

ORIGINAL ARTICLE

**Agency and vulnerability in the field of immigration law: a linguistic-ethnographic perspective on lawyer–client interaction**

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**Abstract**

Migrants are often perceived as a group of vulnerable victims, especially within a legal context such as the one in this study: lawyer–client consultations in the field of immigration law. The literature describes how institutional limitations often translate into asymmetric lawyer–client dynamics. The linguistic-ethnographic data gathered for this study show, however, that the reality is more complex. In operationalizing the concept of agency, this study focuses on the dynamic-relational nature of power differences, which implies a move away from the binary conceptualization of structure and agency. The ethnographic lens helps to unpack agency and reveals a picture of strategic behaviour that is contextually embedded and multi-layered. In this light, the performance of agency and vulnerability is shown to be

(1) interactionally achieved, (2) indicative of an awareness of macro-level processes, and (3) reflective of the philosophy behind the authorities' migration management.

## 1 INTRODUCTION

Prevalent scholarly discourses characterize people applying for international protection as vulnerable victims lacking autonomy.<sup>1</sup> These views tie in with international law, which recognizes asylum seekers<sup>2</sup> as members of 'a particularly underprivileged and vulnerable population group in need of special protection'.<sup>3</sup> The UN Migration Agency (UNHCR), similarly, states that all applicants for international protection (AIPs) are vulnerable by definition, as they have left their homes and faced challenges in doing so.<sup>4</sup> This 'discourse of vulnerability' is evident not only in official institutional communication but also in media reports, humanitarian aid communication, political rhetoric, policy debates, and academic research. While such characterizations indisputably recognize an existing and harsh reality, they may sometimes be counter-productive, as they disempower AIPs by positioning them as incapable of action and in need of rescue.<sup>5</sup> All AIPs have their own individual stories and trajectories, and come from different geographical areas, and their socio-economic and educational status is widely disparate. In this regard, categorizing every AIPs intrinsically

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<sup>1</sup> A. Orgocka, 'Vulnerable yet Agent: Independent Child Migrants and Opportunity Structures' (2012) 136 *New Directions for Child and Adolescent Development* 1; K. Koser, 'Asylum Policies, Trafficking and Vulnerability' (2000) 38 *International Migration* 91.

<sup>2</sup> This article uses the terms 'asylum seeker' and 'applicant (for international protection)' as synonymous. As a result of the transposition of European directives into Belgian legislation in 2018, a new terminology was introduced, which included the substitution of 'asylum seeker' for 'applicant for international protection' (authors 2021). Though we are aware of this revision, we decided to use both concepts interchangeably, as 'asylum seeker' is a productive term, which is used within prevalent (scholarly, political, media) discourse. Our research participants also often frequented the term.

<sup>3</sup> *Alajos Kiss v. Hungary*, App. No. 38832/06, 20 May 2010, 42.

<sup>4</sup> Fedasil, *Kwetsbare Personen met specifieke Opvangnaden: Definitie, Identificatie, Zorg* (2018), at <[https://www.fedasil.be/sites/default/files/content/download/files/fedasil\\_studie\\_kwetsbare\\_personen.pdf](https://www.fedasil.be/sites/default/files/content/download/files/fedasil_studie_kwetsbare_personen.pdf)>.

<sup>5</sup> C. Mainwaring, 'Migrant Agency: Negotiating Borders and Migration Controls' (2016) 4 *Migration Studies* 289; M. Mustaniemi-Laakso, M. Heikkilä, E. Del Gaudio, S. Konstantis, M. Casas, D. Morondo, V. Hegde, Report by European Commission (2016), <<https://vps5.cloudfarm.it/bitstream/handle/20.500.11825/98/Deliverable-11.3.pdf?sequence=1&isAllowed=y>>

vulnerable or lacking agency ‘by default’ risks essentializing individual identities, by presenting one experience (namely, their victimhood) as ‘paradigmatic, at the expense of other experiences’.<sup>6</sup>

This article aims to demonstrate that the essentializing capacities of vulnerability discourses tend to obscure AIPs’ actual agency.<sup>7</sup> The article seeks to expose this agentic role of AIPs by analysing the complexity of their multilingual interactions within the specific institutional context of the legal consultation. Our linguistic-ethnographic lens interconnects with an intersectional and constructionist perspective and approaches individual agency and structural vulnerability as layered, multi-dimensional concepts. By drawing on authentic interactional data (in the form of ethnographic fieldwork and audio recordings) from the communication between AIPs and their lawyers during legal consultations in Belgium, our article aims to show how AIPs do not lose their agency upon arrival in the destination country. In fact, they continue to have desires, preferences, and plans, all of which can be considered (micro-) demonstrations of agency.<sup>8</sup> The analysis of two case studies foregrounds how – despite obvious institutional power imbalances – the presence of structural vulnerability and individual agency are not mutually exclusive but ‘fluctuate with situations and contexts’ and are interactionally (re)produced as well as denied.<sup>9</sup> Our article connects different fields of legal studies (ethnography, anthropology, sociology, and politics of international immigration law) with the objective of (1) contributing to a theoretical and context-sensitive rethinking of the structure–agency binary in asylum and migration

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<sup>6</sup> L. Peroni and A. Timmer, ‘Vulnerable Groups: The Promise of an Emerging Concept in European Human Rights Convention Law’ (2013) 11 *International J. of Constitutional Law* 1056, at 1071.

<sup>7</sup> Mustaniemi-Laakso et al., op. cit., n. 5.

<sup>8</sup> Mainwaring, op. cit., n. 5. Note that, following European directives as well as the Belgian legal framework, all asylum seekers have the right to free legal assistance. The asylum authorities, as well as people working in asylum reception facilities, have the responsibility to make applicants aware of this provision and to bring them in touch with legal aid offices, who provide pro bono legal support.

<sup>9</sup> Mustaniemi-Laakso et al., op. cit., n. 5, p. 6.

encounters, and (2) challenging the emphasis on vulnerability and passivity in the legal and political discourse relating to migrants and refugees.

## **2 THEORETICAL FRAMEWORK: OPERATIONALIZING AGENCY**

Agency, and the lack thereof, has been a popular topic in hermeneutical and philosophical theories of social life. This section aims to frame the common characterization of asylum seekers as vulnerable and as victims without agency within longstanding academic debates about the paradox of structure and agency.<sup>10</sup> In these scholarly discussions, the link between structure and agency has been traditionally conceptualized as a relationship of polarity, with a focus on how social structure determines individual behaviour.<sup>11</sup> Structuralists argue that ‘the dominating tendencies of embedded social, political and economic structures’ condition human behaviour.<sup>12</sup> From this point of view, structure is regarded as the sum of all of the inescapable constraints that prohibit agency.

In this article, we attempt to operationalize agency in a way that allows us to pinpoint its demonstrations within interactional data. More specifically, the article investigates if and how agency is exerted in legal consultations during the interactions that take place between AIPs and their lawyers. (For a more elaborate description of the dataset and the methodology, see Section 3.) First, the article explores theoretical views on the lawyer–client relationship (Sections 2.1 and 2.2). Second, it challenges overly deterministic readings in favour of more constructionist, bottom-up perspectives that recognize the agency of individuals and the in-group differences among asylum seekers. In doing so, we foreground how there is always a degree of ‘wobble room’ when agency as well as vulnerability are conceptualized as socially,

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<sup>10</sup> M. Emirbayer and A. Mische, ‘What Is Agency?’ (1998) 103 *Am. J. of Sociology* 962.

<sup>11</sup> R. Tipton, ‘Reflexivity and the Social Construction of Identity in Interpreter-Mediated Asylum Interviews’ (2008) 14 *The Translator* 1.

<sup>12</sup> V. Squire, ‘Unauthorised Migration beyond Structure/Agency? Acts, Interventions, Effects’ (2017) 37 *Politics* 254, at 257.

relationally, and interactionally embedded phenomena that are inextricable from the context in which they are produced (Section 2.3).

## 2.1 The structurally defined lawyer–client relationship

Within the genre of legal consultations, the impact of power dynamics and the tension between agency and structure are central themes. Legal clients are structurally constrained in their interaction with legal service providers, as this interaction is inevitably defined by the structural aspects of the legal system.<sup>13</sup> In what follows, we look more closely into the structure that predominantly defines legal consultations and the way in which institutional and organizational requirements constrain the interaction.<sup>14</sup> We do so by discussing the pre-situational hierarchy and the institutional expectations inherent to the legal consultation as a speech event from the perspective of Goffmanian, Habermasian, and socio-legal theories.

Focusing on the particular position of AIPs in Belgium, it can be argued that the individual agency and autonomy of people who have just arrived is constrained by the institutional structure of the asylum system.<sup>15</sup> The fact that AIPs are dependent on government assistance and are put in a position of precarity – something that Peroni and Timmer call the ‘the institutional production of vulnerability of asylum seekers’<sup>16</sup> – accentuates their vulnerability.<sup>17</sup> Johnson similarly argues that ‘migrants are subject to tight control and to increasingly restrictive and exclusionary policies’,<sup>18</sup> which take the form of bureaucracy, prohibitions, and sometimes even literal confinement. The theories about

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<sup>13</sup> D. Eades, *Language and the Legal Process* (2010).

<sup>14</sup> Tipton, *op. cit.*, n. 11; B. Bogoch, ‘Power, Distance and Solidarity: Models of Professional–Client Interaction in an Israeli Legal Aid Setting’ (1994) 5 *Discourse & Society* 65.

<sup>15</sup> Mainwaring, *op. cit.*, n. 5.

<sup>16</sup> Peroni and Timmer, *op. cit.*, n. 6, p. 1069.

<sup>17</sup> Mustaniemi-Laakso et al., *op. cit.*, n. 5.

<sup>18</sup> H. Johnson, ‘Moments of Solidarity, Migrant Activism and (Non)Citizens at Global Borders: Political Agency at Tanzanian Refugee Camps, Australian Detention Centres and European Borders’ in *Citizenship, Migrant Activism and the Politics of Movement*, eds P. Nyers and K. Rygiel (2012) 109.

institutional structure versus client agency presented below pave the way for an inquiry into how the dynamics of lawyer–client consultations are affected when the client happens to be an AIP.

From a *Goffmanian frame analysis perspective*, it is evident that the structure of the legal consultation constrains the agency of the client who enters the frame.<sup>19</sup> Frames are spaces that shape the ‘conditions for establishing social activities’ and therefore affect the interactions that take place in that space.<sup>20</sup> Frame dynamics are patterned, shaped by institutional, political, and professional realities; in this way, they establish pre-situational hierarchies. As lawyer–client consultations take place in a ‘space of law’, physically in law firm’s offices as well as metaphorically within the rule of the law, the consultation is a ‘home match’ for the lawyer. The lawyer possesses a degree of professional power, simply because they are an insider in the legal system, and this epistemic authority is inevitably tangible in the flow of the consultation.<sup>21</sup> In other words, there is no way to mitigate the fact that lawyers are operating within a frame that privileges their position; the lawyer is the one who *owns* or controls the frame, whereas the client merely *uses* it.<sup>22</sup> Analogous to Pöllabauer’s conceptualizations of asylum hearings, the lawyer can often be seen as the demander of information, and the client as the supplier.<sup>23</sup> The control deficiency on the part of the client demonstrates how the structure of the legal consultation limits the opportunities for client agency.

From a *Habermasian point of view*, one could conceptualize the legal consultation as the joining of two voices: the voice of system (‘the legal world for which the lawyer speaks’)

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<sup>19</sup> E. Goffman, *Forms of Talk* (1981).

<sup>20</sup> J. Blommaert et al., ‘Spaces of Multilingualism’ (2005) 25 *Language & Communication* 197.

<sup>21</sup> Eades, *op. cit.*, n. 13.

<sup>22</sup> Blommaert et al., *op. cit.*, n. 20; A. J. Hurder, ‘Negotiating the Lawyer–Client Relationship: A Search for Equality and Collaboration’ (1996) 44 *Buffalo Law Rev.* 71.

<sup>23</sup> S. Pöllabauer, ‘Interpreting in Asylum Hearings: Issues of Role, Responsibility and Power’ (2004) 6 *Interpreting* 143.

and the voice of lifeworld ('the social world of the client beset with urgent emotional demands').<sup>24</sup> In Habermasian theory, the relationship between both voices is considered to be by default of an asymmetric nature. As the voice of system (or, in this particular context, the voice of law) is characterized by strategic communicative moves – in other words, epistemic authority (here, procedural knowledge) and terminology (here, judicial literacies) – it has the ability to *colonize* the voice of lifeworld.<sup>25</sup> In these instances, the voice of lifeworld (here, the client) has limited agency over the conversational direction, and struggles to put lifeworld concerns on the interactional agenda.<sup>26</sup>

Third, from a more general *socio-legal point of view*, attempts at conceptualizing the speech event of the legal consultation often start from a definition of the role of the lawyer. Traditionally, the lawyer's role has been framed within an authoritative representation model, in which the lawyer is dominant and controls the consultation; this conceptualization views lawyering as zealously representing clients and highlights the active and problem-solving dimension of the legal profession.<sup>27</sup> From this perspective, the law is regarded as an objective, universal, and abstract set of rights and norms, within which lawyers should try to find advantages (or even loopholes) for their clients.<sup>28</sup> Neutrality is seen as a key attribute in this process, as the law aligns itself with rationality, cognition, and reason.<sup>29</sup> Accordingly, the authoritarian model considers legal knowledge and expertise as the defining criteria for being regarded a competent lawyer.

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<sup>24</sup> W. Felstiner and A. Sarat, 'Enactments of Power: Negotiating Reality and Responsibility in Lawyer–Client Interactions' (1991–1992) 77 *Cornell Law Rev.* 1447, at 1454; J. Habermas, *Between Facts and Norms* (1996).

<sup>25</sup> J. Habermas, *The Theory of Communicative Action* (1984).

<sup>26</sup> Bogoch, *op. cit.*, n. 14.

<sup>27</sup> K. Johnson, 'Lawyering for a Social Change: What's a Lawyer to Do?' (1999) 5 *Michigan J. of Race & Law* 201. The traditional authoritarian approach to legal consultations was first theorized by Rosenthal: D. E. Rosenthal, *Lawyer and Client: Who's in Charge?* (1974); Author 1 and Author 2 (2021).

<sup>28</sup> P. Zwier and A. Hamric, 'The Ethics of Care and Reimagining the Lawyer/Client Relationship' (1996) 22 *J. of Contemporary Law* 283.

<sup>29</sup> C. Westaby and E. Jones, 'Empathy: An Essential Element of Legal Practice or "Never the Twain Shall Meet"?' (2018) 25 *International J. of the Legal Profession* 107.

## 2.2 The theoretical possibility of agency

The theoretical models presented above do recognize the *possibility* of agentic behaviour. They acknowledge that, even though structure is restrictive, there is always a certain degree of ‘wobble room’. With regards to *Goffmanian frame analysis*, this implies, on the one hand, that the interaction that happens within a frame is shaped by pre-situational frame dynamics, but, on the other hand, that these unfolding interactions themselves also shape the frame, its boundaries, its meaning, and its power dynamics. Applied to our research context, this means that the social activity of the lawyer–client consultation is not only *informed by* the established frame that dictates what such a legal event should look like, but also *informs* these preconditions.<sup>30</sup> Habermas seemed more optimistic about the possibility of conciliation between the lifeworld and system spheres in his later work.<sup>31</sup> Applied to the context of the legal consultation, *Habermasian theory* hints that a more egalitarian lawyer–client relationship might be possible with regard to responsiveness and common ground.<sup>32</sup> *Socio-legal literature* also foregrounds the possibility of an alternative, client-centred representation model.<sup>33</sup> Rather than viewing the law solely as an abstract set of rules, this approach starts from the idea that there is inevitably an emotional dimension to legal cases, as clients bring along highly personal problems.<sup>34</sup> In this regard, striving towards professional neutrality is fruitless. Attending to the role of emotion does not have to stand in the way of rationality or

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<sup>30</sup> Blommaert et al., op. cit., n. 20.

<sup>31</sup> Habermas, op. cit., n. 24; Habermas, op. cit., n. 25.

<sup>32</sup> D. Hayes and S. Houston, ‘Lifeworld, “System” and Family Group Conferences: Habermas’s Contribution to Discourse in Child Protection’ (2007) 37 *Brit. J. of Social Work* 987.

<sup>33</sup> The founding advocates of this model are Binder and Price: D. A. Binder and S. C. Price, *Legal Interviewing and Counseling: A Client-Centered Approach* (1977). C. Suzuki, ‘Unpacking Pandora’s Box: Innovative Techniques for Effectively Counselling Asylum Applicants Suffering from Post-Traumatic Stress Disorder’ (2006) 4 *Hastings Race & Poverty Law J.* 235.

<sup>34</sup> J. Barkai and V. Fine, ‘Empathy Training for Lawyers and Law Students’ (1982) 13 *Southwestern University Law Rev.* 505; Westaby and Jones, op. cit., n. 29.



professionalism; it simply recognizes an existing interactional reality.<sup>35</sup> Whereas the authoritarian model only focuses on actual problem solving, the client-centred model also values the establishment of a good connection (or rapport) between lawyer and client.<sup>36</sup>

### 2.3 Agency in interaction

Alongside the client-centred representation model developed in the socio-legal framework, there is a body of sociolinguistic literature on legal advice communication that explores the ways in which the inherent power asymmetries of the lawyer–client relationship are/can be communicatively addressed in legal consultations.<sup>37</sup> Inspired by the ‘critical turn’ in the social sciences, one could argue that the theories of agency discussed in Section 2.1 emerged from a rather static, absolute view of power, which approached interaction from a paradigm of dominance; by focusing on the power struggle and by identifying interactional evidence of it in operation, researchers were inclined to reify rather than deconstruct the inequality inherent in lawyer–client relationships.<sup>38</sup> However, the increased and diversified mobility of the

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<sup>35</sup> H. Baillot et al., ‘Second-Hand Emotion? Exploring the Contagion and Impact of Trauma and Distress in the Asylum Law Context’ (2013) 40 *J. of Law and Society* 509.

<sup>36</sup> R. Cochran et al., *The Counselor-at-Law: A Collaborative Approach to Client Interviewing and Counseling* (2011).

<sup>37</sup> Y. Maley et al., ‘Orientations in Lawyer–Client Interviews’ (1995) 2 *Forensic Linguistics* 42; S. Trinch, *Latinas’ Narratives of Domestic Abuse: Discrepant Versions of Violence* (2003); J. Reynolds, *Multilingual and Intercultural Communication in and beyond the UK Asylum Process: A Linguistic Ethnographic Case Study of Legal Advice-Giving across Cultural and Linguistic Borders* (2018); J. Masson, ‘“I Think I Do Have Strategies”: Lawyers’ Approaches to Parent Engagement in Care Proceedings’ (2012) 17 *Child & Family Social Work* 202; N. Carver, ‘Displaying Genuineness: Cultural Translation in the Drafting of Marriage Narratives for Immigration Applications and Appeals’ (2014) 3 *Families, Relationships and Societies* 271; M. Baynham et al., *Translanguaging Immigration Law: A Legal Advice Drop-In Service* (2018); C. Dieckmann and I. Rojas-Lizana, ‘The Pragmatics of Legal Advice Services in a Community Legal Centre in Australia: Domination or Facilitation?’ (2016) 23 *International J. of Speech, Language and the Law* 167; Binder and Price, op. cit., n. 33; S. L. Trinch, ‘Managing Euphemism and Transcending Taboos: Negotiating the Meaning of Sexual Assault in Latinas’ Narratives of Domestic Violence’ (2001) 21 *Text & Talk* 567; S. Trinch, ‘Acquiring Authority through the Acquisition of Genre: Latinas, Intertextuality and Violence’ (2005) 12 *International J. of Speech, Language, and the Law* 19; S. Trinch, ‘The Pragmatic Use of Gender in Latina Women’s Legal Narratives of Abuse’ (2007) 14 *International J. of Speech, Language and the Law* 51; E. Codó and M. Garrido, ‘Ideologies and Practices of Multilingualism in Bureaucratic and Legal Advice Encounters’ (2010) 4 *Sociolinguistic Studies* 297.

<sup>38</sup> D. Eades, *Courtroom Talk and Neocolonial Control* (2008); Eades, op. cit., n. 13; W. Krebbekx, ‘Watching Six-Packs, Chilling Together, Spreading Rumours: Enacting Heteronormativity through Secondary School Friendships and Teaching Practices’ (2018) 33 *Gender and Education* 17.

twenty-first century (a phenomenon that is clearly reflected in the ‘superdiverse’ backgrounds of the AIPs in our corpus) has led many researchers to abandon their search for all-encompassing theories (in this case, of the polarity between structure and agency). Whereas interpreting complex social dynamics through a lens of domination foregrounds the deterministic power of social structures, a focus on how the world is constructed through interaction renders visible the impact of individual agency and in-group differences. Declercq and Ayala reflect on this dynamic character of agency in their description of ethnographic interviewing, when they argue that the ‘relatively stable macro-societal powerful or powerless position’ does not necessarily have to transfer linearly into the context of interaction. This implies that although conversations always echo institutional rank/status, interactants can contest, dispute and resist these roles in interaction.<sup>39</sup> Theories that are supposed to be widely applicable seem unsuitable when investigating unique interactional settings. Once we turn away from classically scientific conceptions of theory,<sup>40</sup> however, and towards authentic interactions that take place within actual institutions, the analysis becomes more grounded, more complex, and – dare we say it – more interesting. Our study into the discursive dynamics of lawyer–client consultations in the field of immigration law aims to contribute to this growing body of sociolinguistic literature that recognizes agency as an interactional and dynamic concept.

With regard to sociolinguistic studies that draw on authentic interactional data, our research endeavour can be aligned with a small body of literature that has focused on the distribution of power and agency within institutional lawyer–client interaction. From the 1980s until very recently, few studies have succeeded in gaining the access and ethical consent to observe – let alone audio record – the delicate and private interaction that takes

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<sup>39</sup> J. Declercq and R. Ayala, ‘Examining “Elite” Power Dynamics in Informant–Research Relations and Its Impact on Ethnographic Data Construction: A Case Study from Pharmaceutical Health Communication’ (2017) 16 *International J. of Qualitative Methods* 1.

<sup>40</sup> N. Coupland, *Sociolinguistics: Theoretical Debates* (2016).

place in the lawyer's office.<sup>41</sup> A brief overview of the recurring themes in these works – on which we also draw in our analysis and discussion – immediately shows how the hermeneutical and philosophical perspectives discussed in Section 2.1 capture an existing reality yet do not present the whole picture.

The early Australian study of lawyer–client communication in the realm of civil law conducted by Maley and colleagues reveals how lawyers display empathy interactionally by taking their client's perspective into account.<sup>42</sup> The work of Dieckmann and Rojas-Lizana, which explicitly investigates whether the lawyers in a community legal centre in Australia adopted an authoritarian or a client-centred approach, reveals a similar pattern. They found evidence in favour of the client-centred approach, as they noticed a 'discourse of facilitation' in which lawyers actively employed politeness strategies, colloquial language, and supportive discourse to empower their clients within the local interaction.<sup>43</sup> Felstiner and Sarat's study in the United States (US), which focuses on divorce law cases, paints a more complex picture, as their analysis emphasizes how the power balance in legal consultations is under constant negotiation during interaction – an interpretation that clearly foregrounds the dynamic nature of agency.<sup>44</sup> Trinch's linguistic ethnography of legal advice communication in domestic violence cases of Latina women in the US found a similar degree of role fluctuation, as she observed how the service providers in her interactional dataset embodied an advocacy-oriented, egalitarian positionality at one moment, and a gatekeeping, restrictive positionality at another.<sup>45</sup> Reynolds, in her study of legal advice communication in the context of family reunification, concludes that there is an asymmetrical but complementary balance of control

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<sup>41</sup> M. Ahmad, 'Interpreting Communities: Lawyering across Language Difference' (2016) 54 *UCLA Law Rev.* 999; Eades, *op. cit.*, n. 13.

<sup>42</sup> Maley et al., *op. cit.*, n. 37.

<sup>43</sup> Dieckmann and Rojas-Lizana, *op. cit.*, n. 37.

<sup>44</sup> Felstiner and Sarat, *op. cit.*, n. 24.

<sup>45</sup> Trinch, *op. cit.* (2003), n. 37.

and agency between the lawyers and clients in her corpus.<sup>46</sup> She also examines the influence of multilingualism on the legal consultation and found an ideology of linguistic inclusion in which lawyer–client communication takes place in a relatively egalitarian space of multilingualism. While these observations are in line with the findings of Baynham and colleagues (who use the term ‘translanguaging space’ to refer to the use of broad communicative repertoires in lawyer–client interaction),<sup>47</sup> the Spain-based study of Codó and Garrido, on the contrary, reveals that multilingual repertoires tend to be problematized or ignored within legal service provision for migrants, with exclusionary consequences.<sup>48</sup>

This brief discussion of these critical sociolinguistic investigations into legal consultations shows how interaction-based studies perceive agency as dynamic, rather than static. Though the cited literature does not necessarily come to the same conclusions and uses different parameters to assess the legal consultation’s power balance, these scholarly conceptualizations of agency and analytical inquiries into how it is distributed all start from a constructionist, interactional point of view.

### **3 METHODOLOGY**

Convinced of the added value of a constructionist, interaction-based lens, this article aims to investigate how the interactional dynamics of agency and vulnerability play out in the structurally confined context of immigration law consultations. As indicated in Section 2, there is currently only a small body of literature examining communication in lawyer–client consultations, and even less research on advice giving in immigration law – a context rich with social justice implications for the practice of law. This article aims to fill that gap by

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<sup>46</sup> Reynolds, *op. cit.*, n. 37.

<sup>47</sup> Baynham et al., *op. cit.*, n. 37.

<sup>48</sup> Codó and Garrido, *op. cit.*, n. 37.

drawing on much-needed data from a rarely accessed research site of lawyer-client interaction. We have acquired data for this study by means of linguistic-ethnographic fieldwork in two law firms in the Flemish part of Belgium. In the spirit of *ethnography*, on the one hand, we felt strongly about building relationships with the participants and acquiring a certain familiarity with the everyday workplace routines of the lawyers' offices. These first-hand experiences and observations, which were recorded in extensive field notes, have yielded richly contextualized and embodied understandings of the studied setting.<sup>49</sup> The *linguistic* focus, on the other hand, was enabled by transcripts of the audio recordings, which makes a fine-grained and systematic micro-analysis possible and, in this way, helps to tie down the empirical insights.<sup>50</sup> While access and ethical clearance were negotiated in October 2018, the data were gathered in 2018 and 2019. The study draws on participant observations and audio recordings of legal consultations between asylum seekers and their lawyers (72 in total). After the observations, we conducted semi-structured interviews with the lawyers for reasons of triangulation and to ensure that our analysis is 'ecologically valid'.<sup>51</sup> The article aims to capture the lived experiences of the different participants – the so-called 'emic', bottom-up perspective.<sup>52</sup> The authentic and ethnographic nature of our data offers the kind of 'presentist and particular' lens that is needed to achieve the objective of de-essentializing the asylum seeker.<sup>53</sup> By looking at the complexity of this specific speech event and by discussing interactions that developed in front of our own eyes, we aim to stay away from generalizations and unpack the idea that migrants lack agency and are vulnerable by default.

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<sup>49</sup> G. Marcus and M. Fischer, *Anthropology as Cultural Critique: An Experimental Moment in the Human Sciences* (1999).

<sup>50</sup> B. Rampton et al., *UK Linguistic Ethnography: A Discussion Paper* (2004); K. Tusting (ed.), *The Routledge Handbook of Linguistic Ethnography* (2019).

<sup>51</sup> A. Cicourel, 'Ecological Validity and "White Room Effects": The Interaction of Cognitive and Cultural Models in the Pragmatic Analysis of Elicited Narratives from Children' (1996) 4 *Pragmatics & Cognition* 221.

<sup>52</sup> K. Pike, *Etic and Emic Standpoints for the Description of Behavior* (1967).

<sup>53</sup> Squire, *op. cit.*, n. 12, at 256.

Observed lawyer–client consultations can be contextualized within the field of immigration law. Much of the data deals with applications for international protection and, therefore, it does not come as a surprise that the corpus is of a multilingual nature. This article examines audio recordings of consultations that use either English or French as a ‘contact language’ – in other words, a ‘lingua franca’, a language that all interactants are (to variable degrees) proficient in, and that is therefore used to facilitate communication, though it is not the mother tongue of all interactants. The power and agency dynamics in interpreter-mediated consultations (either with a professional or an ad hoc interpreter) are very different and highly interesting, but beyond the scope of this article.

In analysing the data, we systematically looked for linguistic patterns as well as key excerpts.<sup>54</sup> This process was of an inductive nature – in other words, no conceptual framework or code book was used; the expressions of agency and vulnerability became the focus of analysis after their presence was detected through bottom-up categorization. Following a critical discourse analysis approach, we started by describing the observed phenomena, before explaining patterns and eventually linking the empirical findings with broader social and political theories and issues.<sup>55</sup> We used NVivo as a tool for data analysis, which not only enabled the identification of agency as a theme (or a ‘node’) within the corpus, but also facilitated the process of distinguishing sub-themes. Another advantage of the software package is that it allows one to zoom out to link the fine-grained, line-by-line analysis with macro-level observations. This yields a better understanding of the way in which agency and vulnerability come into being interactionally within the whole corpus. Having identified agency as a theme through the process of coding with NVivo, we selected two complementary lingua franca consultations to illustrate our analytical observations. The

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<sup>54</sup> F. Copland and A. Creese, *Linguistic Ethnography: Collecting, Analysing and Presenting Data* (2015); Author 1 and Author 2, op. cit., n. 27.

<sup>55</sup> J. P. Gee, *An Introduction to Discourse Analysis: Theory and Method* (2014).

juxtaposition of the two cases foregrounds how immigrant clients can exert agency and interact with their own vulnerability in very diverse ways.

## 4 DATA ANALYSIS

This section focuses on two cases to shed light on how individual agency and structural vulnerability are interactionally enacted and constructed in our corpus. In our analysis, we pay special attention to the opening sequences of the consultations because, following Gellhorn, we believe that clients reveal critical self-information in this early phase.<sup>56</sup>

### 4.1 Case 1

Excerpt 1 is taken from a consultation between a female lawyer and a female AIP from Guinea. Following Firth's definition,<sup>57</sup> we consider this a lingua franca consultation, where French has been selected as the contact language. In the opening sequence, the lawyer asks about the client's first interview at the Immigration Office, the government institution responsible for asylum registrations in Belgium. The client explains that the Immigration Office classified her case as falling under the Dublin III Regulation,<sup>58</sup> as she had spent a few days in Spain before coming to Belgium. In Excerpt 1a,<sup>59</sup> the lawyer is trying to elicit more

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<sup>56</sup> G. Gellhorn, 'Law and Language: An Empirically-Based Model for the Opening Moments of Client Interviews' (1998) 4 *Clinical Law Rev.* 32. Note that though crucial identity work takes place in the opening sections (which makes them highly appropriate for the focus on negotiating identity), this is not necessarily the phase of a legal advice meeting where most client agency will be apparent, according to other studies: J. Reynolds, 'Stability and Hybridity in Refugee Legal Advice Meetings: Discursive Structure as a Resource for Lawyer-Client Intercultural Communication' (2020) 15 *J. of Applied Linguistics and Professional Practice* 91.

<sup>57</sup> A. Firth, 'The Discursive Accomplishment of Normality: On "Lingua Franca" English and Conversation Analysis' (1996) 26 *J. of Pragmatics* 237.

<sup>58</sup> According to the Dublin III Regulation, applicants for international protection have to complete their asylum procedure in the first European country in which they set foot (in this case, Spain).

<sup>59</sup> Transcription key: (.) short pause; (...) long pause; *text in italics* English back translation of the original French interaction; = latching, overlaps; xxx inaudible; (?) rising intonation.

details about the client's time in Spain. This quest for information requires collaborative efforts between the lawyer and the client to promote mutual understanding.

*Excerpt 1a*

01 L: Et vous avez (...) ces jours vous avez résidez où (?) C'était dans un (?)  
*And you were (...) those days where were you staying (?) You were in a  
(?)*

02 C: Dans un xxx c'était la police même qui nous a logé dans un grand terrain  
de basket où on place des picots cela on=  
*In a xxx it was the police themselves who housed us in a big basketball  
court where they had put rollaways and there we=*

03 L: C'était des tentes ou des (?)  
*These were tents or (?)*

04 C: Des picots=  
*Rollaways=*

05 L: Ah des lits (?)  
*Oh beds (?)*

06 C: Des petits lits là (.)  
*Small beds there (.)*

07 L: OK je comprends (.)  
*OK I understand (.)*

08 C: Tu comprends (?)  
*Do you understand (?)*

09 L: Oui je comprends (.)



*Yes I understand (.)*

10 C: Mais pas=

*But no=*

11 L: Il y avait un toit (?)

*Was there a roof (?)*

12 C: Il y avait un toit bien sûr il y avait un toit (.) Mais y a le terrain y a le panier de basket de volley dans ça y avait pas de place ailleurs (.)

*There was a roof of course there was a roof (.) But there on the court there was a basketball ring and one for volley there was no place elsewhere (.)*

13 L: C'était comme une salle pour faire du sport (?)

*It was like a sports hall (?)*

14 C: Oui c'était une salle de sport ailleurs (.)

*Yes it was actually a sports hall (.)*

When the lawyer asks about the client's living conditions in Spain, the client describes how she stayed in a sports hall, equipped with rollaway camp beds (in French, <lits> picots). The lawyer's request for clarification in Turn 03 makes clear that she is uncertain about the specific meaning of the word 'picots'.<sup>60</sup> By repeating the word in Turn 04, the client implicitly rejects the lawyer's suggestion about tents. The lawyer figures out that the client is talking about a type of bed and checks this new interpretation of 'picots' in Turn 05, which the client confirms in Turn 06. Though the lawyer expresses her understanding in Turn 07, the client is still not convinced and double-checks that the lawyer has understood in Turn 08. This interactional move goes against the expected pattern of the lawyer – the participant who owns

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<sup>60</sup> Goffman, op. cit., n. 19.

the frame and possesses (epistemic) authority– determining the conversational agenda. The client exerts interactional agency by taking the floor in an attempt to ensure understanding and guarantee that they both agree on a working definition of the term ‘picot’ specifically and the shelter’s conditions in general.<sup>61</sup> Though the lawyer responds affirmatively to the client’s question in Turn 08, she asks for additional information on how to interpret ‘picot’ in Turn 11, which may confirm the client’s sense that mutual understanding has not yet been reached. Eventually, it is not until Turn 14 that the repair sequence comes to an end. One could argue that there is still a degree of interpretative uncertainty (what a rollaway bed is, for example, is unresolved) but the ‘residual ambiguity’ is tolerated by the interactants. This resembles the findings of Baynham and colleagues, who noticed that lawyers in legal consultations sometimes abide by a ‘let it pass’ rule, whereby a certain degree of non-understanding is endured to enable the consultation to proceed smoothly.<sup>62</sup>

The fact that the client does not settle for the level of understanding that is reached in Turn 07 can be considered a strategic move, because details play an important role in the asylum procedure, as inconsistencies and inaccuracies can potentially undermine an applicant’s credibility.<sup>63</sup> As the lawyer is trying to gather arguments that demonstrate why the client should not be sent back to Spain, a detailed description of the circumstances in the asylum shelter might indeed benefit the client’s case. Though it is hard to gauge the client’s actual awareness of this institutional expectation, it is clear from the interaction that her intervention is beneficial to her case. Moreover, the way in which the client negotiates meaning, rather than simply satisfying the lawyer’s question, reveals a certain level of agency on the part of the client that moves beyond the interactional level. The client envisions the

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<sup>61</sup> Id.

<sup>62</sup> Id.; Baynham et al., op. cit., n. 37; Firth, op. cit., n. 57.

<sup>63</sup> C. Bohmer and A. Shuman, *Rejecting Refugees: Political Asylum in the 21st Century* (2007); Author 2 (2006). For a complementary example of how clients’ procedural knowledge about the importance of exactitude can influence their interactional behaviour, see Trinch (2005).

necessity of reaching mutual understanding (in the short run) and being granted international protection in Belgium (in the long run) as a shared responsibility, an attitude that demonstrates involvement and autonomy. Research has shown that such client engagement, in which clients are involved and heard within the context of their own case, is not only beneficial to the outcomes of the procedure but also helps clients to maintain confidence in the justice system.<sup>64</sup>

Excerpt 1b continues after the client and the lawyer have settled on an understanding of the shelter's conditions, as the lawyer starts to explore why applying for asylum in Spain is not a reasonable option for the client. The lawyer starts with an open question, which is characteristic of the opening stage of first-time consultations, to gather the information that constitutes the building blocks of the case.

*Excerpt 1b*

15 L: Oui OK et euhm est-ce qu'il y a des raisons particulières pourquoi vous ne voulez pas retourner en Espagne (?)

*Yes OK and erm are there any specific reasons why you do not want to return to Spain (?)*

16 C: Je suis venue là-bas avec la police d'abord le fait est qu'ils étaient pas accueillant vraiment parce que (.) Mais si par exemple mais quand on écrit ton nom (.) Tu vois que c'est pas ton nom ils te répondent même pas (.) Ils ont pas de considération pour la personne et puis la langue est trop compliquée pour moi aussi (.) On se comprenait pas dans la langue et puis réellement moi c'est la Belgique que j'avais voulu venir parce que

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<sup>64</sup> Masson, op. cit., n. 37.

c'est là qu'on m'a dit qu'on peut m'aider avec mon enfant sans problème  
(.)

*I came there with the police first the fact is that they weren't really  
welcoming because (.) But if for example but when they write your name  
(.) You see that it's not your name they don't even answer you (.) They  
have no regard for the individual and then the language is too  
complicated for me too (.) We did not understand each other in the  
language and for me truly it was Belgium that I wanted to come to  
because that is where I was told that they can help me with my child  
without any problem (.)*

17 L: Et qu'est-ce que vous voulez dire avec ça (?)

*And what do you mean by that (?)*

18 C: Parce que j'ai fui de chez moi pour l'excision de mon enfant (.) Moi déjà  
je suis excisée (.) Donc je veux pas qu'elle subisse la même chose c'est  
pour ça que j'ai fui et donc en Belgique c'est formellement interdit donc  
j'ai décidé de venir ici (.)

*Because I fled my home for the excision of my child (.) I have already  
been excised myself (.) So I don't want her to suffer the same thing that's  
why I fled and so in Belgium it's formally forbidden so I decided to come  
here (.)*

The client sums up three arguments against returning to Spain. The first is of a general nature and presents Spain as a country that is hostile towards refugees, something that she substantiates with an anecdote about a police officer who did not respond to her request to correct her name on an official document. Throughout the dataset, there are multiple

occasions on which clients express their worries about spelling mistakes in their personal details. During the post-observation interviews, one lawyer argued that clients often feel strongly about this as they consider it a highly personal matter. The Guinean applicant's comment that the authorities 'have no regard for the individual' (Turn 16) supports this observation, while the statement also highlights that the institutional and structurally constrained character of the procedure can have a dehumanizing effect. The second argument refers to the difficulties posed by the language situation in Spain – a problem that the client would not encounter in Belgium, as French has an official status there. The third argument is formulated in a multi-layered way: the client explains that she had always envisioned Belgium (and not Spain) as her country of destination because Belgium can help her with her daughter. At this point, it is not clear whether the value of this argument lies in the fact that Belgium was the original plan or in the options for assistance in Belgium.

Consequently, the lawyer asks for additional clarification in Turn 17, by means of an open question that allows for client agency and that is followed by the client disclosing her main reason for fleeing Guinea (Turn 18). The client raises a topic that is personal and delicate – namely, the fact that her five-year-old daughter was at high risk of excision (which is a literal translation from the French word the client used, the medical literature often refers to this violent practice to as female genital mutilation (FGM)), something that the client herself has already suffered. It is notable how the client addresses this issue in a coherent and clear way; the fact that she uses specific terminology in her testimony about sexual violence, rather than using veiled references (a practice that was often observed within a study by Baillot and colleagues<sup>65</sup>), stands out as agentic and helps to progress the consultation. The client's matter-of-fact way of addressing her daughter's risk of excision could be explained by her having become accustomed to discussing the issue with institutional representatives. The

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<sup>65</sup> H. Baillot et al., 'Seen but Not Heard? Parallels and Dissonances in the Treatment of Rape Narratives across the Asylum and Criminal Justice Contexts' (2009) 36 *J. of Law and Society* 195.

fact that the lawyer is of the same sex as the client, which can be considered a beneficial factor with regards to the elicitation of gender-sensitive topics, might also play a role in this respect. The way in which the client links her motivations for departing Spain with her choice of Belgium as a destination, in turn, speaks to her macro-perspective; in zooming out and looking at the ‘bigger picture’ instead of merely focusing on the act of fleeing, she envisioned Belgium as a safe haven because the country prohibits FGM by law.

All three arguments relate to issues that can be considered ‘lifeworld concerns’. The hostile environment, the language barrier, and the initial plan are urgent matters for the client, but they are not (immediately) legally persuasive, as they do not constitute adequate reasons for overruling the Dublin III Regulation. The fact that Belgium prohibits FGM practices does not hold up as an institutionally valid reason either, as Spain also prohibits FGM, as do all European countries by extension. Consequently, the lawyer does not pursue the talking points raised by the client – an example of how institutional dynamics can constrain the local interaction and silence the voice of lifeworld. Nevertheless, the opening stage of this consultation reveals a lawyer who does create interactional space for the client to bring relevant information and concerns into the discussion. This is a structural characteristic of legal consultations, which is necessary for achieving mutual understanding of the client’s practical situation, legal position, and options for action.<sup>66</sup> In this way, the lawyer promotes opportunities for client engagement and agency, though not every subject raised in the interaction is ultimately pursued.

On the other hand, the excerpt also reveals an informed client who makes deliberate decisions. This type of agency is not simply of an interactional nature, though it does reveal itself in the form of communication. Emirbayer and Mische’s seminal work describes how agency can be defined in relation to the past, the present, and the future.<sup>67</sup> Applying this

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<sup>66</sup> Reynolds , op. cit., n. 56.

<sup>67</sup> Emirbayer and Mische, op. cit., n. 10.

theory to Excerpt 1b, it becomes evident, first, that the client exerts agency over the past in the sense that she is able to disclose and interpret what happened. Her capacity to explain her motivation for fleeing cannot be taken for granted, especially because her testimony involves a delicate, gender-based issue. Research has shown that it is exceptionally difficult for AIPs to discursively articulate what motivated their flight, for psychological, structural, and cognitive reasons.<sup>68</sup> The way in which the client is able to verbally express her own needs testifies to her level of self-awareness and to her ability to consider her complex situation in abstract rather than emotional terms.<sup>69</sup> Second, the client's agency with regards to the future is apparent in the way in which she expresses her concrete plans and aspirations to stay in Belgium, where her child will be safe and receive care. One could argue that the client has established a certain degree of event perspective for herself, by which she can envision the goals of the local event, yet also grasp how the institutional event is related to larger speech events and the bigger picture of gaining residency in Belgium.<sup>70</sup> This enables her to act deliberately, informed by the past and aspiring towards a better future. Third, the client's ability to act in the present is demonstrated by the way in which she actively participates within the consultation format. The fact that she is convinced to fight the Dublin III Regulation and be recognized as an exception to the established rule also speaks to her non-passivity. This agency, as conceptualized by Emirbayer and Mische, constitutes a form of autonomy that transcends the boundaries of the interactional frame and that we can therefore characterize as 'translocal'.<sup>71</sup> Institutional literacy, procedural knowledge, and self-awareness empower the client to exert agency and have her voice heard. Within the local context of the

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<sup>68</sup> J. Cohen, 'Questions of Credibility: Omissions, Discrepancies and Errors of Recall in the Testimony of Asylum Seekers' (2001) 13 *International J. of Refugee Law* 293; Tipton, op. cit., n. 11.

<sup>69</sup> Fedasil, op. cit., n. 3.

<sup>70</sup> Author 2 (2013); Trinch, op. cit., n. 37.

<sup>71</sup> Emirbayer and Mische, op. cit., n. 10.

legal consultation, the client, despite her particularly vulnerable case, is able to draw on resources and to manifest a degree of resilience.<sup>72</sup>

In Excerpt 2, the lawyer elicits health-related information, which she will eventually use when submitting the case to the Immigration Office. Following the jurisprudence of the European Court of Human rights (ECtHR), the vulnerability of applicants must be assessed, as its establishment can potentially halt a Dublin Transfer. Though this strategy is anything but infallible, it makes sense to substantiate the client's vulnerability and to pursue a health-based argument, as this approach is probably more successful than the arguments discussed in Excerpt 1b. Note that the lawyer revisits the possibility of a health-based argument at different moments in the consultation. To shed light on this recurring topic, some parts of the transcript have been removed. We will refer to the first part as Excerpt 2a, to the second as Excerpt 2b, and to the third as Excerpt 2c.

#### *Excerpt 2a*

01 L: Et est-ce que un de vous deux vous ou votre fille vous avez des problèmes médicaux (?)

*And does one of you two, you or your daughter do you have medical problems (?)*

02 C: Non pas grave pas si grave hein des petits problèmes qu'ai j'avais quand je suis venue ici (.) Vraiment ils se sont bien occupé de moi ce que je déclare on avait été à l'hôpital.

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<sup>72</sup> Mustaniemi-Laakso et al., op. cit., n. 5.



*No nothing serious nothing really serious some small problems but since I've come here (.) Really they've treated me well I've declared this we have been to the hospital.*

03 L: Et vous aviez quoi comme (?)

*And what did you have?*

04 C: J'avais dans mes yeux des larmes coulaient et puis je voyais pas assez de sang (.) Plus j'ai des maux de ventre au moment présent mais ça c'est modéré (.) Ça fait toujours mal depuis que je suis toute petite mais maintenant toujours mal (.) Oui mais je n'ai même pas eu de produit pour ça d'abord et en plus j'avais mes dents là elles me faisaient mal ils ont traité ça aussi (.) Ma hanche elle me fait aussi trop mal amie elle me donne des médicaments (.) Mais avec la pommade que je mets ça se calme (.)

*I had tears running in my eyes and after a while I couldn't see anymore because of the blood (.) I also have stomach aches right at this moment but it's moderate(.) It has always hurt ever since I was very little but now it hurts constantly (.) Yes but I did not even have a medicine for that before and also I had a problem with my teeth they were hurting they have treated this as well (.) My hip also hurts so much my friend she gives me medicines (.) When I apply the ointment it does calm down (.)*

#### *Excerpt 2b*

05 L: Et comment ça va pour vous psychologiquement (?)

*And how are you doing psychologically (?)*

06 C: 'Ça va à part des petits problèmes au Maroc (.) Quand je suis arrivée ici beaucoup ça s'est amélioré (.) Oui je me sens bien comme ça je me sens très bien vraiment maintenant je dors bien je ne faisais que penser je ne pouvais même pas dormir et quand j' ai fermé l'oeil xxx je faisais des cauchemars (.)

*It's OK apart from some little problems in Morocco (.) When I arrived here it has improved a lot (.) Yes I feel great that way I feel really great now I sleep well I was just thinking about how I couldn't even sleep and when I did close my eyes xxx I was having nightmares (.)*

07 L: Et ça c'était à cause de fait que vous avez dû fuir et vous avez protégé votre fille et (?)

*And that was all due to the fact that you had to flee and you have protected your daughter and (?)*

08 C: Oui depuis que je suis au pays d'abord les souffrances que j'avais là-bas ça me fatigue beaucoup et quand je suis au Maroc aussi parce que je suis resté là-bas pendant neuf mois (.) Donc je souffrais là-bas beaucoup j'ai souffert très mal donc les problèmes qui m'empêchaient là-bas de dormir (.) Quand je ferme un oeil je fais des cauchemars que je ne sais même pas distinguer (.)

*Yes since I am in the country at first the sufferings I had experienced there exhaust me a lot and when I am in Morocco as well because I stayed there for nine months (.) So I was suffering there a lot I suffered very badly so the problems' that kept me from sleeping there (.) When I close my eyes I have nightmares that I can't even distinguish (.)*

*Excerpt 2c*

- 09 L: Je vais contacter l'office d'étrangers je vais expliquer pourquoi vous voulez pas retourner en Espagne et je vais expliquer surtout que vous avez une fille et que c'est dans son intérêt que vous pouvez rester ici (.) Que vous avez déjà vécu beaucoup et qu'il faut que vous avez la tranquillité maintenant et que ça peut seulement faire en Belgique (.) Je vais aussi expliquer que vous avez un profil vulnérable parce que vous êtes une femme seule avec une enfant qui a vécu des traumatismes (.)  
*I will contact the immigration office I will explain why you do not want to return to Spain I will explain above all that you have a daughter and that it is in her interest that you can stay here (.) That you have already survived a lot and that you have to have peace now and that this can only happen in Belgium (.) I will also explain that you have a vulnerable profile because you are a single woman with a child who has survived traumas (.)*
- 10 C: Oui (.) Puis j'ai laissé un petit garçon qui n'avait même pas deux ans (.) Oui il a pu savait marcher à peine je l'ai laissé là-bas (.) C'est parce que ça chauffait on ne sait pas laisser une enfant comme ça (.)  
*Yes (.) Then I have left a little boy who was not even two years old (.) Yes he barely knew how to walk I left him there (.) It's because it was getting dangerous one is not able to leave a child like that (.)*
- 11 L: Non ça je comprends très bien=  
*No I understand that completely=*
- 12 C: Çam'inquiète beaucoup cet enfant c'est tout (.)

*That worries me greatly that child that's all (.)*

13 L: Oui ça je comprends=

*Yes I understand that=*

14 C: Mais si je ne le faisais pas ça aussi ma fille là elle serait excisée sans problème (.)

*But if I hadn't done that too my daughter she would have been excised there without a doubt (.)*

Turn 01 indicates a topic shift towards the theme of health, upon which the client emphasizes that she has no serious issues (only 'small problems') and that Belgium has taken good care of her. When summing up her health-related problems (Turn 04), she again highlights the positive role that Belgium has played in resolving them.

Between Excerpts 2a and 2b, the lawyer and the client discuss what evidence there is to prove her health-related problems. The lawyer inquires about material evidence such as medical records and doctor appointments, as the asylum procedure values written, official documents over spoken testimonies.<sup>73</sup> From Turn 05 until Turn 08, the client continues with a description of her psychological issues. As in Excerpt 2a, her complaints sound serious, but she downplays her current situation by emphasizing how much better she feels now that she is in Belgium (Turn 06). It seems as if she is trying to 'fulfil the image of a good client' by being cooperative and positive despite her traumatic past experiences.<sup>74</sup> One could argue that downplaying physical problems is passive rather than assertive behaviour, yet it also seems fair to perceive the client's tendency to play the 'good client' as a highly strategic – and therefore agentic – move. The way in which she juxtaposes the sentiment expressed in Turn 06 (the relief found in the Belgian system) with her experiences in Spain/Morocco (Turn 08)

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<sup>73</sup> For a more extensive discussion, see Author 2, op. cit., n. 63; Author 1 and Author 2, op. cit., n. 27.

<sup>74</sup> N. Doornbos, *On Being Heard in Asylum Cases: Evidentiary Assessment through Asylum Interviews* (2005).

is striking and functions as a rhetorical argument in favour of rejecting a possible Dublin Transfer. This communicative move speaks to her understanding of the interactional goal of the encounter and highlights that she is a cooperative interactant who is actively involved in managing her own case.

The lawyer, who was previously unaware of the fact that the client had stayed in Morocco, pursues this topic for a couple of turns before Excerpt 2c starts. As the Dublin III Regulation, which focuses on the first European country in which asylum seekers set foot, is not relevant with regards to Morocco (a non-European country where the client did not apply for asylum), the consultation soon refocuses on the topic of the client's experiences in Spain. At the beginning of Excerpt 2, the lawyer initiates client agency by asking open questions (Turns 01, 03, and 05) and by limiting her own talking time.<sup>75</sup> This dynamic changes in Turn 09, where the lawyer seems to have reached a point of saturation – probably the moment when she understands what the building blocks of the case are – and goes on to explain the next legal steps to the client. This practice of informing rather than consulting the client exposes the epistemic inequality between the lawyer and the client. The fact that Turn 09 is framed as a statement rather than as a question reveals a certain hierarchy. It is also interesting to see how Turn 09 discursively transforms the client's lifeworld concerns into a 'legally valid' case. It reflects a narrative reorientation, in which the client's story is reconfigured to cater to the interests of the authorities.<sup>76</sup> Some of the client's words are directly incorporated in the lawyer's reformulation, such as the client's focus on getting rest. Other elements are the lawyer's interpretation of the client's situation, reflected in her discourse of vulnerability (Turn 09: 'survived a lot', '*vulnerable profile*', '*a single woman with a child*', and 'survived traumas') This stance reflects the focus of the ECtHR jurisprudence on vulnerability as a

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<sup>75</sup> This observation is in line with Reynolds' finding that lawyers – at the beginning of a legal consultation – tend to create interactional space for clients to introduce relevant information about the building blocks of their case: Reynolds, op. cit., n. 56.

<sup>76</sup> Author 2, op. cit., n. 63; Author 1 and Author 2, op. cit., n. 27.

reason to overturn the Dublin procedure and echoes the way in which government agencies categorize some members of the AIP population, including single parents with young children, as ‘particularly vulnerable’.<sup>77</sup>

The way in which the lawyer’s discourse frames the client as a vulnerable victim transforms the client into a witness to the creation of her own identity. Scott Ford refers to this practice of highlighting the client’s fragility as ‘playing the violin’ of vulnerability and explains that it is necessary to downplay any sign of client agency (which Scott Ford describes as resourcefulness) to overturn the Dublin procedure.<sup>78</sup> This reading, which turns the lawyer–client relationship into one of covert asymmetry and maybe even power struggle is, however, at odds with the tone of Turn 09 in the later conversation.

Turn 09 can be seen as the point at which the lawyer’s motives for asking health-related questions are demystified, as it is only now that the client starts to realize what kind of information can be beneficial to her case.<sup>79</sup> This revelation allows her to provide the lawyer with an extra element that supports the vulnerability argument: she has left a son behind in Guinea, and though she feels incredibly worried about this, it was the only way to protect her daughter (Turns 10–14). The fact that the client volunteers extra ‘proof of vulnerability’ seems to confirm that the lawyer–client relationship is experienced as cooperative rather than combative. This interpretation, which characterizes the interaction as facilitating rather than asymmetric or authoritarian, is also supported by the backchannelling behaviour of the lawyer, in which she actively shows empathy while a tragic event is being recounted.<sup>80</sup> In this

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<sup>77</sup> Fedasil, *op. cit.*, n. 4.

<sup>78</sup> S. Scott Ford, personal communication (2020).

<sup>79</sup> Bogoch, *op. cit.*, n. 14.

<sup>80</sup> When discussing this case in an informal post-consultation interview, the lawyer, who was pregnant at the time, disclosed that she always felt more involved when encountering cases featuring mothers of young children. This is tangible in Turns 11 and 13, which are expressed in a caring, empathic, and worried intonation. This vignette again serves as an example of how the ‘neutral stance’ (see Section 3) that is often attributed to lawyers cannot be maintained in practice. For a more extensive account of how asylum seekers’ testimonies often provoke emotional responses in the legal practitioners to whom the story is told, see Baillot et al., *op. cit.*, n. 35. See also Baynham et al., *op. cit.*, n. 37.

light, it is interesting to observe how the client demonstrates agency in claiming her own victim status. As she actively provides evidence for her own vulnerability, she deliberately and strategically co-constructs her own case. What seems to be paradoxical, however, is that the strategy of actively playing into the stereotype of passive victimhood – by providing the information needed to create an ‘essentialized victim narrative’ – is often rewarded within the asylum procedure.<sup>81</sup> We further explore this tendency in the discussion section.

## 4.2 Case 2

The second case that we discuss in terms of agency, vulnerability, and lawyer–client dynamics is a consultation between a male PhD student and his female lawyer. The purpose of the consultation is to find a way for him to continue living in Belgium now that his PhD scholarship has almost ended. The client is of Palestinian origin but used to live in Iran before he entered Europe, so he has Iranian nationality. The consultation takes place in English, which is neither the lawyer’s nor the client’s first language. Both are, however, reasonably proficient in the language. Excerpt 3 represents the opening sequence of the legal consultation. Note that the names of specific locations have been omitted to protect anonymity.

### *Excerpt 3*

01 L: What can I do for you sir (?)

02 C: Yeah erm OK erm I tried to test what I can do here all possibilities (.)  
I’ve exhausted all the ways but unfortunately I reached to a point that

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<sup>81</sup> L. Smith-Khan, ‘Negotiating Narratives, Accessing Asylum: Evaluating Language Policy as Multi-Level Practice, Beliefs and Management’ (2017) 31 *Multilingua* 31.

there is not enough opportunity for the students to stay here to continue  
the work they've decided to live in Europe=

- 03 L: May I ask you first what is your nationality?
- 04 C: My nationality Iranian I am Iranian (.)
- 05 L: And you have been staying in Belgium for how long now?
- 06 C: Only for two years the in a erm <name of city> in <name of country> and  
then I came here to start my PhD here and now it is the fourth year I've  
been here
- 07 L: In Belgium?
- 08 C: In Belgium in <name of city>
- 09 L: OK and you have a staying permit in Belgium on the basis of the  
studies?
- 10 C: Yeah I have permission for that I'm Palestinian.
- 11 L: Ah OK
- 12 C: Everything I've done is legal=
- 13 L: Ah OK and the staying permit that you have now is valid until?
- 14 C: Until still I have this one

In Turn 01, the lawyer formulates an open-ended question that prompts the client to take the floor and exert agency. The question invites the client to think about his motivation behind seeking assistance and to identify his goals.<sup>82</sup> It also gives the client the opportunity to negotiate which role the lawyer should take on within the consultation process.<sup>83</sup> This question, however, elicits an unexpected answer from the client, who starts legitimizing his turn to legal counsel by arguing that he has exhausted 'all possibilities'. His use of

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<sup>82</sup> Suzuki, *op. cit.*, n. 33; Cochran et al., *op. cit.*, n. 36.

<sup>83</sup> Hurder, *op. cit.*, n. 22.



‘unfortunately’ in this context suggests that he would have preferred to have solved the problem himself. One could consider this sentence a face-saving strategy, based on the idea that asking for help from a lawyer (or asking for help in general) often constitutes a face-threatening act.<sup>84</sup> The client’s use of ‘all possibilities’ and ‘I’ve exhausted all the ways’ emphasizes that he intended to pursue other options but was forced to turn to legal service provision as a last resort. The lawyer’s interruption in Turn 03, however, undermines the client’s agency by suppressing his ‘attempt to direct the flow of information’.<sup>85</sup> In cutting the client’s explanation short, the lawyer (re-)establishes the conventional hierarchy of the consultation, a routine obvious to practitioners who conduct legal consultations on a daily basis, but not to clients who merely ‘visit’ the frame. In her quest for the relevant facts, the lawyer displays her ability to control the consultation by determining which topics are appropriate for discussion at what time. She makes it clear that, at this stage in the consultation, she first needs to establish some factual information. Though Turn 03 can be considered a display of power, it should be noted that the lawyer uses cooperative politeness strategies and maintains a discourse of facilitation.<sup>86</sup> Accordingly, the interruption does not seem to interfere with the rapport building that is taking place at this initial stage of lawyer–client contact.

From Turn 03 to Turn 14, the consultation takes the shape of an interrogation; the lawyer asks for specific items of factual information and the client supplies them. This new line of questioning reveals how the lawyer’s willingness to open up the conversation in Turn 01 was a ‘temporary phenomenon’, as her professional control over the course of the consultation is almost immediately re-established.<sup>87</sup> The lawyer’s behaviour leaves the client

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<sup>84</sup> E. Goffman, *The Presentation of Self in Everyday Life* (1959); P. Brown and S. Levinson, *Politeness: Some Universals in Language Use* (1987).

<sup>85</sup> C. Hosticka, ‘We Don’t Care about What Happened, We Only Care about What Is Going to Happen: Lawyer–Client Negotiations of Reality’ (1978) 26 *Social Problems* 599, at 604.

<sup>86</sup> Dieckmann and Rojas-Lizana, *op. cit.*, n. 37.

<sup>87</sup> Hosticka, *op. cit.*, n. 85, p. 604.

with limited control over the conversational direction. In Turn 12, however, the client succeeds in putting a lifeworld concern on the interactional agenda, as he inserts a quick comment about his own good morals. This self-justifying behaviour (about how he did nothing illegal), which can be considered a demonstration of agency, shows how the lawyer and the client seem to be pursuing different objectives;<sup>88</sup> whereas the lawyer is gathering the building blocks of the case, the client is still (as was the case in Turn 02) trying to legitimize his turn to legal assistance and his pursuit of a residence permit in Belgium. The fact that the client denies something of which the lawyer has not accused him demonstrates the client's preoccupation with his public image – in other words, the way in which others perceive him.<sup>89</sup>

In taking an all-encompassing view on the concept of agency, this article does not consider a positive uptake as a 'necessary condition for the existence of agency'.<sup>90</sup> As was established earlier, the agency of migrants is often discounted. Therefore, it seems legitimate to call displays of agency 'valid', whether the subject succeeded in their purpose or not.<sup>91</sup> It is according to this same strategy that we also consider worthy of analysis micro-demonstrations of agency that are initiated or enabled by the lawyer, in the context of Case 1 as well as Case 2.

Excerpt 4 occurs almost immediately after Excerpt 3.

#### *Excerpt 4*

01 L: (...) and your question is how will I be able to stay after?

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<sup>88</sup> Author 1 and Author 2, op. cit., n. 27.

<sup>89</sup> Goffman, op. cit., n. 84.

<sup>90</sup> Mainwaring, op. cit., n. 5, p. 295.

<sup>91</sup> Id.; Orgocka, op. cit., n. 1; M. Erdal and C. Oeppen, 'Forced to Leave? The Discursive and Analytical Significance of Describing Migration as Forced and Voluntary' (2018) 44 *J. of Ethnic and Migration Studies* 981.

02 C: Yes because that one of my friends told me that you can lose xxx (.) In this case uh because I don't want to be a refugee in general this is this for me it's the red line

03 L: Hmm

04 C: I have got a good track in my country I am a researcher in my country I have book I'm well-known in my country so (.) I was working as an activist meanwhile but I didn't want to be a refugee so during the previous the previous presidency xxx (.) I was in the opposition side so we had some difficulties (.) I had some cases in the with the cautionary meeting with the security system

05 L: Hmm

06 C: But I didn't want to live in my country based on refugees case so=

07 L: Hmm=

08 C: So I tried to find a legal excuse so I applied=

09 L: Yeah=

10 C: For the university in the <name of country> xxx (.) I've got my first Mastery there and erm well one my professor invited me for doing PhD based on my thesis topic (.) They were interested to work on <specific scientific topic>

Now that the lawyer has gathered the 'building blocks of the case'<sup>92</sup> by means of closed questions, she formulates a hypothesis about why the client is seeking legal assistance (Turn 01). In checking whether she has arrived at the right conclusion, the lawyer embodies the perspective of her client and animates his voice in such a way that the "I" pronoun refers to

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<sup>92</sup> Barkai and Fine, op. cit., n. 34.

the client rather than to the lawyer herself.<sup>93</sup> By putting herself in the client's position and by anticipating his needs in direct speech, the lawyer verifies mutual understanding<sup>94</sup> and displays empathy.<sup>95</sup> Note how this dynamic is different to what happens in Case 1 (Excerpt 2c, Turn 09). While in Case 2 the lawyer's phrasing in Turn 01 remains open to objection – her rising intonation as well as the pause behind her statement invite the client to confirm or renegotiate the formulated goals – in Case 1 the lawyer constructed the client's narrative while informing her of the next strategic step. 'This comparison suggests that the interaction in Case 1 has' a more asymmetrical power dynamic.

In Turn 02 of Excerpt 4, the client acknowledges that the lawyer has correctly identified his goals and wishes.<sup>96</sup> He then responds to the lawyer's invitation to exert agency by taking the floor to bring up two lifeworld concerns. The way in which he does this is informed by the past but also oriented towards the future in the sense that he demonstrates his 'projective capacity to imagine alternative possibilities'.<sup>97</sup> First, he refers to advice that he received from a friend. Following Mainwaring,<sup>98</sup> we consider drawing upon a social network to deal with the challenges posed by the asylum procedure, to be an act of agency. Second, the client sets his boundaries by arguing that he does not want to apply for asylum.<sup>99</sup> In saying this, he clearly demonstrates that he has carefully gathered information and considered his legal options before consulting a lawyer. The way in which he indicates that he does not want to be recognized as a refugee ('for me it's the red line'), exemplifies his 'projective'

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<sup>93</sup> Goffman, op. cit., n. 19.

<sup>94</sup> Zwier and Hamric, op. cit., n. 28.

<sup>95</sup> J. Ford et al., 'What Do Displays of Empathy Do in Palliative Care Consultations?' (2019) 21 *Discourse Studies* 22; Maley et al., op. cit., n. 37.

<sup>96</sup> Suzuki, op. cit., n. 33.

<sup>97</sup> Emirbayer and Mische, op. cit., n. 10.

<sup>98</sup> Mainwaring, op. cit., n. 5.

<sup>99</sup> One could ask whether it is epistemologically fair to treat his demonstrations of agency as an example of how asylum seekers resist structural constraints, given the fact that he neither identifies with the label nor is in the process of applying for international protection. We acknowledge this tension, but do consider the client's interactions relevant to the points made in this article because his acts of resistance can only be captured and analysed through positioning his case within the broader discourses and categories of asylum (management).

competence. The client is resistant to the idea of receiving the refugee label – one that he seems to associate with negative connotations and perceptions of asylum seekers as vulnerable victims without agency (see Section 1)<sup>100</sup>. Furthermore, later on in the consultation, the client refuses to apply for refugee status, saying such things as ‘I don’t want to be a refugee’ and ‘I don’t want to damage my face’. Moreover, rather than being defined by what he does *not* have (a safe home country, freedom of speech in Iran, a residence permit), the client would like to be recognized for the things that he has accomplished (Turn 04). This sentiment also returns later in the consultation when he says:

I got working, I got certificate, I went to class, I can talk a little bit of Netherlands, I’m a classical singer, I can perform Schubert and Schumann on stage and you know I can play you know classic *sonnet* with piano. These are not anything, any no, any point for to stay safe, to live here?

This pattern reveals how the client does not want to be characterized by his vulnerability or helplessness but by his resilience and agency, despite the constraining social circumstances. He does not want his vulnerability to take on a ‘master status’ and to overshadow his talents, knowledge, and abilities.<sup>101</sup> His agency lies exactly in this act of resisting marginalization.<sup>102</sup>

Later in Excerpt 4, the client describes how he was looking for a ‘legal excuse’ to safely come to Europe without having to apply for asylum, which he found under the ‘pretext’ of a PhD. When micro-analysing the phrase ‘legal excuse’, one could argue that the client displays a form of ‘entrepreneurial agency’.<sup>103</sup> In trying to find a legally valid reason to come to Europe, the client can be said to have explored the margins of the institutional system.

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<sup>100</sup> Peroni and Timmer, *op. cit.*, n. 6; Fedasil, *op. cit.*, n.4.

<sup>101</sup> Peroni and Timmer, *id.*

<sup>102</sup> Mainwaring, *op. cit.*, n. 5.

<sup>103</sup> Erdal and Oeppen, *op. cit.*, n. 91.

Nothing he did was irregular or subversive to the state and its laws. His refusal of the systemically imposed passivity as well as his dedication to finding a way out can be considered an ‘everyday resistance to the systems of exclusion that operate at global border spaces’.<sup>104</sup> The way in which he talks about his PhD topic and the interest of his supervisor reveals him to be a hyper-agentic client. This is in such sharp contrast with the common perception of asylum seekers as vulnerable victims that migration management regimes might classify it as ‘suspicious’.<sup>105</sup> As we show in the discussion section below, asylum authorities ‘reward’ essentialized victim narratives (as exemplified in Case 1) over agentic stories that picture the act of migration as a rational decision.<sup>106</sup>

## **5 DISCUSSION AND CONCLUDING THOUGHTS: EXPRESSIONS OF AGENCY UNDER THE INFLUENCE OF MIGRATION MANAGEMENT PRACTICES**

Most legal genres – including lawyer–client consultations – have been analysed as comprising speech events that are structurally defined by institutional expectations and limitations, which render clients discursively vulnerable and provide them with few opportunities to exert agency. Critical sociolinguistic analyses such as the one undertaken in this article, however, expose a more complex reality. The data analysis operationalizes the concept of agency to challenge polarized views of structure and agency in favour of a more dynamic-relational understanding of power differences. Though structural constraints are inevitably at play in the data that we analysed, the clients can be seen to exert agency within the context of legal consultations in the field of immigration law.

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<sup>104</sup> Johnson, *op. cit.*, n. 18, p. 1.

<sup>105</sup> Erdal and Oeppen, *op. cit.*, n. 91.

<sup>106</sup> Mainwaring, *op. cit.*, n. 5.

Based on the data, we can distinguish two closely interrelated dimensions of agency: affective-epistemic agency and interactional agency. The first dimension of agency resides in the clients' affective and epistemic resources. While the former comprise the clients' perspective on personal events and experiences, the latter include their institutional literacies and knowledge of the procedure. This form of agency is closely interrelated with the clients' event perspective.<sup>107</sup> There are moments in the data where the clients display an awareness of procedural technicalities, and they can also be seen to operate as active participants within the genre of the legal consultation, such as when they are occupied with the strategy and the design of their own case and exert agency in doing so. Second, agency has an important performance dimension to it, which is displayed at the interactional level. When agency is demonstrated in the form of introducing a new topic (and thus setting the interactional agenda), claiming the floor (by means of an interruption, a question, or a request for confirmation/clarification), or expressing lifeworld concerns, it can be considered an interactional achievement. Interactional attempts to be heard, if successful, might have an empowering effect. Both Cases 1 and 2 contained a multitude of such instances. The way in which the Guinean asylum seeker detects linguistic ambiguity and attempts to solve this issue is a powerful example. The Palestinian-Iranian migrant's ability to interject lifeworld concerns within the quite formalistic opening stage of the legal consultation also shows how agency plays out interactionally.

Our data analysis has revealed how the behaviour of the lawyer may influence opportunities for client agency; a more client-oriented stance offers clients more opportunity to talk and more space to express lifeworld concerns, resulting in greater client involvement. These findings align with established insights in sociolinguistic research on how power dynamics are interactionally managed in lawyer–client interaction. As the data analysis has

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<sup>107</sup> K. Maryns and J. Blommaert, 'Stylistic and Thematic Shifting as a Narrative Resource: Assessing Asylum Seekers' Repertoires' (2001) 20 *Multilingua* 64.

demonstrated, the lawyer–client dynamic is under constant (re)negotiation. The epistemic balance, however, is not always in favour of the lawyer; the fact that the client knows more about their life story puts them in a more agentic interactional position. At the same time, our analysis shows how the agentic moves and the empowerment of the client do not necessarily lead to the disempowerment of the legal professional.<sup>108</sup> In other words, the ethnographic, intersectional lens of our research endeavour enabled the unpacking of vulnerabilities and revealed a nuanced picture of agency as a contextually/relationally embedded and multi-layered process. In this light, agency and ‘vulnerability’ are considered dynamic phenomena, which relate to a continuum of experiences and which are interactionally constructed and resisted, but at the same time also indicative of macro-level processes of migration management.

This brings us to yet another dimension of agency as being reflective of (or sometimes even prompted by) the philosophy behind migration management. This dimension may have significant implications for social justice, as its existence undermines current frameworks of (inter)national migration management which hold onto a form of ‘categorical fetishism’ by attaching great value to the distinction between forced and voluntary migrants.<sup>109</sup> Though migration authorities try to take individual differences into account, most national systems are ‘overly reductive’ in their typification – a dynamic shaped by the fact that asylum procedures are ‘built around rapidity and administrative efficiency’.<sup>110</sup> How clients from both cases enter the consultation as (inherently) vulnerable and passive subjects can be framed within such institutional practices of migration categorization.<sup>111</sup> In this regard, one should be aware that

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<sup>108</sup> Declercq and Ayala, *op. cit.*, n. 39.

<sup>109</sup> H. Crawley and D. Skleparis, ‘Refugees, Migrants, Neither, Both: Categorical Fetishism and the Politics of Bounding in Europe’s “Migration Crisis”’ (2018) 44 *J. of Ethnic and Migration Studies* 48.

<sup>110</sup> J. Hambly and N. Gill, ‘Law and Speed: Asylum Appeals and the Techniques and Consequences of Legal Quickening’ (2020) 47 *J. of Law and Society* 3, at 23.

<sup>111</sup> Mainwaring, *op. cit.*, n. 5.



vulnerability and passivity are *ascribed to*<sup>112</sup> (rather than *inhabited by*) migrants in anticipation of these legal-administrative categories.<sup>113</sup> Within migration management, the category of forced migration is reserved for ‘true refugees’, those defined by an inability to act. In accordance with the Geneva convention and Protocols, AIPs are screened based on whether they have a well-founded fear of persecution as well as whether their own country can offer them protection. Focusing on the former criterion, the authorities make a distinction between, on the one hand, AIPs who were ‘forced’ to migrate because of this fear, and who are therefore considered to be ‘deserving’ of asylum, and, on the other hand, AIPs who ‘chose’ to flee their country and who are labelled ‘voluntary migrants’, whose asylum application is consequently rejected.<sup>114</sup> People migrating for family reasons or with economic or educational motives are often categorized into this second group.<sup>115</sup>

This institutional binary between forced and voluntary migrants shows how migration agencies reward applicants who perform the identity of a vulnerable victim, who did not exert agency when fleeing their country but were left with no other option. In the case of the Dublin III Regulation (which impacts Case 1), this tendency is even clearer, as the regulation is in place to limit the applicants’ freedom of choice over the country in which they apply for asylum. The legislation, which is often said to prevent ‘asylum shopping’, undermines the agency of clients to make deliberate decisions about their own future residence country. The reductive idea is that a ‘forcibly’ displaced person is ‘a passive victim who must accept what the state is willing to give’.<sup>116</sup> In this way, the categorization (just like the terminology) used by government agencies as well as in migration policy ultimately reinforces the stereotype of asylum seekers as sufferers without agency. This binarism also feeds the ideology that

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<sup>112</sup> J. Blommaert, ‘How Legitimate Is My Language?’ (2006) 18 *Target* 163.

<sup>113</sup> Erdal and Oeppen, *op. cit.*, n. 91.

<sup>114</sup> Mainwaring, *op. cit.*, n. 5.

<sup>115</sup> Erdal and Oeppen, *op. cit.*, n. 91.

<sup>116</sup> A. Innes, ‘In Search of Security: Migrant Agency, Narrative, and Performativity’ (2016) 21 *Geopolitics* 263, at 277.

resourceful migrants are suspicious and that agentic behaviour helps to define the identity of a voluntary migrant. So-called voluntary migrants are sometimes characterized as fortune seekers, ‘economic migrants’ (a term that has acquired a ‘pejorative connotation’<sup>117</sup>) or even ‘conmen’ or ‘bogus asylum seekers’.<sup>118</sup> With regards to Case 2, one might argue that the Palestinian-Iranian client is a forced migrant in that he needed to find a way to leave his country due to political difficulties. Until now, however, he has been in the position of being able to choose other options (such as a student visa) than claiming refugee status, due to his pre-existing social and cultural capital as an educated person and an academic researcher. His agency in resisting the refugee label is underpinned and enabled by other socio-economic/cultural dimensions of his life trajectory. In considering how this client’s experience fits into the wider arguments about structures of migration management, we run up against the artificiality of the distinction between forced and voluntary migration. It should be noted that as the disjuncture between policy categories and the lived experiences of people who fled their country has its foundations in supranational structures, it would be unfair to direct our criticism only at the level of national migration management; rather, concerns should be raised at the supranational level of policy about the way in which it conceptualizes and governs international humanitarian protection.<sup>119</sup>

The question of how a client’s agentic behaviour in the conduct of their legal case may impact their (lack of) agency at the structural level of the law is a valid one, but at the same time this issue is also a very difficult one to solve. In our data, we have observed how agency is negotiated at the interactional level and how lawyers and their clients openly discuss their strategies, to consider how this agency may play out at a more structural level. In Case 1, the client’s agentic move involves maximizing her chances of being granted asylum by

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<sup>117</sup> S. Chakrabarti, ‘Rights and Rhetoric: The Politics of Asylum and Human Rights Culture in the United Kingdom’ (2005) 32 *J. of Law and Society* 131, at 134.

<sup>118</sup> Erdal and Oeppen, op. cit., n. 91.

<sup>119</sup> Crawley and Skleparis, op. cit., n. 109.

highlighting what makes her a typical refugee. The client in Case 2, on the other hand, is more obviously agentic in the way in which he challenges the expected course of procedural action. The lawyer in Case 2 eventually agrees with the client's proposed strategy by submitting a request for naturalization on account of exceptional merit (his academic expertise). While the goal of both applicants is obviously the same (obtaining a residence permit), their agentic moves are very different, and so are their chances of success. These chances are much more favourable for the Guinean woman (who makes her account fit the category) than for the Palestinian-Iranian man. Nevertheless, while his subversive stance may well harm his individual case, his agency – by which he refuses to corroborate and legitimize migration management categories – might have the power to drive structural, agent-driven change, which we believe is very meaningful. In other words, presenting an essentialized refugee narrative might be rewarded within the asylum procedure – and the act of maximizing one's chances is definitely agentic – but the practice of bluntly rejecting stereotypes (when carried out on a larger scale) can be seen as being transformative with regards to the structurally limited categories that govern migration management.<sup>120</sup> Our observations demonstrate the enormous variation in approaches and strategies for anticipating structural categorization processes. At the same time, we are convinced that further research (and more data) is needed to evaluate the impact of this versatility at the structural level of the law.

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<sup>120</sup> Squire, *op. cit.*, n. 12; Johnson, *op. cit.*, n. 18.