questions I confronted while conducting my research as well as while trying to write up my findings, and they inform the following two sections.

3. Background as foreground: Taking methodology seriously

3.1 Negotiating access and secrecy

Depictions of the Commission's work have appeared in highly readable, dramatic, and prominent media sources, including *The Guardian*,[21] *The Washington Post*,[22] *The Economist*,[23] a UK Channel 4 TV documentary,[24] along with *The New Yorker*'s detailed portrayal in Taub's 'Assad Files' 2016 story.[25] These stories were the result of journalists approaching CIJA seeking information on their work. Over time CIJA's profile has grown in the media world and typically a widely-read article precipitates a raft of further journalistic requests for meetings and interviews, particularly through Nerma Jelacic, one of CIJA's Directors, former Fleet Street journalist, and then head of communications at the ICTY. For the legal researcher, these stories are frustrating to read: they open up a fascinating topic of inquiry on the nature of private actor accountability mechanisms for Syria, but ultimately, they are superficial – if not sensationalized – accounts. While such accounts do provide some details about CIJA's work along with the identities of some of its leadership-level staff, beyond this, the exact parameters of CIJA's funding, location, or network of personnel, remain elusive. They also cannot replace standard scholarly sources, so in trying to design my own research project with sufficient 'legitimacy', it soon became evident that I would need to move beyond the realm of journalistic fascination.

[20]For example, there is now collaborative work between CIJA and the United Nations' International, Impartial, Independent Mechanism (IIIM), established in December 2016, as per the *United Nations General Assembly Resolution 71/248 on International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011*, UN Doc. A/RES/71/248 (21 December 2016). The two organizations entered into a memorandum of understanding on 28 June 2019, whose provisions facilitate the transfer of CIJA's files to the IIM, particularly in the latter's pursuit of domestic, criminal trials.

[21]J. Borger, 'Smuggled Syrian documents enough to indict Bashar al-Assad, say investigators', *The Guardian*, 13 May 2015; Borger, *supra* note 14; J. Borger 'The Guardian view on international law: we need enforcement and example', *The Guardian*, 15 October 2016; J. Borger, 'The Guardian view on Syria, the ceasefire and the aid convoy attack: a new low', *The Guardian*, 21 September 2016; J. Borger 'The Guardian view on Syrian war crimes: searching for a road to justice', *The Guardian*, 8 February 2017; and R. Engel and K. Werner, 'Investigators quietly probe allegations of Syrian war crimes', *NBC News*, 30 March 2018.

[22]M. Kersten, 'Here's How Perpetrators of Crimes in Syria are being Prosecuted', *Washington Post*, 4 March 2019.

[23]'The Documents Men: Will smuggled files lead to justice for the Assad regime's victims?', *The Economist*, 24 November 2018.

[24]S. Afshar and N. Cutcher, *Syria's Disappeared: The Case against Assad*, 2017, available at www.channel4.com/programmes/dispatches/on-demand/65453-001 (accessed 30 December 2019).

[25]B. Taub, 'The Assad Files', *The New Yorker*, 16 April 2016.

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After gaining a cursory sense in 2015 about the Commission through these media sources, I started to seek more 'official' resources,[26] such as CIJA's website, along with any extant scholarly or grey literature on the Commission. My searches produced nothing. I was not surprised by the lack of scholarly or policy reporting given the time frame of less than three years since CIJA's inception. The absence, however, of any 'official' presence of the Commission in the form of a website was puzzling. I resorted to basic Google searches based on the names provided in the media stories. From this, it was clear that CIJA's Director, William Wiley, was comfortable in being identified. Searching his name led to a handful of references to talks he had given about CIJA and amidst this material was sufficient information to contact him directly.

Like Taub, I was granted access to CIJA through a series of email exchanges, then Skype interviews, and then two visits. The first, to its European headquarters in 2017, and then to a training workshop in the Middle East for its Syrian lawyers in 2018. I agreed to exclude key identifying facts from any published material, which would also be shared with CIJA staff before submission. I was happy to oblige. Yet, unlike a journalist, I was far more interested in the nature of the legal work itself and was unsure how far I could delve into these details. While perhaps sharing a degree of disciplinary affinity with many of my interlocutors as fellow lawyers, the secrets of CIJA's impressive archive and its now-extensive legal briefs remain out of my reach. It was clear from early email exchanges that I would need to frame my research questions in a manner that enabled CIJA to operate discreetly.[27] Was there anything of scholarly value though that could emerge from such a constrained inquiry? What sorts of questions could I ask? Was there any way to verify – or triangulate – the material once I had gathered it? Should I be concerned with such questions of research 'rigour' at all, or was there some other story to be told about my (ongoing) encounter with this organization?

Perhaps now, four years after initially approaching CIJA, some of these concerns are less vexing. Today there are citable scholarly sources on CIJA,[28] far more newspaper and policy reports mentioning the Commission, and even an *ad hoc* internship program offered through Harvard Law School.[29] Its key spokespeople, Executive Director, William Wiley;[30] Director (Operations and Investigations), Chris Engels;[31] Director (Management and External Relations), Nerma Jelacic; as well as the Chair of the Board of Commissioners, Steve Rapp,[32] continue to sustain a public profile for CIJA's work. Such material *post facto*, allows me a degree of triangulation[33] with my extant data from participant observation and over 30 interviews. Yet, in contrast to much of this material with its remit of overviewing (time and again) the basic characteristics of the Commission, my own encounters provided a chance to reflect substantively on the nature of the production of legal knowledge and academic 'rigour'. In the absence of other scholarly sources at the time of researching, the process forced me to think about what counts

[26]Nouwen, too, notes the complex relationship between 'official' and 'unofficial' stories. See Nouwen, *supra* note 2, at 234.

[27]My interview questions are listed at the end of this article.

[28]I. Elliott, '"A Meaningful Step towards Accountability"?: A View from the Field on the United Nations International, Impartial and Independent Mechanism for Syria', (2017) 15 *Journal of International Criminal Justice* 239; M. Rankin, 'Investigating Crimes against Humanity in Syria and Iraq: The Commission for International Justice and Accountability', (2017) 9 *Global Responsibility to Protect* 395; M. Rankin, 'The Future of International Criminal Evidence in New Wars? The Evolution of the Commission for International Justice and Accountability (CIJA)', (2018) 20 *Journal of Genocide Research* 392.

[29]This internship was co-ordinated by Professor Alex Whiting, a faculty member, Commissioner of CIJA, and one of my (publicly-quotable) interviewees.

[30]See, for example, a panel discussion which included William Wiley hosted by the International Bar Association on 13 April 2019 in The Hague, available at vimeo.com/332691433 (accessed 12 July 2019).

[31]See, for example, N. Hurd, 'Interview with Chris Engels', September 2018, *CSCE*, available at www.csce.gov/international-impact/interview-chris-engels-director-investigations-and-operations-commission (accessed 12 July 2019).

[32]See, for example, an interview with Stephen Rapp: B. Beach, 'Justice Seeker', 2018, *Harvard Magazine*, available at harvardmagazine.com/2018/03/justice-seeker (accessed 12 July 2019).

[33]See Nouwen, *supra* note 2, at 240.

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as 'legally rigorous research', and how this might be different to rigour in its more traditional social science sense.[34]

The field of law sits uneasily in relation to a number of disciplinary trends. While socio-legal research is closely linked with standard social science approaches to the generation of 'data', poststructuralist trends within law, such as those advanced by certain feminist and other critical scholars, are far closer to interpretivist sensibilities that have come to inform the reflective turn in anthropology, which I discuss in the next section. Bochner rejects the possibility of reconciliation between social scientists and interpretivists, pointing out that:

> Researchers who seek more accurate predictions do not speak the same language as those who want to understand how different people make sense of the world and how to cope more effectively with contingencies of lived experience. Neither vocabulary is the one and only suitable vocabulary for studying and/or understanding human life.[35]

Within the realm of qualitative inquiry, the constant refrain of rigour can soon turn to 'rigor-mortis'.[36] While largely convinced of thinking beyond rigour as a lawyer bereft of legal texts to work with in this case, establishing a claim to academic authority along with sustaining my scholarly integrity has been particularly challenging.

Recounting my (limited) story of access is important in appreciating my relationship with my site of study. The rich world of meaning making that came to emerge from my interviews opened up a series of perspectives not only on the substantive topic, entrepreneurial justice, but also, on the nature of legal knowledge and authority. Making methodological sense of this material through anthropological contributions has further underscored the contingency, not only of my own approach, but of scholarly knowledge more generally. It is important to note these limitations and to sit with them rather than try to resolve them. Massoud advocates this type of 'accounting' in his survey of scholarship on conflict zones, suggesting that '[i]n addition to what fieldwork reveals, consider what it has not revealed, what has been said and not said, what has been resisted, and what was unexpected'.[37] It is also important to acknowledge how this knowledge, as present or absent, was solely at the discretion of CIJA staff. For example, on arriving at the training workshop in late 2018, I was advised that I would not be allowed to attend all of the sessions due to their sensitive nature. When this was later revised and I was allowed to attend all of the main sessions, this created a sense of particular privilege, risk as well as responsibility. When placed in such 'hyphen-spaces' of research, Cunliffe and Karunanayake remind us that:

> [w]hen researchers . . . spend any time in a research site, they find themselves deliberately and/or unconsciously reacting to respondents' actions and comments as they negotiate expectations about this relationship, try to gain access to the site and the people, determine what data can be collected and how, which voices will be heard in the research account,

[34]For example, see Geertz's discussion on 'convergent data' in anthropology, which he defines as, 'descriptions, measures, observations, what you will, which are at once diverse, even rather miscellaneous, both as to type and degree of precision and generality, unstandardized facts, opportunistically collected and variously portrayed, which yet turn out to shed light on one another for the simple reason that the individuals they are descriptions, measures, or observations of are directly involved in one another's lives; people, who in a marvellous phrase of Alfred Schutz's, "grow old together"'. As such they differ from the sort of data one gets from polls, or surveys, or censuses, which yield facts about classes of individuals not otherwise related. See C. Geertz, *Local Knowledge: Further Essays in Interpretive Anthropology* (1983), at 156.

[35]A. P. Bochner, 'Unfurling Rigor: On Continuity and Change in Qualitative Inquiry', (2018) 24 *Qualitative Inquiry* 359, at 363.

[36]Ibid., at 364.

[37]M. F. Massoud, 'Field Research on Law in Conflict Zones and Authoritarian States', (2016) 12 *Annual Review of Law and Social Science* 85, at 89.

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> and what happens after that study. These issues, crucial to the success of research, are often ignored in research accounts and descriptions of methodology, and yet data collection is a human activity in which relationships emerge that may influence research in significant ways.[38]

While recognizing the constrained access CIJA has provided to me, this was still a rare opportunity and one that carries with it an ethical responsibility, especially for my Syrian interlocutors as explored in Section 4.[39]

I have also come to reappraise the nature of data itself. Rather than seeing *more information* as *more data*, and hence more rigorous,[40] we can also see the *absence* of information itself as a form of data.[41] In my case, I could gain a sense of how CIJA wants to present itself to me and to the wider public by noting what was revealed and what remained hidden.[42] Through the gradual building of rapport,[43] I was and am permitted to tread a circumscribed path that permits a degree of access in exchange for my continuing discretion.[44] A mutually beneficial relationship evolves here where I can assemble material for publication, which can also provide a degree of academic legitimacy to CIJA's work.

The practical result of limited access to a secretive organization is the need to be ever-adaptive in one's research methods, which may result in 'novel approaches to writing ethnography'.[45] Thus, in her reflections on researching the security sector, Leander recognizes that '[i]n many situations, it may be difficult to find the kind of data and answer the kinds of questions envisaged by conventional methods instructions and theories'.[46] Yet, rather than abandon the project, she argues that:

[38]A. L. Cunliffe and G. Karunanayake, 'Working within Hyphen-Spaces in Ethnographic Research: Implications for Research Identities and Practice', (2013) 16 *Organizational Research Methodology* 364, at 365.

[39]Similarly, for Nouwen, the 'unequal access to opportunities taints the production of knowledge – only a particular set of people, in a particular set of circumstances, is able to shape the research agenda which in turn informs polices that shape the world. These limitations on knowledge production are exacerbated by the discipline's own assessment of who counts as "authority"'. See Nouwen, *supra* note 2, at 258. On the responsibility of access see also A. Al-Hardan, 'Decolonizing Research on Palestinians: Towards Critical Epistemologies and Research Practice', (2014) 20 *Qualitative Inquiry* 61; A. Cerwonka, 'Nervous Conditions', in A. Cerwonka and L. Malkii, *Improvising Theory: Process and Temporality in Ethnographic Fieldwork* (2007), at 34.

[40]Ibid., at 10.

[41]Many thanks for Katherine Carroll for this insight. Also note Denzin's point here, who suggests that, 'the politics and political economy of … data … is not a question of evidence or no evidence. It is rather a question of who has the power to control the definition of evidence, who defines the kinds of materials that count as evidence, who determines what methods best produce the best forms of evidence, whose criteria and standards are used to evaluate quality evidence'. See Denzin, *supra* note 5, at 354.

[42]For an example see V. Smith, 'Ethnographies of Work and the Work of Ethnographers', in P. Atkinson et al. (eds.), *Handbook of Ethnography* (2011).

[43]On the importance of rapport in gaining access see Y. Morse, 'Elite interviews in the developing world: finding anchors in weak institutional environments', (2019) 19 *Qualitative Research* 277, at 280–2. See also T. J. Watson, 'Ethnography, Reality, and Truth: The Vital Need for Studies of "How Things Work" in Organizations and Management', (2011) 48 *Journal of Management Studies* 202, at 212; E. M. Bruch, 'Researching Human Rights Professionals: Tracing the Networks of Human Rights Practice', (2019) 11 *Journal of Human Rights Practice* 116, at 120. Notwithstanding Marcus' seminal questioning of, 'the desirability and achievability of rapport' for anthropologists. See G. E. Marcus, 'The Uses of Complicity in the Changing Mise-en-Scène of Anthropological Fieldwork', (1997) 59 *Representations* 85, at 86.

[44]G. M. Jones, 'Secrecy', (2014) *Annual Review of Anthropology* 43, at 54, 62.

[45]Ibid., at 62. For Gusterson, this can lead to 'polymorphous engagement', which entails, 'interacting with informants across a number of dispersed sites, not just in local communities, and sometimes in virtual form; and it means collecting data eclectically from a disparate array of sources and in many different ways'. H. Gusterson, 'Studying Up Revisited', (1997) 20(1) *PoLAR* 114, at 116.

[46]A. Leander, 'Ethnographic Contributions to Method Development: "Strong Objectivity" in Security Studies', (2016) 17(4) *International Studies Perspectives* 462, at 466.

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> flexibility is the only way of avoiding the scholastic hubris entailed in assuming that it is possible to know what data is most useful for understanding a context and what questions should be asked of it *before* that context has been studied.[47]

Negotiating the risks of secrecy was thus a central concern for me in accessing CIJA personnel and trying to build a credible, scholarly account. It was only after 18 months of relationship-building that I was permitted to attend the annual training workshop between headquarter and Syrian field staff in late 2018. This three-day event was structured by secrecy in numerous ways. In our opening session, which included a customary welcome and introduction to new staff, participants were asked not to divulge their last names to anyone in the room. Highly personal reflections and experiences in this quasi-anonymized register would come to play out over the course of the workshop, highlighting how secrecy is a constitutive, social practice.[48] Thus, Rappert suggests that instead of seeking to 'crack the status of the hidden … [instead, we should] attend to how the circulation of secrets helps constitute understanding'.[49]

Later in a Q & A session between Syrian staff and the directors, frustration with secrecy was palpable. While Chris Engels assured the Syrian fieldworkers that *later* the world would be able to hear of CIJA's efforts, it was imperative to sustain secrecy for *now*. Such a promise of delayed publicity was hard to accept for some of CIJA's Syrian staff whose witness testimony work relies on the goodwill and trust of fellow Syrians who desperately want to see speedy results in divulging secrets about their own abuse. Here we can see secrecy as productive of a variety of group solidarities based on the 'exclusion of outsiders and the inclusion of insiders'.[50]

Attending the training workshop was instructive in allowing me to question earlier assumptions I had had about the value of face-to-face dialogue and interaction. I had conducted three Skype interviews the previous year with some of CIJA's Syrian staff with the assistance of CIJA's Moroccan liaison officer, who stepped in whenever my Arabic failed me. While it was clear that I was far from fluent throughout our conversation, my ability to inflect my faltering speech with Syrian colloquialisms, picked up while studying Arabic there years before, instantly opened up a degree of trust with my interlocutors. Two of these interlocutors also attended the workshop. While we greeted each other and maintained a friendly disposition throughout the sessions and meals together, the intimate reflection made possible through the distancing effect of technology now felt too confronting and uncomfortable. On saying my goodbyes to these two former interviewees, I came to realise that the level of secrecy preserved through disembodied technologies is also productive of intimacy.[51] I left the workshop with greater confidence in the research I had carried out earlier that was *not* the result of

[47]Ibid., at 467; see also K. E. Carroll and J. Mesman, 'Ethnographic context meets ethnographic biography: A challenge for the mores of doing fieldwork', (2011) 5 *International Journal of Multiple Research Approaches* 155, at 165; Cerwonka, *supra* note 39, at 23–5.

[48]B. Rappert, 'Revealing and concealing secrets in research: the potential for the absent', (2010) 10(5) *Qualitative Research*, at 572. A similar point is made by Salwa Ismail in relation to research conversations she had in Syria, which were structured 'within implicit understandings of the boundaries of authorised speech'. This was particularly the case when talking about the Hama Uprising of 1982, 'a subject of silence more than of speech'. I had very similar experiences myself while living in Syria in 2008–2009. See S. Ismail, *The Rule of Violence: Subjectivity, Memory and Government in Syria* (2018), at 26.

[49]Ibid., at 582.

[50]See Jones, *supra* note 44, at 54. For a fascinating illustration of research on secret matters see R. J. González, 'Anthropology and the covert', (2012) 28(2) *Anthropology Today* 21; A. Robben, 'The Politics of Truth and Emotion Among Victims and Perpetrators of Violence', in C. Nordstrom and A. Robben (eds.), *Fieldwork under Fire: Contemporary Studies of Violence and Survival* (1995).

[51]For some other reflections on how technology generates both access and intimacy see Bruch, *supra* note 43, at 127. Also see M. W. Sedgwick, 'Complicit Positioning: Anthropological Knowledge and Problems of "Studying Up" for Ethnographer-Employees of Corporations', (2017) 6 *Journal of Business Anthropology* 58, at 65.

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classic ethnographic participant observation.[52] Rather than feel assured by the solidity of an identifiable field site, I realised that the 'field' of my research was a messy, emergent series of fragmented experiences in which I am implicated.

3.2 Reflections on the nature of 'field', 'subject', and 'scholarly knowledge': Anthropological contributions

While international law scholarship is now more comfortable with interdisciplinary dialogue, including from some key figures straddling the fields of international law and anthropology,[53] reading beyond these key figures provided me with some intellectual scaffolding on which to make sense of my forays into the CIJA 'field'. Over the last few decades, anthropology's reflective turn has precipitated a questioning of prevailing accounts about the nature of the 'field', 'subject', 'researcher positionality', as well as 'ethnographic authority', and the '(im)possibility of objectivity'. While I cannot do justice to this rich set of debates here, acquainting an international law readership with some of these insights is instructive for how to think about our own (legal) knowledge claims. Thus, in this section, I first offer a schematic introduction to the field of anthropology before returning to my site of CIJA through the lens of scholarly debates about 'fieldwork', ethnographic relationships, and para-ethnography. Echoing Twining and his evaluation of the relationship between law and anthropology, I want to show that 'interdisciplinary collaboration should be viewed as a means to an end, not as an end in itself'.[54] Rather than try to create a 'centaur discipline' of law and anthropology,[55] instead we can attempt 'an hermeneutic tacking between two fields, looking first one way, then the other, in order to formulate moral, political, and intellectual issues that inform them both'.[56]

While employed across a range of disciplines with widely divergent iterations,[57] ethnography is first and foremost associated with anthropology. Darian-Smith characterizes ethnography not only as a scholarly methodology, but as a perspective and a type of writing.[58] Consequently, it is particularly concerned with the researcher *seeing* social action as a form of meaning-making.[59] Classically, this took the form of the single (white, male) scholar 'displacing' himself from his own cultural context to immerse himself in another, only to return at a remove from the field site to

[52]While Feldman, in his account of non-local ethnography, downplays the centrality of a field site, he argues that participant observation is still required to distinguish ethnography from other endeavours. G. Feldman, 'Illuminating the Apparatus: Steps toward a Nonlocal Ethnography of Global Governance', in C. Shore et al. (eds.), *Policy Worlds: Anthropology and Analysis of Contemporary Power* (2011), at 45.

[53]See the work of Kamari Clarke, Sally Merry and Annelise Riles in K. Clarke, *Fictions of Justice: The International Criminal Court and the Challenge of Legal Pluralism in Sub-Saharan Africa* (2009); S. E. Merry, *Human Rights and Gender Justice* (2006); S. E. Merry, *supra* note 13; S. E. Merry, 'The potential of ethnographic methods for human rights research', in B. A. Andreassen et al. (eds.), *Research Methods in Human Rights: A Handbook* (2017), 141–58; A. Riles, 'Anthropology, Human Rights, and Legal Knowledge: Culture in the Iron Cage', (2006) 108 *American Anthropologist* 52; A. Riles, 'Afterword: A Method More Than a Subject', in D. Cowan and D. Wincott (eds.), *Exploring the 'Legal' in Socio-Legal Studies* (2016), at 257–64.

[54]W. Twining, 'Law and Anthropology: A Case Study of Inter-Disciplinary Collaboration', (1973) 7(4) *Law & Society Review* 561, at 562.

[55]See Geertz, *supra* note 34, at 169.

[56]Ibid., at 170. In addition, Riles suggests that 'it is necessary to treat the intersections and gaps between disciplines as its own ethnographic zone, to observe how particular actors make claims for themselves and their disciplines through and against disciplinary accounts and the borrowing of one another's methods'. See Riles, *supra* note 53, at 53.

[57]For Sedgwick, 'the state of ethnography is such that in its proliferation across the academy, and in claims to its use everywhere, there is by now no general consensus as to what ethnography is … it rests, precariously, on negative definitions, i.e., of what ethnography is not. In practice, ethnography has become an increasingly large receptacle for all sorts of qualitative methods'. See Sedgwick, *supra* note 51, at 74.

[58]E. Darian-Smith, 'Ethnographies of Law', in A. Sarat (ed.), *The Blackwell Companion to Law and Society* (2008), at 549.

[59]F. Johns, *Non-legality in International Law* (2013), at 21–2; S. E. Merry, *supra* note 13, at 106.

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write up his (objective) observations.[60] While this cliché no longer holds, the idea of 'displacement' is still valuable and can be understood as 'any inquiry that problematizes what the researcher would otherwise take for granted ... [it] need not be reduced to matters of physical location'.[61] Yet ethnography entails more than the act of (usually, physical) dislocation through practices such as fieldwork. Instead, for Ingold, it is about the reflective and documentary process that occurs *afterwards*. Thus, 'to cast encounters as ethnographic is to consign the incipient – the about-to-happen in unfolding relationships – to the temporal past of the already over'.[62]

Although reflexivity within anthropology tends to be linked to the 'crisis of representation' in the 1980s,[63] one of its key protagonists, Marcus, points out that already by the 1960s questions about scholarly objectivity were being raised.[64] In particular, it was during the 'interpretive turn' and the work of Clifford Geertz during the 1960s and 1970s that claims to anthropological 'truth' could no longer hold.[65] Increasingly, critiques within the discipline revolved around exposing the messiness of fieldwork, for example, through 'confessional writing'; contextualizing the 'field' within colonialism; and experimenting with different types of interpretive writing.[66] Such an intellectual shift was coterminous with changes occurring in a globalizing world where the possibility of locating and studying 'others' from a distant and distinct field site proved increasingly illusive.[67] Experiencing the world as fragmented, emergent, and 'unbearably complex', anthropologists soon came to understand the nature of research and its re-presentation through ethnographic writing as a messy and open-ended endeavour.[68]

While debate now is less intense than at its height during the 'crisis of representation', disciplinary discomfort prevails and 'there is little agreement as to what ... constitutes a proper site for anthropological research'.[69] This is captured in the seminal work of Gupta and Ferguson on the nature of the 'field' in the late 1990s. For them, '"[t]he field" of anthropology and "the field" of "fieldwork" are ... politically and epistemologically intertwined; to think critically about one requires a readiness to question the other'.[70] Instead of studying a culture, or an organization in a particular site,[71]

[60]Generally, see Gupta and Ferguson challenging this ideal in A. Gupta and J. Ferguson, 'Discipline and Practice: "The Field" as Site, Method, and Location in Anthropology', in A. Gupta and J. Ferguson (eds.), *Anthropological Locations: Boundaries and Grounds of a Field Science* (2007). For a background story to gatekeeping in the anthropology discipline, see M. Lamont, *How Professors Think: Inside the Curious World of Academic Judgment* (2009), at 87–95.

[61]Feldman, *supra* note 52, at 46. For an application of Foucault's 'ethic of discomfort' in her own activist ethnography see L. M. Coleman, 'Ethnography, Commitment, and Critique: Departing from Activist Scholarship', (2015) 9(3) *International Political Sociology* 263, at 246, 278.

[62]T. Ingold, 'That's enough about ethnography!', (2014) 4 *HAU: Journal of Ethnographic Theory* 383, at 386.

[63]As typified by J. Clifford et al. (eds.), *Writing Culture; The Poetics and Politics of Ethnography, 25th Anniversary Edition* (2010).

[64]G. E. Marcus, 'On Ideologies of Reflexivity in Contemporary Efforts to Remake the Human Sciences', (1994) 15 *Poetics Today* 383, at 384–5.

[65]Robben, *supra* note 50, at 96. See also Marcus, *supra* note 43.

[66]Marcus (1994), *supra* note 64, at 385. See also G. E. Marcus and D. Cushman, 'Ethnographies as Texts', (1982) 11 *Annual Review of Anthropology* 25, at 39.

[67]This is wonderfully captured by Mosse's account of the problems he faced in trying to exit his field site and breaking fieldwork relationships. See D. Mosse, 'Anti-social anthropology? Objectivity, objection, and the ethnography of public policy and professional communities', (2006) 12 *Journal of the Royal Anthropological Institute* 935. This is related to Gupta and Ferguson's discussion about the 'hierarchy of purity', see Gupta and Ferguson, *supra* note 60, at 13.

[68]D. A. Westbrook, 'Creative Engagements Indeed! Open "Disciplines", The Allure of Others, and Intellectual Fertility', (2014) 3 *Journal of Business Anthropology* 170, at 176. See also Marcus and Cushman, *supra* note 66, at 45.

[69]Sedgwick, *supra* note 51, at 65.

[70]See Gupta and Ferguson, *supra* note 60; Coleman, *supra* note 61, at 272.

[71]A rich body of scholarship from the fields of institutional and organizational ethnography have grappled with some of these concerns, but are beyond the scope of this article. In particular see Bruch, *supra* note 43; A. Langhof, 'Off the record: understanding the (latent) functions of documents in organizations', (2018) 7 *Journal of Organizational Ethnography* 59; Watson, *supra* note 43; T. J. Watson, 'Making organisational ethnography', (2012) 1 *Journal of Organizational Ethnography* 15; T. B. Zilber, 'Beyond a single organization: challenges and opportunities in doing field level ethnography', (2014) 3 *Journal of Organizational Ethnography* 96.

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we can study a situation,[72] a network,[73] or a discourse.[74] If 'field' as a category collapses, so too does the possibility of objective knowledge. Thus, Gupta and Ferguson suggest that:

> [r]ather than viewing anthropologists as possessing unique knowledge and insights that they can then share with or put to work for various ordinary people, our approach insists that anthropological knowledge coexists with other forms of knowledge. We see the political task not as sharing knowledge with those who lack it, but as forging links between *different* knowledges that are possible from different locations and tracing lines of possible alliance and common purpose between them. In this sense, we view a research area less as a field for the collection of data than as a site for strategic intervention.[75]

Ferguson and Gupta's contribution here is about far more than a persuasive account about the disintegration of 'field'. More significantly, they are suggesting that the researcher is always implicated in the re-presentation of a 'field'.[76]

Before I went to CIJA's headquarters, and like many anthropologists, I felt anxiety about not 'being there'[77] – in the 'field'; I thought that this could be remedied by 'grounding' my transnational and disembodied Skype conversations in a place with its particular culture as per former classic anthropological studies. Perhaps rather than settle on *one* site, instead, I could adopt a multi-sited approach to allay my empirical anxieties.[78] Yet, as we cannot observe all phenomena, we need to question such desires if we see our work as something other than empiricism. Thus, in moving from the observable to the non-observable, in his study of non-local ethnography, Feldman suggests that participant-observation can give way to, '[p]articipant-listening [which] responds not only to the problem of ethnographic access but also to the decomposition of ethnographic location'.[79] My own research across multiple sites and as grounded in none, resonates then with Feldman's move to non-local ethnography, but tries to remain 'ethnographic' through my own reflections on the dissonance and displacement I experienced while encountering such (non)sites.

[72]Westbrook points out that 'shifting the object of inquiry from traditional cultures to present situations changes many things for ethnography, but it does not transform either the fundamental stance of the ethnographer or even the activity of learning through conversation – there is no need to understand ethnography as declining along with the possibility of geographic discovery'. See D. A. Westbrook, *Navigators of the Contemporary: Why Ethnography Matters* (2008), at 42–3.

[73]Merry, *supra* note 53, at 141.

[74]For Greenhouse, '[c]hanges in the social fields of law in turn affect what constitutes fieldwork. The strong emergence of discourse, narrative, performance, and practice as "found objects" ... blurs any easy distinction between what is "in" some "field" or outside of it'. C. J. Greenhouse, 'Fieldwork on Law', (2006) 2 *Annual Review of Law and Social Science* 187, at 187. Also see Feldman, *supra* note 52.

[75]See Gupta and Ferguson, *supra* note 60, at 39.

[76]K. Hastrup, 'Getting it right: Knowledge and evidence in anthropology', (2004) 4 *Anthropological Theory* 455.

[77]G. Feldman, 'If ethnography is more than participant-observation, then relations are more than connections: The case for nonlocal ethnography in a world of apparatuses', (2011) 11 *Anthropological Theory* 375, at 378. See also G. E. Marcus, 'Ethnography Two Decades after Writing Culture: From the Experimental to the Baroque' (2007) 80 *Anthropological Quarterly* 1127, at 1132.

[78]For one of the most developed contributions on multi-sited ethnography see G. E. Marcus, *Ethnography though Thick and Thin* (1998). Merry prefers to call this type of approach 'de-territorialized ethnography', which in contrast to multi-sited ethnography, 'comes closer to the notion that this is a disembodied space of social life, one that exists in various spaces but is not grounded in any one of them'. See Merry, *supra* note 53, at 29. It is important to note here that Marcus' ground-breaking work on multi-sited ethnography would not only support continuing empirical approaches, but also far more post-structural approaches including within Marcus' own work.

[79]Feldman, *supra* note 77, at 377. See also Carroll and Mesman in their consideration about, 'how long should one spend in the field?'. They stress, 'how compressed time required us as researchers to be reflexive about our norms, work with them to find solutions, and then transition to be able to work within the multiple research approaches required of us in a contemporary and participatory society'. See Carroll and Mesman, *supra* note 47, at 165.

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As well as questioning the *site* of anthropological study – the 'field' – anthropologists also began exploring alternative *subjects* of study. Where once the norm had been for the Western researcher to displace herself in a foreign realm redolent of colonial practices,[80] by the 1970s there was already a move to bring anthropology 'home' and to study those either in comparable or higher social positions. Thus, in her seminal piece in 1972 on 'studying up', Nader argued that increasingly ethnographers would not only concern themselves with the marginalized 'other', but should turn to studying elites.[81] The effects of this move are significant in reversing the standard 'structural dominance' between the ethnographer and her 'informants', and calling for reassessing the nature of knowledge production and ethics[82] in such spaces as I discuss in Section 4.

Yet this turn to elites does not necessarily only lead to a shift in the subject of study.[83] More significantly, it can also entail a radical questioning about the nature of ethnographic knowledge itself as no longer the privileged preserve of the displaced and detached observer. Thus, in a self-conscious break with 'studying up' in their consideration of global elites, Holmes and Marcus'

> object of study is not the interior lives of experts as an elite as such, but rather to understand their frame, which we assimilate by collaboration and complicity, for a project of tracking the global, being engaged with its dynamics from their orienting point of view.[84]

Such an approach is *para-ethnographic*, which is a method or sensibility that emerged at the turn of the twenty-first century out of anthropology's reappraisal of reflexivity.

Most simply, we can understand para-ethnography as a form of knowledge generation that relies on the perspectives of ethnographic subjects themselves, 'reconceived as theorists of a kind'.[85] In my case, this meant that I learnt from my CIJA interlocutors presenting their reflections on their work to me rather than me generating my own 'detached' reflections as per participant observation. For Islam, para-ethnography, 'starts from the premise that organizational actors can often represent their own cultures to outsiders in ways that are self-conscious, analytical, and strategic'.[86] While para-ethnography is often discussed alongside a range of other reflexive anthropological methodologies,[87] here, I want to stress its singular epistemic value in studying professional actors situated in globalized spaces, such as CIJA personnel. Marcus and Holmes are perhaps the most prominent scholars to have written on the approach and they offer the following description of para-ethnography:

> We presume that we are dealing with counterparts rather than "others" – who differ from us in many ways but who also share broadly the same world of representation with us, and the same curiosity and predicament about constituting the social in our affinities. This condition

[80]Thus, for Sedgwick, anthropology 'could not have arisen outside of a colonizing framework'. See Sedgwick, *supra* note 51, at 66.

[81]L. Nader, 'UP the Anthropologist – Perspectives Gained from Studying Up', in D. Hymes (ed.), *Reinventing Anthropology* (1972). Merry endorses 'studying up' as an important strand within the anthropology of international law. See Merry (2006), *supra* note 53, 108.

[82]Sedgwick, *supra* note 51, at 60.

[83]H. N. Deeb and G. E. Marcus, 'In the Green Room: An Experiment in Ethnographic Method at the WTO', (2011) 34 *PoLAR* 51, at 53.

[84]D. R. Holmes and G. E. Marcus, 'Cultures of Expertise and the Management of Globalization: Toward the Refunctioning of Ethnography', in A. Ong and S. Collier (eds.), *Global Assemblages: Technology, Politics, and Ethics as Anthropological Problems* (2005), at 248. See also G. E. Marcus, 'Experimental forms for the expressions of norms in the ethnography of the contemporary', (2013) 3 *HAU: Journal of Ethnographic Theory* 197, at 208.

[85]G. Islam, 'Practitioners as Theorists: Para-ethnography and the Collaborative Study of Contemporary Organizations', (2015) 18 *Organizational Research Methods* 231, at 232.

[86]Ibid.

[87]Islam lists these as auto-ethnography; multi-sited ethnography, and para-ethnography. Ibid.

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> of orienting ethnography in a multi-sited project changes fundamentally many of the norms and forms of the established model of fieldwork and ethnographic writing.[88]

Para-ethnography then entails intellectual risk as it requires an 'act of deferral'[89] by the researcher who now, 'put[s] the question of what [is] interesting or important in the hands of one's interlocutors'.[90] This often instils in the researcher a sense of loss of her orienting author(ity) and expertise[91] in, 'an overall process of exchange and dialogue'.[92] I too felt ungrounded in the midst of my CIJA sojourn, but encountering scholarly debates on para-ethnography has provided an invaluable lens through which to read my own relationship to my fieldwork and to my CIJA informants.

Interviews can be particularly helpful for informing para-ethnography. While acknowledging some of the pitfalls of elite interviewing,[93] I want to argue that it is nevertheless here, through a particular form of discussion between two lawyers, that new understandings about law and governance can and do emerge. Within any conversation occurring in a given research setting, a variety of shifting power imbalances are at play.[94] Perhaps, then it is better not to speak of 'studying up', but rather 'studying across' or 'studying next to', to capture the relative power parity and affinity that we can at least aim for in our conversations with fellow lawyers.[95] Gusterson suggests that we see interviews as dynamic events 'through which the identity of the subject … [is] performed and even co-constructed by the interviewer and interviewee'.[96] In conducting my CIJA research, there were times when I had to put my legal training to the side as the doctrinal methods I had learnt at Law School did not assist me in understanding the nature of CIJA's work. Holmes and Marcus make a similar point as anthropologists when they make their case for para-ethnography: 'we must therefore relearn our method from our subjects as epistemic partners, from a careful assessment of how they engage our world and our time intellectually'.[97] Practically, we can (re)present this in our writing by providing greater space to our subjects' voices, especially through long, verbatim quotations.[98] Yet this 'entails risks [of the research] becoming merely parasitic and derivative … The navigator [i.e., researcher] brings little to the table and seeks the knowledge of the subject'.[99] Perhaps it was for this reason that on reading my substantive

[88]Holmes and Marcus, *supra* note 84, at 250–1.

[89]D. Holmes and G. Marcus, 'Collaboration Today and the Re-Imagination of the Classic Scene of Fieldwork Encounter', (2008) 1 *Collaborative Anthropologies* 81, at 82.

[90]See Riles, *supra* note 8, at 260.

[91]Typically, we assume that '[a]cademic voice has authority. It naturalizes our questions, our concepts, our frames of reference and positions us as part of a natural, authoritative "we"'. See Coleman, *supra* note 61, at 274. See also Gusterson, *supra* note 45, at 117.

[92]Darian-Smith, *supra* note 58, at 551.

[93]For example, see L. Empson, 'Elite interviewing in professional organizations', (2018) 5 *Journal of Professions and Organization* 58.

[94]For example, see Pierce's reflection on her experience as a female researcher of male litigators, in J. L. Pierce 'Lawyers, Lethal Weapons, and Ethnographic Authority: Reflections on Fieldwork for Gender Trials', in S. D. Moch and M. Gates (eds.), *The Researcher Experience in Qualitative Research* (2013).

[95]For Marcus, this, 'affinity arises … [the] mutual curiosity and anxiety [of the fieldworker and informant] about their relationship to a "third" – not so much the abstract contextualizing world system but the specific sites elsewhere that affect their interactions and make them complicit (in relation to the influence of that "third") in creating the bond that makes their fieldwork relationship effective'. See Marcus, *supra* note 43, at 100.

[96]H. Gusterson, 'Ethnographic Research', in A. Klotz and D. Prakash (eds.), *Qualitative Methods in International Relations* (2008), 93, at 105. See also K. Perera, 'The interview as an opportunity for participant reflexivity', (2019) *Qualitative Research*, doi:10.1177/1468794119830539.

[97]See Holmes and Marcus, *supra* note 89, at 84. Also see Deeb and Marcus, *supra* note 83, at 55.

[98]S. P. Bate, 'Whatever Happened to Organizational Anthropology? A Review of the Field of Organizational Ethnography and Anthropological Studies', (1997) 50 *Human Relations* 1147, at 166–8; J. Clifford, 'On Ethnographic Authority', (1983) 1 *Representations* 118; J. Van Maanen, 'Ethnography as Work: Some Rules of Engagement', (2011) 48(1) *Journal of Management Studies* 218, at 225.

[99]See Westbrook, *supra* note 72, at 52. See also D. R. Holmes et al., 'Intellectual Vocations in the *City of Gold*', (2006) 29 *PoLAR* 154.

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CIJA work, which includes long quotations, law colleagues and peer reviewers told me to remove or at least radically cut down such excerpts. As the 'disembodied' scholar,[100] it was my task to analyse general trends from the data and (re)present them in a neutral and detached third person voice.

4. Research as responsibility and the ethics of scholarly expertise

> 'The ways in which we, as researchers, are positioned as members brings alive our identities in relation to others – membership is not only about the choices we make about our involvement as researchers, but also about privilege, ethics and politics. It is, importantly, not only choices we make but also how participants see us in relation to them and to those around them.'[101]

How we choose to re-present our research is not only a methodological choice, but also an ethical one.[102] While the general relationship between me as a researcher granted privileged access and CIJA as an organization able to gain some form of scholarly legitimation is mutually beneficial, there are a variety of interests and perspectives at stake within CIJA itself, particularly given its diverse staffing base located over many sites.[103] For example, I noted quite different attitudes about the promise of international law for CIJA's lawyers in Europe compared to those working in the Middle East. There was a much greater sense of urgency for the Syrian fieldworkers whose professional and personal identities had been transformed through their CIJA accountability work. While most had worked as lawyers before the war, none had worked in the particular idiom of international criminal justice, highlighting a stark difference with CIJA's Europe-based lawyers.

Not only did I benefit from enjoyable conversations over tea in CIJA's European headquarters as well as by Skype with various experts in Australia and the United States, but I also spoke to Syrian lawyers risking their lives for their work. My interviews with these lawyers felt more risky, not only in implicating me in their continued safety, but also in straying into predatory, quasi-touristic inquiry[104] that might provide nothing of value to the subjects themselves.[105] After the immediate concerns about whether I could get 'enough' (quality) material in this constrained context, more importantly, I needed to ensure that I could share this material in an ethical manner.[106] As a researcher who has lived in Syria and has lost friends to the conflict, this dilemma is particularly raw and it has forced me to reflect on the *utility* of my own discipline of international law and the recurring desire to 'do something' as a scholar or as a lawyer.[107]

While all lawyers must question their positionality as advocates, perhaps this is particularly the case for international lawyers cognisant of their field's complicity with empire and its persisting

[100]For Orford, 'the protocols of scholarly writing in disciplines like law have ... required that the "author" be absent from the text. Areas of knowledge such as law, which claim to be objective and technical, require that the embodied nature of the human being creating the texts in question be forgotten. An analysis of the ways in which lawyers are produced is, therefore, seen as irrelevant to the central debates of the discipline'. A. Orford (1998) 'Embodying Internationalism: The Making of International Lawyers', *Australian Year Book of International Law*, at 4.

[101]K. MacDonald, 'Towards a Transnational Feminist Methodology of Encounter', (2019) *Qualitative Research*, doi:10.1177/1468794119847578.

[102]See Coleman, *supra* note 61, at 274.

[103]See A. Al-Hardan, *supra* note 39, at 66.

[104]See Coleman, *supra* note 61, at 271. Or '"suffering" voyeurism' in Al-Hardan, *supra* note 39, at 66.

[105]Nouwen notes the problem of the researcher profiting from her subjects, and also how she rarely encounters these subjects again. See Nouwen, *supra* note 2, at 244. See also Al-Hardan, *supra* note 39, at 26.

[106]See Rappert, *supra* note 48, at 571.

[107]See Orford, *supra* note 100, at 11. Wood notes that, '[i]n carrying out research in conflict zones, the researcher inevitably comes to wonder why the research is worth pursuing over purely humanitarian relief work'. See E. J. Wood, 'The Ethical Challenges of Field Research in Conflict Zones', (2006) 29 *Qualitative Sociology* 373, at 383.

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Eurocentrism.[108] Does recognizing the field's problematic aspects remedy these faults or is something more radical required?[109] Similarly, for anthropology,

> an outcome of the discipline's recent concern over its colonial roots, and fears regarding its possibly on-going neo-colonial disposition, has been an extension of the missive that anthropologists "should do no harm" toward the view that anthropologists' work "should do some good".[110]

What type of 'good' can international lawyers do in relation to the Syrian catastrophe and does this lie within the realm of the academy? While engaging with CIJA's Syrian staff who are often passionately committed to the cause of international criminal accountability, the distinction between scholarship and activism often felt rather tenuous. Given the slow pace of academic debate as well as international trials at present, the allure of 'extra-academic' endeavours seem difficult to dislodge.

Studying dangerous situations as framed through secrecy does not mean that such work is qualitatively distinct from other forms of scholarly inquiry.[111] It simply provides a starker illustration about the potential blurring between scholarship, advocacy, and activism.[112] CIJA's chief legal investigator for Syria articulated this most clearly for me in our 2017 Skype conversation:

> [w]hat I want to do now is to speak to your legal conscience, Michelle. Since you are conducting this research about this subject, I want to highlight the importance of having this research widely published and to reach media outlets. So that other communities, our partners in humanity and brothers and sisters in humanity, are aware and are supporting this effort [CIJA], and to support, let's say, this glimmer of hope that has started to become a reality in Syria. This is [CIJA], the system of justice and accountability, or the system of criminal trials that aims to achieve criminal justice. Just the fact that we are pursuing criminal justice generally, that we are holding this slogan of criminal justice is huge, and this is a responsibility on us as legal actors and lawyers, it is necessary to pursue this [criminal] aspect. I put a responsibility on you now, as a colleague, to publish this focus on justice and to affirm it, and as CIJA has undertaken an important role in this, so it is necessary to support this work and to provide means and resources, whether financial or logistical ... so that this work will continue in Syria. Because this started as a culture [of criminal justice] and it is becoming a [more robust] culture, so it our job is to support and follow this culture.[113]

[108]Particularly as sustained by TWAIL scholarship, such as A. Anghie, *Imperialism, Sovereignty and the Making of International Law* (2005); A. C. Martineau, 'Overcoming Eurocentrism? Global History and the Oxford Handbook of the History of International Law', (2014) 25 EJIL 329.

[109]On the tension between reform and radical change on the question of international law and Eurocentrism see L. Eslava and S. Pahuja, 'Between Resistance and Reform: TWAIL and the Universality of International Law', (2011) 3 *Trade, Law and Development* 103. For a critique of TWAIL's radical potential see J. D. Haskell, 'TRAIL-ing TWAIL: Arguments and Blind Spots in Third World Approaches to International Law', (2014) 27 *Canadian Journal of Law and Jurisprudence* 383.

[110]Sedgwick, *supra* note 51, at 67–8. See also Nouwen, *supra* note 2, at 260.

[111]It might require heightened awareness about the potential risk to the research subjects, such as those based in authoritarian states. See J. A. Clark and F. Cavatorta, 'Introduction: The Methodological Challenges of Conducting Research in the Middle East and North Africa', in J. A. Clark and F. Cavatorta (eds.), *Political Science Research in the Middle East and North Africa: Methodological and Ethical Challenges* (2018), at 18.

[112]See Westbrook, *supra* note 68, at 12; Coleman, *supra* note 61; J. Mesman, 'Disturbing Observations as a Basis for Collaborative Research', (2007) 16 *Science as Culture* 281.

[113]Thanks to Anan AbuShanab for her translation.

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Conscious of his own tenuous position, the speaker's entreaty here is a powerful call to action, forcing me to reflect on my responsibility as a privileged researcher,[114] a fellow lawyer, and a potential activist. While he clearly distinguishes himself from me through his use of the first person singular (I/me) compared to the second person singular (you), there is also an implicit assumption about our (first person plural) shared understanding of the word 'justice'. While there is much scholarly debate on the hollowness of this term,[115] here my interlocutor suggests that, as fellow lawyers interested in Syria's collapse, no further definition is needed. In asking me to broadcast my findings about CIJA's (noble) work then, he calls on me to abandon any scholarly pretence of political detachment. Regardless of my own position on how best to respond through law to the Syrian case, my limited advocacy capacities as an individual legal academic ensure that I have already failed in this wider task. Constrained as I am by secrecy, it is also difficult to know how to put a persuasive case across to a wider audience.

This entreaty highlights the irresolvable problems we face as scholars in seeking to represent our subjects with dignity and with respect while striving for academic detachment in our writing – something I am trying to contest here in this article.[116] I wanted to provide a space for the chief investigator's ideas without necessarily agreeing with them.[117] Such a move to polyvocality then forces us to grapple with the extent to which we can include the voices of our para-ethnographic partners while opening up the possibility of critique *at the same time*. For Fassin:

> [t]he difficulty of developing a critique that is both autonomous and engaged is thus twofold: the actors have to recognise themselves in what is said of the way they act, but at the same moment, they have to perceive the distance that is being established. To put it more forcefully, the critical stance I am advocating necessitates for my interlocutors a dual sentiment of recognition and betrayal. Criticism is both loyalty and displacement.[118]

While I am sure that my interlocutor could recognize CIJA as represented in my own scholarly descriptions, my quest for a degree of detachment might also entail a sense of betrayal.

I wanted to give voice here to CIJA's chief investigator on Syria to illustrate the delicate ethical relationship the researcher enters in undertaking this type of para-ethnographic inquiry. Yet quotations 'are always staged by the quoter, and [for Clifford they] tend to serve merely as examples, or confirming testimonies'.[119] While inclusion does not mean endorsement or agreement, I do ultimately remain as the single author of this text.[120] Thus, this type of gesture of inclusion on my part can only ever be a small para-ethnographic step closer to polyvocality not only in

[114]For Al-Hardan as a privileged Palestinian 'outsider' speaking to Palestinian 'insiders' in her fieldwork in Syria, she notes how the, 'perceived need to convey the message [about the 1948 Palestinian *Nakba*, or catastrophe] is itself telling of the power relations from where I had come – the imperialist centres of power and upholders of the colonial and neo-colonial status quo in the (Arab) world and to where I had come . . .'. Al-Hardan, *supra* note 39, at 66.

[115]See, for example, Clarke, *supra* note 53.

[116]This is particularly the case for Westerners representing non-Westerners. See A. Robben and C. Nordstrom, 'The Anthropology and Ethnography of Violence and Sociopolitical Conflict', in A. Robben and C. Nordstrom (eds.), *Fieldwork under Fire: Contemporary Studies of Violence and Survival* (1995), at 7–8.

[117]A. Lashaw, 'How progressive culture resists critique: The impasse of NGO Studies', (2012) 14 *Ethnography* 501.

[118]D. Fassin, '*Noli Me Tangere*: The Moral Untouchability of Humanitarianism', in P. Redfield and E. Bornstein (eds.), *Forces of Compassion: Humanitarianism between Ethics and Politics* (2010), at 42. See also Mosse, *supra* note 67; Marcus' discussion on some of these points in relation to Geertz's ground-breaking work, in Marcus, *supra* note 43.

[119]Clifford, *supra* note 98, at 139.

[120]Ibid.

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decentring my own author(ity),[121] but in recognizing a 'variety of possible readings' that can arise through the agency of the reader herself.[122]

4. Conclusion

My own reading of CIJA's international criminal accountability work reveals the particular discipline I have been trained to embody, international law, and the extent to which I can step beyond these structures by engaging with anthropological debates *while continuing to hold international lawyers as my primary audience*. Although I have started to develop a substantive account about the organization as illustrative of 'entrepreneurial justice', in this article I wanted to do something different. I wanted to explore how I have also learnt about the possibilities and limitations of legal inquiry and knowledge in relation to researching secret spaces. I suggested that one particularly fruitful – if risky – approach is through a turn to para-ethnography and its attendant requirement of the loosening of own scholarly author(ity). Yet this rests on a variety of risks. While the nature of CIJA's entrepreneurial justice work is structured through risk as partly offset through secrecy, secrecy itself also begets risk as its legitimacy can be harder to sustain. As a scholar interacting with and dependent on my CIJA interlocutors, operating within the constraints of secrecy also produces academic risks. Here, I illustrated the constant negotiation between risk and integrity that continues to play out for me as the researcher and for CIJA as the research 'site'. In puzzling through the many risks to our research 'subjects' and to our (disciplined) careers, I have suggested we do so through an ethic of scholarly responsibility and humility.[123]

Appendix

Interview questions for Syrian CIJA employees

1. Please tell me about any university training or specific legal training you have.
2. Please tell me about your professional background before the war.
3. When did you start working in the accountability field and why?
4. How would you describe the nature of consciousness about international criminal justice amongst the general public as well as lawyers before the conflict?
5. How would you say this has changed as a result of the war? For example, is there greater interest in international law/human rights in some sectors of society? If so, please illustrate.
6. To what extent was the Syrian war a catalyst for your interest in this work?
7. Could you please describe how you understand the evolution of the accountability field in Syria since the conflict began? In particular, how was expertise in local personnel developed? What type of interaction has there been between local, regional and international experts? What are the divisions and controversies on the ground in Syria about how best to prepare the path for accountability?
8. How did you come to work at CIJA?
9. How would you describe the mandate and vision of CIJA in Syria? Would you say that your colleagues share this understanding and vision?
10. Does and if so, how, does CIJA interact with other (expert) individuals and organizations in Syria? To what extent do you learn from each other about best practice?
11. What is your opinion of human rights advocacy organizations working within Syria? How do they contribute to eventual accountability?

[121]Bate, *supra* note 98.

[122]Clifford, *supra* note 98, at 141. See also Marcus, *supra* note 64, at 391. One noteworthy anecdote here is the forceful response I encountered from a colleague after a seminar I gave that had included this very quotation. She herself has carried out extensive fieldwork within marginalized communities, but was vehement in her opinion that I could not include any material from this interview because of the compromised relationship that she saw as occurring between me and my interlocutor.

[123]On scholarly humility see Nouwen, *supra* note 2, at 234; Sedgwick, *supra* note 51, at 63.

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12. To what extent has there been and is there awareness for Syrian experts about regional experiences with international criminal justice (such as Palestine, Sudan, Libya, Lebanon)?
13. In your personal capacity, what do you hope will happen in a post-war settlement? What do you think will actually happen? How significant is international criminal law in your understanding?
14. Are there any cases you draw on in particular for informing your work and/or your hopes and expectations about a post-war settlement?
15. Is there anything else you would like to add?

Interview questions for all other individuals

1. Please outline in general your legal training: education and experience.
2. Please outline the nature of your ICL work.
3. Why did you start work in the ICL field and how would you describe the field then compared to now?
4. Please outline how you came to work on/with CIJA? What was/is your role?
5. How would you describe CIJA's mandate?
6. How do you understand this mandate in relation to accountability in Syria as well as accountability efforts in general?
7. How has your experience within CIJA shaped your understanding of the ICJ field? Where do you see the ICJ field heading? What are the key actors and issues for it?
8. How do you understand the role of HR NGOs and advocacy? How is this related to CIJA and your work (or not)?
9. What are the key challenges in achieving accountability in Syria? What does 'accountability in Syria' mean to you?
10. To what extent do you see experts within and outside of CIJA sharing your views? Is this important or not

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