CONSTRUCTING RESTRUCTURING: LEGAL NARRATIVE, LANGUAGE IDEOLOGY, AND THE FINANCIAL REHABILITATION OF IRAQ

HADI NICHOLAS DEEB*

I
INTRODUCTION

In 2005, as coalition forces struggled against a resourceful insurgency in Iraq, a team of bankers and lawyers strove to draft the country's first-ever disclosure documents for its commercial debt-for-debt exchange offer. A member of the group, frustrated at its inability to write conventional risk factors,[1] wryly suggested that enclosing an IED (the infamous "improvised explosive devices" raging through Baghdad at the time) would be more to the point. Morbid as the comment was, it illustrates that Robert Cover's maxim, that "[l]egal interpretation takes place on the field of pain and death," applies also to contexts other than adversarial dispute.[2] Not every client, sovereign debtor or otherwise, comes with trouble as dramatic as Iraq's. But every lawyer must craft a client's trouble into a morally persuasive narrative that includes not only the detached, rational, and deductive emphasis of modern law, but also the swirls of anger, love, and other emotions that advocates from the mythical Atticus Finch to ordinary law-firm junior associates sense are indispensable to

---

Copyright © 2010 by Hadi Nicholas Deeb.

This article is also available at http://www.law.duke.edu/journals/lcp.

* Ph.D. student in linguistic anthropology at the University of California, Los Angeles. My principal assignment as an associate at Cleary Gottlieb Steen & Hamilton LLP from 2003 to 2008 was to assist the Ministry of Finance and the Central Bank of Iraq to restructure Iraq's sovereign debt. I am grateful to Lee Buchheit and the rest of our restructuring team. I thank Mitu Gulati and Anna Gelpern for including me in the joint American University Washington College of Law–Duke Law School conference, "A Modern Legal History of Sovereign Debt," held on October 26, 2009 in Washington, D.C., in conjunction with which this article was prepared. Elinor Ochs, Paul Kroskrity, and Justin Richland provided invaluable comments. Matthew Wingerter and Jeremy Pam supplied reminders of the facts and feel of the Iraq deal. Any errors remain my own. Work on this article was supported by a National Science Foundation Graduate Research Fellowship.

1. *See, e.g.*, James Rice, *Cleary Advises Iraq on First Eurobond Issue*, INT'L FIN. L. REV., Feb. 2006, at 8, 8 (quoting issuer's counsel as saying, "It was a particular challenge to structure a bond transaction where there is no standard disclosure."). To be clear, recollection indicates that the lawyer quoted did not make the comment about IEDs.

2. Robert M. Cover, *Violence and the Word*, 95 YALE L.J. 1601, 1601 (1986).

their mission.[3] While legal scholarship often contrasts these two aspects as "law" versus "narrative," in fact, legal narratives meld rational and emotional logic, albeit in language that is ideologically inflected to suppress the emotional features. Lacking the centralized decisionmaking forum, adversarial format, and final arbiter that structure litigation narratives, transactional lawyers must mobilize other media to make a persuasive case. For example, a speech crafted by counsel and given by Iraq's then-Minister of Finance in 2004 demonstrates how reason and emotion are blended together into a story of suffering and a plan to resolve it. The speech became important both for negotiating the legal resolution of Iraqi and, arguably, creditors' suffering when parties gathered at the bargaining table, and for transforming that table talk into substantive provisions of Iraq's debt restructuring deal.

II

IRAQ AND PROJECT 688

Between seizing absolute power in 1979 and losing it in 2003, Saddam Hussein not only squandered a reserve of forty billion dollars but also accumulated a mountain of debt to other governments and private creditors—ranging from huge construction companies to mom-and-pop trade suppliers.[4] That debt was thrown into default when United Nations sanctions severed Iraq's financial ties to the world after its 1990 invasion of Kuwait. Following the overthrow of Saddam, the new Iraqi government's accountants eventually reconciled breach-of-contract claims against Iraq totaling approximately $140 billion (including late interest). Next to the country's ongoing violence, this debt was the biggest problem facing the new government. The World Bank estimated that even fantastical 33% annual growth would have left Iraq's debt-to-GDP ratio at 600% to 900%, many times higher than other, less-devastated middle-income borrowers such as Argentina and Russia had recently faced. Uncertainty about the fate of this debt stirred political contention inside and outside Iraq, notably through an attempt to revive the doctrine of "odious debts,"[5] and obstructed normalization of Iraq's economic and financial operations, especially rehabilitation of its all-important petroleum sector. As

3. *See, e.g.*, MAX ATKINSON & PAUL DREW, ORDER IN COURT: THE ORGANIZATION OF VERBAL INTERACTION IN JUDICIAL SETTINGS 195 (1979) (noting that moral imputation is a more regular feature of courtroom talk than everyday conversation); Kim Lane Scheppele, *Foreword: Telling Stories*, 87 MICH. L. REV. 2073, 2092–93 (1989) (explaining how a discursive shift away from orthodox legal "objectivism" and toward emotion, if within doctrinal bounds, can help weak parties win cases).

4. *See* Hadi Nicholas Deeb, *Project 688: The Restructuring of Iraq's Saddam-Era Debt*, RESTRUCTURING NEWSL. (Cleary Gottlieb Steen & Hamilton LLP, New York, N.Y.), Winter 2007, at 3, 3–9 (providing further background for the information summarized here).

5. Groups that organized online include Jubilee Iraq, http://www.jubileeiraq.org, and Probe International, http://www.odiousdebts.org. *See generally* Lee C. Buchheit, G. Mitu Gulati & Robert M. Thompson, *The Dilemma of Odious Debts*, 56 DUKE L.J. 1201 (2007); James V. Feinerman, *Odious Debt, Old and New: The Legal Intellectual History of an Idea*, 70 LAW & CONTEMP. PROBS. 193 (Autumn 2007); Anna Gelpern, *Odious, Not Debt*, 70 LAW & CONTEMP. PROBS. 81 (Summer 2007).

with other distressed sovereign debtors, lenders hesitated to provide new money that might be drained to service old claims. Unlike others, Iraq's debt stock consisted not of a few series of notes or bonds, or a handful of large syndicated loans, but of thousands of individual claims held by hundreds of varied creditors. Soon after the U.S. administrator ceded power to a sovereign Iraqi government on June 28, 2004, the new authorities hired accountants, lawyers, and no fewer than four financial institutions to restructure Iraq's debt to manageable levels. The senior law partner on the deal nicknamed the assignment "Project 688," inspired by a randomly generated law-firm code and *633 Squadron*, a classic film about the odds facing fighter pilots ordered to destroy a Nazi fortress.

III

METHODS: NARRATIVE AND LANGUAGE IDEOLOGIES

The personal and affective tone imparted to the work of the legal and financial experts by the "Project 688" moniker exemplifies a narrative blend common in legal discourse. Core attributes of narrative include: (1) an instigating "trouble" that prompts reactions, such as a protagonist's attempts at resolution, with consequences that may generate further troubles;[6] (2) a tension between authenticity—the validation of immediate but inchoate experience—on one hand, and coherence—the attempt to impose causality and consistency on and across experience—on the other, which drives a narrative forward;[7] (3) an implicit recognition of how past, present, and future are bundled together in the human experience of time,[8] so that narrating the past is a way to assess a proposed course of action (and vice versa);[9] and (4) some degree of "dedicat[ion] to maintaining morality."[10]

---

6. *See* Jerome Bruner, *The Narrative Construction of Reality*, 18 CRITICAL INQUIRY 1, 16 (1991).

7. ELINOR OCHS & LISA CAPPS, LIVING NARRATIVE 284–86 (2001).

8. *See* Paul Ricoeur, *Narrative Time*, *in* ON NARRATIVE, 165–86 (W.J.T. Mitchell ed., 1981) (applying phenomenological theories of temporality to narrative).

9. Elinor Ochs, *Stories that Step into the Future*, *in* SOCIOLINGUISTIC PERSPECTIVES ON REGISTER 106 (Douglas Biber & Edward Finegan eds., 1994).

10. OCHS & CAPPS, *supra* note 7, at 102. The linguistic anthropological analysis of narrative on which this article draws, as exemplified by Ochs and Capps's book, builds on pioneering work in other fields. *See generally* WILLIAM LABOV & JOSHUA WALETZKY, NARRATIVE ANALYSIS: ORAL VERSIONS OF PERSONAL EXPERIENCE (1967) (sociolinguistics); MIKHAIL BAKHTIN, SPEECH GENRES AND OTHER LATE ESSAYS (Caryl Emerson & Michael Holquist eds., 1986) (literary theory); MARTIN HEIDEGGER, BEING AND TIME (John Macquarrie & Edward Robinson trans., 1962) (phenomenology).

Law is suffused with these narrative qualities.[11] Resolving trouble is its *raison d'être*, fitting the personal events of particular cases into generally applicable categories is its central tension, sustaining that fit across time by coordinating past cases and future harmony is its institutional function, and maintaining community moral standards is its normative mandate. Scholars of legal narrative often address one or more of these qualities implicitly or explicitly.[12] Typically, their purpose in doing so is to balance "law" that is purely abstract, detached, logical, and deductive—in a word, rational—with a distinct, but equally consequential, "narrative" aspect of legal practices that is predominantly emotional, personal, or humanistic.[13] By contrast, the central claim of this article is that rational logic and emotional logic intertwine in the construction of a legal narrative as a single unit that unfolds through the discourse of legal argumentation and decisionmaking.[14] That is, the language of legal narratives depends on the merger of abstract, deductive reasoning with the emotion familiar from personal narrative.

This dualistic intertwinement is often concealed by a language ideology of the legal profession. Language ideologies, which are as pervasive as language itself, refer to the naturalization of only one (or a limited number) of the

---

11. "Law" in this article refers to legal traditions recognizably traceable to Roman law or English common law, which might be termed "Western." *See* RENE DAVID & JOHN C. BRIERLEY, MAJOR LEGAL SYSTEMS IN THE WORLD TODAY 17–25 (3d ed. 1985) (phylogenic explanation and its defense). Other systems may have similarly ideological views of narrative as an affective genre often marked by gender and inappropriate for legal reasoning. *See* SUSAN HIRSCH, PRONOUNCING AND PERSEVERING 25–33 (1998) (explaining how the use of narrative in Islamic courts in Kenya is considered to be an opprobrious, female practice). In addition, contact between systems may produce heterogeneous linguistic practices. *See, e.g.*, JUSTIN B. RICHLAND, ARGUING WITH TRADITION (2008) (discussing the blend of Anglo-American and Hopi law in Hopi tribal courts).

12. *See generally* ANTHONY G. AMSTERDAM & JEROME BRUNER, MINDING THE LAW (2000); WILLIAM CONKLIN, THE PHENOMENOLOGY OF MODERN LEGAL DISCOURSE (1998); KARL N. LLEWELLYN & E. ADAMSON HOEBEL, THE CHEYENNE WAY: CONFLICTS AND CASE LAW IN PRIMITIVE JURISPRUDENCE (1941); KIM LANE SCHEPPELE, LEGAL SECRETS (1988); JAMES B. WHITE, HERACLES' BOW (1985); Robert M. Cover, *Nomos and Narrative*, 97 HARV. L. REV. 4 (1983); Richard K. Sherwin, *Law Frames: Historical Truth and Narrative Necessity in a Criminal Case*, 47 STAN. L. REV. 39 (1994).

13. DEREK BELL, AND WE ARE NOT SAVED 5 (1987) (justifying as nevertheless law-oriented his "unorthodox" use of fictional narrative in light of the rationalist strictures of conventional legal genres); ROBIN WEST, NARRATIVE, AUTHORITY, AND LAW 152–63 (1993) (utilizing a metaphoric contrast of empathic "literary woman" with individualistically rational "economic man"); David Ray Papke & Kathleen H. McManus, *Narrative and the Appellate Opinion*, 23 LEGAL STUD. F. 449, 450–51 (1999) (contrasting experiential, situated "narrative" with abstract, analytic "arguments"); Richard Weisberg, *Proclaiming Trials as Narratives: Premises and Pretenses*, *in* LAW'S STORIES 64 (Peter Brooks & Paul Gewirtz eds., 1996) (describing the common mantra of "law is narrative" as a display of compassion "as against a hard, cold world of legal abstraction").

14. Underlying this claim is the more basic point that factual description and legal discussion "are integrally intertwined, shaping and framing one another." Elizabeth Mertz, *Consensus and Dissent in U.S. Legal Opinions: Narrative Structure and Social Voices*, *in* DISORDERLY DISCOURSE: NARRATIVE, CONFLICT, AND INEQUALITY 135 (Charles L. Briggs, ed., 1996) [hereinafter DISORDERLY DISCOURSE]. This observation suggests that they are not distinct analytic units in terms of their consequences for legal outcomes.

multiple possible meanings to which a piece of language can point.[15] When that piece of language is put to social use, the naturalized meaning thus organizes social relationships in one or another particular way.[16]

One powerful naturalization of this kind in law is the fusion of rational logic with a more general human tendency to view language as purely referential (that is, having a straightforward semantic definition as in a dictionary),[17] and therefore manipulable in transparent ways. This marriage serves the legal preference for universal or at least generally applicable principles. Language that appears to be context-dependent becomes marked as emotional and inappropriate as a basis for law.[18] The Enlightenment project to purge language of contextual particulars and create a cosmopolitan discourse of detached reason remains a wellspring of this legal ideology.[19] Law students continue to be professionalized into it as they are encouraged, humiliated, and even ventriloquized away from personal reactions like silence, gut feeling, or explicit moral claims and toward the exchange of competing referential arguments.[20]

---

15. Michael Silverstein, *Language Structure and Linguistic Ideology*, *in* THE ELEMENTS: A PARASESSION ON LINGUISTIC UNITS AND LEVELS 195, 204–07 (Paul R. Clyne et al. eds., 1979). Language ideologies feature prominently in efforts at standardization, for example, dictionaries and legal regulation. *See, e.g.*, ROSINA LIPPI-GREEN, ENGLISH WITH AN ACCENT: LANGUAGE, IDEOLOGY, AND DISCRIMINATION IN THE UNITED STATES 152–70 (1997) (describing how an ideology of standard English works against speakers who have an accent in employment discrimination trials).

16. Paul V. Kroskrity, *Regimenting Languages: Language Ideological Perspectives*, *in* REGIMES OF LANGUAGE 1, 5 (Paul V. Kroskrity ed., 2000) [hereinafter REGIMES]; Kathryn A. Woolard, *Introduction: Language Ideology as a Field of Inquiry*, *in* LANGUAGE IDEOLOGIES 3, 10 (Bambi B. Schieffelin et al. eds., 1998) [hereinafter LANGUAGE IDEOLOGIES].

17. Elizabeth Mertz & Bernard Weissbourd, *Legal Ideology and Linguistic Theory: Variability and Its Limits*, *in* SEMIOTIC MEDIATION 261, 273–76 (Elizabeth Mertz & Richard Parmentier eds., 1985).

18. Folk culture's derision of lawyers as cold-hearted and skilled at twisting words could be characterized as an implicit exposure of this professional language ideology, which clearly conflicts with nonlawyers' sense of how language does or should operate. Belying the ideology, scholars have pointed out that "relational" narratives are as logical as "rule-oriented" ones. *E.g.*, JOHN M. CONLEY & WILLIAM M. O'BARR, JUST WORDS 72–73 (2005) (describing the reception given to courtroom testimony delivered in these different styles); CAROL GILLIGAN, IN A DIFFERENT VOICE, at xiii, 19, 73 (2d ed. 1993) (establishing the bases in gender psychology for this bifurcation).

19. *See* RICHARD BAUMAN & CHARLES L. BRIGGS, VOICES OF MODERNITY 29–59 (2003) (elaborating how Francis Bacon and John Locke purposefully undertook to reshape the conceptualization of language). One ironic early result was the marginalization of the natural law views espoused by anti-slavery U.S. judges as mere personal preference during the ascendancy of positivist formalism. ROBERT M. COVER, JUSTICE ACCUSED: ANTISLAVERY AND THE JUDICIAL PROCESS 22–30 (1975).

20. *See generally* ELIZABETH MERTZ, THE LANGUAGE OF LAW SCHOOL: LEARNING TO "THINK LIKE A LAWYER" (2007). The ancient tension between law and morality has led to both their categorical collapse and their categorical opposition. *See* HERBERT L.A. HART, THE CONCEPT OF LAW 7–8 (2d ed. 1961) (recognizing overlap between law and morality but criticizing jurisprudents since St. Augustine for equating them). The legal realists emphasized the opposition as part of their methodology. *See* Karl Llewellyn, *Some Realism about Realism—Responding to Dean Pound*, 44 HARV. LAW REV. 1222, 1251–52 (1931) (defending realists for treating "Is" and "Ought" as analytically distinct). Their treatment of the tension as an analytic issue prior to being a normative one may have contributed to the identification of morality with the emotional, personal, or humanistic, by mapping the distinction between law and morality onto the one between analytic law and those other descriptors. Accounts of the Iraqi debt restructuring exhibit this mapping. *See, e.g.*, Lee C. Buchheit &

Lawyers and judges perpetuate it.[21] And it surfaces in the scholarly bifurcation between rational law and emotional narrative discussed above.[22]

This bifurcation nonetheless is illusory. It is structurally possible to suppress, but not to eliminate, the context-dependent meanings of language that are concealed by the focus on a naturalized referential meaning.[23] The inherent multiplicity within language is part of what makes it possible for people to express and debate the conflicts that underlie legal discourse.[24] Legal texts themselves are impossible to read without this multiplicity.[25] Furthermore, it is increasingly well-established that human cognition and its social expression depend on concurrent rational and emotional operations.[26] From a cognitive psychology perspective, the dichotomy between rational law and personal narrative may be a false one.[27]

As a result, this language ideology takes shape within legal narratives as a lopsided dichotomy that valorizes the ostensibly referential expression of rational logic and suppresses context-dependent emotional logic, although both persist together. This pattern is evident in the speech by the Iraqi finance minister. Grammatically, the connection between syntax and semantics

---

G. Mitu Gulati, *Odious Debt and Nation-Building: When the Incubus Departs*, 60 MAINE L. REV. 478, 484 (2000) (quoting Iraqi officials who spoke contrastingly of the "legal" grounds of odious *debt* and the "moral" grounds of odious *regime*).

21. *See, e.g.*, GREGORY M. MATOESIAN, LAW AND THE LANGUAGE OF IDENTITY 21–24, 37–44, 227–30 (2001) (showing how courtroom interaction among rape trial participants distributes gender-based evaluations as to "legally valid" versus "suspect" actions according to a "patriarchal logic of sexual rationality"; and criticizing rape-law reformers for replicating this orientation); Charles Goodwin, *Professional Vision*, 96 AM. ANTHROPOLOGIST 606, 618 (1994) (examining how defense attorneys for the police officers who beat Rodney King diced and spliced the video to construct an ostensibly rational narrative of escalating resistance and response); John Haviland, *Ideologies of Language: Some Reflections on Language and U.S. Law*, 105 AM. ANTHROPOLOGIST 764, 767–68 (2003) (demonstrating a U.S. trial judge's problematic faith in unproblematic, "referentially transparent" translation).

22. Professional ideologies of language are as pervasive as any other (and undoubtedly lurk in the present article). *See* Paul V. Kroskrity, *Language Ideologies in the Expression and Representation of Arizona Tewa Identity*, *in* REGIMES, *supra* note 16, at 330 (examining the ideologies that framed a mid-century Native American anthropologist's study of speakers of his ancestral language).

23. JACQUES DERRIDA, DE LA GRAMMATOLOGIE 208 (1967) (arguing that the attempt to suppress one half of a binary pair ironically ensures its intellectual persistence); Michael Silverstein, *The Uses and Utility of Ideology: A Commentary*, *in* LANGUAGE IDEOLOGIES, *supra* note 16, at 123, 138–39 (explaining that ideological layers to language go "all the way down").

24. Charles L. Briggs, *Introduction*, *in* DISORDERLY DISCOURSE, *supra* note 14, at 3, 3–4, 13–16 (explaining how competing narratives of a conflict can deploy the indexical and iconic functions of language to complicate referential meaning).

25. *See* JAMES B. WHITE, JUSTICE AS TRANSLATION: AN ESSAY IN CULTURAL AND LEGAL CRITICISM, at x–xi, 28–34 (1990) (discussing the context-dependence of rational logic and providing an example from the *Federalist Papers*). It is evident that the ideological tendency to treat narrative as extralegal nevertheless remains strong within legal scholarship. *See* RICHLAND, *supra* note 11, at 117–18 (reviewing debates over the relationship between law and narrative and identifying numerous gaps and inconsistencies within that debate).

26. *See generally* ANTONIO R. DAMASIO, DESCARTES' ERROR: EMOTION, REASON, AND THE HUMAN BRAIN (1994); JONATHAN LEAR, LOVE AND ITS PLACE IN NATURE (1990).

27. STEVEN L. WINTER, A CLEARING IN THE FOREST: LAW, LIFE, AND MIND 106 (2001).

accomplishes two narrative effects.[28] First, the grammar invokes past categorized narratives (precedents) to build a rational case for a desired action. Second, the grammar contextualizes the present undecided narrative (the problem) in emotional terms to make the negative case against a failure to act as desired (that is, leaving the problem un-rationalized).[29]

Rather than a bifurcation between narrative style and legal substance,[30] style and substance are both present in each strand of the parallel structure of rational and emotional logics. Parallelism gives language its poetic qualities,[31] which, in turn, undergird rhetorical persuasion.[32] Striking the right (lopsided) balance between reason and emotion helps persuade an audience steeped in the professional ideology but also attuned to linguistic cues about emotion that are essential to interpretation and response.[33] First, these cues can signal an appeal to empathetic solidarity and remind listeners of shared values they would want vindicated in their own lives.[34] The balance between rational action and emotional inaction also facilitates the distribution of moral responsibility for Iraq's predicament and its resolution across parties.[35] Second, the performance

---

28. *See infra* Figure 1. The modifier, "meta-pragmatic," in that table means "talk about talk." *See* Carlo L. Prevignano & Aldo di Luzio, *A Discussion with John J. Gumperz*, *in* LANGUAGE AND INTERACTION 7, 15–16 (Susan L. Eerdmans et al. eds., 2003) (interviewing linguistic anthropologist John Gumperz). The meta-pragmatic level of language is the one that "regiments" underlying grammar into moral and ideological outcomes. Michael Silverstein, *Metapragmatic Discourse and Metapragmatic Function*, *in* REFLEXIVE LANGUAGE: REPORTED SPEECH AND METAPRAGMATICS 47–48 (John A. Lucy ed., 1993).

29. Contrast this division with the characterization in AMSTERDAM & BRUNER, *supra* note 12, at 45–47, 108, 122, of both precedent and cases-at-hand as dependent on paradigmatic categorization. The chronological focal point and author may matter. Supreme Court Justices' opinions are acts of decision that perform the work of turning present cases into past precedent. This imperative may conceal just how contingent a pending controversy's fit with a precedential category is. By contrast, this article addresses an advocate's more urgent earlier moment of persuasively making the case, at which point the outcome is uncertain.

30. *See* RICHARD WEISBERG, POETHICS: AND OTHER STRATEGIES OF LAW AND LITERATURE 7–11 (1992) (decrying an entrenched "dichotomy" between narrative and law while still distinguishing narrative "style" from legal "substance").

31. *See* Roman Jakobson, *Grammatical Parallelism and Its Russian Facet*, 42 LANGUAGE 399, 399 (1966) (noting the cross-cultural fundamentality of parallelism).

32. *See* KENNETH BURKE, LANGUAGE AS SYMBOLIC ACTION 101–02 (1966) (arguing against the claim that rhetorics and poetics are mutually exclusive); STEVEN C. CATON, "PEAKS OF YEMEN I SUMMON": POETICS AS CULTURAL PRACTICE IN A NORTH YEMENI TRIBE 155–56 (1990) (drawing on Burke to outline an inherent connection between poetics, persuasion, and politics).

33. *See* Elinor Ochs & Bambi Schieffelin, *Language Has a Heart*, 9 TEXT 7, 9 (1989) (arguing that people need to be able to "convey and assess" emotion in order to "interpret and respond to" semantic arguments).

34. *See* Douglas Hollan & C. Jason Throop, *Whatever Happened to Empathy?: Introduction*, 36 ETHOS 385, 391–92 (2008) (noting that emotion is central to affording empathetic responses, though the latter may be used to harm as much as to help); Joseph Singer, *Persuasion*, 87 MICH. L. REV. 2442, 2453–56 (1989) (arguing that both empathy and introspection are indispensable components of persuasion).

35. *See* ALESSANDRO DURANTI, FROM GRAMMAR TO POLITICS 144–45 (1994) (arguing that ascribing agency to good and bad actions in grammatically different ways helps constitute social and political structure).

of that balance through the rhetoric of the minister's speech was a key demonstration of his—and, by extension, Iraq's—viability as a legitimate and trustworthy contractual partner.[36] In sum, both the style and the substance of persuasion unfold narratively through the poetics of the ideological configuration of rational and emotional logics. The speech, which consumed substantial resources to produce and deliver, helped establish a persuasive framework for the eventual terms of the debt restructuring deal.[37]

Figure 1: Moral Persuasion in Legal Narrative

	Syntactic Form	Semantic and Pragmatic Target	Meta-Pragmatic Indexicality
Rational Logic	Categorize current case according to precedent	Attain desirable result	Rational framing of events: Call to action
Emotional Logic	Configure current case as outside categorical bounds	Avoid undesirable result	Affective framing of events: Warning

IV

A SPEECH ON THE SEINE

On November 17, 2004, the Secretariat of the Paris Club, an informal grouping of creditor countries,[38] formally opened debt restructuring negotiations between the Republic of Iraq and nineteen other states.[39] On the table were a plurality of the debt claims against Iraq, which, when reconciled, totaled over fifty-one billion dollars. If the Club's fractious membership could agree on the terms of a deal that Iraq also would accept, the Club's "comparable treatment" requirement (its version of a most-favored-nation clause) would effectively shield Iraq in other negotiations by preventing it from giving better repayment terms to any other contractual creditor. Minister of Finance Adil Abdul-Mahdi's brief (fewer than one-thousand words) opening remarks set forth Iraq's view of the scene and the stakes.[40]

36. *See* MICHAEL HERZFELD, CULTURAL INTIMACY: SOCIAL POETICS IN THE NATION-STATE 141–45 (1997) (equating social interaction and organization with rhetoric).

37. *Cf.* Donald Brenneis, *Telling Troubles: Narrative, Conflict, and Experience*, *in* DISORDERLY DISCOURSE, *supra* note 14, at 41, 49 (contending that the act of narration during conflicts "engenders and transforms social experience").

38. *See* Club de Paris, http://www.clubdeparis.org (last visited Mar. 26, 2010).

39. One of the nineteen left negotiations before the parties reached an accord.

40. Adil Abdul-Mahdi, Minister of Finance of the Republic of Iraq, Address at a Meeting of the Paris Club (Nov. 17, 2004) (on file with *Law and Contemporary Problems*). Reports indicate the minister stuck to the script. Because the speech was delivered orally, a complete account of what

In the first substantive lines of the speech, the minister laid out the problem in terms that interweave the logics of reason and emotion:

> What is at stake here is whether the Republic of Iraq will be able quickly to recover from the horrors of three wars, the corruption and brutality of the Saddam regime, and the social instability that has followed the overthrow of Saddam. If Iraq *can* recover—quickly and convincingly—great benefits will flow to the Middle East region and to the rest of the world. But if Iraq remains paralyzed by continuing social and political instability, the cost to all of us will be unimaginably high.[41]

First, the problem itself is framed in moral terms loaded with affective markers: horror, corruption, brutality, instability, unimaginably high costs, and, twice, the name Saddam, which the discourse surrounding the 1990 Gulf War made synonymous with evil for many people around the world.[42]

Second, the minister frames proposals for addressing the problem in rational, consequence-oriented terms. The subjunctive bifurcation of possible end results is a narrative device called "sideshadowing."[43] Each if–then phrase reproduces an ideal form of deductive reasoning. By juxtaposing them, the minister gives his interlocutors a clear consequence-oriented choice, either "great benefits" or "unimaginably high costs," depending on whether and how they choose to reduce Iraq's debt burden. The stress on "*can* recover" conveys both the contingency and the desirability of the first possibility. The undesirability of the second possible outcome is conveyed by the negative, affective descriptions of "remain[ing] paralyzed" and "unimaginably high costs."

Third, the redeployment of the emotional logic set forth in the passage's first sentence to undermine the undesirable possibility in its final sentence points to a category problem the minister had to overcome throughout his speech. The simplest approach to negotiations would have been to request one of the Paris Club's existing standard packages, such as "Cologne" or "Lyon"

---

happened in the meeting would ideally include a description of how the audience shaped it before, during, and after delivery. *See* Alessandro Duranti, *The Audience as Co-author: An Introduction*, 6 TEXT 239, 240–43 (1986) (describing how the meaning of an oration depends substantially on real-time audience activities and interpretations). Those details are not available. However, reading written legal texts also generates meaning dynamically and interactively. JAMES B. WHITE, WHEN WORDS LOSE THEIR MEANING 18 (1984). More people read the speech more times and in more varied contexts than heard it in Paris.

41. Abdul-Mahdi, *supra* note 40 (emphasis in original).

42. By 2004, English-speaking media often referred to the Iraqi leader as simply "Saddam." *See, e.g.*, Blair Shewchuk, *Saddam or Mr. Hussein?*, CBC NEWS ONLINE (Feb. 2003), http://www.cbc.ca.news/indepth/words/saddam_hussein.html (investigating the reasons). The use of first names in English usually indicates solidarity, affiliation, or allegiance. D.J. Allerton, *Proper Names and Definite Descriptions with the Same Reference: A Pragmatic Choice for Language Users*, 25 J. PRAGMATICS 621, 622, 632 (1996). The use of "Saddam," which is taken by English speakers to be a first name regardless of Arabic convention in Iraq, appears to be a hyperbolically performative subversion of this practice to convey non-alignment instead.

43. GARY S. MORSON, NARRATIVE AND FREEDOM 40–41 (1994). Subjunctivity in legal narrative creates space to advance counterfactual arguments. *See* Cover, *supra* note 12, at 4–5 (positing narrative as the force that connects legal norms to both actuality and possibility).

terms.[44] However, at the time, no country had ever received the massive level of debt reduction Iraq was seeking, leaving no categorical basis for rational comparison. The failure of numerous poor, conflict-ridden countries to transform their emotionally compelling cases into such a precedent meant that an emotion-based moral warning also was unlikely to persuade creditors.[45] By setting forth an emotional appeal based on the awful present, offering two alternative outcomes based on rational if–then logic, and making one of those alternatives loop back to the terrible present, the minister enlists rational logic to emphasize how bad it would be to leave Iraq in such a highly specific and uncategorized context, without having to concede that Iraq's circumstances merited exceptional treatment. Later in the speech, the minister similarly addresses concerns that Iraq's untapped oil wealth mitigated the need to cut its debt. His response again is constructed as a rational choice ("We can either devote our resources to repaying Saddam era debts, or we can apply those resources toward rebuilding Iraq's oil production capacity for the common benefit"),[46] with an affective marker (the "Saddam era") leading one possibility back to the problematic present.

The minister recasts this double-stranded story from his opening passage two additional times, in two subsections explicitly separated in the written text.[47] In the first, the minister disclaims the interjection of an Iraqi narrative or using it as a justification: "We all know the motivations that led Saddam to accumulate this debt, and we all know how he spent the money. I am not going to retell that story here or draw any conclusions from it."[48] Leaving unspoken the affective experience of the Iraqi people (which, as a former exile, includes his own) pays lip service to the language ideology of impersonal reference while creating a powerful rhetorical effect through the presupposition of a shared truth. This truth is evinced by the phrase, "we all know," which is used twice, and sedimented by the minister's refusal to "retell" the story, which implies a first telling that already happened and was accepted. Through this ostensibly

44. *See* Club de Paris, *supra* note 38.

45. *See, e.g.*, Gumisai Mutuma, *Africa Struggles for Global Attention*, 17 AFR. RECOVERY 10 (2003) (expressing concern that international attention on the crisis in Iraq was "sidelining" Africa), *available at* http://www.un.org/ecosocdev/geninfo/afrec/vol17no2/172iraq.htm; Craig Smith, *Major Creditors Agree to Cancel 80% of Iraq Debt*, N.Y. TIMES, Nov. 22, 2004 (noting the unprecedented nature of Iraq's final Paris Club deal, which in fact gave less relief than some Club members initially wished), *available at* http://www.nytimes.com/2004/11/22/international/middleeast/22debt.html; Charles Mutasa, *Global Apartheid and African Debt Crisis* (Life Over Debt, Discussion Paper Series Issue 3, 2005) (accusing the U.S. government of racial hypocrisy for supporting debt relief for Iraq that it had not advocated for sub-Saharan African countries), *available at* http://www.afsc.org/AfricaLifeOverDebt/ht/a/GetDocumentAction/i/43866. This public commentary directly challenged Iraq's worthiness in comparison with other debilitated states. Some drew on more distant historical precedents more favorable to Iraq. *See infra* text accompanying note 70.

46. Abdul-Mahdi, *supra* note 40.

47. Listeners may not have appreciated these subdivisions, although a pause by the speaker at the written dividing points may have conveyed the separation aurally. The speech was later posted onto a website for the Trade Association for Emerging Markets.

48. Abdul-Mahdi, *supra* note 40.

transparent presupposition and non-telling of the story, its moral basis is not opened up to evaluation by the audience.

Lest there be doubt, the minister supplies the correct evaluative stance with the admonition contained in the first four words of the subsequent sentence: "But everyone should recognize that unlike countries whose borrowings finance growth and development, Saddam borrowed much of this money to make war upon his neighbors, to threaten the international community and to oppress his own people."[49] From the strictly rational point of view presented in the if–then clauses in the speech's opening passage, Saddam's reasons and uses should not matter to the resolution of the problem. Either the debt is reduced, to everyone's benefit, or it is not, to everyone's detriment. In addition, a main reason the Iraqi Government and its advisors took great pains to distance themselves from the odious debt "doctrine" was the difficulty of distilling its heavily emotional–moral grammar into rational, deductive terms.[50] By nevertheless invoking that grammar using a rhetorically effective three-part list—make war, threaten, and oppress[51]—the minister appeals obliquely to the audience's morality. It is both oblique and an appeal to moral action because of the grammatical mood marker "should recognize" (the only one of its type in the speech), which implies truth–value dependent on human control.[52] He also sets up a moral counterpoint to private creditors' anticipated claims for preferential treatment because their goods or services went to education, healthcare, or civilian infrastructure.

Finally, as with his opening passage, the minister focuses his direct appeal in ideologically preferred terms:

> Only three things about Iraq's debt stock need to be highlighted for present purposes: First, it is gargantuan in size. . . . [T]he debt claims against Iraq total at least $125 billion. . . . Second, a debt stock that size is visibly unsustainable under any scenario. Third, for so long as that debt stock—or any significant part of it—remains in place, Iraq will not be able to attract the investment it needs . . . .[53]

These enumerated "realities,"[54] as the minister subsequently calls them, connect in an ideologically preferred chain of fact-based reasoning that combines a mathematical figure and the technocratic term "unsustainable" to reach the conclusion that brute economics minimally requires categorization of

---

49. Abdul-Mahdi, *supra* note 40.

50. *See* Buchheit, Gulati & Thompson, *supra* note 5 (discussing the adjudicative difficulties caused by the moral ambiguities of the odious debt doctrine).

51. See Gail Jefferson, *List-Construction as a Task and Resource*, *in* INTERACTION COMPETENCE 63–66, 68, 73 (George Psathas ed., 1990), for the "programmatic relevance" of three-part lists in everyday conversation.

52. *See* RANDOLPH QUIRK ET AL., A COMPREHENSIVE GRAMMAR OF THE ENGLISH LANGUAGE § 4.49, at 219–20 (1985) (comparing intrinsic and extrinsic modality (the formal term for such mood markers)).

53. Abdul-Mahdi, *supra* note 40.

54. Lists have rhetorical qualities that reinforce rational logic and distance texts from emotional logic. *Cf.* Deborah Schiffrin, *Making a List*, 17 DISCOURSE PROCESSES 377, 380–84 (1994) (discussing the functional contrast between lists and narratives).

Iraq within the class of countries that have already obtained Paris Club debt reduction deals.[55]

In the second subsection of the speech, labeled "The Logic" in the written text, the minister reiterates the duality of rationality and emotion. In this, the heart of the speech, he leads with the preferred rational logic: "The logic behind eliminating the large majority of this debt stock is compelling. The potential costs to the international community of continued instability in Iraq are unthinkably high. This is not a national or even a regional problem; it is a global problem."[56] The first sentence sets forth the need to act in ideologically preferred terms by asserting compelling "logic," in its conventional reason-based connotation. The second sentence cements this consequence-orientation by offering the disfavored affective alternative, "unthinkably high" costs (echoing the "unimaginably high" costs in the speech's opening passage). Against the backdrop of the first two sentences, the third sentence compresses the three narrative features of trouble, tension between authenticity and coherence, and temporality to effectuate the fourth feature, a moral stance. The rhetorical effect of the repetition of "problem" in the third sentence is enhanced by its change in valence and scale from not "national" to not "regional" to, in fact, "global." Repetition is a rhetorical technique used to evoke a coherent vision of the world, which in this case builds toward a literal declaration of a global problem.[57] Embedded within this rhetoric, the noun, "problem," is not offered as a standalone assertion ("this is a problem"), but as already modified by either "national or regional" or "global," which immediately situates the trouble in one or another presupposed categorical narrative: national–regional troubles versus global troubles. The selection of "global problem" unites speaker and audience in several ways. First, it aligns their temporal experience by implying a shared resource of past precedent

55. The International Monetary Fund (IMF) produces "debt sustainability" analyses. In fact, Iraq's was deemed to require much greater debt reduction than other countries' previous restructurings. *Euromoney* implicitly exposed the rational-emotional ideological contour when it reported that "[f]ormer [Paris] Club chairman [Jean-Pierre] Jouyet says that 'even if you are politically minded, all the decisions in the Paris Club are based on debt sustainability calculations made by the IMF, and we are very strict on this point.' But it's very easy to be sceptical about the Fund's debt sustainability analysis for Iraq, not least because it's based on an oil price of $26 a barrel." Felix Salmon, *Paris Club Members Adapt to New Rules*, EUROMONEY, Sept. 2005, at 212.

56. Abdul-Mahdi, *supra* note 40.

57. *See* Deborah Tannen, *Repetition in Conversation: Toward a Poetics of Talk*, 63 LANGUAGE 574, 576 (1987) (arguing that repetition in speech provides coherence to discourse and therefore to the message that discourse conveys). It is formulated here as another three-part contrastive list, which can be an especially powerful combination in political speechmaking. *See* John Heritage & David Greatbatch, *Generating Applause: A Study of Rhetoric and Response at Party Political Conferences*, 92 AM. J. SOC. 110, 116–17, 122–27 (1986) (extending Atkinson's discussion of contrasts and lists in political speeches); Jefferson, *supra* note 51 (concerning tripartite lists). A similar narrative tactic can be seen in President Johnson's 1965 "We Shall Overcome" speech, in which he declared, "There is no Negro problem. There is no Southern problem. There is no Northern problem. There is only an American problem." President Lyndon Johnson, Address to the U.S. Congress (Mar. 15, 1965). President Johnson, like Minister Abdul-Mahdi, was making a political speech to achieve a legal objective (in his case, civil rights legislation).

(previous global problems) and solutions (how those problems were resolved). Second, it seeks to circumvent the narrative tension between authenticity and coherence by universalizing Iraq's problems, which echoes the strategy earlier in the speech of presupposing that "we all know" the cause of Iraq's misery. Finally, these referential connotations are complemented by the fact that a global problem is also personal to everyone, which pre-empts the need to provide a justification for addressing the trouble.

In the remainder of the second subsection, the minister expands his dualistic theme in a series of sentences that alternate between a declarative deductive chain that leads to the desired result of massive debt relief and affectively marked alternatives if the relief is not forthcoming. To illustrate this narrative tactic, use of the first theme in the following excerpt is marked *A* and use of the second theme *B*, with the conclusion labeled *C*:

> **A** Stability in Iraq will require a massive reconstruction effort . . .
>
> **A** That reconstruction effort will require all the resources that Iraq can generate . . .
>
> **B** But those resources . . . will be painfully inadequate . . .
>
> **A** Iraq must receive large investments from the private sector . . .
>
> **B** It is fanciful to believe that Iraq will be able to attract those investments . . .
>
> **A** The existing debt stock must therefore be drastically reduced . . .
>
> **A** [W]ithout robust recovery, instability in Iraq may continue.
>
> **B** [T]he costs of that instability will be felt by everyone.
>
> **C** Writing off these Saddam era claims is a relatively inexpensive way to reduce the risk that the world will have to confront the costs of dealing with continued instability in Iraq and the region.[58]

The abstract, rational chain of *A* sentences is driven by the repeated use of grammatical mood markers that mark statements as independent of human control for their truth-value:[59] will require, must receive, must be reduced, and may continue.[60] By contrast, the dominant feature of the *B* sentences is ideologically disfavored affective markers—painful, fanciful, believe, attract,

---

58. Abdul-Mahdi, *supra* note 40.

59. *See* QUIRK ET AL., *supra* note 52, at 219–20 (comparing intrinsic and extrinsic modality).

60. The last *A* line incorporates elements of emotional logic by referring to the existing political instability that may continue absent economic recovery. To complete the overall rational chain culminating in the *C* conclusion, it was necessary to laminate the *A* and *B* lines. At the time of the speech, debt reduction was still a counterfactual situation. Inverting the last *A* line into the negative, existing scenario allows that line to import emotional elements and creates a hook for the last *B* line so that together they drive toward the conclusion. This counterfactual situation might explain why the last *A* line has a relatively downgraded mood of "may continue" rather than the more forceful "will continue." It may have seemed unpersuasively presumptuous to assert rather than merely predict continuing chaos. However, Iraqi officials subsequently did assert that debt reduction was a necessary condition for the return of stability. *See* Ali A. Allawi, *Why Iraq's Debt Deal Makes Sense*, EUROMONEY, Sept. 2005, at 213 (writing, "I do not for a moment want to suggest that debt relief is a sufficient condition for social and political stability to return to Iraq. But it is certainly a necessary condition.").

and felt—that reinforce the negative alternative if debt relief is not granted. The fugal alternation of themes in this passage highlights how both the rational and emotional logics have narrative potential through parallel structure. The former's lead and latter's echo of words like resources, investments, and instability reinforce the lopsided ideological preference for rational over emotional logic. The force of both themes combines in the concluding *C* sentence, where the subjunctive risk warned of in the *B* sentences can be diminished by a solution based on the *A* sentences.

Only at the end of his speech, which is separated by five asterisks and the subheading "Conclusion" in the written text, does the minister explicitly engage emotional logic. Yet even here, the emotional and personal aspects of the narrative, which the minister expresses as "political," are couched as an objective "observation" he makes about the emotional state of his people:

> Allow me to make one further observation of a political nature. The Iraqi people regard themselves as the principal *victim* of the Saddam regime. They also look upon the debts that Saddam accumulated as one aspect of that *victimization*—an aspect that unfortunately will continue to *haunt* the people of Iraq for decades to come. Although the Interim Government wishes to behave responsibly in settling these issues, no Government in Iraq can ignore the *deeply-held sentiments* of the Iraqi people concerning these claims.[61]

It is common for speakers to fragment and distribute social responsibility by framing their words as coming from other people.[62] The minister extends this practice by ascribing an emotional state to the Iraqi people. Doing so distances himself and the Interim Government from the barely veiled threat in the last sentence. That threat is the one instance in his speech in which consequence-oriented logic is explicitly framed in emotional terms.

Each section of the minister's speech employs the core features of narrative as a scaffold for a legal language ideology that emphasizes reference-oriented rational logic and suppresses context-dependent emotional logic. The interweaving of those logics results in one cohesive narrative about the Iraqi debt crisis. That narrative is both a story and a plan.

V

TALK INTO MONEY

The minister's speech was not confined to its specific place, moment, and linguistic genre. Delivering it was necessarily a speech-*act* that equally necessarily nestled within a logic of intertextual relationships.[63] Constructing

---

61. Abdul-Mahdi, *supra* note 40 (emphases added).

62. *See* MARJORIE H. GOODWIN, HE-SAID-SHE-SAID: TALK AS SOCIAL ORGANIZATION AMONG BLACK CHILDREN 90 (1990) (expanding Goffman's seminal account of how speakers animate third parties to include not only direct attribution of others' talk or actions but also how others are situated socially by virtue of where they are or identifying characteristics).

63. *See* WILLIAM F. HANKS, INTERTEXTS: WRITINGS ON LANGUAGE, UTTERANCE, AND CONTEXT 111, 168, 172 (2000) (explaining that a text is a "mode of social action" that has communicative relevance largely by virtue of being "situated within a larger network" of texts); John

Iraq's debt situation in language ideological terms was only the first step; implementing those terms on the ground had to follow.[64] The narrative begun at the Paris Club in 2004 continued after an accord was reached, as attention turned in 2005 to making a deal with Iraq's hundreds of private creditors. The message in the minister's opening remarks was adapted across additional public statements that counsel shaped; among these were the minister's closing remarks at the November 2004 Club meeting; interviews by him and Central Bank of Iraq Governor Sinan Al-Shabibi in *Euromoney*; an article in that journal by Dr. Abdul-Mahdi's successor, Ali A. Allawi; financial officials' speeches at a forum for large private creditors held in Dubai in May 2005; and various smaller-group meetings and phone calls.[65] The narrative also flowed into the contracts and other formal documents of the debt restructuring program itself.

For example, the basic terms of any debt reduction agreement with private creditors were set by the comparable treatment provision of the Paris Club accord. This achievement overcame the category problem that faced the minister at the outset of his speech: the Paris Club deal operated as a precedent upon which Iraq could draw in rational terms in negotiations with its private creditors. At the same time, comparable treatment did not determine every detail, including the calculation of late interest, which had significant financial implications because of the long lapse since default in 1990. To calculate the amount of debt owed prior to cutting it, late interest on Paris Club debt claims was reconciled according to the contractual terms, whereas late interest for private creditors was subjected to a uniform rate regardless of the accounting method and amount of past-due interest a private creditor had applied to each individual claim.[66] This policy, together with a specialized arbitration mechanism, was the most unusual compared to other debt restructurings, sovereign or otherwise.

Searle, *What is a Speech Act?*, *in* PHILOSOPHY IN AMERICA 221, 221–22 (Max Black ed., 1965) (arguing that linguistic communication is irreducibly composed of both a stretch of language and its socially effective production).

64. *See* Susan U. Philips, *Constructing a Tongan Nation-State through Ideology in the Courtroom*, *in* REGIMES, *supra* note 16, 229, at 244–45 (layering secondary sites of meta-pragmatic commentary that create language ideologies (such as courts) on top of primary sites in which those language ideologies are used in everyday life).

65. *See, e.g.*, Felix Salmon, *Restructuring Debt Is Top Priority*, EUROMONEY, Sept. 2004, at 72 (interviewing Minister Abdul-Mahdi on the subject of the debt before the Paris Club meeting); Allawi, *supra* note 60, at 210 (promising that Iraq would "vigorously" work to complete its debt restructuring, in narrative terms that often recapitulated Minister Abdul-Mahdi's opening remarks); Kathryn Wells, *Iraq Restructures Saddam Debt*, EUROMONEY, Feb. 2006, at 54 (reporting on the stages leading up to Iraq's "ground-breaking" debt-for-debt exchange and noting Dr. Al-Shabibi's role in overseeing the process). Others, of course, constructed their own narratives of these events. *See, e.g.*, *How the Iraq Deal Was Done*, EUROMONEY, Sept. 2005, at 210 (reading Iraq's Paris Club accord against a longer political history of Paris Club deals, and emphasizing the role of individual political leadership in cementing the Iraq accord).

66. Some Paris Club members voluntarily applied a uniform rate in accordance with their own policies.

Some creditors, including powerful institutions and their influential leaders, reacted angrily. They typically argued either that contracts must be honored or that their claims were for debt incurred for civilian purposes. These arguments had both rational and emotional features. Within the dominant global narrative of Iraqi political history since 1990, the claim concerning civilian use is a relatively straightforward referential contrast between civilian–good and military–bad. Precisely because of that narrative, the claim that the contract must be honored is trickier. Classical speech-act theory would support it on the basis that a promise commits a promisor, regardless of context.[67] An op-ed in *The New York Times* adopted this view, dismissing even "prudent" (rational) arguments that punitive financial burdens can backfire because Iraq "must respect one of the first principles of the rule of law: contracts should be honored."[68] The emotional logic of the creditors' arguments surfaced in individuals' patent fury and through the emphasis on fairness, which law training treats as non-legal and emotional.[69]

The narrative established by Minister Abdul-Mahdi's opening remarks to the Paris Club foreshadowed Iraq's response in several ways. First, as noted in section IV, the Iraqis emphasized the oppressive aspects of Saddam Hussein's profligacy, so that the emotional costs far outweighed any benefits. Second, because Iraqi debt had been in payment default for fifteen years, over which time late interest compounded, Iraq's advisors pointed out that even small differences in how creditors booked that interest could lead to much more dramatic divergences in debt sums than would have been predicted when the contracts were made. This rational arithmetic counter-principle supported the emotional counter-argument that the uniform rate better adhered to the principle of intercreditor equity. The speech less directly presages this argument—it was not designed to—but the categorical appeal to Iraq's debt as a "global problem" initiates a theme of solidarity. Iraq's representatives and friends also deployed this theme to remind creditors of disastrous alternative precedents, most infamously the dispute over German reparations after the First World War.[70] Finally and most decisively, the Iraqis stressed that time was of the essence. It was difficult enough to reconcile more than eleven thousand individual private debt claims, but to investigate the circumstances of each claim would have been infinitely time-consuming and adjudicatively complex, if not impossible. The minister's speech in 2004 repeatedly hit the theme of rapid motion toward the future rather than bogging down in the present. He contrasted Iraq's need to "recover quickly" with it "remaining paralyzed" and

67. *See generally* John H. Searle, *How To Derive "Ought" from "Is"*, 73 PHILOSOPHICAL REVIEW 43 (1964) (acknowledging, however, that extenuating circumstances could negate the promise).

68. Mark Medish, *Make Baghdad Pay*, N.Y. TIMES, Nov. 4, 2003, *available at* http://www.nytimes.com/2003/11/04/opinion/make-baghdad-pay.html.

69. *See* MERTZ, *supra* note 20, at 121. Of course, like all aspects of morality, fairness remains a factor when the ultimate bases for the legal system are under discussion.

70. *See, e.g.*, Medish, *supra* note 68 (citing Nobel laureate Joseph Stiglitz's view that failure to cancel Iraqi debt would repeat the mistakes of the Treaty of Versailles).

"remaining in place" and with its "continued instability." These terms exhibit a subtle but grammatically remarkable shade of the rational–emotional distinction. The active verb "recover" links the desirable outcome to consequence-oriented, future-looking motion, while the present progressive tense of the other verbs connects the undesirable possibility to Iraq's specific, problematic circumstances.

The speech is even more explicit. Its last substantive sentence emphasizes the urgency in a final deployment of rational if–then logic: "In short, if we all wish to settle this problem, we must do it now . . . ."[71] That problem, of course, was global. Establishing this urgency early on in ideologically persuasive form helped to overcome resistance when the commercial-claim reconciliation terms were announced. The Iraq debt restructuring team even rationalized creditors' complaints by re-narrating their individual emotional–moral appeals in generalized referential terms. The team devised a standard letter to respond to any such complaint, erasing each creditor's personal narrative.[72] While not entirely determined in advance, the way in which Iraq's debt restructuring narrative took actionable shape at the negotiating table in Paris later became a basis for translating those negotiations into specific substantive provisions of the debt restructuring deal.

VI

CONCLUSION

The legal tale of Iraq's debt restructuring program—and there must be no mistake that this was a *legal* tale, for at the end of the day, the program is represented by a thick set of binding contracts covering tens of billions of dollars and hundreds of parties—is one that participants themselves narrated. They strove to mediate the tension between authenticity and coherence and between morality and law within the bounds imposed by the ideological requirements of legal discourse. One such requirement that appears to cut across many legal narratives, and stands out in the speech analyzed above, is the construction of a particular rhetorical configuration of reason and emotion. This process is neither insincere nor self-contradictory. Whatever purposeful artistry these kinds of speech-acts involve, they also reflect deeply ingrained linguistic habits regulated by a system of social rewards and punishments.[73] Much as

71. Abdul-Mahdi, *supra* note 40.

72. Language ideologies tend to "erase" "facts that are inconsistent with the ideological scheme," including by homogenizing situations that do not fit. Judith Irvine & Susan Gal, *Language Ideology and Linguistic Differentiation*, *in* REGIMES, *supra* note 16, at 35, 38. Not unfeelingly, the standard letter was dubbed the "Naked City letter," after the dispiriting metropolitan tagline to the eponymous TV series (earlier a film), "There are eight million stories in the Naked City. This has been one of them." *See* Lee C. Buchheit, *Use of Creditor Committees in Sovereign Debt Workouts*, 10 BUS. L. INT'L 211, 211 n.16 (2009) (reproducing a similar response by Iraq's Central Bank Governor to a creditor's committee).

73. PIERRE BOURDIEU, LANGUAGE AND SYMBOLIC POWER 37–38 (Gino Raymond & Matthew Adamson trans., Polity Press 1991) (1982) (situating individualistic linguistic acts on a field of social competence governed by *habitus* and a "market" of "sanctions and censorships").

Galileo's science was not solely the product of laboratory-based conviction, but also developed through the performance of scientific philosophy in the morally approved Renaissance-court style (*sprezzatura*),[74] legal professionals' practices blend referential argumentation and social contextualization according to norms of lawyerly performance.

Effective performances draw on specific cultural knowledge,[75] the mastery of which often endows specialized elites such as lawyers with a particular role in narrative construction. Clients may benefit even more from lawyers' inside knowledge of a system and its players than from counsel's command of abstract legal principles.[76] In Iraq's case, the Paris Club itself was negotiating between a history of feudal procedures reminiscent of *The Wizard of Oz* on one hand,[77] and its increasingly institutionalized role in rationalizing international economic relations on the other.[78] Iraq's counsel used background knowledge of the Paris Club to insist that their clients would neither sleep nor eat in the basement nor address the Club through pages or Dumas-esque secret messages. Minister Abdul-Mahdi made his opening remarks not as supplicant, but as a member of the rational discursive community: "My colleagues and I have met privately with many of you over the past few months, and I believe there is a strong consensus that these are indeed the realities now facing Iraq and its creditors."[79] Here, "meeting privately" suggests conferral among equals; "consensus" invokes an express Paris Club principle, demonstrating expert knowledge; "realities" are referential facts; and Iraq and its creditors are described as facing them collectively. That sentence combines cultural knowledge and language

74. *See generally* MARIO BIAGIOLI, GALILEO, COURTIER (1993). Compare U.S. politics, where candidates and the electorate attend to two distinct discourses of "truth" and "theater" and perform or evaluate performance in terms of these discourses. Jane Hill, *"Read My Article." Ideological Complexity and the Overdetermination of Promising in American Presidential Politics*, *in* REGIMES, *supra* note 16, at 259.

75. Linda Garro, *Cultural Knowledge as Resource in Illness Narratives*, *in* NARRATIVE AND THE CULTURAL CONSTRUCTION OF ILLNESS AND HEALING 70 (Cheryl Mattingly & Linda Garro eds., 2000).

76. CONLEY & O'BARR, *supra* note 18, at 94. This distribution of value is ironic in light of the privilege accorded to rational logic by legal language ideology.

77. Brian Caplen, *Paris Club Comes Under Attack*, EUROMONEY, Sept. 2000, at 56.

78. The Club's first-ever annual report in 2007 can be read as an effort at making its texts and practices transparent (a contemporary trend among other financial institutions as well, such as central banks, ALAN S. BLINDER, THE QUIET REVOLUTION 5 (2004)). In it, the Club insisted that "[k]ey elements such as membership, working practices and the structure of Paris Club agreements were already in place by the early 1970s, when the Paris Club's activity was much lower than in subsequent decades . . . . [T]he fact that its key features have not changed significantly can be seen as proof of their consistency and one of the reasons explaining the Club's longevity." PARIS CLUB, ANNUAL REPORT 37 (2007). It then summarized five "key principles" aimed at "maximum efficiency." *Id*. at 40. Through statements like these, the reader is invited to view the Club as a rational organization easily understood in context-independent, referential terms.

79. Abdul-Mahdi, *supra* note 40.

ideology to place the minister on an even footing with his audience early on.[80] He also can leverage that even footing at the end of the speech to voice the Iraqi people's emotional suffering as something stronger than a plea for grace.

Moreover, the professional ground occupied by lawyers permits them to intervene in and even become part of narratives broader than those of single clients. With respect to the sovereign debt restructuring field, in 2009, the government of Ecuador's decision to default on foreign debt payments despite outside perception that it had the means to make its payments triggered a stern rebuke from Ecuador's erstwhile sovereign debt counsel (who, incidentally, was also Iraq's). The press picked the story up as one of a "godfather" and "institution" banishing the black sheep to preserve the credit-worthiness of the rest of the flock.[81] In his own co-authored article assessing the Ecuadorian move, the attorney traced the country's ostensible legal justification to the revival of the odious debt doctrine in the Iraqi debt restructuring.[82] That is, the Ecuadorians seized upon the revival of the odious debts narrative to alter the legal terms of their situation. Their critics responded partly by rejecting that narrative and seeking others to describe the Ecuadorian action. Even this brief sketch of competing narratives—odious debt versus black sheep—hints at a language ideological pattern to each side's justifications that parallels the Iraqi case. Attunement to patterns like this one can help practitioners stay ahead. Narrative tactics emerge along the fault lines of broader social practices.[83] The Ecuadorian maneuver was possible because lenders opened a contractual loophole years earlier when they dropped longstanding prohibitions on borrowers repurchasing their own obligations, which allowed Ecuador to drive down the price of its debt by defaulting and then scooping up the devalued assets.[84] "The justification, if there was one," Ecuador's former counsel writes about what in retrospect looks like lenders' naiveté in creating the loophole, "must have been that no sovereign bond issuer would risk its market reputation by deliberately defaulting in order to manipulate the price of its bond to its own benefit."[85] Lawyers are keenly attentive to such isolated rational deduction, as well as warily sensitive to emotional arguments. Developing awareness as to

---

80. "Footing" is a technical term that describes how people position their own and others' social selves during linguistic interaction. *See* Erving Goffman, *Footing*, 25 SEMIOTICA 1, 4 (1979) (listing the attributes of footing).

81. Felix Salmon, *Emerging-market Debt After Ecuador*, REUTERS (June 8, 2009), http://blogs.reuters.com/felix-salmon/2009/06/08/emerging-market-debt-after-ecuador/.

82. Lee C. Buchheit & G. Mitu Gulati, *The Coroner's Inquest*, INT'L FIN. L. REV., Sept. 2009, at 22, 22–26.

83. *See* SHERRY ORTNER, HIGH RELIGION: A CULTURAL AND POLITICAL HISTORY OF SHERPA BUDDHISM 13–15 (1989) (defining social structure as imbued with abstract as well as emotional contradictions that inspire narratives of heroic action in response to these cultural contradictions). "Tactics" represent individual flexibility of action enmeshed within the constraints of impersonal, institutional "strategies" of power relations. 1 MICHEL DE CERTEAU, THE PRACTICE OF EVERYDAY LIFE, at xix, 35–36 (Timothy J. Tomasik trans., 1998) (1994).

84. Buchheit & Gulati, *supra* note 82, at 22–26.

85. *Id.* at 25.

how both unfold together in legal narrative can improve the depth of focus of the profession's habitual instrumentalist thinking.[86] For those who share Cover's concern with justice, it may also illuminate ways to employ the ancient practice of narrative persuasively in service of reform.

86. *See* Annelise Riles, *Property as Legal Knowledge: Means and Ends*, 10 J. ROYAL ANTHROPOLOGICAL INST. 775, 790 (2004) (asserting that lawyerly thinking prizes knowledge principally as a means to a further means in a telescoping analytic chain). Language ideologies operate over a wide range of awareness on the part of those who exhibit them, with the most naturalized ones being the least available to self-conscious manipulation. Paul V. Kroskrity, *Arizona Tewa Kiva Speech as a Manifestation of a Dominant Language Ideology*, *in* LANGUAGE IDEOLOGIES, *supra* note 16, at 117.