

*Taina Cooke*

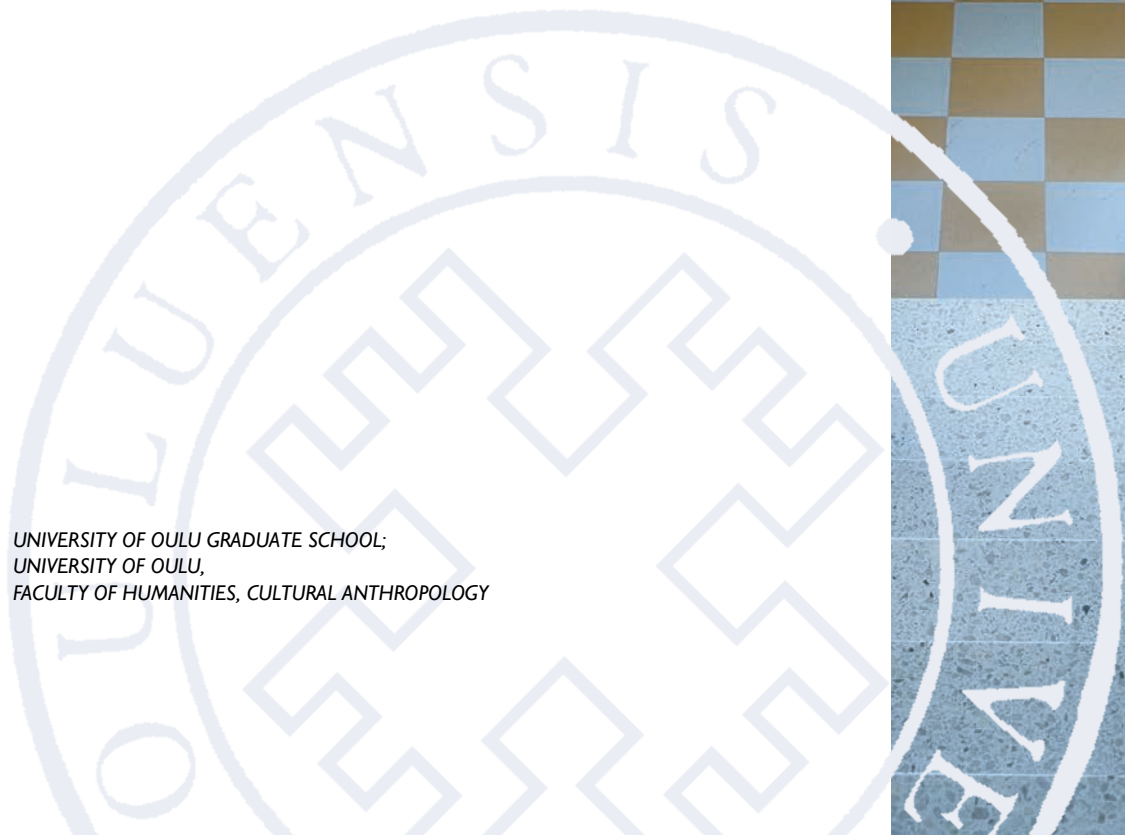
# CULTURE ON TRIAL

**AN ETHNOGRAPHIC STUDY OF THE  
DE/CONSTRUCTING OF CULTURE IN  
FINNISH LAW COURTS**

UNIVERSITY OF OULU GRADUATE SCHOOL;  
UNIVERSITY OF OULU,  
FACULTY OF HUMANITIES, CULTURAL ANTHROPOLOGY

B

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**TAINA COOKE**

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in Finnish law courts

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### *Abstract*

This thesis investigates Finnish criminal trials that involve people from cultural minorities through the use of ethnographic methods. The study examines how those involved in criminal trials actively mobilise the notion of culture, on one hand, yet reproduce an image of law and its subjects as acultural and without context, on the other. Through analysing the processes of culture construction and deconstruction in courts, this study adds to theoretical discussions on legal knowledge production and to methodological debates on the ethnographic study of law. In studying the details of legal knowledge production regarding cultures taking place in courts, it challenges the essentialisation of legal knowledge that has been furthered in much of the previous research on cultural diversity in law courts and stresses the benefits resulting from the use of courtroom ethnography when studying law.

First, this study examines how, and by whom, the notion of culture is interpreted and mobilised in Finnish courts. The analysis reveals that cultures and cultural identities are discussed and contested in courts by judges, litigants, and lawyers, but also by eyewitnesses, interpreters as well as indirectly by the Finnish parliament. This process ties into imagining the “cultural other” but also the “cultural normal”, and it leads into reproducing stereotypical notions of cultures and cultural identities. Secondly, this study investigates the deconstructions of culture taking place in courts through analysing the practices in which the socio-cultural background of litigants and legal institutions are erased. These practices, it is concluded, draw on the law’s commitment to particular ideals regarding legal subjectivity, neutrality and equality.

Finally, this study draws attention to the institutional logics of the Finnish court system and examines the hegemonic idea of dispute resolution that characterises criminal trials. As for practical implications, the findings lead into considering whether the involvement of trained cultural experts could contribute towards making the discussions regarding cultural backgrounds in trials more transparent and informed, and if allowing witnesses to swear by their god would, in some cases, be advisable.

*Keywords:* courts, criminal law, cultural expertise, culture, ethnography, legal anthropology, minorities, trials



## **Cooke, Taina, Kulttuuri käräjillä. Etnografinen tutkimus kulttuurin de/konstruomisesta suomalaisissa tuomioistuimissa**

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### ***Tiivistelmä***

Väitöskirjassa tutkitaan etnografisin menetelmin suomalaisia rikosoikeudenkäyntejä, joissa on osana henkilöitä vähemmistökulttuureista. Tutkimuksessa tarkastellaan, kuinka rikosoikeudenkäynteihin osallistuvat henkilöt toisaalta aktiivisesti valjastavat kulttuurin käsitettä eri tarkoituksiin ja toisaalta luovat kuvaa laista ja sen toimijoista kulttuurittomina ja kontekstistaan vapaina. Näitä kulttuurin de/konstruomisen prosesseja analysoimalla väitöskirja osallistuu teoreettisiin keskusteluihin oikeudellisen tiedon rakentumisesta ja metodologisiin keskusteluihin lain etnografisesta tutkimisesta. Tutkimalla oikeudellisen tiedon rakentumisen yksityiskohtia tutkimus haastaa oikeudellisen tiedon essentialisointia, jota on edistetty suuressa osassa aiempaa tutkimusta liittyen kulttuuriseen monimuotoisuuteen tuomioistuimissa. Väitöskirja myös alleviivaa etnografisen lain tutkimuksen hyötyjä.

Tutkimuksessa tarkastellaan ensiksi, miten, ja keiden toimesta, kulttuurin käsitettä tulkitaan ja käytetään suomalaisissa tuomioistuimissa. Analyysi osoittaa, että kulttuureista ja kulttuuri-identiteeteistä keskustelevat ja kiistelevät oikeudessa paitsi tuomarit, asianajajat, vastaajat ja asianomistajat, myös silminnäkijätodistajat, tulkit ja epäsuorasti Suomen hallitus. Tämä prosessi kiinnittyy ”kulttuurisen toisen” mutta myös ”kulttuurisen normaalin” kuvitteluun, ja se johtaa usein kulttuuristereotyyppien uusintamiseen. Toiseksi väitöskirjassa tarkastellaan kulttuurin dekonstruomista oikeudessa kiinnittämällä huomiota käytäntöihin, joissa vastaajien ja asianomistajien mutta myös oikeusinstituutioiden sosiokulttuurinen tausta häivytetään näkyvistä. Väitöskirjassa todetaan, että nämä käytänteet nojaavat lain erityisiin tulkintoihin oikeussubjektista, neutraaliudesta ja yhdenmukaisuudesta.

Lopuksi tutkimuksessa kiinnitetään huomiota suomalaisen tuomioistuinjärjestelmän institutionaaliseen logikkaan ja tarkastellaan rikosoikeudenkäyntien hegemonista käsitystä riidanratkaisusta. Tutkimustulosten mahdolliset käytännön hyödyt liittyvät kulttuuriasiantuntijoiden hyödyntämiseen ja todistajan vakuutukseen. Tutkimustulokset antavat aihetta pohtia, voisivatko koulutetut kulttuuriasiantuntijat tehdä oikeudessa käytävistä kulttuurikeskusteluista läpinäkyvämpiä ja asiantuntevampia, sekä voisiko jumalan nimeen vannomisen salliminen todistajille olla joissain tapauksissa suositeltavaa.

*Asiasanat:* etnografia, kulttuuri, kulttuuriasiantuntijuus, oikeudenkäynnit, oikeusantropologia, rikosoikeus, tuomioistuimet, vähemmistöt



## Acknowledgements

Completing this thesis has been a challenging experience yet, overall, an immensely enjoyable and rewarding one. The ups of my PhD journey have certainly outnumbered the lows thanks to the many people I have had the privilege to meet, work with and learn from during these six years.

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I do know that engaging with research certainly gives food for thought but not necessarily for eating. I feel very thankful for having been funded by the University of Oulu Graduate School and the University of Oulu Scholarship Foundation throughout my PhD research. For making sure that my thesis kept on track, I would also like to thank the very helpful people in my follow-up group: prof. Petteri Pietikäinen and prof. Vesa Puuronen.

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important as colleagues but, more than that, as friends. For their comradeship and general fun-ness both during and after the office hours I would also like to thank Audrey, Romain, Pablo, Georg, Jouni-Matti and Mathilde. It has been great to discuss research, and especially anything but research, with you over lunches, coffees, canoeing, sausage grilling and music video productions. A special shoutout to Audrey whose friendship – and baking creations! – have brought a lot of joy to our entire family during the last years.

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Oulu, October 2021

Taina Cooke

## List of original publications

This thesis is based on the following publications, which are referred throughout the text by their Roman numerals:

- I Cooke, T. (2017). Seeing past the liberal legal subject: Cultural defence, agency and women. *Suomen antropologi* 42(3), 23–40.
- II Cooke, T. (2019). From invisible to visible: Locating "cultural expertise" in the law courts of two Finnish cities. In A. Sarat & L. Holden (Eds.), *Cultural expertise and socio-legal studies: Special issue in studies of law, politics, and society* (pp. 13–33). Bingley, Emerald Publishing.
- III Cooke, T. (in press). Judging 'close family relations' in irregular migration: The production of legal, national and familial orders in Finnish courts. *Nordic Journal of Migration Research*.
- IV Cooke, T. & Heikkilä, E. (2020). Etnografia oikeudenkäyntien tutkimuksessa: Kulttuurinen asiantuntijuus ja oikeussubjektin haavoittuvuus vähemmistökulttuurien edustajien rikosoikeudenkäynneissä. *Oikeus* 49(4), 425–446.

This thesis consists of four publications, three of which (publication I, II and III) are written in English and one (publication IV) in Finnish. I have been the sole author of publications I, II and III while publication IV is co-authored with Eino Heikkilä, a PhD researcher in ethnology at the University of Helsinki. Publications I and II are based on research material that I collected through participating in thirty-eight criminal trials and interviewing five legal professionals. Publication III, in turn, is based primarily on written documents and it draws from 178 court decisions regarding the arrangement of illegal immigration (*laittoman maahantulon järjestäminen*). Publication IV shares the same research material with publications I and II and builds on the findings presented in them in order to make a methodological argument regarding the use of ethnographic methods in law courts. Publication IV, then, is based on research material that I have collected, and in forming the argument and presenting it in text, Eino Heikkilä and I have worked in an equal collaboration.



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# 1 Introduction

“Why do you study these things anyway?” A lawyer, who has been patiently answering all my questions for over an hour, asks me bluntly as soon as I have turned off my recording device. We are travelling in his car to a courthouse in Northern Finland to attend a hearing regarding irregular migration. The lawyer is involved in the case as a defence lawyer for an asylum seeker client who is accused of assisting other asylum seekers in entering Finland illegally. We have been discussing his experiences in representing clients from cultural minority backgrounds, the role of “culture” in court and the possibility of cultural expert witnessing. He has highlighted some of the issues with language interpretation in court and stated that the Finnish courts are, overall, ill-equipped to consider arguments regarding a defendant’s cultural background in trials.

Slightly surprised at his question, I tell the lawyer that I am interested in understanding how culture, in all its ambiguity, becomes visible in criminal court cases. I say something to the effect that my aim is to highlight the ideas regarding cultures that underpin the legal practice and its outcomes. The lawyer nods a few times approvingly, but then cynically states that he himself is no longer interested in those sorts of things. He tells me that he does not trouble himself over questions of the truth, for example, and asks if I have read *The Brothers Karamazov* by Dostoevsky. “All that matters”, he continues assertively, “is the processual truth and reaching some sort of a verdict”.

The short conversation above is telling of some of the differences between the disciplines of anthropology and law – the two academic fields that form the backbone of this thesis. While the lawyer’s comment was, at least partially, meant to be provocative, his underlying commitment to legal pragmatism was hardly fabricated. Although some anthropologists have challenged the view according to which there is a deep epistemic gap between the disciplines of anthropology and law (Bens, 2016a; Loperena, 2020; Riles, 1994), several have maintained that there are crucial differences in, for instance, how “facts” are understood in the two disciplines (Geertz, 1983; Rigby & Severeid, 1992; Thuen, 2004) and how issues of normativity are approached (Kandel, 1992; Grillo, 2016, 17). Indeed, the anthropological constructionist reasoning might appear far removed from the normativity and positivism of legal practice (cf. Thuen, 2004, 266). This becomes evident when, for instance, examining how certain categories and notions central in the field of anthropology are understood by anthropologists, on one hand, and by legal practitioners, on the other. Indeed, a particularly revealing window into the

relationship between anthropological and legal ways of knowing is provided when looking at the notion of “culture” and the different interpretations of it manifesting in courts.

In this thesis, I study Finnish criminal trials that involve people from cultural minorities through the use of ethnographic methods. I study the twofold relationship between criminal trials and “culture” and examine how those involved in criminal trials both mobilise the notion of culture as well as reproduce an image of law and its subjects as acultural and without context. My study takes part in theoretical discussions regarding the diverse forms of knowledge production that take place in courtrooms and provides a methodological contribution to the ethnographic study of law. Finally, through studying the processes of culture construction and deconstruction, I question the hegemonic notions regarding disputes and litigants that define the present-day Finnish judicial dispute resolution.

### **1.1 Studying “culture” in Finnish courts**

In my study, I approach the concept of culture from two distinct angles. In the first part of my analysis (Chapter 4), I study the notion of culture as it is being used in my research material and examine how the concept is understood and mobilised by those taking part in criminal trials. Culture, in this way, appears as an idea and a construct that holds a variety of meanings and is mobilised according to the differing views and intentions of legal professionals, witnesses and litigants. In the second part of my analysis (Chapter 5), however, I ascribe to the concept of culture more explanatory power and invoke the notion of “law as culture” (Rosen, 2006) as an underlying premise for the analysis of my research material. Here, I am interested in the conflicting dynamics between law’s assumed neutrality, often stressed by legal professionals (Gershon, 2011b, 158), and its simultaneous cultural embeddedness. When seeing law and legal institutions as social constructs, as products of specific cultural contexts and points in time (Ballard, 2007, 4; Rosen, 2006, 5), the inherent bias of law towards the privileged groups in a given society becomes easy to detect. As I will demonstrate, law and legal proceedings are loaded with (cultural) assumptions regarding, for instance, the autonomy and religious beliefs of the legal subject and the witnesses. In my analysis on the judicial deconstructions of culture, then, I study the techniques through which the cultural backgrounds of litigants and witnesses, but also of Finnish law and legal proceedings are erased in trials.

While in the first part of my analysis I direct scrutiny towards the ways in which others use the concept of culture in Finnish trials, in the second part of the analysis I myself engage with the notion more actively. The culture-concept is, indeed, useful yet its use comes with potential risks. The notion is central in the discipline of anthropology, and it was a topic of much controversy among scholars particularly in the 1980s and 1990s. During that time, several anthropologists drew increased attention to the problems of understanding culture as a homogenous and stable unit. James Clifford (1988, 232, 274), for instance, argued that culture problematically implies the balanced, “authentic” and coherent features of shared life, and that the concept may, indeed, have served its time. According to Roger Keesing (1994, 302), in turn, the “conception of culture almost irresistibly leads us into reification and essentialism” while Arjun Appadurai (1996, 12) argued that the noun culture discourages attention to agency. Culture was, furthermore, criticised for its close connection to the biological notion of race (Appadurai, 1996, 12) and for being a “tool for making other” (Abu-Lughod, 1991, 143).

The criticism towards the notion of culture was, however, met with pushback from anthropologists who found the term useful despite its problems. Marshall Sahlins (1999), for instance, challenged the view according to which ethnographic description had traditionally seen cultures as bounded entities and argued for the enduring significance of the culture-concept for anthropologists as well as for the people they study. Christoph Brumann (1999, 6), likewise, highlighted the usefulness of the notion and argued that the term has relevance as an abstraction and that staying with culture will help to preserve the common ground it has created within the discipline of anthropology. Indeed, even when anthropologists still demonstrate a “curious allergy to the concept of culture” (Smith, 2018, 88), it provides a useful tool for talking about collective identities (Kuper, 1999, 3) and allows for a better understanding of shared systems of meaning (Geertz, 1973, 5, 12). Yet a successful use of the term has to be accompanied with a definition of what is, and is not, meant by it (cf. Brumann, 1999, 13).

As I discuss the cultural backgrounds of minority litigants and law, then, I wish to promote for a “dynamic, agentic and historicised way of understanding culture” (Merry, 2010, 42) rather than treating culture as a coherent unit or as a simplistic explanation to a certain type of behaviour. I understand cultures broadly as those “webs of significance” (Geertz, 1973, 5) that structure peoples’ lives, that are learned and shared through socialisation, always complex in nature and plural in number. This sort of view of cultures, furthermore, sees them as contested systems of meaning-making that are necessarily reflective of the power relations present in

the surrounding society (Ortner, 1999, 8-9). Yet while culture can be understood very broadly, I do not intend to use it as a blanket term that potentially flattens the issues of gender, class and race, for instance (cf. Friedman, 1994, 207-208). While gender, class and race are cultural in that they are socially shared systems of classifications, it is also necessary to distinguish culture from these traits when attempting to account for the complexity of human subjects. Indeed, while I start the second part of my analysis with the idea of the judicial deconstructions of culture, the scope of my analysis extends from considering the cultural minority backgrounds of the litigants to attending to other vulnerabilities of theirs, such as gender and age. In my analysis, then, I seek to avoid a culturalist account and instead apply an intersectionality-informed framework, which provides a way of seeing the overlapping and complex social identities of human subjects (Crenshaw, 1989). Similarly, in discussing the socio-cultural context of Finnish law, I do not attempt to paint a coherent picture of any one particular “culture of Finnish law”. While I seek to identify patterns such as increased individualism and secularism affecting Finnish law and legal institutions, I am not suggesting that these would be the only, or necessarily even the main, characteristics affecting the national legislation and judicial interpretation of the laws. The historical and socio-cultural background affecting legislation is complex and incoherent, yet it is possible to detect certain cultural patterns and trends that impact the development and transformation of Finnish law and those institutions that interpret it.

Legislation and courts in Finland reflect a variety of national but also international influences. The Finnish legal system can be regarded as one constituent of Nordic (or Scandinavian) law, which in turn is located in the broader legal tradition of civil (or Roman-German) law (Husa, 2012, 5, 12). The Finnish legal system has been developed under the legal codes of both Russia and Sweden, yet the Swedish influence is more prevalent, which can be seen, for example, in the similarities between the Finnish and Swedish court systems (Ervo & Dahlqvist, 2014, 250). The Finnish courts are divided into general district courts and administrative courts – the former processing criminal and civil cases, and the latter focusing on administrative matters. Appeals regarding criminal and civil cases are dealt with in the courts of appeal and in the Supreme Court while the Supreme Administrative Court processes appeals in administrative cases (Criminal Procedure Act 689/1997; Code of Judicial Procedure 4/1734; Administrative Judicial Procedure Act 586/1996). The vast majority of legal disputes are resolved in the above listed courts yet there are also four special courts with distinct focus areas: the labour court (e.g. disputes on collective labour agreements), the market

court (e.g. disputes on market law, including intellectual property), the insurance court (e.g. disputes on social security, including entitlement to national pension), and the high court of impeachment (e.g. criminal prosecutions against members of the Finnish government and members of the Supreme Court) (e.g. Ervasti, 2018, 20).

The cases that make up the bulk of my research material are criminal cases that have been tried in district courts and courts of appeal. The ideology of the Finnish criminal justice system has been described as abiding by the principles of “humane neoclassicism” as it stresses a preference for less repressive measures and the need for legal safeguards against coercive care (Lappi-Seppälä, 2016, 52). Sentencing criteria includes the principle of equality, in addition to proportionality and predictability, and it stresses the need to avoid disparities in sentencing (Lappi-Seppälä, 2016, 52-53). The courts are, hence, expected to issue sentences according to the principles of uniformity and consistency (Hinkkanen & Lappi-Seppälä, 2011, 356-357), which deemphasises the idea of individualised sentencing.

The laws in Finland have historically not been particularly accommodating towards cultural minorities, which becomes evident when looking at, for instance, the treatment of issues concerning the Sámi people. The rights of the Finland’s indigenous people “to maintain and develop their own language and culture” was only added to the Finnish Constitution in 1999 (§17), yet disputes over land rights in particular are on-going and reflect the reluctance of the state to fully recognise Sámi as indigenous people with distinct legal rights (Toivanen, 2013, 43; UN HRC, 2016, 15). Over the past decades, discussions around immigration and multiculturalism have become more prominent in Finland, giving rise to new kinds of reflections regarding the relationship between different cultural/ethnic minorities and law. While it would be inaccurate to claim that Finland has become culturally and ethnically diverse only over the past several decades – e.g. the presence of minorities such as the Sámi, Roma and Tatar, for example, predates the independence of the country (Häkkinen & Tervonen, 2005) – immigration to Finland has significantly increased and diversified in recent years. In 1990, there were 24 783 people in Finland who did not speak Finnish, Swedish or Sámi as their native language, whereas in 2019 this number had increased to 412 644 (SVT, 2019).

Increased immigration in Finland has been accompanied by intensive political debates and (social) media coverage, in which immigration has been framed as a problem (Horsti & Nikunen, 2013). The nexus of immigration and crime, in particular, has been established in public and political discourses in Finland and

elsewhere in Europe (Buonfino, 2004, 34-35; Eberl et al, 2018; Keskinen, 2016). In Finland, debates on unresolved rape cases, for instance, can become highly politicised by neo-nationalist and anti-immigration activists, and turned into “a proof” of the violence and criminality of refugees and Muslims (Keskinen, 2016, 120). Despite the intensified focus on crimes that involve people from cultural and ethnic minorities in media and on political platforms, ethnographic research on related trials in Finnish courts is lacking. This study begins to fill that void and provides insights regarding the interplay between the notion of culture, minority legal subjects and institutional logics in Finnish courtrooms.

Before moving on to outlining my research questions, I want to briefly address some terminological issues connected to three key concepts used in this study. Firstly, I use the term *cultural minority* to refer to people who differ from the majority population of a given society based on traits such as their native language, traditions and physical appearance (cf. Wagley & Harris, 1958). The minority-majority divide relates to the differences in numbers of people but also to the unbalanced access to power that characterises the minority-majority relations (Gleason, 1991). The members of cultural minorities that are discussed in this thesis are primarily people who have migrated to Finland from abroad and who differ from the majority population based on, for example, their native languages and their countries of birth. The study material, then, is collected primarily from cases that involve immigrant defendants yet six of the court cases I attended to included people from a Finnish internal minority, the Roma community.

Secondly, in discussing *legal knowledge* I refer to the ensemble of forms of knowing, judging, analysing, theorising and reflecting that are manifested in the practices of legal actors (Riles, 2007, 885). The legal actors, in my study, are those who participate in the knowledge making in the courtrooms: the judges, prosecutors and lawyers – but also the litigants, witnesses and interpreters. In my discussion on the witness affirmation, furthermore, I see the Finnish parliament as a legal actor who participates in the knowledge making processes of law courts. I am inspired by the works of anthropologists such as Leticia Barrera (2009), Bruno Latour (2010) and Annelise Riles (2011) who have studied the everyday practices of legal knowledge production through the use of ethnographic methods. Legal knowledge can be accessed through its ends (e.g., documents, legal doctrines) but also through its own means – that is, by way of looking at the “mundane and routine instruments of bureaucratic knowledge through which lawmaking is performed” (Barrera, 2009, 13). In my study, I am particularly interested in the production of legal knowledge

on cultures, meaning that I pay attention to the processes in which the legal actors contribute towards the construction and deconstruction of “cultures” in trials.

Thirdly, I use the term *illegal immigration* when referring to the criminal offence of the facilitation of illegal immigration (*laittoman maahantulon järjestäminen*) as defined and understood in Finnish law. The notions of migration and migrant “illegality” have been much criticised in academic scholarship as political constructions through which certain people and practices are criminalised, marginalised and even dehumanised (De Genova, 2002; Galemba & Thomas, 2013, 211). In my own usage, then, I have opted for the notion of *irregular migration* in the hope of adopting a more neutral term that looks at the processes of clandestine cross-border mobility beyond the issues of il/legality.

## 1.2 Research questions

In this thesis, I study the twofold relationship between criminal trials and “culture”, and examine how those involved in criminal trials actively mobilise the notion of culture, on one hand, yet reproduce an image of law and its subjects as acultural and without context, on the other. In anthropology and in sociolegal studies, the scholarly discussions regarding cultural minority identities in courts have largely drawn on the (assumed) epistemic gap between legal and anthropological knowledges and the different ways of understanding the notion of culture in the two fields (e.g. Clifford, 1988; Grillo, 2016, 14; Good, 2008). Scholars have, in particular, debated the role of anthropological expertise in legal proceedings and argued that presenting cultural identities as fixed categories in courts is often necessary in turning them legally legible (Hoehne, 2016; Martínez, 2020). According to anthropologist Jonas Bens (2016a; 2016b), the epistemic gap debate has been much about how anthropology conceives of itself, and assuming the divide has, in fact, contributed towards the essentialisation of legal knowledge among anthropologists.

Through attending to the details of legal knowledge production, I seek to add nuances to the discussions on cultural diversity in courts and bring into focus the mundane ways in which “cultures” are perceived and assessed in the daily legal practice. I examine the intricacies involved in the production of legal knowledge on cultures in courts as these intricacies have not yet received much ethnographic focus in the existing literature that has, in turn, emphasised the role of anthropological knowledge and expertise in courts (Ballard, 2011; Caughey, 2009; Good, 2008; Holden, 2011a; Mora, 2020; Zenker, 2016). Directing ethnographic

scrutiny towards the processes of constructing legal knowledge reveals that cultures and cultural identities are discussed and contested in courts by judges, litigants, and lawyers, but also by eyewitnesses, interpreters and indirectly by the Finnish parliament too. Legal knowledge production regarding cultures, then, is a multivocal and contested process that is anchored in the differing values and views held by those taking part in the courtroom proceedings.

In addition to challenging the essentialised view of legal knowledge on cultures, my study seeks to provide a methodological contribution to the study of law courts. I highlight the benefits resulting from the use of courtroom ethnography when studying legal issues faced by cultural minority subjects and argue for the continued relevance of participant observation in such endeavours. Emphasising the importance of “being there” (Geertz, 1988, 1) in the research field is important in the current era of anthropological research that is increasingly being influenced by the logics of urgency and high efficiency (Cabot, 2019; Grandia, 2015, 302-303; Tamarkin, 2018, 306). Through examining the processes of culture construction and deconstruction in Finnish courts, then, I seek to provide insights into theoretical discussions on knowledge production in courts and into methodological debates on the study of law. Lastly, I reorient attention away from these debates, and move on to considering what the results of my study reveal about the hegemonic notions regarding disputes and litigants that define the present-day judicial dispute resolution in Finland.

My research questions are:

1. How, and by whom, is the notion of culture interpreted and mobilised in Finnish criminal trials involving people from cultural minorities? (Chapter 4)
2. What are the techniques through which litigants and legal institutions, such as the witness affirmation, become to be portrayed as acultural in Finnish law and in courts? (Chapter 5)
3. How does the method of courtroom ethnography, with an emphasis on participant observation, influence the knowledge produced in the study of law? (Chapters 3, 4 and 5)

In answering the first research question (Chapter 4), I will combine findings from Publications I, II and III. My response to the second question (Chapter 5) is based primarily on Publication I, while the third research question (Chapters 3, 4 and 5) is addressed mainly through references to Publication IV. While the four publications, then, serve as the foundation for the arguments presented in this thesis, the analysis has benefitted from the inclusion of new material too. I have referred

to additional court cases and included further interview quotes to Chapters 3, 4.1, 5.1 and 5.2. Section 5.2, in particular, is largely based on new research material that has not been included in the original publications.



## 2 Anthropology of law courts

*Law, rather than a mere technical add-on to a morally (or immorally) finished society, is, along with a whole range of other cultural realities from the symbolics of faith to the means of production, an active part of it. (Geertz, 1983, 218)*

### 2.1 Epistemic considerations

On an epistemic level, this study draws from an interpretive (hermeneutic) perspective (Geertz, 1973) and is situated in the tradition of social constructionism (Berger & Luckmann, 1967). The interpretive perspective acknowledges the different meanings and interpretations that people, including the research subjects but also the researchers, assign to a phenomenon in their separate “imaginative universes” (Geertz 1973, 13). Constructionism, in turn, maintains that reality and its categories, such as law and crime, are socially constructed and cannot exist independently of human beings. Together these approaches emphasise the significance of social interaction, particularly the role of language, (e.g. Berger & Luckmann, 1967, 88), in the production of the subjective realities and truths.

The emphasis on language and subjectivity is central to the interpretive and constructionist traditions but also to contemporary anthropological scholarship more broadly. The issues of representation were widely debated in anthropology in the 1980s and 1990s resulting into the so-called *reflexive turn* in the discipline (Clifford & Marcus, 1986; Marcus & Fischer, 1986). These debates centred around the problem of anthropological authority in a postcolonial and postmodern world and evoked thorough scrutiny towards the culture-concept and ethnographic writing. Consequently, anthropologists were encouraged to confront the issues of politics, power, history and language in the process of producing representations of others in their research (cf. Clifford, 1986, 25). These debates left an important legacy for the discipline, and one of the most influential remarks raised in these debates was about the inherent partiality of ethnographic knowledge (Clifford, 1986, 1).

An ethnographic research process, which indeed characterises much of my study, produces knowledge through a collaborative and dialogic approach (Campbell & Lassiter, 2015) in which knowledge is not “found” but co-constructed together with the research subjects. Ethnographic conception of knowledge is, hence, always context dependent, relativistic and bound to lead into the production

of “partial truths” (Clifford, 1986, 1). Ethnographic research rarely sets out to uncover any “objective facts” but rather focuses on different *meanings* and aims at understanding how these meanings are produced, displayed and contested in a particular setting by particular people (cf. Geertz, 1973, 5). Indeed, studying the processes of meaning-making by real historical actors as always embedded in larger social and political settings (Ortner, 1999, 8-9; Roseberry 1982, 1022) serves as a foundation for the present-day ethnographic research in anthropology. Likewise, it is the process of constructing specific meanings, or “truths”, regarding cultures, legal subjectivity and expertise that has caught my attention in the course of this research. I study, for instance, the meanings assigned to the notion of culture and examine the process through which some of these meanings become legitimised and regarded as legally valid. My interpretations on the phenomena draw from engagements with the research subjects in the field where I have observed court cases in person and interacted with the legal professionals as well as the litigants. In my ethnographic research, I have also analysed court documents, some of which have been further explained to me by the legal professionals I interviewed, in an attempt to understand how, for instance, cultural difference is erased from a case by a particular judge.

A close focus on the negotiated and contested meanings, or “truths”, hence, is central to the theoretical approach of this thesis. Referring to the process of truth-making, furthermore, draws attention to the dynamics of power that define such processes which, in turn, serves to highlight the Foucauldian influence present in my analysis (e.g. Foucault, 2002). Indeed, courtrooms are sites where certain interpretations on, for instance, cultures are privileged, which is telling of the power relations between different actors involved in the case. It is the process in which these power relations become visible and certain readings on “cultures” or “expertise”, for instance, legitimised that I will focus on in the coming chapters. Consequently, I take the premise of this study to be consistent with social anthropologist Yazid Ben Hounet’s and political anthropologist Deborah Puccio-Den’s (2017, 6) account, according to which:

*The anthropologist does not, of course, show an interest so much in the truth as in the techniques used to negotiate the truth and the conditions underlying its production: the confrontation of different interpretations in the courtroom or other places where the truth is made (- - -) and the conditions for averring one of several interpretations.*

My research is further inspired by the case method approach, originally developed by anthropologist Edward Adamson Hoebel and legal scholar Karl Llewellyn and subsequently applied and developed by generations of legal anthropologists (Bohannan, 1989; Conley & O’Barr, 2004; Gluckman, 1973). In *The Cheyenne Way: Conflict and Case Law in Primitive Jurisprudence* (1941), Llewellyn and Hoebel outlined the case method approach which focuses on studying the so-called “trouble cases” in law. This approach seeks to analyse in detail the processes involved in resolving actual disputes in a society. Instead of focusing on written rules and the official law, then, the method stresses the need to study “the case of trouble which makes, breaks, twists, or flatly establishes a rule, an institution, an authority” (Llewellyn & Hoebel, 1941, 29). While Llewellyn’s and Hoebel’s application of the method can be criticised in hindsight based on, for instance, the lack of first-hand ethnographic material used and for the romanticising of native processes (Mehrotra, 2001, 755, 771), “methodologically speaking, almost everything we do in legal anthropology today can trace its roots to Llewellyn and Hoebel’s notion of the trouble case” (Conley & O’Barr, 2004, 214). Indeed, my study too is characterised by the objective of studying law at the level of particulars and, ultimately, as a window into understanding the wider society, its norms and ideals.

The illumination of the general through a close focus on the particular, then, is a core aim incorporated into the case study method but also into the principles of ethnographic research more broadly. Indeed, I agree with the view according to which ethnography is never “mere description” (Nader, 2011) but rather seeks to *explain* something about the social world and about people’s ways of engaging with it. Consequently, ethnography can perhaps best be understood as enabling the anthropological project of “theoretical storytelling” (McGranahan, 2020), in which the tools of narration serve as a vehicle for making a theoretical argument. The methods through which the objective of “theoretical storytelling” is approached in my study are elaborated in the next chapter.

Before moving on from outlining the epistemic assumptions of this study, some further reflections on the relationship between law, culture and crime are called for. Above I stated that both law and crime are socially constructed and, furthermore, that I engage with the notion of “law as culture” (Rosen, 2006) later on in this study. The constructionist approach adopted, then, leads into studying courts as sites where law(s), culture(s) and crime(s) are constantly being produced through courtroom negotiations and legal decisions. Indeed, “legal facts are made not born” (Geertz, 1983, 173) and while “couched as statements of fact, legal decisions are,

quite often, really creators of fact” (Rosen, 1989, 17). Law, furthermore, allows a window into the larger culture while also being a cultural domain itself with a distinctive terminology, history and personnel (Rosen, 2006, 4, 12). Anthropologist Clifford Geertz (1983, 184) has theorised the relationship between law and culture further and likened law to a type of ideology through which the world is made sense of as “a distinctive manner of imagining the real”. Law and culture, then, are deeply entwined and to understand how legal “facts” come into being, it is essential to see how they are rooted in the wider cultural settings.

Through defining certain acts as forbidden, law produces crime (cf. Durkheim, 1982, 98-102). In theorising the concept of crime, early anthropologists made distinctions, for example, between a “public delict” against the community and a “private delict” against an individual (Radcliffe-Brown, 1933) and understood crimes, in general terms, as breaches of widely accepted social norms (Schapera, 1972, 390). Later, anthropologists have studied aspects of criminalisation, which can be understood as “the process by which states, media and fearful citizens define particular groups and practices as “criminal”” (Schneider & Schneider, 2008, 352). Scholars have, furthermore, regarded criminality or “illegality” as a sociopolitical construction whose production ties closely into the power structures of a society (De Genova, 2002) and allows states to, ultimately, “govern through crime” (Simon, 2007). Indeed, modern states, together with some supranational entities, have the monopoly of law-making, and they employ judicial authorities to enforce laws and identify illegal activities (cf. Weber, 1991). Law courts are key constituent components of this judicial machinery and the very places where crimes are ultimately made and unmade. Combined with the earlier observations, then, law courts appear as sites where cultures, laws and crimes are all constantly being defined and constructed, making courtrooms a particularly intriguing setting for anthropological enquiry (cf. Hounet & Puccio-Den, 2017, 6).

## **2.2 Previous studies and theoretical debates**

Law courts have been studied by scholars from various fields including law, anthropology, sociology, linguistics, history, political science and performance studies. Scholars differ in their interests greatly, of course, and some have focused on the political and historical settings of judiciaries (Crowe, 2012; Pihlajamäki, 2001) while others have been more interested in the microlevel interactions between different actors inside a courtroom (D’hondt, 2010; Flower, 2018). Anthropological enquiry into law and law courts is itself versatile, and the early

studies echoed the general focus of the late 19<sup>th</sup> and early 20<sup>th</sup> century anthropology in which an interest in small-scale societies and an adoption of an evolutionary perspective were prominent (Maine, 1861; Morgan, 1877). Some of the most notable early anthropologists, such as Lewis Henry Morgan and Sir Henry Maine were, in fact, lawyers and they contributed towards establishing a strong focus on law and social orders in anthropology from its dawn as a modern academic discipline. Through viewing law as embedded in culture, anthropologists have since then moved from offering detailed accounts on the social orderings of entire societies (Malinowski, 1926; Schapera, 1938) to studying, for example, the implications of cultural diversity on legal proceedings (Foblets & Renteln, 2009; Holden, 2019a; Rosen, 2018; Torry, 1999), workings of tribal and village courts (Goddard, 2009; Nesper, 2007; Richland, 2008), details of legal discourse (Conley & O’Barr, 1990; 1998; García, 2019; Philips, 1998), and significance of affect and demeanour in courtroom (Bens, 2018; Eltringham, 2012).

The central themes of my thesis relate most closely to the discussions on the implications of cultural diversity, or multiculturalism, on legal proceedings. Scholars have, for instance, highlighted the misunderstandings that might arise when cultural minority subjects are tried under a legal system that reflects the values of the cultural majority (Foblets & Renteln, 2009; García, 2019; Torry, 1999) and discussed whose knowledge regarding cultural backgrounds should be applied when deciding on these kinds of cases (Holden, 2011a; 2019a; Rosen, 2018, 57-83). The two notions that have been most prominent in these scholarly discussions, and which are also central in my thesis, are *cultural expertise* and *cultural defence*. Cultural expertise implies the special knowledge that allows anthropologists, or other cultural mediators, “to locate and describe relevant facts in light of the particular background of the claimants, litigants or the accused person(s), and in some cases of the victim(s)” (Holden, 2011a, 2, see also Holden, 2019a; Rabo, 2019; Ruggiu, 2019). Cultural defence, in turn, refers to a type of argumentation in court in which a person’s cultural background is used as a defence or as a mitigating factor against criminal charges (Lernestedt, 2014; Phillips, 2007; Renteln, 2004, 2009, 2014). While cultural defence is applied by a defence lawyer, cultural expertise should, at least theoretically, remain neutral and take no sides (Holden, 2019a, 2). Furthermore, cultural defence is primarily discussed in the context of criminal law whereas cultural expertise seeks to exceed this scope with its connection to cases relating to, for example, asylum and adoption (Holden, 2011a, 2). Cultural defence and cultural expertise, then, both refer to the use of arguments relating to a person’s or a community’s cultural minority background, but these

arguments are presented with a varying degree of impartiality and potentially in different legal environments.

A central point of debate in the scholarly discussions on cultural expertise and cultural defence has been the issue of essentialism. Several scholars have noted that discussing culture in court appears to result in particularly essentialist representations of cultural minority identities (Coffman, 2007; Good, 2008; Hoehne, 2016; Loperena, 2020; Martínez, 2020; Phillips 2007, 2010) as culture seems to stand the best chance of succeeding as a legal argument when it is presented as a monolithic and coherent unit, and when it corresponds with existing stereotypes (Phillips 2007, 85-99). In *cultural essentialism*, a person is, indeed, seen as thoroughly defined by their cultural membership, as a bearer of *a* culture (Grillo 2003, 158). Discussions on cultural essentialism in court have, furthermore, often been accompanied with the notion of *strategic essentialism*, which relates to the calculated motives that are seen as defining the “use of culture” in legal arenas. Drawing on the work of Gayatri Spivak (1988), some anthropologists have, indeed, argued that essentialising cultural identities in courts is often necessary in communicating them as legally relevant and fulfilling the requirements of legal proceedings (Hoehne, 2016, 257; Martínez, 2020). Scholars have, furthermore, debated the problematic role of anthropologists as cultural experts in engaging with these essentialising discourses regarding cultural identities in courts (Good, 2008, 56-57, Hoehne, 2016; Loperena, 2020; Martínez, 2020).

The discussions on essentialism in courts have drawn on the longstanding debates regarding the (assumed) epistemic differences between anthropological and legal knowledges. Indeed, the differences between anthropological and legal modes of thinking and reasoning have been stressed by several scholars who have, for instance, seen critical differences between how “facts” are perceived in the two disciplines (Geertz, 1983; Good, 2008) and how issues of normativity are addressed (Grillo, 2016, 17; Kandel, 1992). While some scholars have come to challenge the assumed epistemic gap between anthropology and law (Bens, 2016a; Loperena, 2020; Riles, 1994), many have ended up enforcing it in, for instance, stressing the courts’ preference to positivistic over contextual and “cultural” evidence (Good, 2008; Thuen, 2004, 280) and in emphasising the differences between legal and anthropological accounts on “culture” in court (Clifford, 1988; Grillo, 2016, 14).

In assuming the epistemic gap, anthropologists have arguably contributed towards the essentialisation of legal knowledge (Bens, 2016b, 3) and failed to pay adequate attention to the details of legal knowledge production taking place in and by the law courts. While some ethnographers, such as Bruno Latour (2010),

Thomas Scheffer (2010) and Leticia Barrera (2009) have studied the processes of legal knowledge production in law courts, similar attention to legal knowledge production practices has been lacking from the studies concerning cultural diversity in courts. Instead, scholars have oftentimes focused on the role of anthropological knowledge and expertise in courts (Ballard, 2011; Caughey, 2009; Good, 2008; Holden, 2011a; Mora, 2020; Zenker, 2016) leaving the cases where anthropological expertise does not play a role in the de/constructions of culture in courts with less empirical focus. There are some exceptions to this tendency, however. One of the few but important studies focusing on the details of legal knowledge production regarding cultures was conducted by anthropologists Larissa Veters and Marie-Claire Foblets (2016). Veters and Foblets (2016) conducted a survey among European judges and examined how the different judges perceived and accommodated cultural diversity in their daily decision-making. The researchers analysed the judges' readings on "immigrant culture" and found that the judges' understandings reflected a reified view on culture but revealed highly nuanced accounts on culture too (Veters & Foblets, 2016, 276).

With my thesis, I wish to contribute towards this body of research that attends to the nuances of legal knowledge production regarding cultures as I examine who else, besides judges, discuss and assess cultures in courts. My study, then, adds to the scholarly discussions on cultural diversity in courts through focusing on the processes of culture construction and deconstruction as it is manifested in the works of the different agents of legal knowledge. Studying the processes of legal knowledge production ethnographically reveals that "cultures" and cultural identities are negotiated in courts by a number of different actors including judges, litigants, lawyers, eyewitnesses and interpreters. The judicial deconstructions of culture are advanced by the Finnish parliament too, which becomes evident when looking at the recent abolishment of religious witness affirmation. Ultimately, then, I seek to challenge the essentialised view on legal knowledge regarding cultures that has been furthered in much of the previous anthropological scholarship, and show that the judicial constructions and deconstructions of culture cannot be usefully understood through assuming a unified legal way of knowing. Consequently, I seek to underscore how law operates "as a hegemonic process, an apparatus, or ensemble of practices, discourses, experts, and institutions, that actively contributes to the legitimation of a social order" (Chunn & Lacombe, 2000, 10) and how, as such, it is constantly contested and transformed. I explore how culture as an idea and as a context is constructed and deconstructed in the

hegemonic process of law and what, furthermore, are the underlining, dominant views on disputes and litigants that are revealed in this process.

The lack of research that attends to the intricacies of legal knowledge in the study of cultural diversity in law courts might be largely due to the preferred methodological strategies of the involved researchers. The primary ways in which scholars have studied the implications of cultural diversity on legal proceedings have been through autoethnographic accounts and documents. Scholars examining cultural expertise have tended to draw on their personal involvement as experts in specific cases (Ballard, 2011; Hoehne, 2016, Holden, 2011a; Loperena, 2020) while researchers studying the use of cultural defence, in particular, have based their analyses largely on court verdicts and other legal documentation (Deckha, 2009; Renteln, 2004; Truffin & Arjona, 2009). The autoethnographic accounts on cases involving cultural experts have been particularly useful in producing knowledge of the role of anthropological expertise in legal cases. However, this has left the judicial accounts on culture and the uses of informal cultural expertise, for instance, largely unexplored. The reliance on documents in the study of law courts is understandable due to “the central role that the artifacts of legal bureaucracy play in the constitution of law itself” (Barrera, 2018, 91). Indeed, the study of legal documents serves as an important methodological addition in the research strategy of my thesis too (see subchapter 3.3). Documents, however, convey only parts of the legal reality and, most notably, privilege certain voices over others (cf. Barrera, 2018, 101). While the Finnish court decisions, for instance, summarise multiple accounts from different actors (e.g. prosecutor, witnesses, judge), the authorship of the document and the power to decide what information to include and what to exclude, remain with the judge. Hence, the court documents are particularly useful in giving access to the top of the hierarchy legal knowledge yet, in my view, inadequate in portraying detailed descriptions on the diverse accounts involved in the process of producing that knowledge.

The methodological strategy of my study seeks to overcome the limitations of the previous studies that have, then, highlighted the active role of anthropologists in courts and relied heavily on the top of the hierarchy legal knowledge. Consequently, I use the method of courtroom ethnography (see Chapter 3) and emphasise the importance of participant observation extending beyond autoethnographic accounts in examining cultural diversity in law courts. Stressing the importance of participant observation is hardly a novel notion in the field of anthropological research when assessed in the context of the history of the discipline. Yet in the current era of anthropological research that is increasingly

being affected by the sense of urgency and a demand for high efficiency (Cabot, 2019; Grandia, 2015, 302-303; Tamarkin, 2018, 306), emphasising the importance of ethnographic methods is timely. The logics of urgency might affect legal anthropological research particularly strongly as its scholars commonly study powerful state institutions that deal with “hot topics” such as irregular migration and international crime. In arguing for the continued relevance of participant observation, my study, then, adds to the current methodological debates criticising the business-like logics of anthropological research (Cabot, 2019) through showing that the methods of courtroom ethnography allow access to a rich source of material and insights on the processes of law.



### 3 Studying law ethnographically

“Have you ever met a lawyer who is very flexible in his or her thinking?” The lawyer, whom I interviewed in the car and quoted earlier, asked me yet another unexpected question during our journey to the courthouse. His question was accompanied with loud laughter and I did not know how else to respond than with a smile. Soon, he continued: “Our minds are so stiffened with clauses (*pykäliin kangistuneita*) and that’s why it’s quite fun that you are not a lawyer but *a cultural anthropologist* [emphasises] – or what did you say you were?”

For the lawyer, it appeared as unusual to have an anthropologist study court cases, which serves to highlight the tricky “insider-outsider” (Brayboy & Deyhle, 2000) position of an ethnographer. It is often stated that in ethnography, the main research tool is the researcher him or herself (e.g. Amit, 2000, 2), and that the ethnographer has to navigate the paradox of accessing “insider” voices and experiences while remaining on the “outside” with a certain degree of analytical and social distance (Brayboy & Deyhle, 2000; Hammersley & Atkinson, 2007, 90). In addition to the ethnographer, the field site and its special characteristics naturally influence the type of material that can be collected and produced on the phenomenon that is being researched. Consequently, the arguments presented in this study too have been developed in a process defined by researcher positionality, the special nature of the field site and ethical considerations.

#### 3.1 Research process and study location

As outlined earlier, the ethnographer acquires a crucial role in the production of ethnographic knowledge, which, in turn, necessitates heightened attention around the positionality of the researcher (e.g. Davies, 2002). In accessing the field, interacting with its people and analysing the material, researchers draw on their “ethnographic toolkits” (Reyes, 2020), which consists of various social positions and individual characteristics. Researchers in social sciences and humanities commonly highlight the need for reflexivity in research, which means thinking about the ways in which the researcher is connected to the research situation and, hence, how he or she influences it (Davies, 2002, 7). The objective of reflexivity is to increase the transparency and ethical quality of the ethnographic research process; it is a means through which knowledge can be approached, not, however, its end purpose (Davies, 2002, 90, 222; Gould, 2016, 14).

This study grew out of my master's thesis, in which I studied the use of cultural defence in Finnish criminal trials through ethnographic methods (Tihinen, 2014). I completed my master's degree in cultural anthropology with a special focus on criminology after completing studies in criminology in the United Kingdom. The topic of cultural defence, hence, fit my interests well, and while the international scholarship around the controversial topic had increased significantly (e.g. Lernerstedt, 2014; Phillips, 2007; Renteln, 2004; 2009; 2014), the issue had not gained much academic attention in Finland by the time I was writing my master's thesis. The conclusion reached in my study was that culture, as an explanatory factor for criminal behaviour, was discussed in criminal hearings and that the phenomenon deserved more attention in the context of culturally diverse Finnish courtrooms.

Focusing on the cultural defence, hence, served as an important starting point for my doctoral thesis. Indeed, the notion played a significant role in Publication I, but in the end, turned out to be part of a larger phenomenon that I wanted to explore in my thesis more broadly. My interest began to shift towards seeing and questioning the role of "culture" in the background of various courtroom debates – not just of the ones where culture was used as a defence. Consequently, I widened the scope of my research and included considerations on notions such as agency, expertise and family ties in the analysis. During early doctoral research, I became acquainted with legal anthropologist Livia Holden's work and was able to visit her to spend time working on her EURO-EXPERT project (Cultural Expertise in Europe: What is it useful for?) at the University of Oxford for a period of two months. Publication II, in which I study the so-called informal cultural expertise in Finnish courts, relates most closely to this project. Dr Holden's project kindly covered much of my visit to Oxford as well as some court data utilised in Publication III, for which I am grateful.

The main physical site of my research has been the courthouse in one of Finland's largest cities. The city, located in Northern Finland with a population of around 200,000, has a small yet steadily increasing number of residents born outside of Finland (4.6% in 2016, SVT). Since 2014, I have taken part in criminal hearings involving members from cultural minorities in this city's courthouse. The number of these cases has increased along with the related changes in population, yet they still represent a clear minority of all the criminal cases tried in the courthouse. Most of the cases that I observed were tried by the district court while a smaller number of cases were dealt with in the court of appeal. Once, I was able

to attend two trials of the same case, first in the district court and later in the court of appeal.

The criminal hearings I attended were all open to the public. The courthouse has a board located in the general waiting area of the building where the day's schedule is outlined in a row of printed out A4 papers. In the beginning of my research, I studied the board in the mornings to find out about suitable cases, but soon began to either visit or ring the courthouse secretary to enquire about the upcoming cases in advance. This, unsurprisingly, proved a more efficient tactic albeit last minute changes, which occurred often, meant that my preliminary schedule was in a constant need of updating. Thanks to the eternal patience of the courthouse secretary, who did not seem to mind my multiple enquiries, this schedule kept fairly up to date.

The public details about an upcoming trial include the date and time of the hearing but also the title of the charge and the name of the defendant. Information regarding nationality or ethnicity, however, is not disclosed in the case brief. A highly unsophisticated yet mostly effective method I used in singling out cases that potentially involved members from cultural minorities, then, was to look at the names of the defendants. I paid attention to the names that stood out from what to me appeared as typical names among the Finnish cultural majority. This naive method was not based on any thought-out criterion but rather benefitted from a sort of silent cultural knowledge accumulated through years of living in a country. While imperfect and biased, I found the method effective as in only one instance I was left wondering if the defendant of a trial would be better characterised as belonging to a cultural minority or, in fact, to the majority. In the end, I decided to exclude that case from the research material. In other cases, the method led me to follow trials including, for example, asylum seekers, Finnish citizens of immigration background, and members of the Finnish Roma community.

In the course of this study, I attended thirty-eight criminal trials, the lengths of which ranged from two hours to fifteen days (see Table 1). For me, stepping into a courthouse and attending criminal trials has very much been like getting to know a foreign culture in a familiar setting. I am not formally trained in law, and I had never attended a trial before starting my study of them, which allowed me to observe court cases first from an outsider's perspective before becoming more familiar with their inner logics. In practice, I moved from trying to find my way to the right courtroom to slowly getting into the rhythm of legal argumentation and understanding the nuances of roles, processes and practices included in judicial decision-making. While inevitably becoming more accustomed to the technicalities

of trials and to the many rules that define them, I remained an outsider to the performances of justice that, to me, appeared to progress often in unexpected and mysterious ways.

I believe that my prior unfamiliarity with legal practice served mainly as a benefit as it allowed me to examine trials from a fair distance and with genuine curiosity. My “otherness” in the field also meant that the legal professionals, and at times the litigants too, who were involved in a particular case showed curiosity towards my presence, leading into several insightful conversations in the waiting area during the breaks. The legal professionals often assumed that I was a law student completing some compulsory courses before I told about my research interests and discipline. My identity primarily as a “student”, however, was prevalent in the courthouse and might have also been influenced by my relatively young age. My student status served me mostly well as I believe it made me easy to approach. A major benefit from being a non-law student and primarily an outsider to legal practice, was also that I was perhaps able to relate to the litigant’s experience in court fairly well. Often it appeared to me that everyone else, apart from me and the litigants, knew exactly what was going on in the courtroom. A disadvantage resulting from my outsider status, however, became apparent for example in the distribution of last-minute information. In one instance, a trial was transferred to another city suddenly halfway through the litigation without me knowing. Consequently, I went to the courthouse early in the morning only to learn that, due to last minute changes, the trial was to be continued in a location more than 100 kilometres away. I drove to the other courthouse and was able to attend the trial midday onwards yet was disappointed about having already missed half of the day’s proceedings.

Attending trials in person, then, has largely defined the methodological approach of this study. While I see myself engaging with participant observation, it is worth recognising the particular relationship between participating and observing that characterises my use of the method. Sociologist Raymond Gold (1958) has proposed four roles available for an ethnographer conducting fieldwork: complete observer, observer-as-participant, participant-as-observer and complete participant. Anthropologist Paul Rabinow (1977, 79), in turn, has stressed the primacy of observing and noted that observation is always the starting point and the governing term in the observer-participant pair. The isolated roles of an observer and of a participant only exist in theory, of course, and an ethnographer’s position in the participant-observer continuum shifts in different stages of research too (Musante, 2015, 263). In my research, the role of an observer, rather than that

of a participant, was more dominant in most situations. I saw my task in the courtroom primarily as to observe, yet I was also participating in the courtroom performances as a member of the audience. I was, then, an observer conducting ethnographic research but also a participant among the silent public that, ultimately, validates the performances of justice and the authority of law (see also Eltringham, 2012). The participation aspect was manifested, furthermore, in the out-of-courtroom discussions that occurred in the courthouse cafeteria and other waiting areas nearby the courtrooms. Additionally, I did conduct interviews with a lawyer, judge, interpreter and two prosecutors to complement the research material. The semi-structured interviews (Davies, 2002, 94-95) lasted for approximately one hour each and they were all recorded and transcribed with the permissions of the participants. The participants were given information regarding the use of the interview data and a summary of the research plan in writing prior to the interviews. While the informal, out-of-courtroom discussions are not explicitly quoted in the four research publications, they have been invaluable for my increased understanding of the day-to-day proceedings of Finnish criminal law. For the use of the one informal chat that I quote at the very start of this thesis, I did ask and receive permission from the interviewed lawyer.

During fieldwork, I had my laptop with me in the courthouse and made detailed notes during each hearing. I summarised what people said in the courtroom and included verbatim quotes when I thought the topic discussed was particularly important (e.g. implicit references to “culture”). I complemented these notes with comments and further observations after the trial, most often on the same day. At first, I struggled to keep up with the pace of the trial and constantly felt like I was not managing to write all the relevant details down. After becoming more accustomed to the environment and, importantly, learning what information I could access later in the decision document, my note taking became more efficient. In the end, my notes from a short trial (approx. two hours) filled approximately three to six pages while the longest trial of my study (fifteen days) turned into eighty-nine pages of notes.

**Table 1. Summary of research material**

Type of material	Quantity	Years of collection
Field notes from observed cases		
District court	35 cases duration per case: 2h–15days notes per case: 3–89 pages	2014–2018
Court of appeal	3 cases duration per case: 2–4h notes per case: 2–6 pages	2014–2016
Interviews (semi-structured)	5 (lawyer, judge, interpreter and two prosecutors) duration per interview: ~1h	2016–2017
Court decisions		
Arrangement of illegal immigration	178 pages per decision: 3–167	2017 (cases tried 2011– 2017)
Others	52 pages per decision: 3–175	2014–2018

### 3.2 Courtroom ethnography

Traditionally, anthropologists have studied groups of people through taking part in their daily lives for an extended period of time. After his fieldwork among the Trobriand people in New Guinea, anthropologist Bronislaw Malinowski (1922, 25) outlined, in what is considered the first modern ethnography, that the objective of participant observation is “to grasp the native’s point of view”. Although anthropologists came to be known for their interest in the “remote” and “exotic” peoples, the strand of at-home-ethnography, or endogenous ethnography, has been an integral part of anthropological research for decades (Marcus & Fischer, 1986, 112-113; Ginkel, 1994, 6). Despite the geographical location of a given study, the objective of ethnographic research is to gain an in-depth understanding of the field site, its people and events through what can be essentially described as “being there” (Geertz, 1988, 1).

Ethnography has proven a particularly useful method when studying law and legal practice, the daily proceedings of courtrooms and the varied social interactions linked to them (Conley and O’Barr, 1990; Latour, 2010; Makhija, 2019; Merry, 1990; Nesper, 2007; Richland, 2008; Scheffer, 2010). As an “antihegemonic paradigm” (Blommaert, 2009, 438) ethnography has the “ability to cast legal concepts and processes in a new light, and in so doing challenge legal blindspots

and habits of thought” (Gill, 2019, 310). An ethnographic approach to law, then, looks beyond the “law in books” (Pound, 1910) and pays close attention to the speech, space and people that make up the legal negotiations and the day-to-day of law.

Scholars who have made use of ethnographic methods in studying law courts have, for instance, highlighted how ideology becomes visible in the language of judges (Philips, 1998), and that courtroom discussions are in many ways reflective of law’s power (Conley & O’Barr, 1998). Indeed, in their ethnographies of legal discourse in American legal practice, legal anthropologists John Conley and William O’Barr (1998) have shown how power emerges in linguistic details revealing, for example, a deep gender bias in the way in which credibility is assessed in rape trials. In a more recent study regarding trials and language, anthropologist María García (2019), in turn, analysed a Guatemalan genocide trial as a site of miscommunications between the Ixil Maya witnesses and non-Ixil lawyers, judges and observers. García argued that the discursive expectations of the courtroom did not allow for Ixil ways of speaking and, therefore, for Ixil subjects, highlighting the challenges faced by marginalised groups as they engage with the state institutions of justice. García’s observations of the shortcomings regarding hegemonic legal subjectivity in trials ties closely into my writing on acultural legal subjectivity, which is a central notion of Publication I. Both García and I suggest that the courts in our studies are equipped to deal with specific types of subjects that conform to the established courtroom protocol and cultural norms resulting in the exclusion of alternative, subaltern legal subjectivities.

While analysing courtroom talk has been an apparent focus for a number of anthropologists studying law courts, some scholars have found the language-centric approach as insufficient. Anthropologist Nigel Eltringham (2012), for instance, has studied the International Criminal Tribunal for Rwanda and highlighted the crucial role played by the silent public of trials in validating the juridical spectacles and, ultimately, the authority of law. Bens (2018), in turn, has proposed a methodological approach to studying law courts as “affective arrangements” in which analysing courtroom atmospheres, rather than mere speech, is crucial. Drawing from his case study in the International Criminal Court, Bens suggested that courtroom atmospheres are best grasped through looking at the performative aspects of trials which includes paying attention to dimensions such as “voice, gesture, spatial arrangements, and visual regimes” (p. 346). While affect is not a central notion in my study, similarly to Bens, I have found the metaphor of trials as performances useful in analysing courtroom procedures.

Paralleling trials with performances is by no means a novel notion and scholars in anthropology, law, performance studies, history and literature have often described legal proceedings in terms of performance or theatre (Bens, 2018; Cole, 2010; Grunwald, 2012; Levenson, 2008; Peters, 2008). In anthropology, performance is a complex notion and it can be applied to studying the spectacular, public and highly conventionalised but also as a lens into analysing the mundane everyday events (Palmer & Jankowiak, 1996, 225). Ethnographic writings on performance, in general, link closely to the postmodern crisis of representation as researchers saw the paradigm of performance as addressing the oppressive dominance of the textual form and offering a way into relating to others through embodiment and empathy (Conquergood, 1985; D'onofrio, 2018, 7). Following the ideas of anthropologist Victor Turner (1986, 4-5), performances, or “social dramas” can, furthermore, be understood in terms of rituals, which serve as transformative acts in which a person assumes a new place in the social order. The collective and highly formalised performance of a trial is perhaps particularly telling of the power and meaning of legal rituals for individuals but also for the wider society in redressing disputes (cf. Turner, 1986, 28). Trials as performances, then, stresses the crucial role of legal rituals in a society but also allows a lens through which to study the ethnographic field. Indeed, seeing trials as performances is a fruitful basis for conducting anthropological research in courts as it provides a broad perspective through which to study not only the linguistic utterances of a courtroom but also the multiple gestures, affects and visual regimes linked to the space (Bens, 2018, 346). For a researcher who seeks to provide “thick description” (Geertz, 1973, 3), understanding criminal trials as complex cultural performances allows access to metaphors and concepts through which to challenge the taken-for-granted nature of various legal notions.

All the legal performances I observed took place in courtrooms that were several in number but uniform in layout and minimalist style (see Figure 1). The judge, the lay judges and the clerk were sat next to each other at the front of the room behind a wide desk that was elevated to a slightly higher level compared to the rest of the room and its furniture. The prosecutor had his or her desk on the far left side of the room while the desk for a witness was located on the far right. The rest of the desks seated two people each and were positioned opposite to the judges’ desk towards the back of the room. These desks were meant for the defendants and plaintiffs and their lawyers as well as for the interpreters. The part of the room which became most familiar to me, however, was located behind the two person

desks against the back wall. There, at the far back closest to the exit, was a single row of wooden chairs allocated for the audience.

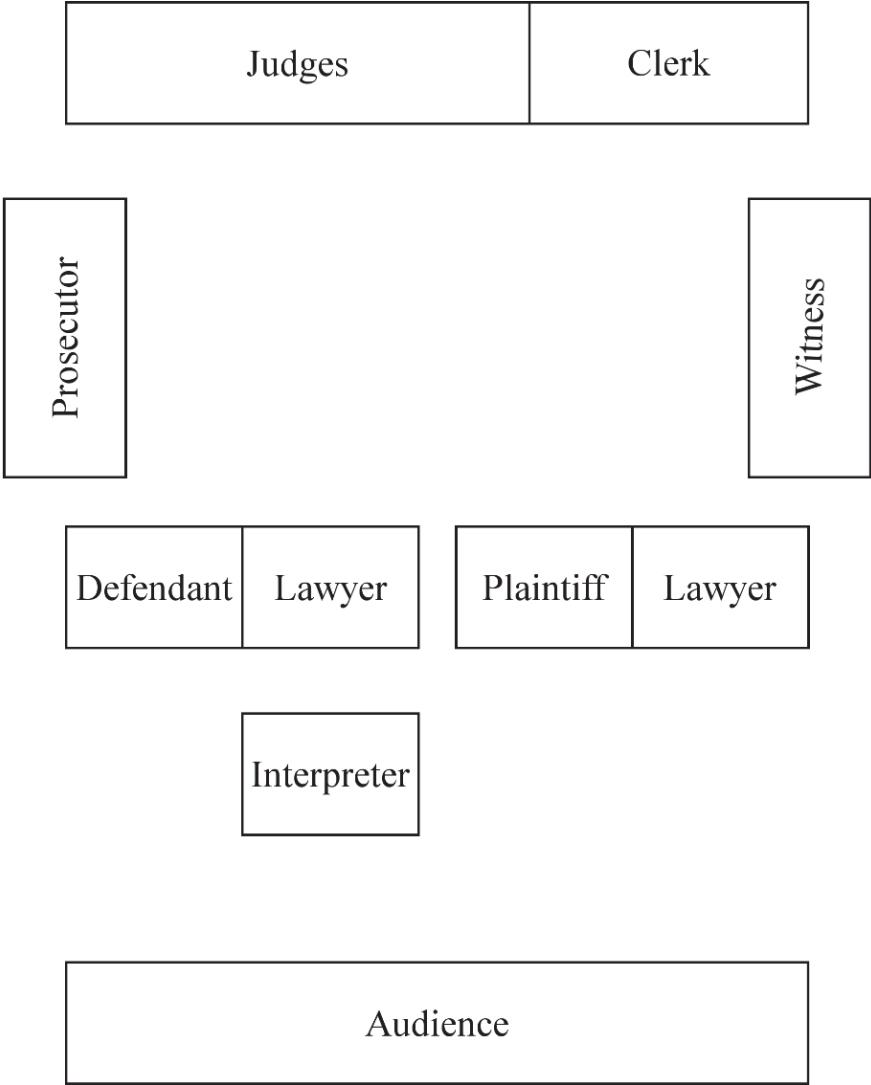


Fig. 1. A simple layout of a Finnish courtroom.

The legal performances I ended up observing included people in various roles and they communicated with each other through a peculiar sounding language. To borrow Erving Goffman's term (1981, 3), the courtroom has a very specific *participation framework* in which some have more visible roles than others yet where everyone, be it a diligently typing clerk or a quiet member of the audience, holds a crucial part in the overall interaction. The main division of roles present in the courtroom seemed to be between the talkers and the listeners. The prosecutors and lawyers took turns talking while the lay judges stared at them expressionlessly, making it difficult to determine whether they were listening intently or mentally somewhere else. The professional judge acted as a sort of director indicating whose "line" was coming up next before blending in with the row of listeners. In this manner, the legal performance would carry on until all the main characters – the prosecutor, lawyers and interpreters – had played their parts and, at times, given floor to the witnesses who made intriguing guest appearances. The style of discussion remained detached, even clinical, as the prosecutor and lawyers described events and evidence in a neutral tone, frequently seeking to back up their arguments by references to specific sections in the criminal law. This clinical sound of the dialogue persisted even when the nature of the events described would oftentimes turn unsettling. While the legal professionals mastered the clinical style seemingly effortlessly, the litigants at times struggled. A woman charged with serious fraud, for example, seemed particularly upset during a trial I observed:

*The defendant seems distressed and often replies that she doesn't either remember, know or understand when she's asked about what took place before and after their arrival to Finland. During the trial she cries a lot and needs many breaks. Earlier in the day she ran out the room crying "I can't take this anymore, I really can't" (mä en jaksa enää, en oikeasti jaksa). It was really disturbing. There was someone in the waiting area who I assume she knew and who started to comfort her. (Field notes, 14.1.2014)*

As I took part in more and more of these legal performances, the paradoxes regarding the role of the litigant began to increasingly attract my attention (Publication I). While the litigants, undoubtedly, were at the centre of the performances, they seemed to obtain the roles of listeners without who the play could easily continue. Indeed, unless they were called to witness, the defendants and litigants were expected to remain quiet throughout the trial. Often defendants and litigants seemed to settle into their roles as listeners effortlessly, but for some of them listening quietly while their lives were being narrated to them by outsiders

proved difficult. In these situations, the lawyers would often swiftly turn to their client and remind them about their role in this theatre and that they should, in essence, stick to the script and remain quiet. In a trial I participated in, the defendant did not settle well into his role as a quiet bystander, but kept interrupting the normal course of the play:

*A defendant asks to go for a smoke. He doesn't have any cigarettes though. His lawyer has some but there is confusion over whether he can give one to his client or not. The judge wouldn't mind but apparently the prison rules prevent it from happening. The defendant is clearly not happy about this. (- - -) The defendant's demeanour is interesting. Seems like he's constantly putting on a show and enjoys being at the centre of the attention. He seems to enjoy making other defendants react with a smile or a chuckle to his statements. He uses a lot of dramatic language and says, for example, that this trial is like Saddam Hussein's. The prison guards in the back roll their eyes. (Field notes, 16.1.2017)*

The clinical style of the conduct that is preferred in Finnish courtrooms is telling of the cultural setting in which the performances of justice take place. Indeed, while in the following chapters I focus largely on the references to litigants' cultural backgrounds and the ways in which cultural difference, for instance, is concealed from trials, much could be said about the culture of interaction in Finnish courts and trials too. In her study of defence lawyers' demeanour in Swedish courtrooms, sociologist Lisa Flower (2018, 3) has written about the emotional regimes of subtlety and control that characterise Swedish trials. In Sweden, she notes, emotions in the courtroom have to remain managed and only subtle gestures and uses of body language can be detected. In the course of a trial, emotion is seen as disruptive of rationality (Bergman Blix & Wettergren, 2016; Flower, 2018, 3) and the same interpretation appears to underline the Finnish courtroom conduct. Indeed, while the cafeteria of the courthouse I studied was filled with upbeat conversations between colleagues on their lunch breaks, the light atmosphere vanished and was replaced by seriousness and stoic demeanours as soon as those same people entered the courtroom.

### **3.3 Studying court documents**

My physical research material consists of ethnographic field notes and interview transcripts, as well as of written legal decisions produced by different Finnish law courts. I collected written court decisions from the trials I participated in, but also

from several trials that I did not attend in person. Publication III, in particular, focuses on written court documents as it takes interest in 178 legal cases dealing with the arrangement of illegal immigration (*laittoman maahantulon järjestäminen*). The lengths of these documents varied from three to 167 pages, and I studied them with the help of the qualitative data analysis software NVivo.

As court documents have an important role in this study, my writing ties closely in with the increased anthropological attention in documents as objects of ethnographic research (Halme-Tuomisaari et al, 2019; Hull, 2012a; 2012b; Jacob, 2007; Navaro-Yashin, 2007; Riles, 2006). In this literature, documents are seen as something beyond mere representation (Hull, 2012a, 254); as affectively charged objects (Navaro-Yashin, 2007; Reeves, 2015, 120) that have the capacity to make things and persons come into being (Billaud, 2014, 82; Frohmann, 2008, 1573; Jacob, 2007). An anthropological reading of documents entails that documents are not treated as plain and forthright objects of bureaucratic institutions, but rather as material that speaks more broadly of the organisations themselves, their rules, practices and ideologies (cf. Hull, 2012a, 253). The Finnish courts' verdict documents, consequently, do not merely state the outcome of a legal case, but make visible a variety of individual and cultural assumptions and ideals underlining legal deliberations.

The meaning of a document is not only conveyed in its textual content but also in its layout and aesthetics (Billaud, 2014; Riles, 1998). The written decisions of Finnish courts have a uniform structure; they consist of multiple accounts and include the wordings of different authors (e.g. prosecutors, court clerks) yet ultimately fall under the authorship of a specific judge or judges. The decision document starts with the general identification details after which the prosecutor's claims are presented. The prosecutor's account is followed by responses from the defence after which the evidence is identified and explained in writing. The evidence can consist of concrete documents and items as well as verbal accounts from the witnesses. Finally, the judge's conclusion is presented and at the very end of the document, the statement of the sentence and compensations are revealed. My main interest in studying the court documents has been the judge's account. Often, reading the judge's conclusion from the decision document has been the only way to learn about the judge's views regarding a specific case. Based on the trials I participated in, only in a small number of cases do judges make their decisions on the day of the trial and read their conclusions out loud in the courtroom. Most often, they take time to deliberate and issue the verdict in writing some days or weeks after the trial. The decision documents, then, are crucial in providing access to the

judges' views. As highlighted earlier, however, in privileging the judges' voices over others, they convey a deeply incomplete view of the process of legal knowledge production.

### **3.4 Ethical considerations**

In writing about the ethics of ethnographic research, Quetzil Castañeda (2006) has highlighted the need to differentiate between the ethics of conducting ethnographic research in the field on one hand and the making of textual representations of it on the other. In terms of the ethics regarding fieldwork, obtaining informed consent from research participants is a central practice – yet the informed consent requirement has to be assessed against the nature of the research environment (Bell, 2014; Kunnath, 2013). Due to the hierarchical structure of the field site of my study where I had little or no contact with, for example, witnesses or incarcerated defendants, I was unable to obtain informed consent from the people I observed. The trials I participated in were all public in nature, and I did inform the courthouse staff about my research at the start of the project. The largely covert nature of my observation was unfortunate, yet in assessing the ethics of my study the differences between studying the public and the private are relevant. As legal anthropologist Laura Nader (1972, 304-305) has argued “We should not necessarily apply the same ethics developed for studying the private, and even ethics developed for studying in foreign cultures (where we are guests), to the study of institutions, organisations, bureaucracies that have a broad public impact”. Indeed, the principles of publicity and transparency of legal proceedings allowed me an access to the field and, I believe, justify the ethnographic scrutiny towards the day-to-day of law too. The ethical approval for my research and data collection was granted by the Ethics Committee of Human Sciences at the University of Oulu.

The lack of informed consent from the people I observed in court has added to my sense of responsibility towards the research subjects and led to considering how to appropriately present them. Despite the publicity of the trials in my study, the topics discussed during a criminal hearing are personal and often sensitive in nature. In order to do minimum harm to the study subjects (cf. AAA Statement on ethics, 2012), I do not disclose the identification details of their cases or use their real names but refer to them using pseudonyms or their professional titles. The anonymisation of personal details is of course crucial, yet a study that focuses on politically charged issues regarding cultural minorities and crime needs to address the ethics of representation further. In my study, ethical considerations regarding

representation are most clearly connected to questions concerning cultural “othering”, the appropriation of migrant voices, and the foreign criminality discourse.

Focusing on cultural minorities is typical in anthropological research and it reflects the ambition of several scholars to engage with those people and communities that are considered to be at the margins of a society (Grillo, 2016, 4). While the risk of reproducing the colonial logic and underlining the imbalanced power relation between the researcher and the researched is present in this kind of engagement (Asad, 1973), my study should not be read as furthering the cultural “othering” in Finnish courts. Rather, my focus is on describing the day-to-day of law through understanding the court cases as cultural performance in which none of the participants are seen as without culture. Consequently, rather than presenting particular individuals as having, or not having, culture, my aim is to highlight the overall cultural nature of trials and the multiple normative assumptions that become visible in courtroom debates and in legal institutions.

In my study, then, I have mostly opted for an institutional focus and studied the ways in which people interpret and interact with the law and with each other under the bureaucratic setting of Finnish jurisdiction. The institutional focus appears favourable also in the light of recent discussions regarding the awkward role of anthropological scholarship in reinforcing the European refugee “regime” through exceptionalising the migrant experience (Cabot, 2019; see also Andersson, 2014). This ethical concern is particularly relevant in connection to Publication III where I focus on court cases regarding irregular migration that took place before and during the European migration “crisis”. In her article, Heath Cabot (2019, 271) suggests that anthropological scholarship contributes towards marginalising refugees and that “Especially for elite anthropologists from the Global North, a more responsible way of dealing with problems of power and co-optation may be to focus not on border crossers but on police, border guards, bureaucrats, and humanitarian actors.” In focusing on the workings of Finnish courts and legal bureaucrats rather than on the migrants, then, I am likely to be less complicit in scholarship that portrays suffering as spectacular and domesticates migrant “voices” (cf. Cabot, 2019, 270).

As I study criminal cases that involve members from various cultural minorities, I run the risk of presenting some of the research subjects in a light that potentially strengthens the “foreigner-as-criminal” discourse (Rivers, 2015). Indeed, the foreign criminality discourse can serve as a powerful political tool for the ideological managing of the nation-state (Rivers, 2015), as it has the potential

to “present a simple, easy-to-understand drama in which political leaders play superheroes who crack down on foreign villains” (Yamamoto, 2004, 49). In Finland, the criminality of refugees and Muslims has been a strong public and political discourse that can be mobilised to strengthen the nationalist rhetoric (Keskinen 2016, 120-121). My study, however, directs scrutiny towards the process of producing “il/legality” in Finnish courts rather than obtaining a narrow focus only on cases in which defendants are found guilty of certain crimes. The focus on the process of producing “il/legality” shows that the criminal subjectivity of a cultural minority defendant is both established and removed in these court negotiations and, thus, highlights the extremely blurry and temporal nature of migrant “il/legality”.

Overall, ethnography as a research method has allowed me to study legal proceedings closely through personal engagement, yet the intimate approach has proven ethically challenging. While studying sensitive topics potentially brings challenges to research in terms of access, methodology, representation and dissemination of results, “sensitivity” of a topic might also indicate that it deals with pressing social issues and challenging questions of policy (Lee, 1993; Sieber & Stanley, 1988, 55). “Sensitivity” of a research topic is hardly a measure of its theoretical or social significance (Lee, 1993, 2), yet through studying a topic that deals with criminality, cultural backgrounds and law I hope to bring insight into some important issues of contemporary Finnish society that have not attracted much ethnographic interest so far.



## 4 Judicial constructions of culture

In the trials examined in this study, explicit references to different cultures and cultural identities appeared both in the courtroom discussions and in the decision documents. “Kurdish”, “Vietnamese” and “Finnish cultures”, for instance, became part of the courtroom vocabulary and turned into legally relevant reasoning. “Culture”, while rarely discussed extensively in the court cases of this study, appeared as a significant subplot within many of the legal performances. Indeed, while several anthropologists have distanced themselves from the notion (Smith 2018, 88), “culture” was found meaningful in court when, for instance, explaining litigants’ behaviour and communicating “otherness” as well as “normalcy”. Here, I will examine how, and by whom, the notion of culture was interpreted and mobilised in the different criminal cases. I will analyse the type of understanding of the notion of culture that was furthered in the judicial constructions of it and, moreover, whose knowledge was relied on in the process.

### 4.1 Essentialising cultures in trials

Discussing a person’s cultural minority background in court is a challenging act. The question of whether a person’s cultural background can or should be considered in assessing criminal liability is a topic of controversy and a question I do not attempt to give a clear-cut answer to in my study. Some scholars have argued that accepting culture as a form of defence has the potential to turn culture into an excuse for criminal behaviour (Coleman, 2001, 999), harm primarily cultural minority women (Frick, 2014; Okin, 1999; Phillips, 2010) and, overall, promote inequality and prejudice (Sacks, 1996). Others, in turn, have reasoned that allowing culture to be considered would protect minorities against the inherent cultural majority bias of the law (Amirthalingam, 2009; Parekh, 2014, 104), it would enable the courts to take an in-depth look into the context and motives of specific actions and, hence, help in making more informed assessments of an individual’s blameworthiness (Lernestedt, 2014, 20; Renteln 2004; 2014).

Regardless of one’s potential normative orientation of choice concerning the use of culture in court, the crux of the debate seems to lie ultimately on the notion of culture. How does culture – culture that has been described by anthropologists as, for example “a way of talking about collective identities” (Kuper, 1999, 3) and a mere “anthropological abstraction” (Borofsky, 1994, 245) – translate into legal language and practice? Indeed, several scholars have noted that discussing culture

in court leads into portraying cultural minority identities in essentialist terms (e.g. Coffman, 2007; Loperena 2020; Phillips 2007, 2010). Discussing culture in court, then, can happen in a particularly simplifying manner, and this became apparent in my research material too.

When the cultural backgrounds of litigants were invoked in the court cases of this study, the presentations of cultures were predominantly uncomplex. In a case regarding the arrangement of illegal immigration, for example, a district court judge considered the role of “Iraqi culture” in assessing the criminal nature of the case. The alleged arrangement of illegal immigration included an Iraqi couple living in Finland who drove five of their relatives across the border between Sweden and Finland in order to assist them in their asylum-seeking processes. According to the verdict, the parents of the couple had urged the couple to assist their relatives in traveling to Finland. In his assessment of the case, the judge concluded that “According to Iraqi cultural norms, the defendants did not have the option to act against their parents’ will” and that “In their culture, assisting close relatives is an obligation”. In the end, the judge found the couple guilty of facilitating illegal immigration but exempted them from any punishment.

In another instance, first a district court and later a court of appeal dealt with a case regarding human trafficking. The couple charged in the case were of Vietnamese origin and they recruited employees from Vietnam to their Oriental restaurants located in a Finnish city. In the trials, both courts found the couple guilty of multiple charges, including human trafficking, forced labour and fraud. The court verdicts include references to “Vietnamese culture” and in one of them, the judges state:

*The court of appeal finds also that the threat of being sent back [from Finland to Vietnam] is connected to the so-called risk of losing face, as in Vietnamese culture it is the duty of a man to provide for both his immediate family as well as his close relatives. Likewise, the shame resulting from an employer terminating the employment relationship works as a threat in a culture where respecting one’s employer, or generally someone who is higher in the hierarchy, is central.*

In a third example, the view of culture as a monolithic and coherent unit was employed when a court dealt with a violent altercation between two asylum-seeking men. The men were referred to as Kurds in the trial, and the violent incident that was under scrutiny had started with verbal insults and ended with one man stabbing the other with a pair of scissors. I attended the trial in person, and it proved

particularly interesting, but also disturbing, to observe, as we were presented with three surveillance camera videos connected to the incident. While much of the footage was grainy and unclear, one of the videos showed the stabbing. The two men, whilst apparently verbally arguing, left the room with a pool table and headed towards a doorway and to the corridor on the other side of the doorway. Other men followed and soon the narrow corridor was crowded with people who moved in an agitated manner. The details, such as faces and expressions, were indiscernible yet the determined and repetitive movements of a stabbing taking place in the middle of the chaotic crowd was visible. By the time the crowd had managed to separate the attacker from the victim, harm had already occurred. In the last of the three videos, we were confronted with footage of the victim leaving the corridor to the staircase by foot with his hand on his bloody neck. While the clinical demeanour prevailed and there were no clear expressions of shock or discomfort that I could see among the people in the courtroom, the atmosphere in the room felt heavier after the viewing of the videos. The performance of justice, however, quickly continued its normal course as the judge invited the prosecutor and lawyers to comment on the medical note regarding the victim's injuries.

While the surveillance camera videos lacked sound, it seemed as though the two men were having a heated conversation. Indeed, the prosecutor of the case was interested in the verbal death threats that were allegedly presented during the incident and argued that the crime in question was an attempted manslaughter. The three district court judges deciding on the case referred to culture as they wrote in the verdict that "it has been told that in the defendant's and plaintiff's culture claiming to kill someone without having a real intention to do so, is rather easily done". Later on, they also stated that "In any case, both the defendant and the plaintiff are Kurds, therefore they share the same cultural background and they, in all likelihood, understand each other in the same way." During the trial, cursory references to "Kurdish culture" were frequently made without going into any detail on the plaintiff's ethnic backgrounds or places of origin. In the end, the defendant escaped the charge of attempted manslaughter and was found guilty of aggravated assault.

In the three cases mentioned above, the different judges constructed "Iraqi", "Vietnamese" and "Kurdish" cultures in a way that reflected essentialising logics and glossed over the complexities of the notions. The "Iraqi cultural norms" were portrayed as extremely coercive and the charged couple as unable to decide for their own involvement in the crime. The notions regarding unequal power relations and strong hierarchy were, hence, presented as part of "Iraqi culture" and the defendants

as falling victims to it. Similarly, in their presentation of “Vietnamese culture” the courts constructed an image of a culture that is coercive, entails unequal power dynamics and bears duties to its members. Portraying the “cultural other” as devoid of agency problematically echoes colonial discourse which imagines the non-Western other as passive and powerless (Ortner, 1996, 11; Said, 1978). In writing about the “Kurds” who “share the same cultural background”, furthermore, the courts portrayed an image of one “Kurdish culture” that is a coherent unit and the same to all its members. These judicial constructions of cultures, hence, reinforced notions of fixed categories and identities, and showcased that cultural difference is far from a neutral marker separating people in the courtroom (Aliverti, 2018, 129).

Anthropologist Anthony Good has pointed out how in the process of constructing images of other cultures, the lawyers and judges engage in a process of reification where they constitute their own culture in contrast to that of the litigant (Good, 2008, 54). In other words, the notions of other cultures are created against the vision of the “cultural normal”. While the ideas of the “cultural normal” can easily remain unpronounced and unquestioned in the court decisions, in three cases the Finnish courts did make explicit references to “Finnish culture” in deciding on a criminal case. In a case where the potential family relationship between two Somali men was debated, for example, the judge stated:

*The district court states that it is both impossible and unnecessary to determine whether [A] and [B] are somehow related to each other as there is a lack of concepts regarding tribes and clans in Finnish culture.*

In this case, the judge decided that even if the men were in fact part of the same “tribe” (heimo), as argued by the defendant, the relationship should not count as a family tie. The alleged lack of suitable terminology regarding tribal relations “in Finnish culture” appears, at first, as a welcome acknowledgement of the shortcomings relating to the normativity of the national culture in the trial. Arguably, however, the judge’s conclusion on the impossibility of evaluation when talking about family ties unorthodox in Finland works to strengthen the normativity of the national culture in the courtroom. The judge appears to conclude that if the evaluative measures deriving from the national culture are not sufficient, assessment is “both impossible and unnecessary”.

Another case in which the idea of the “cultural normal” was voiced in a judge’s assessment of close family relations included two Iraqi men. In the decision, the judge stated:

*Even when a cousin is not considered a close relative in Finland, it is understandable that in other cultures this may be different, and the feeling of solidarity and desire to help (- - -) extend to a wider circle of relatives.*

In both of the examples described above, the judges reflected essentialising logics as they referred to “Finnish culture”. In these cases, instead of constructing the “cultural other” the Finnish judges constructed the “cultural normal” in simplifying terms as they created uncomplex images of “Finnish culture” and Finland as not recognising tribal relations and as not seeing relationships between cousins as close. Indeed, the cultural groupings constructed in the courtroom are situated in a framework of sameness and difference, and the construction of the “cultural other” cannot be successfully accomplished without constructing a “cultural normal” as the benchmark for such a classification (D’hondt, 2010, 71). In this way, legal language engages in everyday discourses of nationhood too and contributes towards producing the nation as an idealised and imagined community (Aliverti, 2018, 134; Anderson, 1991).

Applying the idea of Finnish nation as an idealised point of reference when evaluating the criminal nature of a person’s actions was clearly pronounced in a case regarding the arrangement of illegal immigration. The judge assessing the case considered whether a person who assisted a group of Syrians to enter Finland from Russia was acting under humanitarian influences. In the end, the judge concluded that the person was not affected by humanitarian influences and justified his conclusion in the decision document as follows:

*During the Second World War, Finns organised a large-scale operation where children were sent to Sweden to safety. The case in question concerns people who have already managed to escape war from Syria to Russia. The conditions affecting the safety of the Syrians in Russia cannot be equated with the situation of Finland in the World War.*

Here, it is unclear why the judge used Finland and the Second World War as points of comparison when evaluating the potential humanitarian influences affecting the defendant of the case. The judge’s explicit use of the nationalistic imaginary appears arbitrary, yet it speaks volumes about the ideological capacity of the law in communicating national identities and belonging (see also Aliverti 2019). Indeed, the nationalistic notions mobilised by the judge idealise the military history of Finland and showcase the symbolic power of the law in nation-building.

The judicial constructing of cultures by Finnish judges, then, is a process of imagining the “cultural other” but also the “cultural normal” in a way that reflects essentialising logics. The different judges mobilised a notion of culture as a fixed category and revealed some normative assumptions regarding what they viewed as defining characters of, for example, “Vietnamese” and “Iraqi”, but also “Finnish” cultures. In my research material, however, the judicial constructions of culture were not only created by the judges but also by the litigants and their lawyers. Similarly to the ways in which the judges referred to cultures, the litigants too applied essentialising and simplifying language as they made statements about those cultural groups they saw themselves as belonging to. In a case where a defendant had violated a restraining order and sent aggressive text messages to his ex-partner, for example, the threatening nature of the messages was discussed in connection to the defendant’s cultural background. The defendant claimed that he had not, in fact, attempted to threaten his ex-partner and the defence lawyer’s wording cited in the decision document asserts that the plaintiff: “was aware that the defendant comes from Turkish culture and when agitated, says things that he doesn’t mean”.

The short quote above highlights how the belief that culture explains certain type of behaviour is also gendered. Scholars have argued that for men, culture is invoked in court to explain their hyper-masculine, violent and sexual behaviour whereas for women culture is invoked when explaining their lack of agency and submissiveness to men (Phillips, 2007, 85; Aliverti, 2018, 137). In the cited case, “Turkish culture” was indeed invoked in connection to explaining threatening behaviour that was, however, allegedly to be understood as a façade and not as genuinely threatening. In their portrayal of “Turkish culture”, then, the defendant and the lawyer invoked gendered stereotypes and produced an image of a culture that normalises masculine performances of aggression. The judge assessing the case, however, did not accept the explanation drawing from “Turkish culture” but found the defendant guilty of intimidation.

Gendered stereotypes were, likewise, invoked in a case where a sister and a brother, who had moved to Finland from Iraq, were the plaintiff and the defendant. The sister claimed that her brother had assaulted and threatened to kill her as a result of her not acting according to the expectations of her family. The sister had spent time outside the house with friends that included men, and she had, in her brother’s opinion, dressed “inappropriately”. According to the decision document, the brother stated in the trial that “in their culture, a daughter has to live by certain rules to avoid risking the family’s reputation”. Here, the brother explained his

motives through reproducing the ideas of strong gender and generational hierarchies in “their culture”. The district court judges deciding on the case acknowledged this reasoning and concluded that the threats to kill were to be taken seriously. The brother’s explanation drawing from cultural traditions was, then, recognised yet not accepted as justifying his actions. In this case the judges considered the motives that linked to the traditions assumably central in the plaintiffs’ culture whereas the defendant attempting to explain his violent behaviour towards his ex-partner through invoking “Turkish culture” was unsuccessful. The judges’ decision to either take cultural reasoning into account or reject it might in some cases, then, be subordinate to the broader commitment of the courts to condemn patriarchal violence. Indeed, the previous cultural defence scholarship has stressed the complex relationship between patriarchal values and the accommodation of cultural differences and highlighted, for instance, the problematic ways in which judges have ended up accounting for the cultural reasoning to the detriment of gender equality (Coleman, 1996; Deckha, 2009).

Finally, references to cultural differences rather than to specific cultures, were made in my research material. For example, in a case concerning an accounting offence the defendants claimed that they did not understand that they might be committing a crime as they “came from a foreign culture and were young”. In another case, a defendant maintained in the trial that “due to cultural differences and language problems, he has not understood that his actions might be criminal” after having threatened to kill a person in a text message. Furthermore, a defendant who was accused of giving false information to immigration authorities claimed that “the incident was due to incomprehension, naivety and foreign culture”. In none of these cases, however, did the courts accept the use of cultural differences as justification but found the defendants guilty of the criminal charges.

The judicial constructions of cultures manifesting in Finnish courts, then, are created in essentialising terms not only by the judges but also by the litigants themselves as well as by their lawyers. As observed in earlier research, culture is routinely reduced to stereotypical representations when discussed in courts and these representations fail to recognise the historically changing and internally contested nature of cultures (Phillips, 2007; Coffman, 2007). Indeed, law courts are hardly the places where stereotypical notions on foreign or national cultures are challenged but rather, they are reproduced and reified for varied purposes (Leinonen & Pellander, 2014, 1503). While this was most often true in my research material too, there was at least one instance where the litigants of the case disagreed on the defining characteristics of “their culture”. In this particular case, the district

court assessed whether a man had caused his friend's death through negligence in connection to a car accident. Both the defendant and the deceased man were of Egyptian origin and had moved to a Finnish city from Cairo in 2007 and in 2011. The deceased person's Egyptian parents were the plaintiffs in the case, and they demanded high financial compensation from the defendant due to their future loss of income. The deceased son was in medical school and, according to the parents, he would have been responsible for providing for the parents after their retirement. According to the court decision, the lawyer of the parents stated that:

*The loss of income is based on Egyptian culture where children provide for their parents when given the opportunity. The notion of family is different from that in Finnish culture. A family consists of parents, grandparents and children.*

This was an unusual claim for compensation, and as I attended the trial in person, I noticed that the defence lawyer was uncomfortable in stating the parents demands. The lawyer, who to me appeared as an archetype of a practitioner of the legal profession with his dark suit, grey hair and thin wire-framed glasses, stated with hesitation that the parents ask for 10 million euros and added: "It is not common in Finland to demand such a large sum, but I am doing this [presenting the demand] as it is the request of the plaintiffs". There had also been a trial based on sharia law in Egypt regarding the same case and the district court was provided with documentation from that trial. There was some confusion over the legal significance of these documents, but the defence lawyer referred to them in arguing that the deceased son is not the only sibling in the family and, hence, not the sole provider for the parents in any case. The defendant, furthermore, questioned the whole interpretation on the crucial role of the son as a future provider for the parents. The defendant's account was cited in the decision document:

*As far as the defendant knows, [the deceased person C] has not been anyone's provider and [C's] parents are retired and divorced. In Egypt, parents have the responsibility to provide for their children, not the other way around. [C] had not been in contact with his father since moving to Finland. [C] had a sister and a brother, and the brother worked as an engineer.*

Here, the relationship between parents and their children in "Egyptian culture" was debated making the case a rare example of a trial where culture appeared as open for different interpretations. The arguments regarding "Egyptian culture", however, were not acknowledged by the judges in the final decision where they dismissed the charge of negligence, and consequently, any claims for compensation.

Overall, the knowledge production on cultures and cultural identities that became visible in the above-mentioned examples shows that the judicial constructions on cultures were predominantly essentialising in nature. This may relate to the ethos of legal fact-finding in which simplifications and essentialisation are often conceived more applicable than notions of context-dependency, for instance (cf. Thuen 2004, 280). Culture, as a famously contested and ambiguous concept, might appear particularly well suited for bearing a variety of different meanings that align with the strategic objectives of different actors involved in a court case. Indeed, anthropologists have, so far, discussed this issue in terms of the epistemic differences between legal and anthropological ways of knowing (Good, 2008; Martínez, 2020) which has led into establishing a divide between essentialist law and reflective anthropology (Bens, 2016b, 3). While positioning ones claims to reinforce the epistemic gap argument seems, indeed, easy at times, I do argue that assuming the gap as too deep has prevented the scholars from fully acknowledging the intricacies that are involved in the production of legal knowledge on cultures in courts. The primarily static views on cultures and cultural identities that manifested in the courtroom negotiations and legal documents of my study, for instance, were produced in multivocal processes that involved different judges but also litigants and their lawyers. These processes tied into the normative articulations of the “cultural otherness” but also of the “cultural normalcy” and they revealed the ideological capacity of the law in communicating national identities and belonging. The process through which the legal accounts on cultures were produced, then, hardly reflected one legal way of knowing about cultures and cultural identities but hints towards the complexity of relations and actors involved in the production of such accounts.

## **4.2 The informal experts of cultures in trials**

As discussed above, cultures and cultural identities were portrayed in courts by multiple actors including judges, litigants and lawyers. Additionally, the judicial constructions on cultures in Finnish courts relied at times heavily on what I have called informal cultural expertise (Publication II). Several scholars in anthropology have examined the potential of cultural expertise in legal proceedings and highlighted its potential benefits (Holden, 2011a; Good, 2006; Rabo, 2019; Rosen, 2018). Cultural expertise in courts is by no means a new phenomenon, and the use of anthropological knowledge in Native American tribal claims in the United States was, in fact, recorded as early as in 1895 (Holden, 2019b, 183). Since then,

anthropologists and other cultural experts have been involved in legal cases regarding, for example, racial segregation, indigenous communities' land claims as well as granting asylum (Rosen, 2018, 59). Legal anthropologist Livia Holden has noted that while anthropological expertise has become highly formalised in North America, the United Kingdom and Australasia, "More research should be carried out on anthropological expert witnessing in Continental Europe" (2019b, 195).

In Finland, expert witnessing was one of the focal points in a 2016 legal reform concerning the law of evidence, yet discussions on the role of cultural expertise have remained minimal. Before the reform, a distinction between an "expert witness" and a "witness with expert knowledge" was made: the former was deemed more credible and could only be named by the court, whereas the latter could be appointed by the prosecutor or the lawyers (Rautio & Frände, 2016). At present, the division no longer exists, and the expert witnesses can be appointed by all parties to the trial. However, cultural experts as expert witnesses were not utilised in any of the trials of my study. In the interviews and in several informal discussions, I asked legal practitioners as well as interpreters whether they had been to, or heard of, a court case where an expert witness had shared their knowledge regarding a specific culture or tradition. A lawyer, who had practised law for 23 years, explained to me in an interview:

*If we talk about people from, let's say, the Middle East, we tend to have stereotypes about them that are based on our prejudices rather than actually knowing them and surely that applies, I mean the district courts and the members of law courts are in no way cut off from the general life, it applies to them, too. (- - -) It is clear that if we talk about, for example, homicide to which the defendant has pleaded not guilty and it is argued that the meanings of all the important factors would be completely different if the crime was committed among Finns than if it was committed among immigrants, then the only way [to find out about the crime] is to invite an expert witness to explain the cultural issues. However, in no trial, so far, have I invited [an expert witness] nor have I been to one where one was invited; although in principle it could happen in any case.*

The lawyer's lack of experience with cultural experts was by no means an anomaly in my research material as only one interpreter told me about having participated in a trial where a cultural expert as an expert witness was present. While formal cultural expertise was not utilised in any of the cases of this study, in some instances the courts ended up relying on informal cultural brokers in assessing the alleged

crimes. In the earlier mentioned case concerning a violent altercation between two Kurdish men, for example, an eyewitness ended up acquiring a dual role both as a witness and a cultural expert. The witness, who according to the judges' account articulated in the court decision "is also a Kurd", had been present during the violent incident as he lived in the same reception centre with the defendant and the plaintiff at the time of the suspected crime. I, along with others participating in this specific trial, were able to see in very concrete terms that he had, indeed, been present during the incident as he appeared in the surveillance camera footage described in the previous subchapter. In the trial, the witness was asked questions regarding the verbal threats presented during the episode and he, for instance, told the prosecutor that he did not interpret the death threats as serious. I observed how the witness explained casually that "in their culture" threatening to kill a person is most often just a "habit" and does not indicate an actual desire to take anyone's life. The witness highlighted his point to the prosecutor with an anecdote: "I can give you an example. As children, when we played outside, mother would call to us, and she might shout 'Come in or I'll kill you!' It's just a habit, it doesn't mean anything serious." In the end, the district court judges convicted the defendant of serious assault rather than attempted manslaughter and stated in their decision:

*It has become clear from the plaintiff's, defendant's and witness's narratives that both the defendant and the plaintiff have insulted each other's close relatives. In addition to this, at least the defendant has told the plaintiff that he intends to kill him. Then again, it has been told that in the defendant's and plaintiff's culture claiming to kill someone without having a real intention to do so, is rather easily done. The court deems that the cultural background of the defendant and the plaintiff shall be taken into account when assessing the significance of the statements, yet there has been no external report presented in this case regarding the way in which these sorts of statements should be interpreted in their culture. According to the witness, in their culture one can insult religion but never close relatives. (Emphasis added)*

In the decision, the court stated that it had not been provided with any external report that would guide the judges in interpreting death threats in the context of the litigants' "culture". The judges did, however, refer to the witness's account twice as a source of cultural expertise in the quote presented above (in non-italics). The first reference is presented with the use of passive voice, yet it was indeed the witness who spoke about the casualness of death threats in "their culture" in the trial. The use of the passive voice hides the social actor behind the argument making it

difficult to locate the source of information that the court relied on. This discursive strategy of favouring the passive voice is widely used in the decision documents together with referring to the deciding judge or judges as “the court”. In different cases, “the court” consisted of three to four people that, in district courts, included lay judges in addition to one professional judge, and in the courts of appeal involved only professional judges. In spite of the courts’ inevitable internal dissimilarity, their views were manifested in the verdicts only through one voice, as “the court”. Arguably, as the legal verdicts tended to mask the sources of cultural information and refer to the court as an impersonal collective, they built towards a view of the court as an omniscient and objective authority. In a similar vein, other scholars have studied how the judicial authority of law courts is produced in practices such as the exclusion of certain cases (Barrera, 2018) and in the favouring of particular types of expert knowledge (Wilson, 2016). The judges in the above-mentioned case, then, were potentially making the informal cultural expertise appear as neutral and objective, and hence, turning it more suitable for their use. In the second instance, the reference to the witness as the source of information is explicit, and his views on what count as serious insults “in their culture” are presented without further elaboration. The judges, then, relied on the witness’s views when making statements about the litigants’ culture, and hence treated him as a community member who was acting as a cultural expert (see also Caughey, 2009, 326; Holden, 2011a, 209-210).

Anthropologist and legal scholar Alison Renteln (2004, 206) has pointed out that having insiders explain their traditions appears “more politically palatable” than employing experts who are not members of the groups in question. This rationale links to the fundamental disciplinary debates regarding the ethics and politics of representation (Clifford & Marcus, 1986; Marcus & Fischer, 1986) and highlights the reluctance of several scholars to use *etic* rather than *emic* categories in describing various cultures and social groups. However, the use of “insider experts” as providers of cultural expertise in court is not without its challenges. It seems problematic for courts to assume that community members can automatically be employed as experts without any training, solely based on traits such as their ethnic identity (Holden, 2011a, 209-210). As anthropologist John Caughey (2009, 326), a cultural expert witness himself, highlights: “we may speak a language fluently without being a convincing expert on its linguistic structure.” Indeed, even though the witness was assumed to share the same cultural minority background with the defendant and the plaintiff in the case, it did not necessarily make him the most reliable cultural expert. The witness’ statement quoted in the

verdict on religion being something in “their culture” that one can insult, for example, might very well reflect the views of a secularised Kurd, but assuming that this would characterise “their culture” – or even necessarily the litigants’ “culture” – more broadly, appears questionable.

Another case in which the court relied on an eyewitness’s account in making statements regarding the litigants’ culture, took place in the earlier mentioned trial regarding human trafficking. The couple who managed Oriental restaurants in a Finnish city recruited a majority of their employees from Vietnam, but some staff members were also recruited locally. One of those locally recruited staff members acted as a witness in the trial, and she is introduced in the court decision as follows:

*According to [the witness D], who is called to testify, her mother is Vietnamese and father Finnish. When she was one year old, she moved from Vietnam to Finland, where she has lived both with her mother and her father. When living with her mother, she has become familiar with Vietnamese culture. [D] understands and is able to communicate in Vietnamese.*

Only after this initial introduction, it is explained how the witness is connected to the case at issue: she worked in one of the restaurants as a waitress for six weeks. The emphasis that the court first placed on her “cultural connection” to the case is revealing, however, and it highlights her dual role in the case as both a cultural mediator and as an eyewitness. The two-and-a-half-page summary of the witness’s account includes details on what she experienced and saw during her short-term employment in the restaurant. Additionally, there is a paragraph stating the following:

*In Vietnamese culture, speaking out about grievances is not commonplace. (- - -) Vietnamese people had a habit of expressing hardships through joking. The meaning of family was great for the Vietnamese. Speaking ill of one’s own family was not customary. It was typical that [Vietnamese] people working abroad sent money to their relatives back in their home country.*

The decision document also states that “In Vietnamese culture, according to [D], it is typical that emotions are not expressed openly.” Later, in another context the judges relied on this description even when not explicitly referencing the witness, as they stated:

*The credibility of the plaintiffs’ statements increase when taking into consideration that many of them have shown emotions when answering*

*questions regarding their working hours or the extreme nature of the labour even when this is not typical in Vietnamese culture.*

The ways in which the judges referred to the witness's account when making statements about "Vietnamese culture" reveals that the witness did, indeed, play a crucial role as a cultural expert in the trial even when she was not formally appointed as one. Her exclusion as the explicit source of information in the above cited text might, again, be a tactical choice from the judges' part which makes the information appear as objective and neutral and, hence, available for their use as the omniscient legal authority. While the judges treated the Finnish-Vietnamese witness as a knowledgeable insider of the Vietnamese community, it is worth considering to what extent she was, in fact, a suitable spokesperson for the Vietnamese litigants involved in the case. The witness had grown up almost entirely in Finland, in addition to which her age, gender and socioeconomic status seemed to set her apart from the majority, if not all, of the other people with Vietnamese backgrounds involved in the case. Despite this, her statements regarding Vietnamese culture were treated in many ways as the objective descriptions of a culture they were all expected to share. The witness's ethnic belonging, then, was clearly seen as fitting by the court for offering reliable knowledge on "Vietnamese culture" and, hence, served as a questionable justification for her employment as an informal cultural expert (cf. Holden, 2011a, 210).

In addition to eyewitnesses, interpreters were at times acting as cultural mediators in the cases of this study. Interpreters played crucial roles in the trials that I attended as most of the cultural minority litigants did not speak or understand Finnish fluently. An interpreter whom I interviewed explained to me, however, that ideally she and her colleagues should act as invisible and neutral tools that enable communication but do not otherwise intervene in the legal process. The scholarship on court interpreting stresses the crucial yet problematic position of an interpreter who is, indeed, often confronted with legal actors' naive expectations for performing "as a disembodied mechanical device" (Wadensjö, 1998, 74; see also Morris, 1995; 2010; Rycroft, 2011, 209). Sociologist Ruth Morris (1995, 30-31) has highlighted that this "legal fiction" on the absolute accuracy of translation, works in the favour of the law allowing it to ignore the inevitable failure of the interpreting process "to reproduce an identical replica across the language barrier". Scholars have, however, challenged the myth of verbatim, word-for-word translation and highlighted the engaged role of interpreters as visible actors who

ensure successful communication and convey pragmatic meanings (Jacobsen, 2003; Roy, 2000, 3).

The interpreter I interviewed was, hardly surprisingly, well-aware of the mixed expectations linked to her role in the courtroom. She explained how it frequently felt as though some people in the courtroom assumed her to be biased towards one party of the hearing. Consequently, she often felt it necessary to verbally remind all the parties to the trial about her unbiased position, think about seating arrangements and avoid extensive eye contact. In one trial where I observed her working, she did indeed change her seat mid-trial. When she did not return to her old seat next to a particularly chatty defendant after a break, the defendant seemed disappointed and wanted to know why the interpreter wanted to change her seat. The interpreter translated the brief conversation and told the defendant, and us, that the defendant interrupted her work. In the interview, she also recounted an instance where the defendants of a case saw a police officer whisper something to her during a trial and hence started to assume that the interpreter worked for the police. These examples work to highlight the significance of body language and demeanour in courtroom proceedings. Indeed, the performances of justice are not only carried out in words and documents but through various bodily acts and non-verbal cues (Flower, 2018). In another case, a prosecutor wanted to know what two defendants had talked about during a break and told her: “you are *our* interpreter, you have to translate everything”. The interpreter said that she was irritated by the comment and told the prosecutor that she was unbiased, regardless of who pays her, and that in any case she does not work during the breaks.

A prosecutor whom I interviewed contemplated on the problems of court interpreting and commented on the expectations regarding interpreters acting as cultural mediators. She stated with annoyance that “Sometimes they [interpreters] are entirely misused in trials. They might be asked ‘is that really how it is’? And that’s where it goes horribly wrong.” In the trials where I participated in, there were a few instances where the interpreters ended up offering, what I interpreted to be, informal cultural expertise. During one such trial, a mundane and short, yet quite telling, discussion around two names that kept appearing in a witness’s narrative occurred. Due to the large number of defendants, seven altogether, there were two interpreters present throughout the trial, and they worked together closely:

*Judge: The names Ahmed and Ahmad keep appearing in the story, which one is right?*

*Interpreter A: Is the question for the interpreter or for the witness?*

*[Judge remains quiet]*

*Witness: [says something in Kurdish]*

*Interpreter A: [explains in general terms in Finnish about the two ways to spell and use the name]*

*Interpreter B: To clarify, that was the interpreter's own view, the witness said that he doesn't know and in his area they just use Ahmed and he doesn't know how it is spelled.*

Discussions similar to the one above were fairly common in the trials I participated in. In another trial, for instance, an interpreter explained to the legal professionals why a witness wished to swear an oath by the name of god rather than to give a non-religious affirmation. In yet another case, the interpreter explained that when the defendants talked about their “brothers” they, in fact, referred to their close friends rather than biological family members. In all these cases, it has seemed to me that the cultural mediation provided by the interpreter has been welcomed and no parties to the trial have opposed to it. When I asked an interpreter in an interview if she was asked to clarify what could be defined as cultural matters in trials, she responded:

*Yes, sometimes they do ask. But at times I see it as necessary to say something if I can tell that the other one has not understood and then I say that “interpreter comments” and then explain the matter and interpret the same explanation also into the other language. It does help and in that way we can avoid questions that last for ten minutes.*

In my research material, then, interpreters were at times employed as the providers of ad hoc, informal cultural expertise in issues that linked, at least initially, to language and communication. Due to the close connection of national culture and language, and given the criticism pointed to verbatim translation (Colin & Morris, 1996, 17; Gibb & Good, 2014, 394; Morris, 1995, 27; 2010, 59), interpreters acting as cultural brokers might even be inevitable to some extent. Yet, while drawing a clear line between lingual and cultural interpreting seems impossible, there are situations in which the line between the two should be made more distinct. Similar limitations that concern employing eyewitnesses as cultural experts apply here too. The backgrounds of the interpreters, who according to my experience often have a long history of living in Finland, potentially set them fairly far apart from the people they interpret. Furthermore, while the interpreter and the litigant might share the

same language, that is hardly a guarantee of them sharing a connection to the same country, nation or “culture”. Needless to say, a single interpreter can also work in multiple languages regardless of their country of origin, ethnicity or cultural background.

To summarise, when the notion of “culture” was mobilised in a trial of this study, the judges did, at times, look for cultural expertise to create the judicial construction of that specific culture. This cultural expertise, however, was not provided by anthropologists or other cultural experts acting as expert witnesses but rather by informal cultural mediators. In some instances, eyewitnesses as well as interpreters were placed in dual roles as both witnesses/interpreters and expert witnesses regardless of their formal statuses in the trials. In these cases, the courts seemed to look for a “cultural connection” between the informal cultural experts and the litigants through, for example, focusing on a shared language or a country of origin. This process of establishing a cultural connection seemed cursory, however, and there appeared to be no discussion on the suitability of the eyewitness or interpreter in acting as a cultural expert in the cited trials.

In the cases I studied, the potential of cultural expertise as provided by trained experts was not tested, yet I believe it could have had a beneficial effect on the discussions around cultures that did take place. A trained expert, with no personal connection to any of the parties involved in the case, could have played a role in providing cultural expertise that was more impartial than when presented by an involved eyewitness, for example. A trained expert would have been able to base their knowledge on studies and experience and support their claims with scholarly references (Caughey, 2009, 326). As mentioned earlier, several anthropologists have, however, voiced their concerns regarding cultural expertise in courts due to “law’s reifying approach to ‘culture’” in which the strive to resource efficiency and absolute answers outweighs anthropological notions on, for example, relativity and reflexivity (Good, 2008, 57; see also Holden, 2011a, 204). Indeed, as the legal sphere seems to give support to particularly essentialist presentations of cultural minority identities, by providing an “expert view” on what constitutes a tradition, cultural identity or “culture”, the experts too would inevitably reinforce an imagery prone to essentialist features (Good, 2008, 56-57; Martínez, 2020, 634). The involvement of trained experts could, in any case, contribute towards making the discussions regarding cultural backgrounds in trials more transparent and informed. After all, when informal cultural experts are utilised in a haphazard manner, too much is left to chance. The risk is that a cultural minority litigant would only benefit

from (or be harmed by) “cultural expertise” when there are suitable interpreters or eyewitnesses involved in their legal case.

Examining the role of informal cultural experts in Finnish trials served to draw further attention to the intricacies involved in the production of legal knowledge on cultures. Informal cultural experts, such as eyewitnesses and interpreters, can have a central role in the production of a judicial construction of a specific culture even when the techniques of legal knowledge production can mask their full involvement. While the legal knowledge on cultures that became visible in the decision documents privileged the judge’s authority, the tools of courtroom ethnography are ideally suited for seeing past this top of the hierarchy legal knowledge. Through participant observation it was possible to locate the source of cultural expertise utilised even when this source was not identified in the final decision document. This was particularly true in the cases of the interpreters acting as cultural mediators as their formally impartial position and imagined invisibility automatically removed them from the courts’ documentation practices.

## 5 Judicial deconstructions of culture

The processes of legal knowledge production that are examined in this study include explicit mobilisations of “culture” and cultural identities but also practices in which the socio-cultural background of litigants and legal institutions are erased. While law is, indeed, cultural, law’s categories and practices tend to draw on the imagined universality and objectivity of a specific legal order (cf. Geertz 1983, 218, 221). The legal dramas performed in the courtrooms, then, are performances of objectivity and universality in which the role of culture becomes downplayed. Here, I will examine the techniques through which such erasing of culture from law was achieved in my research material. First, I will look at the hegemonic notion of legal subjectivity applied in Finnish courts and then analyse how the notion of law’s equality relates to the deconstruction of culture as meaningful in the context of cultural defence as well as in the practice of witness affirmation.

### 5.1 The acultural legal subject of trials

In the performance of a criminal trial, every participant holds a clearly defined role. The performances centre around the litigants who, as the *legal subjects*, are not only actual people but also the law’s ideals of individuals. While the legal subjects naturally change from one trial to another, law’s understanding of the legal subject remains largely unchanged. Indeed, legal subject is one of Western law’s basic categories and it derives from private law – not, then, from criminal or public law, for instance (Kurki, 2018; Tuori, 2000, 213). Legal subject is an ideal, and this generic construct can prove problematic when applied to legal cases involving people from linguistic or cultural minorities (Publication I; see also Kurki, 2018). Indeed, the idea of the liberal subject prevalent in Finnish trials, and in Western legal traditions more generally, assumes a highly context-free individual (Glenn, 2014, 147-151; Mäkinen & Pihlajamäki, 2004). Legal scholar Anna Grear (2011, 44) describes the *liberal legal subject* as:

*a socially de-contextualised, hyper-rational, wilful individual systematically stripped of embodied particularities in order to appear neutral, and, of course, theoretically genderless, serving the mediation of power linked to property and capital accumulation.*

In two of the criminal court cases of this study, the problems relating to the idea of a liberal legal subject became particularly noticeable. The legal subjects in these

cases were young immigrant women. The first case, which to me highlighted the shortcomings linked to the hegemonic notion regarding liberal legal subjectivity most evidently, involved an Afghan couple who was charged with serious fraud. I attended the two-day district court trial of the case in person in 2014.

The couple, “Ali Sayed” and “Mariam Sayed”, was charged with serious fraud after having received financial support from the Finnish state for years on questionable grounds. According to the prosecutor, the couple had been receiving financial aid ever since their arrival to Finland in 2008 on wrongful grounds as they, in reality, had considerable wealth abroad in foreign banks. By the time of the trial, Ali and Mariam Sayed had separated and in court they were represented by separate lawyers. Ali Sayed pleaded guilty to fraud while Mariam Sayed denied the charge primarily on the grounds of her lack of intent in connection to the alleged crime. Mariam Sayed’s defence stressed that due to her status as an illiterate and subordinated Afghan woman, Mariam Sayed’s level of moral and legal culpability was significantly lesser than that of Ali Sayed’s. Mariam Sayed’s lawyer highlighted that due to reasons embedded in “their culture”, a woman does not have a say in the financial matters of the household and hence her involvement in the alleged fraud was assumed incorrectly.

During the trial, details regarding the couple’s past were examined and special attention was placed on Mariam Sayed’s involvement in providing the Finnish authorities with false information. The couple’s time in Finland was characterised by multiple relocations and rejected asylum applications, and the most significant change took place when Mariam Sayed was entered into the protection system for human trafficking victims together with the couple’s child. The suspicion on trafficking occurred a few years after the couple’s arrival in Finland after Mariam Sayed told a social worker about her suspicions regarding her actual age. Consequently, a forensic age estimation was performed and according to the results, it was likely that Mariam Sayed had, in fact, been underage when the married couple entered Finland. In court, the prosecutor criticised the test heavily and found it unreliable. Nevertheless, after the test was performed and the results revealed in 2011, the couple’s marriage was invalidated and Mariam Sayed’s status as a human trafficking victim established.

When Ali Sayed became aware of the human trafficking charge, he denied it firmly and shared his version of the events with the police. He disclosed that after their arrival in Finland, the couple had provided the authorities with false information regarding their backgrounds, travel routes, names and financial situation. Ali Sayed claimed that they had lived legally in Russia for years, and he

supported his statement with evidence that included, for instance, his and Mariam Sayed's passports. According to the year of birth stated in Mariam Sayed's passport, she had not been underage when they arrived in Finland. The police had also gathered further evidence through interception of telecommunications and this evidence supported Ali Sayed's version of the events. After the new evidence was disclosed, Mariam Sayed was removed from the protection system for victims of human trafficking – the costs of which had, however, reached more than one hundred thousand euros. Mariam Sayed, nonetheless, continued to argue that she was underage when arriving to Finland and that the passports were forgeries.

After assessing the case, the district court, and later also the court of appeal, found that both Ali and Mariam Sayed were guilty of serious fraud. They were found equally responsible in terms of the financial support acquired from the state, and in addition to having to compensate for the costs, they were sentenced to probation. Additionally, Mariam Sayed was deemed responsible for compensating for the costs resulting from her inclusion into the protection system for victims of human trafficking. In the end, Ali Sayed was obligated to repay approximately 22,000 euros whereas Mariam Sayed was responsible for a repayment of just under 170,000 euros.

When assessing Mariam Sayed's involvement in the crime, then, the law courts did not question her role as an autonomous legal subject who acted in a calculating manner in planning and executing the fraud. In reinforcing the hegemonic notion of an autonomous legal subject, however, the courts were unable to count for the various vulnerabilities linked to Mariam Sayed's position. Martha Fineman (2008; 2013) has written about the *vulnerable subject* who, according to her, should replace the independent and autonomous subject glorified in the liberal traditions. Fineman argues that vulnerability rather than autonomy is a universal characteristic of the human condition, which means that the structures of our society, such as social policy and law, should be built to be more responsive towards the "existing material, cultural, and social imbalances" (Fineman, 2008, 4).

Considering Mariam Sayed's position from the viewpoint of a vulnerable subject provides further insight into the context within which she operated. Mariam Sayed was presumably illiterate, she had grown up in an environment defined by strong patriarchy and she had lived in uncertainty for years. She had, furthermore, lived in multiple institutions, received assistance from various agencies, and she had been represented by several legal assistants and social workers in an environment that, in all likelihood, was relatively unfamiliar to her. During the trial, Mariam Sayed needed breaks repeatedly, she often answered the questions with

uncertainty and left the courtroom crying during the proceedings. The hegemonic notion of an autonomous legal subject enforced by the courts, however, left little room for considerations regarding not only the various vulnerabilities of the subject, but also the potential multiplicity of agents. In court, Mariam Sayed's defence stressed that it would be unjust to demand that Mariam Sayed was responsible for the costs resulting from her time in the protection system for victims of human trafficking. According to the defence, after the forensic age estimation was performed, the authorities took charge of the situation and, in fact, placed Mariam Sayed into the system automatically.

The other case in which the idea of liberal legal subjectivity defined the judicial assessment of a case, and consequently called off any considerations on the potential role of cultural difference and gender, dealt with an irregular migration of an Iraqi woman. The alleged illegal immigration happened for the purpose of an arranged marriage, involving an Iraqi family of four and a smuggled bride. In the analysis of this case, which was tried in a Southern Finnish district court, I rely on the written material that was produced by the court. In the 17-page decision, the involvement of the different family members – the mother, father, daughter, and son – in arranging the irregular transportation was discussed. A key element to the journey was the daughter's passport, which the bride used to enter Finland by air. All four members of the family, however, claimed that the daughter was unaware of the unauthorised use of her passport. The bride, on the contrary, argued that everyone, including the daughter, was actively involved in organising her travel from Iraq to Finland. In the verdict the district court judge concludes:

*[The daughter E's] role has been significant as her passport has been used in the act. Had she refused to hand over her passport, execution of the travel could not have happened the way it did (- - -) [E] was born in 1984, and she has lived in Finland for years. In addition to this, she is a university student. These things considered, there are no grounds for deeming that she has not been able to make an independent decision regarding the illegal use of her passport.*

In the decision, the district court judge assessed the daughter's involvement in the case and placed a lot of emphasis on her age, history of living in Finland and status as a university student. These markers served as signs of autonomy for the judge and showed, to her, that the daughter was able to make an "independent decision" on the use of her passport. Taking into consideration the custom of arranged marriage in question, however, the vulnerabilities linked to the daughter's gender

and cultural background were potentially not invalidated by her age, studies, or history of living in Finland. Certainly, the daughter could have been acting willingly, yet it appears that the judge employed the idea of liberal legal subjectivity too readily in assessing the daughter's involvement. Scrutinising the daughter's role from the perspective of a vulnerable subject could have offered a more comprehensive account on the defendant's involvement and culpability in this particular case.

The strong underlying assumption on a context-free legal subject, that mostly excludes any references to factors such as cultural difference, was also highlighted in an interview I conducted with a prosecutor. We discussed trials involving immigrant women, and whether or not it would be possible to bring into question issues relating to their potential vulnerabilities in some of those cases. The prosecutor, who had a lot of experience in working with immigration issues, considered the matter:

*If the argument is that this is a subordinate woman, then it is the legal assistant's job to point out what is it specifically that makes this woman subjected. It won't – if you just say that she is from, let's say, Nigeria, it won't do. You have to bring a medical certificate proving something about the woman. That she is suffering from a trauma, for example, or has mental health issues ( - - - ) these could be factors in it. We talk about building themes, so the assistant would need to notify us that he or she seeks to introduce this theme of a subordinate woman and that would allow the assistant an opportunity to bring up also these cultural issues through, for example, hearing the woman about her life: "Tell us what you have done: can you read and write?"*

The prosecutor's comment supports the view of liberal legal subjectivity, as autonomous, acultural and genderless, being a fixed starting point when scrutinising the acts of a litigant in a courtroom. In order to have the judges recognise any references relating to vulnerability and cultural difference, the lawyers must provide a strong case for it. This, of course, has to be carried out in a language familiar to the court through evidence such as medical documents and oral testimonies. The question of how often the lawyers are able to convince the judges on the subordinated status of their clients in an environment where vulnerability and cultural difference have to be translated seamlessly into concrete proofs remains, however, open to speculation.

In the cases discussed above, then, the judicial deconstructions of culture derived from the hegemonic socio-cultural context of law's categories, and more

precisely, that of the legal subject. Instead of taking into account the potential impact of cultural difference, the courts assessed the activities of the cultural minority women through the lens of hegemonic legal subjectivity. This view of legal subjectivity is not only blind to culture, of course, but also to other social structures, such as gender, race and class (Gear, 2011, 44). It is not only culture, and other markers of individuals and groups, that are constructed and deconstructed during trials, however. It is also law and its seeming universality – or “superficiality”, as Latour (2010, 264) puts it – that are reinforced in legal disputes. The legal professionals of Finnish trials, then, are necessarily engaged in the process of maintaining the ideals of law’s totality and power as they make sure that law “holds everything” and when needed, links “all people and all acts” (Latour, 2010, 264). To fit this purpose, the notion of a legal subject has to remain superficial and stripped of any individual and cultural characteristics. This superficiality of law’s categories is not only a theoretical remark, but it is part of the framework that the trial actors orient to in their everyday trial talk and performance. The legal professionals I engaged with and observed during this study, for instance, appeared to take the hegemonic notion of liberal legal subjectivity as given in their courtroom conduct. In the trials, the legal professionals spoke on behalf of the litigants referring to them as their “principals” (*päämies*), bolstering an illusion of a legal subject as above the lawyer, as powerful and as having control. In reality, however, the litigants appeared to have minimal control over anything taking place in the courtroom and paradoxically ended up serving as muted stage props in the legal performances that could dictate their futures. The notion of liberal legal subjectivity, then, is a theoretical illusion yet at the very core of the performative project in which law maintains its power and seeming objectivity through providing its practitioners with the tools to support that project.

## **5.2 “Inequality” in cultural defence and in witness affirmation**

I have argued above that the assumption on liberal legal subjectivity characterised parts of my research material and appeared, at times, to lead into portraying the defendants in particularly simplifying terms. These legal constructions of individuals were genderless and acultural, and hence, resulted in inadequate representations of the defendants in the cases that I discussed. In addition to relying on the idea of liberal legal subjectivity, however, there appeared another technique through which the judicial deconstructions of cultures were achieved in my research material. This technique was to invoke the idea of “one law for everyone”

when reasoning, firstly, that cultural defence should not play a role in criminal trials, and secondly, that the current form of the witness affirmation was “neutral” and equally binding to all the potential witnesses.

In the interviews I conducted, I asked the legal professionals about their views on the role of “culture” in criminal trials and whether they saw cultural difference as something that could or should be taken into consideration when deciding on some of the legal cases that involved people from cultural minorities. The lawyer and the two prosecutors gave very similar answers initially as they were critical towards the idea of cultural defence on the grounds of inequality. The lawyer noted: “We deal, or we attempt to deal with all the issues in an equal manner. That is also what the law tells as to do. The law court and the process have to be the same for everyone.” The prosecutor’s reasoning followed the same line of thought as she argued: “The simple answer is no, of course we won’t consider culture. We won’t consider the majority culture for Finns either. We won’t consider individual variations like that.” The other prosecutor, likewise, stated that: “Everyone is treated the same, a Finn or a foreigner, it doesn’t matter.” The judge was less straightforward in expressing her views but she too noted that “In principle it [cultural difference] doesn’t have an impact (- - -) my understanding is that according to the law, it has no impact no matter what the cultural background.”

While it has to be noted that all the legal professionals also expressed softer views towards taking the defendants’ cultural backgrounds into consideration later on in the interviews, the shared initial response was still the same: criticism towards cultural defence on the grounds of inequality. The same argument has been raised in scholarship and legal scholar Valerie Sacks (1996, 545), for instance, has argued that “Far from leading to greater equality and less prejudice, adoption of the cultural defense is likely to promote prejudice and inequality.” Legal scholar Doriane Coleman (1996, 1144), who has studied the use of cultural defence in American law, has likewise argued that the cultural defence principle violates the core objective of the law to offer equal protection to all citizens. The idea of cultural defence impeding the principle of equality in law, then, appears prevalent among those who are critical towards the use cultural defence, and instead they highlight that law should be neutral, non-political and non-cultural (Claes & Vrielink, 2009, 307-308; Kymlicka, Lernestedt & Matravers, 2014, 5).

While the inequality argument can be mobilised when arguing against the use of cultural defence, multiple scholars have noted that the notion of equality can serve to justify the use of cultural defence too. Renteln (2004, 196; 2009, 62), for instance, has argued that equality does not mean identical treatment under the law

and that the equal protection principle of the law supports the use of cultural defence. The core idea of this argument is that law is always already cultural and allowing the cultural minority backgrounds to be considered would only serve to undo the cultural majority bias that is necessarily embedded in law and in trials (Lernestedt, 2014; Parekh, 2014). Indeed, law is shaped by a distinct way of organising and understanding human life, and it is embedded in and legitimised by the central views of the wider society (Parekh, 2014, 106). In other words, law is geared towards suiting the needs of the cultural majority or majorities, rather than those of the minorities. In that sense, allowing cultural defence would not give the cultural minority litigants anything the other litigants do not already have as part of the cultural majority. These debates on cultural defence do not, of course, exist in a vacuum but they relate closely to wider discussions on the accommodation of minority groups (cultural, ethnic, indigenous, national) in national and international laws (Kymlicka, 2007; Scheinin & Toivanen, 2004).

Despite the theoretical arguments for the use of cultural defence, the legal professionals I interviewed did not seem open to considering the cultural minority backgrounds of litigants in courts when they first commented on the topic. The legal professionals, then, deconstructed culture as meaningful on the grounds of the equality of law principle going against the recognition of minority cultures in a legal setting. Another context in which the notion of equality was invoked when seeking to view people, as well as the law, in the courtroom as acultural, was the witness affirmation ritual. The witness affirmation ceremony applied in Finnish courts has undergone some recent changes, and the ritual is, indeed, particularly telling of law's embeddedness in the wider society and its changing nature.

When a witness was called to testify in a criminal case that I attended, the atmosphere in the courtroom often changed noticeably. After all the written evidence was processed, a judge would ask the witness to enter the room over the intercom linking the courtroom with the waiting area. The witness, then, would enter the silent room and walk to the desk opposite to the prosecutor (see Figure 1) with many pairs of curious eyes following his or her footsteps. The judge would then greet the witness, verify his or her name and ask if the witness was aware of anything that might prohibit him or her from testifying. The judge would often ask a specifying question and enquire if the witness was, for example, a close relative to a litigant in the case. After having confirmed that the person was able to act as a witness in the case, the judge would ask the witness to perform the final ritual that qualified him or her as a witness: the witness affirmation.

In Finland, it has been possible to choose between a religious oath and a non-religious affirmation when acting as a witness in court until very recently. The practice of giving a religious witness oath has a long history, and it stems from the Swedish legal codex of 1734. After the changes introduced to the legal codex regarding criminal procedures in 1948, however, there appeared a distinction between a religious oath and a non-religious witness affirmation. In the non-religious affirmation, the witness swore by his/her honour and conscience (*kunnia ja omatunto*) rather than by the all-mighty and all-knowing God (*kaikkivaltias ja kaikkietävä Jumala*) (Laki oikeudenkäymiskaaren muuttamisesta 571./1948, 29 §). The option to choose between the oath and the affirmation was, however, removed in 2016 when the non-religious affirmation became the only type of witness vow recognised in the Finnish courtrooms (HE46/2014). The witness affirmation, then, is the same for all the witnesses and it consists of the following words:

*Minä [etunimi, sukunimi] lupaan ja vakuutan kunniani ja omantuntoni kautta, että minä todistan ja kerron kaiken totuuden tässä asiassa siitä mitään salaamatta tai siihen mitään lisäämättä taikka sitä muuttamatta.*

Free translation into English:

*I [first name, last name] promise and affirm by my honour and conscience that I will testify and disclose the whole truth in this matter, without concealing, adding or altering anything.*

The way in which the Finnish parliament justified the abolishment of the religious oath echoed the same “one law for everyone” principle that my informants as well as several researchers have invoked in connection to criticising the use of cultural defence in court. Indeed, the parliament argued that the non-religious witness affirmation allows the witnesses to be treated equally and according to the principle of religious liberty. The parliament considered, furthermore, the non-religious affirmation as neutral and in line with the idea of a pluralistic and liberal society. Additionally, in criticising the religious oath, the parliament noted that for a person who is not part of the Evangelical Lutheran church, it might be difficult to understand which god the oath refers to. (HE46/2014, 35-36.)

While the parliament perceived the use of the non-religious affirmation as “equal” and “neutral”, then, my ethnographic research material challenges this interpretation. The references to personal honour and conscience that are at the core of the non-religious affirmation appear, in fact, far from neutral and the notions are

most likely not perceived as equally pressing by all the witnesses. This point was highlighted in a trial where a witness, an asylum-seeker from Iraq who had recently arrived in Finland, was asked to give the non-religious affirmation before testifying. The witness did not speak Finnish and the interpreter translated the affirmation sentence-by-sentence after the judge. The witness, then, repeated the affirmation in his native language, Sorani, according to the interpreter's wording. After the judge asked to repeat the part where the witness swears by his conscience and honour, however, the witness interrupted the process. There appeared a short exchange of words between the witness and the interpreter after which the interpreter commented: "The witness said that he should swear by god before giving his testimony in order to do it properly". The judge responded quickly: "Tell him that we don't swear by god in here". The interpreter conveyed the message to the witness who appeared surprised and then responded to the interpreter. The interpreter commented: "He said okay, no problem." After this, the repeating of the oath continued as usual and the witness, then, gave a non-religious affirmation to his testimony.

While the above described instance was dealt with quickly and no one returned to the issue later on in the trial, I wondered how big an impact the episode might have had on the witness's testimony. When the non-religious affirmation was established as the only type of witness vow recognised by Finnish courts, it was, as mentioned earlier, defined as "neutral" and "equal" to all the witnesses. Arguably, however, the reference to "*my* honour and conscience" echoes commitment to a type of individualism that characterises something that might be labelled more accurately as Western rather than neutral. Indeed, Western law emphasises the centrality of a person and has the idea of individual rights at its core (Glenn, 2014, 147-151; see also Mäkinen and Pihlajamäki, 2004; Parnell, 2006, 453, 463). When comparing civil and common law legal traditions to Islamic or Confucian legal traditions, for example, the shifting role of the individual becomes apparent. In the Islamic legal tradition, the word for "right" in the subjective sense familiar to Western law, does not exist (Glenn, 2014, 203-204). In the East Asian legal tradition "individual" is absent, and subjective autonomy or unresponsiveness to others even indicates "idiocy or immorality" (Ames, 1988; Glenn, 2014, 334, 337). The legal language of Western tradition, then, is characterised by a highly individualised account of responsibility unmatched by many of the other major legal traditions.

The strong commitment to secularism that is reflected in the abolishment of the religious witness oath too, can be seen as part of a long process during which the Finnish state has distanced itself from the Christian religion. While the

Evangelical Lutheran and Orthodox churches both have strong ties to the Finnish state in terms of legislation and taxations rights, for example, (see kirkkolaki 1054/1993; laki ortodoksisesta kirkosta 985/2006) the separation between the Finnish state and Christianity has increased throughout the 1900s and 2000s. The principle of religious freedom was introduced in the Constitution Act of 1919 and the Religious Freedom Act was passed a few years after that (uskonnonvapauslaki 267/1922). The Religious Freedom Act was expanded in 2003 (uskonnonvapauslaki 453/2003) reflecting the increased commitment to alternative religious movements as well as to atheism in the Finnish population. An area where the increased secularism between the Finnish state and Christianity can be seen particularly clearly is religious education. During the 2000s, the state-supported schools in Finland have increasingly begun to offer education on several religions as well as on secular ethics (Sakaranaho, 2013).

The Finnish witness affirmation, consequently, while disguised as “neutral” is in fact reflective of a specific historical and cultural setting characterised by increased secularism and individualist thinking. If the purpose of the witness affirmation is to increase the reliability of the witness’s testimony, the enforcement of an oath that reflects the values of the institution rather than the witness appears, however, problematic. Legal scholar Eugene Milhizer (2009), who has studied the history and use of witness oaths and affirmations in the USA, has found the use of religious oaths still significant in American courts. Milhizer argues that religious items, such as the Bible or the Quran, however, should not be used while taking a witness oath but rather a non-specific invocation of god is preferred. Invoking a general notion of a god, he reasons, accounts for a variety of views on the identity and nature of god, which is consistent with the present-day attitudes in American society (Milhizer, 2009, 59). The removal of god from Finnish courts, then, raises the question of whether a meaningful custom was abandoned on too weak grounds and if allowing for a general notion of a god to be invoked in the oath would have resulted in a better outcome in terms of the quality of the witness testimonies.

I discussed the topic of witness testimonies in the interviews with the legal professionals and asked for their opinions regarding the abolishment of the religious witness oath. According to the lawyer, the move from an oath and affirmation to affirmation only was completed “because it is easier and more modern”. Invoking the notion of modernity highlights the increased secularism of the court institution and underlines the individualistic values that the lawyer saw as characterising the development of the Finnish law too. Some of the legal professionals, however, saw the current enforcement of the non-religious witness

affirmation as problematic in some cases. A prosecutor and the judge, in particular, had wondered if the old system was, in fact, more fit for the purpose of acquiring reliable testimonies from witnesses. The judge commented on the issue:

*I have, in fact, wondered if the old system would still be more efficient for some [witnesses]. Maybe for Finns it feels like swearing by god isn't all that meaningful these days. But then in some cultures it could still be [meaningful].*

A prosecutor, likewise, questioned the benefits resulting from the abolishment of the religious witness oath as she stated that:

*This witness affirmation is part of our Finnish legal praxis and culture, and it is tailored for us. When we have some people, who feel that they will testify with pure hearts if they swear by something else, something that is fitting for them, then I don't see that as a problem. I can trust that they speak the truth when they have sworn by their own god rather than according to the Finnish script.*

In stating that the religious witness oath could be more effective for some of the witnesses, the judge and the prosecutor recognised the shortcomings linked to enforcement of the current, "Finnish", witness affirmation in courts. The cultural embeddedness of the witness oath and affirmation was highlighted also by the other prosecutor who had made an interesting observation regarding the lack of choice some judges offered to cultural minority witnesses already prior to the abolishment of the religious oath:

*Even when the religious oath was still a possibility, the question was actually ignored and in my opinion they [judges] always took an affirmation from immigrants. (- - -) Apparently because it was thought that the god in the oath is a Christian god and it, for some reason, would be different from a Muslim god.*

The prosecutor's observation regarding the ways in which the religious oath was, or more accurately was not, applied further highlights the strong cultural and ideological embeddedness of the witness oath and affirmation. The earlier cited parliament note on the justifications regarding the abolishment of the religious oath, likewise, stated that one of the reasons for abandoning the religious oath was that a person who is not part of the Evangelical Lutheran church might find it difficult to understand which god the oath refers to. This argument seems confusing if the purpose of the witness oath or affirmation was solely to increase the chances of the

witness telling the truth. In that case, why would it matter which god the witness had in mind when repeating the oath? The answer is that it would not, of course, yet when perceiving the witness oath as a tool for cultural and ideological control in the courtroom, the witnesses knowing which god is being referred to, appears imperative.

The examination of the witness affirmation, then, reveals it as an institution that is inseparably connected to the surrounding society, its central values and history. While the cultural embeddedness of the witness affirmation is clear, the desire to deconstruct the cultural context of the affirmation through references to neutrality and equality became particularly clear when looking at the arguments offered by the Finnish parliament for the abolishment of the religious oath. Here the “deculturalisation” of the witness affirmation serves to highlight the intricacies involved in the construction and deconstruction of “cultures” that are involved in the legal knowledge production. The agents involved in the legal knowledge production regarding cultures, then, are many and include people both in and outside of the courtrooms. The methods of courtroom ethnography gave access to research material that provided further insight into the topic and contested the “neutrality” and “equality” of the witness affirmation. Instead, the witness affirmation appeared as a cultural institution that is built according to the logics of individualism and secularism that are increasingly visible in the Western law and in Finnish society.



## 6 Conclusion

Studying the processes of legal knowledge production ethnographically revealed the explicit and implicit ways in which cultures and cultural identities were both constructed and deconstructed in Finnish courts. Through focusing on the details of legal knowledge production on cultures taking place in courtrooms, my study engaged in the scholarly discussions regarding the relationship between anthropological and legal knowledges in the practices of law. These discussions – which have often highlighted the active role of anthropologists in courts (Ballard, 2011; Caughey, 2009; Good, 2008; Holden, 2011a; Mora, 2020; Zenker, 2016) and relied heavily on the top of the hierarchy legal knowledge through examining documents (Deckha, 2009; Renteln, 2004; Truffin & Arjona, 2009) – have tended to essentialise legal knowledge rather than turn it into an object of ethnographic analysis (see also Bens, 2016b; Riles, 2004, 777). In studying the intricacies involved in the production of “legal accounts” on cultures, however, my study has contributed towards challenging the essentialised view of legal knowledge as I have brought into sight some of the complex relations and changing flows of power underlining the judicial de/constructions of culture.

First, I studied how, and by whom, the notion of culture was interpreted and mobilised in Finnish criminal trials involving people from cultural minorities. I found that cultures and cultural identities were discussed in courts by judges, litigants, and lawyers, but also by eyewitnesses and interpreters who ended up acting as informal cultural experts. Consequently, I found the legal knowledge production regarding cultures a multivocal and contested process that reflected the differing values and views held by those involved in the courtroom proceedings.

Echoing the findings of previous research, I concluded that the judicial constructions of culture reflected essentialising logics and reduced cultural identities into stereotypical notions. “Kurdish”, “Vietnamese”, and “Finnish cultures”, for instance, were discussed in simplifying terms while in only one case there appeared different interpretations on what culture, and more specifically “Egyptian culture”, entailed. Indeed, while for anthropologists the concept of culture serves as an abstraction and as a tool for analysis, in court the concept easily turns into an item and a legal instrument (cf. Demian, 2008; Gershon, 2011a, 545).

When equipped with anthropological references on the contested and dynamic nature of cultures, then, it is easy to criticise the courtroom discussions and find them as glossing over the complexities of the notion of culture. While this object of criticism appears, indeed, as a low hanging fruit and as one already stressed in

previous scholarship, it remains valid. The risks and consequences of enforcing stereotypes in an arena of knowledge production as powerful as law are potentially major and, hence, require increased and continuous attention. Courtroom discussions and legal decisions as the “creators of fact” (Rosen, 1989, 17) have the potential of establishing demeaning stereotypes and confrontation between groups in a way that effects the world far beyond a single criminal case. For instance, the case in which a brother and a sister with Iraqi backgrounds were the plaintiff and the defendant attracted wide national media attention when the charges were pressed and processed. The media referred to the case as the “honour killing trial” (*kunniamurhaoikeudenkäynti*) (YLE 13.3.2017) despite the fact that the brother was not charged of manslaughter or murder and was, in fact, found not guilty to the main charge regarding preparation of murder, in the end. The different media outlets, nevertheless, quoted some of the statements made in court regarding “Iraqi culture” and concluded, for instance, that the case was “Finland’s first suspected preparation of an honour killing” (YLE 13.3.2017).

The manner in which the above-mentioned legal case was discussed in the media and by the public, then, highlights that the language used and the notions invoked in courts can have a substantial impact on how certain minorities are perceived in the public eye. The public discussions drawing from the court documents ended up constructing the “cultural other” as committing to undesirable norms and practices while the “cultural normal” was simultaneously idealised and imagined in the background as reflecting liberal and civilised values. This kind of process works to establish the boundaries of belonging and, as a damaging flipside, it also legitimises exclusion (see also Aliverti, 2018, 129). The discourses of belonging and exclusion are central in nation-building, and they serve as powerful allies in constructing the deeply polarised division between “us” and “them” that underlines many of the conflicts in today’s societies.

While invoking the notion of culture in court, then, can lead into problematic outcomes in terms of strengthening stereotypes and increasing polarisation between “us” and “them”, assuming law and its subjects as acultural and without context is hardly a desirable approach either. In addressing the second research question of this study, I examined the techniques through which litigants and legal institutions, such as the witness affirmation, become to be portrayed as acultural in Finnish law and in courts, and with what consequences. Indeed, my research material highlighted that in some cases the use of an autonomous, acultural and genderless legal subject as a fixed starting point when assessing the acts of litigants, was severely insufficient. The ways in which litigants and legal proceedings (e.g.

witness affirmation) are assumed as representatives of and serving for the cultural majority or majorities of a given society can result in an unequal treatment of those belonging to cultural, religious and gender minorities, among others. Hence, the judicial deconstructions of culture, as in the disregard of litigants and legal institutions as embedded in a specific socio-cultural setting, can lead into disfavoured multiple individuals in a society characterised by plural value systems and a variety of identity categories. Indeed, Martha Fineman's call for a more responsive state that accounts for the "existing material, cultural, and social imbalances" (Fineman, 2008, 4) in social policy and law, now seems timelier than ever. There is a need for further studies in this area of research too, and scholars could look at how the different minorities in Finland are (un)produced by the law and its categories, but also how the members of different minorities themselves perceive the law and its processes (cf. Merry, 1990).

Overall, studying cultures as legal knowledge with ethnographic methods made it possible to see how culture and cultural identities became part of law's language and the everyday legal reasoning. The third research question I set out to answer was how courtroom ethnography influences the knowledge produced in the study of law. While my study material included a large number of legal documents too, the role of participant observation conducted in court was pivotal in reaching the outcomes presented in this thesis. Previous scholars studying cultural diversity and anthropological expertise in courts have largely relied on autoethnographic accounts (Ballard, 2011; Hoehne, 2016, Holden, 2011a; Loperena, 2020) often excluding the legal cases where cultural experts were not invited to attend from the ethnographic analysis. As a result, there has been a stronger focus on the spectacular rather than mundane legal cases in which cultures and cultural backgrounds have been discussed. Courtroom ethnography, then, made it possible to study the everyday processes and performances of culture de/construction and the informalities and multiple actors involved in these processes. Consequently, "legal knowledge" appeared in less essentialist terms than it has appeared in much of the previous scholarship. Stressing the role of participant observation, furthermore, is important in the current era of anthropological research that is increasingly being influenced by the logics of urgency and high efficiency (Cabot, 2019; Grandia, 2015, 302-303; Tamarkin, 2018, 306). As anthropologist Heath Cabot (2019, 270) has argued, returning to the key methods of the discipline may make anthropologists better prepared to resist the business-like logics of neoliberal academia and "the lure of crisis chasing".

The outcomes of this study are, of course, results of particular theoretical and methodological choices which are not without their limitations. Due to the geographical challenges and limited access to nation-wide information regarding upcoming trials, for instance, my ethnographic focus remained with a single courthouse. While I was able to take part in thirty-eight trials, there remained several which I studied solely through documents. Due to the multivocality of the court decisions (see subchapter 3.3) and the discursive strategies (e.g. passive voice) applied in them, the information regarding who exactly is speaking and what, indeed, is left unsaid often remains unclear. While the lack of transparency and detailed information in court documents presents itself as a disadvantage in terms of the depth and quality of the research material, it has also led into examining the logics and techniques connected to these documentation practices. Consequently, hiding particular actors behind the passive voice, for instance, proved to be a fruitful issue to investigate in this thesis rather than appearing solely as a weakness in the collected research material.

Furthermore, I believe that my study would have benefitted from a more detailed description on the everyday knowledge-making practices present in courtrooms as well as from first-hand ethnographic material regarding the processes in which judges deliberate and author their decisions. However, my notes, particularly from the early period of field work, contain little microsocial detail regarding gestures, body language and the physical treatment of documents, for example, which I later found of importance and which would have added depth to my ethnographic description and analysis regarding the practices of legal knowledge production taking place in courts. Also, the crucial part of the legal knowledge production where judges assess the case and write their conclusions was, regrettably, inaccessible to me and remained largely in the dark as I was able to learn about the judges' accounts only in the decision documents. Additionally, while I believe that the lack of formal legal training served me largely as a benefit, I wonder if my unfamiliarity with the written law narrowed my view at times in a disadvantageous way. Did I miss something crucial by not understanding the rules of the performance the ways in which the ones performing in it did? Was I too much of an outsider and, essentially, trying to understand a culture despite not knowing its language? While these issues are, ultimately, for the readers to decide, I believe that a strong case can be made for the ethnographic study of law by non-lawyers and non-legal scholars. When courtroom proceedings are not understood in terms of implementing laws but instead as cultural performances and as sites where

diverse forms of knowledge production takes place, a more nuanced view of law and its place in a society can potentially be achieved.

The most apparent practical implications of this study have to do with the practices of cultural expertise and witness affirmation. While more research is needed, the insights of this study would suggest that cultural expertise is not provided by specially appointed expert witnesses in Finnish courts but that the possibility of employing trained cultural experts should be considered. The involvement of trained experts could contribute towards making the discussions regarding cultural backgrounds in trials more transparent and informed. This study has also highlighted that the non-religious witness affirmation, which is currently being used in Finnish courts, might not be equally suited for all the witnesses. In addition to keeping the witness affirmation in place, allowing for a non-specific invocation of god could result in a practice that accounts for a variety of beliefs and, hence, suits a larger number of witnesses. These possible implications are, however, based on observations drawn from a limited amount of data and would, again, need to be examined more thoroughly in future research.

The ethnographic focus on the mundane legal knowledge production made it possible to see how law operates as a hegemonic process (cf. Chunn & Lacombe, 2000, 10) that legitimates certain views of cultural otherness and normalcy, for instance, but also of dispute resolution more generally. The judicial constructions and deconstructions of culture described above showed that cultures and cultural identities were negotiated in courts in highly polarising terms: cultures were either essentialised or ignored. This, consequently, serves to highlight the problematic logics of judicial dispute resolution – which is where I wish to end my conclusions. Indeed, what kinds of ideas on disputes are reflected in Finnish trials and what is the assumed role of the litigant in resolving them? American legal scholar Carrie Menkel-Meadow (1996) concluded over two decades ago that the binary nature of the adversary legal system and trials seems outdated in a postmodern and multicultural world characterised by multiple truths and partial perspectives. Menkel-Meadow (1996, 6) argued that the way in which the adversary legal system necessitates the forming of two opposite sides to an issue polarises and distorts, rather than uncovers, the truth(s). Consequently, the trials by default simplify complexity, and that tendency to reduce nuances is what underpins the ways in which the judicial constructions and deconstruction of culture are formed too.

The criticism towards the role of courts and towards the theoretical assumptions of the traditional jurisprudence has led into an increase on global scholarship discussing the potential of Alternative Dispute Resolution (ADR) (e.g.

Menkel-Meadow, 2000; Steffek et al, 2013). The scholarship around ADR is extensive and includes references to approaches such as problem-solving justice (Berman & Feinblatt, 2005; Nolan, 2011), restorative justice and therapeutic jurisprudence (Braithwaite, 2002; Winick, 2003), to name a few. Legal scholar and sociologist of law Kaijus Ervasti has written about the development of problem-solving justice and mediation in Finland and concluded that the role of Finnish courts is changing considerably (Ervasti, 2018, 21; see also 2014). Ervasti (2018, 21) argues that “Finnish court procedure is moving away from the ideals of material law and a substantively correct judgment and towards the ideal of negotiated and contextual law”, which can be seen, for instance, in the requirements that courts must meet regarding perceived procedural justice. The criminal law has seen the introduction of several reforms and the victim-offender mediation, for instance, is widespread in Finland (Ervasti, 2018, 21). The changes, however, are happening slowly and the primacy of trials in dispute resolution is evident when looking at, for instance, the increased waiting times connected to judicial trials (Finnish Bar Association, 2020).

Studying the constructions and deconstructions of culture in Finnish trials, then, highlights the deeply contrasting and simplifying logic underpinning the format of present-day litigation. Additionally, examining criminal cases that involve members from cultural minorities serves to reveal some of the core assumptions regarding the role of the litigant in a trial. Indeed, as a final remark I want to draw attention to the judicial system’s assumed users and consider for whom the Finnish trials are designed. A top-down view would highlight the role of the state and stress that trials are a tool of control and violence for the state and its protagonists (Baxi, 2014; Kaplonski, 2008). A focus on the individuals, on the other hand, would lead into stressing the role of trials as a tool for achieving individualised justice and renegotiating personal relationships (Andreetta, 2020; Merry, 1990). Indeed, the different interests and shifting power relations are clearly present in trials and they highlight the complexity regarding the ownership of legal issues too. In her ethnographic study on the working-class Americans’ experiences with litigation, legal anthropologist Sally Engle Merry (1990) described the loss of control experienced by her informants as they encountered the legal system. According to Merry, the litigants felt entitled to use the legal system of a nation they saw themselves as being part of, yet in order to access the power of law, they had to increasingly yield control of the situation to the legal professionals. In a similar vein, Norwegian sociologist and criminologist Nils Christie (1977) has famously argued that conflicts are best seen as property that should be used to serve those

initially involved in them. According to Christie (1977, 4-5), lawyers, however, steal conflicts from people omitting especially the victims' potential for participation.

The lack of litigants' involvement in trials orchestrated and ran by legal professionals became clear in my research material too. The litigants remained mostly quiet in the courtrooms yet during the breaks several of them turned to their lawyers and asked them to explain how the process was going and what was about to happen next. The largely invisible role of a litigant became particularly evident in a case where one of the defendants concerning a case on the arrangement of illegal immigration did not come back to the courtroom after a break. The guard informed the judge that the defendant, who was kept in prison during the trial, did not want to join the trial but rather stayed in the confined waiting area for the rest of the day. The judge acknowledged the situation after which the trial continued as normal despite the defendant's absence. The small role played by the litigants in trials, then, begs the question: whose version of the problem is being discussed in court?

To avoid the litigants from being further alienated from their legal cases, it is crucial that the trials remain valid for them and that they respond adequately to their views on how justice should be delivered. The format of a trial appears rigid yet as anthropologists John L. Comaroff and Simon Roberts (1981) have outlined in their research on dispute resolution among the Tswana, the relevance and meaning of rules are negotiated in disputes. When looking at each trial as a possible contestation over the meaningfulness of the format, studying court cases that involve cultural minority litigants can prove particularly rich in content. Questions such as "why does the judge not ask me anything", "when is it my turn to speak" or "why cannot I swear by god", all invoked in the trials part of this study, are highly relevant and should be taken as an invitation to reflect on the issues and challenge what is currently being taken for granted in Finnish trials. As the Finnish courts and dispute resolution adjust to the needs of the 2020s, acknowledging that the users of the system are many and that the performances of justice are evaluated from diverse perspectives, is essential.



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## Original publications

- I Cooke, T. (2017). Seeing past the liberal legal subject: Cultural defence, agency and women. *Suomen antropologi* 42(3), 23–40.
- II Cooke, T. (2019). From invisible to visible: Locating "cultural expertise" in the law courts of two Finnish cities. In A. Sarat & L. Holden (Eds.), *Cultural expertise and socio-legal studies: Special issue in studies of law, politics, and society* (pp. 13–33). Bingley, Emerald Publishing.
- III Cooke, T. (in press). Judging 'close family relations' in irregular migration: The production of legal, national and familial orders in Finnish courts. *Nordic Journal of Migration Research*.
- IV Cooke, T. & Heikkilä, E. (2020). Etnografia oikeudenkäyntien tutkimuksessa: Kulttuurinen asiantuntijuus ja oikeussubjektin haavoittuvuus vähemmistökuultuuriin edustajien rikosoikeudenkäynneissä. *Oikeus* 49(4), 425–446.

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